

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

May 17, 1813.

CONTRACT.

Interlocutors in favour of the Respondent *reversed*.

SCOTLAND.

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.

THIS 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.

May 14, 1813.

AGENCY.

against Hannay for freight and demurrage, for which he was found liable. Hannay made use of this as a reason of suspension against a charge given him at Haig's instance, on a bill due by him to Haig. The Court of Session sustained the reasons of suspension, holding that Haig was bound to relieve Hannay against the payment of the freight and demurrage, whereupon Haig appealed.

Mr. Adam and *Mr. Leach* (for the Appellant). Haig merely contracted to deliver the spirits free on board at Leith. He had nothing to do with the freight of the vessel, which was to have been paid by Napier, the Respondent in the last case. Napier therefore, and not Haig, was liable to Hannay for the amount.

Question depending 10 years, which a jury in England would have set at rest in half an hour.

Sir S. Romilly and *Mr. Horner* (for the Respondent). The question as to this sum of 97*l.* which had now been depending 10 years, if brought before a jury in England would have been set at rest in half an hour. The single question was, Whether Hannay in freighting the vessel acted as the agent of Haig, or of Napier? Now there was no evidence whatever that Hannay had any connexion with Napier.

Monday, May 17, 1813.
Judgment.

No sufficient

Lord Eldon (Chancellor) and *Lord Redesdale*, after noticing the letters between the parties, of which the language, they said, was equivocal, observed that the former case ought to have no bearing upon this, which was to be decided on its own merits as they appeared in evidence. There was no evi-

dence that any thing passed between Napier and Hannay that could make *Napier* liable. Whatever therefore their individual opinion might be, they saw no sufficient grounds upon this case to say judicially, that the decision of the Court below was wrong: that judgment ought therefore to be affirmed. Whether Haig might recover over from Napier was another question. He might have saved the demurrage by discharging the vessel immediately on her arrival at Leith.

May 17, 1813.

AGENCY.

evidence to
make Napier
liable.

Appeal dismissed, and interlocutors complained of affirmed.

Agent for the Appellant, CAMPBELL.

Agent for the Respondent, GORDON.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

FITZGIBBON, Esq.—*Appellant*.

SCANLAN, Esq.—*Respondent*.

FITZGIBBON holds a lease as trustee; lease expires, and he renews it for his own benefit. This not impeached for nearly 20 years from the time of renewal. Trustee held in equity to have renewed for benefit of his *cestui que trust*, and his representative ordered to account accordingly.

June 2, 1813.

TRUST.

IN the year 1773, Matthew Lane Scanlan intermarried with Elizabeth Fitzgibbon. At the time