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by the defender, or twisting the neckcloth by the pursuer, first took place. But I have perhaps gone too much into detail in such a case as the present.

Verdict—"For the pursuer, damages L.25."

*Sandford* and *Maclean* for the Pursuer.
*Moncreiff* for the Defender.

(Agents, *D. Fisher* and *James Balfour*.)

PRESENT,

LORD CHIEF COMMISSIONER.

1820. March 14.

## CAMERON *v.* CAMERONS, &c.

Damages for arresting the stocking on a farm.

DAMAGES for arresting the pursuer's stock on a farm, for payment of rent, subsequent to an offer of payment to the factor of the proprietor.

DEFENCE.—The pursuer's conduct rendered the arrestment necessary; and the defenders did not use it maliciously.

ISSUE.

"What loss and damage the pursuer has
"suffered, in consequence of the sequestration
"executed, or caused to be executed by the
"defenders, on or about the 6th day of Fe-
"bruary 1817, upon the farm of Lundavra,
"rented by the pursuer from the defenders,
"for the sum of L.18. 13s. 8d. as one year's
"rent of said farm."

The LORD ORDINARY found damages due, and sent the case to the Jury Court to ascertain the amount.

When part of a letter is given in evidence, the whole letter ought to be read, if the opposite counsel thinks it necessary to the understanding of the passage given in evidence.

The first piece of evidence was a passage from a letter. Mr Clerk, for the defenders, wished the whole letter read.

LORD CHIEF COMMISSIONER.—In this case, I understand Mr Clerk to say, that the whole is necessary to understand the passage relied on by the pursuer. In the practice to which I have been accustomed, when a part of a letter was given in evidence, the whole was read at the time it was given in, if, as in the present case, the opposite counsel wished it.

The first witness for the pursuer was asked

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if a sequestration being laid on, was injurious to a tenant; to which Mr Clerk objected.

LORD CHIEF COMMISSIONER.—It appears to me, that it is not fit to prove a self-evident proposition. It is quite competent, however, for the pursuer to prove any actual loss he has suffered, and for the defenders to shew, that in the particular circumstances of the case, the sequestration was not injurious.

A witness, on cross-examination, referred to a letter, and was allowed to look at it to refresh his memory.

Incompetent by parol evidence to prove the contents of a receipt.

The witness was then asked as to a receipt given for rent.

LORD CHIEF COMMISSIONER.—You ought to have given them notice to produce the receipt, before giving evidence of its contents. The question is irregular on another ground, as you now state there is a witness who is to produce the receipt.

*Jeffrey*, for the pursuer.—This is a case peculiarly fitted for a Jury, as the damage is not to be ascertained by calculation, but by a fair estimate of the injury done by a se-

questration. Saying a man is bankrupt subjects in damages, and this is much stronger.

*Clerk*, for the defenders.—The whole proof in this case has been for the defenders. The sequestration was laid on before the rent was paid, and you therefore cannot find damages. Though damages are found due by the Lord Ordinary, yet, as none have been proved, you cannot find any. Clark *v.* Thomson, (Vol. I. p. 187.) He has not proved that he had any credit to lose.

LORD CHIEF COMMISSIONER.—From the turn this case has taken, it is important for you, and particularly for me, to consider the interlocutor of the Lord Ordinary, on which this Issue is founded. It is said that you are not entitled to give damages, as none have been proved; and reference is made to the case of Clark and Thomson; but there the claim was for an actual loss. In every question of account, the doctrine there laid down applies, but it does not apply to the claim for *solatium*. I must take the Issue and interlocutor as they stand, and together. If no damages are proved, you cannot find them; but there is a claim for *solatium*, and you must

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consider what evidence there is of the injury to the mind and feelings.

The chief part of the case depends on the parol testimony, which proves the offer of the rent both in Edinburgh and the country. So that the real object of the sequestration appears to have been, not to get the rent, but to get quit of the tenant. This is not a question of patrimonial loss, but solatium; and you are to consider what, under all the circumstances, is an indemnification for what the pursuer has suffered. Questions of this sort ought always to be considered with moderation, and not with a view to punish the defenders, but to repair the injury to the pursuers.

Verdict, "For the pursuer, damages L.50."

*Jeffrey* for the Pursuer.
*Clerk* for the Defenders.

(Agents, *J. B. Hyndman*, and *D. Cameron*.)

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1820. Nov. 27.

Costs follow the verdict.

Mr Jeffrey moved, in presence of the three Lords Commissioners, for expences, which Mr Clerk opposed.

LORD CHIEF COMMISSIONER.—From the

commencement of this new Institution, I thought it most important that there should be some regulation on the subject of costs. Giving costs is no doubt a matter of discretion here, as it is in the Court of Session; but this Institution is borrowed from England, where costs are regulated by statute, and it is a *desideratum* whether we ought not to have a general regulation similar to theirs.

When the condescendence and answers are reduced to a single sentence, and the parties go to issue upon this, and damages are found; if, on the question of expences, we are to hear the whole case argued again, it would be like trying the case again, and allowing a new trial on the ground of excessive damages. The manner practised in the Court of Session, of giving a slump sum for damages and expences, is impracticable here; and in the present case, I have not heard any ground to induce us to give expences subject to modification. I am not aware of any case in which this has been done, where the question, as in the present instance, was left to the Jury. Of all cases, this does appear to me one in which we ought not to deviate from the general rule followed since 1816. The order

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must be general, but the party may object to any charge he thinks improperly made.

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

1820.
March 15.

## REID *v.* STODDART.

Found that the purchaser of a share of a lottery ticket had abandoned his purchase.

DAMAGES for selling the one-sixteenth share of a ticket in the State Lottery, after it had been sold to Stoddart.

DEFENCE.—The purchase was not completed. Stoddart abandoned the purchase.

ISSUE.

"Whether, upon the 19th September 1813, "the defender abandoned and gave up the "purchase of the one-sixteenth share of the "ticket No. 3934, in the State Lottery, admitted to have been purchased by the defender from the pursuer, upon the 18th "day of September aforesaid?"

On Saturday the 18th September, in Reid's