

PATERSON
v.
RONALD.



PRESENT,
THE THREE LORDS COMMISSIONERS.



1820.
Jan. 31.

PATERSON v. RONALD.


Costs refused,
where the
claim was for
reparation of a
loss, and a ver-
dict returned
for 1s.

THIS was a case tried at Glasgow, on the 13th September 1819, on an Issue whether a partnership was entered into, and whether the defender refused to implement, or untimously and unjustifiably withdrew from the partnership, to the loss and damage of the pursuer.

The Jury found one shilling damages.

Cockburn and *Maitland* moved for expences to the pursuer, as the verdict was important, by finding that the contract existed; and stated, that it was the general understanding, that the smallest damages carry costs; and referred to a case in the Court of Session, where L.10,000 were claimed, and only L.5 given, and where expences followed. Expences were also given in *Finwick's* case (Vol. I. p. 255); and in *Millar's* (Vol. I. p. 55, *n.*)

Forsyth, for the defender, opposed, and stated—Giving expences is matter of discretion; Hepburn's case (Vol. I. p. 267). We in fact gained our case, and are entitled to expences. A shilling in England may carry costs, but that is when the verdict establishes a right of property.

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LORD PITMILLY.—This case was tried before me; and there was very little discussion as to the existence of the contract. The question was substantially one for damages. It was not, however, a claim of damages for loss of character, or injury done, but to get an equivalent for the profit the pursuer would have made, had the partnership been completed. The result was, a verdict for one shilling; and I did not find fault with the verdict.

The question now before us is, whether a person claiming damages to repair an actual loss, and getting only one shilling, is entitled to his expences. This must, of course, be decided by the law of Scotland, and as it would have been decided in the Court of Session. The cases referred to on the one side, were for reparation of character, and where the object was to obtain a verdict. The case put on the other side is one to establish


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a right of property. These all differ in principle from the present, which is one of alleged loss; and the question is, whether we are to extend to this case, the principle applicable to the others.

LORD CHIEF COMMISSIONER.—I am most anxious to decide this, and all other cases, according to the law of Scotland; and by that law, and in the Court of Session, expences is matter of discretion; but no Court can decide by discretion, without founding that discretion in sound principle. It is contended, that, in the Court of Session, damages carry costs; but that, as stated, is too extensive. My view of the present case is, that damage or not was the single question for the Jury. The question then is, upon what the claim of damage rests? The claim is for damage to repair a loss—not to repair an injury or an affront; and the claim being for L.2500, while the Jury give only 1s. I must hold it a case brought without a sufficient cause of action. If there is no rule to the contrary in the Court of Session, I must come to the conclusion, that there should be no expences.

LORD GILLIES.—I agree entirely, both in the principle laid down, and the conclusion drawn from it. In matters of this sort, a

Court must form precedents where it has none to guide it. There are fewer here than might have been expected, but that arises from the infrequency of such actions. The object of law is to protect property and persons from real, not imaginary injuries.

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There may be cases of nominal damages where costs ought to follow; but that is not the case in the present instance.

LORD PITMILLY.—I should be sorry to lay it down as a general rule, that expences should follow when 1s. damage is given for loss of property. My difficulty in this case was the want of authority; but I think we are entitled to draw the distinction pointed out, and to say that no expences ought to be given in this case.

Both motions were dismissed.

Cockburn and Maitland for the Pursuer.

Forsyth for the Defender.

(Agents, *E. Lockhart*, w. s. and *Jo. Grainger*, w. s.)