

HIDDLESTON  
v.  
GOLDIE, &c.

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DUMFRIES.

PRESENT,  
LORD PITMILLY.

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HIDDLESTON v. GOLDIE, &c. (HIDDLE-  
STON'S TRUSTEES).

1819.  
April 12.

AN action of reduction on the ground of  
death-bed.

Found that a  
person died of  
the disease of  
which he was  
ill at the time  
of executing a  
trust-deed.

DEFENCE.—The granter, at the date of  
the disposition, was not labouring under the  
disease of which he died.

ISSUES.

“ 1st, Whether the deceased John Hiddle-  
“ ston, the granter of the trust-disposition  
“ under reduction, died on or about the 11th  
“ June 1818 ?

“ 2d, Whether on the 29th May 1818, the  
“ date of the said trust-disposition, the said  
“ John Hiddleston was labouring under the  
“ disease of which he afterwards died; and whe-

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“ ther, subsequent to the date of the said trust-  
“ deed, the said John Hiddleston went to  
“ kirk and market ?”

Medical gentlemen called to give an opinion on the nature of a disease, allowed to be in Court during the examination of witnesses as to the symptoms of the disease.

See Vol. I. p.  
308.

After the case was opened for the pursuer,

*Cockburn*, for the defenders, stated.—This case must depend on the opinion of medical gentlemen ; and it is important that those who did not see the deceased, should hear the evidence of the other witnesses. This has been done twice in this Court ; once in a case of insurance.

*Jeffrey*, for the pursuer.—I should have no objection to the arrangement proposed, if it had been made in time ; nor shall I now oppose it, if our witnesses can be found, and also be present at the examination. This is a medical question, and it is important that they should hear the evidence ; but those who saw the deceased during part of his illness, are equally entitled to this benefit ; but, of course, the duty of the witnesses will be explained to them by the Court.

When the witnesses were called,

LORD PITMILLY.—You are called here, that you may have an opportunity of hearing the evidence of the less instructed witnesses, that from the symptoms they describe, you may be able to give an opinion upon the nature of the disease. It is not for the purpose of giving a joint opinion; and therefore each ought to form his individual opinion on the facts stated, without communicating with the others, that you may be able to give that opinion when afterwards called and examined separately.

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The first medical gentleman called had attended the deceased during a considerable part of his illness.

When the second was called,

*Cockburn*, for the pursuer, wished him to be put in possession of the *facts* stated by the first.

The facts, but not the opinion stated by one doctor, detailed to another.

LORD PITMILLY.—It appears to me, that the best course is for Mr *Cockburn* to read his notes of the evidence, under correction of any mistake.

Which was done accordingly.

*Jeffrey*.—You are called to apply a law

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which meets with less approbation from the profession, or support from common sense, than any other. It is, however, the law, but you are bound to give it the narrowest possible construction, and to favour the defender.

The question is one of medicine rather than law. The pursuer has not proved that Hiddleston died of the same disease, and we shall prove that he died of a different disease.

*Cockburn.*—The question, and the only question, is, without reference to the medical name of the diseases, whether this person died of the same disease.

As the law is admitted, we are only bound to prove that he was ill in May, and that he died in June. It is of no consequence that the disease may have assumed a new form. The question is, whether this, in fairness, is a new disease. We proved that he was ill, and gradually sunk under the disease. In opposition to this, it is said, he was struck dead by apoplexy. The medical gentleman who states this, is certainly highly respectable, but he is a single witness, and contradicted, instead of being supported, by circumstances.

Stair, III. 4.  
 28. p. 463.  
 Ersk. III. 8.  
 96. p. 689.

LORD PITMILLY.—This is in some respects a nice and difficult case.

A great deal has been said on the law of death-bed, and that it did not meet with the admiration of gentlemen of the profession, and therefore you must favour the defender. These, however, are principles on which you ought not to act. The only question for you, is the point of fact, whether John Hiddleston was, at the date of the trust-disposition, labouring under the disease of which he afterwards died.

The only part of the law which it is necessary for us to know, is what is meant by the same disease. Law holds, that any disease followed with death within sixty days, is the disease of which a man dies. It is of no consequence that it may have a different name, or that the person may have been of sound mind, or going about his ordinary affairs. If he had a disease upon him, and death followed, this, in contemplation of the law, is the disease of which he died. In this case, there is no doubt the person was ill at the date of the deed.

The evidence is of two kinds; 1st, That of the attendants and medical gentlemen who

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visited him; 2d, The opinion of medical gentlemen on the facts proved.

Both are legal evidence, and must be attended to; but as, in my opinion, this case must rest on the opinion of the medical gentlemen, it is not necessary to say much on the other evidence, though it may be of use in correcting the medical evidence.

[His Lordship then stated the evidence for the pursuer.]

We are not to consider ourselves as doctors, or to form our own opinion of the nature of the disease. It is much safer to take the result of the opinions given, which went to this, that though the symptoms might vary a little, the disease remained the same.

If the case had rested here, there could have been little doubt; but there has been most important evidence given for the defenders, to prove that this person died of a totally different disease; and you must make up your minds on the question of fact, after balancing the evidence.

The defence, in this case, is a very nice one; and I think the burden of proving it rests on the defender. The pursuer has made out his case, and placed it in the situation to entitle him to a verdict, if the defender does

not prove clearly and distinctly the defence, that Hiddleston died of a different disease.

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It is therefore necessary to go through the evidence for the defender, and balance the opposite opinions. Dr Maxwell gives it as his decided opinion, that Hiddleston died of a very different disease; and the symptoms he described, convinced another medical gentleman that Hiddleston died of apoplexy, which they agreed in opinion was not a common consequence of the previous complaint. It does not appear to me that Maxwell's evidence is liable to the objection taken to it, that he is a single witness unsupported; and, therefore, I state this as a case in which the opposite opinions are to be balanced. If the disease, though different, had been a common sequel or result of the other, I would have held, that upon this ground, the defender had failed; but the reverse has been proved. It is not possible then to reconcile the testimony. I shall therefore sum up both sides, and leave it to a respectable Jury to decide between the contradictory opinions.

There can be no difficulty in the form of the verdict: you may either convert the Issue into an affirmative or negative, or find for the pursuer or defender.

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The verdict was for the pursuer on the different points in the Issues.

*Cockburn, Maitland, and Whigham*, for the Pursuer.

*Jeffrey and Ivory* for the Defender.

(Agents, *A. Goldie*, w. s. and *Wm. Bell*, w. s.)

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DUMFRIES.

PRESENT,

LORD PITMILLY.

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M'LEAN v. SIBBALD.

1819.

April 13.

Damages for  
defamation,

AN action of damages for defamation.

DEFENCE.—No ground for the action.

ISSUES.

“ 1st, Whether, on or about the 9th day  
 “ of June 1816, the defender did *insert*; or  
 “ cause to be *inserted*, in the Book of Records,  
 “ or Minute Book of the Kirk-session of  
 “ Kirkmabreck, a certain paper referred to in  
 “ the summons, defamatory of, and injurious  
 “ to, the pursuer, as the act or minute of the