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Kennedy, who would employ him? This is a verbal injury; not mere scandal or defamation; and every case depends on its own circumstances. If Lord Kennedy was unable to pay this sum, the case might be different, as I am not prepared to say it would not be excessive, if perpetual imprisonment were the consequence.

The other Judges expressed their concurrence in this opinion, and the new trial was refused.

PRESENT,
LORD GILLIES.

GRAHAM v. GRAHAM.

1818. November 30.

Value of a house, and of political interest, ascertained.

AN action to compel payment of half the value of certain property, said to be contained in an agreement betwixt the parties.

DEFENCE.—By the agreement, the defender was the sole judge of the value, and whether any value was to be given. The pursuer admitted that he had no legal claim:

Political interest is not legally a subject of valuation.

ISSUES.

"What was the value of the mansion-
"house and offices upon the estate of Kin-
"ross, at the time the defender succeeded to
"said estate, under the transaction with the
"pursuer?

"What was the surplus value of the policy
"or pleasure ground about the said mansion-
"house at the time aforesaid, over and above
"the value accounted for under the reference
"to Mr Adam, and consequent settlement?

"What was the value of the superiorities
"and political interest upon the said estate,
"and those lying in the county of Fife, to
"which the said defender succeeded, in virtue
"of said transaction, at the time the defender
"so acquired right to them?"

The late Mr Graham of Kinross conveyed his estate to trustees, for behoof of his son the pursuer, under certain conditions.

The pursuer, entered into a transaction with the trustees, by which they agreed that he should have the value of half of the estate, as

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that should be ascertained by Mr Adam of Blairadam. The trustees having objected to any value being put on the house, and the political interest in the county, the pursuer agreed to accept of such value as his uncle, the defender, might put upon them. Mr Selkrig, accountant, was employed to make the division, after having satisfied himself of the value of the estate; and his valuation was approved of by Mr Adam. In the valuation, two views were taken of the value of the avenue in front of the house: it was valued at L.72 per annum for tillage, and L.42 for pasture; and Mr Adam adopted the latter sum as the value.

Jeffrey, for the defender.—The trustees refused to value the house, &c. as they thought it disproportioned to the estate. The value put on it by the witnesses we think extravagant, and shall prove it of no value in reference to the estate. In consequence of the decision of the Court, the Jury must value the political influence, though that was never before considered a marketable commodity.

Clerk.—The value in this case does not depend on the special circumstances, but on

the real value of the house and votes, as this was to be a fair division of the estate.

It is ridiculous to say the votes are worth nothing. It is by keeping them out of the market that the defender has twice put himself into parliament.

LORD GILLIES.—Much has been stated that is most material; but there has also been a great deal stated by way of explanation, which we must throw entirely out of our view, so far as that is possible.

We must confine our attention to the terms of the Issues, as it is by them we are limited; and we must put a fair value on the house, &c. as between man and man.

1*st Issue*.—It is vain to say that the house is worth nothing. It is proved, that, as a quarry, it would sell for L.800 or L.900; and if the proprietor keeps it up, he must consider it as worth more. We are to consider the value of the house, or its worth in the market, in reference to the estate on which it is situate. That the house is too large, was sworn to by almost every witness; but none of them said the offices were too large.

The question is the value of the house

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where it stands; and to this point Mr Brown is almost the only proper witness. The architects do not differ much from him; but they are not the proper persons to give an opinion as to its value, in reference to the estate. In opposition to their evidence might be placed the opinions of those gentlemen who considered the house a disadvantage.

It appears to me, that your good sense will probably put a value of L.1000 or L.1200 upon the offices; and something between L.900 and L.4500 upon the house.

2d Issue.—If you consider the house as a residence, the value of the avenue must remain as it is: if you consider the house as a quarry, then the higher value must be put on the avenue. But I consider Mr Selkrig's report to fix the value at the time, for either alternative, as he employed professional persons.

3d Issue.—On this we must banish all that was said of the discussion in the other Court. We are merely to return the value of the superiorities, deducting the feu-duties and the casualties. This value is what they would have sold for at the date of the agreement, if that can be ascertained. There is no direct proof of the value at that date; but you

have proof that recently the L.1 Scots sold for 20s. sterling, and that in 1810 it sold for 15s. It has not, however, been proved that the value rose from 1802 to 1810, and probably the rise was not great.

Some of the witnesses considered, that if the whole superiorities were offered for sale at once, the market might be glutted: but they merely formed their opinions on general reasoning, and an answer was made, worthy of consideration, that the whole might be an object to any person who wished the command of the county.

We are not to overset the award of the arbiter, but to put a value on what was excepted from the submission. This is an intricate case, but I have no doubt you will make a proper return upon it.

As the party seems to wish it, you may return that you took such a sum of valuation at so many shillings sterling for the pound Scots; and should the Court of Session think there were other votes which ought to have been included, they can easily do so.

Verdict,—"The Jury found L.5000 as "the value of the house and offices, and "L.7845. 8s. as the value of the superiori-

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" ties; and that no surplus value had been " put on the policy and pleasure grounds."

Clerk, Cuningham, and *Robertson,* for the Pursuer.
Jeffrey and *Cockburn* for the Defender.

(Agents, *James Robertson & Son,* W. S. and *John Campbell,* W. S.)

Expences refused, an appeal being entered.

On 31st December 1819, a motion for the expences was dismissed, on the ground that an appeal had been presented to the House of Lords, against the decision of the Court of Session.

PRESENT,
LORD PITMILLY.

1818. December 16.

TENNENT & CO. *v.* HODGE.

A Jury dismissed of consent, without returning a verdict.

IN this case, after the Jury were sworn, but before the case was opened for the pursuer, the parties agreed to a compromise.

Mr Jeffrey proposed, that the Jury should of consent find a verdict in terms of the compromise. This was objected to on the other side.