

bound, he should have taken the defender otherways obliged than he had done.

No 24.

Answered for Young the pursuer; That the obligation is clear, 'that the defender was to dispose on the pursuer's goods.' Now, this can noways be meant of bartering the same with other commodities; because, the constant and current practice among merchants, when any such thing is intended, is to order the neat proceeds of the outwards cargo to be reinvested, and to mention the merchandise in which the same is to be so reinvested; nothing of which was done in the present case; and therefore the above clause of the obligation must be interpreted to be disposing of the merchandise by way of sale, for ready money, which the defender might have remitted or brought home: And, tho' he did indeed get ready money for the goods; yet, he having bestowed that on other goods, the objection still recurs, viz. that this was *ultra vires mandati*; besides, that in this case the defender ought certainly to have sent the pursuer a bill of loading, or letters of advice, that such goods were shipped in return of the salmon upon the pursuer's own account: For, supposing the wines had come safely home, yet the pursuer not having any bill of loading or advice as above, he could have had no pretence to demand the wine, neither could he know what quantity, nor what number he was to call for; and the defender's obligation could have afforded him no action, not having ordered wines, or any other commodities to be brought in return from Bilboa: So that, if the defender had offered the price he received at the port, he would have justly contended that he had satisfied the terms of his commission; and therefore, now that the wines are lost, he cannot be heard to turn over the loss upon the pursuer.

'THE LORDS found, That the skipper having sold the salmon, and bought the wines for the price, without giving advice thereof to the pursuer, is liable for the prices of the salmon.'

Act. *Graham.*Alt. *McKenzie.*Clerk, *Robertson.**Fol. Dic. v. 2. p. 58. Bruce, v. 2. No 29. p. 37.*

1724. July 17.

GEORGE TAYLOR, Merchant in Amsterdam, *against* JAMES JOHNSTON,
Merchant in Edinburgh.

MR JOHNSTON, by his letter 23d August 1718, to Mr Taylor merchant and factor at Amsterdam, directed him to buy several parcels of goods particularly expressed in the letter, 'and ordered him to deliver them to Mr Andrew Man shipmaster, to be found at Mr Adam Duncan's merchant in Rotterdam, from whence he was to sail with the goods for Scotland, and to take Mr Man's receipt for the goods,' which the letter said should be sufficient.

No 25.

A factor who had employed one to enter goods, instead of doing it himself, was found liable for them, having been seized as not properly entered.

No 25.

Mr Taylor accordingly bought the goods, delivered them to Mr Man, and took his receipt for them, dated at Rotterdam 18th September 1718, in which Man obliged himself to deliver the same to Mr Johnston at Edinburgh, or his order, sea-hazard, customhouse-officers, and all other hazards excepted.

Mr Taylor also on the 27th September 1718 transmitted to Mr Johnston an invoice of the goods, with the prices and charges, &c. and amongst other articles he stated 23 guilders, 2 stivers, as paid for custom, passports, and to searchers.

Mr Man sailed from Rotterdam with the whole goods, being nine boxes and one barrel; but it happened, that upon a search of the ship by the customhouse-officers at Helvoetsluys, (the port at the mouth of the Maese, by which ships from Rotterdam to Scotland must pass) five of the boxes and the barrel were taken out and detained by the officers.

Mr Johnston having received but four of the boxes, acquainted Mr Taylor of the seizure, and complained of an undue entry made at Rotterdam, as the occasion of it. Mr Taylor, in return to Mr Johnston's letter, wrote him on the 18th November 1718, that he regreted the misfortune, but insisted, that it was none of his fault, in respect that he had given orders to Mr Duncan to make the proper entry of the goods; and at the same time he acquainted Mr Johnston that the goods were relaxed, and that he hoped Mr Johnston would find another opportunity for bringing them home.

In September 1719 Mr Taylor drew a bill on Mr Johnston, payable to his factor Mr Blair at Edinburgh, for the prices charged in the invoice, with interest from the first of January preceding, which was the time when the price of the goods was actually advanced. Mr Johnston having refused to accept the bill, process was raised against him upon his first letter commissioning the goods, and Mr Man's receipt of them.

It was *pleaded* in defence for him, That he must have allowance of the value of the five boxes and barrel which had been detained at Helvoetsluys, since the seizure was occasioned by Mr Taylor's fault, who was, by his acceptance of the commission, bound to have made the proper entries of the goods, and expedite the necessary clearances; and for proof of this, Mr Johnston produced a declaration of merchants, importing, 'That factors abroad were understood to be 'obliged not only to buy goods, &c. commissioned from foreign parts, but also 'to make the proper entries of them, and procure the necessary clearances of 'customs,' &c.

It was *answered* for Mr Taylor, *1mo*, Admitting the above to be the case of ordinary and general commissions, yet that could not take place in the present case, where the commission expressly directed the taking a receipt of the goods from Mr Man, which was declared to be sufficient; *2do*, The care of entering the goods, and procuring clearances, appeared to have been the less incumbent on the pursuer, that he did not reside at the port where the goods were to be entered on board; *3tio*, No evidence was brought, that the detaining the goods

happened for want of the proper entry and clearances; on the contrary, the presumption was, that it proceeded from some fault of Mr Man's, or at least the unreasonable proceedings of the customhouse-officers, since the goods were relaxed and ready to be re-delivered in less than a month after the seizure.

No 25.

Replied, for Mr Johnston to the first and second answers, That there was nothing particular in the commission, it being generally expressed in all such commissions, that the shipmaster's receipt shall be sufficient; but this is never understood to liberate the factor from the necessity of making the proper entries and procuring clearances; on the contrary, it appeared from the pursuer's own letter 18th November 1718, that he understood it to be a part of his duty, even though he did not reside at Rotterdam, in so far as he gave a commission to Mr Duncan to take care of these particulars for him, and did actually charge in his invoice 23 guilders 2 stivers on account of entries and clearances; so that whether it was his or Mr Duncan's fault, he must suffer the loss. As to the third reply, it was reserved to proof.

THE LORDS found, That Mr Taylor having employed Duncan to enter and ship the goods libelled, and having stated the expenses of entries and shipping to Mr Johnston, Mr Taylor was liable for the fault and neglect of Mr Duncan.

Reporter, *Lord Forglan.*
Clerk, *Gibson.*

Act. *Jo. Fleming & Ro. Craigie.*

Alt. *Jo. Horn.*

Fol. Dic. v. 4. p. 58. Edgar, p. 94.

1724. July 28.

ELIZABETH SHORT, Relict of Mr HUGH MACKAILL, against WILLIAM HAMILTON, Post-Master of Falkirk.

MRS MACKAILL having occasion to send four guineas to Lieutenant Bray at Edinburgh, she inclosed them carefully in a letter directed to him, and committed it to the care of the Post-master of Falkirk. The letter was delivered to Mr Bray at the post-office in Edinburgh, but the four guineas were amissing; upon which Mrs Mackaill pursued Hamilton the Post-master, before the Justices of Peace of Stirlingshire; and a proof of the fact being taken, the Justices decerned Hamilton in payment of the four guineas.

Of this decret suspension was obtained: The reasons were, *1mo*, That by the rules of the post-offices, letters containing money, or any other valuable thing, are brought to the office, and there the contents are shown to the officer and sealed in his presence, and marked by him, after which he is answerable; but this in the present case was neglected, and the letter only marked to pay the ordinary postage of a single letter; *2do*, When the letter was delivered at

No 26.

Cash in gold was inclosed in a letter, and committed in charge to a post-master, which not having been delivered, he was found liable.