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the appellants could make it appear that they were warranted in withholding the bills, yet there would not be any ground of pretence, either for them or their constituents contending, that they are entitled to retain the value of the bills, to the effect of satisfying their own unauthenticated claims. The attorneys are liable to account in this country, from the particular circumstances of this case. It was a condition, understood by both parties, at the time the power of attorney was granted, that they were to account to the constituents in Glasgow; and, accordingly, upon this understanding the attorneys themselves had acted, by transmitting accounts from time to time, although these were in themselves defective, and liable to exception. Besides, the fund is now really in this country, and the remittance of that fund, shows at once that they were so liable to account.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors complained of be, and the same are hereby affirmed.

For Appellants, *R. Dallas. J. Scarlett.*

For Respondents, *W. Grant, W. Adam, T. W. Baird.*

NOTE.—Unreported in the Court of Session.

JOHN PHILIPS, Merchant in Glasgow, *Appellant;*
 MESSRS. BLAIR and MARTIN, Spirit Dealers } *Respondents.*
 and Merchants in Greenock, .

House of Lords, 16th Nov. 1801.

CONTRACT OF SALE—DELIVERY IN REASONABLE TIME—DAMAGES FOR NON-FULFILMENT.—A sale of 12 puncheons of spirits, distilled from molasses, was bargained for, and four puncheons delivered. The buyer continued urging the delivery of the remainder, but the sellers delayed, until after an act of parliament was passed on 18th Dec. 1795, prohibiting distillation of spirits from molasses, and annulling all bargains or contracts for the delivery of such. The sellers refused to furnish the spirits, and, in action, stated this defence, that having had three months to deliver, and the act of parliament having been passed in the interval, they were not bound; Held in the Court of Session, that there was no evidence to show that the sellers were bound to deliver before the 18th Dec. 1795. Reversed in

the House of Lords, and held, that from the correspondence adduced, the sellers were bound to deliver the remaining puncheons within reasonable time, and therefore before the 18th Dec. 1795, the date of the passing of the said act, and remit made to the Court of Session to assess the damages.

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Action of damages was raised by the appellant against the respondents, for failure to execute a contract of sale of 12 puncheons of spirits sold by them to him; and concluding that they should be ordained to make payment of £134. 2s. 7d., being the difference of the price at which the appellant could have sold them as on 24th Dec. 1795, and the price at which they were purchased from the respondents.

The sale took place on 5th Nov. 1795; the spirits being those distilled from molasses at 6s. 9d. per gallon—strength one in ten under hydrometer proof. Four of these puncheons were delivered on 12th Nov., with invoice of same date, bearing “*that the rest will be sent as soon as we can get casks to hold them.*” When the four puncheons arrived, the appellant found, on examination, that the strength of the spirits was only one to eight under hydrometer proof, and immediately apprised the respondents of this, and desired the difference might be settled. One of the respondents accordingly called in the end of the month, and informed the appellant that the remaining eight puncheons were ready, and that he would send them as soon as he could get casks to put them in, and they were to appoint a friend to examine the spirits already sent, to ascertain the deficiency of strength.

Several letters followed, pressing the respondents to settle the deficiency of the four puncheons, and to forward the other eight. The respondents wrote in answer, stating, “You know that we had eight weeks to deliver you the spirits, which will not expire for these three weeks to come, *by which time we suppose they will be ready.* Mean- time we wish you to send what puncheons you have of ours, as we are truly scarce of that article. You will please on receipt make up as many molasses as you can, being of the forty puncheons you have to deliver us from this to the 5th February. Your answer will oblige.” In answer, the appellant wrote, “It is rather surprising you decline an answer respecting the deficiency in strength on the four puncheons of spirits furnished on the 12th ultimo. *This is now the fifth time I have written to you on the subject.* They still lie in the same state as they were received from

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 Dec. 10, 1795.
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“ you. Had you been punctual, you might have had
 “ all your empty puncheons before this time; and indeed I
 “ consider it a very great inconveniency that I have not
 “ liberty to dispose of them till this matter is settled. *As*
 “ *to the time you mention to have for delivery of the remain-*
 “ *ing eight puncheons of spirits*, I do not recollect any being
 “ mentioned; besides, when your Mr. Blair was here, im-
 “ mediately after receiving the four puncheons, he said the
 “ remainder was ready, and would be forwarded so soon as
 “ you could get puncheons to hold them. Respecting the
 “ molasses, I have delivered all that bargain was made for.
 “ Waiting your answer, I am,” &c.

Dec. 15, 1795.

The respondents' answer to this letter was as follows:—
 “ We have received yours, and shall give orders to some
 “ friend to examine how much it is weaker than five in
 “ eight under hydrometer of Clarke's instrument, which is the
 “ strength we sell at to Gardner and Strong and others.
 “ Had you furnished us with puncheons, you might have
 “ *had some of the eight puncheons long ago*; but as we have
 “ no puncheons, we always give the spirits to those who
 “ provide puncheons themselves. Respecting the molasses,
 “ we shall try whether or not you have delivered all your
 “ quantity, yea or nay,—we are accordingly to take a pro-
 “ test against you. As for molasses puncheons, we can
 “ furnish you with 20, 30, or 40, which were only once fill-
 “ ed, price 5s. 3d. free on board a gabbard at our quay.
 “ Should they answer, let us know in course.”

Before any thing further took place, an act of parliament was passed, 18th Dec. 1795, prohibiting all distillation in Great Britain from molasses, and declaring all contracts and bargains for the delivery of such spirits, during the subsistence of the act, void and null.

The deficiency as to strength in the four puncheons was adjusted and settled on the 24th Dec. 1795, by proportional abatement being given. And when the appellant again wrote, urging delivery of the remaining eight puncheons of spirits, the respondents finally in answer wrote thus:—
 Jan. 22, 1796. “ answer, we will send you no spirits. Your usage to us in
 “ the molasses transaction was dishonourable on your part,
 “ which you must be very sensible of, and are,” &c. Where-
 upon the present action was brought by the appellant.

In defence, it was stated, that “ by the terms of the de-
 fenders' agreement with the pursuer, they only became
 “ bound to deliver three or four puncheons of spirits upon

“ the week after the agreement, viz. 5th Nov. last (1795),
 “ which were delivered accordingly ; but with regard to the
 “ remaining eight puncheons, which the pursuer commis-
 “ sioned, the defenders were only bound to furnish these in
 “ the space of between two and three months thereafter ;
 “ but, in the meantime, the law (already mentioned) stop-
 “ ping distilleries from distilling from molasses passed, by
 “ which all contracts for the delivery of spirits posterior to
 “ the 18th Dec. 1795 were voided, and of course the con-
 “ tract betwixt the pursuer and defenders came to an
 “ end.”

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After a proof of the respective averments of the parties, the Lord Ordinary pronounced this interlocutor:—“ Finds June 30, 1798.
 “ there is no sufficient evidence of the pursuer’s allegation,
 “ that, by the agreement of parties, the defenders (respon-
 “ dents) were bound to deliver the eight puncheons of
 “ whisky in question before the 18th day of December 1795,
 “ and therefore sustains the defence founded upon the 36th
 “ George the Third, cap. 20, assoilzies the defenders (re-
 “ spondents) and decerns, superseding extract until the
 “ third sederunt day in November next.” On representa- Nov. 13, 1798.
 tion the Lord Ordinary adhered. And, on reclaiming peti- Dec. 4, 1799.
 tion to the Court, the Court adhered. Dec. 18, 1799.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—The interlocutor of the Lord Ordinary proceeded on a mistake, in finding that there is no sufficient evidence of the appellant’s allegation, that by the agreement of the parties the respondents were bound to deliver the eight puncheons of whisky in question, before the 18th December 1795 ; for the appellant having established that twelve puncheons were purchased, and four delivered, it was incumbent on the respondents to prove that a distinction had been made in the transaction as to the remainder. What is here stated in the Lord Ordinary’s interlocutor is not an allegation made by the appellant. It is the allegation upon which the respondents rested their defence, as stated in their defences, viz. that Mr. Blair agreed that the appellant “ should have twelve puncheons also, but that his prior en-
 “ gagements rendered it impossible for him to deliver these
 “ in less time than from two to three months, excepting
 “ with regard to three or four puncheons, which should be
 “ delivered upon the week following.” Then it lay upon them to prove the fact on which they rested their defence.

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They had, however, not only failed to do this, but they had made contradictory averments, which were also proved to be unfounded by evidence in the cause. In their defences, they aver that they were to be allowed two or three months, for delivery of the whisky, whereas, in their letter, they state they were to have eight weeks to make this delivery, when they add, “they suppose they will be ready.” But this last assertion is totally at variance with the advice sending the four puncheons, and their verbal assertions, which expressly declare that these were ready, and would be sent as soon as casks could be got to hold them. The agreement, therefore, to sell twelve puncheons of spirits, four of which were delivered about ten days thereafter, is fully made out, and was afterwards recognised in two instances prior to the 36th Geo. III., upon which the respondents rest their defence. This being the case, and as it is clear from the respondents’ own argument, that they were not only bound, but were also in a situation to fulfil this contract before the 18th Dec.; that they had twice, before that date, intimated that the spirits were ready for delivery, it follows that the act of parliament cannot apply to this contract, which expressly has reference to spirits distilled subsequent to the 18th December. They were, moreover, bound to deliver the spirits before the operation of the statute. At least the respondents have failed to produce evidence to the contrary of that afforded by the proof, which clearly shows they were so bound to deliver before the operation of the statute.

Pleaded by the Respondents.—There is no evidence that, by the terms of the bargain, the respondents were bound to deliver the twelve puncheons of spirits immediately after the bargain was concluded. On this point the appellant, after offering a proof thereof, and so admitting that, without such proof, he could not recover, has totally failed. David Hynd, the only person present when the bargain was made, did not hear of any time mentioned for the delivery of the spirits; but even if he had deponed that the bargain was as stated by the appellant, his single testimony would not be sufficient to prove the terms of the bargain, as, by the law of Scotland, two witnesses are necessary to prove a bargain. Nor does the correspondence help out this defective proof; on the contrary, one letter written by the respondents shows that they were not obliged to deliver the remaining eight puncheons of spirits sooner than eight weeks from the date of the bargain, and as the assertion

therein contained was not denied by the appellant until some time after, and when the statute had, in the meantime, affected the rise and distillation of spirits from molasses, so there arises strong presumptive evidence that the terms of the bargain were as the respondents have stated it.

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Besides, by the act 36 Geo. III. c. 20, all contracts and bargains made by a distiller, for the delivery of spirits distilled from molasses, after the 18th Dec. 1795, are declared null and void; and therefore the present contract falls under the nullity of the act.

After hearing counsel,

The Lord Chancellor ELDON moved a reversal of the judgment of the Court of Session, for the special reasons stated in his judgment as below.

It was ordered and adjudged that the interlocutors complained of in the appeal be reversed; and it is hereby declared, that by the contract, of which the correspondence in process is sufficient evidence, the respondents were bound to deliver the puncheons in reasonable time, and therefore before the 18th Dec. (1795); and having failed in fulfilling such contract, the appellant is entitled to recover damages for the breach thereof; and it is hereby ordered that the cause be remitted back to the Court of Session in Scotland to assess the said damages.

For Appellant, *W. Grant, M. Nolan.*

For Respondents, *Wm. Adam, James Montgomery.*

NOTE.—Unreported in the Court of Session.

ROBERT LEE, Merchant in Greenock,	<i>Appellant ;</i>
MESSRS. MURDOCH, ROBERTSON, & Co., Merchants in Glasgow, and WALTER EWING	} <i>Respondents.</i>
M'LAE, Trustee on their sequestrated estate,	

House of Lords, 26th Nov. 1801.

BILL—VITIATION — NO VALUE — COPARTNERSHIP. — A bill was granted by a member of a firm in the Company name, to a banking company, without the knowledge of the Company, for £1000. It was thereafter renewed to the same individual for £1068, being the principal sum of the original bill, and interest. In action