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PRESENT,

LORDS CHIEF COMMISSIONER AND GILLIES.

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GODDARD and COMPANY v. HADDAWAY.

1816.  
November 4.

A statement by one party, in pleadings before an arbiter, may be a complete set-off to a claim of damages on account of a statement made by the other.

THIS was an action of damages for slander.

DEFENCE.—A denial of any intention to defame, and *compensatio injuriarum*.

ISSUES.


“ Whether the defender, some time in the  
 “ year 1813, in a submission to John Green-  
 “ shields, Esq. advocate, then acting as arbiter  
 “ between the parties, in a cause subsisting be-  
 “ tween them, did slander and injure the pur-  
 “ suers in their character, credit, and reputa-  
 “ tion as merchants, by a paper writing deli-  
 “ vered to the said John Greenshields, as such  
 “ arbiter, in the following terms, viz. ‘ The  
 “ pursuer does not hesitate, in conclusion, to  
 “ assert, that the whole account produced by  
 “ the defenders savours of fabrication from be-  
 “ ginning to end ; as two or three days previ-  
 “ ous to its production, in going hastily into

“ the counting-house, he observed a ledger new-  
 “ ly wrote, and a young man in the very act of  
 “ inserting his account in said ledger, at which  
 “ he expressed his astonishment at the time,  
 “ and came off with very unfavourable impres-  
 “ sions of his antagonist, which has since been  
 “ verified to his sad experience. The pursuer,  
 “ with all submission, offers these remarks,  
 “ with a full conviction of the responsibility he  
 “ is under to his all-seeing Judge, if he has  
 “ dared to advance a single allegation not  
 “ founded on strict fact ?’


“ And whether, upon an apology being re-  
 “ quired by William Goddard, one of the pur-  
 “ suers, the defender did not say that he had  
 “ stated nothing to the arbiter but what was  
 “ true, and would therefore make no apo-  
 “ logy ? And whether the defender has not  
 “ published and spread the calumny before  
 “ mentioned ?

“ And whether the pursuer has not since,  
 “ viz. in the year 1813, slandered the defen-  
 “ der, and, among other things written, in the  
 “ course of the legal proceedings between the  
 “ said parties, that, with regard to the price of  
 “ the malt, the letter produced shows, that,  
 “ even according to Mr Haddaway’s first offer,  
 “ it was not to be 36s. per boll ; and yet it is

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“ entered in his books at that rate ; his books,  
 “ therefore, are entitled to no faith whatever ;  
 “ and, with regard to the commission being 6d.  
 “ per boll, such a thing was never heard of  
 “ when the price was, at the same time, gua-  
 “ ranteed, as was the case, by Goddard and  
 “ Company having become the purchasers  
 “ themselves, Mr Haddaway’s books being out  
 “ of the question, the price of 34s. being fair-  
 “ ly entered in Goddard and Company’s origi-  
 “ nal day-book, and the high probability that  
 “ the pursuer would come down a little from  
 “ his first offer, seem, when united, very suf-  
 “ ficient to satisfy the mind of the arbiter  
 “ that the price was no more than 34s. per  
 “ boll ?”

The issues show the nature of this case, which was said by the defender to be intended as a set-off to the preceding action at his instance against the pursuer.

The papers given in to the arbiter were admitted on both sides, and two witnesses were examined for the defenders, who detailed the assault, the ground of the preceding case.

*Cockburn*, for the pursuers, contended, This is a charge of fraud and fabrication ; the de-

fender published it ; and even if he had not, writing such a charge to a person himself is actionable. If the retort is calumnious, the defender may bring his action, but cannot plead it here.


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*Jeffrey*, for the defender, answered, This is not actionable. It is merely a statement that the pursuer was dilatory in making up his ledger ; it was given in to a private judge, and never published ; the statement for the pursuer in the same submission is equally strong, or even stronger, and in addition, he was guilty of an assault on the defender's person. In the former case the Court found damages due, but here that point is left open.

LORD CHIEF COMMISSIONER.—This case has been conducted with a clearness, shortness, and precision highly commendable. There is no proof that the statement in the first issue was circulated, or even was shown to any one but the arbiter.

The second issue is sent to ascertain if there is not a *compensatio injuriarum*. A party claiming damages must come into Court with clean hands. The pursuer has attempted to do himself justice, and did not bring this action

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till the action for the assault had been some time in Court.

A private letter may entitle a person to claim damages, but it will not be rigorously construed, and here the counter-statement must be considered.

That an account “ savours of fabrication,” and that books “ are entitled to no faith whatever,” are statements so nearly balanced, as to throw the damages out of sight. We are both clearly of opinion that the compensation is made out, and that there ought to be a verdict for the defender.

Verdict for the defender.

*Baird and Cockburn, for the Pursuer.*

*Forsyth, Jeffrey, and Brodie, for the Defenders.*

(Agents, *D. Murray, w. s. and James Spence, w. s.*)