

“ proceeding on the voyage aforesaid :’ Find,
 “ on the *second* issue, that, at the time of her
 “ being so damaged, the said vessel was in pi-
 “ lot’s fair-way, but was not in a situation
 “ where a pilot might have been had, and, there-
 “ fore, was not in a situation where a pilot
 “ ought to have been on board, and the said
 “ vessel had not a pilot on board at the time of
 “ her being so damaged as aforesaid.”

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This verdict was afterwards abandoned, and a verdict entered for the pursuer, subject to the opinion of the Court of Admiralty, on a case agreed upon by counsel, and drawn up from the Lord Chief Commissioner’s notes.

Jeffrey and _____, for the Pursuers.
Moncreiff and *Jamieson*, for the Defenders.
 (Agents, *Ramsay* and *Imrie*, and *Wm. Miller*.)

=====
 PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

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ARMSTRONG v. VAIR and ALSTON.

1823.
 Feb. 28.

THIS was an action of damages for sending a challenge to fight a duel—for posting the pursuer as a coward, &c.—and for a libel con-

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tained in a narrative by Mr Alston “ of the
“ circumstances of the affair between Mr Vair
“ and Mr Armstrong.”

DEFENCE.—The pursuer had induced a young lady to break her promise of marriage to Mr Vair—he accepted the challenge, but did not come out—the publication contained the truth—and was provoked by a written statement by the pursuer.

The issues as to Mr Vair were, Whether he sent a letter containing a challenge?—Whether he wrote, composed, &c. the placard and the narrative? And as to Mr Alston, Whether he delivered the letter, knowing its contents?—Whether he wrote, &c. the placard and the narrative? with the same conclusions as in the other issues.

Two issues were taken in defence, Whether the pursuer agreed to meet and fight? And, Whether he wrote or published a statement, &c.? But no issue was taken on the truth.

The deposition of a haver produced by one party, given in evidence for the other to a certain effect.

The deposition of the pursuer, as a haver, was put in without objection, but on the deposition of his friend, Mr Thorburn, being presented,

LORD CHIEF COMMISSIONER.—I suppose both these are consented to.

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Jeffrey, for the pursuer.—They are put into process by the defenders, and we are entitled to rest upon them.

The next evidence tendered were opinions given to the pursuer, upon which he ultimately refused to fight.

LORD CHIEF COMMISSIONER.—That steers very near what is objectionable on other grounds than those referring to the interest of the parties.

A witness having stated that she took a copy of one of the letters to Mr Vair, was desired to look at it.

LORD CHIEF COMMISSIONER.—As you have endeavoured, but failed, to get the original from the defender, if the witness swears this to be a true copy, it is not only evidence, but better than her statement from memory.

When evidence was tendered of the character of the defender,

LORD CHIEF COMMISSIONER.—As this is

A party may prove the contents of a written document regularly called for, but not produced by the opposite party.

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not objected to I shall not interfere, but wish it not to be drawn into a precedent.

McNeill opened the case for the pursuer, and stated the facts.

Cockburn, for the defenders.—This is purely a question of reparation, and not to put down duelling. The defender, Vair, appears here to vindicate *his* character, and not to save L. 500 or 500 farthings. He does not deny the facts, but the cause of quarrel.

Jeffrey.—Many parts of this case are painful, and the pursuer claims compensation, not for bodily fear or disclosure of truths, but for the publication of falsehood.

LORD CHIEF COMMISSIONER.—This is purely a question for the Jury; indeed, more so than any at which I have presided.

The case is brought on two grounds. 1. The challenge. 2. Libelling in the placard and publication. The issue as to the challenge was met by the answer, that he accepted it. Those as to the libel were met by an answer, which is, as near as can be, of the nature of a set-off.

In Scotland, sending a challenge is actionable, and we have tried a case of this sort, which was sent at a time when the issues were approved

of in the Court of Session ; and, therefore, I have no doubt that this in law forms a ground of action.

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There is a question, whether the pursuer accepted the challenge; as that would take away his right of action. If there had been a direct acceptance, there would have been no difficulty, but the proof of acceptance rests merely on suspicion ; it is only an inferential or constructive acceptance, of which you must judge from the evidence. The next question is, whether the libellous matter was published by the pursuer, and if it was, whether it compensates the whole or only part of what was published by the defender. The question is, whether he took the law into his own hands, and how far the words take off from the severity of those on the other side.

In estimating the damages, you will also consider the extent of the publication of each. If the words had been such as to absorb those in the statement, they would have taken away the right of action, though the number of copies was not the same ; but, if it is a lighter publication, you must balance the account, and consider them as affecting the amount of damages.

This is a very painful case, and it would have been better had it never been brought ; but the

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pursuer having brought it, must stand by the consequences of a disclosure of his conduct in the delicate affair to which it relates.

Verdict—For the pursuer on the first seven issues, and for the defender on the eighth; damages L. 20.

Jeffrey and M'Neill, for the Pursuer.

Cockburn and Maitland, for the Defenders.

(Agents, *Ed. Hoygan*, w. s., *Rt. Strachan*, and *John Patison jun.*, w. s.)

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PRESENT,

THE LORD CHIEF COMMISSIONER.

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1823.
March 4.

CRAIG v. BUDGE.

Findings that a written agreement had not been departed from, and a verbal one entered into.

THIS was a suspension of a decree of the Sheriff of Caithness, on the ground that the Sheriff had no jurisdiction. That he refused to allow the pursuer to establish a parol agreement by parol evidence.

ISSUES.

“ It being admitted that a written agreement,
“ dated 12th March 1819, was entered into be-
“ twixt the pursuer Alexander Craig, and the