

The Lords found, that the Earl's infesting his son during the dependance of their process could not prejudice them ; and therefore preferred the creditors, legatars, to this present Earl's right. *Vol. II. Page 416.*

---

1708. *January 13.* PATRICK FLETCHER *against* ALEXANDER REID.

PATRICK Fletcher, factor at Rotterdam, pursues Alexander Reid, merchant in Dundee, for the price of some goods he sent him from Holland.

ALLEGED,---I must have retention and compensation for the price of a parcel of salmon I sent, by your order and commission, in January 1703 ; and, though they were taken into Dunkirk by a French privateer, yet *unaquæque res perit suo domino* : They were upon your risk, and I must have allowance for them.

ANSWERED,---The hazard must lie upon Reid himself ; for you did not observe the terms of my mandate, which was, to send them with that fleet which sailed with the Zeland convoy : but so it is, they came not then, but long after, when the lent-market of fishes was over ; it *fnes mandati sunt in terminis custodiendi*. And my letter had an alternative, either salmon or plaiding ; and therefore you might have sent the last if you could not get the first.

REPLIED,---I acted for you as I did for myself ; for I had a cargo of salmon in the same ship, which was lost as well as yours. And I gave you advice of their coming, which you did not countermand : and, though I had wanted a commission, yet it was *negotium utiliter gestum* upon my part, though, eventually, they were seized ; for which the most prudent merchants, acting *bona fide*, cannot be answerable, otherwise all faith should be at an end : and mandates may be fulfilled by equipollents.

The Lords finding he gave no evidence, by bills of loading, that these salmon were shipped for Fletcher, as the proceeds of his goods, nor produced his letter-book to show that he had advertised him thereof, and that it seemed to be a story made up *ex post facto* ; they repelled the compensation.

*Vol. II. Page 418.*

---

1708. *January 27.* ANNE NAIRN *against* BARCLAY of COLLAIRNY.

By contract of marriage betwixt Sir David Barclay of Collairny and Dame Anne Riddel, he secures her in a jointure out of his lands of Pitblado ; and, because the mansion-house on these lands is not sufficiently repaired for her accommodation, therefore he obliges himself and his heirs to build and repair it sufficiently, with the office-houses, for her use during her lifetime. He dies in 1655, and she outlives him for thirty-one years, and dies in 1686, at Newcastle, in Doctor Nairn's house ; and, for onerous causes, assigns to Anne Nairn, his daughter, the bygones of her jointure ; and particularly that clause of making her jointure-house habitable. Whereupon Anne Nairn raises a process against Barclay, now heir, by progress, to Sir David, to pay her 500 merks yearly during that time, as the house-maill she was forced to pay for the want of it : and, for