

No 27.

It was *answered*, That the contracts with the King's Commissioners were entered into with the consent, participation and knowledge of James Sherriff the defender's trustee; so that the risk behoved to be his and his constituent's, and not the pursuer's, who merely out of respect and favour to the defenders had accommodated them with iron which belonged to other people, to expedite their affairs.

Replied, That when a factor furnishes goods of his own to his constituents in expectation of receiving other goods contracted for to replace them, and does not acquaint his constituents, he, the factor, would fall to have the profit of these goods, which he expected, if their value should rise before delivery; he therefore must submit to the loss, if their value should fall, or if the goods should never be delivered: And that the defenders were neither to have the loss nor profit of the bargain between the pursuer and the King's Commissioners, seems evident from James Sherriff's letter of the 20th of November, which mentioned an absolute bargain for the iron with the pursuer, but took no notice of any concern in the bargain with the King's Commissioners.

THE LORDS found, that the pursuer having advised by his letter of 17th November 1718, that iron was loaded for the proceeds of the herrings conform to James Sheriff's commission, as supercargo by the freighters, and his letter of the 20th November, the pursuer cannot now be allowed to prove contradictory facts to his former correspondence; And found James Sherriff's knowledge (though partly concerned in the outward cargo) that part of the pursuer's or other peoples iron in his custody was shipped aboard in return of the outward cargo, not relevant against the defenders; and found no presumption that James Sherriff did advise the freighters of the true fact.

Act. Dun. Forbes. Alt. Ja. Graham, sen. Reporter, Lord Grange. Clerk, Murray.
Fol. Dic. v. 4. p. 58. Edgar, p. 134.

1730. June 18.

SELWYN *against* ARBUTHNOT.

No-28.

A BANKER at Edinburgh got orders to remit his correspondent's money by a bill on the bank of England, but chose rather to remit it by a bill upon a private banker in London. The bill being taken out of the post office by some unknown person, who, upon a false indorsation and receipt, got the money from the banker on whom the bill was drawn. THE LORDS found the defender's remittance by bill on the private banker was on his own risk and hazard. (See APPENDIX.) See Baines against Turnbull, No 77. p. 1486.

Fol. Dic. v. 2. p. 58.