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Judge at the trial to say whether he is or is not liable, and then the party will have his redress by Bill of Exceptions.

It appears to me that it would not be the exercise of a sound but an unsound discretion, were we to remit it to the Court of Session.

PRESENT,

THE LORD CHIEF COMMISSIONER.

1823. Feb. 19.

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Damages claimed for defamation.

AN action of damages for defamation, against the defenders as editor and printers of a newspaper called The Scotsman.

DEFENCE.—The words do not bear the meaning put upon them. They were fair observations on the pursuer's language and conduct at a public meeting. The statements are true, or at least the defenders had good reason to believe them to be so. One of the articles does not apply to the pursuer.

A certificate was engrossed in the deposition of a witness examined on commission, as to the pursuer's character.

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Jeffrey, for the defender.—To save the time of the Court, we object to this and all other evidence as to the pursuer's conduct as a gentleman, as we never attacked it.

LORD CHIEF COMMISSIONER.—If this case rested on the first issue alone you may be quite right; but if he makes out that the letters in the second issue apply to him, then the whole goes to his character as a gentleman.

A witness was asked, whether he read the passage quoted in the second issue at the time it was published, and whether he understood the meaning of it, and that it applied to the pursuer.

LORD CHIEF COMMISSIONER.—You may ask whether he understands it now, and if he has himself made out the meaning, it will be evidence; but if it was explained to him it is incompetent.

Incompetent to suggest to a witness any part of the answer expected.

A witness, not recollecting what was said at the meeting, was asked, if any thing was said about Government, &c.

LORD CHIEF COMMISSIONER.—This is incompetent. You must stand to the rule of not sug-

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gesting to the witness the answer, or any part of it.

Robertson.—In Baird and M'Lellan a speech was proved by calling witnesses in this manner.

LORD CHIEF COMMISSIONER.—Was not the trial in that case for sedition, and the speech rested on as an act? The question is not important in the present instance, but in others it may be very important.

The way to get a report of a speech is for the party to state that it is the speech he delivered; that he wrote it before, and spoke it from the writing; if this cannot be had, the next best evidence is the party swearing to what he spoke, as he alone can know what was in his mind; the next is by a short-hand writer.

There was much discussion on this subject in Hastings's case, and there it was held, that the regular course was to call the short-hand writer to the bar, to state that he took it down at the time, and that he believed it accurate. This was allowed in that case, as the writer stated that, in taking it down, he attended merely to the words, not to the meaning.

Incompetent to ask a witness

A medical gentleman was called, and it was

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whether he considered the statements in the issues injurious to the pursuer.

proposed to show him the issues, and ask him whether he considered the statement injurious, and a printed report of the case Gibson *v.* Stevenson was relied on.

LORD CHIEF COMMISSIONER.—The question put in Gibson's case was objected to, and I thought it objectionable.

I took the distinction there that the question was general, and not to prove a particular instance.

I thought the witness in that case (Sir R. Dundas) was called for the purpose of proving that the pursuer was the person meant in the libel, and I have no recollection of allowing the question now proposed. If it was put, I am sure I meant to check it, but there was some degree of confusion in the examination, and I wish what is there printed not to be taken as a precedent.*

Such evidence is surely not necessary in this case, and if you mean to prove his loss of a patient in consequence of this publication, that is quite competent.

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* What is stated in the report of that case, *ante* p. 216, contains, I believe, the doctrine laid down by his Lordship at the time, and probably the error in the report referred to arose from the confusion in the examination mentioned by his Lordship.

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Similar publications in other newspapers not a defence in an action for defamation.

I am happy to have so soon an opportunity of correcting an error that has got into the printed report of the former case.

The defenders put in evidence, a copy of the Weekly Journal newspaper containing an account of the Pantheon Meeting.

LORD CHIEF COMMISSIONER.—How is this admissible? All the other newspapers may have been mistaken. It does not appear to me that this can be received even in diminution of damages. The publication by the pursuer of his speech is evidence; but here there is no transaction of the parties.

M'Neill, in opening the case, and *Robertson* in reply, admitted the propriety of allowing free discussion, but maintained, that it ought to be checked when it attacked an individual.

In the present case, the attack is personal; for though the insanity is said to be political, the evidence was an attempt to prove it real. We proved that this paragraph was applied to the pursuer, and deny that it is necessary to prove that it was meant to apply to him.

Holt, L. of Libel, 231, &c. (2, 3, 5.) Jardine *v.* Creech, 22 June 1776, M. 3438, and App.

Allusion to a party by initial letters, subjects in damages.

Jeffrey, for the defender.—This is an at-

tempt to get damages from the honourable partialities and prejudices of a Jury differing on political questions from the defenders.

The alleged libel is not founded in falsehood, but the facts are stated, and are substantially true, and the account of the meeting was given in all the newspapers.

One part of the statement is personal, and not political, but it does not apply to the pursuer. In the authority referred to, the initials were those of names, not of general terms.

The summons is brought for the purpose of political oppression, not for reparation, as the author is not prosecuted, though his name was given, and an offer made to publish an explanation. The pursuer has failed to prove that this applies to him. You must judge whether the witnesses had reason so to apply it.

LORD CHIEF COMMISSIONER.—I shall be as short as I can in this long case, and in reference to the allusions made from the Bar, I must state it as a great satisfaction to me, that, after six years' experience, I can say, that the Juries have not gone by any thing but the case made out before them, and that I have no doubt the gentlemen I now address will do the same, and that they will receive from me, as law, any direction I give them on that subject,

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and that any observation I make on the facts will be received with candour.

The questions arise on three issues, which it will be necessary to consider in detail, but I shall first make some general observations.

It has been said, and truly, that the liberty of the press, when rightly understood, is the foundation of all liberty. But the liberty of the press consists in there being no censor of the press, no previous licence required, but every one has a right to publish. When he does publish, however, he must take care that he does not trench on the fame and interests of individuals, as these are protected by the right to claim damages.

The present is an action of damages of this nature; and I consider the situation of a person the same, and his conduct liable to the same discussion, whether he is a public functionary having the duty thrown upon him, or an individual taking upon himself a sort of public duty. In either case, I consider their measures, and conduct as referable to these measures, subject to free discussion. But if this discussion transgresses the bounds of free general discussion, and becomes personal, then, by the law throughout the United Empire, the publisher is responsible.

Within the limits I have stated there may

be many degrees; but if the publication diverges from public to private matter, the party has right to reparation and damages. A member of the state, or any inferior public officer, is liable to have his conduct submitted to public animadversion and discussion; and however severe, and however it may affect his feelings, such a publication will be protected; but if private or personal matter is brought forward, or the individual turned into ridicule, that alters the nature of the discussion.

This is the law applicable to those who have the duty thrown upon them; and I conceive those who take a duty upon themselves are protected in the same manner. If a person goes to a public meeting, and there expresses an opinion, the public are entitled to have that opinion and his public conduct discussed, and the publisher will be protected under the principle I have mentioned; but if the discussion becomes personal, if it descends to individual attack, he will be liable in damages.

In this case, I shall only consider the evidence as it applies to the rule I have stated, and on one branch of the case, perhaps, there was a culpable latitude allowed in the evidence as to character. The defender not having averred the truth of his allegation, the in-

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ference drawn from the pursuer's appearance could only go in mitigation of damages, and you are therefore to look to his conduct at the meeting, and say how far you think it ought to go in mitigation of damages. It is said this only meant political insanity; but though this was a political meeting, you must observe that part of the evidence went to prove that the witnesses thought him really insane.

M'Ewan *v.* Magistrates of Edinburgh, 3 July 1733, M. 3434.

The principle upon which you are to decide is laid down in an early case in this country, and the same principle is adopted in England, which I do not mention as authority, but to show that the two laws are consistent.

Stuart *v.* Lovel, 2 Starkie, 96, *N. P.* Cases.

In the present instance, the frantic spirit of the Tory party is described, but you must say whether this is not afterwards applied to the pursuer, and if this is not public discussion, but ribaldry and personal abuse, you must find damages, but modified according as you think the whole or only a part applies to him.

On the second issue, the great question is, Whether it is of and concerning the pursuer? and it is said that you are to take the evidence on this subject only as an assistance, and that you are to judge whether the witnesses had good grounds for drawing the conclusion they did. I cannot agree in this doctrine. If a

passage clearly relates to a pursuer, then the Jury may draw this conclusion without evidence; but if it requires evidence, and if evidence is brought, then they have only to judge whether the witnesses speak true; and if it is made out by the evidence of credible witnesses to apply to the pursuer, the Jury must go along with them.

After stating the evidence on this point, his Lordship said, You are to say if that is credible testimony, and if it is so, that binds you on the fact; and I tell you, in law, that if credible it is sufficient.

His Lordship then commented on the terms used, and submitted to the consideration of the Jury, whether madman could mean political madness, and said that, though he had stated it as a case for damages, there were many circumstances, which he mentioned, affecting the amount.

Verdict — "For the pursuer, damages L.100."

Robertson and *M'Neill*, for the Pursuer.

Jeffrey for the Defender.

(Agents, *Wm. Ritchie*, S. S. C. and *Alex. Fleming*, W. S.)