SPINK
v.
JOHNSTON.

PRESENT,

THE LORD CHIEF COMMISSIONER.

1830.
July 14.

SPINK *v.* JOHNSTON.

In an action to reduce a holograph deed, finding for the pursuer, subject to the opinion of the Court on a case.

REDUCTION of a holograph deed of settlement, on the ground of deathbed.

DEFENCE.—The deed bears a true date, and was not executed on deathbed.

ISSUE.

"It being admitted that a deed bearing to "be dated 14th January 1821, and of which "No. 14 of Process is a copy, is holograph of "the late James Spink, lieutenant in the royal "navy.

"Whether, at the time the said deed was "executed, the said James Spink was *not* on "deathbed?"

Neaves opened for the pursuer.—This deed bears date six years before the death of the testator; but it is sufficient if we prove its existence more than sixty days before his death. There was a person who saw it much more

than that period; and there are minute circumstances in the deed itself, and the parties named in it, which confirm the truth of its date. The only question is, Whether one of the alterations in it was made on deathbed? but the witness will prove that the deed she read contained alterations, and a provision in favour of the person there named.

A deed shown to a witness that she might prove its identity.

The witness having stated that she read the deed, and having detailed a number of the provisions in it, was shown the deed, and desired to say whether it was the paper which she read.

One witness may prove that a communication was made to him by another, but not the contents of the communication.

When the brother of the witness was called to prove a communication made to him by her,

LORD CHIEF COMMISSIONER.—You may prove that a communication was made to him, but not the contents of the communication.

Skene, for the defender, said, There were several points of law which could be better determined on a case than by a verdict.

LORD CHIEF COMMISSIONER.—This is the proper course in such a case; but the jury must be satisfied that this is the will which was seen by the witness. It is established that a will in

MASON
v.
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his handwriting existed years before the death of the testator; the witness saw it in a place where it was natural that it should be, and at the time she mentioned to the other witness that she had seen it. As to the contents, they are not the question before you, but simply whether this is the deed she saw some years before his death; and if you, the jury, are of opinion that it is, you will find for the pursuer on a case to be made up.

Verdict—"Of consent, the jury found for "the pursuers, subject to the opinion of the "Court of Session, on a case to be settled by "the parties."

Hope, Sol.-Gen., and *Neaves*, for the Pursuer.
Skene and *Bell*, for the Defenders.
(Agents, *James Morgan*, and *Thomas Deucher*.)

PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

1830.
July 16.

MASON *v.* MERRY.

Finding for the defender in a reduction of a deed.

REDUCTION of a contract and other writings, on the ground of force and fear—that the contract was not read to the party—that the name