

HIDDLESTON

v.
GOLDIE, &c.

The verdict was for the pursuer on the different points in the Issues.

Cockburn, Maitland, and Whigham, for the Pursuer.

Jeffrey and Ivory for the Defender.

(Agents, *A. Goldie*, w. s. and *Wm. Bell*, w. s.)

DUMFRIES.

PRESENT,

LORD PITMILLY.

M'LEAN v. SIBBALD.

1819.

April 13.

Damages for
defamation,

AN action of damages for defamation.

DEFENCE.—No ground for the action.

ISSUES.

“ 1st, Whether, on or about the 9th day
 “ of June 1816, the defender did *insert*; or
 “ cause to be *inserted*, in the Book of Records,
 “ or Minute Book of the Kirk-session of
 “ Kirkmabreck, a certain paper referred to in
 “ the summons, defamatory of, and injurious
 “ to, the pursuer, as the act or minute of the

“ Kirk-session of Kirkmabreck, without the
“ authority of the said Kirk-session ?”

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The second Issue was, Whether the de-
fender communicated the contents of the
aforesaid writing at sundry times and places
to several individuals ?

Damages and solatium laid at L.100.

The defender was minister of the parish of
Kirkmabreck, and the pursuer one of the
elders. Certain differences occurred between
them ; and the pursuer alleged that the de-
fender got the other elders to sign a certificate,
and caused a minute to be inserted in the
Kirk-session record, which he considered de-
famatory.

In this case, a proof had been taken on
commission. When one of the witnesses was
called, an objection was taken that he had
gone with the agent, and had been present
at the examination of two witnesses.

A witness re-
jected, having
gone with the
agent, and
been present
at the exami-
nation of other
witnesses.

LORD PITMILLY.—It is impossible for
me to receive the witness.

When the deposition of one of the wit-
nesses who was dead was produced,

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Jeffrey, for the defender, objected.—Evidence of what a dead man has said, is only competent after the better evidence is exhausted; and there are two members of Session not yet called. This proof was *ex parte*, as there was no condescendence, or any intimation that the proof was going on.

Cockburn, for the pursuer.—The defender declined the jurisdiction of the Court, and did not attend. The objection rests on the mere fact of his not being present.

LORD PITMILLY.—I am not aware of the rule contended for by the defender, that all the superior evidence must be first exhausted. If this is competent evidence, I cannot interfere to prevent the pursuer producing it at the time he thinks proper.

In my opinion the evidence is admissible, but liable to observation to the Jury. In the Court of Session it was found that this proof was regularly taken, and therefore I am bound to receive it here. When it was said to be *ex parte*, all that was meant was, that no one was present on the part of the defender, to cross-examine the witness. It is therefore defective, and liable to this objection.

When one of the witnesses formerly examined was called, the counsel agreed in opinion, that he was entitled to read his former deposition.

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A witness examined on commission, allowed to read his deposition before being examined.

Before closing his case, the pursuer gave in the process in the Court of Session.

Jeffrey.—The pursuer must close his case.

LORD PITMILLY.—If he wishes to have any passage read from the process, he ought to point it out.

Jeffrey.—This is a case not to get reparation for a real injury, but an attempt to gain a victory. If the paper was improperly inserted in the minutes of the Kirk-session, it was done by a regular meeting of the Session; and being an ecclesiastical offence, cannot be corrected in the civil court. The only point of any importance therefore is, whether he fabricated it; and if you find for the pursuer on this, you must then consider whether it is libellous.

Cockburn.—We are only anxious for a verdict in vindication of character—not for high damages. We do not accuse the de-

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fender of forgery, but that he caused this to be inserted without authority.

There is no question here, whether the defender has suffered damage, as he has a separate action.

We wish a verdict as a ground for the Church Court ordering this to be erased.

LORD PITMILLY.—At an early stage in this cause in the other Court, I expressed a desire, that it should be settled out of Court. But the parties were entitled to judge for themselves; and our duty now is, to decide it, with reference to the justice of the case—not to which party was right or wrong in continuing the discussion.

The only points in this case are contained in the Issues. There is no question of forgery: it is only whether this paper is injurious, and was inserted without authority.

On the first question you will judge whether you can doubt that the paper is injurious. On the second, whether it was inserted in the minutes, without the authority of the Kirk-session, there is evidence on both sides.

The paper consists of two parts; and you must decide whether the part which appears objectionable, was approved of by the Session.

If you think it injurious, and that it was inserted without the authority of the Session, then the justification flies off.

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2d Issue.—It appears that the contents of this minute were shewn to several of his brethren, but it was not extensively circulated.

If the defender inserted the minute without authority, it was certainly blameable; but neither party come off well; and we have seen a great deal too much temper in this case.

“ Verdict for the pursuer, damages 1s.”

Cockburn, Maitland, and Hamilton, for Pursuer.

Jeffrey and Ivory for Defender.

There was a counter action by the defender in the above case, against the pursuer. It had been agreed that the same Jury should try both cases. No additional evidence was produced in the second case, but it was opened on both sides; and after the reply for the pursuer, Lord Pitmilley, shortly stated the case to the Jury, who returned a verdict for the pursuer, damages 1s.

Jeffrey and Ivory for Pursuer.

Cockburn, Maitland, and Hamilton for Defender.