consider the circumstances in which it was done, that it was within a minute of the decision, and when the party was in a passion.

If you agree with me in this, and if the first is not a charge of perjury, then the damages for the third will be such as will not much gratify the pursuer; and the case would have been much better settled by some farmers in the county of Ross than in a Court of Law.

Verdict—"For the defender on all the issues."

Moncreiff and *Cockburn*, for the Pursuer.
Jeffrey, for the Defender.
(Agents, *Ainslie & Macallan*, w. s., and *Thomas Walker*.)

PRESENT,

THE LORD CHIEF COMMISSIONER.

HUNTER *v.* CARSON.

1822. Dec. 20.

Special findings in a question, Whether the defender had guaranteed the payment of the price of a certain number of cattle.

THIS was a case sent to try certain questions of fact, to enable the Court of Session to decide, whether the defender was liable, as cautioner, for James Gordon in Overlaw, for the price of a number of cattle.

HUNTER
v.
CARSON.

The duplicate of proceedings made by the trustee in a bankruptcy received as evidence.

The trustee on Gordon's estate was called, and the duplicate of the proceedings in the sequestration, made as directed by the bankrupt act, was produced.

Cockburn, for the defender, objects, The original ought to be produced.

Jeffrey.—This is made under authority of the statute, and is lodged as evidence in the Court of Session.

LORD CHIEF COMMISSIONER.—There is a great difference between a private copy and one made by statute; and this is a document which the Court of Session are to act upon. After looking at the clause in the statute his Lordship said, this copy is evidence for every purpose for which the Sederunt Book is evidence, and must be received.

Incompetent to prove, by the trustee on a sequestrated estate, that, from the declaration of the bankrupt and states of accounts, the bankrupt was insolvent at a particular date.

The trustee was then asked, Whether, from the declarations of Gordon, the state of accounts, or otherwise, he could state whether he was insolvent on 26th October? An objection was taken, that the declarations of the bankrupt were not evidence.

LORD CHIEF COMMISSIONER.—The objection to this is very strong. Suppose it had been

upon oath, still it is in another proceeding, with other parties. This Court must have the evidence upon oath, and in presence of the Jury, but I have no objection to calling Gordon back to speak to the facts, and you may examine him from the declaration.

Whigham, for the pursuer, wished the Jury to return to the Court of Session the precise words that were used.

Cockburn admitted, that the liability depended on the precise words, but that the words proved were such as were constantly used in markets, without the least intention of becoming a cautioner.

LORD CHIEF COMMISSIONER.—The case has been concluded without evidence for the defender; but to entitle you to find for the pursuer, you must be satisfied that he has proved the different issues, and must attend particularly to the words used by the different witnesses. It has been correctly stated, that you are not to decide the right betwixt the parties, but to return findings upon the issues, that the Court of Session may decide, whether there was a guarantee, which may undoubtedly be proved in this manner. The return may either

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be, by a finding for the pursuer, or defender, on each issue, or by re-echoing the terms of the issues.

His Lordship then went through the evidence applicable to each issue.

Verdict.—The Jury found one of the issues not proven; and on the others, they found certain expressions which had been used by the defender at the time the cattle were sold; and that at that time Gordon was insolvent, but that his insolvency was not known to the defender.

Jeffrey and *Whigham*, for the Pursuer.
Cockburn and *Maitland*, for the Defender.
(Agents, *Welsh & Ewart*, w. s., *Corrie & Welsh*, w. s.)

Facts indorsed on the issue by consent of both parties.

Whigham moved to have it indorsed on the issues, that Hunter and Gordon were not previously acquainted.

LORD CHIEF COMMISSIONER.—You must show to the Court, that it is expedient to indorse it, and then you must satisfy the Jury that the fact is as you state it. This is the second application of this sort, and in the former

case the Court did not think it expedient to exercise their discretion.

Cockburn.—We also wish a fact indorsed, viz. that Gordon was notoriously in good credit at the time. I have all along regretted, that there was no issue on the reputation, which is the true question in a case of this sort, as under the return to the last issue, the other party may say that there was no foundation for believing him solvent.

Whigham.—There is nothing in this case of reputation, but of representation.

His Lordship intimated, that both applications appeared to him to be for new issues, not for the indorsing detached facts. But by consent of the parties, his Lordship allowed both to be indorsed.