

husband, she noways represented him by any passive title; likeas, *2do*, She was then married, and noways obliged to depone in prejudice of her husband. *Answered*, To the *first*, Noways a decret in absence, for she had a procurator compearing for her, and produced a mandate, in so far as he produced the messenger's copy citing her to compear, which Perezius ad Cod. tells, does as sufficiently authorise him as if he had the party's writs in his hand; and he refers the verity of the debt to the pursuer's oath, who having deponed affirmative, the Sheriff decerns accordingly; and the sentences of inferior courts are not to be made like Penelope's web, or spiders nets, to be swept down at every touch, else these judicatories will be absolutely discouraged. And as to the *second*, of her being married, the same was clandestine without proclamation, and so never came to the charger's knowledge, and must not prejudice him of her oath. *Replied*, *Nulla modo relevat* to produce the copy for proving that the procurator had a mandate; for copies may be lost, or left in the lock-hole, or got for a little money from a messenger, and so the pursuer may employ a mock procurator for his antagonist, and bind a false compearance on him; but *esto* it had been a full mandate, yet that never empowers a procurator to refer the debt to the pursuer's oath without a special particular mandate to that individual effect, seeing a procurator is not so *dominus litis* that he can dispose of his client's property, as if it were his own; so that he clearly malversed, *et excessit fines mandati*; and as to her marriage, they prove it by the minister's testificate, that it was publicly celebrated in the church. THE LORDS found that no procurator could defer the libel to the pursuer's oath without a special warrant to that effect, and therefore reponed the defenders against the Sheriff's decret.

No 4.

*Fountainball, v. 2. p. 477.*

1712. January 18.

INGLIS against FULLER.

THE LORDS, upon report of the Lord Cullen, found that one's procurator before an inferior court, could not defer the verity of a point to the other party's oath, *etiam in re minima*.

No 5.

*Fol. Dic. v. 2. p. 211. Forbes, p. 577.*

1775. November.

GRAHAMS against FERGUSSON.

No procurator in an inferior court can defer a libel to the defender's oath without a special mandate to that effect. See APPENDIX.

No 6.

*Fol. Dic. v. 4. p. 153.*

See PROCURATOR-FISCAL.—See DELINQUENCY.—See APPENDIX.