

No 9.

for the value ; the goods having been sent by the agreed time, but he having gone sooner, and left orders to say that he was still in town ; so that the goods remained in the carrier's quarters, where they were damaged.

Act. G. Buchan-Hepburn.

Alt. James Boswell.

G. F.

Fac. Col. No. 102. p. 358.

1787. February 6.

ARCHIBALD MACAUSLAND *against* WILLIAM DICK, WILLIAM BYRAM, and JOHN CAMERON.

No 10.

The owners of stage-coaches not answerable for the safe conveyance of money, unless where it has been delivered as such.

WILLIAM DICK, one of the owners of a stage-coach plying between Glasgow and Edinburgh, received a parcel belonging to Archibald Macausland. This he marked in the way-bill, with a charge of sixpence, which is the rate demanded for all ordinary parcels not exceeding a certain weight.

The parcel not having been delivered, Mr Macausland brought an action against William Dick, and his partners, for L. 200, alleged to have been contained in it ; and

*Pleaded,* The case of carriers by land, though not specially provided for by the edict of *Nautæ, caupones, et stabularii*, yet clearly falls within the spirit and meaning of that regulation ; and the obligation it creates does not depend on the value of the goods. If these have been *received*, action must be sustained for *re-delivery*. This is confirmed by the usage of modern nations, and likewise by the conduct of the owners of stage-coaches in Scotland, who generally take care to express, by a particular advertisement, to what extent they are to be understood to warrant the safety of goods entrusted to their care ; l. 1. § 4. 6. *D. Naut. Caup. et Stab.* ; l. 7. *ibid.* ; Stair, book 1. tit. 13. § 3. ; Blackstone, vol. 3. tit. 9. p. 164.

*Answered,* The owners of stage-coaches do not, in general, undertake the conveyance of money ; because, they have no proper repository for it ; and because it is almost impossible for them to provide against the frauds or misconduct of the passengers. This article for the most part is, and always ought to be transmitted by a waggon, in which there is a place fitted up for the purpose. There, too, it is usual to proportion the rate of carriage, not to the bulk only, but also to the value of the goods. The consequence of admitting the present claim, would be to subject people, in the defenders situation, to a hazard which did not fall within their agreement, and for which, of course, a corresponding premium could not be stipulated.

It was also *argued* for the defenders, That the edict ought not to be extended to carriers by land. But the case was determined on this principle, that the

owners of stage-coaches, or other carriages for hire, were not responsible for the safe conveyance of money which had been delivered as an ordinary parcel. "THE LORDS sustained the defences, and assolized."

No 10.

Lord Reporter, *Eskgrave.*Act. Dean of Faculty, *Hope.*Alt. *Maclaurin, J. Dickson.*Clerk, *Home.*C. *Fal. Dic. v. 4. p. 61. Fac. Col. No 308. p. 477.*1791. *January 15.* JAMES DENNISTON *against* WILLIAM HARKNESS.

No 11.

JAMES DENNISTON, of Glasgow, delivered a parcel of goods to William Harkness, a common carrier between Glasgow and Carlisle.

The parcel was addressed to Nathaniel Workington, at Oldham, near Manchester; and so it was described in Harkness's way-book.

Upon his arrival at Carlisle, Harkness delivered the parcel to Jonathan Wilson, a common carrier between Carlisle and Manchester, after receiving from him eightpence, as due for the carriage between Glasgow and Carlisle. He also saw the parcel marked in Wilson's way-book.

The parcel having been lost in its progress between Carlisle and Manchester, Denniston brought an action for the value against Harkness, as having undertaken the charge of it to the place of its destination.

In support of the action, Denniston examined several respectable merchants and carriers, who swore, that, according to the general understanding of people engaged in the trade, the defender was liable; and

*Pleaded,* By the entry in the carrier's way-book, describing the parcel as deliverable at Manchester, he clearly explained the nature and extent of his engagement; nor is this obviated by the circumstance of his terminating his own journey at a place not so far distant. Having the choice of the person to whom, on his arrival at Carlisle, the parcel was to be entrusted, his situation was the same, as if the parcel had still remained under his immediate care. This species of warranty, which, from the reciprocity of it among carriers, can be attended with little loss to them, is absolutely necessary for the safety of inland commerce; and it appears, from the evidence, to be thoroughly understood and followed in practice.

*Answered,* The entry in the way-book was evidently intended to describe the parcel, and not to extend the obligation of the carrier, in a manner quite inconsistent with the nature of his employment. It would be contrary to all reason, that a carrier of goods between Glasgow and Carlisle should answer for the conduct of another person, who is necessarily to have the charge of the goods at an after period; and the rate of hire received by him, which has no relation either to the length of the road through which the goods are to pass to their ultimate place of destination, or to their intrinsic value, but to their

A common carrier between Glasgow and Carlisle having undertaken the conveyance of goods intended for Manchester, found not liable for the loss of the goods between Carlisle and Manchester.