

of inferior officers, his choice must be approved of by the Postmaster-General, and even he is under the controul of the Lords of the Treasury.

No 39.

Inferior officers, on their appointments, take the oaths of allegiance and fidelity, find security to the public for their conduct, and are in every respect public officers. Their superiors are no more liable for them, than the Lords of the Treasury, the Commissioners of Excise and Customs, &c. are for inferior officers in their departments. None of the statutes relating to the Post-Office, give any countenance, in a case like the present, to a claim either against the revenue or the officers of the Post-Office. On the contrary, the revenue arising from it, after deducting the expense of management, is appropriated to public purposes; and, for the security of the conveyance, severe penalties against malversation are introduced; 9th Anne, c. 10.; 5th Geo. III. c. 25.; 7th Geo. III. c. 50. The incompetency of a claim like the present, is fixed in England by repeated decisions; Raymond, v. 1. p. 641. Lane against Potter and Frankland; Cowper's Reports, p. 754. King's Bench, Easter Term 1778, Whitfield against Postmaster-General.

The cause was reported by Lord Balmuto, probationer.

The COURT, on the grounds stated for the defenders, and particularly the English decisions, unanimously assoilzied.

Lord Ordinary, *Craig.* Act. *D. Cathcart.* Alt. *Boyle.* Clerk, *Pringle.*
D. D. Fac. Col. No 130. p. 297.

1799. June 21.

HENRY SWINTON against WILLIAM BEVERIDGE, Solicitor of the General Post-Office.

JAMES STEWART, one of the letter-carriers of the General Post-Office at Edinburgh, abstracted from a letter five notes of the Falkirk Banking Company, for L. 20 each, which had been transmitted by Henry Swinton of Grangemouth, for Thomas Gladston and Son of Leith.

Stewart, before being detected, had put two of the notes into circulation, and one of them had come into possession of Sir William Forbes and Company, and the other of Messrs Kinnears, bankers in Edinburgh.

William Beveridge, solicitor of the Post Office, afterwards received the notes from them, on paying their full value, and lodged them with the Clerk of Justiciary, as evidence against Stewart.

After his conviction, Messrs Swinton and Beveridge presented petitions to the Court of Justiciary, each claiming the notes.

The Court refused both petitions, but 'granted warrant to, and ordained the clerk of Court to deliver up the money lodged with him to the person who shall be found to have right thereto, upon his receipt.'

No 40.

A letter-carrier of the General Post-Office having abstracted some bank-notes from a letter, and put two of them into circulation before he was detected, the solicitor of the Post-Office paid value for them to the holders, and lodged them with the clerk of Justiciary as evidence against the

No 40.
letter-carrier.
After his con-
viction, the
original own-
er of the
notes was
found to have
no claim for
recovery of
them.

A multiplepointing was accordingly raised in the Court of Session, in which Messrs Swinton and Beveridge were called as defenders. The former

Pleaded; By a salutary regulation of the law of Scotland, the expense of criminal prosecutions, at the instance of his Majesty's Advocate, is defrayed by the public.

In offences against property, one branch of this expense, and which may greatly exceed the value of the subject, frequently arises from recovering the property abstracted, in order that it may be used as evidence against the culprit. This, however, cannot effect the right of the person defrauded, to recover his property after conviction, otherwise, contrary to the rule of law, he would be indirectly subjected to part of the expense of the prosecution.

It is unnecessary to inquire how far bank-notes, in possession of a third party, acquiring them *bona fide*, are subject to a *vitium reale* at the instance of a former owner, from whom they have been fraudulently abstracted; (See Ersk. b. 3. t. 1. § 10.; Stair, b. 1. t. 7. § 1. 11.); because here the only competition is between him and the public, the latter having recovered the abstracted property to be evidence against the offender; and the former insisting, that no part of the expense of the conviction shall be defrayed by him.

Answered; It is completely fixed, from views of commercial expediency, that an onerous holder of money, bank notes, or bills of exchange, is liable to no extrinsic objection; Bankt. v. 1. p. 218.; 24th February 1749, Crawford against Royal Bank, No 2. p. 875; Bur. Reports, v. 1. p. 452, Miller against Rare; Douglas's Reports, p. 611, Peacock against Rodes; and Mr Swinton clearly would have had no claim against the bankers, from whom the notes were purchased. No right can arise to him from the purchase, which took place *bona fide*, and from which he sustained no prejudice.

The public is not responsible for the safe transmission of letters, (see preceding No.), or obliged to purchase stolen goods, and restore them to their former owner.

If the present claim had been suspected, instead of purchasing the notes, the object of the prosecution would have been obtained by a warrant on the holders for production of them; and there could have been no doubt of their right to recover them after the trial. The solicitor of the Post-Office is precisely in their place.

The Lord Ordinary reported the cause on memorials.

The Court unanimously preferred Mr Beveridge on the grounds stated for him.

Lord Ordinary, *Melvin*.
D. D.

For Swinton, *Ar. Campbell*.

Alt. *Boyle*. Clerk, *Horne*.

Fac. Col. No 131. p. 300.