

a case against himself; but if you have any doubt of this, the damages must be very trifling.

FRASER'S TR.
v.
FALCONER.

Verdict—"For the defenders."

Robertson and W. Bell, for the Pursuer.

Jeffrey and Cheape, for the Defenders.

(Agents, *John Johnson, and T. Leburn.*)

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

FRASER'S TRUSTEES v. FALCONER.

1830.
July 13.

THIS was an action against an agent for having, without authority, made certain accusations in the pleadings in a submission, on account of which the pursuers had been found personally liable in expences.

Finding for the defender (an agent) in an action of relief brought against him by trustees who had been found personally liable in expences on account of statements made in the pleadings.

DEFENCE.—The pursuers sanctioned and approved of the pleadings.

ISSUES.

The issues contained an admission that the defender was employed to conduct the plead-

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ings in the submission, and that the pursuers had been found personally liable in expences. The question then was, whether the pleadings contained certain words, (which were quoted?)

“ And whether, without the authority or sanction of the pursuers, and contrary to his duty, as agent aforesaid, the defender did insert, or cause to be inserted, the whole, or any part of the said words, in the said pleadings, or any of them, and did lodge, or cause to be lodged, the said pleadings, or any of them, in the said submission? and whether the words so inserted and lodged, without authority, and contrary to his duty as agent aforesaid, were the grounds on which the said arbiter found the pursuers personally liable in payment of expences, and that they were not entitled to charge against the trust-funds the expences incurred by themselves, as aforesaid? and whether, in consequence thereof, the defender is indebted and resting owing to the pursuers in the sum of L. 567, 3s. 5d. or any part thereof?”

Robertson opened for the pursuers, and stated the facts, which gave rise to the submission in which the statements were made.

Jeffrey, D. F., opened for the defender,

and said,—This was a disreputable case, as the pursuers were fully aware of the statements, but wished to throw over the expence on the agent. It is only for *gross* negligence or mismanagement that an agent can be subjected, and here there was none, as the pursuers authorized and sanctioned the statements. I am not here to justify the statements made ; but, in the circumstances, they were not such as to subject any one in expences—it is extravagant and monstrous to attempt to get them from an industrious agent.

Skene, in reply,—The real question is, whether a paid agent is or is not to relieve his unfortunate employers from the damage done to them by him ? If he had acted with ordinary prudence, good sense, and temper, there would have been no such finding. There is no question here of the truth of the charges, as in every point the decree finds them unfounded. The question is not the malignity of the pursuers against the person accused, but whether the defender so acted as to free himself from the damage done by his conduct, and by persevering in charges after they were disproved.

LORD CHIEF COMMISSIONER.—This is not a question depending on malicious purpose, but

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is a dry question, whether the defender discharged his duty in such a way as to prevent the pursuers from being relieved of the expences to which they were subjected by the Solicitor-General. When an agent is called on he is bound to do the service with fair professional skill, and if the client suffers from the want of this, the agent ought to be made responsible to the client; but the case is not the same as to statement of facts, many of which must be stated on the authority of the client, or, if not so authorized at first, still, if they are communicated to and approved by the client, the agent must be relieved. In the ordinary case, trustees who act for others, and act *bona fide*, are not personally liable for the expences of the trust; but in this case the expence is not laid on the trust, but on the individuals, on the ground that they asserted matter which ought not to have been stated.

There is no doubt the defender inserted the statements; the only question is, whether he did it under proper authority, or without it, and on his own responsibility? If he was the head and hand who did it, then the pursuers are entitled to relief. Stating them "without authority, and contrary to his duty as an agent," is the ground on which he is liable, but on the facts proved you are to say whether it was with-

out authority. To require evidence of authority for each detached fact, would render it impossible to conduct business. The question is, Whether, from the general authority, sanction, and approbation which he had, he acted according to directions in stating them? You must consider the facts proved as to the leading pursuer, and an important letter written by him; and if that amounts to acquiescence or approval, then this expence cannot be thrown on the agent. From what was proved, will you not presume that the pursuer knew the contents of the paper; and would it not be dealing too strictly with an agent to require proof of direct authority? When an agent acted fairly and honestly, and when his conduct was not checked but approved by the pursuer, will you subject him in those expences, or allow them to remain on the pursuer, where the arbiter has placed them?

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Verdict—"For the defender."

A motion for a New Trial was made in the Court of Session, but refused on the 3d February 1831.

A New Trial refused.

Skene, Robertson, and Dauney, for the Pursuers.

Jeffrey, D. F., Forsyth, and Sandford, for the Defender.

(Agents, *John Shand, w. s. and Alexander Johnston, w. s.*)