PRESENT,
THE LORD CHIEF COMMISSIONER.

COOPER v. MACINTOSH.

1823. July 17.

Damages for defamation.

DAMAGES for defamation in a newspaper, and in letters to the Lord Lieutenant and Member of Parliament for the county of Inverness.

DEFENCE.—So far as the averments are intelligible, they are denied. The defender, being a Justice of Peace, was entitled to state *facts* confidentially to the Lord Lieutenant and Member of Parliament. The defamation was provoked, and has since been compensated.

The issues contained long extracts from the newspaper, and from the letters; and the questions put, were, Whether they represented the pursuer, as acting from corrupt motives, as destitute of honour and truth? &c.

An issue in justification was taken upon certain resolutions passed at a meeting at Inverness, at which the pursuer was present.*

---

* The letters and resolutions in this case, were the same as those founded on in the case of Tytler, *ante*, p. 236.

COOPER v. MACINTOSH.

A verbal inaccuracy in an issue corrected before proceeding to trial.

Before proceeding to trial, a doubt was stated as to the competency of correcting two words, inaccurately copied in the issues.

LORD CHIEF COMMISSIONER.—It is undoubtedly competent to correct matter of this sort, though we could not now amend the averment.

Parol evidence of the contents of a letter rejected.

The first witness was asked on cross-examination, Whether, on a certain occasion, he received a letter from the defender, and what answer he returned?

LORD CHIEF COMMISSIONER.—You cannot, in this manner, prove the contents of the letter; not even that it was marked private. I merely take that the letter produced is the answer which the witness sent to the defender.

The same as to a written opinion given by counsel.

The second witness, Colonel Grant, having stated, on cross-examination, that he took the opinion of counsel, as to whether he ought to communicate the letters to Mr Grant, was then asked to state the opinion.

LORD CHIEF COMMISSIONER.—If that opinion was given in writing, it is incompetent to prove it by parol. I rather think Colonel Grant is entitled to withhold this as a confi-

COOPER
v.
MACINTOSH.

dential communication. But, before asking the question, you must establish that the opinion was a verbal one, and then the Court will decide whether the question is competent.

Incompetent to ask whether a witness acted with the approbation of counsel.

The witness was then asked, Whether he delivered the letters with the approbation of counsel?

LORD CHIEF COMMISSIONER.—You may ask the Colonel what he did, but the question now put is incompetent.

A witnesss for the pursuer was asked, on cross-examination, Whether certain names were in the former commission of the Peace, to which an objection was taken.

LORD CHIEF COMMISSIONER.—They ought to produce the old commission, and if you wish to establish that the new one differs from it, you may do so by comparison of the two.

In damages for defamation, incompetent to prove the character of the defender.

When another question was put to the same witness.

LORD CHIEF COMMISSIONER.—Is not this a question as to the character of the defender, which is incompetent?

COOPER v. MACINTOSH.

When another question was put for the defender.

LORD CHIEF COMMISSIONER.—The Court is bound to interfere to prevent this question being put, as it may aggravate, instead of diminishing the damages.

Circumstances in which a document was admitted in evidence, though not produced eight days before the trial.

The clerk of the peace was then called, and the commission of the peace shown to him.

Mathison objects.—This was not produced eight days ago.

Moncreiff.—It was produced in Tytler's case, and could not be in both processes.

LORD CHIEF COMMISSIONER.—This is an objection on the terms of the act of sederunt, and it requires great care that it may not be misunderstood, or become the means of injustice. Was not this paper in the power of the defender? It is transferred from one process to another, but, in the spirit of the act of sederunt, it was produced, and it is of no consequence whether it is in one bundle of papers or another.

A witness having stated that part of what was charged as libellous had been shown to him two years before by the defender, was then ask-

ed, Whether he had given a copy to Mr M'Leod? This was objected to.

LORD CHIEF COMMISSIONER.—If they ask whether it was delivered *under the seal of secrecy*, this may be questionable, but it is quite competent to ask, Whether he put it into the hands of Mr M'Leod?

The receipt of a letter not proved by a marking upon it. To prove hand-writing, a witness must either have seen the party write, or be accustomed to see his hand-writing.

A letter was produced, but the witness who was first called to prove the hand-writing had never seen the party write, and the date was not admitted.

LORD CHIEF COMMISSIONER.—You do not prove the date at which it was received, by proving the marking of receipt. You must prove the receipt by evidence upon oath, and the date may possibly be proved by the contents of the letter. To prove hand-writing, the person must either have seen the party write, or have corresponded with him, or have been accustomed to see his letters, and must swear that he *believes* the writing to be that of the party.

Moncreiff opened the case for the pursuer, and stated the nature of the libel.

Mathison, for the defender, contended, That

COOPER v. MACINTOSH.

Holt, 237. Hawkins, P. C. c. 73. § 9.

what was said did not apply personally to the pursuer, but was an expression of a general opinion.

LORD CHIEF COMMISSIONER.—This is a claim of damages for defamation published in a newspaper, and in letters to two individuals. The questions for consideration are, Whether the matter is of and concerning the pursuer, and whether it is false and calumnious?

In this case, there is no doubt the matter is libellous, and if libellous, the law infers it to be false, unless the defender proves it true; and if libellous and false, the law infers malice. This is not a privileged case, requiring an allegation and evidence of malice, which would be required if the defender had been advising a friend not to deal with an insolvent person; or giving a character of a servant.

It is said, this is not of and concerning the pursuer, and this is inferred both from the matter in the issues, and from what is said by Hawkins and Holt. The first is high authority, but the other, though an able book, is not authority. In all cases of this nature, the question is, whether the matter applies to the individual, or to the body to which he belongs? and in this case, the question is,

whether part does not apply to the individual? and it is no defence that he is not named.

Gilchrist v. Dempster.

Neither is it a defence that the letters were written confidentially, because, if the letters applied to the pursuer, they are actionable though they had remained with those to whom they were addressed.

The resolutions can only be stated in diminution of damages, not as a bar; but if a party takes the law into his own hand, and libels the pursuer, it must have weight against him.

Verdict—For the pursuer, damages L. 200.

Moncreiff, Buchanan, and *Robertson,* for the Pursuer.
Mathison and *Rutherford,* for the Defender.
(Agents, *Macqueen* and *Mackintosh,* w. s. and *Æneas Macbean,* w.s.)

INVERNESS.

PRESENT,

LORD GILLIES.

Gilchrist v. Dempster.

1823. Sept. 10.

Damages for defamation in a judicial proceeding.

Damages for malicious defamation contained in certain written pleadings in the Sheriff-court of Sutherland.