

have had evidence of the information he had; and the only question is, if the defender had fair and credible information, and reasonable ground to make the statement; for proof of the truth of the facts would not have been competent.

The words are proved. The question is, whether the justification is proved; and if you think the statements were made with a pure mind, you will find a verdict for the defender?

Verdict—"For the defender on all the
"Issues."

Thomson, Moncreiff, Lumsden, and Robertson, for the Pursuer.

Clerk, Jeffrey, and J. A. Murray, for the Defender.

(Agents, *J. S. Robertson, w. s. and Inglis & Weir, w. s.*)

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PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.
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M'NAB v. TELFER.

SUSPENSION of a threatened charge on a bill

M'NAB
v.
TELFER.



1821.
June 18.



A bill found to be a fictitious document, but that it was not represented at the time of delivery, as good and sufficient.

M'NAB
v.
TELFER.

of exchange, on the ground that the only consideration given for it was a bill, which the charger knew to be a forgery.

ISSUES.

“ 1st, Whether the bill in process, dated
“ 20th May 1819, for L.66. 12s. purporting
“ to be drawn by Joseph Johnstone, and to
“ be accepted by John Campbell, Preses of
“ the Society of Grocers and Spirit-dealers at
“ Dalry, in the county of Ayr, which bill is
“ admitted by the defender to have been the
“ value given by the said Joseph Johnstone
“ to the pursuers, in return for the bill
“ charged on; was a fictitious and false docu-
“ ment, in respect there was no such person
“ as John Campbell, the supposed acceptor,
“ and no such company as the Society of Gro-
“ cers and Spirit-dealers at Dalry aforesaid ?

“ 2d, Whether, at the time the pursuers
“ received the said bill, dated the 20th May
“ 1819, the defender represented to them that
“ the said bill was a good and sufficient or
“ genuine document ?

“ 3d, Whether, at the same time the pur-
“ suers received the said bill, dated the 20th
“ May 1819, the defender knew or believed

“ that the said bill was a false and fictitious
“ document ?”

M^cNAB

v.

TELFER.

Incompetent
to prove, by
parol evidence,
who accepted a
bill.

A witness having stated that he had formerly discounted with a bank, a bill which he got from the defender, and which not being paid, the defender promised to take up from the bank, was asked by whom the bill was accepted.

Cockburn, for the defender—Objected.

LORD CHIEF COMMISSIONER.—Was any notice given to the defender to produce this bill? If notice was given, or if it is proved that the bill is lost, this may be competent, but not otherwise. I have no objection, however, to take the evidence that the defender retired the bill; but I cannot take parol evidence of who accepted it.

Jeffrey opened the case for the pursuer, and stated—The question here is, whether there was no value given for the bill in question, and whether the pursuer was by fraud induced to put his name on it. We shall prove that Telfer knew that this was a forgery. This is not a question for punishment, but resisting an attempt to recover

M'NAB
v.
TELFER.



from the pursuer a debt due by an outlawed felon.

Cockburn, for the defender.—The observations and evidence do not apply to the Issue. The pursuer has undertaken the proof of a transportable felony. Even in the civil question, the presumption of innocence applies, and you must have direct proof of the crime. We are not here to try or form any opinion on the question of value.

On the second Issue there must be a verdict for the defender. There is no evidence of any representations by him.

On the third the pursuer makes his stand; but the evidence does not apply; for the witnesses, though they disputed Johnston's solvency, never suspected forgery.

LORD CHIEF COMMISSIONER.—The case has been closed without any evidence for the defender, and none was necessary. It is quite true that we are only to find the fact; and a distinct answer to the questions in the Issues is all that is necessary, as the case is not final here.

There is no difficulty on the first Issue, as it is admitted that the bill is a fictitious docu-

ment; but it is extremely material to attend to the terms of the other two Issues, as they are to determine the case.

The Issue is inaccurate in not stating the date of the transaction, which I shall state as the 14th August 1819; and the time is material, as the question is, whether at that time the defender knew that this was fictitious. There is no doubt of what has been stated, that fraud must be proved, and is not to be presumed; but it is also clear, that being of a secret nature, direct evidence is not to be expected, but it is to be inferred from facts and circumstances.

After stating the evidence on the second and third Issues, his Lordship said—That if the Jury took the same view of the evidence with him, they would find for the defender on the second Issue; and that on the third, they must consider whether the statement, that “things were not in a right course with John-ston,” applied to his credit, or his conduct relative to this transaction.

Verdict.—“The Jury found the bill a fictitious document: That the defender did not represent it as a good and sufficient document: That it was not proven that he

M^cNAB
v.
TELFER.


SCOTT
v.
M'GAVIN &
OTHERS.

“knew or believed it to be a fictitious document, at the time he gave it.”

Jeffrey and *M'Neill* for the Pursuer.

Cockburn and *Anderson Blair* for the Defender.

(Agents, *D. Mactavish*, w. s. and *Thomas Cranstoun*, w. s.)

PRESENT,

THREE LORDS COMMISSIONERS.

1821.
June 25.

SCOTT v. M'GAVIN & OTHERS.

Damages for
defamation.

AN action of damages for defamation.

DEFENCE.—The defender being ready to support by evidence, every statement made by him, waives an objection to the relevancy on the ground of counter-defamation, by the pursuer or his friends.

The pursuer, in this case, is the Roman Catholic clergyman in Glasgow. The present was an action of damages for defamation inserted in the Glasgow Chronicle newspaper; and in three numbers of a publication called