

REID & Co.  
v.  
SINCLAIR.



PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.



1827.  
Dec. 3.

REID & Co. v. SINCLAIR.

Damages for  
breach of con-  
tract in not de-  
livering market-  
able staves.

THIS was an action to recover the price of cer-  
tain pipe and hogshead staves.

DEFENCE.—The staves sent were not mar-  
ketable.

ISSUE.

“ Whether, on or about the 5th day of De-  
“ cember 1825, the defender agreed to pur-  
“ chase from the pursuers 3000 Dantzic crown  
“ hogshead staves, at L. 82 per thousand, and  
“ 3000 Dantzic brack hogshead staves, at L. 72  
“ per thousand, to be imported without delay  
“ from Dantzic, at six months credit from the  
“ date of the arrival?—and, Whether the de-  
“ fender failed to implement the said agree-  
“ ment, to the loss, injury, and damage of the  
“ pursuers?”

*Neaves* opened the case, and stated the date  
of the bargain and transmission of the staves :

That there was no bargain for picked staves ; and that those sent being passed by the bracker, the defender was bound to take them.

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A witness, on cross-examination by the defender, was asked, whether a verbal bargain was made for these staves in October.

Competent to prove the circumstances in which a written agreement originated.


*Jeffrey* objects.—The bargain is proved by the bill of lading, and parol evidence is incompetent.

*Cockburn*.—The statement in the pleading is, that they were sold by a verbal bargain, and the date is material.

LORD CHIEF COMMISSIONER.—There is no doubt that this is competent. It is established that the staves were delivered in March, and the invoice is the 5th of December ; but it is competent for the defenders to prove a prior agreement, and the circumstances in which the bargain originated.

*Cockburn*, for the defender.—The issue turns on whether the defenders failed ; and we maintain that the failure was by the pursuers. The date is material ; for the pursuers say, in December the demand was so great, that the best staves could not be expected. We say the bargain was in October, as the number and price

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were then fixed; and that we were entitled to the best quality, as we were to pay the best price. As soon as we saw the staves they were rejected as too thin.

*Jeffrey.*—There was a communing in October, but the invoice is the written agreement; and if the pursuers furnished a good article, you cannot find against them on this issue, which is limited to the 5th December. I admit that the defender was entitled to a fair marketable commodity, and that these staves are not of prime quality; but there is no evidence that a good stave is not marketable, because it is under  $2\frac{1}{2}$  inches thick.

LORD CHIEF COMMISSIONER.—This case has turned out one purely for your consideration, and there are two questions, 1, Whether there was a contract completed? and 2, Whether it was broken? On the whole circumstances, it is not easy to say the contract was not completed, but up to the 5th December it was only in progress. In this case there was no special warranty, and therefore, the question is not whether the staves were of a particular description, but whether they were a good marketable article. The only question is on the thickness, and the contract does not specify any scantling. The

evidence of the thickness, therefore, is to be taken merely as a means of judging of the sufficiency of the staves, and you must decide whether, if they are not  $2\frac{1}{2}$  inches thick, they are not marketable. The correspondence is important on this point, and one witness said, if there was no bargain as to thickness, he thought he must take staves commissioned, though under that thickness. These staves are proved insufficient for whisky, but it is not proved that the bargain was for whisky staves. If the defender had received the staves, it might have gone far to fix them on him, but he rejected them immediately.

Verdict—For the pursuers, damages L. 362.

*Jeffrey and Neaves, for the Pursuer.*

*Cockburn and Rutherford, for the Defender.*

(Agents, *John Murdoch, s. s. c.* and *John Harvey.*)

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PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.  
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M'LAREN v. RAE, &c.

AN action of damages against a master and servant for injury caused by the negligence of the servant.

M'LAREN  
v.  
RAE, &c.

1827.  
Dec. 10.

Damage against  
a master and  
servant, for in-  
jury caused by  
the negligence of  
the servant.