be shipped by the first vessel for that port. Smith, on the 22d September, sent Macpherson the invoice, acquainting him, that the goods had been sent, in five packages, to Hawley's wharf, according to order. Macpherson did not write to Smith for several months; but, in the following April, he informed Smith's clerk or rider, then at Inverness, that only four of the packages had arrived, and even these deficient in several articles; That these had not come to hand till the preceding February, and that was in consequence of his causing a correspondent at London make enquiry after the goods, which were found not at Hawley's wharf, as ordered, but at a different place, lying utterly neglected, and one package amissing: In these circumstances, he refused to pay for more than he had received. Smith, in an action for the price of the whole commission, offered to prove, that he had sent the goods by the ordinary conveyance to London, directed to Hawley's wharf, and had written to Messrs Hawleys about them, desiring they might be shipped for Inverness; and therefore *insisted*, That they were not at his risk.—THE LORDS were of opinion, That Macpherson had failed in his duty, in not acquainting Smith of the non-arrival of the goods within a reasonable time after receiving the invoice, by which means he had prevented the latter from taking any measures to trace them. And they therefore found Macpherson liable for the value of the whole.—See APPENDIX. No 36.

Fol. Dic. v. 4. p. 60.

1795. *January* 15. CLAUDE SCOTT *against* MACKENZIE and LINDSAY.

No 37.
A mercantile company in Scotland, sold grain for a merchant in London, on a commission *del credere*, and took bills for the price, which, before they became due, they discounted with a private banking-house in Edinburgh, then in good credit, who drew a bill on London for their amount, payable to the order of

IN the beginning of 1793, Mackenzie and Lindsay, merchants in Dundee, sold a cargo of wheat, for behoof of Claude Scott, corn-factor in London, and took bills from the purchasers, payable two and three months after date. They then transmitted to Mr Scott an account of the sales, in which they charged him two and a half per cent. for commission, and one and a half per cent. on account of their undertaking the risk *del credere*,

Having been urged by Mr Scott for a remittance, before the bills became due, they, after having in vain, as they alleged, applied to the Bank at Dundee, and to the Royal Bank at Edinburgh, for that purpose, on the 20th March 1793, discounted the bills with Bertram, Gardner, and Company, then in good credit, (and with whom they had other transactions about the same time), for a bill drawn on Baillie, Pocock, and Company of London, payable to the order of Mackenzie and Lindsay, seventy-five days after date. The latter indorsed and transmitted this bill to Mr Scott, who made no objection to the remittance being made in this way.

The bill was regularly accepted; but, before it became due, both the drawers and accepters had stopt payment.

No 37.
the Scotch Company, who indorsed and transmitted it to their employer. The drawers and accepters of this bill having become bankrupt, before the term of payment, the Scotch Company were found liable for it.

Upon this, some correspondence took place between Mr Scott and Mackenzie and Lindsay, in which the latter undertook to pay the bill, and requested the delay of a month or two, that they might be able to do so, without inconveniency. Being afterwards, however, advised, that they were under no legal obligation to pay it, they brought a suspension, in which they

Pleaded; The obligation of a factor charging a commission *del credere*, extends only to warrandice of the solvency of the purchasers from him, and is at an end when the money is recovered from them, for which the factor no doubt is liable to account to his constituent; but if the latter desires it to be remitted to him, a new and separate mandate takes place, in which all that is incumbent on the factor is, to transmit a bill on a house responsible at the time, whose solvency he is not obliged to warrant, unless he be allowed a new commission on that account.

In the present case, it was entirely owing to the charger's anxiety to have his money before the original bills fell due, that recourse was had to the house of Bertram, Gardner, and Company, or any loss occasioned.

Nor, in a question between the present parties, does the bill being drawn in favour of the suspenders, and being afterwards indorsed by them, make any difference. They acted merely *factorio nomine*. They would have done all that was incumbent on them, if they had taken the bill payable directly to Mr Scott, who can qualify no loss from their having adopted a different method. It will not be presumed, that they meant gratuitously to undertake a new obligation. The same observation applies to the letters which were written by the suspenders, under an erroneous impression, that they were antecedently liable for payment of the bill.

Answered; A person whose goods are sold at a distance from the place of his residence, and who is necessarily often ignorant of the situation of those with whom his factor must enter into contracts, has equal reason to wish to have the safety of the remittances warranted to him, as the solvency of the purchasers; and accordingly, the commission *del credere* extends equally to both; Beawes, *v.* Bills of Exchange, p. 428, 429. § 97.; Mortimer's Dict. *v.* Bills; and that such was the understanding of the suspenders, is evident from their making themselves at any rate liable for the bill, by indorsing it; 5th July 1782, Connel against Maclelland, No 76. p. 1485.; and from the assurances of payment contained in their letters,

The Lord Ordinary repelled the reasons of suspension, and found expenses due.

Upon advising a reclaiming petition, with answers, it was

Observed; That, as the charger had sustained no loss from the suspenders having indorsed the bill, and written the letters, these circumstances could no farther affect the present question, than as they tended to shew their own sense of the extent of their obligation; but that, as they had the money of the charger in their possession, or bills which they were bound to warrant to be good,

they ought to have transmitted a bill of a public bank, and had no right to make their employer incur a risk by any transaction entered into with a private banking house. No 37.

THE LORDS, by a great majority, 'adhered.'

Lord Ordinary, *Justice-Clerk.* For the Charger, *Geo. Fergusson.* Alt. *Hope.*
Clerk, *Menzies.*

D. D. *Fol. Dic. v. 4. p. 61. Fac. Col. No 149. p. 341.*

*** This case was appealed:

1796. *December* 19.—THE HOUSE of LORDS ORDERED and ADJUDGED, that the appeal be dismissed, and the interlocutors therein complained of be affirmed, with L. 100 costs. No 38.

1795. *December* 1. BAINES *against* TURNBULL.

A FACTOR in Scotland, employed to sell goods for English merchants, was accustomed to lodge the price of the goods sold in a private banking-house, on an account in his own name, and to take from them bills drawn on their correspondent in London, payable to himself, which he indorsed and transmitted to his employers, against whom he charged two and a half *per cent.* commission. Upon the bankruptcy of the drawers and accepters, he was found liable for such bills as had not been paid by them, because he ought not to have taken the bills payable to himself, but directly to his constituents.

*** This case is No 76. p. 1486. *voce* BILL of EXCHANGE.

1799. *June* 21.

ROBERT FARRIES *against* THOMAS ELDER, Deputy Postmaster-General for Scotland, and WILLIAM SCOTT, Postmaster at Ecclesfechan.

No 39.
The officers of the Post-Office are not responsible for the safe delivery of money sent by post, where the loss of it is not imputable to the individual defenders.

ROBERT FARRIES, on the 6th August 1798, delivered to William Scott, postmaster at Ecclesfechan, a sealed letter, for Sutherland and Company, Leith, which had 'L. 25 inclosed,' marked on a corner of it. Farries told Scott that it contained this sum, and paid 2s. 1d. as the postage of it.

It was too late for the mail of that evening; but, in Mr Scott's absence, it was next day dispatched by his wife, who, upon the letter-bill sent by the mail, wrote, 'Mr Sutherland's letter, supposed a money-letter.'

This letter was not delivered to Sutherland and Company, and it was never ascertained what became of it; but it has since been conjectured, that it had