

# CASES

TRIED IN

## THE JURY COURT.

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GLASGOW.


PRESENT,

LORD CHIEF COMMISSIONER.

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WILSON, &c. v. WILSON.

1828.  
Nov. 4.



AN action to recover the balance of an account due by one Mason, on the ground that the defender had introduced him to the pursuers, and had failed to recover from him the sum claimed.

Finding for the defender on a question of guarantee and negligence in delivering and recovering the price of goods transmitted to him for sale.

DEFENCE.—The defender did not guarantee the payment. He was not agent for the pursuers, and acted as he would have done for himself. Mason consigned coffee to the pursuers, which, if sold on its arrival, would have paid the sum due.

WILSON, &amp;c.

v.  
WILSON.

## ISSUES.

“ It being admitted, that in the month of  
 “ December 1813, the pursuers transmitted  
 “ to Jamaica, certain goods and furnishings or-  
 “ dered by Richard Mason, residing at York-  
 “ Valley, in the said Island ; and in the month  
 “ of October 1814, certain other goods and  
 “ furnishings, also ordered by the said Richard  
 “ Mason :

“ It being also admitted, that the said Ri-  
 “ chard Mason transmitted to the pursuers cer-  
 “ tain quantities of coffee, viz.—in the month  
 “ of April 1814, 18 tierces in the Perthshire ;  
 “ in the month of May 1815, 20 tierces in the  
 “ ship Lincoln, and three tierces in the Ber-  
 “ lin ; and in the month of June 1815, 17  
 “ tierces in the Marquis of Wellington,—the  
 “ proceeds of which were to be applied in pay-  
 “ ment of the goods aforesaid :

“ It being also admitted, that in the year  
 “ 1819, the said Richard Mason died insol-  
 “ vent :—

“ Whether the defender guaranteed to the  
 “ pursuers the payment of the price of the said  
 “ goods transmitted in December 1813, and  
 “ is indebted to the pursuers in any, and what  
 “ sum, as the said price, or part thereof ?

“ Whether the said goods, sent out in Oc-

“tober 1814, were transmitted to the defender; and whether the defender became, and is indebted to the pursuers in any, and what sum, as the price of the said goods, or part thereof?”

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“Whether the defender promised and agreed to recover from the said Richard Mason, the price of both or either of the said parcels of goods; and whether the defender failed to recover the said price, to the damage and injury of the pursuers?”

*Hope, Sol.-Gen.* opened the case for the pursuers, and said, This is a case of guarantee, and of undertaking on mercantile correspondence, and of gross negligence in fulfilling it. The defender clearly was agent, and was not entitled to deviate from his instructions. We do not admit acquiescence in the deviation.

*Jaffray v. Boag,*  
Dec. 7, 1824.  
3 Sh. and Dun.  
375.

*Jeffrey*, for the defender, denied the guarantee, as the only promise was, that a certain quantity of coffee should be sent, and nearly double the quantity was sent. The defender did all he was bound to do for recovering the money, by getting Mason to confess judgment for the amount.

*Tidd*, 593.

LORD CHIEF COMMISSIONER.—This case

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comes before us in peculiar circumstances, as it had been for a considerable time in the Court of Session ; and it was there decided that the parties must abide by the evidence then in process, which makes it a case depending entirely on written documents, which is not natural to such a tribunal as this. I am uncertain whether you feel, but I certainly do, the disadvantage of bringing forward a case of this sort in this manner, when there is not an opportunity of repeated perusal of the letters ; but if I err on this occasion, the subject may be brought again before me in Session, when there will be time for deliberate consideration of the letters.

If the first question were a pure question of guarantee, it would not require the interposition of a jury to tell the Court the construction to be put upon it—but here it is to be drawn from a train of correspondence ; and the question is, Whether it is a guarantee or recommendation ? Were this brought neatly before me for an opinion in law, I should be disposed to say, on the terms of the letters, that they amounted to a guarantee. But you are to consider whether they are so, or merely a recommendation. If you are of opinion that it is a guarantee, you must next consider whether the terms of the

undertaking were fulfilled, and if so, find for the defenders.

The second issue contains a question of fact, and then the question of liability. The goods, for the price of which the action is brought, were sent by the pursuers at Mason's request, but the bill of lading was sent to the defender; and it is contended, that, by receiving the bill, he received the goods, and is liable for the price. It appears that the goods were intended for Mason; and the question is, Whether there was sufficient caution in delivering them? Whether the defender is indebted depends, under this issue, on the series of transactions.

The third issue is added, in case the pursuers have failed on the two first; and the question is, Whether the defender failed in getting good security, or doing diligently what was necessary to recover this money? If the defender had been an agent charging commission, he might have been liable; but in this case slight negligence is not sufficient; but to render him liable, there must be gross negligence, which is fraud. It appears that he took steps to get a confession of judgment, which would have been a security upon which the person or property might have been taken. But it does not appear distinctly what he did in following this

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out ; and from 1817 to 1819 he appears to have done nothing. Was this acting like a prudent man ? But if you think there was not culpable negligence, you must find for the defender.

Verdict—" For the defender on all the issues."

*Hope, Sol.-Gen. and Buchanan, for the Pursuers.*

*Jeffrey and Hunter, for the Defender.*

(Agents, *Hugh Macqueen, w. s., Gibson and Hector, w. s.*)

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GLASGOW.

PRESENT,

LORD CHIEF COMMISSIONER.

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1828.  
Nov. 5 and 6.

OSWALD, &c. v. LAWRIE, &c.

Finding that a public road existed for time immemorial, and that it had been obstructed by a gate erected by the defenders.

THIS was a declarator by a committee of road trustees under a Statute Labour Act, to have it found that a public road had existed for more than forty years,—that it had been obstructed by certain buildings and a gate,—and that the gate should be removed.

DEFENCE.—There are other open streets parallel to the one in question. The ground