

It was a serious matter, and serious damages must be given.

The jury returned a unanimous verdict for the pursuer on both issues, and assessed the damages at £300.

Counsel for Pursuer—Mr Gifford and Mr Maclean. Agent—William Miller, S.S.C., and W. A. Taylor, writer, Cupar-Fife.

Counsel for Defenders—Dean of Faculty (Moncreiff), Solicitor-General (Millar), and Mr Alexander Moncreiff. Agents—Murray, Beith, & Murray, W.S.

Monday—Tuesday—July 22—23.

(Before Lord President.)

BROATCH *v.* JENKINS.

(*Ante*, vol. ii, p. 169, and vol. iii, pp. 123 and 309.)

Jury Trial—Fraudulent Misrepresentation. Verdict for defender.

Agent and Client—Agent's Account—Taxation. If an agent renders an account to a client, and taxation of it is demanded, the agent is not bound by the account rendered, but he may remodel it and increase its amount.

This case was tried before Lord Barcaple and a jury in December last, when a verdict was returned for the pursuer by a majority of 9 to 3. This verdict was afterwards set aside by the Court as contrary to evidence. The present was the second trial. The pursuer was Robert Broatch, writer in Kirkcudbright; and David Jenkins, writer in Kirkcudbright, was defender. The issue was as follows:—

“Whether the defender David Jenkins, by fraudulent misrepresentation as to the number and extent of the accounts, and amount of the balance, claimed by him from the defender James Rankine, induced the pursuer to become a party to the minute of reference No. 29 of process, as cautioner for the said James Rankine?”

The minute of reference referred to was granted on 10th November 1863, and was as follows:—

“We, James Rankine, timber merchant, residing in Kirkcudbright, eldest son and apparent heir of the deceased Adam Rankine, residing in Kirkcudbright, and Robert Broatch, writer in Kirkcudbright, as cautioner for the said James Rankine, on the one part; and David Jenkins, writer in Kirkcudbright, on the other part; Considering that the said David Jenkins and Adam Rankine had various business transactions with each other, and that the former conducted certain proceedings in the Steward Court and Court of Session, and also did a variety of general business for the latter, and also made certain cash advances to him, the accounts for which and for said business transactions and proceedings have never been adjusted nor paid; and the parties, in order to prevent disputes with regard to the adjustment of said accounts and advances, do hereby refer the said accounts and cash advances to Anthony Mackenzie, writer in Kirkcudbright, to tax and adjust the same; and whatever the said Anthony Mackenzie may fix and determine as the balance due to the said David Jenkins on said accounts and cash transactions, with any interest that may be due thereon, the

said James Rankine personally, and as apparent heir of the said deceased Adam Rankine, and the said Robert Broatch, as his cautioner, jointly and severally bind and oblige themselves to pay to the said David Jenkins, and this without prejudice to any claim of hypothec he may have over the title-deeds of the said Adam Rankine; with power to the said Anthony Mackenzie to take such probaton as he may consider necessary; and the said James Rankine personally, as well as apparent heir fore-said, binds and obliges himself to free, relieve, and skaitheless keep the said Robert Broatch of all cost, skaithe, damages, and expenses which he may sustain in consequence of his said cautionary obligation.

(Signed) “JAMES RANKINE.
ROBERT BROATCH.
DAVID JENKINS.”

The pursuer adduced as witnesses himself and the defender. The evidence of the one was diametrically opposed to that given by the other. The only other witness examined was an accountant, who explained to the jury various alterations which had been made by the defender upon the accounts which he had rendered to the late Adam Rankine prior to their being lodged with his claim in the reference. The defender led no evidence.

The LORD PRESIDENT, in his charge to the jury, directed them, *inter alia*, that a law-agent who rendered an account to a client, offered, by doing so, to accept payment of the amount stated in it; but if the client insisted on taxation of the account, or by not paying rendered legal proceedings necessary for its recovery, the agent was entitled to remodel the account and increase its amount; that in this case the defender was entitled so to remodel his account before it was laid before the arbiter, and that the pursuer, as a law-agent, must have known this rule of the profession, and he was not entitled to a verdict unless he proved the fraudulent representation set forth in the issue.

After an absence of an hour, eleven of the jury were agreed upon a verdict; and this having been announced to the parties by the presiding judge, they consented to accept the verdict of the majority as a unanimous one.

The verdict thereupon returned was for the defender.

Counsel for the Pursuer—Mr J. H. A. Macdonald and Mr William Inglis. Agent—Rob. Johnston, S.S.C.

Counsel for the Defender—Mr Pattison and Mr John Burnet. Agent—James Somerville, S.S.C.

Tuesday, July 23.

SECOND DIVISION.

CAMERON *v.* GEORGE MENZIES AND OTHERS.

Lease—Submission—Decree-Arbitral—Corruption—Failure to hear Parties. Verdict for the pursuer in an action seeking to set aside a decree-arbitral, regulating the mutual claims between an outgoing and incoming tenant, and the proprietor, on the ground that the oversman acted corruptly and before awarding his decree-arbitral did not hear the pursuer on the matters disposed of.

In this case, Mr James Cameron, tenant of the farm of Bullions, in the parish of Torryburn and

county of Fife, is pursuer; and the Right Hon. Sir James William Colville of Ochiltree, Knight, residing at Craigflower, Dunfermline; George Menzies, formerly tenant of the said farm of Bullions, presently residing at Trentham, Staffordshire; and Alexander Duncan, tenant of the farm of Pusk, in the county of Fife, and residing there, for his interest, if he have any, are defenders.

The issue sent to the jury, and relative documents, were as follows:—

“It being admitted that in the year 1861 the defender George Menzies became tenant of the farm and lands of Crombie, called the Barns and Bullions of Crombie, and others, in terms of the lease No. 12 of process, and remained tenant thereof until the term of Martinmas 1865, when he ceased to occupy the same, in terms of the minute of renunciation No. 12 of process:

“It being also admitted that the pursuer became tenant of the said farm and lands and others at the said term of Martinmas 1865, in terms of the lease No. 13 of process, and also obtained the assignment No. 8 of process:

“It being also admitted that in November 1865 the pursuer, and the defender George Menzies, and Colin M’Kenzie, W.S., on behalf of Sir James William Colville of Ochiltree, Knight, the proprietor of the said lands, entered into the submission No. 6 of process, to Robert Lucas, Bridge of Allan, and James Robertson, farmer, Hilltown of Beath, who accepted the said submission, and thereafter devolved the same on Alexander Duncan, farmer, Pusk, Fifeshire, as oversman, by the minute No. 6 of process:

“It being also admitted that the said oversman pronounced the decree-arbitral No. 6 of process:—

The decree-arbitral referred to as having been issued by Mr Alexander Duncan was as follows:—

“I, Alexander Duncan, tenant, Pusk, oversman or umpire chosen by the referees in terms of the foregoing minutes, having met with the parties, or others on their behalf, and considered the mutual claims, disputes, questions, and differences existing between them, *hinc inde*, and in virtue of the tack and renunciation referred to in a minute of reference, and having also heard the referees, and being well and wisely advised in the matters, and having God and a good conscience before my eyes, do give forth the following as my final award and sentence:—1. In regard to the claims for alleged mis-cropping the farm and lands contained in the tack, I find that the outgoing tenant is not liable in the sums claimed on that account, nor any part thereof. The farm has been left in uncommonly good condition, and, in my opinion, is not the least deteriorated. 2. I find Mr Cameron and the proprietor, Sir James William Colville, liable in payment to Mr Menzies in the following sums—*viz.*, the sum of £178, 4s. 6d., being the value of the turnips which have been measured by Mr Robert Hay, surveyor; the sum of £32, 4s., being the value of manure in the seed, also measured by Mr Hay; the sum of £351 16s., being the value of the straw effeiring to the corns proofed, including value of grey corn; the sum of £22, 1s. 6d., being the value of the horse, bones, implement shed, wooden fence, strained wire fence, wooden rhond and door, all specially mentioned in the reference; the sum

of £240, 7s. 6d., being the value of 1259 cwt. of hay, left by the outgoing to the incoming tenant; the sum of £11, 15s., being the value of rakings of wheat, barley, and oats; and the sum of £2, 12s., for thrashing the proof grain. These several sums, amounting together to £839, 0s. 6d., I decern Mr Cameron and the proprietor to pay to Mr Menzies, one-half thereof at Candlemas, and the other half at Whitsunday, both next, with interest from these terms till paid. 3. And I find Mr Menzies liable to pay Mr Cameron and the proprietor the sum of £22, 4s. 6d. in lieu of satisfaction of his obligation in the lease to maintain and leave the dwelling-house, cottages, steading, and offices, stone dykes, hedges, ditches, and drains in good order and condition, and not in need of any repairs; and I also find him liable to Mr Cameron and the proprietor in the sums of £20 and £18, 10s., in respect of having taken from an extra portion of ground, and in respect of a second cutting taken from grass land; and I also find Mr Menzies liable to Mr Cameron in the sum of £116, 12s. 10d., as the expense of stacking, thrashing, and carrying to market the crop given over to the proprietor or incoming tenant, in terms of the lease, deducting the charge for 63 acres stacked by Mr Menzies—these several sums amounting together to £177, 7s. 4d. I decern Mr Menzies liable in payment of the measurer’s fees for measuring dung and turnips, and I decern all other expenses to be paid mutually; and in respect to all other matters and claims in dispute falling under the reference to me, I ordain the parties to grant mutual acquittances or discharges, *hinc inde*, the one to the other.”

The submission mentioned was entered between Mr George Menzies, outgoing tenant, Mr James Cameron, incoming tenant, and Mr Colin Mackenzie, W.S., on behalf of Sir James William Colville, and showed that the lease of the farm of Bullions had been renounced by Mr Menzies, on condition that he should leave the whole houses, buildings, dykes, hedges, fences, ditches, drains, and rotation of cropping in the manner prescribed in the lease with regard to the last year under the tack; and that the lands of Bullions had been let to Mr James Cameron, and certain obligations of the said George Menzies, contained in the lease assigned to Cameron. In order that all disputes between outgoing and incoming tenants should be settled amicably, and that all the obligations between these persons and the landlord arranged, it was referred to Mr Robert Lucas, Bridge of Allan, and James Robertson, farmer, Hilltown of Beath, as arbiters, to pronounce decree-arbitral, or, in case of difference of opinion between the arbiters, it was to be referred to an oversman or umpire.—

“1. Whether the said oversman acted corruptly in pronouncing the said decree-arbitral?

“2. Whether the said decree-arbitral was wrongfully pronounced by the said Alexander Duncan, without hearing the pursuer on the matters thereby disposed of?

The trial occupied the Court till after six o’clock, when the jury returned a verdict for the pursuer by a majority of ten to two.

Counsel for the Pursuer—Mr Shand and Mr Asher. Agents—Messrs Adamson & Gulland, W.S.

Counsel for the Defenders—Mr A. R. Clark and Mr W. Watson. Agent—Mr D. Curro, S.S.C.