

“ mission, examine the witness under it, and
 “ thus secure against the testimony being kept
 “ back.”

AUCHMUTIE,
 &c.-
 v.
 FERGUSON,
 &c.

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 PRESENT,

THE THREE LORDS COMMISSIONERS.
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DOWNIE v. BURGAN and COMPANY.

1817.
 February 24.

THIS was an action to recover a sum of money paid to the defenders to account of the price of a cargo of herrings, and for damages on account of breach of contract.

Damages for
 breach of con-
 tract.

DEFENCE.—The herrings, when shipped, were of the quality stipulated. The pursuer accepted of them, and paid part of the price after they had been some weeks in his possession.

ISSUES.

“ 1. Whether the defender did, in the
 “ months of September and October 1814, sell
 “ to the pursuer 500 barrels of herrings of the
 “ best quality, and in a state to keep for six or
 “ eight months, and engage to ship the same
 “ at Eyemouth, to be conveyed from thence to
 “ the pursuer, at or near Cork, to be at the

DOWNIE
v.
BURGAN & Co.

“ risk of the pursuer from the time the vessel
“ in which they should be shipped should leave
“ Eyemouth ; and whether the defenders did
“ improperly delay to ship the same until near-
“ ly two months after the bargain for the pur-
“ chase of the said herrings was completed ?

“ 2. Whether the said 500 barrels of her-
“ rings, so shipped by the defenders for the pur-
“ suers, were of the best quality, and properly
“ cured and prepared for the Irish market, and
“ in a state to keep for six or eight months ;
“ and whether the same were properly taken
“ care of between the time of completing the
“ bargain and the shipment of the said her-
“ rings ; or whether the said herrings had been
“ by the defenders improperly exposed to the
“ sun, and weather, and accidents, on the quay
“ of Eyemouth during the period last afore-
“ said ?

“ 3. Whether the defenders are justly in-
“ debted to the pursuer in the sum of L. 842,
“ 6s. 9d, Irish currency, as the balance of the
“ account libelled on, and whether they are
“ further liable in damages to the pursuer for
“ their undue performance of the aforesaid bar-
“ gain ?”

The defender failed to appear.

There were produced two affidavits of due notice having been given, and the persons who gave the notice were called to the table, and swore that “the contents of their affidavits were true.”

DOWNIE
v.
BURGAN & Co.
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When Mr Cockburn had stated the case for the pursuers,

LORD CHIEF COMMISSIONER.—You must prove the letters constituting the bargain, or at least show that they were in process and admitted.

The defences and answers to the condescence were given in.

LORD CHIEF COMMISSIONER—This admission is sufficient ; the letters may be read.

His Lordship put a number of questions to the witnesses.

Verdict,—“For the pursuer on the three issues, with L. 50 Sterling damages.”

*W. Erskine and Cockburn, for the Pursuer.*  
(Agent, *J. Nairne, w. s.*)

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On the 19th July 1816, Mr Erskine moved for a commission to examine witnesses in Ireland ; Mr Bruce opposed the motion, as the proof was irrelevant. He maintained that the

DOWNIE  
v.  
BURGAN & Co.

issues showed that the question to be tried was the state of the herrings when they left this country, not when they arrived in Ireland.

LORD CHIEF COMMISSIONER.—This may be a good reason against reading the answers, but at present this objection is premature; examining a witness on commission is much the same as citing him at the trial. The commission is at the risk of the person seeking it; if the proof be irrelevant, the party who takes it must pay the expence.

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PRESENT,

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1817.  
March 13.

MURRAY and Others v. Tod and Others.

THIS was a multiplepinding brought by the treasurer of the Royal Bank of Scotland, for the purpose of ascertaining who had right to two promissory notes, the one for L. 800, the other for L. 200.

The claimants on the one side were the nearest of kin of the late Mr Tod, and on the other certain parties who claimed those notes as having been delivered to a third party to be held for their behoof.