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of the interlocutors complained of by the cross appeal, in respect of the transaction which is proved by correspondence between the respondents and the factor of the late appellant and his curators, and which is established to have been approved by the late appellant, whereby he is barred from insisting on the benefit of the act 1695; and, on this ground, it is ordered and adjudged, that the rest of the interlocutors complained of in the original appeal, be affirmed, with the following variations, viz. in the interlocutor of 22d November 1792, after the word (barred) leave out (*exceptione doli*), and in the interlocutor of 1st March 1793, after the word (barred) leave out (*exceptione doli*). And it is further ordered that the said cross-appeal be dismissed this House.

For Appellant, *W. Grant, Matthew Ross.*

For Respondents, *Ro. Dundas, Geo. Ferguson.*

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MESSRS. SAMUEL BIRNIE & Co.,	<i>Appellants ;</i>
MRS. HELEN WEIR, Bleacher at Longloch,	<i>Respondent.</i>

House of Lords, 16th May 1800.

**SALE—IMPLIED WARRANTY—THE GOODS MUST BE FIT FOR THE PURPOSE FOR WHICH THEY ARE BOUGHT.**—In this case, certain potashes were represented as of equal efficacy with the American potash, for bleaching and whitening clothes, and much cheaper. A party bought several casks, on the faith of this representation. In using them, they whitened the clothes equally well, but the goods, after being sent home and unpacked, when exposed to the atmosphere, lost their white colour, and assumed a reddish or bluish colour, according to the humidity of the atmosphere. In an action for the price, conjoined with an action of damages raised by the buyer; held that she was not liable in payment of the price, but entitled to damages, and damages awarded accordingly.

The respondent had for many years carried on the trade of bleaching, and had been in the practice of using the American potash, which was generally used for the purposes of bleaching. Having heard that the British potashes, as manufactured by the appellants Messrs. Birnie and Co., which had been advertised as far cheaper, and equal in quality in producing the same effects with the American pot-

ashes, the respondent's son went to the appellants' manufactory, saw Mr. Birnie's brother, and had handed to him the following card or bill of recommendatory directions as to his British potash, as follows:—

“ Of the British Potashes.

“ The British potashes, also manufactured by Samuel  
 “ Birnie & Co. are a very powerful kind of ashes, being the  
 “ mineral alkali in a caustic state, and have been found to  
 “ answer every purpose in bleaching, and equal to the best  
 “ American pot; and, in making pencil and China blue for  
 “ printing, they have been found superior. They are to be  
 “ used in the same way with American potashes, which they  
 “ resemble much in their quality, and produce the same ef-  
 “ fects in bleaching.”

Finding the appellants' British potash so represented, the respondent's son ordered a cask, which was furnished, and the ashes having been used with temporary success, and without discovering any defect, two more casks were ordered, were furnished, and used in the same manner in bleaching as the American potash had been. The only difference observable was, that the residuum of the British potash was different, but in whiteness and purity of colour it was the same.

The goods, when bleached and packed up, were sent as usual to the different owners. Shortly afterwards various complaints came in, stating that the goods, when unpacked and exposed to the atmosphere, lost their white colour in a very short space, and assumed different hues, according to the degree of humidity in which they happened to be placed. At first the potash was not suspected as being the cause; but after some time this was ascertained beyond all doubt. Whereupon complaints were made to the appellants, and specimens shown to Mr. Birnie of the effects of his alkali. Letters from the respondent's customers, whose clothes had been so destroyed, complaining of the bleaching, and refusing to pay their accounts, were also shown. But the appellants refused to admit that their potash was the cause, stating, that as the goods had been used, the price must be paid.

Payment of the price being refused by the respondent, action was raised by the appellants for £15. 9s. 8¼d. as the price thereof, before the inferior court. In defence, it was stated, that though the British potash whitened the cloth as well as could be desired, yet, from some radical defect not discoverable at the time they were used, the cloth did not

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retain its purity, but, upon exposure to the air, acquired sometimes a reddish and sometimes a bluish colour, thus rendering the cloth as unfit for use as before it was bleached.

After a proof, the Judge Admiral pronounced this interlocutor: "Having considered the proof adduced, and the whole cause, sustains the defence, and assoilzies the defender; finds expenses due to the defender, of which allows an account to be given, and decerns."

An advocacy was brought before the Court of Session, which was raised to try the question. And at sametime the respondent brought an action of damages, for the loss sustained by her, in consequence of the defective consequences of the potash in the process of bleaching. Lord Meadowbank, Ordinary, conjoined both processes: and remitted to Dr. Black, professor of chemistry in the University of Edinburgh, to report on certain particulars. "1st. Whether he had been made acquainted with a process, by which a commodity, sold by the said Samuel Birnie and Co. as useful in bleaching, in the year 1795, under the description of British potashes, was prepared; and whether he had formed an opinion or conjecture that said commodity, from the method of preparation employed, or other causes, contained a portion of the calx of iron, by which means, or some other imperfection in its composition, it was unfit to be used in bleaching manufacture, where the end in view was to produce a pure and *permanent white colour*? 2d. Whether the process had been communicated and shown to him by Messrs. Birnie for his opinion? 3d. At what time? 4th. And whether he made any suggestions by which bleachers, who used the British potash, might avoid the bad consequences that would otherwise ensue from it in the colour of the goods they manufactured?"

A report was returned, showing that the appellants were made acquainted with the unfitness of their potashes for the purposes of bleaching, and that the uncrystallized sample shown contained a certain quantity of calx of lead, which made it as unfit for bleaching as if it had contained iron.

They seemed sensible of this themselves, because it was proved they had, in their *second* paper of directions, given out, that their potash should only be used in the first part of the process of bleaching.

May 24, 1799. The Lord Ordinary advocated the cause "at the instance of Birnie and Co., assoilzies the defender (respondent), from

“ the conclusions thereof, and decerns, find expenses due, and  
 “ allows an account thereof to be given in ; and in the pro-  
 “ cess at the instance of Mrs. Weir, against the said Messrs.  
 “ Birnie, finds damages and expenses due, and appoints her  
 “ to give in a condescendence thereof, against next calling.”

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On representation the Lord Ordinary adhered. And on June 12, 1799.  
 reclaiming petition to the Court, the Lords adhered, and ap- Jan. 16, 1800.  
 pointed Mrs. Weir to give in a condescendence of the da-  
 mages. This condescendence having been given in, the Feb. 22, 1800.  
 Court restricted the claim of damages to £10. 10s., and ex-  
 penses to £63. sterling.

Against these interlocutors the present appeal was brought to the House of Lords.

*Pleaded for the Appellants.*—The respondent purchased the ashes in question, from the appellants at a certain price ; and the transaction having been completed by delivery of the goods, she is bound to pay the price to the appellants. The sale, and the directions given as to using the potashes, were distinct, and the former could have no reference to the directions afterwards communicated to the respondent by the appellants. It has been clearly shown that these directions were perfectly proper at the time they were given. And as at that time it was the universal practice only to use the American potashes in the earlier stages of the bleaching process, in which it is admitted that the British ashes are equally fit to be used, the practice as to the American potashes, having afterwards been varied, the appellants made a corresponding variation in their directions ; but they had no opportunity of communicating these new directions to the respondent, as they were not printed until after the last parcel of ashes had been transmitted to her. The appellants, at all events, acted in *bona fide*. They could not, and did not intend by their directions, to recommend the use of the British potashes in the finishing and bleaching process, because it was their interest that, in the last stages of the operation of bleaching, the salt of soda should be used. Its utility for these purposes is accordingly recommended in the paper of directions ; in which its superiority over the *British* potashes is strongly pointed out, and, from the whole tenor of which it is perfectly evident that the appellants neither desired nor understood that the last mentioned article, viz. the British potashes, were ever to be used, except in the first stages of the bleaching process.

*Pleaded for the Respondent.*—The defence of the re-

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spondent has been completely established, namely, although the British potash whitened the cloth at first in the process of bleaching, yet that afterwards, when exposed to the air, it acquired sometimes a reddish and sometimes a bluish colour. These potashes, therefore, did not answer the description given, and did not produce the effects ascribed to them by the appellants. Besides, they were blameable for selling these potashes, after they were apprized by Dr. Black that it contained noxious qualities, which made it totally unfit for the purpose of bleaching. The respondent is therefore entitled to indemnification for the damages she had sustained from the effects of the ashes in question. Whatever may have been the contents of the second card of directions issued by the appellants, it is clear that the respondent only received the first paper of directions; but the fact that the second directions varied essentially from the first, is conclusive against them, as showing that they were not fit for the purpose as at first advertised.

After hearing counsel, it was

Ordered and adjudged that the interlocutors therein complained of be affirmed, with £100 costs.

For Appellants, *Wm. Adam, Ad. Gillies.*

For Respondent, *R. Dundas, J. W. Murray, M. Nolan.*

NOTE.—Unreported in the Court of Session.

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THOMAS WHYTLAW, Merchant in Glasgow,	<i>Appellant;</i>
MARGARET COATS, only child and Executrix of William Coats, late Merchant in Glas- gow, deceased, . . . . .	} <i>Respondent.</i>

House of Lords, 19th May 1800.

**COPARTNERY—RETENTION.**—It was provided in a copartnery, that on the dissolution of the concern, no division of the stock or profits should take place, until the debts due by the company, or the debts due by any of the partners to the company, should be first *paid or secured*. Circumstances in which it was held that certain agreements subsequently gone into by the partners, did not alter or affect this provision of the contract; and that a partner, on the dissolution of the copartnery, was entitled to withhold and refuse payment of another partner's share in the concern, until a debt due by