

According to the inclos'd account-current, my demand is banco mk. 325 - arising from an accepted bill, the account is just, and subject to no exceptions. Shou'd you be oblig'd to make use of a lawyer, he must allow of no exceptions, but must ground the lawsuit on the acceptance of the bill, which is an acknowledgement of the debt. Should Mr. Hönert (contrary to my opinion) propose any presumed exceptions, then the action must be referred to a counter-complaint, and I give bail.

But it will not go that length. A judge skilled in the statute-law concerning bills of exchange, will admit of no exceptions. I would not be allow'd of here; as the acceptance of a bill, makes all exceptions void.

Inclos'd you'll receive 17 of Mr. Hönert's original letters. The draft on himself for L. 221: - with the protest &c.

II.
AN ARBITREMENT;
OR
ARBITRATION IN DISPUTES.

Letter 128th.

According to promise, I send you here inclos'd the arbitrement I receiv'd, with the verdict

verdict of some of the most principal merchants of this place. The case is critical; several refus'd to put down their opinion. I have added mine to the rest; tho' it is of no great weight, I hope it will be of no hindrance. I am glad they all say, justice is on your side. I hope the affair will now end well.

Adieu! I remain always ready to serve you &c.

Species Facti.

Sempronius orders 2 chests of linnen with Cajus, desiring the same to be sent to Titus in Hambro', to be further dispos'd of, as he thinks fit. Both chests are sent away, numbered $\frac{20}{27}$ in one pack, to Titus at Hambro', by the way of Lunenburg. At the same time Cajus sends 4 other chests, in 2 packs, No. $\frac{16}{17}$ $\frac{18}{19}$ to Flavius at Hambro', by the way of Lunenburg, ordering the same to be shipped for Lisbon, to his friends, as mention'd.

The packs arrive at Hambro'. Both Titus and Flavius acquaint the owners therewith, as also with their having shipped them off. Titus likewise mentions his having sent the pack No. $\frac{18}{19}$ instead of $\frac{20}{27}$ per Cap^r. Claassen to Sempronius in London. Flavius also informs at the same time, of an error having happened, in his sending the pack $\frac{16}{17}$ $\frac{20}{27}$ per Cap^r. Lund to Lisbon; they both agree, of their having not known of the mistake, untill their being shipped away, that they both had used all possible means, to have the good debarked, but it was impossible.

Cajus answered immediately. Ordering Titus to get the packs No. $\frac{18}{19}$ which was sent to London by a mistake, to be forwarded instantly to Lisbon; as the contents were not vendible in England. He ordered Flavius also, to send the packs No. $\frac{20}{21}$ from Lisbon to London, to Sempronius, who in reason required his goods, which had been ordered, and mostly paid for to Cajus.

Flavius writ to Lisbon. Acquainted the receiver of the packs No. $\frac{20}{21}$ with the mistake. Cap^t. Lund's arrival in the Tagus, was known before he got up to Lisbon, and a boat was sent to meet him with a message; but to no effect; the packs were stow'd so deep in the hold, that they could not be come at. The master sail'd with the whole cargo to the toll, after which, the damage was no otherway retrievable, but by losing 25 p. cent exportation.

In the mean while God visited Lisbon with that great misfortune, which chang'd it into a heap of rubbish. Amongst the goods burnt in the custom-house, the pack No. $\frac{20}{21}$ sent thither by a mistake, was also found to augment the loss.

Sempronius as owner and orderer of this misfortunate pack, required a restitution of the value from Cajus; he, who was ignorant of the mistake, had acted only as a commissioner; refers Sempronius to his *Spediteur* *) Titus. He will have nothing to do with him.

His

*) Only used in Germany, and signifies a commissioner, factor or agent.

His excuse is founded, on his having remedied this mistake, by sending the pack No. $\frac{18}{19}$ to the right place. Flavius judges likewise, that the misfortune at Lisbon, can not be laid to his charge, consequently has no need to make good the loss.

Hence the question in dispute is: *Who shall make good the loss?* and an impartial arbitrement is desired.

Arbitrement, or answer.

If Cajus had written the bill-of-lading right, the mistake lies on the Spediteurs Titus and Flavius, in not taking due regard to the packs and numbers they receiv'd. We are therefore of opinion, that they are lyable to make good the whole loss, occasion'd at Lisbon together with all charges, without the least resistance. We believe also, that by such a misfortune, as that at Lisbon, a consideration ought to be made, and even may be demanded. Thence Cajus and Sempronius ought to indemnify the loss by an unreserv'd and voluntary gift. Altona the 15th May 1756. —

A. B. & Company.

If the Lunenburg Spediteur made no mistake in obeying Cajus's orders, in sending the packs away, or in their address; then undoubtedly Titus and Flavius are to be blam'd for the fault, consequently obliged, without any opposition, to make the loss good. Hambro' 18th May 1756. —

J. P. H.

L 3

I like.

I likewise agree with the above opinion.
Hambro' 19th May 1756. —

F. C. W.

Since Cajus obeyed Sempronius's orders, in sending the goods to him, as also those designed for Lisbon, without making any mistake, consequently the loss sustain'd, has been occasion'd by the Hamburger *Speditour*; thence my opinion is, that they ought to make good the loss, except the bespoker and forwarder of the goods, in consequence of the universal misfortune of Lisbon, were willing to bear a part of the loss. Altona the 23^d. May 1756.

B. v. M —

Cajus who sent the goods away, must be free'd from all cost and charges, according to the tenor of the whole. Sempronius as sufferer, has a right to have the loss made up, for the pack consumed by fire; which loss must be recompensed by the active, or efficient cause; consisting in Titus and Flavius, who has an equal share in the mistake committed. If either the one or the other, had but observ'd the numbers they receiv'd, probably the mistake in shipping, and consequently the loss sustain'd, would not have hapned. Sempronius being a foreigner, I am not aware, how he can be expected to suffer for a loss, caus'd by the imprudence of an other. The losing an opportunity, and the lying dead of advanced money, makes a kind of loss, which a merchant may take into consideration. Hence Sempronius must

not be compelled to any thing, if he chuses to make the loss more supportable, ought to be looked upon as a species of humanity, consequently arbitrary. — Altona 24th.
May 1756.

J. C. M. —

Letter 129th.

At last, I can send you the arbitrement again. After much difficulty, some few have added their opinion to it. It is a very singular circumstance, consequently the decision more difficult. Several accidents may change the affair greatly, and that which has all appearance of right, may become wrong.

The whole has been insured by C.; and according to the inclos'd account appears, his having paid 7 or $7\frac{1}{2}$ p. c. which is a great deal. A broker might by chance have been with C. on his receiving your order, to whom he committed the insurance, and who bargain'd before change-time, or, was it in the afternoon, bargain'd before the next day's change. It is even possible that C. run the risk himself, which if that's the case, B. might have had no inclination thereto, or on the other hand, the ship might have been full, consequently, on his broker, endeavouring to get insurance, no one would sign, which often happens, especially in the dangerous winter months.

Supposing the case to be judged in this light, then it appears quite otherwise, as if B. was accused of negligence in his business &c.

Minutes of Particulars.

A — receives advise from Peterborough, that a vessel is sail'd for Lübeck, in which he has for 2900 Rd. wares. He writes on one and the same day to Amsterdam, desiring A. and B. to get insured for his account, the first 1900 Rd. and the last 1000 Rd. without making agreement concerning the praemium, as may be seen in the annexed papers *a* and *b*. The post-office here, testify the letters departing at one and the same time.

C. mentions as per annexed paper *d*, that he has got the mention'd 1000 Rd. insured; but in the contrary B. mentions as per annexed paper *e* that he could not obtain insurance for the 1900 Rd. as no one would sign on that ship, without receiving an unaccountable praemium.

A few days after receiving these letters, news arives from Lübeck, that the aforementioned ship is lost, with the whole cargo.

As A. had desired both B. and C. to use all possible means to get insurance; without fixing either of them to a certain praemium; and both letters departing on one day; and B. getting insurance, but not C. the last is therefore the cause of the loss, which he might have prevented: hence arises the question: *wheter he is not obliged to make it good?*

No.

N o t e s.

- a.* Abstract of a letter from A. to B. in Amsterdam, 16th Decembr. 1756.

Mr. Frederic Christopher Göltz of Peterborrow, mentions the 14th Novemb. O. S. that he
on board the bound for Lübeck, for which please to get insurance for 1900 Rd. acquainting me with the necessary.

- b.* Abstract of a letter from A. to C. in Amsterdam 16th Decembr. 1756.

on board the for
from Peterborrow to Lübeck, desiring you to get insurance for 1000 Rd. I can acquaint you that master sail'd the 13th Novemb. O. S.

- c.* Copy of the Post-office's Testimony. On the 16th Decembr. 1756 two letters from Mr. A. of this place, went from hence to Amsterdam, one directed to Mr. B. the other to Mr. C. inclos'd in the mail of that day No. 100 and 101 per riding post, by the way of Cleve. With a testify on request.

. . . February 1st. 1757.

- Royal Post-office.

- d.* Abstract of Mr. C's letter to Mr. A. Amsterdam 22^d. Decembr. 1756.

According to your order I have got the 1000 Rd. insured, on Capt.
at L. 2600: - current, with all expences.
Inclos'd you'll get the account, amount-

L 5

ing

ing to L. 210:- cassa, which please to credit my account for, &c.

B. Abstract of Mr. B — 's letter to Mr. A. Amsterdam 23^d. Decembr. 1756.

I have not been able to get insurance on Capt. — . . . No body will sign for the 1900 Rd. without a praeium be paid, which I can not answer for, &c.

Q u e s t i o n s.

Which are to be answer'd, before the arbitrement can be granted.

(1.)

„ Whether a commissioner is obliged to
 „ execute the commissions sent him, or whether he can let them alone unexecuted, without being answerable for so doing, on his instantly reporting the same, as B — did, in answering the first post.

(2.)

„ Whether B — who probably had but a bad opinion of the Cap^t and ship, and for the sake of a poor provision, was unwilling to get a bad name by the insurer. This objection is grounded on the advanced season, and dangerous voyage from Peterborough to Lübeck. —

(3.)

„ Whether A — who has corresponded for a long while with B — and in the greatest harmony and concord, has any thing to fear, in not giving an uncommon praeium for insurance?

Ans-

*Answers to the questions, as also a nearer
 explanation to the disputes in hand.*

(1.)

A — has corresponded for 18 years together with B — and all his Russian wares have been insured by him, during the last 8 years. B — had offered his service thereto in the beginning, and never refused a commission of that kind: thence he was obliged, to have fulfilled this order, as C — did at the same time. It ought further to be considered, that B — did not really say he could not, or give a reason why he would not, only mentioning, that the *insurance could not be had, &c.* for which he is less pardonable; as A — had not tied him to any fixed praemium, though C — 's commission was of the same nature, and performed.

(2.)

From the time of the ship's loss, to that of the receiving the order, Mr. B — could not have had any bad opinion thereof, to have prevented him from getting the insurance performed, according to the Amsterdammer statute of insurance. Consequently the loss can not be laid to his charge.

(3.)

Since B — has corresponded for above 18 years with A — and in the course of that time, had no disputes about insurance, since the first desired the other to get insurance in the best manner, not limiting him to any
 prae-

praemium: thence B — could be the more sure, of not falling into any disputes about it.

This I thought proper to mention, to the questions, thence expecting a sentence which can not be rejected.

Arbitrements.

The underwritten are of opinion that A — will get nothing from B — according to law, for not effectuating the given order, for insurance.

Hamburg

J. L.

M. F.

According to my opinion, B — is in some measure to blame, in not performing the desired insurance for A —, as he neither mention'd the unaccountable high praemium, nor demanded new orders. He is more to blame, because on sending the orders, mention was made, of the ship having put to sea the 13th November, which was the order sent to C — also; of which note A — makes no mention.

Hamburg

S. R —

By reason of A — not mentioning B — that the vessel was already sail'd from Peterborough, and B — answering by the first post, that the insurance could be had no otherwise, than at an uncommon praemium: hence the loss can not be laid to B —'s charge; unless the statute on that head (if any) oblige the commissioner to get insurance, at any rate, and that the person desiring it, must be content

tent with such proceedings. It is very possible that C — got insurance at 7 or 8 per cent; but that does not condemn B —, nor on account of the first getting the start of the latter, probably he might have been the insurer himself. Altona . . .

B. v. M.

According to my opinion A — himself laid the foundation, why B — did not perform the required insurance, in his letter of 16th December. The advanced season, when storms and tempests generally happen, together with other circumstances, making the voyage from Peterborough to Lübeck vastly dangerous, thence an insurer is inticed to demand extraordinary praemiums; and the more so, as B — could give him no information of the ship's departure. Those, whose business is in insurances, know very well, what depends on a ship lying in the port, where she took in her cargo? wheter gone to sea? how long at sea? and what more. B —, could answer to none of these questions. Not being acquainted with these particulars, ought to be look'd upon, as the chief reason, of his getting no insurance, and C — was informed with the requisite information. Consequently A — must bear the loss himself, having no right to demand a requital from B — who is not obliged to pay him any thing.

Altona. . . .

C. K —