

BURNS, &c.
v.
STIRLING, &c.

whether it was the duty of the master of the Two Sisters to slacken his cables; but the remarks that have been made as to the credit due to the different sets of witnesses, in matters of professional opinion, apply here. The *facts* are not to be questioned, but their *opinion* may be biassed.

If you think there were faults on both sides, then you may return the facts that have been proved; but I have little doubt that you will not find this necessary.

Verdict—"That the damage sustained by the ship Two Sisters and cargo, was occasioned by the carelessness or inattention of the master and crew of the ship Christian."

Jeffrey, Jamieson, and Henderson, for the Pursuers.

G. J. Bell and Cockburn for the Defenders.

(Agents, *James Gillon, Alexander Forsyth, and George M'Dougall.*)

PRESENT,

LORD GILLIES.

1819.
March 10.

SMITH v. JAMIESONS.

Damages for
breach of con-
tract.

AN action of damages for breach of contract.

DEFENCE.—The bargain was not concluded.

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ISSUE.

“ Whether, in the month of September
 “ 1817, and subsequent to the 5th day of the
 “ said month, the defenders, or one or other
 “ of them, purchased from Mr Archibald
 “ MacBrair of Glasgow, as agent for the pur-
 “ suer, 200 bolls of oats, conform to a sample,
 “ at 27s. per boll, Stirling measure, deliver-
 “ able at Port-Dundas or Kirkintilloch ; and
 “ whether the said defenders failed to imple-
 “ ment the said bargain, to the loss and da-
 “ mage of the said pursuer ?”

In September 1817, Liddle, an agent in Leith, transmitted, at the desire of the pursuer, a sample of his oats to MacBrair in Glasgow, who wrote to the defenders, mentioning that he had got the sample, and wished them to see it. Accordingly, one of them met him, and after seeing the sample, agreed to take 200 bolls at 27s. per boll ; but when the oats were sent, they refused to receive them, alleging that MacBrair was in a mistake, that they had not got his letter at the

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time they met, and that it was a different bargain of which they understood him to speak at the time they met in Glasgow. The oats were afterwards sold at a loss, and this action was brought to recover the balance of the price, and damages.

A mercantile agent an admissible witness, though entitled to commission.

When MacBair was called as a witness, *Miller*, for the defenders, objected. He is not a regular broker, and as he is paid so much per cent. his interest is direct.

Cockburn, for the pursuer.—He has no interest in the event of this trial, as we have paid his commission, and are ready to relieve him from any claim for not having completed the bargain.

LORD GILLIES.—Call the witness to ascertain the fact; but at present I am disposed at any rate to repel the objection on the ground of interest. An analogous case is that of a banker's clerks, who are good witnesses to prove due notification of the dishonour of a bill, though, if they did not send the letter, they are liable.

The witness stated that he had been paid commission on the highest price (27s.), and of course he had no interest.

When Mr Jeffrey closed his speech for the defender, LORD GILLIES observed, that it would be necessary to call back MacBrair, who had been re-inclosed, as the notes he had taken of the evidence differed from the statement by Mr Jeffrey. The witness was accordingly called; and his Lordship's notes being read to him, he stated that they were correct.

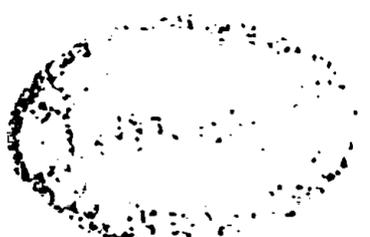
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A witness, examined and re-inclosed, called again to ascertain whether the note of his evidence was correct.

A witness for the defenders having stated, that, on the day the defender was alleged to have made the bargain, he saw him at Cumbernauld, he was then asked where the defender said he was going.

His Lordship at first seemed disposed to allow the question; but it being farther objected that it was not the best evidence,

LORD GILLIES.—This is not the best evidence, and therefore incompetent. If, however, the objection was simply that it was not the best evidence, in the circumstances in which this question arises, I might get over the objection; but it is coupled with this, in addition, that the statement comes from the defender.

Jeffrey.—The whole case rests on the testimony of one witness, which is not evidence; and he has mistaken one bargain for another.



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LORD GILLIES.—This appears to me a very simple case. The damages are admitted, and the only question is, whether there was a bargain. This is said to depend on the testimony of one witness; but the rule as to one witness is, that if he is supported by circumstances, and you believe him, the evidence is complete.

One witness supported by circumstances, sufficient evidence.

The question for me to decide is, whether the circumstances are sufficient in this case to render this testimony evidence; and I state to you, that if you believe the witness, you must give full effect to his testimony as legal evidence. The circumstances appear to me extremely strong, and that the testimony is to be believed; indeed, it is impossible to suppose perjury in the case, and there is no alternative between perjury and giving faith to the testimony.

The written evidence shews that there was a bargain, and that it was varied as to payment and place of delivery. It is said he did not conduct himself as an agent ought to do, in not giving the defender notice in *writing*, that the bargain was confirmed by his employers. You are better able to judge of this; but to me it appears, that he conducted himself correctly in every particular. He pro-

bably expected to see the defender, and there are important verbal engagements entered into every day.

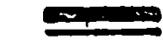
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v.
JAMIESONS.

Verdict “ for the pursuer, damages
“ L.158. 12s. 2d., due from 25th September
“ 1817.”

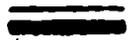
Cockburn and D. Macfarlane, for the Pursuer.

Jeffrey and Ja. Miller, Jun. for the Defenders.

(Agents, *David Murray, w. s.* and *A. Robertson, w. s.*)



PRESENT,
LORD PITMILLY.



DUKE OF ARGYLE v. CAMPBELL.

1819.
March 12.

COUNTER actions relative to the right of the Duke of Argyle to take sea-wreck and shell-sand from the shore opposite to the lands of the defender.

A finding as to the practice of taking wreck, &c. from the sea shore.

ISSUES.

“ 1st, Whether the Duke of Argyle, by
“ himself or his tenants, has been in the im-
“ memorial use of taking sea-ware, or wreck,