

APPENDIX.

PART I.

Liquidation of the

FACTOR.

1802. November 30. BROWN against MACDOUGALL and COMPANY.

UPON the 14th October 1800, Macdougall and Company, merchants in Greenock, received a letter from John Maccallum, merchant in Bristol, in these terms, "I have forty-six hogsheads of molasses," and "would sell them here at 39s. per cwt, and take upon myself to ship them safely on board for any purchaser, if you could obtain one." This letter was immediately transmitted to a broker in Glasgow, who was to endeavour to procure a purchaser, and in a few days he concluded a bargain, by which the molasses were sold for 39s. per cwt. to Robert Brown, merchant in Glasgow, who granted a bill for the price, payable to Maccallum in London.

Brown immediately informed Maccallum of this transaction, and forwarded to him the order of delivery, which he received from Macdougall and Company, but he never got any answer. On the 23d of October, however, Maccallum wrote to Macdougall, that the bargain with Brown could not be fulfilled; for despairing of getting the molasses disposed of in Scotland, and before he knew any thing of the transaction with Brown, he had sold them at Bristol for 38s. per cwt. The parties were not agreed, whether Maccallum's letter had been shown to Brown before he had made the bargain, or after it.

Brown raised an action against Macdougall and Company, concluding for damages; and

Pleaded: 1. That he purchased the molasses in the ordinary course of business, on the faith and credit of Macdougall and Company, from whom accordingly he received the order of delivery. 2. That he knew nothing of Maccallum, and did not therefore rely upon his credit; but that, even holding Macdougall and Company as agents of Maccallum, as they charged a commis-

No. 1.

An agent empowered to make a sale, who communicates the instructions of his employer to those with whom he deals, is not personally responsible for the implement of the bargain.

No. 1. sion upon the transaction, they, *ipso facto*, became principal parties in the contract, to the effect at least of guaranteeing the validity of the sale and the obligation of delivery; L. 1. § 17. *D. De exercit. act*; Stair, B. 1. T. 12. § 18. Rankine against Mollison, 17th February 1738, No. 17. p. 4064.

Answered: Macdougall and Company appearing in no other character than as the agents of Maccallum, and having all along transacted merely in that capacity, are not personally responsible any farther than to authenticate their commission, and the instructions of their employer; Wilkie against Greig, November 26, 1799, (not reported.)

The Lord Ordinary found, "That there was a finished bargain betwixt the parties relative to the molasses in question; therefore finds, the defenders Donald Macdougall and Company were bound to make delivery of the forty-six hogsheads of molasses to the pursuer on the arrival of the order transmitted by the pursuer at Bristol, and ordains them to make delivery accordingly; and in case of their failing to make such delivery, finds them liable in damages to the pursuer."

Macdougall and Company petitioned against this judgment, and the Lords (February 3d, 1802) altered the interlocutor of the Lord Ordinary, and assolizied the defenders.

A reclaiming petition for Brown was advised with answers, (May 28. 1802), when the Judges having differed in opinion, and reference being made to the practice of England, the Court ordered a case to be made out, that the opinion of English counsel might be taken.

The Attorney and Solicitor General of England agreed that an action could not be maintained against Macdougall and Company in any of the English courts, as they had communicated their instructions to the purchaser.

The Court assolizied the defenders.

Lord Ordinary, *Hermann*. Act. *Cornell*. Agent, *T. Johnston*.

Alt. *Ferguson*. Agent, *A. Ferrier*, W. S. Clerk, *Pringle*.

J.

Fac. Coll. No. 64. p. 146.