

“ Issue, as no damage is proved ; and also find
 “ for the defender on the second, as it is not
 “ proven.”

SNADON
 v.
 STEWART.

Clerk and Dalzeil for the Pursuer.

Jeffrey and Cockburn for the Defenders.

(Agents, *Wm. Landers*, and *M. Burd*, w. s.)

PRESENT,

LORD GILLIES.

BELL v. LEIGHTON and DONALD.

1819.
 January 18.

AN action of damages for breach of contract against Leighton as principal, and Donald as agent and broker, for not delivering a quantity of tallow sold to the pursuer.

Damages for breach of contract by not delivering tallow.

DEFENCE for Leighton.—No authority was given to make, nor did he confirm the bargain.

The LORD ORDINARY repelled the defence, and found the parties conjunctly and severally liable in damages.

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ISSUE.

“ What loss and damage has been sustain-
“ ed by the pursuer, in consequence of the
“ non-delivery of 12 casks best yellow candle-
“ tallow sold to him by the defender, William
“ Donald, as agent for the other defender,
“ George Leighton, in October 1813, at 94s.
“ per cwt. ?”

Belief of a general agent held evidence of current prices, though he did not make sales at the time in question.

One of the witnesses, on his re-examination, was asked, whether there were not circulars printed of the prices of tallow at different times? and what was the price of tallow in January and February 1814?

Jeffrey, for the defender, objected.—The witness has stated, that he made no sales at that time, and therefore cannot prove this fact.

LORD GILLIES.—The belief of a general agent is certainly evidence. It may be strong or weak, according to circumstances.

Fletcher opened the case for the pursuer, and maintained, that, as damages were found due, the Jury must find him entitled to some; but to shew that there was no foundation for Leighton's defence, he read the letters from

him, on which the finding of damages was founded.

The pursuer is entitled to the highest price he can prove that he might have got for the tallow.—*Morison v. Boswell*, 4th March 1806, *M. App. Dam. & Int.*

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*Morison v.
Boswell.*

Jeffrey, for the defender.—If no damages are proved, none can be found. The pursuer has not proved that the tallow arrived; and if it did not arrive, the loss ought not to fall on Leighton, as there was nothing fraudulent on his part.—*Boyd v. Siffkin*, 2 *Camp.* 326.—*Idle and Others v. Thornton and Others*, 3 *Camp.* 274. If it arrived, and he proved actual loss, I must have repaired this loss, whether my failure was fraudulent or not. In the case of *Boswell*, there was an attempt to cheat. A case nearer the present is *Robertson v. M'Culloch*, 23d December 1808.

Boyd v. Siffkin.

Idle v. Thornton.

*Robertson v.
M'Culloch.*

LORD GILLIES.—The case we have to try is stated in the Issue, and is a very short one, and keeping this steadily in view, we have next to attend to the facts. That a bargain was entered into, and broken, has been found in the Court of Session.

In my opinion, it was quite unnecessary to lay these letters before you; and the ar-

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gument on the other side appears to me out of place, as damages have been found due, and you cannot find that there was no bargain.

It is said no damages are due, as, in October, the pursuer might have bought other tallow at the same price. If this is to be listened to, there can be no damages in any case. It is said we must find the defender's conduct fraudulent. This may be necessary to entitle the pursuer to a *solatium*, but in the present case, it is not necessary to impute blame to any person. The defender appears to have acted with propriety, but he did not implement his bargain, and must therefore pay what the pursuer has lost.

The bargain is 90 cwt. at 94s. If you think 110s. has been proved as the selling price, then you will give 90 times 16s.

Cockburn.—I hope your Lordships will think, that the Jury may give a slump sum.

LORD GILLIES.—I conceive it to be clearly proved, that there were 12 casks, and that a cask contains $7\frac{1}{2}$ cwt. A slump sum is the simplest way, but this must be ascertained by calculation.

Jeffrey.—I consent to holding the quantity 90 cwt.

Verdict—" For the pursuer, damages L.92
12s. 6d.

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Cockburn and Fletcher for the Pursuer.

Jeffrey and Hope for the Defender.

(Agents, *David Murray, w. s. Gibson, Christie, and Wardlaw, w. s. and Dugald Mactavish, w. s.*)

PRESENT,

LORD GILLIES.

HOULDSWORTH v. WALKER.

1819.
January 28.

AN action to compel the defender to furnish coal or culm for steam-engines, and of damages for failing to supply it.

Damages
claimed for not
supplying
steam-engines
with coal.

DEFENCE.—The contract is not binding, as it was not signed by all the parties to it. The pursuer broke it by misapplying the power of the steam-engines.

ISSUES.

“ Whether the defender has furnished
“ coal or culm, in terms of the contract enter-
“ ed into between Henry Houldsworth, cot-