(M. 8482.)

JOHN STEIN, Esq., Distiller, . . . *Appellant;*
WM. FARRIES, Spirit-Merchant in Ecclefechan, *Respondent.*

House of Lords, 24th March 1800.

SALE—OFFER AND ACCEPTANCE—CONDITIONAL.—The respondent wrote the appellant making proposals for a sale of spirits, and requesting to know, in course of post, the lowest price at which he would sell the spirits for cash. The appellant replied that he would give him the spirits at 3s. 2d. for cash, and 3s. 4d. at three months' credit; and requesting to know, *in course of post,* whether he would accept. The respondent did not reply *in course of post,* nor for six days thereafter. In the interval, the price of spirits had risen considerably, and the seller again wrote him that he could not now sell him the spirits at the prices mentioned. In an action of damages for non-fulfilment: Held him liable; Reversed in the House of Lords, on the ground, that as the condition on which the offer was made was not complied with, the appellant was entitled to consider it at an end.

The respondent, of this date, wrote the appellant, proposing to purchase of him spirits, in the following terms:—"Sir, As I "have sold five puncheons of aqua vitæ (British spirit of malt) "I bought from you the last time Mr. Brown was in this place, "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." Nov. 7, 1797.

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

No answer came to this letter until six days thereafter, namely, on the 17th November, when, in the interval, the price of spirits rose considerably. This letter intimated acceptance of the offer, and agreed to the terms proposed.

In reply to this communication the appellant wrote, "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." Nov. 19, 1797.

Action being brought, for damages for failure to imple-

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ment the bargain, the question, in these circumstances, came to be, Whether an offer to sell a certain quantity of spirits, at a certain price, where the offerer desires an answer in course of post, he is still bound by his offer, if no answer is returned in course of post?

The Lord Ordinary repelled the defences, and decerned in terms of the libel. On two several representations he adhered. And, on reclaiming petitions to the Court, the Lords adhered.

Feb 2, 1798.
June 26, ——
Nov. 13, ——
Dec. 4, 1798.
Mar. 8, 1799.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—When an offer to sell goods is made by one person to another, expressly requesting an answer to the offer in course of post, the offer is no longer binding on the party after expiry of that time; and unless this were to be the rule, the parties would be placed in situations extremely unequal, the one being in a situation to derive all the advantage, the other exposed to all the loss arising from any supervening change in the state of the market. A verbal offer ceases to be binding unless acceded to immediately. And the same rule follows, and ought to apply to a written offer; and, accordingly, in mercantile usage, an offer made in a post letter ceases to be binding unless the person to whom it is addressed declares his acceptance, either in course, where the interval betwixt the arrival and departure of the post is sufficient to enable him to do so with convenience. The letter of offer, in this case, was dated and dispatched on the 10th November. It would arrive at Ecclefechan on the morning of the 11th, and, if he meant to accept, he might have answered by the return of post, which leaves Ecclefechan at six o'clock the same evening. Instead of this, he does not reply till the 17th November, when prices had considerably risen. If the offerer were to be held bound in these circumstances, it is clear that it would result in manifest injustice and hurt to the offerer. Nor is it any answer to plead ignorance of mercantile usage on the respondent's part, because here the letter of offer expressly bore that an answer was requested in course of post. And where an offer is sent, thus expressly qualified with a condition of "an answer in course," the rule above alluded to must the more imperatively follow, and the party offering to sell be free, unless his offer be accepted of within the time specified.

Pleaded for the Respondent.—The appellant offered the spirits for sale, not under condition only of his offer being

accepted of within a specified time, but only in the usual manner of such letter of offer, which makes use of the terms, "in course of post," as a phrase common to all letters in general. The appellant therefore having sold, was bound to deliver the quantity of spirits above mentioned to the respondent; and the respondent has sustained damage by the refusal to deliver to the amount of £40, to which sum he has restricted his claim.

After hearing counsel,

LORD ELDON said,—

"MY LORDS,

"The condition on which the offer was made not having been complied with, Stein was entitled to consider it as at an end; I am decidedly of opinion that it would place the offerer on very unequal terms, were it to be left to the person to whom an offer is made to accept it, after a rise perhaps had taken place in the price of the commodity. It was incumbent in this case, upon Farries to use due diligence in answering Stein's letter, which he had not done; and the apology, attempted on the ground of the former course of dealings, had no place in the question, which depended entirely on the latter making the offer, and the answer to it."

It was therefore

Ordered and adjudged that the interlocutors complained of be, and the same are hereby reversed.

For the Appellant, *W. Adam, Ad. Gillies.*

For the Respondent, *Wm. Grant, M. Nolan.*

(M. 11032 *et* 11045.)

WILLIAM RIDDICK of Corbieton, . . *Appellant;*

DOUGLAS, HERON and Co., late Bankers in Ayr, and GEORGE HOME, Esq., their Factor and Manager, ... } *Respondents.*

(*Et e contra.*)

House of Lords, 2d April 1800.

BOND — CAUTIONARY OBLIGATION — SEPTENNIAL LIMITATION.—

A decree in absence had been obtained against the representative of the cautioner within the seven years, together with certain correspondence had with his factor, seeking delay to pay the debt; Held the correspondence sufficient to elide the prescription, though no "legal diligence," in the sense of the statute, had followed on the debt *within* the seven years.

William Kirkpatrick, merchant in Dumfries, obtained a