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ALEXANDER WILKIE, late of Kingston, Jamaica,	} <i>Appellant</i> ;	WILKIE, &c.
Merchant, . . . . .		
Messrs. JOHNSTON, BANNATYNE, & Co., Mer-	} <i>Respondents</i> .	JOHNSTON, &c.
chants, Glasgow, . . . . .		

House of Lords, 19th Feb. 1808.

**SALE—JOINT ADVENTURE—LIABILITY.**—Circumstances in which a party, residing in Jamaica, was held liable for goods, bought by his correspondent in this country, to be sent to Jamaica, between whom, it appeared from the correspondence, there was a joint adventure.

This case arises out of the same course of dealing which the appellant had with James Hutchison, jun., merchant in Glasgow, as set forth in the appeal in the case with Benjamin Greig, ante vol. iv. p. 265.

As there explained, Hutchison was made the medium of purchasing and shipping goods from this country to the appellant in Jamaica. The transactions originated with the appellant, in a proposal communicated in a letter, and ordering a shipment of articles out to Jamaica “on our mutual account.” This proposal was assented to on the part of Hutchison. Goods were bought, and sent with invoice thus: “Invoice of goods shipped per Cecilia, by James Hutchison, junior, Glasgow, on the joint account and risque of said James Hutchison and Alexander Wilkie, Kingston, Jamaica.”

In complying with these orders, Hutchison seems himself to have purchased these goods on credit from others. And the present question arises between parties from whom he had bought those goods, as to whether there was a copartnery or joint adventure between Hutchison and Wilkie, so as to make the latter liable as well as the purchaser of the goods.

As explained in Greig’s case, Hutchison latterly seems to have thought it proper to propose a change in the nature of the transactions between them, by a letter on 11th May 1793, whereby he proposes, if “agreeable to you, but, in either case, it shall be the same to me. What I mean is, to send out the goods upon my own account, and you to charge a commission.”

Thereafter, and in July, orders very pressing arrived from

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the appellant for goods to be sent out as formerly, on mutual account.

These letters were brought to the respondents, Bannatyne and Co., and, upon inquiry, they had no hesitation to furnish goods to the extent of £460. 18s.

The entry of this purchase in the respondents' day-book stood thus:—" Sold James Hutchison, junior, Glasgow, and Alex. Wilkie, Kingston." The second entry was thus booked: " Sold James Hutchison, junior, and Alexander Wilkie." The invoices were drawn out and sent in same manner; and, finally, a bill was drawn on 11th Dec. 1793 by the respondents, upon " Messrs. James Hutchison, junior, and Alexander Wilkie, Glasgow, and accepted by James Hutchison, jun., for self and Alexander Wilkie."

The appellant alleged that, in answer to the above proposal for an alteration of the transactions between them, he wrote Hutchison, of this date, stating, " I have considered your plan of doing our business in future, and I do think it the clearest way for me to charge a commission. I have made inquiry. The common commission for goods sent out is 5 per cent., and for produce sent home 2½ per cent. This I shall charge for all this order, and I have no doubt you will be pleased with my transactions."

The respondents alleged that if this letter arrived at all, it was never shown to them. The original was never produced, and no intimation made of it whatever.

Action being raised by the respondents for payment of the sum of £460. 18s. contained in Messrs. Hutchison and Wilkie's bill above mentioned; in defence, the appellant stated that he was never in partnership with James Hutchison, nor had ever been engaged in a joint adventure with him; and that, while in Jamaica, he had only employed Hutchison to purchase goods for him, which Hutchison did in his own name, and that he had made remittance to him therefor. In answer, it was stated, that the above correspondence showed that there was a series of adventures between them, and that, by the special nature of the purchase, which was made in this case upon being shown Wilkie's letter ordering goods for the joint adventure, they sold the same.

Feb. 27, 1798. The Lord Ordinary, of this date, decerned in terms of the July 11, 1799. libel. On reclaiming petition to the Court, the Lords ad-  
Nov. 26, 1799. hered. On another petition the Court adhered.  
Feb. 4, 1800.

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

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*Pleaded by the Appellant.*—There is no colour or ground for supposing that the appellant and Hutchison were in partnership generally, or that they had joint concern in the goods, for the value of which this action is brought. They were concerned in certain single adventures, it is true, but without any view to partnership; but these were completely settled before the purchase of the goods in question. And the goods sent out in the present case, it is proved, were sent out on the footing that they were to be furnished by Hutchison alone, and the appellant was only to be his factor, charging a commission. Even independently of this, a foreign merchant, who procures goods from this country through or by means of his correspondent here, to whom he allows a commission, is not answerable directly to the persons from whom the correspondent has purchased the goods. All that the foreign merchant is bound to, is to make remittances to his correspondent towards payment of those goods, and, if he does so, his responsibility ceases. It is altogether erroneous to view such a person as an agent or factor, and the foreign merchant his constituent and principal.

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*Pleaded by the Respondents.*—Prior to the transactions in question, there had been a joint trade carried on between Hutchison and the appellant, in the purchase of goods and merchandize in Great Britain, and the sale of such goods and merchandize in the island of Jamaica. The goods, in the present instance, were purchased in terms of a letter, which authorized Hutchison to purchase the goods therein ordered, either upon the joint account, as formerly, or upon his own account, charging a commission; and the goods in question were purchased on the joint account, as is proved by the special nature of the transaction between them and Hutchison. Every circumstance which occurred in the case of Greig is exactly reversed in this case. Greig had previous dealings with Hutchison upon his separate account, and stated the goods purchased in autumn 1793 to the separate account of Hutchison, in his books. The invoice, in Greig's case, was in the name of Hutchison alone, and the bill drawn by Greig for the price of the goods, at the time they were sold, was upon, and accepted by Hutchison only. But, in this case, the dealing which had taken place between Hutchison and the respondents prior to the transaction in question, was with Hutchison and Wilkie

1808. jointly. The goods were booked in their name—invoiced in their joint name—and the bill drawn on them jointly. All these circumstances show that the decision pronounced by the House of Lords, in that case, cannot apply to the present, except in so far as it furnishes grounds of affirmance of the interlocutors complained of.

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After hearing counsel, it was  
 Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed, with £80 costs.

For Appellant, *Wm. Adam, J. A. Park.*

For Respondents, *Wm. Alexander, M. Nolan, Thomas H. Baird.*

[Mor. App. 1. Foreign No. 6.]

<p>WM. SHEDDEN, only Son of the deceased William Shedden of Rughwood, in the County of Ayr, sometime Merchant in New York; and HUGH CRAWFORD, Merchant in Greenock, his Factor <i>loco tutoris</i>,</p>	}	Appellants :
<p>DR. ROBERT PATRICK of Trearne, in the County of Ayr, . . . . .</p>	}	Respondent.

House of Lords, 3d March 1808.

LEGITIMATION PER SUBSEQUENS MATRIMONIUM—FOREIGN—ALIEN—NATURALIZATION ACTS.—A Scotchman had settled as a merchant in New York, and had become domiciled in that country. In 1770 an heritable estate devolved on him in Scotland, but, on this event, he did not return to Scotland. Ann Wilson lived with him in America; and the result of this connection was, the birth of two children, of whom the appellant, William Shedden, was one. In 1798, when on deathbed, he married their mother in America, by a regular marriage, performed by a clergyman; and the questions raised in a reduction were, 1st. Whether this marriage, celebrated in a country which did not recognize the law of legitimation by the subsequent marriage of the parents, was nevertheless good to legitimate the child, claiming heritable estate in Scotland, where that law was recognized? or, Whether the status of legitimacy was to be decided according to the law of America, where he was born, and his parents resided, or according to the law of Scotland? 2d. Whether, being born out of the allegiance of the King