

PROCURATOR.

1777. *March* . FERGUSON *against* GRAHAM.

By the regulations established by the Sheriffs, as to the form of process before their Courts, no procurator has power to make a reference to the oath of party without a special mandate to that purpose: a general mandate is not sufficient. See also Dict., Vol. II. p. 210; Bank., Vol. II. p. . In the case, Ferguson *against* Grahams, under consideration of the Court, 20th December 1775, the Lords seemed to be of this opinion, although they did not directly find so; and, on advising a reclaiming petition with answers, as the other party alleged there had been a written mandate for a reference to oath, they granted, before answer, diligence for recovering it; and the diligence being reported, and no written mandate produced, the Lords having resumed consideration of the petition and answers, they adhered.

Summer 1769. ANDERSON and DAVIDSON *against* ROBERT GRANT, Merchant in Leith.

A PARTY giving authority verbally to his procurator, to make a reference to oath, in a process before the Judge of the Court of Admiralty, and naming a Commissioner for taking the oath; this held to be sufficient without a written mandate, Anderson and Davidson *against* Robert Grant, merchant in Leith.

PROOF.

HELEN Liddell pursued William Heugh, a tenant, for aliment of a child, of which, she said, he was the father. The Justices of Stirlingshire allowed the woman her oath in supplement; and, in an advocacion which was past and discussed before Lord Monboddo, Ordinary, 7th July 1778, the Lord Ordinary remitted the cause *simpliciter*: and, upon a bill and answers, the Lords adhered, 15th January 1779. The circumstances against the man, were chiefly being twice with her in an out-house, at ten o'clock in the month of May, and

some lesser circumstances, tending to show good acquaintance between them : he acknowledged an intended courtship, but denied criminal converse : no familiarities appeared. He objected to her character as to chastity with others ; but this was denied, and the contrary seemed proved, *viz.* that she was a girl of good character. The Ecclesiastical Judicatories, both upon her part as of the church, and his, as a seceder, were against him. And this day, 3d February 1779, the Lords refused a petition without answers, and adhered.

1774.

JEAN STEWART *against* SAMUEL M'KEAN.

JEAN Stewart brought an action, before the Sheriff of Wigton, against Samuel M'Kean, for aliment of a bastard child, of which she was delivered, 3d January 1772. The defender denied that he was the father of the child ; and the pursuer having referred to his oath, if he had not had criminal correspondence with her within twelve months prior to the birth of the child ; and he having deponed that he had had such correspondence 11 calendar months preceding 3d January 1772, but no later, the Sheriff assoilyed, and decerned.

Winter Session 1774, in an advocacy, the Lords advocated the cause, and assoilyed.

It seemed dangerous to extend the period of incubation of children, above that fixed by the law, in the question of legitimacy, where ten months is reckoned the highest ; for though perhaps instances may be found, as was alleged in this case, where women have gone eleven months instead of nine, or ten, yet such instances, if such there be, are not to be made a rule. But Lord Covington observed, that he doubted if the periods fixed by law held as to bastard children, confessedly allowed to be such, but that they were fixed *in favorem matrimonii*. However, the Lords determined as above, and did not seem to regard this distinction.

JACK *against* COPLAND.

DETERMINED to the same purpose, and on the same principles, 27th June 1775, Jack *against* Copland of Collieston.

In both the above cases, particularly the first, the women were of doubtful character.

1771. *March* .RAMSAY *against* STEEL.

RAMSAY brought an action against Steel, concluding, that he should be decerned in aliment to a child brought forth by Ramsay, of whom Steel was the