

that moderation which is the best way of doing justice.

AITKIN
v.
REID, &c.

Verdict—"For the pursuer, L.30 damages against Reid, and L.20 damages against Fleming."

Jeffrey for the Pursuer.

Forsyth for Fleming.

Cockburn for Reid.

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PRESENT,

LORD CHIEF COMMISSIONER.
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BEATSON v. DRYSDALE.

1819.
July 8.

AN action of damages for assault and battery.

Damages for assault and battery.

DEFENCE.—A denial of the assault charged.

ISSUE.

"Whether, upon the 18th day of August 1818, or about that time, the defender did, at or near the harbour of Burntisland, vio-

BEATSON
v.
DRYSDALE.

“ lently assault or strike the pursuer? Or
“ did also violently plunge or immerse him
“ in the water of the said harbour, to the in-
“ jury and damage of the said pursuer?
“ Damages laid at L.500.”

A number of boys were at play near the defender's garden, and the pursuer and another boy were passing. A stone was thrown into the garden, and struck the servant of the defender, on which the defender came out, and chased the pursuer, and beat and plunged him in the harbour.

The wife of John received as a witness, though described in the list as the wife of James.

The first witness called was the wife of John Johnston, inspector of herring fishery.

Forsyth objects.—She is not in the list of witnesses. There is the wife of *James Johnston*.

LORD CHIEF COMMISSIONER.—Is James the inspector of herring fishery at Burnt-island? If so, I think that sufficient designation in so small a town.

Cockburn, for the defender.—This is a foolish case; and as no damages have been proved, the Jury have no right to shew their opinion of the defender's conduct. He had

reasonable grounds to believe that the pursuer threw the stone.

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v.
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LORD CHIEF COMMISSIONER.—This is a very short case; and, as it is proved, the only question is the damages.

I do not understand the doctrine, that though an assault is proved, no damage is done. The only defence to the action is to set up and prove a justification.

In such a case as the present, you ought to be sure of your ground before giving exemplary damages; and excessive damages ought never to be given. Where an action is for a debt, a verdict must be given, whatever consequences may follow; but where the action is for damages, all circumstances must be taken into account, and the damages fixed with moderation.

Verdict—“ For the pursuer, L.80 damages.”

Jeffrey, for the Pursuer.

Forsyth and *Cockburn* for the Defender.

On a motion for expences, Mr Forsyth stated that the damages were too high.

The amount of expences does not depend on the amount of damages.

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LORD CHIEF COMMISSIONER.—That is a matter we cannot take into consideration. The damages are in the hands of the Jury, and we cannot say that we are to affect their verdict in giving expences.

LORD PITMILLY.—This is impossible, it would be taking the question of damage out of the hands of the Jury.

LORD GILLIES.—On the principle contended for at the Bar, if we thought the damages too low, we might give high expences, and thus render the Jury a nullity.

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PRESENT,

LORD CHIEF COMMISSIONER.
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MACKENZIE v. MURRAY.

1819.
July 9.

Damages
claimed for de-
famation.

AN action of damages for defamation.

DEFENCE.—There was no intention to defame, and no injury followed.

ISSUES.

“ 1st, Whether, on or about the 6th day