

been received, and a new trial was granted on payment of costs.

GRAHAM &
COMPANY
v.
NEWLANDS.

==
GLASGOW.

PRESENT,
LORD GILLIES.

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GRAHAM AND COMPANY v. NEWLANDS. *

1825.
Sept. 24 & 26.

JOHN NEWLANDS had, for several years, been the confidential clerk of William Graham and Company, merchants and manufacturers in Glasgow. They at last suspected him of having been in the habit of defrauding them, and they charged him privately with this offence; and upon the 28th of April 1821, obtained his subscription, in their own counting-house, to a written acknowledgment of guilt, and took four bills from him in their favour, for L. 500 each, as a liquidation, *pro tanto*, of the damage they said they had sustained. The friends of Newlands afterwards took out a brief for having him cognosed; and upon the 11th day of

Finding for the
defender, on is-
sues in a reduc-
tion of a verdict
on a brief of idi-
ocy.

* I am indebted to a learned friend who was present at the trials, for the report of this case, and the following one of Syme and Marshall.

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April 1823, a Jury found that he was incapable of managing his affairs then, and had been so for a period antecedent to the dates of these documents. The curator of Newlands then raised an action before the Court of Session for reducing the bills and the acknowledgment, and of count and reckoning. Graham and Company instituted a counter action of count and reckoning. In the course of these proceedings, Graham and Company wished to found on the acknowledgment and on the bills; but they were met by the verdict. On this they challenged that verdict, and maintained that it had been obtained without evidence, and by trick on the part of Newlands, who, in order to deceive the Jury when they saw him, had pretended to be a great deal worse than he really was. In this situation, the following issues were sent to trial :

ISSUES.

“ It being admitted, that, on the 11th of
 “ April 1825, John Newlands, residing at An-
 “ derston Walk, near Glasgow, was, by a ver-
 “ dict of a Jury returned upon a brief of idiocy
 “ issued from Chancery, directed to the Sheriff
 “ of Lanarkshire, found to be of insane mind,
 “ and incapable of administering his affairs,

“ and that the said John Newlands had con-
 “ tinued in that state from December 1820.

“ 1. Whether on the said 11th day of April
 “ 1823, and from the month of December
 “ 1820 down to that date, the said John New-
 “ lands was of a sound and disposing mind,
 “ and capable of administering his affairs ?

“ 2. Whether the said John Newlands frau-
 “ dulently, or by producing false evidence to
 “ the Jury, did prevail upon, or induce the said
 “ Jury to return the said verdict ?”

Moncreiff opened the case for the pursuers ; explaining how the alleged frauds had been committed, and the evidence by which it would be established, that, although Newlands had been struck with palsy, which changed his external appearance, he was not incapable of managing his affairs ; and, accordingly, had had the disposition and the ability to feign idiocy in order to mislead the Jury.

The pursuers, in the course of their proof, called certain accountants, who had inspected the books, to establish the fact that the frauds had been committed.

OBJECTED, That this was totally irrelevant. The commission of specific crimes by Newlands had no proper bearing on the only question

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In a question as to the sanity of a person alleged to have committed fraud—proof of the fraud admitted.

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raised by these issues, which related merely to his intellectual condition; and, at any rate, if the pursuers intended to prove specific frauds, they ought to have given warning of this, by taking an issue to this effect.

ANSWERED, The consideration of the frauds is not only relevant, but very material, because it explains and establishes the motive which Newlands had for deceiving the Jury.

LORD GILLIES considered the point as attended with considerable difficulty; but, upon the whole, was of opinion, that, though the investigation of the frauds must necessarily be imperfect under the trial of these issues, and therefore in a great measure useless, it could not be altogether excluded.

Mr Solicitor-General (HOPE) opened for the defender, but, owing to the length which the pursuers' evidence had extended, it was midnight before the defender's proof was about to begin. In this situation, it was agreed to adjourn till Monday; and the parties consented by a minute that the Jury should be at large during the interval.

The trial proceeded on Monday.

A case adjourned from Saturday to Monday, and the Jury allowed to go at large.

It was objected by the pursuers to a witness, that he was within a few days of being married to the sister of John Newlands. It was answered, that, till he was actually married, there was no relationship. The objection was repelled.

Mr Jeffrey replied for the pursuers.

LORD GILLIES stated to the Jury, That they were now called upon by the pursuers to find that a person, whom they had not seen, had been sound in mind at a particular time, in opposition to the solemn opinion of another Jury who had seen and examined him. He doubted whether almost any evidence could justify a Jury in so very strong a proceeding; more especially, as it was in the power of the pursuers to have exhibited Newlands again, but they had not chosen to do so. He then went over the evidence, and intimated it as his opinion, that the pursuers had totally failed in their proof upon both issues. The practical effect of reducing the verdict would be to exclude inquiry in the action of count and reckoning; because, as has been admitted, if the verdict was set aside, Newlands must go into Court with an unchallengeable acknowledgment of guilt, and unchallengeable bills, standing

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A witness received, who was in a few days to be married to the sister of the party.

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v.
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against him for the debt. Whereas, the only effect of sustaining the verdict was, that these documents would be cast aside, and each party would enter upon the investigation on its own real merits.

The Jury found for the defender on both issues.

Jeffrey, Moncreiff, and Monteith, for the Pursuer.

Solicitor-General, Cockburn, and Wilson, for the Defenders.

(Agents,

Muir, w. s. and

GLASGOW.

PRESENT,

LORD GILLIES.

SYME v. MARSHALL.

1825.
Sept. 26.

Finding for the
defender on a
question of fraud
and deception.

THE pursuer being charged to make payment of a bill, resisted, 1st, On the ground that his name had been forged; but he afterwards abandoned this statement; and maintained, 2^{dly}, That, although the subscription appeared to be genuine, it was not; legally speaking, his subscription, because he had been deceived when he signed, and was defrauded in the transaction.