1771. *December* 10. BURNET *against* CLERK.

No 34.

A FARRIER being employed to attend a horse that was diseased, the owner directed him to give the horse no medicine but nitre. The farrier accordingly gave the horse nitre; but, to make him swallow it more easily, mixed it with a little treacle. The horse died next day; and the owner brought an action for the price, in respect the farrier had gone *ultra fines mandati*, in mixing treacle with the nitre. The COURT, however, were of opinion, that the defender had not gone *ultra fines mandati*, but that the mode followed was necessary to fulfil the orders given, and therefore assoilzied.

*** This case is No 8. p. 8491. *voce* MANDATE.

1791. *May* 20. COOPER *against* GREEN and CHATTO.

No 35.

COOPER, a painter in Leith, gave an order in October, to Snowball, the rider of Green and Chatto of Newcastle, for a barrel of lintseed oil. The oil was shipped 19th December, but the vessel did not sail till the 24th, and next day, the 25th, which was the earliest post-day, Green and Chatto wrote to Cooper, inclosing the bill of lading and invoice, which were received by Cooper on the morning of the 27th. Next day, the 28th December, Cooper got intelligence that the ship was wrecked, and cargo lost. In an action for the price of the oil, the defender urged the improper delay of executing his commission, and likewise the delay of acquainting him of the oil being put aboard, which ought to have been done the same day that it was shipped; and *insisted*, that, on these accounts, he was not liable for the price.—THE LORDS were of opinion, that where no time is specified for the execution of a commission, a reasonable discretion is allowed, and found there was no *mora* of acquainting Cooper of the goods being shipped; it being the common practice to send the bill of lading and invoice only upon the sailing of the vessel: They therefore found Cooper liable in the price. See APPENDIX.

Fol. Dic. v. 4. *p.* 60.

1791. *July* 1, SMITH *against* MACPHERSON.

No 36.

MACPHERSON at Inverness commissioned a quantity of earthen ware from Smith of Burslem, and desired that they might be sent from Burslem to Hawley's wharf, London, in packages, directed for the purchaser at Inverness, to

be shipped by the first vessel for that port. Smith, on the 22d September, sent Macpherson the invoice, acquainting him, that the goods had been sent, in five packages, to Hawley's wharf, according to order. Macpherson did not write to Smith for several months; but, in the following April, he informed Smith's clerk or rider, then at Inverness, that only four of the packages had arrived, and even these deficient in several articles; That these had not come to hand till the preceding February, and that was in consequence of his causing a correspondent at London make enquiry after the goods, which were found not at Hawley's wharf, as ordered, but at a different place, lying utterly neglected, and one package amissing: In these circumstances, he refused to pay for more than he had received. Smith, in an action for the price of the whole commission, offered to prove, that he had sent the goods by the ordinary conveyance to London, directed to Hawley's wharf, and had written to Messrs Hawleys about them, desiring they might be shipped for Inverness; and therefore *insisted*, That they were not at his risk.—THE LORDS were of opinion, That Macpherson had failed in his duty, in not acquainting Smith of the non-arrival of the goods within a reasonable time after receiving the invoice, by which means he had prevented the latter from taking any measures to trace them. And they therefore found Macpherson liable for the value of the whole.—See APPENDIX. No 36.

Fol. Dic. v. 4. p. 60.

1795. *January* 15. CLAUDE SCOTT *against* MACKENZIE and LINDSAY.

No 37.
A mercantile company in Scotland, sold grain for a merchant in London, on a commission *del credere*, and took bills for the price, which, before they became due, they discounted with a private banking-house in Edinburgh, then in good credit, who drew a bill on London for their amount, payable to the order of

IN the beginning of 1793, Mackenzie and Lindsay, merchants in Dundee, sold a cargo of wheat, for behoof of Claude Scott, corn-factor in London, and took bills from the purchasers, payable two and three months after date. They then transmitted to Mr Scott an account of the sales, in which they charged him two and a half per cent. for commission, and one and a half per cent. on account of their undertaking the risk *del credere*,

Having been urged by Mr Scott for a remittance, before the bills became due, they, after having in vain, as they alleged, applied to the Bank at Dundee, and to the Royal Bank at Edinburgh, for that purpose, on the 20th March 1793, discounted the bills with Bertram, Gardner, and Company, then in good credit, (and with whom they had other transactions about the same time), for a bill drawn on Baillie, Pocock, and Company of London, payable to the order of Mackenzie and Lindsay, seventy-five days after date. The latter indorsed and transmitted this bill to Mr Scott, who made no objection to the remittance being made in this way.

The bill was regularly accepted; but, before it became due, both the drawers and accepters had stopt payment.