

he disposed thereof, and of the goods he bought with the price as he did with his own, and as others entrusted with the rest of his loading did with theirs. THE LORDS did find the skipper liable for the price, deducting so much for the exchange as it would then have given, if he had remitted the money, upon that reason, that the war being declared, he ought not to have bought goods in Holland, nor sent them to Scotland by sea under so great a hazard; which seems hard, seeing by the impossibility to execute the commission, he was in the case of *negotiorum gestor*, and disposed with that parcel as he did with his own, and as other merchants did who had a greater quantity, and run a greater hazard; and if he had remitted the money by bills, there might have arisen a great hazard, as well as by sending the goods by sea.

Gosford, MS. No 754. p. 468.

No 19.

1687. July 8. ANDREW ALEXANDER against SIR JAMES CALDER.

ANDREW ALEXANDER, late factor at Rochelle, against Sir James Calder of Muirton, for payment of a bill of exchange:—THE LORDS found Andrew had exceeded *finis mandati* in not selling the salmon at Rochelle, but sending them to Bilboa in Spain, in hopes of a better market, though it proved contrary, and therefore assoilzied from exchange and re-exchange; but ordained him to be heard anent the annualrent of it.

Fol. Dic. v. 2. p. 58. Fountainhall, v. 1. p. 464.

No 20.

1696. November 12. M'NEIL, ROWAN, &c. against GEORGE DAWLING.

IN the concluded cause, M'Neil, Rowan, and other merchants in Glasgow, against George Dawling skipper in Greenock, for compt, reckoning, and payment of the value of a cargo of herrings they trusted him with to Stockholm in Sweden; his defence was, he consigned them to Alexander Pittillo, a factor there; and with their produce bought from him dales, iron, and tar; and after his ship was loaded, he breaking, and being debtor to the King of Sweden for public dues, the government there seized on his ship, and *manu forti* took away the goods as Pittillo's.—*Answered, 1mo*, You being not only skipper, but having a special factory and commission, you could not consign them to another factor; but the very nature of your trust and mandate obliged you to sell for ready money; at least, to have enquired whom you trusted, and exacted caution; and if you did not, it is on your own peril, and not your constituents; *2do*, Pittillo's condition was at that time suspect, and he shortly after broke, and so you was *in mala fide*.—THE LORDS, as to the first point, found a *mandatarius* trusting another did not exactly obey the terms of his mandate, but followed the faith of that other on his peril, and was liable for the event, tho'

No 21.
A mandatary trusting to another, does not in doing so without orders, comply exactly with his mandate, and must be liable for the consequences.