

MANDATE.

1735. *July 24.* SHERWELL *against* JEFFRAY and GILLESPIE.

No. 1.

MERCHANTS buying goods at London on the credit of a factor, to whose debit they are ordered to be charged, are liable as well as the factor for the price.

1736. *December 7.*

SMITH in Yarmouth *against* FOTHERINGHAM in Arbroath.

No. 2.

MERCHANTS in Arbroath commissioned their factors at London to find a proper person at Yarmouth to buy for them a cargo of red herrings, who accordingly commissioned Smith at Yarmouth; and upon his undertaking to purchase it, they advised him it was for the behoof of the Arbroath merchants, who were to send a ship with instructions, which he was to follow, and to draw on them the London factors for his reimbursement. The Arbroath merchants thereafter corresponded also directly with Smith, and ordered him on receipt of their letter to buy for them conditionally from 100 to 150 barrels more, (than the 450 that their London factors advised them he had already bought for them) as the ship can stow, "we being only obliged for that quantity, and our draughts on Yeaman, &c. for that we have further commissioned will be duly honoured, they having orders for that effect." Smith sent his invoices, and the skipper's bill of lading, in name of the Arbroath merchants to the London factors, and drew on them as directed; and they having failed, now pursues the Arbroath merchants. But the Lords found that the bargain was made betwixt Smith and the London factors upon the faith of these factors, and that the Arbroath merchants were not liable for the same; reserving to the pursuer to be heard on the additional 150 barrels;—and found the defenders liable for the said 150 barrels.

1745. *February 6.* SANDILANDS and KNOX *against* LINDSAY.

No. 3.

CARMICHAEL commissioned Sandilands and Knox to send four tons of wine to Lindsay, which they did, and he received; and they drew on Carmichael, payable to Coutts at London; to whom Carmichael wrote that he wondered Lindsay had not remitted the money; and about that time broke; and Murray, brother-in-law of Lindsay, being creditor to Carmichael, fitted accounts with him after his breaking, and gave him credit for these four tons, as well as for wines furnished by him to Lindsay in former years. Sandilands and Knox sued Lindsay, and Murray compeared and defended him on that fitted account; but there being no evidence that Murray had commissioned Carmichael to furnish them, or was otherways liable to Carmichael for them, the defence was repelled, and Lindsay found liable. *Vide* Sherwell *against* Jeffray, and Smith *against* Fotheringham, *supra*.

1753. *November 15.* LAING *against* The LORD CHIEF BARON.

No. 4.

MANDATARY, though he go beyond or even counteract the terms of his commission, has good action in equity for his expenses if he acted profitably for his employer; and therefore Laing the wright being employed by Lord Chief Baron Idle to repair his house at Dalry, but expressly cautioned to preserve the old ceiling (which was of stucco) of one of the rooms, otherwise not to meddle with the house, having notwithstanding taken off the whole roof, and given the house a new roof, whereby the ceiling of that room was of consequence destroyed;—having brought his action for payment of his account, and on a joint proof allowed by the Court, having proven that the old roof, the cupples, as well as floors, were rotten and insufficient, and that without a very great expense and unprofitable to his employer, who was then in England, the ceiling could not have been preserved;—the Court found him entitled to payment of his account. The interlocutor was afterwards stopped on a reclaiming bill not yet advised, but it is chiefly on the question, whether the taking off the whole roof was necessary or profitable?

See NOTES.