remedy in this case, and it is important that this should appear in your Lordship's notes.

LORD CHIEF COMMISSIONER.—The second ground is law, to which you may except, and you may consider of the other, upon which I am ready to hear you at Chambers.

PRESENT,

LORD CHIEF COMMISSIONER.

1822. July 12.

LINDSAY *v.* GILCHRIST and BLACK.

A finding that a subscription to a bill was not the handwriting of the party.

SUSPENSION of a threatened charge, upon a bill of exchange, on the ground that the acceptor's name was forged.

ISSUE.

"Whether the name of James Lindsay, "subscribed to the bill in process for the sum "of L. 197, dated 13th June 1815, and bear- "ing to be drawn by Jabez Auld, and address- "ed to James Lindsay of Hatchbank, is not "the true and genuine subscription, and pro- "per handwriting of the said James Lind- "say?"

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There were issues in similar terms as to three other bills.

A defender may prove documents on cross-examination, but, if he uses them in evidence, the pursuer has a reply.

In the course of cross-examining a witness for the pursuer, the counsel for the defenders showed him some documents. On an objection stated,

LORD CHIEF COMMISSIONER.—You may ask the witness as many questions, and show him as many documents, as you think proper, in this stage of the cause; but if you read these documents, if you use the paper, or if it forms part of your case, it is your evidence, though proved by a witness for the pursuer.

An engraver admitted to prove, that, in his opinion, a name subscribed to a bill was not in the same handwriting as other documents shown to him.

When Mr Lizars, an engraver, was called,

J. A. Murray, for the defenders, objected.

Rutherford, for the pursuer.—This is the common proof of forgery, first to prove the genuine handwriting of the party, and then to prove, by persons of skill, that the forged document differs from it. The defenders had full notice that this proof would be brought.

LORD CHIEF COMMISSIONER.—I think this admissible, as comparison of handwriting is competent. It is the common course of the law of Scotland to admit it, and much of the

objection which may belong to such evidence is removed in this case, by direct evidence having been given, in the first instance, by persons acquainted with the handwriting. In England, the distinction established is, that persons of skill may be called to prove that a writing is in a feigned hand, but it is not allowed to compare it with other writings, and state their belief as to their being written by the same, or a different person—but in this country it is established that this is competent evidence.

A witness, to refresh his memory, allowed to look at a note made by himself.

Mr Kirkwood, another engraver, in the course of his examination, wished to look at a note he had made when he formerly examined the bills.

LORD CHIEF COMMISSIONER.—You may look at the note, if it was made at the time, to refresh your memory as to the opinion you then formed, and then you will give your testimony, according to your opinion.

A document not having been produced eight days before a trial, a party not entitled to show it to a witness.

On cross-examination, he was shown a bill.

Jeffrey, for the pursuer, objects, It was not produced eight days ago.

J. A. Murray.—It is to try the skill of the witness.

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LORD CHIEF COMMISSIONER.—Your examination is good, if you had put yourself in a situation to use this document. But if I admitted this, you might produce a cart-load of papers, which the other party had no means of examining before the trial.

In opening the case for the defender, Mr Murray referred to the practice in the House of Commons.

LORD CHIEF COMMISSIONER.—It is better not to refer here to the practice of that House; but if it is done, the practice ought to be correctly stated.

A document being produced, does not necessarily go to the Jury.

At the conclusion of the case for the defenders, the hornings raised upon the bills were produced.

Jeffrey.—These are not to go to the Jury.

LORD CHIEF COMMISSIONER.—It seems to be the general opinion, that a document, by being put in, goes of course to the Jury to examine; but this is a mistake; it is for the Judge to say what does or does not go to the Jury.

Rutherford opened the case, and stated, Those who know Lindsay's handwriting will prove that the subscriptions are not his writing; and engravers, by comparison with genuine writings, will prove the same, and will point out in what they differ. The defenders will rest much on the pursuer having acquiesced, when a demand was made for payment; but that question is not here, and he did not question them at first, from a belief that they were part of a number of bills he had signed.

Murray.—The Bank discounted these bills in the *bona fide* belief that they were genuine. No person has been called who was acquainted with the transaction; and of the two who knew Lindsay's handwriting, one acquired his knowledge subsequent to the date of these bills. Persons of skill have also a bias to discover that a writing is in a feigned hand, and there is much danger in allowing comparison of handwriting. He then stated several facts to prove the acquiescence of the pursuer.

Jeffrey.—The only question is, Whether this is his handwriting? not whether he is liable to pay the bills. The only proof in a case of this sort is by a person who saw him sign, or who saw another sign, or by an inference from facts and circumstances; and in this case, as there

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is no direct evidence, the only proof is by comparing the writing with genuine writings, or with the recollection of those who know his writing.

LORD CHIEF COMMISSIONER.—Mr Jeffrey properly and truly says, that the only question is, Whether these are Lindsay's handwriting? Other matter may have arisen in the course of the trial as to his transactions relative to these bills, but these are subjects for consideration in the ulterior stages of this cause.

The case has been most ably conducted, and the proof brought in the best manner, by first calling those who knew the handwriting, and then persons of skill;—first laying the foundation in the true evidence, and then bringing forward the criticisms of the men of skill. Those who speak from knowledge of the writing can alone properly speak to belief, and that may be repelled by contrary evidence of the same nature.

I shall not enter into the minute differences pointed out by the engravers, but they both swore that these subscriptions were in a feigned hand. To this extent, evidence of persons of skill is admitted in both ends of the island; and it is most important, as it is the foundation

of what they farther state as to this not being the writing of this person. There is no evidence of this sort on the other side, but the defence is rested on the transactions of this person in reference to these bills, and you are to take these into consideration, and say whether they are sufficient to counteract the evidence for the pursuer.

It would not be a wise exercise of discretion in a Judge to withdraw these documents from the Jury; but Jurors ought, in all cases, to act upon evidence, and it would be very dangerous were the Jury to judge of whether they are feigned or not. The purpose for which they are introduced is, that we may have an opportunity of comparing them with the evidence, and this applies to me as well as you, the Jury. Were I to form my own opinion on the subject, I might think the address and the acceptance were different; but the witnesses say they are written by the same person, and you will judge of the reasons they give for saying so. You will look at the bills, not to judge by your skill in handwriting, but to see whether the witnesses properly describe the dissimilarity.

You have nothing to do with what may ultimately become of the case, but are to judge

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whether the defender's evidence is sufficient to overturn the evidence for the pursuer;—to me that evidence appears not to be sufficient, but it is entirely for your consideration.

Verdict for the pursuer on all the issues.

Jeffrey and *Rutherford*, for the Pursuer.
J. A. Murray and *Wilson*, Jun. for the Defenders.
(Agents, *Pat. Orr*, w. s., *Dav. Welsh*, w. s.)

PRESENT,

LORD CHIEF COMMISSIONER.

1822. July 13.

Damages for wrongous imprisonment.

BEVERIDGE *v.* SCOTT and OTHERS.

AN action of damages for wrongous imprisonment.

DEFENCE.—The diligence was regular, on a bill accepted by the pursuer. A special defence was put in for one defender, that he acted, in discharge of his duty, as a messenger. And the defence for others was, that they acted merely as office-bearers of a Mason Lodge.

The issues were, Whether a bill for L. 100, &c. was accepted by the pursuer solely in his