

1852.
16th and 17th
December.

CULLEN, APPELLANT.
BLACK, RESPONDENT.

Remit with directions to alter the interlocutors complained of, and to decide the cause upon admissions made at the bar of the House.

In other words, the Court below required to revoke its decision, not because it was wrong, but on account of new evidence received in the Court of Review by consent of both parties.

MR. *Bethell* and Sir *Alexander Cockburn*, for the Appellant. The Lord *Advocate (Inglis)*, for the Respondent.

Of this case there is a full report in the Court of Session Decisions (a). It deserves notice here only on account of the peculiar terms of the judgment, which was as follows:

IT IS ORDERED and adjudged, with consent of the said Appellant and Respondent, by their Counsel and Agents, appearing at the bar, as follows, (that is to say), that the said Cause be, and the same is hereby remitted back to the said Court of Session, with instructions to recal the Interlocutors complained of in the said Appeal, and to hear and decide the said cause on the Pleadings and Documents in Process, with the following mutual Admissions made by the said Parties, by their Counsel as aforesaid; (that is to say),

On the 6th November, 1847, the Appellant sent his clerk, John Irvine, from Edinburgh to Glasgow, to Archibald Kerr, with the letter of that date, No. 20 of process, and 446*l.*, being the price of 180 shares in the Great Northern Railway, which the Appellant, by his letter dated the 14th October, 1847, No. 5 of process, had instructed Kerr to buy, and which Kerr, by letters dated the 15th October, 1847, and relative purchase note (being Nos. 6, 7, and 8 of process), represented that he had bought;

On the 6th November, 1847, Kerr waited on the Respondent with the document, No. 60 of process, which had been already signed by Lindsay, and the Respondent having executed the same, received from Kerr 120*l.*, being 2*l.* 8*s.* per share for 50 shares, and

(a) 13th June, 1851; Second Series, vol. xiii. p. 1114.

in exchange delivered to Kerr the said document, with the relative certificates for the 50 shares, as therein mentioned ;

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The said document so handed over by the Respondent to Kerr was, with the exception of the Appellant's signature thereto, in the state in which the document No. 60 of process now appears ; the said document No. 60, so executed by Lindsay and the Respondent, was given by Kerr to Irvine along with the letter, No. 21 of process, addressed to the Appellant, and was, on the same 6th of November, brought by Irvine to Edinburgh, and delivered to the Appellant, who immediately subscribed his name to the said document.

It does not appear that any communication was ever made by Kerr to the Appellant that any purchase of shares in the Great Northern Railway had been made by Kerr on behalf of the Appellant, except the purchase stated by Kerr's letters of 15th October, 1847 ;

That instructions were given by the Appellant to Kerr by letter, No. 5 of process, for the purchase of 180 Great Northern Railway shares, and that number of shares was actually bought by Kerr for the Appellant on the 15th October, 1847 ;

That the extracts, Nos. 98, 127, and 130 of process, and set out in the pleadings in the said cause, are true extracts from the books of Kerr and Hector H Munro and the Respondent respectively ;

That on the 3rd day of November, 1847, three days before the said document No. 60 was executed, a call of 2*l.* 10*s.* per share had been made on the shares by the Great Northern Railway Company ;

The first application on the subject of the aforesaid shares by the Respondent to the Appellant personally was made by letter of the 2nd October, 1848, No. 85 of process ;

and also with power to the said Court to deal with and decide all questions of expenses between the parties in the said cause, including the Costs of the present Appeal.

DEANS—WARD.