

' rerum locationi accedunt.' It were absurd to say, that a cloak-bag, with 1000 merks *accedebat* to the horse and saddle; or that it was for his daily use in his journey, as the *vestimenta*, the only species mentioned in the law; so that the money was not *receptum* in the sense of the law, unless it had been specially intimated to the defender, or put in the custody of some servant entrusted by him for such uses. And the last words of the same law are certainly to be taken in conjunction with the words above cited in § 6. ' Et puto ' omnium eorum recipere custodiam, quæ in navem illata sunt;' which are to be thus understood, ' Omnium, scil. mercium et rerum quæ mercibus accedunt, veluti vestimenta.' The case of a ship and of an inn justify this sense; for, as the skipper is liable for the *merces*, so is the inn-keeper for the horses. And these things ' quæ viatoribus accedunt, sicuti vestimenta, &c. quæ ad ' quotidianum usum habemus.'

*Answered* for the pursuer, That the l. 1. § 6. makes *receptum* to be *quæcunque res vel merces*: So that the edict has been principally designed for the advantage of traders, and such as in course of business may be obliged to carry about any subject of value. This moves Vivianus to put the question, whether *vestimenta*, and such daily necessaries, come under the edict? which he determines they do, *quia mercedibus accedunt*; so that the principal design of the edict seems clearly to have been the security of travellers in their money and goods of value: And such things as are barely necessary for travelling, fall under the edict only *per interpretationem*; and, therefore, here comes in the rule, that, *sive assignatæ, an etsi non sint assignatæ*, the inn-keeper from his presumed knowledge is liable; 2do, The citation from the *Lex Rhodia* is not to the purpose, that law did not contain any edict of this kind. And the Roman law did in this, as in several other articles, amend the laws of Rhodes, which, in this case, did only allow a simple *actio depositi*, regulated by quite different rules from the present action.

THE LORDS, in respect the pursuer came to the defender's house at mid-day, and only to bait for about an hour and an half, without design of any longer stay, did, upon the 17th December last, find the defender liable upon the edict. And, upon a reclaiming bill given in this day, their Lordships adhered to their former interlocutor, and refused the desire of the petition.

Act. Sir James Nasmyth.

Alt. Advocatus.

Clerk, Sir James Justice.

Bruce, v. 1. No 95. p. 115.

1769. December 2.

MANNERS against STEWART.

A CARRIER, who had undertaken to carry certain goods from Edinburgh to Kilmarnock, and to wait two hours for them, was found liable upon the edict

No 9.

for the value ; the goods having been sent by the agreed time, but he having gone sooner, and left orders to say that he was still in town ; so that the goods remained in the carrier's quarters, where they were damaged.

Act. G. Buchan-Hepburn.

Alt. James Boswell.

G. F.

Fac. Col. No. 102. p. 358.

1787. February 6.

ARCHIBALD MACAUSLAND *against* WILLIAM DICK, WILLIAM BYRAM, and JOHN CAMERON.

No 10.

The owners of stage-coaches not answerable for the safe conveyance of money, unless where it has been delivered as such.

WILLIAM DICK, one of the owners of a stage-coach plying between Glasgow and Edinburgh, received a parcel belonging to Archibald Macausland. This he marked in the way-bill, with a charge of sixpence, which is the rate demanded for all ordinary parcels not exceeding a certain weight.

The parcel not having been delivered, Mr Macausland brought an action against William Dick, and his partners, for L. 200, alleged to have been contained in it ; and

*Pleaded,* The case of carriers by land, though not specially provided for by the edict of *Nautæ, caupones, et stabularii*, yet clearly falls within the spirit and meaning of that regulation ; and the obligation it creates does not depend on the value of the goods. If these have been *received*, action must be sustained for *re-delivery*. This is confirmed by the usage of modern nations, and likewise by the conduct of the owners of stage-coaches in Scotland, who generally take care to express, by a particular advertisement, to what extent they are to be understood to warrant the safety of goods entrusted to their care ; l. 1. § 4. 6. *D. Naut. Caup. et Stab.* ; l. 7. *ibid.* ; Stair, book 1. tit. 13. § 3. ; Blackstone, vol. 3. tit. 9. p. 164.

*Answered,* The owners of stage-coaches do not, in general, undertake the conveyance of money ; because, they have no proper repository for it ; and because it is almost impossible for them to provide against the frauds or misconduct of the passengers. This article for the most part is, and always ought to be transmitted by a waggon, in which there is a place fitted up for the purpose. There, too, it is usual to proportion the rate of carriage, not to the bulk only, but also to the value of the goods. The consequence of admitting the present claim, would be to subject people, in the defenders situation, to a hazard which did not fall within their agreement, and for which, of course, a corresponding premium could not be stipulated.

It was also *argued* for the defenders, That the edict ought not to be extended to carriers by land. But the case was determined on this principle, that the