

No 79. time, his servant assisted the rebels to carry them off. THE LORDS found the seller not liable.

*D. Falconer.*

\* \* \* This case is No 6. p. 10071, *voce* PERICULUM.

1758. July 11.

MASON *against* ADAMS.

No 80.  
How far the  
proprietor of  
a ship is liable  
for the in-put  
master.

JOHN ADAMS being employed as his Majesty's master mason in the works of Fort George, and having occasion to bring by water carriage to the fort, from different places in the Murray-frith, quantities of stone, lime, and timber, he caused build at Leith an open boat of a particular make fit for that purpose; and, by a mutual contract, *anno* 1751, engaged John Wilson "to navigate the said vessel to and from the quarries of Cromarty and Monlochie to the port of Ardersier, or to any other place Mr Adams shall direct, paying him certain sums for each voyage; and the said John Wilson bound himself to obey the orders and directions that should be given him by Mr Adams."

Gilbert Mason, merchant in Leith, brought an action before the high Court of Admiralty, against John Adams, as owner of the said vessel, and against John Wilson, in-put master, founded on a bill of lading, dated 21st September 1756, subscribed by the said John Wilson, acknowledging to have received on board said vessel at Thurso, for behoof of the pursuer, deliverable at Inverness, 326 bolls oatmeal; subsuming, That when the meal was delivered at Inverness, there was a short-coming of 27 bolls, value L. 17 Sterling; and therefore, concluding, That the defenders should be decerned conjunctly and severally, &c.

The following defence was made for Mr Adams, That Mr Wilson was employed by him for carrying stone, lime, &c. to the fort at Ardersier, and that if Wilson, without his authority, ventured to employ the ship for any other purpose, such breach of duty could not bind Mr Adams. The Judge-Admiral found Mr Adams liable. But a bill of suspension was past upon the following reasons; *1mo*, The proprietor, in whatever branch of commerce he employs his ship, is understood to give the master put in by him all the trust that is necessary for carrying on that branch; and particularly, to make contracts of afreightment, &c. which must bind the owner; *2do*, As the owner is bound to fulfil such bargains, so he is liable for those he employs; But, *3tio*, If the the master make a bargain without authority, the owner is not liable to fulfil, nor consequently for the negligence or fraud of the master: The last supposition is the present case. It appears, by the contract betwixt Mr Adams and Wilson, that the boat was destined for a certain purpose, and that the master's power was limited to that purpose. Therefore, if the pursuer insist that the master had a commission to make profit by freighting the ship at large, it is

incumbent upon him to prove the fact, either directly, or at least by showing, that, under the eye of Mr Adams, Wilson was in use to hire out the vessel.

No 80.

*Fol. Dic. v. 4. p. 231. Sel. Dec. No 148. p. 204.*

1784. July 6.

JAMES STEWART *against* DUNCAN MACDONALD, HUGH CHISHOLM, and  
GEORGE BEAN.

JAMES STEWART being apprehended by Hugh Chisholm, a messenger, for a debt due to Duncan Macdonald, consigned the money in the hands of the magistrate, to whom he was presented for incarceration, and was set at liberty. A few hours after, he was again apprehended, on the former diligence, by Hugh Chisholm, in consequence of directions from George Bean, the agent for Mr Macdonald, the creditor, and thrown into prison, where he lay for several days.

No 81.  
A creditor  
not respon-  
sible for the  
misconduct of  
an agent or  
messenger in  
the execution  
diligence.

In an action of damages founded on these proceedings, the LORDS pronounced the following interlocutor:

“ Find, That the imprisonment after consignment was illegal and oppressive, and that George Bean the agent, and Hugh Chisholm the messenger, are conjunctly and severally liable in damages and expenses; but, in respect there is no evidence that the defender, Duncan Macdonald, was in any degree accessory to the imprisonment of the pursuer, therefore assoilzie him from the process.”

Lord Ordinary, *Braxfield.*

Act. Solicitor-General Dundas, *W. Miller.*

For the Creditor, *Lord Advocate Campbell, G. Buchan-Hepburn.*

For the Agent and Messenger, *Mackintosh, H. Erskine, Honyman.*

Clerk, *Home.*

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*Fol. Dic. v. 4. p. 231. Fac. Col. No 146. p. 261.*

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S E C T. XII.

Servant dismissed between Terms.

1750. June 20.

RAE *against* The PARTNERS of the Glass-work Company at Leith, and MILNE,  
their Clerk and Cashier.

RAE brought an action in August 1748, before the Justices of the Peace, against the said James Milne, for a year's wages, as one of the teasers to the

No 82.  
Where a ser-  
vant is dis-  
missed be-  
tween terms,