tioned. Besides, there was really no necessity in this case for a new manse, as the old might, as is clearly proved by the proof in process, have been repaired at a much less cost to the heritors.

Pleaded by the Respondent.—The plea founded on the act 1663, that the sum is limited to £83. 6s. 8d. is untenable, because that sum had reference to manses immediately then to be built in parishes where there had been none before. Perhaps the sum was reckoned sufficient in those days for building a manse, but now that things and circumstances have changed, the legislature never intended that this sum would be sufficient for such a purpose in all future times. This is evident from the act itself, because in the very next clause, where it comes to speak of the repairs of manses then already built, no limitation in amount is imposed whatever in that department of expense, while, in the present instance, the new manse has been ordered to be built only after the most careful inquiry that such was necessary, and the most advantageous course for the heritors.

After hearing the appellant's counsel,

LORD CHANCELLOR said,

"The respondent's counsel need not answer. The Court of Session had gone according to the spirit of the statute, and according to many former decisions. The appellant was inexcusable for bringing such a matter here; and therefore I move to affirm with £100 costs."

It was ordered and adjudged that the interlocutor complained of be affirmed with costs.

For Appellant, *Ilay Campbell, John Hagart.*

For Respondent, *Alex. Wight, Wm. Adam.*

NOTE.—Not reported in Court of Session.

MESSRS. STURROCK & STEWART, *Appellants;*

WILLIAM PORTER, Merchant St. Petersburgh, and ALEXANDER OGILVIE, Merchant Leith, his Attorney, } *Respondents.*

House of Lords, 27th March 1786.

FACTOR—SALE—NOTICE.—Held, where a foreign merchant was commissioned to purchase flax for a merchant in Dundee, that

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the former was not liable for the loss of the flax by fire, which he had purchased, though he had not intimated the purchase to his employer; the flax being only part of the quantity ordered, and was put into a store, waiting the arrival of a vessel to take it to Dundee.

The appellants having ordered, by letter, their correspondent, Mr. Porter, at St. Petersburgh, to purchase for them a quantity of flax, to be shipped for them to Dundee, he, in compliance with their order, had purchased several parcels, and had part stored in a warehouse awaiting shipment, when the warehouse was burned down, and the flax destroyed by fire. No intimation had been received of the purchase, which was only part of the quantity ordered; and when a demand was made for payment, this was refused, whereupon action was raised by Porter and his attorney before the Judge Admiral for £481, the price of the flax. The question was, Whether the property was sufficiently transferred, so as to make the loss fall on the appellants, or whether the loss ought to fall on the respondent Porter? In defence to the action, the appellants urged, 1. That there was no evidence of the purchase having been made as ordered. 2. That if it was made, they were not liable for the loss, because they had not been advised of the purchase previous to the accident. A proof being allowed, the letter or order to purchase was produced, and the following points established:—That he purchased 1071 poods of flax for the appellants, and laid it up in a warehouse to await the arrival of vessels for shipment; that it was not customary for factors in St. Petersburgh to open an account, or make an entry in their books, of purchases made for correspondents, till the orders are completed and the goods shipped, and that it was not customary to give advice of *partial purchases*. The Judge Admiral, upon consideration of the proof, decerned for payment.

Aug. 7, 1783.

A suspension was brought, but the Lord Ordinary, of this date, repelled the reasons of suspension, and decerned. On reclaiming petition to the whole Court the Lords, of this date, adhered to the Lord Ordinary's interlocutor, and also on further petition adhered.

Dec. 9, 1784.

June 16, 1785.

Aug. 4, 1785.

Against these interlocutors the present appeal was brought.

Pleaded for the Appellants.—It is the general rule of law and custom of merchants, that goods purchased by a factor are not, and do not lie at the risk of the merchant commis-

sioning such goods, unless the factor gives advice or notice that such goods have been purchased on his account, in terms of the order. In the present case, no such advice was given, and therefore the flax lay at his own risk, and, when consumed, was a loss to the factor, and not to the appellants. Had advice been given, they might have insured against fire.

Pleaded for the Respondent.—Having received a letter from the appellants commissioning him to purchase 60 lasts of flax, the respondent Porter purchased part, consisting of 1071 poods, from Leverikoff, which part, though burned while in the warehouse waiting the arrival of vessels for shipment, was the property of the appellants, and the loss fell on them, and not on the respondent Porter. The latter acted in compliance with the letter of instructions,—he paid the price with his own money for the flax; and it must be shown that he has been guilty of gross negligence, in following out the orders, or has occasioned the fire, before the loss can fall on him. The property being the appellants, the loss is also theirs. And the want of advice is not that neglect, for which law holds a party responsible. Besides, it was clearly established by the proof, that it was not the custom of merchants at St. Petersburgh, to give advice of the partial execution of orders. No request as to advice was made, no intimation given of an intention to insure in any shape, otherwise intimation would at once have been given.

After hearing counsel, it was
Ordered and adjudged the interlocutors be affirmed.

For Appellants, *R. Mackintosh, Alex. Wight.*
For Respondents, *Ilay Campbell, Edw. Bearcroft.*

NOTE.—Unreported in Court of Session.

[M. 14,200.]

JAMES HILL, Trustee on the Bankrupt Estate of Wilson aud Brown, } *Appellant;*
GEORGE and JOHN BUCHANAN, Merchants in Glasgow, } *Respondents.*

House of Lords, 11th April 1786.

SALE—BANKRUPTCY.—30 hogsheads of tobacco were bought on the eve of bankruptcy, and 8 hogsheads delivered the day before