

1766. March 7.

CHRISTIANA CHALMERS *against* JAMES YOUNG, Merchant in Stromness, and  
INNES and HOPE, Merchants in London.

THE pursuer being entitled to some wages and prize-money, in right of a son deceased, applied to Young for advice how she might recover it. Young having made her grant a power of attorney to Messrs Innes and Hope, transmitted it with a letter, containing assurances that they should be indemnified of any expense that they might be put to. Innes and Hope having recovered the money, and placed it to the credit of Young, who was their debtor, the pursuer first brought an action against Young; but afterwards calling Innes and Hope, insisted against them only for payment.

*Argued* for Innes and Hope, They were Young's mandataries, he the pursuer's; and it is to their employers only they are respectively accountable. It was from their knowledge of Young's circumstances and character, and his assurances of indemnification, that they were induced to accept of the commission. Of the pursuer they knew nothing but the name; and, had she herself transmitted the power of attorney, they would not have taken any concern in it. It is true, the power of attorney was from her to them; but this was only as a necessary piece of form, which could not, nor was meant to affect the real transactions of the parties, and the consequential obligations upon them. It is the universal practice of merchants to settle with the persons who employ them; and it would be a great hardship upon individuals, as well as a great embarrassment upon mercantile business, if they should be subjected to second payment to persons with whom they had no connection.

*Answered* for the pursuer; The only mandate in this case was the power of attorney granted by the pursuer to Innes and Hope; she therefore was their employer. Young was no more than the hand that transmitted the mandate; he indeed recommended Innes and Hope; but, if one were to be liable for the debts of those who might chance to recommend one to another in the way of trade, the consequences to commerce would be much more fatal than any that might attend the doctrine of the pursuer.

"THE LORDS, in regard the pursuer's power of attorney was a direct commission to Innes and Hope to levy her son's wages, which commission they accepted of upon recommendation of Young; therefore find, that Innes and Hope are accountable to the pursuer, without prejudice to them to claim a full indemnification from Young, in case they shall make it appear, on accounting with him, that he was in cash to pay this demand."

Act. Oliver.

For Innes and Hope, Arch. Cockburn.

Clerk, Pringle.

A. R.

Fac. Col. No 35. p. 58.

No 6.

Mandataries are directly liable to the mandant, and are not entitled to place the sum recovered to the credit in account of the person at whose desire they accepted of the mandate, altho' liable for them.