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 Joncs,* W.S. and *Jardine and Wilson,* W.S.)

GLASGOW.

PRESENT,

THE LORD CHIEF COMMISSIONER.

KERR v. MARSHALL. †

1816. May 3.

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

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.

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* 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 condescendence, 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.

KERR v. MARSHALL.

in Glasgow, against William Kerr, writer in Greenock, for payment of the balance of an account due to the deceased.

In defence Kerr stated, That he had been in the habit of employing Marshall to conduct the causes of his clients in the Burgh Court of Glasgow, and that the account was composed of the expences incurred in these causes, but that several clients had failed, whereby he had not been able to recover a considerable part of the sum due by them; and that, by the practice of the writers in Glasgow and Greenock, the writer in Greenock was not liable for such deficiency.

The Lord Ordinary, and at first the Court, held Kerr liable; but on a reclaiming petition, they appointed him to give in a condescendence, and afterwards approved of the following

ISSUE.

"Whether, during the period betwixt the "month of June 1799, and the month of No- "vember 1805, it was the practice and under- "standing between the writers in Greenock "and the writers in Glasgow and Paisley,

"when a writer in Greenock employed a writer "in Glasgow or Paisley to conduct business "for their mutual clients in the Courts in said "burghs, for the writer in Greenock to be re- "sponsible to the writer in Glasgow or Pais- "ley for such accounts only as he actually re- "covered from their mutual clients, unless "there was a special agreement to the con- "trary?"

Kerr called almost all the writers in Green-ock, who swore to the practice alleged by him. Marshall, on the contrary, rested his case on the testimony of a number of writers in Glasgow, who were in extensive employ-ment from other parts of the country, but never heard of this practice or understanding with Greenock.

Jeffrey, for the defender, maintained, In all cases the employer is liable to the person employed. This was found in a strong case of law business. It would require strong proof to take any case out of this general rule; and the witnesses all found their opinions on narrow views of expediency, which the Court have determined to be against them.

Greig *v.* Stewart, June 12, 1811.

KERR
v.
MARSHALL.

Murray, for the pursuer, contended, In general an agent is not liable unless he receive a *del credere* commission: The Court proceeded in the case of Greig on the broad admission of the writer in Glasgow. The witnesses on the other side merely gave an opinion in law. All the Greenock writers, and those who have practice with that town, swear, that it is the understanding, that the writer in Greenock is not responsible for the sums he does not recover from the clients.

LORD CHIEF COMMISSIONER.—At common law Kerr would be liable, but in consequence of an averment that the *practice* and *understanding* between Glasgow and Greenock is different, this issue is sent to have that practice ascertained.

As it is an exception to the general rule, Kerr, who in this Court becomes pursuer, must make out his case distinctly, and if you think he has done so, you will find accordingly; if not, you must presume for the common law.

Most of the witnesses for Kerr swore that the *practice* was as he stated; and some of them mentioned particular instances in which demands such as Marshall now set up had been made

and *resisted*. This shews the *understanding* with respect to such claims. These witnesses, however, being writers in Greenock, though perfectly fair and candid, have the secret bias of interest.

The witnesses for Marshall have no particular knowledge of this practice with Greenock; but it is material, that though living here, (in Glasgow,) and in extensive employment from various quarters, they never heard of this practice or understanding with Greenock. One of them, though agreeing with the others, that the law was in his favour, admitted, that he would not push it to the extent of bad debts.

On the whole, I am of opinion, that there is reasonable ground to think, that the practice and understanding is made out in favour of Kerr; but this is a matter which falls more properly within the province of a Jury.

Verdict for William Kerr the pursuer.

J. A. Murray, and *R. Hunter*, for the Pursuer.

Jeffrey and *Jardine*, for the Defender.

(Agents, *William Drysdale*, W.S. and *Archibald Crawfurd*, W.S.)

8th June 1816.—The Court refused a rule

KERR
v.
MARSHALL.

to shew cause why a new trial should not be granted.

On the 22d they applied the verdict, and found Kerr entitled to his expences in the Jury Court.

PRESENT,
LORDS CHIEF COMMISSIONER AND PITMILLY.

PAUL *v.* OLD SHIPPING COMPANY.

1816.
June 10.

The owners of a vessel found liable for the loss sustained by the shippers, having concealed that she was under detention for payment of duties, and the market price of goods having fallen.

THIS was an action to recover the loss sustained on flax-seed by the detention of a vessel belonging to the defenders.

The Defence was, That no loss was suffered: That the application to take the seed on board was not made till after the day on which the vessel should have sailed: That the defenders did not engage that their vessels should sail on any particular day, and were not put on their guard that this was an indispensable condition of the shipment.

Mr Paul, merchant in Leith, wrote to Messrs Hewitson of London, to send him a