

expedient for the interest of the creditor, seeing it is at Carrick's desire he asked the delay, which was a direct stating himself a cautioner; and, in consequence thereof, Lohead, who was going on in diligence when he received the missive, forbore for upwards of two months. It is true, that a mandate, granted only for the sake of the mandant, infers no obligation; but a mandate, on account of a third party, which is the present case, does oblige the mandant to repair any loss the mandatary shall incur by following thereof. Besides, it would have been ridiculous to ask of Lohead to suffer the effects of his debtor, viz. the sum that Carrick was to pay away at Whitsunday, to be withdrawn, and to relinquish the method pointed out to him by law for attaching thereof, unless some other security was to be substituted in the place of what he passed from. And, as to the observation on the letter, it is believed the word ye'll has the very same meaning in Scots, that you shall hath in English.

THE LORDS found, That the letter implied an obligation on the defender to relieve Lohead of all damages he might sustain in delaying diligence against Carrick, but found, That he has the benefit of Carrick's being first discussed.

*C. Home, No 78. p. 130.*

1738. February 15.

JAMES PATERSON, Writer in Stirling, *against* LADY HOUSTON.

LADY HOUSTON having an interest in the parish of St Ninians, wrote a letter to Sir Hugh Paterson, empowering him to vote in her name, and sign a call in favours of Mr Mackie to be minister of the said parish; and then adds, "Upon doing whereof, and what else is necessary for me in that affair, I hereby oblige me to hold as sufficient as if I had done so myself." The settlement having met with opposition; such of the heritors, who had signed the call, assessed themselves, in order to raise a fund for defraying the expenses; for payment of a proportion whereof, a process was raised against Lady Houston, founded upon the above letter.

The *defence* was, That it imported no more than the giving a proxy to vote in the call, which could not subject the defender to the expenses. And, as to the latter part of the missive, it was plainly relative and executive; for the words, "and what else," &c. could only be understood of what was naturally consequent upon the call's being approved of by the presbytery, namely, the declaring her submission to Mr Mackie as minister of the parish, in case of a settlement; and, as the assessments were laid on without any authority from the defender, they could not affect her.

*Answered* for the the pursuer, That, though Lady Houston had not added to her proxy the general power of doing all things necessary for obtaining the

No 13.

No 14.

A party who had empowered a proxy to act for her, was found not to be bound to consequences of the obligation incurred, not mentioned in the procuratory given.

No 14.

settlement, but had only signed the call by herself or proxy, it is believed that would have been sufficient, *per se*, to oblige her to pay her proportional share of the necessary expense, the joining in such an affair being a tacit entering into a society for that particular, which subjects every member thereof to his quota of the necessary charges; but it was improper to argue the general point here, as the proxy founded on bears expressly to do every other thing necessary. Now, the only thing requisite in that affair, besides the voting for and signing a call, was the adjusting the proportion by which the charges, in obtaining that settlement, were to be paid by each individual who concurred therein, and laying the same out reasonably; all which has been done in this case.

THE LORDS found Lady Houston not liable.

*C. Home, No 86. p. 140.*

No 15.

An estate being bought under an obligation to re-dispose lands to the value of 6000 merks, or 300 merks of yearly rent, being a forty shilling land, or so much more as should make a forty shilling land, that the seller might retain a qualification to vote for a member of Parliament; the obligation was found to subsist notwithstanding the statute taking away the qualification on that extent.

1745. *January 8.*

MACLAUHLAN of Auchintroig *against* MACLAUHLAN of that Ilk.

MACLAUHLANS, elder and younger of Auchintroig, sold their estate to Maclauchlan of that Ilk, by disposition, in which are these clauses, "Reserving forth from this present disposition to me the said John Maclauchlan, elder, a yearly annuity of 300 merks yearly, payable to me in liferent, out of the first and readiest of the whole rents of the said lands, by the said Lauchlan Maclauchlan his said obligation of this date, and to me the said John Maclauchlan, younger, my heirs and successors in fee."

There is an obligation on Maclauchlan in these words, "To pay to the said John Maclauchlan, elder, and to me, his son, in fee, an yearly annuity of 300 merks Scots, and that out of the first and readiest of the rents of the lands.

Then follows this clause, "And sicklike, the said Lauchlan Maclauchlan, in terms of the foresaid disposition, because of the said John Maclauchlans their discharging the sum of 6000 merks Scots, as a part of the foresaid 28,000 merks (the price) to be applied towards payment of the said yearly annuity of 300 merks, mentioned in the said disposition; and in respect thereof, and for the benefit of a free baron, in favours of the said John Maclauchlan, younger, which he cannot obtain unless a part of the said lands equivalent to that said annuity of 300 merks be made over to him, for payment to his said father of the said yearly annuity; therefore, the said Lauchlan Maclauchlan freely subjects and submits himself to the determination of Mr John Macleod of Muiravonside, Advocate, on his part, and the said John Maclauchlan, younger, freely submits himself to the determination of Mr Nicol Graham, of Gartmore, Advocate; and in case of the decease of either of them, to any other to be chosen for that effect, to allocate and take off from the