

## SCOTLAND.

## APPEAL FROM THE COURT OF SESSION.

HAIG—*Appellant.*NAPIER—*Respondent.*

CONTRACT for spirits to be paid for by bills at three months from delivery. No opportunity for delivery given by purchaser, till a new duty imposed on spirits by Act 43 Geo. 3, cap. 81. Decided that under these circumstances the distiller was entitled to charge the amount of the additional duty on the spirits.

May 12, 1813.

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THE Appellant, a distiller, by contract entered into 21st May, 1803, agreed to supply the Respondent with a certain quantity of spirits, to be shipped at Leith for Kirkcudbright, at the price of 5s. 2½d. per gallon, to be paid for by bills payable at three months from the time of the shipment. It was the practice that the purchaser should send a vessel to take the spirits on board, but the Appellant agreed to be *on the look out* for one. No vessel could be found at Leith, and none arrived till after the 5th July, 1803.

May 21, 1803.

Appellant contracts with Respondent for sale of spirits, to be sent from Leith to Kirkcudbright.

In the mean time, the Act 43 Geo. 3, cap. 31, passed, by which spirits distilled on, and after the 5th July, 1803, were subjected to an additional duty. The Act contains the following clause:—

No vessel arrives for the spirits till after 5th July, 1803, when a new duty imposed by Act 43 Geo. 3, cap. 81.

“Whereas contracts or agreements may have been  
 “made, for the sale or delivery of certain articles  
 “or commodities, on which additional duties of  
 “customs or excise are, or may be granted by this  
 “act, or by any other act of this present session of

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“parliament; which contracts or agreements have  
 “no reference to such additional duties, and thereby  
 “the several contractors may be materially affected;  
 “for remedy thereof, be it further enacted, that all,  
 “or every person or persons, who shall, or may  
 “have made, or entered into, any such contracts  
 “or agreements, shall, and they are hereby respec-  
 “tively authorised, and empowered, in case of any  
 “such contracts or agreements, to add so much  
 “money as will be equivalent to the said additional  
 “duties respectively, to the price of such articles,  
 “or commodities, &c. &c.”

Appellant charges the additional duty on the spirits, and Respondent raises his action of damages, for failure to deliver the spirits at the original price.

The Appellant insisted that he had a right to charge the additional duty (making the price 7s. per gallon) upon the spirits in question, under this clause of the Act. The Respondent demanded them at the original price, and raised his action before the Court of Session for delivery of the spirits and 800*l.* damages. The Appellant pleaded that it was not the practice to distil spirits till there existed an immediate opportunity for delivery; and that as the Respondent had not given an opportunity for delivery till after the 5th July, he was not entitled to say, that the spirits were distilled for him *before* that time, especially as the time upon the bills for payment would only have begun to run from the period of the shipment.

Defender (Appellant) found liable in damages.

The Lord Ordinary sustained the defences; but the Court, by an interlocutor of 5th May, 1805, found the Defender (Appellant) liable in damages for failure to implement the contract. Upon petition by the Appellant, this interlocutor was altered, and the petitioner assoilzied; but upon another peti-

tion by the Respondent, this last interlocutor was altered, and the Defender found liable, in terms of the interlocutor of 25th May, 1805. From this decision the Appellant appealed.

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Appeal;

*Mr. Adam* and *Mr. Leach* for the Appellant;  
*Sir S. Romilly* and *Mr. Horner* for the Respondent.

*Lord Eldon* (Chancellor.) The argument for the Appellant was, that no specific part of his stock belonged to the Respondent, till he tendered a ship; that he did not tender a ship till after the 5th July, and that then the Appellant was entitled to say, that he would only furnish the Respondent with spirits distilled subsequent to that period. This case lay in the narrowest compass. Haig had engaged to sell to Napier a certain quantity of spirits at a certain price; and the material question was, whether any part of Haig's stock could be specifically pointed out as the spirits of Napier, until the delivery on board the vessel at Leith. It had been argued on the part of Napier, that Haig had engaged to provide a vessel to carry the spirits. But that did not appear to be the contract. He had only promised *to endeavour* to procure a vessel, and there was no evidence of any default in that respect. Then came the Act imposing the duty on spirits delivered subsequent to the 5th of July, 1803. Napier had not before that time put Haig in a situation to deliver the spirits, and until the spirits could be delivered, there was no part of Haig's stock that could be specifically pointed out, as the quantity belonging to Napier. Under these circumstances, Haig was en-

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Observations  
and Judgment.No part of  
Haig's stock  
could be  
pointed out as  
the specific

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quantity be-  
longing to  
Napier, till  
the delivery;  
and Haig en-  
titled to charge  
the duty.

The contract  
not what the  
Court below  
supposed it to  
be.

Upon the  
Respondent's  
argument, that  
Haig ought to  
have kept his  
spirits separate  
till a vessel  
arrived, the  
credit might  
have been for  
45 months, or  
any indefinite  
time, instead  
of three  
months.

titled to charge the duty. He was of opinion there-  
fore, that the interlocutors of the Court of Session,  
in favour of the Respondent, ought to be reversed,  
the defences sustained, and the Defender assoilzied.

*Lord Redesdale* concurred in this opinion. It  
was clear that the transaction was not what it had  
been supposed by the Judges below to be. They  
appeared to have misunderstood the contract. The  
agreement was to deliver the spirits free, on board  
a ship at Leith. They seemed to think that some  
other mode of delivery was intended, they did not  
specify what. But Napier himself had no other  
mode of delivery in contemplation, and there was  
no other mode of getting the spirits out of Haig's  
stock, except by hiring a warehouse, and setting  
them apart as Napier's stock, which he was not  
called upon to do; and which was inconsistent with  
the nature of the contract. The argument for the  
Respondent went to this, that Haig was bound to  
keep the spirits of Napier separate for 12 months,  
or any indefinite time, unless a ship arrived; so  
that as the credit on the bills was not to commence  
till the delivery, Haig might have been obliged to  
give credit for 15 months or more, instead of three  
months. The vessel did not arrive till the 18th of  
July. The Act began to operate on the 5th. The  
spirits could not be delivered till the 18th, and till  
then the sale could not be completed. The manu-  
facturer was, by the Act, entitled to charge the duty  
on all spirits sold after the 5th, and of course on  
Napier's spirits. There was no pretence for the  
argument that Haig was bound to provide a ship.  
He had only promised *to look out* for one, and there

was no evidence that he did not. Napier himself appeared to have been sensible that the duty must fall on him.

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Interlocutors in favour of the Respondent *reversed*.

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APPEAL FROM THE COURT OF SESSION.

HAIG—*Appellant*.

HANNAY—*Respondent*.

HAIG desires Hannay to engage a vessel for the carriage of spirits, upon the understanding that the freight was as usual to be paid by the purchaser. No evidence of any authority given by the purchaser to Hannay, and therefore Haig, the seller, was held to be liable for the amount.

May 14, 1813.

AGENCY.

**T**HIS was a question arising out of the transactions stated in the last case. The Respondent, a trader at Kirkcudbright, wrote to Haig to send him some spirits by the same vessel which was to carry Napier's larger quantity. Haig's clerk wrote to Hannay, stating that no vessel had as yet been got, and asking whether he, Hannay, could procure one. Hannay wrote in reply, that he could; and accordingly freighted a vessel, which arrived at Leith on the 18th July. For the reasons stated in the last case, the spirits were not shipped; and the owners of the vessel raised an action in the Admiralty Court

Circumstances on which the question depended, whether Hannay acted as agent to Haig, or Napier.