

character of the servant ; and the question is on the last words of the letter, “ whose character is so little approved of, and so despised “ by every one in the neighbourhood.” It was not, however, intended to go farther than the master ; and but for this action it would not have gone further.

The first part of the letter I do not consider actionable, but the latter part is sufficient to sustain a verdict for the pursuer ; and one for the defender would be inconsistent with law. You will therefore consider the whole circumstances, and say what damages you will give as *solatium*, for there has been no pecuniary loss.

Verdict—For the pursuer, damages L. 10.

*Jeffrey and Skene*, for the Pursuer.

*More*, for the Defender.

(Agents, *Peter Crooks*, w. s. *J. Campbell Junior*, w. s.)

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PRESENT,

FOUR LORDS COMMISSIONERS—LORD PITMILLY ABSENT.

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M'CANDIES v. M'CANDIE.

1827.  
March 21.

AN action of damages by a nephew and his

Damages for  
defamation.

M'CANDIES  
v.  
M'CANDIE.

M'CANDIES  
v.  
M'CANDIE.

wife against his aunt for defamation of the wife in letters addressed to the husband and his friend.

DEFENCE.—The terms used are not actionable ; and if they were, the defender was justified in using them from the situation in which she stood. There was no publication. The letter to Robertson came into the pursuer's hands by a breach of confidence, and he has barred himself by his delay in bringing his action.

Incompetent to put a new meaning on a libel at the trial.

*Skene* opened the case for the pursuers, and said, Part of one of the letters may mean that.

LORD CHIEF COMMISSIONER.—You cannot now put a meaning on the passage, but must be bound by your *inuendo*.

*Skene*.—We are merely to prove facts, and the jury are to draw the inference. The defenders are not entitled to prove the facts true ; and writing to the husband is publication sufficient.

Hutchison v.  
Naismith, 18th  
May 1808.

*Hope, Sol.-Gen.* for the defender.—It is difficult to know whether to treat this case with ridicule or indignation. A nephew brings an action against his aged aunt, who had treated him as a mother, for stating to him what she received on credible information ; but

which, if true, she would rather pay damages than take an issue to prove. I admit that writing to an individual entitles to damages ; but saying a man is despicable does not entitle to damages. There must be some specific charge.

*Jeffrey*, in reply, said, The jury must give damages ; and the only question is, Whether anything had been proved to take off from the injurious characters of the letters ? The words are actionable ; and it is not true that the report was believed at the time ; but if it had, the propagator of a report is equally liable with the originator. It is not necessary in Scotland to charge any specific crime.

LORD CHIEF COMMISSIONER.—We must act according to what is law, and not according to what we wish to be law. There is no one but must wish that such a case had been settled in a private forum ; but there is no doubt that it is competently brought, as anything in a private letter, which is injurious to the feelings of the individual, is actionable by the law of Scotland. This is the law ; but juries ought to be particularly cautious in *apportioning* the damages, which is their part of the tribunal. There is no loss proved ; and in giving the *solatium* for the distress of mind, you must be careful to measure it according to the original

M'CANDIES  
v.  
M'CANDIE.



Borth. Lib. 185.

CLARK'S TR.  
v.  
HILL & C.

state of the injury, and not to give it for the publicity the accusation has now got, as the publication was by the pursuer.

There is no doubt the letters contain slanderous matter, as the defender applies epithets as well as states facts; but you will consider them in reference to the relation and situation of the parties. This is an action by a nephew against his aunt for a private communication of an infirmity of his wife, stated no doubt in language stronger than was proper; and the epithets show her anger at the marriage. This gives a right to maintain the action; but it is for you to say what *solatium* you will give; and in a family question you should be extremely cautious.

Verdict—For the pusuers, damages L. 50.

*Jeffrey and Skene*, for the Pursuers.

*Hope (Sol:-Gen.) and Buchanan*, for the Defender.

(Agents, *Campbell and Tod*, w. s. *Hugh Macqucen*, w. s.)

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PRESENT,

LORDS CHIEF COMMISSIONER, CRINGLETIE, AND MACKENZIE.

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1827.  
March 22.

Damages for  
abstracted mul-  
tures.

CLARK'S TRUSTEE v. HILL AND OTHERS.

AN action by the tenant of flour mills to re-