

·COUSELAND
v.
CUTHIL.

LORD CHIEF COMMISSIONER,—In ancient times the rules as to vitious intromission were strictly applied, but more recently they have been gradually relaxed. In the present instance no case of vitious intromission has been made out, as it is cured by the confirmation, and two inventories, in which there is no appearance of fraud; on the contrary, the taking the goods appears most proper. They were taken by the widow to her father's openly, and it was fair she should have the use of them. Two inventories are made up. There is no foundation in the proof for the statement that there was money taken away, and it would be beyond all example, if you were to render the defenders liable for the whole debts.

Verdict—For the defenders.

Cockburn, Rutherford, and Shaw, for the Pursuers.
Jeffrey, D. F., and R. Thomson, for the Defenders.
(Agents, *A. C. Howden, w. s.* and *Wm. Hunt, w. s.*)

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PRESENT,

THE LORD CHIEF COMMISSIONER.

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COUSELAND v. CUTHIL.

1830.
Jan 11.

Damages for de-
famation.

DAMAGES for written and verbal defamation.

DEFENCE.—The defender did not mean to injure the pursuers, and, in the circumstances, the action ought not to have been brought.

COUSELAND
v.
CUTHIL.

ISSUES.

The first related to a letter in which it was stated, that the pursuers were not worth L. 5, and the second to the defender saying they were bankrupt.

Robertson opened for the pursuers.—The pursuers are shopkeepers beginning business, and their credit is most important to them. The defender is a rival trader, and this letter, to which the case is now limited, is beyond all the bounds of fair mercantile correspondence.

A witness was asked on cross-examination by the defender, whether he granted a bill?

Incompetent to prove the contents of a bill by parol.

LORD CHIEF COMMISSIONER.—You cannot have the contents of the bill from the witness, but must produce the bill.

Cunninghame opened for the defender.—This is a frivolous case. There is no evidence of malice or falsehood, and the defender was entitled to write the letter.

LORD CHIEF COMMISSIONER.—I do not in

COUSELAND
v.
CUTHIL.

this or any case wish to aggravate damages, but I should do wrong if I did not tell you that there is a case for your consideration. The defence is a legal one, if you think it made out in evidence, as every one is entitled to make a confidential communication as to the circumstances of another, to a friend who calls for it with a view to dealing with that person, in the same way as a master, when called on, is entitled to tell the truth of his servant, though that may reflect on the character of the servant. The *inuendo* as to the meaning is admitted, and the question is on the falsehood and calumny. If falsehood is proved, the malice which law requires is presumed, and law by implication holds calumny false, which is not proved true. If the defender meant to plead the truth, he ought to have undertaken to prove it, and to have proved it. You are here to consider whether this letter contains fair and candid information to a correspondent, or whether it contains more than was required, and what establishes bad intention on the part of the defender. It seems to me to go beyond information, as it holds out a threat of not dealing with their correspondents if they employ the pursuers. This is not a case for high damages, but for such moderate sum as will not too much

hurt the one, and will free the other from uneasiness.

HILL
v.
KING.

Verdict — “For the pursuer, damages L.20.”

P. Robertson, for the Pursuers.

Cuninghame, for the Defender.

(Agents, *John Campbell Jun. w. s. Alexander Burns, w. s.*)

PRESENT,

THE LORD CHIEF COMMISSIONER.

HILL v. KING.

1830.
Feb. 1.

THIS was a reduction of a finding by the Judge-Admiral assoilzieing the defender from a claim for repetition of the price of a vessel.

Finding for the pursuer on a question of fraud in the sale of a vessel.

ISSUE.

“ Whether, on or about the 11th day of July
“ 1810, at Guadaloupe, in the West Indies, by
“ fraud, deceit, or misrepresentation practised
“ by the defender on the pursuer, the pursuer
“ was induced to purchase the vessel called the
“ Smile of Spring, and to pay for the said ves-
“ sel the sum of L. 2200 Sterling, to the loss,
“ injury, and damage of the pursuer?”