" tinued to be such until near its termina- " tion. 2*d*, That he has acted several times " as a partner of said company. 3*d*, That " he has admitted himself to be a partner, " but has not held himself out as a partner " to any persons who furnished articles for the " use of the manufacture."

SMITH v. PULLER.

Cockburn for the Pursuer.
J. S. More for the Defender.

(Agents, *J. F. Orr*, w. s. and *J. Stewart*.)

PRESENT,
LORD CHIEF COMMISSIONER.

WALKER *v.* ARNOT.

1820. Nov. 27.

AN action of damages for defamation.

Damages for defamation.

DEFENCE.—A denial of having stated any thing defamatory.

The case was tried on the 8th November, and the Jury found for the pursuer, damages 1s.

Costs allowed where one shilling damages was given for defamation.

WALKER v. ARNOT.

Jeffrey moved for costs to the pursuer.

Cockburn and *Murray* objected.—The Jury only gave 1s., which does not carry costs. In the case of Sibbald, *ante*, p. 122, tried at Dumfries, when 1s. was given, the Court of Session refused expences; and in this Court they were also refused, in a case tried at Glasgow. By the law of Scotland, a person is not entitled to bring an action in the Court of Session for less than L.25; and probably in that Court the expences would have been given the other way. In England, by the statute of Gloucester, and other acts, 1s. in a case of this sort, does not carry costs.

Jeffrey.—This was a case of gross defamation, clearly proved; and being a new case, is well worthy of consideration. There were specialties in the case referred to. It is said the Court of Session would not give expences where the damages are under L.25; but they have given expences without any damages.

LORD CHIEF COMMISSIONER.—I wish to consider this, and shall give the decision on a future day; but will now state how the case strikes me at present.

If damages are really nominal, it is the same as a verdict for the defender; and on that ground costs are not given. But in the

present case, it is impossible for me to divest my mind of the impression, that, if the verdict had been found for the defender, a new trial would have been granted, on the ground of the verdict being contrary to evidence. At the trial, an objection was taken to evidence, and an attempt made to shew that the evidence had been prepared; but I was of opinion, that the agent for the pursuer acted properly, and I received the evidence. The case was clearly proved, and I left it to the Jury as a case fair and fit to be brought; but as it was proved that the defender was a carter, I even more anxiously than usual urged upon the Jury the necessity of being moderate in their damages, and the Jury may have acted under the impression of this direction.

Being ready, if called on, to certify that this was a fit case to be brought, and the defamation being proved, I am at present of opinion, that costs ought to be given; but I wish to have an opportunity of conversing with my brethren.

Two days after, in presence of the other Lords Commissioners, his Lordship stated, There ought to be a statutory regulation of costs; and in that case the rule should be, that costs should follow the certificate of the

WALKER v. ARNOT.

Judge who tried the cause. As in this case I am ready to grant such a certificate, we are of opinion, that costs ought to be given.

On a subsequent day, on a motion to approve of the Auditor's report, it was proposed that part of the expence should be struck off, on account of the smallness of the damages.

LORD CHIEF COMMISSIONER.—In this Court the damages are left to the Jury, and they have in this case found damages. The present question does not depend on the amount, but whether it was a fit case for an action. I formerly stated, that it appeared to me that the action was properly brought; and therefore, unless there is any objection to the report by the Auditor, we must approve of it.

PRESENT,

THE THREE LORDS COMMISSIONERS.

1820. Nov. 27.

SKENE *v.* MABERLYS.

AN action of damages for a nuisance.

DEFENCE.—A denial that a nuisance existed.