CHRISTIAN *v.* LORD KENNEDY.

1818. November 27.

New trial refused; damages not excessive.

THIS case was tried on the 6th day of July 1818, and the report will be found at p. 419 of the first volume. The Court of Session granted a rule to shew cause why there should not be a new trial in this case.

Grant on New Trial, 213.

Jeffrey shewed for cause, that granting a new trial is one of the most delicate duties the Court have to perform, and is a remedy for an erroneous verdict, of recent introduction. The defender has not made out his case. Damages cannot be said to be excessive, when they are only a little more than double the sum the *party* expected to pay. It was said the expressions were used in the heat of blood, and were warranted. That is disproved by the report of the evidence.

Clerk.—I am sorry to find the Court doubtful about granting a new trial, when the damages are so excessive. The dictionary shews, that up to 1800 the highest damages given in a case of this description, were L.40. (see

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M. 13,923). Since then L.50 were given; Hutchison *v.* Naismith, 18th May 1808. M. App. Delin. No. 4. And in an aggravated case, where the defender was a man of fortune, L.300 were given; Caddel—*n. r.** Even in the Jury Court the sums have been only L.100, L.5, L.900, and L.80, for a most impudent libel.

LORD ROBERTSON.—As this is not a case of difficulty, I shall state my opinion in one word—that there is no ground for a new trial. But in the infancy of this institution, it is perhaps right to say a few words on the principles on which new trials ought to be granted.

Granting a new trial is in the discretion of the Court; but it is not to be rashly or hastily exercised. Were we to grant new trials on the ground that the sum is larger than we would have given, this would in fact be taking out of the hands of the Jury the assessment of damages. It is only in cases where the damages are out of all bounds excessive, that

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* See 3d July 1798, M. 12,010; and 19th January 1799, M. 12,375.

the Court will interfere. This is an action for falsely and injuriously aspersing the character of the pursuer; and it is the peculiar province of the Jury, by the law and constitution of the country, to assess the damages; and I should be sorry to disturb it. I have heard nothing here to satisfy me that the damages are excessive. On two occasions the defender might have retracted; and the evidence shews the pursuer's character was fair at the time. In these circumstances, no new trial ought to be granted.

LORD GLENLEE.—I am against a new trial, but must confess, that, though a verdict is not to be rashly touched, yet, if excessive damages are given, it must be taken into serious consideration. A verdict is not to be touched for a few pounds; and in this case I do not think the Jury have given more than I would have done.

In Caddel's case, the nature of the injury was very different. Here it is accusing a man of dishonesty in his profession; it is falsely and injuriously accusing him of having cheated—there is the sting. He might act as a scoundrel with some, and not so with others; but if it was believed that he cheated Lord

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Kennedy, who would employ him? This is a verbal injury; not mere scandal or defamation; and every case depends on its own circumstances. If Lord Kennedy was unable to pay this sum, the case might be different, as I am not prepared to say it would not be excessive, if perpetual imprisonment were the consequence.

The other Judges expressed their concurrence in this opinion, and the new trial was refused.

PRESENT,
LORD GILLIES.

GRAHAM v. GRAHAM.

1818. November 30.

Value of a house, and of political interest, ascertained.

AN action to compel payment of half the value of certain property, said to be contained in an agreement betwixt the parties.

DEFENCE.—By the agreement, the defender was the sole judge of the value, and whether any value was to be given. The pursuer admitted that he had no legal claim: