

happened for want of the proper entry and clearances; on the contrary, the presumption was, that it proceeded from some fault of Mr Man's, or at least the unreasonable proceedings of the customhouse-officers, since the goods were relaxed and ready to be re-delivered in less than a month after the seizure.

No 25.

*Replied*, for Mr Johnston to the first and second answers, That there was nothing particular in the commission, it being generally expressed in all such commissions, that the shipmaster's receipt shall be sufficient; but this is never understood to liberate the factor from the necessity of making the proper entries and procuring clearances; on the contrary, it appeared from the pursuer's own letter 18th November 1718, that he understood it to be a part of his duty, even though he did not reside at Rotterdam, in so far as he gave a commission to Mr Duncan to take care of these particulars for him, and did actually charge in his invoice 23 guilders 2 stivers on account of entries and clearances; so that whether it was his or Mr Duncan's fault, he must suffer the loss. As to the third reply, it was reserved to proof.

THE LORDS found, That Mr Taylor having employed Duncan to enter and ship the goods libelled, and having stated the expenses of entries and shipping to Mr Johnston, Mr Taylor was liable for the fault and neglect of Mr Duncan.

Reporter, *Lord Forglan.*  
Clerk, *Gibson.*

Act. *Jo. Fleming & Ro. Craigie.*

Alt. *Jo. Horn.*

*Fol. Dic. v. 4. p. 58. Edgar, p. 94.*

1724. July 28.

ELIZABETH SHORT, Relict of Mr HUGH MACKAILL, against WILLIAM HAMILTON, Post-Master of Falkirk.

MRS MACKAILL having occasion to send four guineas to Lieutenant Bray at Edinburgh, she inclosed them carefully in a letter directed to him, and committed it to the care of the Post-master of Falkirk. The letter was delivered to Mr Bray at the post-office in Edinburgh, but the four guineas were amissing; upon which Mrs Mackaill pursued Hamilton the Post-master, before the Justices of Peace of Stirlingshire; and a proof of the fact being taken, the Justices decerned Hamilton in payment of the four guineas.

Of this decret suspension was obtained: The reasons were, *1mo*, That by the rules of the post-offices, letters containing money, or any other valuable thing, are brought to the office, and there the contents are shown to the officer and sealed in his presence, and marked by him, after which he is answerable; but this in the present case was neglected, and the letter only marked to pay the ordinary postage of a single letter; *2do*, When the letter was delivered at

No 26.

Cash in gold was inclosed in a letter, and committed in charge to a post-master, which not having been delivered, he was found liable.

No 26. Edinburgh, the three seals were entire, and therefore the Post-master was not chargeable with the contents.

In *answer* to these reasons, the substance of the proof before the inferior court was resumed, viz. Mrs Mackaill deponed upon the inclosing of the four guineas in a letter sealed with three seals and tipped with wax on both sides, and addressed to the Lieutenant. Margaret White, a common carrier of letters to and from the post-office of Falkirk, deponed, That she delivered the letter to Janet Thomson the defender's spouse, who was constituted by him to receive the letters, and at delivery she acquainted her that there were four guineas in it. Jean White deponed, That she was present when the letter was delivered, and heard the former witness acquaint the Post-master's wife with the contents. The defender's wife deponed, That she received the letter, and that Margaret White told her that it contained some gold, but did not remember the quantity; that she left the letter with her husband to be dispatched with the rest. Hamilton the defender likewise deponed, That he found amongst other letters in his office one with something weighty in it, and was going to mark it a double letter, but did it not, and sealed it up in the bag with the rest. Mr Bray deponed, That upon receiving his letter in the post-office of Edinburgh he immediately opened it, and finding that it ought to have contained four guineas, but that it did not, he complained to the servants of the office; and of these, two deponed conform to him, with this addition, that Hamilton sent along with the same packet a bill or label, which is usual, to take care of two letters of his own marked W. H. which were carefully delivered.

From this proof it was *contended* for the charger, That the suspender was justly decerned, since he had accepted the charge of a letter with gold in it, and had not observed the usual caution of marking the letter, so as special care might have been had of it: That the formalities mentioned in the first reason of suspension were sufficiently answered, by the delivery of the letter to his wife the *institor*, and acquainting her of the contents: That though the seals remained whole, yet it was easy enough to imagine that the gold might have been taken out.

THE LORDS found the letters orderly proceeded.

Act. *Ja. Boswell.*

Alt. *Arch. Hamilton, sen.*

Clerk, *Mackenzie.*

*Fol. Dic. v. 4. p. 61. Edgar, p. 105.*

1724. December 23.

VOLRATH THAM Merchant in Gottenburg *against* CHARLES and RICHARD SHERIFFS, Merchants in Prestonpans.

No 27.

A party in Sweden who had written to a correspondent that

IN the month of September 1718, James Sheriff, brother to the defenders, sailed with a cargo of herrings belonging to himself and them, having a discretionary power from the defenders to carry them to any port in Sweden, where