

MUCKARSIE
v.
FLEMING, &c.

PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

1830.
July 12.

MUCKARSIE v. FLEMING, &c.

Finding for the
defenders on a
question of
wrongful arrest-
ment of funds,
and giving a
charge of horn-
ing after a sum
of money was
tendered.

AN action of damages against an agent and his employer for arresting the funds of the pursuer, and giving a charge of horning for payment of the balance of a bill after the sum was tendered.

DEFENCE.—The pursuer refused to deliver up to the agent a receipt said to be granted by the party for a partial payment.

ISSUE.

“ It being admitted, that on the 27th Au-
“ gust 1827, the pursuer granted to the defen-
“ ders, Fleming and Watson, a bill of exchange
“ for the sum of L. 49, 9s. 1d. and that on the
“ 5th day of January 1828, there was a balance
“ of L. 32, 12s. 10d. due on the said bill:—

“ It being also admitted, that diligence was
“ done on the said bill, and that arrestments
“ were used by the said Fleming and Watson


“ in the hands of Pillans, George Russel,
 “ and George and John Dron, on the 31st day
 “ of December 1827 :—

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“ Whether, on or about the 10th day of Ja-
 “ nuary 1828, the pursuer tendered payment
 “ of the said sum of L. 32, 12s. 10d. the ba-
 “ lance of the said bill, to the defender Archi-
 “ bald Walker, as the authorized agent, and
 “ acting for the defenders Fleming and Wat-
 “ son?—And whether the defenders, or any
 “ of them, wrongfully refused to accept the
 “ said sum of L. 32, 12s. 10d. and to deliver
 “ up the said bill, and loose the said arrestments,
 “ —to the loss, injury, and damage of the pur-
 “ suer?”

Robertson opened for the pursuer.—The de-
 fenders refused the sum tendered, and insinua-
 ted that the pursuer had altered a receipt from
 seven to seventeen, though he only stated it as
 seven.

Jeffrey, D. F. opened for the defenders.—
 The only point here is, whether we wrongfully
 refused the money tendered? Our request to
 see the acknowledgment for the L. 7 was rea-
 sonable, and the pursuer agreed to give it, but
 he departed from his agreement, and wishes to
 catch the defenders.

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LORD CHIEF COMMISSIONER.—This appears to me a very clear case. The facts appear from the admissions in the issue, and the question depends on the conduct of the one defender as agent for the other. It is clear that the pursuer went with the balance due on the bill, and if it had been a pure question on the tender, you would have had to consider whether damages were due or not. But there had been previous transactions between the parties, and it was a fit thing that the agent should get all the pursuer's receipts, that he might be able to show them to his constituents. The pursuer expressly agreed to give the receipt; and, therefore, the question is not whether his refusing to give it would have vitiated the tender. If he had given it, and the arrestment had not been taken off, there would have been a ground of action. The acceptance of the tender is clogged with a condition—he agrees to that condition—and if he had offered the receipt and the balance, and it had been refused, then it would have been a tender. The question turns on the wrongful refusal to accept,—the agent did not refuse, but proposed a condition, which was agreed to; but the pursuer gets bad advice, and does not fulfil his agreement; and can it in that case be said to be a wrongful refusal. The pursuer makes out

a case against himself; but if you have any doubt of this, the damages must be very trifling.

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Verdict—"For the defenders."

Robertson and W. Bell, for the Pursuer.

Jeffrey and Cheape, for the Defenders.

(Agents, *John Johnson, and T. Leburn.*)

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

FRASER'S TRUSTEES v. FALCONER.

1830.
July 13.

THIS was an action against an agent for having, without authority, made certain accusations in the pleadings in a submission, on account of which the pursuers had been found personally liable in expences.

Finding for the defender (an agent) in an action of relief brought against him by trustees who had been found personally liable in expences on account of statements made in the pleadings.

DEFENCE.—The pursuers sanctioned and approved of the pleadings.

ISSUES.

The issues contained an admission that the defender was employed to conduct the plead-