FROM SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

The Governor and Company of the Bank of Scotland } *Appellants.*
WATSON . . . . . *Respondent.*

Mar. 15, 1815.

BANK AGENCY.

Agent for the Bank of Scotland, also carrying on the business of a banker on his private account, receives money, for which he gives a receipt, which does not purport on the face of it to be given for the Governor and Company of the Bank of Scotland. Agent becomes insolvent. Question whether the Bank is bound by the act of its agent, the holder of the security supposing that he was dealing with the Bank of Scotland?

IN 1792, James Smith, and John and Colin Smith, his sons, were appointed agents for the Bank of Scotland, at Brechin, where they transacted the business of the bank; and also private banking business of their own, though (as was alleged) without the knowledge of the bank, till the year 1803, when they became bankrupt. The vouchers which were given by Smith and Sons, *as the Agents* of the Bank, were discharged by the Bank; but they refused to discharge those which did not purport to be granted by Smith and Sons as their agents. The Respondent, therefore, brought an action in the Court of Session, averring in the summons (declaration) "that he had lodged with the Bank of Scotland 60*l.* sterling, conformable to receipt, dated at the Bank-office, at Brechin, and signed by James Smith and Sons, who were at that time agents there for the said bank," and concluding for decree against

The Bank refuses to discharge the vouchers, which did not purport to be given by Smith and Sons as their agents. Action by the Respondent.

the Appellants, for payment of the said sum of 60*l.* with costs.—The evidence in support of the demand was an unstamped document, in the words and figures following— Mar. 15, 1813. BANK AGENCY.

" Bank-office, Brechin, 25th March 1803.

" £60.

" 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 returned in six months.

" SMITH AND SONS."

The Court decided first in favour of the Appellants, but afterwards finally decided against them, upon which they appealed.

The question in this case turned upon two points, 1st. Whether this receipt being unstamped was a good foundation for an action?—2d. Whether supposing no stamp was required, or that it were stamped, it was such an instrument as would bind the Bank of Scotland?

In support of the first objection to the document, on the ground of its not being stamped, *Sir S. Romilly* and *Mr. Leach*, for the Appellants, contended that by the Stamp Acts, 31st G. 3. c. 25—37th G. 3. c. 136—44th G. 3. c. 98, such documents as the present, unless stamped, could not be pleaded or given in evidence, or admitted in any court, to be useful or available in law or equity, as an acknowledgment of debt. It was true, that there was an exception in favour of receipts given by

Mar. 15, 1813.

BANK AGENCY.

bankers for money lodged with them merely for safe custody: but in this instance, it appeared on the face of the instrument, that *interest* was allowed, which rendered the receipt an agreement, and brought it within the general rule.

In regard to the second point, it was contended, that there was nothing on the face of the instrument, or in the circumstances of the case, that afforded any ground for the allegation, that the Bank was bound by this instrument: that it did not purport to bind the Bank: that there was no evidence to show that the money had been applied to the purposes of the Bank, or that the Respondent understood himself to have received the Bank security; and that, at any rate, the Smiths were limited agents, and that the Bank could not be bound where its agents had exceeded their authority. The Bank had by public advertisement, and by placards in the Agents' Offices, apprised the public of the limited nature of the authority of these agents—That, some time before the present document was given, the Bank had reduced its rate of interest to 3 per cent. upon a deposit, however long it remained; but, that the Smiths in their private banking concern had continued the old rate of interest, allowing 4 per cent. when the money was suffered to remain for six months, and that the present document was of this last description.

Though this document, then, had been legally stamped, it still could not have bound the Bank without further evidence to show that it was given by the Smiths *as the Bank Agents*, or in short that it was a transaction with the Bank. It was absurd to say that the Bank was bound merely because the

instrument had been given at the Bank Agency-office, as this would make them liable for every transaction, however extravagant, that took place within its walls. As to the instrument bearing the words "Bank-office, Brechin," this could not render the Bank liable; for the receipts given by the Smiths, confessedly *privato nomine*, had the words in question.

Mar. 15, 1813.

BANK AGENCY.

Assuming then that the Smiths were limited agents, the Appellants referred to the case of *Fenn and Harrison*, 3d T. Rep. 757, and to *Erskine* B. 3. T. 3. Sect. 35, who had these words: "A mandatory must follow the precise rules prescribed by his employer; for all his power is from the commission, and whatever he does *ultra fines mandati* is without authority, and cannot bind his constituents. A factor cannot *pledge* goods of his principal, his duty is to sell (*Newson and Thornton*, 6th T. Rep.) The doctrine held by some of the Judges below, that the Appellants, though they did not know of the private banking of Smith and Sons, were answerable for the consequences of this *culpa lata*, on the ground that it involved them in the charge of culpable negligence, was utterly irreconcileable with any principle of law, besides that it proceeded upon the supposition of a fraud on the Respondent by the Smiths, which was not proved.

The *Attorney General* (now Vice-Chancellor), and *Mr. Adam*, for the Respondent, argued, that the document in question was a good one within the exception of the Stamp Acts, which exempted bankers' receipts for money deposited with them

Mar. 15, 1813.

BANK AGENCY.

from the duty: that the clause of interest could not make any difference in the case, as bankers' receipts in Scotland usually had such a clause; and the Bank of Scotland would have been bound by the custom to pay interest, even though no interest had been mentioned in the document; and that, at any rate, the instrument was a good one against the Bank, since if a stamp was required the Respondent had only to pay the penalty, 10*l.* and get it stamped.

As to the second point, the words "Bank of Scotland's-office" was written in large letters on a board over the window of the place where this transaction took place, and naturally led the Respondent as well as other persons to conclude that, when they deposited their money there, they had the security of the Bank of Scotland. The Respondent did so imagine: he paid in his money *bonâ fide* to the Bank; and as the agents had a general authority in matters of this kind, the Bank was liable, though the document did not on the face of it purport to be the security of the Bank. The Respondent conceiving that the agents had a general authority, and no sufficient notice of the contrary having been given, was satisfied that the agents had power to bind the Bank by documents of this kind. The case of *Fenn and Harrison* rather favoured the argument of the Respondent, and in that case it had been stated by some of the Judges that the warranty of a horse by a servant would bind the master, though the master had desired him not to warrant; because the servant had a general authority.

Lord Eldon (Chancellor.) If Justice Buller had

Mar. 15, 1813.

BANK AGENCY.

a horse to sell, and thought he would be bound by the warranty of his servant, though desired not to warrant, he would have gone to market himself to see his horse sold. But the Judges appeared to have made a distinction between horse dealers and others. If Tatersal sent his servant to sell, and the servant contrary to his instructions warranted, Tatersal might be bound; but another person (not a horse dealer) would not be bound by the unauthorised warranty of either Tatersal or his servant, or of his own servant, he having only given a particular authority.

If a horse-dealer sends his servant to market with a horse, and desires him *not* to warrant, and yet the servant *does* warrant, the master is bound; but if another person (not a horse-dealer) employs his servant, or an agent, to sell his horse, and desires him *not* to warrant, and the servant or agent *does* warrant, the master is *not* bound.

Attorney General and *Mr. Adam.* But the agents here having a general authority, their acts bound their principal, though unauthorized. This had been decided in a variety of cases. The general authority might be limited by proper notice, as in the case of a notice put up in his office by a carrier, or a notice in the newspapers. But the mere circumstance of a general notice given was not conclusive, but only created a presumption that the individual had notice of the limitation. The general notice was merely admitted as evidence, and it was left to the jury to say, whether under the circumstances, the individual had notice; and unless this was found, the general notice itself was not sufficient. Though an advertisement was inserted in the newspapers in 1789, this was previous to the Brechin establishment, and not notice of the limitation to the people there; the advertisement was never repeated. The placards in the office, stating the limitation of the agents as to forms and otherwise, were not sufficient notice. They had not

Mar. 15, 1813.

BANK AGENCY.

been pointed out to the attention of the Respondent. He had never read them, and the most important of them was so discoloured with smoke as to be hardly legible. The limitations upon the agents applied to other instruments. The agents were left to their discretion as to the form of *receipts*; by which the Bank should be bound. The Bank itself did not consider its rules and forms indispensable, for at the agents' office an accountant's name was not signed even to their promissory notes, though required by their notices, it having been proved that there was no accountant at Brechin; and neither at the agents' nor at the Bank-office, at Edinburgh, was the Bank-seal, (which was also required by their rules) affixed to their receipts. The Bank therefore had no right to insist upon rules which had evidently fallen into desuetude.

Lord Eldon (Chancellor). Would not a Scotch Judge be as much surprised to receive a Bank of Scotland note in this form, as any of us would be at receiving a Bank of England note in this way?

Attorney General and *Mr. Adam*: The general law was unquestionably in favour of the Respondent. The granting of receipts was an act for which Bank Agents were usually appointed, and it was not therefore *ultra fines mandati*. It was *qua* Agents that the fraud was practised, and therefore the Bank was liable under the well known obligation of *quasi ex delicto*. For the principles of the liability of masters for servants, they here cited Blackstone, vol. 1. b. 1. chap. 14. p. 429.—Voet. ad Tit. ff. de Instit. Act.—Stair, b. 1. Tit. 12—19.—Black-

stone, b. 1. Tit. 8th, 30 and 36.—Principles of Equity, vol. 1. b. 1. part 1. p. 63.—*Paisley Banking Company against Scott*, &c. 20th June, 1798). The Respondent, in his minute to the Court of Session, distinctly offered to prove, by persons of all descriptions, in and about Brechin, that no one had ever heard of the private banking of the Smiths, or knew, or supposed that these people had ever in their lives issued from the Bank-office a document which did not bind the Bank of Scotland. Though the obligation to pay interest at 4 per cent. after having been scored out of the receipts for some short time, subsequent to the regulation of the Bank to receive their rate of interest, was afterwards allowed to remain no inference unfavourable to the Respondent ought to be drawn from that circumstance, because the Bank might vary its rate of interest again; and there was nothing in this that ought to have roused the suspicion of the Respondents and others, who considered themselves as dealing with the Bank.

Mar. 15, 1813.

BANK AGENCY.

Sir S. Romilly in reply.—The stamp acts expressly subjected to the duty documents bearing interest as this did. The Judges of the Court of Session had evidently proceeded upon the supposition, that a fraud had been practised on the Respondent, by the Smiths, of which however there was no proof. There was no evidence whatever to show, that the Respondent and others in his situation considered themselves as dealing with the Bank of Scotland, and not with the Smiths as private bankers: that he could not believe the Judges

Mar. 15, 1813.

BANK AGENCY.

to have said some things which had been attributed to them. They had been stated as speaking of their own knowledge, of what was the practice of the Bank, making themselves witnesses. The object of this action was to make a limited agent liable as a general one, and that too upon a document in which the agent did not represent himself as such.

Mar. 26, 1813. Judgment.

Question Whether Scotch Bank receipts for money lodged with them are within the exception of the Stamp Acts, notwithstanding their bearing a clause of interest?

Lord Eldon (Chancellor). There were two questions in the case: 1st. Whether the document was such as would bind the Bank, supposing it stamped, or that it did not require a stamp;—2d. Whether it was invalid on account of its not being stamped. A few words as to the last point first—It had been said, that the receipt carrying interest was an agreement, and therefore ought to have been stamped; to which it was answered, that Bankers' receipts were excepted, and that the rate of interest was usually inserted in the Scotch Bank receipts; and that these Banks would have been liable by the custom to pay interest, though the rate had not been inserted. He did not however consider himself called upon in the present case to decide that point.

Nothing on the face of the document to shew that it was the security of the Bank.

As to the other point, there was nothing in this document that showed it to be that of the Bank of Scotland, unless their Lordships were prepared to say that "Bank-office, Brechin," meant the same thing as the words "For the Governor and Company of the Bank of Scotland." There was nothing peculiar that he knew in Bank Agency, to take it out of the rule that the agent could not bind his principal beyond the limits of his authority.

Nothing in Bank agency to take it out of the general rule, that the agent could

Mar. 26, 1813.

BANK AGENCY.

The Chief Justice (*Ellenborough*) had sat at the table at the hearing of this case, and had observed that if it had come before him, it would not have occupied more than ten minutes. There were other cases, it was said, depending upon it, but of that they could take no notice; though, from the nature of the transactions, he should rather suppose that each of them must be governed by its own peculiar circumstances. There were a variety of considerations and circumstances stated, to raise a presumption in favour of the Respondent; but all of them appeared to him insufficient to show that this was an instrument by which the Bank could be bound. It was his opinion, therefore, that the judgment of the Court of Session ought to be reversed.

not bind his principal beyond the limits of his authority.

The circumstances here not sufficient to raise the presumption that this document was given as the Bank security, when no such thing appeared upon the face of it.

Lord Redesdale concurred in that opinion. The question as to the necessity of a stamp, had better perhaps be left open, since there was no necessity for deciding it in this case: but as to the instrument on which the action was founded—suppose the Bank had become insolvent, and that Smith had remained solvent, could the holder have by such an instrument as this succeeded in an action against the estate of the Bank? It was clear he could not.

The judgment of the Court below was accordingly reversed.

Agent for Appellants, CHALMER.
Agents for Respondent, SPOTTISWOODE and ROBERTSON.