

1803. June 14. MILNE *against* HARRIS, JAMES, and COMPANY.

IN the course of the year 1800, James Milne, merchant in Edinburgh, gave an order to Callendar, the rider or travelling agent of Harris, James, and Company, merchants in London, for certain goods, which were duly transmitted. In payment of this order, Milne gave a draught, payable in London, at one month's date, which was dishonoured; and as Milne did not refer to any house in London to take up the bill, it was some time after it was due before payment was obtained.

In the month of February 1801, Callendar came again, in the course of his business, as a travelling agent, to Edinburgh, and received an order from Milne for a quantity of tea, of which he took down a memorandum, and transmitted it, with his other orders, to Harris, James, and Company, subjoining to his letter, 'And the annexed orders executed in the best way possible.' Immediately upon this intelligence, Harris, James, and Company wrote to Milne, informing him, that his mode of payment had been so unsatisfactory upon a former occasion, that they did not wish to resume the correspondence, and therefore they took the first opportunity of informing him not to expect the tea which he had commissioned. Immediately upon receiving this letter, Milne wrote to Harris, James, and Company, insisting upon the execution of the order, and offering to pay the amount in ready money, upon proper discount. This offer not having been accepted, an action was brought by Milne against Harris, James, and Company, for damages, on account of their refusal to execute the order which had been transmitted to them by their agent; and the LORD ORDINARY "repels the defences, and finds, that the bargain between between the pursuer and Mr Callendar, agent or rider for the defenders, was valid, and ought to have been implemented by the defenders; finds, that as the defenders failed to deliver the tea purchased by the pursuer, they are liable to him in damages."

The defenders reclaimed to the Court; and

Pleaded; 1st, A rider has no power to bind his constituents. His employment is merely to collect debts, and to transmit the orders which he may receive. An order given to a rider, therefore, like an order transmitted by post, is not binding until it is accepted, and in this case the defenders gave the earliest intimation to the pursuer, that his commission could not be executed.

2d, The rider, even although he had powers to sell the defenders goods, did not conclude any bargain with the pursuer. He merely received his order, and he undertook nothing more than duly to transmit it to the defenders, who had a sufficient cause, from the previous conduct of the pursuer, to decline any farther correspondence.

Answered; *imo*, The object of a merchant in sending a rider to the different parts of the country, is not merely to collect his debts, but to make an offer of

NO II.

An order taken by a travelling agent is binding upon his constituents.

No 11. his goods at a certain price ; which offer becomes binding, whenever it is accepted. If the defenders had written to the pursuer, offering their goods at a certain price, his answer accepting the offer would assuredly have constituted a concluded bargain ; and it can make no difference that the offer was communicated through the medium of their travelling agent. Unless the wholesale dealer were bound by his offer, as well as the retailer by his acceptance, the parties would not be on an equal footing, and the former might profit by any variation in the price of the commodity.

Ido, It is evident from the terms in which the order was transmitted, that the rider understood the bargain to have been finally concluded ; and if there had been any irregularity upon the pursuer's part on the former occasion, it was the duty of the defenders to have instructed their agent not to receive any of his orders.

THE COURT affirmed the interlocutor of the Lord Ordinary, (February 16. 1803.) ; and, upon advising a reclaiming petition, with answers, they, by a very narrow majority, adhered.

Although there was great difference of opinion upon the Bench with respect to the circumstances of this case, it seemed to be the decided opinion of the Court, that the nature of commercial dealings required it to be held as a general rule, that a rider or travelling agent, who receives an order, comes under an obligation for the merchant by whom he is accredited. But several of the Judges held, that this general rule might be departed from, if sufficient cause be shown for the refusal ; and that in this case the conduct of the pursuer in the former transaction was enough to justify the defenders from declining to enter into any farther correspondence.

Lord Ordinary, *Bannatyne*.
Alt. *J. A. Murray*.

Act. *Campbell*.
Agent, *J. Jeffrey*.

Agent, *S. Cunningham*.
Clerk, *Ferrier*.

J.

Fac. Col. No 108. p. 238.

Diligence of a Mandatary. *See DILIGENCE.*

Mandate how proved. *See PROOF.*

Mandate when presumed. *See PRESUMPTION.*

Periculum betwixt Mandant and Mandatary. *See PERICULUM.*

See APPENDIX.