

QUIGLEY
v.
REID.

On the other side, the evidence is, that this road was used by the public without any one being stopped; that it was used as a church road; that it was repaired by the public; and, if this had been done at a remote period, it would have been conclusive. You will consider the evidence as to the repair of the road; and the person who made the statement being dead, it is my duty to tell you that the witness's report of what he said is evidence by the law of Scotland.

Verdict—For the defender.

Rutherford and Wilson, for the Pursuer.

Cockburn and Cowan, for the Defender.

(Agents, *William Mercer*, w. s., *Donaldson and Ramsay*, w. s.)

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PRESENT,

LORD GILLIES.

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QUIGLEY v. REID.

1827.
Sept. 22.

One shilling damages found for using an irregular warrant.

AN action of damages for executing an irregular justice of peace warrant, and for using arrestment to an excessive amount.

DEFENCE.—The defender is not responsible for any irregularity, as the warrant was in the form used in the district of the county.

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ISSUE.

The issue contained an admission that the debt of L. 2, 12s. 7d. was due; that the pursuer was cited to appear before the Justices; and that arrestments were used in the hands of several individuals. The questions then were, Whether the pursuer was cited by virtue of an illegal and irregular complaint, &c. to the injury, &c.? and, Whether arrestments were used to the extent of L. 30 or L. 40?

Mr Donald opened the case for the pursuer, and stated the facts, and that an offer had been made to compromise the case. To this an objection was stated; and Lord Gillies said he did not consider it in the cause. Mr Donald then went on to state various particulars in which the warrant was irregular.

LORD GILLIES.—If it is illegal in one point, is that not sufficient? The number of the irregularities does not appear to me to bear upon the amount of the damages.

Donald.—I shall confine the case to the want

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of signature by the clerk ; and in a case at Glasgow, where an inventory was merely taken with a view to poinding, L. 120 damages were given.

When a witness was called to prove that the error was not a common one,

LORD GILLIES.—I cannot allow this. It would be proving against a practice which is in the face of an act of Parliament.

3. Mur. Rep. 494.

Cowan, for the defender.—I rest on the doctrine laid down by the Lord Chief Commissioner in the case of Rankine and Mac-laren ; and shall prove that in this case the nominal party is not the real one.

LORD GILLIES.—Do you mean to say that this warrants a verdict for the defender ?—you should have taken an issue on this. I cannot inquire into this, as Mr Donald appears here for the person you call a nominal party.

(*To the Jury.*)—This is a short case ; and though it may be hard for the defender, there is no doubt that a party is liable, not morally but legally, for the agent he employs. The signature of the clerk is required by the act of Parliament, and the want of it is a gross irregularity. The pursuer discovers this irregularity, and brings his action. I cannot com-

mend him for doing so ; but here we are only to look to the legality of his conduct.

He appears to me to have brought his action on legal grounds, but to have failed in proving any damage, you should therefore find for him ; but if you agree with me in thinking that he has failed in proving damage, you should find nominal damages, and may find one farthing or a shilling. This does not decide the expense, as that is a matter for the Court ; but you ought to do your duty, and to presume that the Court will do what is right as to expenses.

Verdict—For the pursuer, damages 1s.

Donald, for the Pursuer.

Cowan, for the Defender.

(Agents, *James Gemmel*, w. s., and *Thomas Gairdner*, w. s.)

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PRESENT,

LORD CHIEF COMMISSIONER.

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TAYLOR & Co. v. SIR WILLIAM FORBES & Co.

1827
Nov. 21.

THIS was an action of damages for breach of contract.

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Finding for the  
defenders on an  
issue whether  
the trustee and