

altered this interlocutor, and found the Bank liable for the contents of the receipt, and likewise in the expenses of process.

No. 3.

Lord Ordinary, Dunsinnan. Act. Gordon, Robinson. Agents, Robinson and Ainslie, W. S.  
 Alt. Solicitor-General Clerk, Gillies, Bell. Agent, R. Aytoun, W. S. Clerk, Walker.

J.

Fac. Coll. No. 246. p. 550.

1807. February 18. SOMMERVAIL'S TRUSTEE, against CORE.

No. 4.

CHARLES HENRY CORE, china-merchant in Edinburgh, had extensive dealings with certain manufacturers in Staffordshire, and was in the use of having his shipments made from the port of Hull. His agent at that place regularly intimated the shipments to him; which was the more necessary, as the furnishers of the goods, living in the interior of England, and not knowing when the shipments might take place, could not do so themselves.

Intimation of the shipment of goods required of a port agent

James Sommervail, merchant in Liverpool, who had vessels employed in the carrying trade, applied to Core to allow his shipments to take place from that port in his vessels; offering as an inducement, that the freight should be cheaper than from Hull. Accordingly, for about a twelvemonth, the shipments, amounting to five or six, were made from Liverpool. It did not appear, however, that Sommervail had given intimation of any of these shipments.

The last shipment was in August 1800, consisting of china, valued at £88. 7s. 4d. and the vessel which carried it having been wrecked at sea, a very small part only of the china was saved. Sommervail had, previous to this, given up his concern in the carrying trade, so that the china had been sent by a vessel with which he was nowise connected.

Sommervail having become bankrupt, the trustee on his estate brought an action against Core for the balance of an account current due to Sommervail. Core, among other objections, insisted on deduction of the above sum of £88. 7s. 4d. as the value of the china lost, on the score of Sommervail having neglected to send him intimation of the shipment, which might have enabled him to insure; the legal consequence of which was, that Sommervail was to be held the insurer himself; Garden, No. 5. p. 6488.

Core having offered to prove, by Sommervail's oath, the nature of their agreement, the latter deposed in substance, "That he had solicited Core to transport by his vessels any goods he might get from England, as the expense would be somewhat less than sending them by Hull. That no stipulation was made respecting any commission or remuneration to be allowed the deponent for receiving or forwarding the defaulter's goods; nor did he ever

No. 4. “charge, or intend to charge, any thing on that head, nor did he make such charge to any other person in the same situation, as he was desirous of establishing his vessels in the carrying trade, and so wished the charges to be as easy, as possible; That he did not recollect ever forwarding a bill of lading to the defender; nor did he, in the general case, conceive it his duty so to do; but that with regard to this last shipment, as he had then given up the carrying trade, if he had been at home at the time, he would have given intimation.”

On considering this deposition, the Lord Ordinary having found that Sommervail could not be held liable for the china lost, Core reclaimed, and

Pleaded: That while he continued to have his business done at Hull, intimation had been regularly made to him of the shipments, as was vouched by sundry of these intimations produced. In these circumstances, Sommervail applied to him to have his shipments transferred from so short and easy a passage as that by Hull, to one so long and hazardous, as that by Liverpool. In agreeing to this, he meant to do a favour to Sommervail, as the smaller freight was scarcely a sufficient inducement to hazard so much more circuitous a voyage. He therefore never meant to relinquish any of the obligations usually discharged by port-agents, and in particular by his own port-agents at Hull, among which the duty of regular intimation of the shipments was one of the most important. The circumstance of Sommervail's charging no commission as a port-agent, was no presumption that he was free from the duties of that character; for, as he was interested in the carrying-trade of his vessels, he made his profits in that way. His combining the character of port-agent and carrier of the goods, did not exempt him from any of the duties of either. Had he declined performing the duties of a port-agent, Core must have employed some other person in Liverpool to discharge these, as there are many things incumbent on a port-agent besides intimation, such as stowing the goods before shipment, &c. All these, however, Sommervail attended to.

It was further urged, that the circumstance of Sommervail having given up the carrying-trade before the last shipment, without any notice to the mandant, and sending the goods by a strange vessel, made it more particularly incumbent on him to give intimation of the shipment.

Answered: The duties of a port-agent and of a carrier are quite distinct. The former makes his profit by a commission on the goods, the latter by the freight. Sommervail never came under the obligation of a port-agent, nor received any commission. He was merely the carrier of the goods who makes his profit by the freight, and on whom the duty of intimation is not incumbent. Were there any doubt on this point, it is removed by the conduct

of the parties; for, if the duty of the intimation had been understood to be incumbent on Sommervail, Core would have objected to the failure therein in the previous shipments, which he never had done. No. 4.

A majority of the Court held, that the circumstances of Sommervail's situation, subjected him to the duties of a port-agent, as well as carrier of the goods; and hence, that he was bound to intimate the shipments, and that his failure therein made him liable for the value of the china lost.

And, on a reclaiming petition and answers, they, by a small majority, adhered.

Lord Ordinary, *Hermann*. Act. *W. Erskine*. Agent, *R. Aytoun*, W. S. Alt. *A. Bell*.  
Agent, *R. Fleming*, W. S. Clerk, *Pringle*.

*F.*

*Fac. Coll. No. 272. p. 612.*