PATERSON v. BLAIR.

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

PATERSON *v.* BLAIR.

1819. July 14.

Damages found, for being turned out of a farm.

DAMAGES for being turned out of possession of a farm.

DEFENCE.—The proprietor was entitled to turn the tenant out of possession.

ISSUE.

" What loss and damage has been sus-
" tained by the deceased Walter Paterson,
" and his representatives, in consequence of
" the measures taken by the defender, to re-
" move the said Walter Paterson from the
" lands of Merchiston, in breach of the mis-
" sives of lease, dated 18th May 1813, and
" 16th November 1813, referred to in the
" summons.

The damages and loss were laid in the summons at L.2000, which were stated under different heads.

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The defender, by missive letters in 1813, let to the pursuer part of the lands of Merchiston, near Edinburgh. The missives contained various stipulations, and amongst others, the tenant was to "give up whatever "parts of the said ground may be wanted "for the purpose of feuing or letting on "building leases," &c. Some differences occurred between the parties; and there being a dispute with the former tenant of part of the land, as to his quitting possession, the defender gave the pursuer notice, in April 1814, to give up the whole lands at the following Candlemas. An action of removing was brought, and decree allowed to go out, reserving the claim for damages.

A counsel who commences the examination of a witness, ought to continue it throughout.

After Mr *Cockburn* had cross-examined a witness, Mr *Baird*, on the same side, put some questions.

LORD CHIEF COMMISSIONER.—I do not in general wish to interfere; and there has been some irregularity in the practice on this point; but our rule is, that one counsel examines a witness throughout.

A book kept by a farmer, not evidence for him.

To prove the quantity of dung laid upon

the farm, Mr *Jeffrey* proposed to give in evidence a book regularly kept by the pursuer.

LORD CHIEF COMMISSIONER.—This book may be evidence against him, but certainly not for him.

An objection was taken to a witness, that he was interested, being a creditor on the pursuer's estate.

Jeffrey.—He is only brought to prove that the defender received L.20 from the pursuer.

LORD CHIEF COMMISSIONER.—Is there no receipt? It is clear the evidence is not necessary to the present discussion. Their objection to the witness is, that the present action is for the purpose of increasing the fund for the creditors, and that he has an interest to increase that fund.

A witness called for the defender, was desired to produce some letters, to shew that the rent was too high, and that, therefore, the pursuer could not be a loser by being deprived of it.

LORD CHIEF COMMISSIONER.—All the facts you state may be proved by parol. You therefore do not require the letters.

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A part of an inferior Court Process, if tendered in evidence, ought to be produced before the trial.

A witness was called to authenticate a copy of part of a process in the inferior Court.

Jeffrey objects.—He is agent for the defender in several cases. This writing, had it been produced in terms of the Act of Sederunt, would not have required any authentication.

LORD CHIEF COMMISSIONER.—Is it really a disqualification that the witness was agent in other causes? I am of opinion on other grounds, that the testimony is inadmissible; for it appears that this is an attempt, by calling the agent, to make the averment of the party evidence in this case. There is a regular Act of Sederunt framed in concert with the Court of Session, which points out the manner in which writings ought to be produced; and unless that is followed, we cannot admit them under any other authority.

Jeffrey, in opening the case, and in reply, stated—The case is a very narrow one: it is to fix the amount of damages. The land was high rented as a farm; but the pursuer, a builder, took it for the quarries, and to supply his horses with food. He is entitled to damages, on account of the disappointment and vexation he suffered.

Cockburn, for the defender, maintained. The loss of the quarry is the only article proved; and the estimated value of this is notoriously too high. L.900 is claimed as the value of the quarry; and we shall prove that it is not worth working. There is no ground for *solatium*, as there was no injury to his feelings; and the motives of the defender make no difference to the pursuer.

LORD CHIEF COMMISSIONER.—This is a question of pure fact; and as the Court of Session have already found damages due, your duty is merely to ascertain the amount. The pursuer is called upon to specify of what the damages are composed; and having done so, it will be proper for you to find them separately. [His Lordship then stated what he considered proved as to the different articles; and that the real question was the loss of the quarry.]

Several of the witnesses gave an estimate of the value of it; and this is a sort of particular evidence; and I cannot state that you ought to give less than the lowest sum proved. You must exercise your good sense on the facts as proved; and as this is purely

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a question of fact, any observations I make, are merely for your consideration.

As to *solatium*,—If you are satisfied that you give the sum which the pursuer has lost, this is all to which, in my opinion, he is entitled. It appears to me a mere question of accounting; but this also is matter for you to consider; and if you give *solatium*, I trust you will do it with moderation.

Verdict—"Found for the pursuers, damages L.1000."

Jeffrey and *S. More* for the Pursuer.
Baird and *Cockburn* for the Defender.

(Agents, *James Lyon*, and *James Gentle*.)

PRESENT,

LORD CHIEF COMMISSIONER.

ERSKINE *v.* ERSKINE.

1819. July 16.

Found that a person was of sound mind—that a deed was signed on the day inserted in the testing clause—and that it was not proved, that at that time the person was ill of the disease of which he died.

REDUCTION of the assignation of a lease, on the grounds of death-bed, and of the granter being incapable of knowing the contents of the deed.