the pursuer, it is for you to assess the damages, in doing which, you will attend to the schedule.

MILLER v. MOFFAT.

Verdict—" For the pursuer on all the " Issues, but found no damages due."

L'Amy, Jeffrey; and *Cockburn,* for the Pursuer.
J. P. Grant and *Alison* for the Defender.

(Agents, *James Smyth,* w. s. and *William Jamieson,* w. s.)

PRESENT,
LORD PITMILLY.

HENRY v. EVANS.

1820. June 26.

DAMAGES for assault.

Damages for assault.

DEFENCE.—A denial of the statement; and a plea that, the defender's estate being sequestrated, the claim is incompetent.

ISSUES.

" 1*st,* Whether, on or about the 4th day " of January 1816, on the shore of Leith,

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"the defender did assault and strike the pur-
"suer, to the injury and damage of the said
"pursuer?—or,

"2*d*, Whether the pursuer did first assault and strike or push the defender?

"Damages laid at L.1000."

Malice was objected to a witness, and he was examined *in initialibus*.

LORD PITMILLY.—You ought to explain what you mean to prove. I understand the witness to have said that he has no such malice as would lead him to state what is not true.

It was then stated that he had expressed a wish to ruin the defender, upon which the witness was withdrawn.

Proof of an assault upon the party not sufficient to disqualify a witness.

When the witness was again offered, Mr Jeffrey said, that he would prove that he had assaulted the defender in 1817.

LORD PITMILLY.—You have stated nothing sufficient to disqualify the witness. What you state only goes to discredit him; and you have proved it in the best way, by his own evidence; and that evidence will go with all the other evidence, to the Jury.

(*To the Jury.*)—There are two questions here: Whether the defender assaulted the pursuer? or Whether the pursuer struck first? From the form of the Issue, the defender is put to prove his justification; but if you make up your minds on the first Issue, it decides the case.

You must attend to the very commencement of this case, and particularly to the clear, satisfactory, and strong evidence of the only witness who saw the first blow. You saw the witness; and it is one excellence of this mode of trial, that you see the witnesses. It is law that one witness is not sufficient; but when there are circumstances supporting that evidence, the Jury must consider it; and in this case I do not think there is any ground for the objection.

There is here no proof of justification; and you must take the whole facts into consideration; and in fixing the amount of damages, you must give them as compensation to the defender, not punishment of the pursuer.

Verdict for the pursuer, damages L.50.

J. A. Murray and *Cockburn* for the Pursuer.

Jeffrey for the Defender.

(Agents, *James Herriot*, W. S. and *John Thorburn*.)

HENRY
v.
EVANS.

1821.
Jan. 31.

Judgment entered up for the full sum found due by a verdict, not for the dividend due by the defender to his creditors, under a composition contract.

Jeffrey moves, that as the defender had entered into a composition contract, judgment should be entered up only for the dividend on the sum found by the verdict, and also on the expences. If this is not done, we have no opportunity of bringing the question under the consideration of the Court of Session, by Bill of Suspension.

J. A. Murray.—The bankrupt has no right to make this motion; he says he was discharged three years before the Issues were tried.

LORD CHIEF COMMISSIONER.—There is a great deal in the objection, both on the general purview of the statute 59. Geo. III. c. 35. § 19. and the particular words, which are strong: viz. That the judgment shall be equally effectual as an extracted decree of the Court of Session, which goes to exclude a Bill of Suspension; and under this clause the judgment must be in terms of the verdict. This relieves us from going into the merits;

but it is a satisfaction to my mind, that I do not consider the debt constituted till judgment is pronounced.

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LORD PITMILLY.—I am of the same opinion. I thought a Bill of Suspension might have been competent, but I am relieved on the ground stated; and if we are to go to the merits, I agree that the debt is only constituted at the date of the verdict.

PERTH.

PRESENT,

LORD CHIEF COMMISSIONER.

HENDERSON *v.* GARDYNE.

1820. September 27.

DECLARATOR of right of property.

Found that a piece of ground had been possessed exclusively by the pursuer and his predecessors, for forty years.

DEFENCE.—The ground in question was common to the pursuer and defender.

ISSUE.

"Whether, for forty years and upwards, "previous to the 10th day of April 1818, the