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alty on his doing so, he might refuse to acknowledge their powers, and the question would then be tried on the only case where it could occur. But here the parties have run up to your Lordships, to crave, that you would say what the House of Lords should determine on some future occasion, if the case were brought before them.

“ I submit, as my opinion, that this combination ought to be reprobated, and that the justices have not punished the parties by fine, as they ought to have done. Indeed, if I am not misinformed, the appellants have reaped advantage from their proceedings. The Court of Session said to them, take 1s. 2d. per mile for your post chaises, on account of the high price of hay, oats, and other matters used in your business, as an interim regulation. But, happily for the country, the price of these articles was soon lowered, and they still continued to charge the price of 1s. 2d. per mile. By these means, posting was dearer in this county than in any other county in Scotland.

“ Upon the whole, it appears to me that the present appeal has been prematurely brought, and that your Lordships have no opportunity of trying the matter which the appellants complain of. It is an appeal rather from certain subjects of talk and discourse in the Court of Session, than from a judgment of that Court.”

After this the EARL OF KINNOULL made a speech, which could not be distinctly heard, but entered into a defence of what had been done by the justices in the county of Perth on a similar occasion.

Whereupon it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors complained of be affirmed.

For Appellants, *W. Grant, W. Adam, Henry Erskine, David Cathcart.*

For Respondent, *Sir J. Scott, J. Anstruther, Chas. Hope, Wm. Dundas.*

JOHN & JAMES M'LEAN, Merchants, Leith,	} <i>Appellants ;</i>
MESSRS. ROBERT THORLEY, BOLTON, and	
Company, Merchants in Narva, Russia ;	
and THOMAS CRANSTOUN, Writer to the	
Signet, their Attorney, - -	} <i>Respondents.</i>

House of Lords, 26th Feb. 1798.

CONTRACT OF SALE—PAYMENT OF PRICE—EXCHANGE.—Timber having been sold, but, in consequence of the insolvency of the

buyers, they wrote to the sellers to sell it as on their account ;— Held, that in this sale, the price received for it, and the price agreed to be paid by the original buyers, was to be taken into account along with the difference of exchange or value of money as between St. Petersburg and London, when the timber was offered back, and when it was first sold,—the account being stated in Russian money.

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This was an action arising out of the sale of timber bought by the appellants from the respondents, merchants in Russia. The appellants had engaged to send shipping to Narva to take away the timber which the respondents had ready for loading ; but owing to the difficulty of procuring shipping in the year 1793, during the war then existing, the appellants could not get shipping, and in the following year their affairs having become involved, they were obliged to give up their contract, and ordered the respondents “ to dispose of the wood, and as prices, I understand, are settled for the ensuing season at the same rate I was to pay, I flatter myself you will be able to get quit of it with no loss.”

The respondents did not sell the wood, but retained it themselves at a valuation.

In the contract the appellants had bound themselves to pay the price of the timber by draughts on Amsterdam.

In these circumstances, the questions which arose were, 1st. At what prices were the respondents to retain the timber? Whether at the current prices as at 3d June 1794, for the timber called Dutch timber, according to the current prices in the *Dutch market*; or whether at the *current prices* for Dutch timber in the *English market*. The current prices for Dutch timber in the English market being much higher than in the Dutch market; and the appellant contended that he was entitled to have the wood valued according to the current prices of Dutch timber of equal value in the English market, although it was proved that the Dutch timber was sent from Narva to Holland, and sold at a rate of one doyt, or one-eighth of a stiver per foot less than the respondents had allowed Messrs. M'Lean; and, consequently, as they maintained, had sustained a loss thereby. 2d. Whether the appellants were liable for the difference of exchange between Petersburg and Amsterdam as at these dates, namely, 31st July 1793, when the respondents ought to have been paid for the timber, and the

1798. 3d of June 1794, when the contract was given up. It being contended that the exchange between these two places on the first of these two dates was $24\frac{1}{2}$ stivers per rouble; whereas at the 3d of June 1794 it had risen to 29 stivers per rouble, so that the same number of guilders paid in Narva on 31st July 1793 would have purchased a greater number of roubles than on 3d June 1794; and consequently that the respondents were entitled to have this difference made good to them.
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- Feb. 17 & 18, 1796. The Court, of this date, sustained the allowance made by the respondents for the price of the timber taken back by them, with interest from a certain date. And with respect to the article of exchange, “ find, that in settling accounts “ between the parties, effect must be given to the variations “ of exchange on the 3d day of June 1794, when the timber “ was taken back, from what it was on 31st July 1793, and “ remit to Charles Selkrig, accountant, to make up and re- “ port to the Court a state of accounts betwixt the parties.”
- In obedience to this interlocutor, Mr. Selkrig gave in his report, stating the account in four different views. In the first and second views, he stated the account in Dutch money; and in the third and fourth views, he stated it in Russian money, and calculating exchange as between St. Petersburg and London in his fourth view.
- Mar. 11, 1796. On representation, the Court adhered; and, of this date, upon the objections to the accountant's report, they ordered
- May 21, — a condescence of the facts the appellants undertook to
- June 14, — prove. A condescence having been given in, and a proof allowed, by examination of certain merchants in London, engaged in the trade, as to the custom of merchants, the
- Nov. 29, — Court pronounced this interlocutor: “ Find that the fourth “ view contained in Mr. Selkrig's report, must be the rule “ in settling betwixt the parties; and therefore discern ac- “ cordingly; and, with regard to expenses claimed by the “ respondents, supersede consideration thereof until “ day of next.”
- Jan. 25, 1797. On reclaiming petition the Court adhered, and found the
- Jan. 28, — appellants liable in expenses. Another petition was refus-
- Feb. 21, — ed. A bill of suspension was also refused.

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

Pleaded for the Appellants.—1. That the respondents made their valuation of the timber without consulting the appellants, and even concealed what they had done for a

considerable time. Until they gave in their condescendence in this suit in January 1795, admitting that they had taken the timber to themselves at a valuation put upon it by themselves, the appellants imagined it had been sold. The respondents had authority only to sell the timber, and if they had sold it *bona fide* for the least price they could get, the appellants could not have complained. But the respondents had no authority to take the timber to themselves, especially at an undervalue; and as the appellants never approved of that transaction, they cannot be bound by it. The respondents are entitled to the fair and adequate prices, such as wood of the same quality was selling for at the time; and as it has been shown that wood of the same quality was selling during the season 1794 at 30 and 35 per cent. higher than the respondents allowed, they are entitled to that value. 2. As to the difference of exchange. The appellants' obligation was to pay a certain sum in guilders, by drafts on Amsterdam, or otherwise to pay the debt in pounds sterling, agreeably to the course of exchange between *London* and *Amsterdam*. They never came under an obligation to pay the respondents in Russian roubles or money. On all former dealings, the appellants paid, and the respondents were content to receive, payment in Dutch money; and whenever the payments were made in English money, the sums due were calculated by turning the Dutch money into pounds sterling, at the then existing rate of exchange between London and Amsterdam.

Pleaded for the Respondents.—1. The appellants in their foresaid dealings with the respondents, were bound by the general custom and usage of merchants, in the same trade, which the proof clearly establishes to be as found by the interlocutor. 2. Every loss sustained by the respondents, arising from the appellants' failure to perform their contract, ought to be borne by them, whether arising from the difference in exchange or otherwise; and on these grounds the appeal ought to be dismissed.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed, with £200 costs.

For the Appellants, *Sir J. Scott, W. Adam.*

For the Respondents, *J. Mansfield, J. L. Hubbersly.*

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