

1850 to 1864 a customer of the firm of John Nixon & Sons, lambswool and hosiery-yarn spinners at Lynnwood, near Hawick, and that the defender William Nixon was, during the years before mentioned, and is now, the sole surviving partner of that firm:

"Whether the defender's firm, from time to time during the years before mentioned, prepared and issued to their customers, including the pursuer, price lists, and exhibited the same in the counting-house of the said firm? And whether, during the years 1855 to 1864 inclusive, the pursuer was induced to purchase yarns from the defender at the prices specified in said price lists, by false and fraudulent representations made by the defender to the pursuer, to the effect that the prices specified in said price lists were the fixed prices charged to all customers? And whether, between the years from 1855 to 1864 inclusive, or any of them, the defender granted abatements or deductions from, or sold yarns at less than the prices stated in the price lists of the day, under which purchases had been made by the pursuer, to Robert Walker, hosier, Leicester; Robert Scott & Sons, manufacturers, Dumfries; Milligan, Henderson, & Company, manufacturers, Dumfries; and Henry Wales, manufacturer, Leicester, or any of them; and in consequence thereof these parties, or any of them, were enabled to undersell, and did undersell in the market, the pursuer as a manufacturer of lambswool hosiery, to the loss, injury, and damage of the pursuer?"

Damages laid at £10,000.

The Court to-day unanimously dismissed the action, with expenses.

The LORD PRESIDENT—I don't think there is a very good ground of action founded upon the deductions or abatements said to have been given to certain parties. It does not follow that because a person holds out prices in a price list he is not to sell subsequently at lower rates. He did not bind himself not to sell at lower rates. There was no such condition. I don't understand what is meant in this case by fraudulent. It is not said that the sales to the other parties were fraudulent. There is altogether a want of substance in this claim of damages, and I think the action should be dismissed.

Lord CURRIE HILL—I had very great difficulty in discovering at the debate what the pursuer meant to represent as his ground of action. There are two categories under which the case might fall. It might be said that there had been a breach of contract—that the goods which the pursuer purchased were sold to him by the defender on a condition that he would not sell to another at a lower price. Again, it might be said that there had been fraudulent representations made by the defender as to his dealings with third parties. I asked at the debate under which of these categories the pursuer thought his case fell, but I could not get any answer. I see, however, from the issue now proposed that the case is put as one of fraudulent representation—that the sales by the defender to the pursuer were vitiated by false representations as to sales already made to other parties. The question, therefore, comes to be, Is there averred such a case of vitiation as to afford good ground for giving restitution? I don't find any such case stated on record. Besides that, there is a total want of specification as to the purchases and sales. On both these grounds I think this action should be dismissed.

Lord DEAS—If the pursuer's allegations had come up to this—that a contract had been made that the seller should never sell at lower prices to others than he did to the pursuer, and that that contract had been broken, I would not have doubted the relevancy of the action. But that is plainly not the ground of action. I don't say that the pursuer may not be able to state a relevant case founded on fraudulent representation. It would require, however, to be very distinct and specific. This statement is vague throughout in regard to the representations made, their falsehood, and their consequences. It is not said that the purchaser sustained loss. On the contrary, he made a profit, but it is said he might have made a greater profit. That may not be quite clear. In short, the whole matter from beginning to end is too vague and indefinite in a case of the novelty of the present one.

Lord ARDMILLAN—This is a very peculiar case. It is an attempt, after the lapse of fifteen years from the commencement of the transactions, to open them all up on averments of fraud of a very singular character. It is not said the pursuer bought his goods at too high a price, or had to sell them at too low a one. No injury is set forth. The pursuer carried on a lucrative business, but he says he has been injured by reason of dealings betwixt the sellers to him and other parties. I think it quite possible that such a case might occur, and be stated, but it would require to be far more specific than anything we have here.

Counsel for Pursuer—The Solicitor-General, Mr Gordon, and Mr M'Kie. Agents—Messrs Webster & Sprott, S.S.C.

Counsel for Defender—Mr Clark and Mr Watson. Agents—Messrs Paterson & Romanes, W.S.

LONGWORTH *v.* HOPE AND COOKE.

(*Ante*, vol. i., p. 53.)

Motion for New Trial—A party not appearing to support a motion for a rule, the Court held the motion as passed from.

The trial of this case resulted in a verdict for the defenders. The pursuer, immediately after the verdict, gave notice of a motion for a rule on the defenders to show cause why a new trial should not be granted. This motion was in the roll to-day for hearing, but no one appeared for the pursuer.

SHAND, for the defenders, read a letter dated the 14th instant, which had been addressed to their agents by Mr James Somerville, S.S.C., in which he stated that he had ceased to act as agent for the pursuer.

CAMPBELL SMITH, who had formerly acted as counsel for the pursuer, was sent for, and he stated that he had ceased to act as the pursuer's counsel on Saturday last. He also stated, in answer to the Lord President, that he believed the pursuer was aware that her motion was set down for to-day for hearing.

The Court, in these circumstances, held the notice of motion as passed from by the pursuer, recalled the sist of procedure which had been granted when the notice of motion was given, and remitted to the Lord Ordinary to apply the verdict of the jury.

Agents for Defenders—Morton, Whitehead, & Greig, W.S.

CAMPBELL'S TRUSTEES *v.* CAMPBELL'S EXECUTORS, *et e contra.*

Fraudulent Impetration—Essential Error—New Trial—In a reduction of an agreement on the