

BANNERMAN  
v.  
FENWICKS,  
&c.

who tried the case shall first give his opinion on the question of costs.

His Lordship then stated what led him to agree with Lord Gillies, that expences ought to be found due.

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PRESENT,

THE THREE LORDS COMMISSIONERS.

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1817.  
June 23.

MORGAN and SAUNDERS, v. HUNTER and  
COMPANY.

An article commissioned, and on receipt returned to be repaired as damaged; found, that when repaired in terms of the letter returning it, any objection to the original construction is precluded.

THIS was an action to recover L. 61, 3s. 6d. as the price of a patent globe writing table.

DEFENCE.—The table is composed of old materials, and is defective both in its form and the delineation on the globe.

ISSUES.

“ Whether the pursuers, upholsterers in  
“ London, in consequence of an order by the  
“ defenders, contained in a letter dated in  
“ the month of October 1813, did make, and  
“ in the month of January 1814, did ship for  
“ Leith, properly and carefully packed, a

“ certain writing-table described in the said  
 “ letter ?

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“ Whether the said table was not returned  
 “ to the said pursuers by the defenders, as  
 “ having been injured in the packing, and  
 “ carriage, and not made agreeable to or-  
 “ der ?

“ Whether, after the said table had remain-  
 “ ed for sometime at the warehouse of Adams  
 “ and Company, Glasgow Wharf, London, un-  
 “ accepted by the defenders, the said defen-  
 “ ders, in the month of May 1814, had agreed  
 “ to accept the same on certain conditions spe-  
 “ cified in a letter bearing date the *25th May*  
 “ 1814, and written by the defenders to Ro-  
 “ bert Liddle, manager of the Leith Shipping  
 “ Company ?

“ Whether, in pursuance of, and agreeably  
 “ to, the terms of the last mentioned letter,  
 “ the said table was put on board a smack in  
 “ the port of London, to sail for the port of  
 “ Leith, in June, 1814, in the condition re-  
 “ quired by the said last mentioned letter,  
 “ and whether the same was not carefully and  
 “ sufficiently packed for the voyage ?

“ Whether, on the arrival at Leith, and on  
 “ its being unpacked, the said table was in a  
 “ condition such as was required by the defen-

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“ ders, in the last mentioned order or commu-  
 “ nication of May 1814?

“ Whether the defenders did not, wholly  
 “ refuse to receive the said table, and to pay  
 “ for the same to the damage of the said pur-  
 “ suers?”

The table had been injured on its way to Edinburgh, and was returned to be repaired; it was repaired and again sent down. In the letter mentioning the injury it had suffered, no objection was made to the price, or to the representation on the globe not being accurate. On its arrival, however, the second time, these were made the grounds of refusing payment, and a considerable part of the proof was an attempt to show that the price was too high.

Objections were taken to some of the interrogatories put to a witness examined on commission.

The LORD CHIEF COMMISSIONER, having read the answer to one of the interrogatories, said it was improper, and it was not read to the Jury.

His Lordship afterwards observed, — In a number of cases, the witnesses to the foundation of the contract have been examined on

commission out of the jurisdiction of the Court. In many of them the expence of bringing the witnesses here, would have been greater than the importance of the case warranted. It would perhaps be desirable if a middle course could be followed, and commissions only granted upon motion, and after the Court were satisfied of the expediency in each particular case. In the case from Berwick, it was essential to have the witnesses in Court, and yet if they had not voluntarily come within the jurisdiction of the Court, we could not have compelled their attendance.

In summing up the case to the Jury, his Lordship observed,—All that has been said of the table coming the first time from London is mere narrative, to make the case intelligible; the only question is on the letter (25th May 1814) when it was returned; the only objection then made is the damage it had sustained. If, therefore, you are of opinion that it was sufficiently repaired, and was complete on its return, (according to the terms of the letter,) you will find for the pursuer; if not proved complete, then for the defender. His Lordship then stated the evidence, and that he did not think they ought to diminish the sum claimed, because what was proved by

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 Trustees, *v.*  
 Johnston and  
 Husband,  
*Supra*, 71.

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the witnesses to be the value of the different parts of it, did not amount to the whole sum claimed.

Verdict for the pursuer.

*Jeffrey and Boswell*, for the Pursuers.

*Grant and Cockburn*, for the Defenders.

(Agents, *John Blair*, w. s. and *John Tait*, jun. w. s.)

Dec. 17, 1817.

*Jeffrey* moved for expences.

*Grant*, for the defender, stated,—We offered, in writing, to refer the price of the table to two persons, which would have saved the expence of the trial. When this was formerly stated, the Court thought it could not be pleaded as a defence, but seemed to think it might enter into the question of expences.

LORD CHIEF COMMISSIONER.—This, upon consideration, cannot be taken as a ground to vary the rule, that the successful party is entitled to expences. If you had not defended there would have been no expence.

Motions for expences should be made as soon as possible after the verdict is applied, when the circumstances are fresh in the recollection of the Judge.