

MACQUEEN AND
MACKINTOSH

v.
COLVIN.

PRESENT,

LORDS CHIEF COMMISSIONER, PITMILLY, AND CRINGLETIE.

1827.
March 19.

MACQUEEN AND MACKINTOSH v. COLVIN.

Circumstances in
which a party
was found liable
in payment of
an account to an
agent in Edin-
burgh.

AN action to recover from a party the expenses of legal proceedings carried on for his benefit.

DEFENCE.—The defender never employed the pursuer, nor authorized any one to do so.

ISSUE.

“ Whether, in the years 1820 and 1821, the
 “ defender himself, or by others acting in his
 “ name and by his authority, employed the
 “ pursuers to present to the Court of Session
 “ an advocacy of a process at the instance of
 “ the defender, then depending in the Dean of
 “ Guild court at Inverness, and to conduct the
 “ litigation upon the said advocacy ; or ho-
 “ mologated or sanctioned the proceedings car-
 “ ried on by the pursuers in his name, in the
 “ said advocacy ? And whether the defender
 “ failed to pay the expenses incurred in the li-

“ tigation on the said avocation, to the loss,
“ injury, and damage of the pursuers ?”

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Hope, Sol. Gen., for the pursuers, said, This was a simple case, and that the refusal by the defenders to pay was contrary to good faith, honesty, and conscience. It was not disputed that the Inverness agent employed the pursuers ; and it will be proved that the defender knew of the proceedings in the Court of Session, and took advantage of their decision, and has homologated the proceedings.

Bryan v. Murdoch, 3 Shaw and Dun. Nov. 13, 1824.

When the process was given in evidence, and the books of the pursuers,

A process being put in, does not make every part of it evidence to the Jury.

LORD CHIEF COMMISSIONER.—Being thus put in, I consider the process as before the Court ; but it will not be evidence of facts, except in so far as they are pointedly averred and admitted in the condescendence and answers. With respect to the books, I had not formerly been accustomed to see the books of a party given in evidence for him.

Brown, for the defender.—The sole question here is on the evidence ; and there is no proof that the defender employed the pursuers, or took advantage of the decision.

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LORD CHIEF COMMISSIONER.—It is true that you must be satisfied of the pursuers' case on evidence; and the claim here is for L. 35. It is true, that, when an agent here is employed by an agent in the country, he first looks to the agent for payment; but that does not dissolve the obligation of the party. On the contrary, when the agent fails, as in this case, it is competent to go against the principal. The question here is, Whether the pursuers were employed by the defender through the country agent, or, Whether he took the benefit of what was done? and if you are of opinion with the pursuers on either of these alternatives, you must find for them.

It might be difficult to say that there is direct evidence of employment; but you will consider all the circumstances which the defender must have known, and the manner in which he acted in these circumstances, and then say whether he did not know of the advocacy, or sanction and approve of what was done.

Verdict—For the pursuers, damages L. 35, 17s. 5d.

*Hope (Sol.-Gen.), More, and Buchanan, for the Pursuer.
Brown, for the Defender.*

(Agents, *Hugh Macqueen, w. s. R. Lockart.*)