

No 212. Mudie is not at liberty, by every competent mean of proof, to establish the mandate he received from Ouchterlony, to make the purchase for his behoof; and so was determined in the cases Tweedie *contra* Loch, Skene *contra* Balfour, Ramsay and Rigg *contra* Maxwell, all lately under the consideration of the Court, (See APPENDIX). And the principles of the civil law, under the title *De Mandato*, are perfectly agreeable to these decisions.

Answered for Ouchterlony's Representatives: Mandates or commissions are commonly given in writing: This practice proceeds from the general sense of the law: Mandates are only probable by writ or oath; and it is consistent with reason they should be so, as the terms of a verbal commission, like a verbal promise, may easily be mistaken by witnesses, and proof of mandates has been often limited to writ or oath, long prior to the act 1696, particularly in these cases observed by Durie, 13th Feb. 1638, ——— *contra* ———, No 203. p. 12397.; 28th Nov. 1634. Brown *contra* Hamilton, No 204. p. 12398.; and 15th June 1688, Lague *contra* Vauss, No 212. p. 12402.: That, whether Mudie or Ouchterlony is to be considered as the trustee, makes no distinction in the present case, as the intention of the legislature, by act 25th 1696, could not be to give a benefit to the trustee, which it denied to the truster; and, if writ or oath only could prove the trust against the one, no other mean of proof can be competent against the other.

' THE LORDS remitted to the Lord Ordinary to allow a proof.'

For Mudie, <i>Lockhart</i> .	For Ouchterlony, <i>D. Rae</i> .	Clerk, ———
A. E.	<i>Fol. Dic. v. 4. p. 160,</i>	<i>Fac. Col. 36. p. 60.</i>

1756. June 27.

DR ROBERT HERRIOT *against* ALEXANDER FARQUHARSON, Trustee for ADAM and THOMAS FAIRHOLME's Creditors.

No 213.

ACCESSION to a trust-deed was found to be sufficiently proved by letters from the creditors authorising their agent to concur with the acceding creditors, joined to the agent's attendance at their meeting, and concurring in their measures.

Act. <i>Ilay Campbell</i> .	Alt. <i>Macqueen</i> .
G. F.	<i>Fol. Dic. v. 4. p. 160. Fac. Col. No 39. p. 267.</i>

1791. May 7. TRUSTEES of CROLL *against* ROBERTSON.

No 214.

ACCESSION to a trust was found sufficiently proved, by the creditor having attended a roup of the bankrupt's effects, called by the trustees, bought several