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whether the defender's evidence is sufficient to overturn the evidence for the pursuer;—to me that evidence appears not to be sufficient, but it is entirely for your consideration.

Verdict for the pursuer on all the issues.

Jeffrey and *Rutherford*, for the Pursuer.
J. A. Murray and *Wilson*, Jun. for the Defenders.
(Agents, *Pat. Orr*, w. s., *Dav. Welsh*, w. s.)

PRESENT,

LORD CHIEF COMMISSIONER.

1822. July 13.

Damages for wrongous imprisonment.

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AN action of damages for wrongous imprisonment.

DEFENCE.—The diligence was regular, on a bill accepted by the pursuer. A special defence was put in for one defender, that he acted, in discharge of his duty, as a messenger. And the defence for others was, that they acted merely as office-bearers of a Mason Lodge.

The issues were, Whether a bill for L. 100, &c. was accepted by the pursuer solely in his

capacity of Treasurer of the Town of Auchtermuchty? Whether it was an accommodation-bill to a mason lodge, or in part payment of a debt due by the town to the lodge? Then there were issues as to Whether the pursuer was four times apprehended, by directions of the defenders, on diligence raised on the bill?

The Town of Auchtermuchty was indebted to the Mason Lodge of St Cyre. The lodge wished to raise L. 100, for the purpose of buying meal to be retailed to the members of the lodge; and it was said that the town, not being ready to pay up the debt, the pursuer agreed to accept the bill in question. On the affairs of the town becoming embarrassed, the managers of the lodge wished to make the bill effectual against the pursuer, and to hold it as having been granted in place of a bill for L. 100 due by the town. Scott, who was box-master of the lodge at the time the bill was granted, gave authority for putting the diligence in force, but afterwards recalled it, and protested against the execution of the diligence.

After the bill and several other documents were put in evidence, Mr Forsyth wished to give in evidence an interlocutor which was written on the letters of suspension.

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J. A. Murray objects, They must put in the whole legal proceedings.

LORD CHIEF COMMISSIONER.—You cannot put in the judgment without putting in such of the proceedings as are necessary to make the judgment intelligible.

Circumstances in which parol evidence was admitted to prove the purpose for which a bill of exchange was granted.

The first witness was asked, What was the object of granting the bill?

Ivory and *J. A. Murray*, for the defenders.—This is incompetent, as the bill speaks for itself, and the presumption of law is, that it was given for value, and it is not competent to prove the contrary by parol evidence, but only by writ or oath. This is asking his opinion, founded upon hearsay.

Glen on Bills of Exchange, p. 77.

Forsyth.—Mr Ivory is right in a question in the Bill-Chamber, but presumption must yield to fact. This is not a question upon the bill, but a claim of damages on account of the conduct of these parties.

LORD CHIEF COMMISSIONER.—The question is, What the object was in granting this bill? and it is put to a witness, who has proved himself a party to raising L.100 for the purpose of

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buying meal to be resold. He proves one mode in which the money was to have been raised; and that, when this was departed from, he did not think it proper that he should be the acceptor of this bill, but he indorsed it. In these circumstances, a person conversant with all the facts and circumstances appears to me to be the best witness to it; and surely the question proposed is fit to be put to a witness so circumstanced.

A party to a transaction allowed to prove that it was understood that a bill was not to be paid out of his funds.

The witness afterwards stated, that, when he agreed to accept the bill, it was understood that it was not to be retired from his funds.

J. A. Murray objects, That this is hearsay, not evidence.

LORD CHIEF COMMISSIONER.—This would be hearsay if he were a bystander; but he is a party to the transaction; and it is clearly competent. You may, no doubt, on cross-examination, bring out facts which will render it worth nothing.

The counsel who begins the examination of a witness ought to continue it.

Two counsel on the same side having put questions to the witness,

The LORD CHIEF COMMISSIONER observed,

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This case will never be done, unless we proceed regularly. Is there no process in the Court of Session by which this case could be stayed till the previous question of the liability for the bill is decided? It is hard to try a long case, when, after all, the trial may prove abortive. In one view of the case, it would then be very simple; were the question settled in the suspension, it would then only be necessary to prove the imprisonment and the damages. If the pursuer objects to this, then the judgment on the verdict must be suspended.

Mr Forsyth stated what was done in the suspension, and argued, that the case was decided.

LORD CHIEF COMMISSIONER.—I would go along with all this if the two first issues were not here.

In damages for wrongous imprisonment, competent to prove in aggravation of damages, that one of the pursuer's family was sick.

The case then proceeded, and several witnesses were called; to one of whom

J. A. Murray objected.—We understand he is called to prove special damage, from the state of the pursuer's family, and no notice has been given of it in the condescendence.

LORD CHIEF COMMISSIONER.—When the

action is for particular loss in business, and the nature of the action requires you to prove loss, then you must plead it; but if you take upon yourself to put a man in prison, he is entitled to get the loss he has suffered. He may prove himself married, and that he has a family, and it is only going a step farther, to prove that one member of that family was in particular circumstances.

Jameson opened the case, and stated, The pursuer at first refused to accept the bill; but on being assured that he would not be personally liable, as it was addressed to him as town treasurer, he accepted it. He then stated the manner in which the different parties had rendered themselves liable, and that the only questions were, Whether the imprisonment took place, and what was the amount of the damages?

Boswell, for Scott.—It is an ungracious proceeding to call Scott as a defender, as he acted a fair and candid part. An implied recall of the authority would have saved him; but he protested.

J. A. Murray, for the other defenders.—This is not an accommodation-bill, as value was given for it; and there is no doubt, that if any man accepts a bill without limitation, he is

Stewart *v.* Macdonald, July 6, 1784, M. 13,989.

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liable for the contents, in whatever character it is addressed to him. A question has been stated as to the liability of Magistrates after they are out of office.

LORD CHIEF COMMISSIONER.—I will not decide that question here, if any such occurs in this case. The question at present is, How far a party is liable when he is described in a particular manner, and then accepts? and whether the practice of the parties, knowing all the circumstances, would fix it on the individual, or on the official person?

Murray.—If a person accepts unqualifiedly, he is liable in whatever manner he is described. If he only accepts to a certain extent, that limits the liability, but the addition to the name is merely a description of the person.—A town cannot be sued, but in the person of its officers. If we applied for payment of *any* part of the debt, it is sufficient.

Douglas *v.* Lord Dunmore, 27th Nov. 1800, M. App. Bill of Exchange, No. 11.

LORD CHIEF COMMISSIONER.—That is quite clear, and it is held, that a person taking the bill only trusts the officer. In the present case, if this bill had all the qualifications which are stated to be necessary, in the practice of

this burgh, to constitute a town debt—if it had the initials of the Magistrates, was drawn at twelve instead of three months, &c. then it might constitute this a town debt. If he accepted this as town treasurer, he had funds, but, as John Beveridge, he had none. Where is the conscience of the lodge in making this demand?

Murray.—This was a fair, legal, onerous transaction. We were acting for poor widows, and he having held out his credit in support of the burgh, was bound to all intents and purposes. It is, in form, a private transaction, and it is asked what consideration was given? The consideration is, to support the credit of the town, and, as treasurer, he ought to have had funds prepared.

LORD CHIEF COMMISSIONER (to the Jury.)—Though this is a business case, which you are best able to judge of, yet, as there are some parts of it which it is difficult to understand, I am afraid it may be necessary to occupy some portion of time by going through it, and I hope by turning it in your minds that you will get at the truth.

The first question is, Which of the defend-

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ers are fixed by the evidence to be liable? the next, What is made out against them? and the third is the damages.

There are here ten defenders.

1. Coll the messenger.—The next is Scott, the party in whose name the diligence proceeds; but he was out of office, and protested against the incarceration, which I would have held sufficient even if he had remained in office. A letter has been produced, in which he authorizes the proceedings; but it is said, and with some force, that this was subsequent to the first arrest, and that it was recalled by the protest. If, therefore, you think there is sufficient evidence to disconnect him from the transaction, I am of opinion that the law will support your verdict.

[His Lordship then stated the conduct of the other defenders, which led him to hold all of them liable in damages.]

Upon the merits,—the first and second issues must be taken together. The first is, if the pursuer acted solely as treasurer, which is a mixed question of law and fact; the other, whether this was an accommodation-bill, or in payment of debt. If he acted as treasurer, then it may have been in payment of debt; but if as an individual, there is more difficulty.

We have heard much of the debt due by the

town to the lodge; and at one time there seems to have been some conversation as to drawing part of it. That debt does not appear to me to be connected with this bill, by such clear and perspicuous evidence as would show that the bill was granted for value. If you think otherwise, it will be important on the first issue, as it could only be in his character of treasurer that the pursuer had any funds in his hand.

On the question of value, there appears to me to be a question of law, but not the one which was stated from the bar. It arises out of the manner in which those parties used to deal. It has been proved, that the bills granted for the town debt were drawn at twelve months, and addressed to the treasurer; that a magistrate put his initials upon them, and that they were then accepted by the treasurer. This bill, I have little doubt, was meant to be a town creditor's bill; but as it is drawn at three months, and wants the initials of the Magistrate, I cannot say that the evidence, as applied to the law, proves this to have been accepted solely in his character of treasurer.

This takes away the substratum of the first part of the second issue, on which it appears to me the real merits depend. If you are satis-

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fied that this bill was accepted for the accommodation of the Mason Lodge, then it was an accommodation-bill; and if you find so, I think the law will support your verdict. I am aware of the question stated on the authority of cases, and of an author of great eminence; but that relates to what are termed wind-bills. It is my opinion, that in this issue accommodation is to be taken in the common meaning; and that the question is, Whether this bill was accepted to accommodate the Mason Lodge?

It must either be a personal undertaking, or as treasurer,—it is not valid as a draft on the treasurer; and if it is a personal undertaking, was it not for the accommodation of the Lodge? The town fails, and they come against the individual; but as he has no funds in his hands, it is contrary to all conscience, and, consequently, contrary to law, to put the diligence in force against him.

From the facts proved, I hold this to be not a wind-bill, upon which so much discussion has been had, and which is a species of bill that is a disgrace to all who are connected with it; but as a bill accepted to accommodate this Lodge, and to enable them to purchase meal, for which, when re-sold, they drew the price.

If I am wrong in the opinion I have deliver-

ed, the gentlemen at the bar are aware of the manner in which the error may be rectified.

If you find this an accommodation-bill, then the question of damage arises, and I consider this a case of great hardship; but an action for a civil injury ought never to be made the means of punishment. I think it a case for damages, —the amount must be matter of accommodation.

Forsyth.—We wish to except to the direction, that Scott is not liable.

Ivory.—We also intend to except to the direction, that the messenger is liable.

LORD CHIEF COMMISSIONER.—After so long and painful attention to this case, I cannot go into the detail of the manner in which you ought to do this; but would say, in general, that you may state that such and such facts appear in the evidence, which makes it improper for me to have directed the Jury to hold him not liable.

Verdict—The Jury found, that the bill was not accepted by the pursuer as treasurer, but as an individual, and merely as an accommodation-bill: And found Scott liable in L. 5, and

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the other defenders, conjunctly and severally, liable in L. 100 damages.

Forsyth and *Jameson*, for the Pursuer.
Boswell, for Scott.
J. A. Murray and *Ivory*, for the other Defenders.
(Agents, *Martin & Stevenson*, W. S. and *Alex. Burns*, W. S.)

PRESENT,

LORD CHIEF COMMISSIONER.

1822. July 16.

BERRY and SANDERSON *v.* BALFOUR.

A protest on a bill of exchange found to be regularly taken.

AN action of reduction and improbation to have a protest upon a bill of exchange set aside.

ISSUES.

"Whether the bill in process, dated Edin-
"burgh, 11th January 1819, for the sum of
"L. 385, 18s. 1d., drawn by the pursuers,
"and accepted by Alexander Elder and Com-
"pany, was not protested for non-payment on
"the 14th day of April 1819, by James Lun-
"din Cooper, notary-public in Kirkcaldy, in
"the usual place of business of the said Elder
"and Company, at Kirkcaldy, or in the per-