

they ought to have transmitted a bill of a public bank, and had no right to make their employer incur a risk by any transaction entered into with a private banking house.

No 37.

THE LORDS, by a great majority, 'adhered.'

Lord Ordinary, *Justice-Clerk.*
Clerk, *Menzies.*

For the Charger, *Geo. Ferguson.*

Alt. *Hope.*

D. D.

Fol. Dic. v. 4. p. 61. Fac. Col. No 149. p. 341.

* * * This case was appealed:

1796. December 19.—THE HOUSE OF LORDS ORDERED and ADJUDGED, that the appeal be dismissed, and the interlocutors therein complained of be affirmed, with L. 100 costs.

No 38.

1795. December 1. BAINES *against* TURNBULL.

A FACTOR in Scotland, employed to sell goods for English merchants, was accustomed to lodge the price of the goods sold in a private banking-house, on an account in his own name, and to take from them bills drawn on their correspondent in London, payable to himself, which he indorsed and transmitted to his employers, against whom he charged two and a half *per cent.* commission. Upon the bankruptcy of the drawers and accepters, he was found liable for such bills as had not been paid by them, because he ought not to have taken the bills payable to himself, but directly to his constituents.

* * * This case is No 76. p. 1486. *voce* BILL of EXCHANGE.

1799. June 21.

ROBERT FARRIES *against* THOMAS ELDER, Deputy Postmaster-General for Scotland, and WILLIAM SCOTT, Postmaster at Ecclesfechan.

ROBERT FARRIES, on the 6th August 1798, delivered to William Scott, postmaster at Ecclesfechan, a sealed letter, for Sutherland and Company, Leith, which had 'L. 25 inclosed,' marked on a corner of it. Farries told Scott that it contained this sum, and paid 2s. 1d. as the postage of it.

It was too late for the mail of that evening; but, in Mr Scott's absence, it was next day dispatched by his wife, who, upon the letter-bill sent by the mail, wrote, 'Mr Sutherland's letter, supposed a money-letter.'

This letter was not delivered to Sutherland and Company, and it was never ascertained what became of it; but it has since been conjectured, that it had

No 39.

The officers of the Post-Office are not responsible for the safe delivery of money sent by post, where the loss of it is not imputable to the individual defenders.

No 39. been abstracted by one of the letter-carriers at Edinburgh, who was afterwards executed for a similar offence.

Farries brought an action against Thomas Elder, as Postmaster-General for Scotland, and William Scott, for recovery of the money.

The Lord Ordinary ordered memorials to the Court.

That for the defenders was printed. There was annexed to it a copy of Mr Elder's commission from the Earl of Chesterfield and Earl of Leicester, as holding jointly the office of his Majesty's Postmaster-General, by which he was appointed 'Deputy Postmaster-General for Scotland.'

It was likewise stated in the memorial, that the postage of letters is invariably fixed according to their weight, and that no additional charge is ever made on account of their containing money,

No memorial was lodged for the pursuer, who proposed to desert the action. But the Court having recommended to the Post-Office to defray the expence of trying the question, a hearing in presence took place, and the pursuer

Pleaded; Before the establishment of the General Post-Office, the conveyance of letters was intrusted to private carriers, who were responsible for the safe delivery of them, in terms of the edict *Nauta, caupones, &c.* When the public afterwards assumed the exclusive right of carrying letters, the same responsibility of course followed; Edgar, 28th July 1724, Short against Hamilton, No 26. p. 10091.

The Scottish was incorporated with the English Post-Office by 1710, c. 9. Various subsequent statutes have been passed, introducing penalties for abstracting letters; and the whole proceed upon the supposition that money may be safely remitted on paying additional postage.

When the loss happens without the fault of the officers of the Post-Office, they may indemnify themselves from the revenue derived from it, upon which this risk may be considered as a necessary burden.

Answered; If the pursuer had been able to establish, that the loss had been occasioned in consequence of any fault personal to either of the defenders, his claim would of course have been well founded; but this not being pretended, there is no room for the general responsibility contended for by him.

The situation of the public or of the defenders, cannot, with propriety, be assimilated to that of carriers. The latter are entitled to insist, that the contents of any inclosures sent by them shall be ascertained in their presence, and make their charge in proportion to the risk in each case, which cannot be done at the Post-Office.

The salaries of the defenders, too, are quite inadequate to the responsibility ascribed to them. Indeed, it would be essential to such obligation, that they should have the sole appointment of the persons through whose hands letters necessarily pass before delivery. But so far from this, the defender Scott had no concern with the letter after it was dispatched. Mr Elder is himself a deputy; and although his recommendation is attended to in the appointment

of inferior officers, his choice must be approved of by the Postmaster-General, and even he is under the controul of the Lords of the Treasury.

No 39.

Inferior officers, on their appointments, take the oaths of allegiance and fidelity, find security to the public for their conduct, and are in every respect public officers. Their superiors are no more liable for them, than the Lords of the Treasury, the Commissioners of Excise and Customs, &c. are for inferior officers in their departments. None of the statutes relating to the Post-Office, give any countenance, in a case like the present, to a claim either against the revenue or the officers of the Post-Office. On the contrary, the revenue arising from it, after deducting the expense of management, is appropriated to public purposes; and, for the security of the conveyance, severe penalties against malversation are introduced; 9th Anne, c. 10.; 5th Geo. III. c. 25.; 7th Geo. III. c. 50. The incompetency of a claim like the present, is fixed in England by repeated decisions; Raymond, v. 1. p. 641. Lane against Potter and Frankland; Cowper's Reports, p. 754. King's Bench, Easter Term 1778, Whitfield against Postmaster-General.

The cause was reported by Lord Balmuto, probationer.

The COURT, on the grounds stated for the defenders, and particularly the English decisions, unanimously assoilzied.

Lord Ordinary, *Craig.* Act. *D. Cathcart.* Alt. *Boyle.* Clerk, *Pringle.*
D. D. *Fac. Col. No 130. p. 297.*

1799. *June 21.*

HENRY SWINTON *against* WILLIAM BEVERIDGE, Solicitor of the General Post-Office.

JAMES STEWART, one of the letter-carriers of the General Post-Office at Edinburgh, abstracted from a letter five notes of the Falkirk Banking Company, for L. 20 each, which had been transmitted by Henry Swinton of Grangemouth, for Thomas Gladston and Son of Leith.

Stewart, before being detected, had put two of the notes into circulation, and one of them had come into possession of Sir William Forbes and Company, and the other of Messrs Kinnears, bankers in Edinburgh.

William Beveridge, solicitor of the Post Office, afterwards received the notes from them, on paying their full value, and lodged them with the Clerk of Justiciary, as evidence against Stewart.

After his conviction, Messrs Swinton and Beveridge presented petitions to the Court of Justiciary, each claiming the notes.

The Court refused both petitions, but 'granted warrant to, and ordained the clerk of Court to deliver up the money lodged with him to the person who shall be found to have right thereto, upon his receipt.'

No 40.

A letter-carrier of the General Post-Office having abstracted some bank-notes from a letter, and put two of them into circulation before he was detected, the solicitor of the Post-Office paid value for them to the holders, and lodged them with the clerk of Justiciary as evidence against the