therein contained was not denied by the appellant until some time after, and when the statute had, in the meantime, affected the rise and distillation of spirits from molasses, so there arises strong presumptive evidence that the terms of the bargain were as the respondents have stated it.

Besides, by the act 36 Geo. III. c. 20, all contracts and bargains made by a distiller, for the delivery of spirits distilled from molasses, after the 18th Dec. 1795, are declared null and void; and therefore the present contract falls under the nullity of the act.

After hearing counsel,

The Lord Chancellor ELDON moved a reversal of the judgment of the Court of Session, for the special reasons stated in his judgment as below.

It was ordered and adjudged that the interlocutors complained of in the appeal be reversed; and it is hereby declared, that by the contract, of which the correspondence in process is sufficient evidence, the respondents were bound to deliver the puncheons in reasonable time, and therefore before the 18th Dec. (1795); and having failed in fulfilling such contract, the appellant is entitled to recover damages for the breach thereof; and it is hereby ordered that the cause be remitted back to the Court of Session in Scotland to assess the said damages.

For Appellant, *W. Grant, M. Nolan.*
For Respondents, *Wm. Adam, James Montgomery.*

NOTE.—Unreported in the Court of Session.

ROBERT LEE, Merchant in Greenock, *Appellant;*
MESSRS. MURDOCH, ROBERTSON, & Co., Merchants in Glasgow, and WALTER EWING M'LAE, Trustee on their sequestrated estate, } *Respondents.*

House of Lords, 26th Nov. 1801.

BILL—VITIATION — NO VALUE — COPARTNERSHIP. — A bill was granted by a member of a firm in the Company name, to a banking company, without the knowledge of the Company, for £1000. It was thereafter renewed to the same individual for £1068, being the principal sum of the original bill, and interest. In action

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raised against the appellant, on the second bill, two objections were stated; 1. No value. 2. The bill was vitiated, by an erasure and alteration in it, from payable on demand to payable one day after date. On report to the whole Court, the Lords of Session sustained the claim to the extent of the sum of £1000 in the original bill, with interest. Reversed in the House of Lords, without prejudice to the respondents bringing a new action on the original bill for £1000.

Robert Lee, merchant in Greenock, the appellant's father, was partner in the house of Lee, Rodgers and Co., merchants in Glasgow, of which firm Robert Donald, Hugh Colquhoun, and James Wilson, were partners. This business was dissolved in 1783.

Robert Donald, one of their number, was a shareholder or partner, at sametime, in the house of Speirs, Murdoch and Co., bankers; and, besides his interest in stock, had a credit in that bank to the extent of £1000, for which Lee, the appellant's father, and Colquhoun, were sureties; but the cautioners were secured against this by Donald's stock, amounting to £4000.

The banking company of Speirs, Murdoch and Company, was dissolved by the death of Speirs, in the beginning of the year 1784, but was continued by Murdoch, Robertson and Co., who, two years after the dissolution of the firm of Lee, Rodgers and Co., wrote the appellant's father, stating that they held the acceptance of that company for £1068. 19s. 7d., and requesting payment. At such a demand Mr. Lee was not a little surprised. It was the first time he had heard of the bill. And, on appointing a meeting with Mr. Robertson regarding it, he found the transaction to stand thus: Donald, who had a credit with the bank, had overdrawn that credit to the extent of £1000, and, in order to hide this from the bank, he had taken it upon him to draw out an acceptance in the company name of Lee, Rodgers, and Co., without their permission, to serve his own individual purpose with the bank; and the bill now demanded of £1068. 19s. 7d. was a renewal of that bill, with interest. When examined on this occasion, it bore to be payable *on demand*. On ascertaining that this was the nature of the transaction —that this was not a company transaction, but an unwarrantable use of the company name, and that no value had been received for it, he refused payment, whereupon the present action was brought for payment of the £1068. 19s. 7d. bill against Lee, the only surviving partner.

The defence stated to this action was, that Lee, Rodgers, and Company had never received value for the bill; that the bill itself was erased and vitiated, in so far as the words "payable on demand," which had stood originally a part of the bill, were erased, and the words, "one day after *date*" substituted in their place; the object wished to be gained by this alteration, as was stated, being to subject Mr. Lee in the payment of interest upon the contents of the bill, from the month of February (being its date); And, finally, that the bill had been granted long subsequent to the dissolution of the concern.

The Lord Ordinary ordered informations on the point, for the consideration of the whole Lords; and their Lordships, of this date, pronounced this interlocutor: "Find the de- Dec. 4, 1799.
"fender liable to the pursuers for the sum of £1000, con-
"tained in the *original bill* granted by Lee, Rodgers, and
"Company, with the interest due thereon, and remit to the
"Lord Ordinary to allow the pursuers to amend their libel
"to that effect, and proceed and determine as to his Lord-
"ship shall seem just."

As this judgment seemed virtually to sustain the objection to the vitiation of the bill, £1068. 19s. 7d., for which payment was concluded; but decerned for payment of the *original bill* of £1000, which was *not* concluded for in the summons, both parties reclaimed, the respondent praying the Court to vary the terms of the interlocutor.

The Court, on advising, pronounced this interlocutor:— Feb. 11, 1800.
"Find, that the meaning of the Court, when they pronounc-
"ed the judgment reclaimed against, was to sustain the
"claim of the pursuers to such an extent, as that the same
"should not exceed the sum of £1068. 19s. 7d., and inte-
"rest thereof from the 23d day of February 1786, until
"payment: Find the defender, Robert Lee, liable in these
"sums accordingly; and, with this explanation, adhere to
"their former interlocutor; and, farther, find the defender
"liable in the full expense of extract; but in no other ex-
"penses."

Against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—The bill, which is the foundation of the present action, is erased and vitiated *in substantialibus*, and therefore void, and not good to sustain action for the contents thereof. Nor is the assertion either true, or proved by the respondents, that the alteration was made with

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the consent of the acceptors. This allegation is not only without evidence, but is inconsistent with the declarations of Robertson and Walker, and, in the circumstances of a dissolved company, and the fact that this was a private transaction of Donald's own, altogether incredible. The instrument here has been fraudulently vitiated, not because of the uncertainty of their original tenor, but because in law the alteration necessarily cancels the original instrument; and, in refusing action on such vitiated bill, both the laws of England and Scotland agree. The bill was also rendered void and null, under the several statutes regulating the stamps for bills of exchange, where the alteration rendered a new stamp necessary. *Separatim*, As no value was given to Lee, Rodgers and Co. for the bill, and as the holders had connived at the transaction, and, besides, had been guilty of the grossest negligence in not bringing forward the bill at the proper time when due, when Mr. Lee could have operated relief against Mr. Donald's own estate, they are not now entitled to recover.

Pleaded by the Respondents.—Mr. Lee, the appellant's father, was clearly liable for the original bill, dated 20th March 1783, which was accepted in the usual manner by the managing partner of that company, under the company firm. This bill was accepted six months before it is alleged that Mr. Lee and his partners had resolved to dissolve their copartnership, and two months before the contract expired. Mr. Lee, according to the established principles of law, must be liable, as a partner of the company, for that bill, unless he can show that this case does not fall under the general rule of law, owing to special circumstances. Here there was no such special circumstances. There was no fraud. As, therefore, no good objections could have been stated to the original bill granted in the name of the company, so neither does there lie any good objection to payment of the new or renewed bill. The mere renewal does not exempt from that liability. Being bound, therefore, as a partner, to pay the one, he was also liable for the other.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of in the appeal be reversed, but without prejudice to the pursuers' bringing any action on, or in respect of the original bill for £1000, granted by Lee, Rodgers, and Company, as effectually as if they had amended

their libel according to the terms of the first interlocutor complained of.

For Appellant, *W. Adam, John Clerk.*
For Respondents, *W. Grant, Ar. Cullen.*

NOTE.—Unreported in the Court of Session.

ALEXANDER WILKIE, late of Kingston, Jamaica, *Appellant;*
BENJAMIN GREIG of Glasgow, Merchant, *Respondent.*

House of Lords, 1st Dec. 1801.

SALE OF GOODS—FACTOR OR AGENT—FOREIGN MERCHANT.—Circumstances in which it was held, that the purchase of goods by a merchant in Glasgow, for export to a foreign merchant, was such as made the foreign merchant liable to the party from whom the goods were bought; although it was contended that a foreign merchant, who procures goods from a correspondent in this country, to whom he allows a commission, was not so directly liable. Reversed in the House of Lords, and held that the foreign merchant was not liable in the special circumstances of this case.

The appellant, Alexander Wilkie, was a merchant in Kingston, Jamaica; and James Hutchison, merchant in Glasgow, opened a correspondence with him, and proposed to purchase goods in this country, and ship them out to him for sale in Jamaica. At first the transaction assumed this form. Hutchison bought the goods in Glasgow on his own credit; but shipped them out with invoices made out by himself, titled, "Goods shipped per Cecilia, by James March 1792.
"Hutchison, junior, Glasgow, on the account and risk of the
"said James Hutchison, and Alexander Wilkie, Kingston."

In 1793 this mode of transaction was changed, at Hutchison's own request; and, of this date, the appellant wrote May 10 and
in answer, stating, "It has occurred to me to offer you an 11, 1793.
"alteration in the mode of sending the goods as formerly,
"and perhaps it might be more agreeable to you, but, in
"either case, it shall be the same to me, only will save us a
"good deal of trouble. What I mean is, to send out the
"goods on my account, and you to charge a commission
"adequate to your trouble, then I shall have it in my power
"to make you remittances upon the receipt of the goods.