

case give any thing like the sum claimed ; and though each may probably have fixed a different sum, you will have no difficulty in coming to an agreement on the amount.

HYSLOP  
v.  
MILLER.

Verdict for the pursuer, damages L. 5.\*

*Jeffrey and Cockburn* for the Pursuer.

*Clerk, Fullarton, and Moncreiff,* for the Defender.

(Agents, *Thomas & John Scotland*, w. s. and *Alexander Blair*, w. s.)

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PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

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DICKSONS, Brothers, v. DICKSONS and COMPANY.

1816.  
March 18.

AN action of damages against one company for executing an order intended for another.

Damages found due by one company of merchants for executing an order intended for another.

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\* When the case was returned to the Court of Session, the Lord Ordinary found expences due, which were taxed by the auditor at upwards of L.400, including those in the Court of Session. The Court, however, modified the sum, and struck off L.200.

By act of sederunt, dated 6th March 1817, all expences in the Jury Court are declared to be under the sole and exclusive cognisance of that Court. But, if the Issue is on an incidental point

DICKSONS  
v.  
DICKSONS  
& Co.

DEFENCE.—*Bona fides.*

ISSUES.

“ Whether the defenders did receive, or get  
 “ into their possession, certain letters from the  
 “ Reverend William Carr, factor for, or act-  
 “ ing on behalf of, his Grace the Duke of De-  
 “ vonshire, viz. one letter directed Messrs  
 “ Dickson, Nurserymen, Edinburgh, dated  
 “ Bolton Abbey, 11th October 1813, contain-  
 “ ing an order to furnish the said Duke of De-  
 “ vonshire with 150,000 best seedling larch ;  
 “ another letter, dated Londesborough, 19th  
 “ October 1813, relative to the said order of  
 “ 150,000 seedling larch, and making a further  
 “ order for 5000 weeping birch ; and another  
 “ letter, dated Bolton Abbey, 16th Decem-  
 “ ber 1813, relative to the former order of  
 “ 150,000 seedling larch, and making a further  
 “ order of 10,000 birch seedlings, and 20,000  
 “ Scots, (meaning Scots fir,) all which letters  
 “ and orders were written and intended for  
 “ the pursuers ? And,

“ Whether the said defenders, knowing the

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in the case, the Lord Ordinary or Division directing the Issue,  
 “ shall determine whether the expences so allowed, and taxed by  
 “ the Jury Court, shall be awarded in whole or in part.”

“ said letters from the said Reverend William  
 “ Carr, with the orders therein, not to be in-  
 “ tended for them, the said defenders did never-  
 “ theless, knowingly and fraudulently, reply to  
 “ the said letters so meant and intended for the  
 “ said pursuers ; and did farther execute the  
 “ orders contained in the said letters, conceal-  
 “ ing the said mistake in delivery and receipt  
 “ of the said letters from the said pursuers, and  
 “ from the said Reverend William Carr, to the  
 “ great injury of the pursuers in their trade and  
 “ business, and to their damage in respect to  
 “ the said orders ?”


“ N. B. The damages are laid at L. 500.”

Mr Carr, not knowing that there were two  
 companies of Dicksons in Edinburgh, addres-  
 sed his letter “ Messrs Dickson, Nurserymen,  
 “ Edinburgh.” This, though intended for  
 the pursuers, was carried to the defenders, and  
 they proceeded to execute the commission.  
 One of the partners of the house of Dicksons,  
 Brothers, having met Mr Carr, an explanation  
 took place. A correspondence ensued betwixt  
 the two companies, in which the defenders  
 stated, that the first letter was addressed pro-  
 perly to them ; and though, in the second let-  
 ter, Mr Carr referred to orders of former years,

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 DICKSONS  
 & Co.



they could not from that circumstance discover the mistake, their books being in the hands of an accountant at the time.

After the defender has opened his case, the pursuer may read documentary evidence, but the defender is entitled to observe upon it.

After Mr Cockburn's speech for the defender, *Mr Clerk* said, he wished to read certain documents which he had omitted to notice.

LORD CHIEF COMMISSIONER.—The documents may be read, and Mr Cockburn may then observe upon them.

The rule that cross questions are incompetent, if they do not arise out of the examination in chief, was also held as fixed, till the bill of exceptions in the case *Hyslop v. Staig, supra*, p. 18, shall be discussed.

LORD CHIEF COMMISSIONER to the Jury.—The question here is not whether this is a criminal fraud, but whether there is such a deceit as the law construes to be fraud, and which will subject the defenders in damages.

Mr Carr's letter of the 11th October 1813 is so short, that the defenders ought to have suspected that it was not a first order, and the other letters refer expressly to orders of former years.

After detailing the circumstances of the case,

his Lordship said, the pursuers are entitled not merely to the profit on this particular order, but to a compensation for the injury done to their business, and the trouble and anxiety this action has occasioned.

DICKSONS  
v.  
DICKSONS  
& Co.

Verdict for the pursuers, damages L. 150.\*

*Clerk, Cranstoun, Jeffrey, and Brownlee, for the Pursuers.*

*Cockburn, Drummond, and Rutherford, for the Defenders.*

(Agents, *John Jones, w.s.* and *Jardine and Wilson, w.s.*)

GLASGOW.

PRESENT,

THE LORD CHIEF COMMISSIONER.

KERR v. MARSHALL. †

THIS was an action raised by Marshall, as executor of the deceased William Marshall, writer

\* The Jury, in this and several other cases, found the pursuer entitled to costs, but were informed by the Court that this was not within their province.

† As Mr Kerr had been appointed to lodge the condescence, he was, in terms of the act of Sederunt, 9th December 1815, § 41, held to be pursuer in the Jury Court, though defender in the Court of Session. He is, therefore, described as pursuer in the following report.

1816.  
May 3.

It is the practice and understanding at Greenock, that an agent there who employs one in Glasgow or Paisley to conduct the causes of his clients, is only liable for the sums he recovers from the clients.