


 PRESENT,
 LORDS CHIEF COMMISSIONER AND GILLIES.

SIMPSON
 v.
 LIDDLE.

1821.
 December 3.

SIMPSON v. LIDDLE.

DAMAGES assessed for wrongous imprisonment.

Damages assessed for apprehending and imprisoning the pursuer by diligence on a bill.

DEFENCE.—The diligence was legal, and no improper use was made of it.

ISSUE.

“ It having been decided by interlocutor of
 “ the Court of Session, bearing date 6th July
 “ 1819, and now final in that Court, That the
 “ defender was not entitled to do personal di-
 “ ligence against the pursuer, on a certain bill
 “ of exchange, produced in process, for L.630,
 “ dated the 17th June 1815, payable on the
 “ 17th day of February 1816; drawn by the
 “ defender upon the pursuer and one Thomas
 “ Mowat, and by them accepted; and that
 “ the said defender is liable in damages to the
 “ pursuer, for having done diligence thereon,

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“ What loss and damage has been suffered by
“ the pursuer, in consequence of the defender
“ having caused him to be apprehended and
“ imprisoned in the jail of Lanark, on the
“ 19th day of June 1817; and therein de-
“ tained until the 23d or 24th day of the said
“ month, in virtue of letters of caption, raised
“ upon the said bill of exchange, at the in-
“ stance of the said defender? ”

“ Damages laid at L.1000.”

The pursuer, along with Thomas Mowat, accepted a bill for L.630, drawn by the defender. The defender afterwards agreed to purchase a property belonging to Mowat, and to hold the L.630 as part of the price. Some delay occurred in making out the conveyance by Mowat; and the defender raised diligence on the bill, and incarcerated the pursuer.

In damages for illegal imprisonment, incompetent to prove the character of the defender.

A witness called for the defender was asked, whether he, the defender, was a harsh man?

LORD CHIEF COMMISSIONER.—I very much doubt if this is evidence, as we are here trying the question as to the act done, not as to the character of the man.

Another witness being called to the same point,

LORD CHIEF COMMISSIONER.—I cannot sit here and allow incompetent evidence to be produced. If this was a prosecution for a criminal act, the character of the defender would be in issue; but in the present case, the question is as to the act done, and to ascertain the damage; and how can the character of the defender aggravate or diminish the damages?

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Fullarton opened the case for the pursuer, and stated the origin of the case, the interlocutor of the Lord Ordinary, and that probably the defender used this as a means of compelling Mowat to proceed.

Baird, for the defender, admitted that the Jury must find damages, but contended that 1s. was too much, as Mowat was guilty of tergiversation.

LORD CHIEF COMMISSIONER.—In fact the Issue is the damage which arose from the imprisonment. The pursuer gave some evidence as to the transaction with Mowat; and so far as it goes in diminution of damages, it may be quite right in you to found on it. But if this is to go the length of overturning the interlocutor of the Court of Session, I ought to have stopped it sooner; for though you said you was not to impugn the judgment,

When damages are found due by the Court of Session, incompetent to bring evidence in the Jury Court to prove that none were

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The Court, and not the Jury, decide whether nominal damages carry costs.

yet the argument and evidence opened by you appears to me to impugn it. The judgment goes on the principle that the transaction with Mowat was *res inter alios*.

Baird.—I am entitled to state every circumstance in diminution or extinction of damages, as even nominal damages carry expenses.

LORD CHIEF COMMISSIONER.—That is not a question for the Jury, and therefore ought not to be stated by either party. There have been cases of nominal damages, where expenses have been given, but they are exceptions to the general rule.

Jeffrey, for the pursuer.—The matter stated on the other side is irrelevant. The defender had action against Mowat, to compel performance at the time he used diligence against the pursuer.

LORD CHIEF COMMISSIONER.—Evidence has been laid before you of the situation of the pursuer, and also of the temper of the defender. This last is not fit for your consideration, as the question is, what the pursuer has suffered; and this cannot be affected by the temper of the defender, whether it is harsh or the reverse. Much of the evidence for

the defender goes to shew, that what was done was necessary, and that it produced the effect of getting a conveyance to the property. That evidence, I conceive, goes to impeach the judgment of the Court of Session, and is not to be considered by you, but is put out of Court by the final interlocutor of that Court. We must hold that interlocutor as containing a finding that the defender having entered into the transaction with Mowat, a third person was no longer entitled to demand the amount of the bill from the pursuer.

In every case, it is usual to claim, as damages, a much larger sum than is expected; and in this case Mr Jeffrey has limited his demand to L.500. Without wishing to take this question out of your hands, I mention it that you may not be misled; as, were you to give the sum now demanded, it would be very like what the law calls vindictive damages.

You will consider the actual loss suffered by the pursuer, which appears to me very trifling. The uneasiness of mind and public disgrace suffered, is the great question here. This must differ in the circumstances of every case, and the compensation ought to be considered with composure, and without being

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inflamed by what may have been stated by counsel.

Verdict—"For the pursuer; damages L.100
"sterling."

Jeffrey and Fullarton, for the Pursuer.
Baird, for the Defender.

(Agents, *John Somerville, jun. and Thomas Russel.*)

PRESENT,

LORD CHIEF COMMISSIONER.

1821.
Dec. 5.

KITCHEN v. FISHER.

L.1676 found due by the master of a trading vessel, as damages and the value of a quantity of ivory.

AN action against the master of a vessel for the price of a quantity of ivory, and other goods said to have been sold by him on a voyage to Africa and the West Indies, and also for damages.

DEFENCE.—The allegation is false and injurious.

ISSUES.

"It being admitted that, in September

*Incedentally—
of a witness
entitled to have
is previous.
deposition taken
called before being
in Court*

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