

BURREL, &c.

v.
HODGE.

me of opinion, that his evidence is not such as will be taken by a sensible Jury, in opposition to the other evidence.

Verdict—" For the defender on both
" Issues."

Jeffrey and Brownlee for the Pursuer.

Moncreiff and James Miller jun. for the Defender.

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PRESENT,

LORD CHIEF COMMISSIONER.

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1821.
July 21.

BURREL &c. v. HODGE.

Damages
against a com-
mercial agent,
for neglect of
duty.

DAMAGES against a commercial agent for
neglect of duty.

DEFENCE.—The defender did every thing
in his power for the interest of the pursuer.
The pursuer cancelled the bargain.

ISSUE.

" It being admitted that, in the month of
" February 1820, the defender undertook to

“ act as agent for the pursuer, in the disposal
 “ of a quantity of pine timber, then lying at
 “ Leith ; and that, in the month of February
 “ aforesaid, Messrs William Hall and Com-
 “ pany made offer to the defender, acting as
 “ aforesaid, to purchase sixteen thousand four
 “ hundred and fifty-one feet of the said tim-
 “ ber, or thereabouts, at the price of one shil-
 “ ling and sixpence per foot, as it lay on the
 “ beach, and that the defender made this of-
 “ fer known to the pursuer ?

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“ Whether the pursuer intimated to the
 “ defender that he was willing to accept of
 “ said offer ? and Whether the defender, con-
 “ trary to his duty as agent for the pursuer,
 “ concealed from, or failed to make known to
 “ the said William Hall and Company, the
 “ pursuer’s acceptance of their offer aforesaid,
 “ to the loss and damage of said pursuer ?”

A witness examined on commission, had
 been asked his opinion of the duty of an agent ;
 and at the conclusion, a case was put, and the
 opinion of the witness asked upon the suppos-
 ed case.

Incompetent
 to prove the
 opinion of a
 witness, as to
 the duty of a
 commercial
 agent.

LORD CHIEF COMMISSIONER.—What-
 ever may be the answer to the first question,
 I shall tell the Jury that they are to take my

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opinion on the subject, and not that of the witness. I shall not prevent the answer given being read, but the second question is what we are to try; and it would be a great relaxation to allow the answer to be read.

Robertson opened the case, and stated, That the pursuer had employed the defender to sell a quantity of timber, and directed him to accept an offer made for it; but he concealed this letter, wishing to purchase the wood himself.

Jeffrey.—The question whether the letter was communicated is simple; but the real question is, Whether the defender is liable in damages for not communicating this letter, which was not an acceptance in terms of the offer, but left a discretion to the agent. The damage is not proved, as the wood was sold privately, and even at the time of the sale others were ready to give the price offered at first.

Cockburn—Said that one fact was sufficient. Hall and Company sent repeatedly to know if their offer was accepted, and the defender concealed the letter he had received from the pursuer.

LORD CHIEF COMMISSIONER.—This ques-

tion arises out of a mercantile transaction, in which an agent is bound to diligence.

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The admissions in the Issue are most proper; and there are three questions on which you must make up your minds before returning your verdict, though it is not necessary that you find them separately; a general verdict for the pursuer or defender will be sufficient.

The first is, Whether Burrel the pursuer accepted the offer of Hall and Company? On this question the important letters are two by Burrel. The first is not an acceptance; but the defender having written that that was a house of undoubted credit, you will consider whether the pursuer's answer was or was not an acceptance.

In general the Court construe a written instrument, and the Jury take the direction of the Court; but this applies more properly to cases of deeds and solemn legal instruments, or to missive letters; but in a mixed case like the present, I think it right to submit it to you, merely stating my views on the subject, for your consideration. You will therefore take the letters, and say whether, when taken together, they can bear any other construc-

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tion, than an acceptance of Hall and Company's offer.

The second question is, Whether the defender concealed this acceptance from Hall and Company? If the question of damage had been left open, concealment might have been an aggravation of damage; but in the present case, it is merely a question of whether he did not communicate the acceptance. The whole, in my opinion, goes to shew that the communication was not made; and if you come to this conclusion, then the third question arises, which is the amount of the damage. On this subject there is no appearance of any vindictive spirit; there is merely a claim for the difference of price, and the expence of seeking a market, which the pursuer was not bound to do, after accepting the offer.

Verdict---“ For the pursuer, damages
 “ L.203. 1s. sterling.”

Cockburn and Robertson for the Pursuer.

Jeffrey for the Defender.

(Agents, *Ro. Paul and John Young, s. s. c.*)