

appointed, during Mr Murray's life, and upon the vacancy occasioned by that resignation. But this was not the case which happened: Mr Murray enjoyed the office till he died; and, upon the vacancy occasioned by his death, Sir Harry succeeded,—none of the communings having ever been made known to the minister, nor any application made to him till after Mr Murray's death. It was even denied that they were known to Sir Laurence.

The Lords, on report of Lord Kennet, "Sustained the reasons of suspension, and suspended the letters *simpliciter*."

They did not particularise the grounds of their judgment. The two first reasons of suspension were mentioned, but rather departed from by the parties; but, upon the whole, the Lords held the transaction as incomplete at Mr Murray's death.

MANDATE.

ROBERTSONS *against* BOSWELL.

BOSWELL, factor for Watkins, gave directions to Gray, procurator at Haddington, to apply to the Sheriff, first for a sequestration, and then for a roup of the stock and crop of Robertsons' tenants at Skedbush, belonging to Watkins, founded on the hypothec, (see *Hypothec*.)

Gray did so, obtained the first, and carried the last into execution.

Robertsons complained of irregularities in the proceedings concerning both, and brought a process of damages: they called Boswell, Gray, the officers of Court employed in the execution, and the Sheriff. Boswell pleaded, that he did no more than to desire a judicial application to be made to a judge, in behalf of his constituent, and that he was not answerable for any informality in his procurator, or in the judge, or in the officers under him.

The Lords thought, that a judge convicted of corruption was liable to a party in damages. In this case, however, there was no pretence of corruption, but merely a precipitancy of procedure proceeding from no bad intention, proceeding also from the applications of Gray as procurator for Boswell. They thought that judicial procedure is much *periculo petentis*, and therefore that Boswell was liable as well as Gray, leaving them to settle matters between themselves. And as Gray was dead, and his heirs not in the field, they gave damages against Boswell; but they assoilyied the Sheriff and his officers.

They had done otherwise in a cause determined
from the county of Sutherland.

1774, coming