

Answered: Although the master's powers of binding the owners for money borrowed on account of the vessel, or of hypothecating her, cease when she is in a home port, 4th March 1761, Rope Work Company of Port-Glasgow, No. 68. p. 6268. 29th July 1788, Hamilton, No. 69. p. 6269; yet, as the *propositura* of the master continues, his power of binding the owners for ordinary furnishings is invariably the same, whether the ship be at home or abroad; Stair, B. 1. T. 12. § 18. Macdowall, vol. p. 399. Ersk. B. 3 Tit. 3. § 43. Mollay, vol. 1. p. 324, 329, 331. Strange's Reports, vol. 2. p. 816. Graham v. Burnett; Vernon, vol. 2. p. 643. Speering v. Degrave; Douglas's Reports, p. 101. Wilkins against Garmichael.

No. 2.

A majority of the Court, on the general doctrine pleaded by the pursuers, and also on the special ground, that Campbell, although he disapproved of the purchase of the cable, did not see it returned to the furnishers, "decerned in terms of the libel, and found the defender liable in expenses."

After the reclaiming days had expired, the defender presented a reclaiming petition, in which he stated, as *res noviter veniens ad notitiam*, that Clark, soon after he removed the cable from the vessel, told the pursuers, that he alone was answerable for its price; on which specialty the defender craved that the judgment should be altered.

But the petition was refused without answers.

Lord Ordinary, Cullen.

Act. Maccormick.

Alt. Montgomery.

Clerk, Sinclair.

R. D.

Fac. Coll. No. 185. p. 423.

1806. May 15. WATSON against The BANK of SCOTLAND.

IN 1792, the Governor and Company of the Bank of Scotland established a branch of their bank at Brechin, and appointed James Smith and Sons their agents at that place, who had powers to transact the ordinary business of the Bank; received money on the same terms as the Bank; kept cash-accounts, and granted promissory-notes, bearing the usual rate of interest allowed at the Bank of Scotland. An office was opened at Brechin, where their business was transacted, over the door of which, *The Bank of Scotland's Office* was affixed in large characters.

The receipts granted for money deposited in this office, were filled up from engravings, upon bank paper, in a uniform style, and were signed by James Smith and Sons, as agents for the Bank. A placard was put up in the Bank office, stating the form in which bank-receipts were to be granted, and particularly, that they were to be signed by James Smith and Son, as agents of the Bank. But it was alleged, that this placard was in such a situation as not to be easily read by persons frequenting the Bank.

No. 3.

A Bank is liable to the public for the conduct of its servants, in the operations of banking carried on at its office.

No. 3. James Smith and Sons were engaged in a variety of mercantile speculations ; and, with a view to facilitate these, they were in the use to discount bills, and receive deposits of money upon their own account. They carried on money-transactions in this way to a great extent, and by carrying on these dealings in the office of the Bank of Scotland ; by contriving to grant receipts in a form closely resembling those of the Bank, and by issuing promissory-notes, bearing the same rate of interest, they were enabled, from their situation as agents, to carry on money-transactions of which they reaped the profits themselves, and with which the Bank had really no concern. Separate books were kept, in which these private transactions were entered. Neither the public nor the Bank were aware of this double character in which James Smith and Sons carried on the business of banking ; and it was generally understood that their bank-transactions were carried on entirely in the capacity of agents for the Bank of Scotland.

James Watson, a baker in Brechin, had occasion to place £60 in the bank, and on depositing the money, received a receipt in the following terms :

“ £60. *Bank-Office, Brechin, 25th March, 1803.*
 “ Received from Mr. James Watson, Brechin, Sixty pounds Sterling, at his
 “ credit, bearing interest at the rate of three *per cent.* on demand, or four *per*
 “ *cent.* if not retired in six months.
“ JAS. SMITH & SONS.”

Some time afterwards, James Smith and Sons stopped payment ; and in the course of the investigation of their affairs, the Bank learned, for the first time, the double capacity in which they had conducted their bank-transactions at Brechin. They refused payment of all promissory-notes and receipts which formed part of this private concern, and which were signed by James Smith and Sons, without the designation of Agents for the Bank.

Watson raised an action against the Bank of Scotland, for payment of the contents of this receipt, and the Lord Ordinary took the cause to report. The pursuer

Pleaded : The bank of Scotland, by establishing a branch at Brechin, and investing James Smith and Sons with the ostensible character of their agents, are responsible for their dealings with third parties, in so far as these are comprehended within the ordinary limits of bank-transactions. An agent is held out by his constituents to the public as deserving their confidence ; and they are invited to deal with him, on the faith that his constituents are answerable for his dealings. In every thing which relates to the Bank, he must be considered in the same light as the Bank itself, otherwise the business of all the branches of the Bank would be at an end. The agent is as much the servant of the Bank, as their cashier, tellers, or accountants, and the Bank are equally responsible for the acts and deeds of the agents of country branches, as of

their servants at Edinburgh. Whoever, therefore, transacts bank-business with the agent at any one of the branches of the Bank of Scotland, enjoys the same security as if he had transacted with the Bank, by whom these agents are accredited.

The agent may exceed the bounds of his trust, or may be guilty of fraud to his employers. But it is the duty of the Bank to know the character of those whom they employ in that capacity, and to demand such security as may indemnify them for any loss which may arise from their improper conduct. If loss should arise by the fraud or misdemeanour of these agents, it is more reasonable that the Bank, by whom they are selected, and for whose benefit these branches are instituted, should suffer, than individuals who place money in their hands, relying on the public character with which they are invested. Their responsibility is the same as that of a master for his servant, in the business for which he is employed, who is liable to third parties, either *quasi ex contractu*, on the footing of the maxim *Qui facit per alium facit per se*, or *quasi ex delicto*, in as much as he was to blame for employing a person as his servant who could act in such a manner.

That the pursuer deposited his money in the belief that it was placed in the Bank of Scotland, cannot admit of a doubt. It was deposited in their office, in the hands of their agent, and on the same terms as the Bank were in use to receive money; and although the receipt does not expressly bear the word *agent*, it has the form and semblance of a bank-receipt, is dated from the Bank-office, and signed by their agent, who was not understood to carry on the banking-business in any other capacity.

It may be very true, that the agent did not comply with the instructions of the Bank, and that this receipt is not signed exactly in the terms prescribed by the Bank for signing their receipts. But it was nevertheless such a receipt as a person of ordinary penetration might have taken as a bank receipt; and the pursuer, by receiving it, was not guilty of any such negligence as to preclude his claim for recovering his money. It was impossible for him to divine that which the Bank had not penetration to discover, and to know that their agent carried on the business of a private banker in their office at Brechin. Had he entered into any other sort of transaction with Smith and Sons in this office, he would have had no claim against the Bank, who were not to be presumed to authorise them; but as this was in the usual course of bank-business, the Bank must be responsible, upon the common principles of the *Institoria Actio*; Kames's Principles of Equity, vol. 1. p. 63. Blackstone's Com. B. 1. Chap. 14. Paisley Bank against Yelton and others, 28th February and 20th June, 1798, (not reported).

Answered: *Unusquisque debet scire conditionem ejus cum quo contrahit*. It was the business of the pursuer, before entrusting his money to James Smith and Sons, to know whether these persons had a general or only a limited commission from the Bank of Scotland, and to take care that the voucher which he

No. 3. took was such as to be obligatory on the Bank. It was perfectly well known, that the agents of the Bank acted under a limited commission, beyond the terms of which their dealings were no more obligatory on the Bank than if they had not been their agents at all.

James Smith and Sons had no powers to bind the Bank, except on the express terms of their mandate. The powers of every agent are limited by his commission. Whoever transacts with him beyond these limits, transacts entirely on his own account. The Bank gave no general powers to their agents at Brechin to take in money on interest; but confined their powers in this respect under express and positive restrictions, and prescribed a particular form in which their promissory-notes should be granted. And with the view of communicating to the public the footing on which they were to deal with their agents, these instructions were pasted up in the office where their business was transacted. In this placard, it was expressly stated, that the promissory-notes for which the Bank were responsible, must be signed by their agents in that capacity; and if the pursuer, after this public intimation, chose to lodge his money on a note signed by James Smith and Sons, in their private capacity, he is not entitled to complain that he is deprived of the security of the Bank. That these persons carried on the banking-business in a double capacity, is a fact which the Bank assuredly did not know, because they would have immediately prevented it; but which it is extremely probable that the inhabitants of Brechin were aware of. But whether the pursuer knew it or not, if the Bank gave no authority for the transaction; if it was not made for behoof of the Bank; and if he does not hold the receipt of the Bank, but the receipt of a private party, it is not enough for him to say, that he believed he was transacting with the Bank, unless he can shew that this belief was occasioned by some culpable conduct on the part of the Bank, which is not pretended in the present case. If it were to be held that the Bank, after giving due intimation of the extent of their agents' commission, were nevertheless to be liable to repair the loss occasioned by persons forming an erroneous notion of the terms of the commission, or to repair all other damage which their agents might occasion, by acting contrary to their orders; such a doctrine would not only be contrary to the established law with regard to mandate, but would in effect render it impossible for the Bank to have agents at their different branches throughout the country.

The Court, upon the report of the Lord Ordinary, (30th May 1805) "sustained the defences, and assoilzied the defenders."

Afterwards, however, upon advising a reclaiming petition, with answers, the majority of the Court, considering that it would be of dangerous consequence to the public, as well as contrary to the implied nature of such a business, if banks were not answerable for the transactions at their known office, by the clerks and servants employed by them in the common operations of banking,

altered this interlocutor, and found the Bank liable for the contents of the receipt, and likewise in the expenses of process. No. 3.

Lord Ordinary, Dunsinnan. Act. Gordon, Robinson. Agents, Robinson and Ainslie, W. S.

Alt. Solicitor-General Clerk, Gillies, Bell. Agent, R. Aytoun, W. S. Clerk, Walker.

J.

Fac. Coll. No. 246. p. 550.

1807. February 18. SOMMERVAIL'S TRUSTEE, against CORE.

No. 4.

Intimation of the shipment of goods required of a port agent

CHARLES HENRY CORE, china-merchant in Edinburgh, had extensive dealings with certain manufacturers in Staffordshire, and was in the use of having his shipments made from the port of Hull. His agent at that place regularly intimated the shipments to him; which was the more necessary, as the furnishers of the goods, living in the interior of England, and not knowing when the shipments might take place, could not do so themselves.

James Sommervail, merchant in Liverpool, who had vessels employed in the carrying trade, applied to Core to allow his shipments to take place from that port in his vessels; offering as an inducement, that the freight should be cheaper than from Hull. Accordingly, for about a twelvemonth, the shipments, amounting to five or six, were made from Liverpool. It did not appear, however, that Sommervail had given intimation of any of these shipments.

The last shipment was in August 1800, consisting of china, valued at £88. 7s. 4d. and the vessel which carried it having been wrecked at sea, a very small part only of the china was saved. Sommervail had, previous to this, given up his concern in the carrying trade, so that the china had been sent by a vessel with which he was nowise connected.

Sommervail having become bankrupt, the trustee on his estate brought an action against Core for the balance of an account current due to Sommervail. Core, among other objections, insisted on deduction of the above sum of £88. 7s. 4d. as the value of the china lost, on the score of Sommervail having neglected to send him intimation of the shipment, which might have enabled him to insure; the legal consequence of which was, that Sommervail was to be held the insurer himself; Garden, No. 5. p. 6488.

Core having offered to prove, by Sommervail's oath, the nature of their agreement, the latter deposed in substance, "That he had solicited Core to transmit by his vessels any goods he might get from England, as the expense would be somewhat less than sending them by Hull. That no stipulation was made respecting any commission or remuneration to be allowed the deponent for receiving or forwarding the defaulter's goods; nor did he ever