

CAMPBELL
v.
ALLAN.

am of opinion, that there is here a case to go to the Jury.

You, gentlemen, have heard the evidence and seen the witnesses, and your good sense will, in general, do as much as the experience of a Judge, in discovering where the truth lies. Some of the words in the Issue have been sworn to, and others not. If you think the words proved, you will have to consider the damages, which is entirely with you.

Verdict for the defender.

Clerk, Jeffrey, and Cockburn, for the Pursuer.

Moncreiff, J. A. Murray, and Wilson, jun. for Defender.

(Agents, *W. Dallas, w. s. and Gibson, Christie, and Wardlaw, w. s.*)

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PRESENT,

LORD CHIEF COMMISSIONER.


1820.
Dec. 15.

ROBINSON v. EDINBURGH & LEITH SHIP-
PING COMPANY.

Goods found to have been delivered to a servant of the defender.

AN action for the value of certain goods contained in boxes shipped on board a vessel belonging to the defenders.

DEFENCE.—The boxes were shipped as empty boxes.

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ISSUES.

“ Whether, on or about the 13th March
“ 1818, the pursuer did deliver to the wag-
“ goner employed by the defenders to receive
“ goods, two boxes or packages containing the
“ goods mentioned in the schedule hereunto
“ annexed, addressed to John Robinson, Co-
“ ventry, to be shipped and sent by the de-
“ fenders from Leith to London, and to be
“ safely landed and delivered at Downe’s
“ Wharf in London; and whether the said
“ boxes or packages, with the goods therein
“ contained, were landed and delivered in
“ safety as aforesaid, and in the order and
“ condition in which they were delivered to
“ the waggoner as aforesaid, to be from thence
“ transmitted to Coventry?—Or,

“ Whether the said boxes or packages
“ were delivered to the waggoner of the de-
“ fenders as aforesaid, as empty boxes or
“ packages, to be shipped at Leith, and land-
“ ed or delivered in London as aforesaid, in
“ order to be sent back to Coventry; and
“ whether the said boxes or packages, as last

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An entry in a merchant's books, good as a memorandum to refresh the memory of a witness.

“ aforesaid, were landed or delivered in London, as aforesaid, in good condition ?”

The first witness was called on to produce a book, containing an entry of the goods.

LORD CHIEF COMMISSIONER.—This is very good as a memorandum to refresh the memory of the witness, provided it was made at the time; but I doubt if the book is evidence.

Cockburn.—The second Issue may be laid out of view; and on the first, though we might perhaps raise suspicions that this is an attempt to recover the price of goods not sent, our servants having received the boxes as empty; yet, as we do not mean to lead evidence on that point, you must find for the pursuer. You are not, however, to find whether we are liable for the goods; but the dry fact, whether the packages were delivered to us properly directed.

Jeffrey.—An honest merchant brings an action to recover goods he has lost, and is met by a charge of fraud. The defender must prove that the boxes were lost in consequence of the want of a proper address. We proved that the two packages were properly directed

at the time they were delivered to the waggoner; and our complaint is, that the address was taken off, and the boxes treated as if they were empty.

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LORD CHIEF COMMISSIONER.—You are relieved from consideration of the second Issue, which did imply some charge of fraud; but as this is given up, we must consider the case as a simple question between two respectable merchants.

During the course of the trial, I had some doubts whether this Issue filled up the whole case; but I am now satisfied that it does; and that, after hearing all the evidence, we could not make the Issue different; and, therefore, a finding for the pursuer or defender will be sufficient. It is proved that *two packages* were delivered; and, therefore, the question is, whether they were properly directed, and not whether the 12 *boxes* were so. In England, this case would have been rested on the testimony of the first witness alone; but here it is necessary to have circumstances in support of his testimony; and the evidence of the waggoner as to the state in which he received them, affords such support. If you credit the witness, and I see

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no ground to doubt his testimony, you will hold that the packages were delivered to the waggoner.

The next question is, whether they were delivered in London in the same state. It is proved by the waggoner that he altered the condition of the packages before they reached Leith; and if you are satisfied that they were delivered to him properly addressed, the defenders are liable for any change made upon them by their servant.

The only point for us to consider is, whether they were delivered in London in the same state as when delivered to the waggoner in Edinburgh; and the evidence is, that they were treated as twelve empty boxes, and not as two packages. If I am right in this view of the case, then the pursuer is entitled to a verdict; but it is for you deliberately to consider the evidence.

Verdict for the pursuer on both Issues.

Jeffrey and J. S. More, for the Pursuer.

Cockburn and Boswell, for the Defender.

(Agents, Duncan and Lang, and John Young.)