

CHAPELAIN  
v.  
BAILLIE, &c.

PRESENT,  
LORD CHIEF COMMISSIONER.

1821.  
March 17.

CHAPELAIN v. BAILLIE, &c.

Damages for  
the rent of a  
house.

AN action for the rent of a house let to the  
defender.

DEFENCE.—No bargain was concluded.

ISSUES.

“ Whether, at Edinburgh, on or about the  
 “ 16th day of December 1819, the defender,  
 “ Archibald Christie, servant to Lieutenant-  
 “ General Mathew Baillie, did hire, or agree  
 “ to hire, for the use of the said General  
 “ Baillie, a house or lodging, No. 18, South  
 “ Castle-street, from the pursuer, for the pe-  
 “ riod of four months, from the 16th of De-  
 “ cember aforesaid, at the rate of L.12. 12s.  
 “ per month? And, whether the said de-  
 “ fenders, one or both of them, have failed to  
 “ implement the said agreement, by refusing  
 “ to pay the stipulated hire at the periods the  
 “ same became due; and whether they still  
 “ continue to refuse to pay the same?

“ Whether, at Edinburgh, on or about the  
 “ 16th day of December 1819, the defender,  
 “ Lieutenant-General Mathew Baillie, did by  
 “ himself, or by Archibald Christie, his ser-  
 “ vant, acting in his name, and by his autho-  
 “ rity, hire, or agree to hire, the house or  
 “ lodging, No. 18, South Castle-street, in the  
 “ City of Edinburgh, from the pursuer, for  
 “ four months from the said 16th of Decem-  
 “ ber, at the rate of L.12. 12s. per month?  
 “ And, whether the said defender, General  
 “ Baillie, has failed to implement the said  
 “ agreement, by refusing to pay the stipulat-  
 “ ed hire at the periods the same became due;  
 “ and whether he still continues to refuse to  
 “ pay the same?”

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An application was made on the 6th De-  
 cember 1820, to separate the case of the two  
 defenders; and another on the 19th February  
 1821, to separate the two Issues.

When parties  
 are joint de-  
 fenders in the  
 Court of Ses-  
 sion, the Jury  
 Court will not  
 grant separate  
 trials.

On the first application, the LORD CHIEF  
 COMMISSIONER stated—That he did not  
 think it fit matter for the Court to look  
 into at that time; and that there was a  
 technical difficulty in the way, as they were  
 joint defenders in the Court of Session. On  
 the second occasion, his Lordship said—

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If the two Issues are tried together, and if it comes out that the servant was made a party, to deprive the master of his testimony, I would direct the Jury to return their verdict, first as to the servant, and then as to the master, as it would then be the duty of the Court to interfere.

A witness, who had attended General Baillie as a sick nurse, having stated, on her cross-examination, that the General did not like a letter sent to him by the pursuer, and that he had given up the house,

*Jeffrey*, for the pursuer, objects.—This is not evidence, being merely declarations by the defender.

LORD CHIEF COMMISSIONER.—The evidence is given ; and I do not at present think it incompetent. You asked the witness as to what the General said ; and they are entitled to sift the witness, to explain her answer to your questions. But proof of the contract being abandoned, or of its never having been entered into, cannot be got from declarations by General Baillie.

It is clear that you may cross-examine, to the full extent of the examination in chief, to try the truth of the evidence in chief ;

and also to all matter that may try the accuracy, or the general character, of the memory of the witness. The point here is, whether the questions are fair, to explain what you asked; and I so consider them.

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*Brown* opened the case for the pursuer, and stated—That Christie, the servant of General Baillie, looked at the house, and agreed to hire it; and ordered fires, and some additional furniture.

*Moncreiff*, for the defender.—The pursuer mistook a mere looking at the house, for hiring it. There is no evidence of authority to Christie, and he had no authority to take the house.

*Jeffrey*.—The hiring is proved; and if hired, it must be held to be hired for the General.

LORD CHIEF COMMISSIONER.—The question here is, Whether the contract of hiring was completed? or Whether there was only an intention to hire? One part of the Issues is now out of question; and the points are, Whether Christie had authority to hire the house? and Whether the house was hired?

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This is one of those contracts which is not reduced to writing, and where parol testimony is admissible; for though there is a letter in this case, that letter is not intelligible without the parol testimony.

The first witness is the one on whose testimony the hiring depends; and if you think the hiring is established, then the authority to hire must be drawn from all the circumstances of the case.

The testimony as to the precise date, is subject to the observation that has been made upon it, that the witness did not specify the reason for remembering it. You saw the witness Christie, who appeared to me a fair witness, and he has now no interest to speak falsely.

As to the agency, this is not a matter requiring written authority; and it appears to me, that this person acted with others as if he was so employed; but there is no evidence of his being so employed; and his own evidence goes to prove, that he had no authority.

The rent might have been proved by proving the value of the house. It has not been distinctly proved, but seems fairly stated in the schedule.

Verdict—"For the pursuer on the second  
 " Issue, against the defender, Lieutenant-Ge-  
 " neral Mathew Baillie, damages L.52. 12s.  
 " 5 $\frac{3}{4}$ d." FORTEITH  
 v.  
 THE EARL OF  
 FIFE.

*Jeffrey and Brown* for the Pursuer.

*Moncreiff* for the Defenders.

(Agents, *James Crawford*, w. s., and *Campbell and Clayson*, w. s.)

PRESENT,

THREE LORDS COMMISSIONERS.

FORTEITH v. THE EARL OF FIFE.

1821.  
 March 20.

DAMAGES for defamation in a judicial proceeding, and for afterwards circulating the calumny. Damages claimed for defamation in a judicial proceeding.

DEFENCE.—The averments in the summons are not, and cannot be, relevantly laid. The extrajudicial slander was not uttered.

The statements made by his counsel were different from what is alleged, and the defender believed, and had reason to believe the statements made to be true. They were made judicially, and are material to the question at issue.