

No 82. 413. § 16., and 27th November 1723, Commissioners of the Customs *contra* Morison, No 75. p. 9533; Walker *contra* Falconer, No 80. p. 9543.

To the 2d; The goods were shipped on board a Sweddish ship, bound to that part of the coast of Scotland where they were directed to be sent, though the vessel was driven, by stress of weather, into the Frith of Forth. Foreign factors, or merchants, are always understood to have fully implemented their commission, so soon as they have shipped the goods commissioned, agreeably to the directions of their constituents;

And, as to the 3d defence; It was *observed*, that it was usual for the foreign merchant to claim the goods in the Court of Exchequer, in order, if possible, to save them from condemnation.

“ THE LORDS repelled the reasons of suspension; found the letters orderly proceeded, and expenses due.”

C. B. *Fol. Dic. v. 4. p. 31. Fac. Col. No 15. p. 225.*

1776. February 8. DUNCAN *against* THOMSON.

No 83.

Two persons having been engaged in a smuggling adventure, the one granted bill to the other for the value of his share of the profits. The goods being afterwards seized, the LORDS refused action for payment of the bill. See APPENDIX.

*Fol. Dic. v. 4. p. 32.*

1779. February 26. M'LURE and M'GREE *against* JOHN PATERSON.

No 84.

Action denied for the price of brandy purchased on board a vessel within port, the brandy having been in casks of a size which could not have been entered.

A VESSEL loaded with foreign brandy in small casks having come in to Clancy Bay, on the coast of Galloway, Paterson, jointly with others, purchased on board of the ship part of the cargo.—The casks were brought on shore by the purchasers during night in boats hired by themselves, and were left on the coast among the rocks until a convenient opportunity should be got of carrying them away. In a few days after, the purchasers granted an obligatory missive to Thomas Ferguson, proprietor of the goods, for the price.

Part of these spirits were seized by the revenue officers; but the remainder came safe to the hands of the purchasers, who afterwards refused payment of the price.—Ferguson indorsed to trustees the obligatory missive, and they brought an action upon it against the purchasers before the Admiral which was carried into the Court of Session by advocacy. The purchasers *contended*, that, at any rate, they were only liable for the price of what spirits they had received; but, *separatim*.