

DICKSONS &
COMPANY
v.
PONTON.

PRESENT,

LORD CHIEF COMMISSIONER.

DICKSONS AND COMPANY v. PONTON.

1824.
July 13.

AN advocacy of an action for the balance of an account for goods sold and delivered.

Finding for the pursuer in an action for the balance of an account.

DEFENCE.—The articles were not furnished to the defender.

ISSUE.

“ Whether the seeds and other goods contained in the account in process, commencing 12th February 1818, and ending 19th April 1820, were sold and delivered by the pursuers to the defender? and, Whether the defender has failed to pay to the pursuers the balance of L. 26, 10s., appearing to be due on the said account, to the loss and damage of the said pursuers?

Several of the articles charged in the account had been furnished on the order of the defend-

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er's son, who, it was admitted, at one time managed for his father; but it was said, that, on account of his conduct, the defender had published an advertisement, warning the public not to trust his son.

A shopman called to swear to an account being supported by the shopkeeper's books.

The person who kept the pursuers' books was called, and it was proposed to prove by him, that the account in the ledger was supported by the day-book, and that the account sued for was supported by the ledger.

LORD CHIEF COMMISSIONER.—In my opinion, the best way is to ask the general question, whether this account is truly supported by the day-book, and leave any disputed article to be brought out on cross-examination?

Delivery of goods to a carrier held delivery to the party.

It being proved that some of the articles were delivered to a carrier, it was stated that the carrier would not be called, unless the Court thought it necessary.

LORD CHIEF COMMISSIONER.—In my opinion, delivery to the carrier is presumed delivery to the party, unless the contrary is proved.

Incompetent by parol evidence to prove the decree of a Court.

A witness having been asked, whether he brought an action, and obtained a decree

against the pursuer for the price of goods furnished in similar circumstances to the present.

LORD CHIEF COMMISSIONER.—It is going near enough to prove, in this manner, that an action was brought ; but it is certainly incompetent to prove that decree was obtained.

It was objected to the first witness for the defender, that he had seen the books,—had had many conversations on the subject of the action,—and had carried a message with a view to a compromise.

LORD CHIEF COMMISSIONER.—Carrying such a message is no disqualification—proof that he saw the books may be an objection to his credit, but does not disqualify him.

When another witness was called to prove an excerpt taken from the books,

LORD CHIEF COMMISSIONER.—Much has been said to-day as to the evidence of books,—if regularly kept, they are no doubt good to refresh the memory of a witness who kept them ; but here the person tells you he knew nothing about the articles furnished.

Monteith, in opening, and *Jeffrey* in reply, stated, That the goods were sold to the son

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A degree of agency held to affect the credit, not the competency of a witness.

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acting for his father; and that the father had paid part, that there was no evidence of the advertisement being known to the pursuer, and that the parol evidence would have been sufficient without the books.

Cockburn, for the defender.—This is not the only claim by which an unworthy son has deeply involved his father. There is no proof that the goods were delivered to the father; and the books do not show whether they were furnished to the father or son, and several of the things are not suitable for a farm.

LORD CHIEF COMMISSIONER.—This is a very short case; for, though we may regret that a father has such a son, still that cannot interfere with the claims of clear justice, and the rules of the common course of dealing.

There are here four points—the order—delivery—agency—and dissolution of the agency. The orders are proved by two servants of the tradesman, who speak to the books, and to the orders given. A tradesman's books are good evidence against him, and by the law of Scotland, they afford a *semi plena* probation in his favour, but must be confirmed by witnesses or circumstances.

It is proved that part of the goods were de-

livered at a place in the Grassmarket,—part to a carrier, which is held delivery to the party,—and part into carts belonging to the father, which not only proves the delivery, but tends to show that the son acted for his father.

This reduces the case to the question of authority, and here a special mandate is not necessary, but authority may be inferred from facts and circumstances. To undo the presumption of his acting for his father, a notice in a newspaper is rested on, and the life of the son as showing him to be a person whom no one ought to trust. But where is the proof of either of these being brought to the knowledge of the pursuer? The notice proves the previous agency, but must be brought home to the pursuer to free the defender. Even notice in the Gazette, though an authorized paper, is not sufficient, unless it is brought home to the person to be affected by it.

It is said notice should have been given to the defender, that he was held liable; but it is too much to say, that the pursuer must trace his letters into the hands of the defender. If you are of opinion that there was good reason to believe that the son was authorized, then the facts proved are sufficient to throw the burden on the defender of taking off this presumption.

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Verdict—For the pursuer, damages L. 26,
10s.

Jeffrey and Monteith, for the Pursuer.

Cockburn and Robertson, for the Defender.

(Agents, *G. Napier and John Jameson*.)

PRESENT,

THE LORD CHIEF COMMISSIONER.

BROWN v. STEWART.

1824.
July 15.

Finding as to an
alleged encroach-
ment by the wall
of a house.

REDUCTION by Stewart of a decree in absence, confirming one in the Dean of Guild Court, authorizing Brown to erect a house on the Castle Hill, Edinburgh, which was said to encroach on the property of Stewart.

DEFENCE.—The house did not encroach.

ISSUES.

“ It being admitted, that William Stewart
“ is proprietor of a tenement of houses, and
“ ground, upon the Castle Bank, in the city
“ of Edinburgh, and that James Brown is pro-
“ prietor of ground immediately to the east of
“ the said tenement ;

“ It being also admitted, that, in the year