

No 75.

What degree of punctuality is required, in the acceptance of an offer to sell spirits at a given price?

1799. March 7. WILLIAM FARRIES *against* JOHN STEIN.

WILLIAM FARRIES, spirit-dealer in the village of Ecclesfechan, Dumfriesshire, on the 7th November 1797, wrote to John Stein, distiller at Canonmills, near Edinburgh: "Sir, As I have sold five puncheons of the aquavitæ I bought from you last time Mr Brown was at this place, and thinking that the other five are over few for me, I wish to have eight or ten puncheons more. If you will be reasonable in your price, ready money I will give for the whole; so, in the course of post, write me the very lowest you mean to take. I hope you will consider, as I take a great quantity from you. Do not disappoint me of an answer in course."

The answer returned, was "Canonmills, 10th November 1797. Sir, I am favoured with yours of 7th inst. I have no objections to let you have other ten puncheons upon the same terms as the last, say 3s. 2d. cash, 3s. 4d. credit, the whole to be taken away in the course of this month. Expecting your answer in course, I remain," &c.

Farries replied, "17th November 1797. I duly received yours of the 12th, observing that you will let me have other ten puncheons more aquavitæ at 3s. 2d., to be taken away in a month, which is rather a short time; but we will endeavour to get it all away if possible, and shall remit you cash in course. My brother will call for four puncheons first journey."

Stein rejoined, "Canonmills, 19th November 1797. Sir, I am this morning favoured with yours of the 17th, but not having received your answer in course to my letter of the 10th instant, I have since disposed of the spirits otherwise, and therefore cannot now accept of your offer. The lowest price at the present for the quantity you mention, is 3s. 6d. cash, or 3s. 8d. three months credit. Having your answer in course, I am," &c.

Stein having persisted in his refusal, Farries brought an action of damages, in which he *stated*, There is a daily post between Edinburgh and Ecclesfechan, which leaves the former at nine in the morning, and the latter at six in the evening; and letters from the one ought to be delivered at the other on the following morning. The letter of the 10th, therefore, supposing it not written till after nine in the morning, would reach Ecclesfechan on the 12th, but owing to irregularities in the delivery of letters usual in country villages, the pursuer did not in fact receive it till the 14th. He was obliged next day to attend a fair at some distance, where he sold the spirits he expected to receive from the defender. The pursuer got home on the evening of the 16th, but after the departure of the post; and on the 17th, he accepted the offer made to him, without having heard that any rise in the price of spirits had in the mean time taken place. These circumstances are conclusive in his favour, as establishing that there was no unreasonable delay on his part, and evidently no intention to take advantage of the defender, who could not expect from

a person in the pursuer's situation, who is frequently obliged to be from home, and whose dealings are not sufficiently extensive to enable him to keep a clerk to take charge of his business in his absence, the same regularity in correspondence as from a higher class of merchants. Even among them, however, there is no fixed rule as to the time within which an offer must be accepted.

Answered, An offer to sell a commodity at a fluctuating price, (and there is none more so than spirits,) at a given rate, must be immediately accepted, otherwise an undue advantage would be given to the purchaser. By the custom of merchants, an answer must be returned in course of post, by which is meant, that it must be dispatched, at farthest, by the post of the day following that on which the offer ought to be received. This is understood to hold, even when it is not mentioned, as the condition of the offer, and still more when it is specially required. It would not vary the matter although the receipt of the letter be accidentally postponed. Of this, however, there is no evidence in the present case, and indeed a delay of three days after receiving it is admitted.

The LORD ORDINARY found damages and expenses due.

A reclaiming petition was (4th December 1798,) refused without answers.

Upon advising a second petition, with answers, the Court were divided in opinion. A majority thought, that in the whole circumstances of this case, the delay on the part of the pursuer had not been such as to entitle the defender to resile from his offer; while, on the other hand, though without expressly adopting the rule contended for by the defender, an opposite conclusion was drawn from them.

THE LORDS adhered.

Lord Ordinary, *Stonfield.*
D. D.

Aët. Corbet.

Alt. H. Erskine, Inglis.

Clerk, Pringle.

Fac. Col. No. 119. p. 271.

*** These cases were reversed on appeal.

Facultas poenitentiae if transmissible to a creditor, *see* PERSONAL AND TRANSMISSIBLE.

See APPENDIX.