PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

EDWARDS v. MACINTOSH.

1823. Dec. 23.

Damages for Defamation.

DAMAGES for defamation contained in certain letters addressed to the Lord Lieutenant and Member of Parliament for the county of Inverness.

DEFENCE.—The defamation is denied. The letters were confidential communications relative to the magistracy of the county. If there was any defamation, it is compensated by publications in the pursuer's newspaper.

The issues in this case contained long extracts from the same newspapers and letters as those founded on in the cases of Tytler and Cooper, *ante*, p. 236 and 357; and the questions put were in many respects similar to those in Cooper's case.

The first witness for the pursuer was shown a letter from him to the defender.

Rutherford, for the defender, objected, That

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it was not one of those in issue, and that the pursuer ought to produce the answer.

LORD CHIEF COMMISSIONER.—This is a letter from the witness, recovered from the defender, who must, therefore, be aware of its existence and contents, and is now produced by the pursuer, to show *quo animo* the letters in the issue were written.

Quotations contained in a letter not evidence of the statements quoted.

The witness was then asked as to certain quotations in the letter, which was objected to, as not the best evidence.

LORD CHIEF COMMISSIONER.—The law is quite clear, that the letter from which the quotations are made, is the best evidence. If the quotations are to be proved, the letter from which they are quoted, must be produced, and it will then appear whether they are correct.

A defender does not make a letter evidence, by putting it into the hand of a witness for the purpose of cross-examination.

On cross-examination, the witness was shown a letter, to which the pursuer objected.

LORD CHIEF COMMISSIONER.—The defender may put the letter in the hand of the witness for the purpose of cross-examination, but he cannot make the letter evidence *now*.

An opinion of counsel given to

The second witness (the Lord Lieutenant)

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a public officer, ought not to be produced in evidence.

was asked, on cross-examination, whether he had taken the opinion of counsel as to the propriety of communicating the letters without permission of the writer, and if so, to produce that opinion,—to which an objection was taken.

Rutherford.—The witness may decline to produce it, but the other party cannot object.

LORD CHIEF COMMISSIONER.—This subject was much considered in a former case. It is clear, that this, being an official and confidential communication, cannot be produced. It does not depend on the contents of the communication, as I am bound to tell the witness, not only that he is not obliged to disclose the communication, but that he is bound not to disclose it. You have got the fact, that he took the opinion of counsel. I would not grant a commission to examine this witness, that he might have an opportunity of refusing to produce this. The same was held in Leven's case, and another, and again in Sir John Marjoribanks' case.

Leven *v.* Young, Vol. I. p. 356. Craig *v.* Sir J. Marjoribanks, *ante* p. 342.

The witness having declined to produce the opinion, unless ordered, was then asked whether he did, in consequence of the opinion, communicate the letter, which his Lordship held an incompetent question.

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When the commissions of the Peace were produced, a witness was called.

LORD CHIEF COMMISSIONER.—It is not necessary to prove an instrument under the Great Seal—it proves itself.

When part of a paragraph is read for the pursuer, the defender is entitled to insist that the whole shall be read.

When a paragraph from the contract of the Inverness Journal was read, the counsel for the defender wished the whole passage read.

The Solicitor General said, The question is, whether they are to have it now?

LORD CHIEF COMMISSIONER.—If there is more in the paragraph, they may have it now.

In an action for sending defamatory letters to two individuals, competent to prove that the letters were afterwards printed.

A printed copy of the letters was then produced.

Skene and *Forsyth*, for the defender, object, There is no issue as to the general publication of these letters. If he has since published them maliciously, he may be liable in a fresh action. They were rejected in Cooper's case.

The Solicitor General.—The sending to Colonel Grant, and Mr Grant, is the ground of the action, but I am entitled to prove the publication to show malice. In Cooper's case we had not full evidence.

2 Phillipps, 152.

LORD CHIEF COMMISSIONER.—I cannot assent to the proposition laid down, that the pursuer is limited to the four corners of these issues. The issue is the question to be tried, and nothing goes to the Jury but what is within the issues; but here the motive is part of the question.

The first point is, whether the matter in the issue is of and concerning the pursuer?—you must go out of the issue to prove how it is so. The next question is the falsehood, and then the malice which is inferred from the falsehood,—but to prove these, the party is not limited to the matter contained in the issue,—he may prove any thing relevant to the question between the parties.

Whether the matter to be given in evidence has reference to that question, is matter of consideration,—but if it has reference, it is admissible, and it is impossible to state evidence in the issue.

We are bound on principle to admit this, and have acted on the principle in two cases; those of Forbes and of Cooper, and, in this last case, my notes show, that we admitted the paper, though it fell to the ground from the parties being interested.

Harper *v.* Robinson, and Forbes, Vol. II. p. 395. Cooper *v.* Mackintosh, *ante* p. 357.

LORD PITMILLY.—I agree that we cannot

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reject this as evidence. The question here is, not whether the defender sent these letters, but whether the matter in them is false, malicious, and injurious;—the important question here is the malice. They may have been sent confidentially, or published, but the question is, the motive with which they were sent.

This evidence may be important on the question which the Jury have to decide on the whole matter proved. Such evidence may, in some cases, be decisive, and it is therefore impossible for us not to receive it, leaving the effect of it to the Jury. In Cooper's case, the witness was examined at considerable length.

Competent to prove to whom certain passages in a printed letter apply, the names being left blank.

It was proved that the letters were printed, leaving the names blank, and it was proposed to ask a witness what persons he understood to be meant.

LORD CHIEF COMMISSIONER.—In examining, to prove more full publication, you may ask who was meant; and, if you wish to make out the inuendo, you may ask the witness paragraph by paragraph.

The defences in the action do not prove a fact.

When the defences were given in evidence.

LORD CHIEF COMMISSIONER.—The defences have never been received in proof of a fact.

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It was stated for the defender that the pursuer had provoked the statements by attacks in a newspaper, of which he was proprietor.

LORD CHIEF COMMISSIONER.—Is there any authority holding, that publications in a newspaper can be pleaded in compensation against a sleeping partner of that newspaper, who complains of an injurious libel, and who is ignorant of the publications in the paper?

Whether defamation in a newspaper, in which the pursuers has a pecuniary interest, can be pleaded by the defender in compensation against a claim of damages for defamation.

Before the defender's case was closed, the Solicitor General gave notice that he intended to found on the numbers of the Courier newspaper, produced for the pursuer.

Incompetent for a pursuer to give evidence of recompensation.

Skene.—I object to this, as they ought to have taken issues, if they meant to found on them.

LORD CHIEF COMMISSIONER.—If they are to go in compensation, I think it incompetent to found on them now; but I wish to know the object of the production.

The Solicitor General.—We produce them to show that the articles are called forth by repeated attacks in the Journal.

LORD CHIEF COMMISSIONER.—If you show that a publication on the 1st September was

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provoked by one on the 31st August, the inclination of my mind is to receive it in evidence, but I cannot receive it to prove *compensatio injuriarum.*

On farther consideration, it appears to me better to reject the evidence, and leave you to take your Bill of Exceptions. It appears to me, that your recompensation is destroyed, and as I reject it as not affording an answer to the issues in compensation, it is a proper subject for a Bill of Exceptions.

J. A. Murray opened the case for the pursuer, and stated the nature of the libel,—and that being contained in private letters to a near relation of the pursuer, was an aggravation of the offence.

Forsyth, for the defender, maintained, That no damage had been proved, and that the pursuer had attacked the defender in the Courier newspaper. The defender, in the Journal, did not attack the pursuer, but a class of persons, and the letters were confidential.

Chalmer *v.* Douglas, 22d Feb. 1758, M. 13939. Goddard *v.* Haddoway, Vol. I. p. 159. Porteous *v.* Izatt, &c. 12th Dec. 1781. M. 13937.

The Solicitor General said, Part of the issues in defence, are anterior in date to the libel, and, therefore, cannot be pleaded in compensation, the principle of which, is, that the party has taken his revenge. The partner of

a newspaper, is civilly, not personally, responsible for slander.

LORD CHIEF COMMISSIONER.—The questions here are, Whether there is proof of publication; and whether the pursuer is the person meant.

The publication is clearly proved, as sending a private letter is by law a sufficient publication. An attempt to injure a person in the opinion of a near relation, and a person of high consideration, is a serious injury, and is often, to a private individual, worse than a public libel.

It is said the communication was confidential, and the communication of it to the Vice Lieutenant of the county, appears to be proper from the circumstances; but a party cannot protect himself by calling a communication private.

Compensation is a good defence by the law of Scotland; but it does not apply here, as the compensatory matter must be of the same nature as the libel. Here the libel is private; the matter pleaded in compensation is a public anonymous libel in a newspaper. This is not in the nature of an account, but if it were, the published libels not being of the same nature, could not be pleaded, and even if they

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could, how is the responsibility of the pursuer to be made out in such a case? I asked for authority on the subject, but none was stated. A person having a pecuniary interest in a newspaper, is liable in damages to a person injured by what it contains; but it is very different, whether he shall be met, by what he may never have seen, as cutting off his right to reparation for an injury done to him personally. To entitle the defender to plead compensation, he must make out that the pursuer is author or publisher of the libel; and, in this case, the evidence shows that he was neither.

You are to consider the compensation as not made out in law, and, taking the law from the Court, you will consider the facts of the case.

Verdict—For the pursuer, damages L.700. *

The Solicitor General, J. A. Murray, Buchanan, Robertson, for the Pursuer. *Forsyth, Skene, Rutherford,* for the Defender. (Agents, *Hugh Macqueen,* W. S., *Æneas Macbean,* W. S.)

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* On the 10th July 1823, a motion was made to delay the case on account of the absence of a material witness. A counter affidavit was produced, stating a belief that the witness was not material.

LORD CHIEF COMMISSIONER.—It being made out on affidavit, that the witness is material, and all diligence having been made to find him, such an affidavit cannot be encountered by other affidavits, that he is not material. We grant the delay, on payment of costs.

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SKENE moved for a new trial, on the grounds, 1st, That evidence had been admitted of facts in 1821, subsequent to the action being in Court, and which could not be in issue. 2d, That there was misdirection in law, the issues on the part of the defender having been withdrawn from the Jury.

In damages for libel, other libels admitted in evidence to show the *animus* of the defender.

The justification of printing in 1821 was, that he was slandered in the pursuer's newspaper, which results in the plea of *compensatio injuriarum.*

Izatt *v.* Porteous, Dec. 12, 1781, M. 13937. Scotlands *v.* Thomson, Aug. 1776, M. 13934.

LORD CHIEF COMMISSIONER.—You wish to establish that the right to bring an action, and to plead the matter in compensation, are convertible terms. When an application is made for a new trial, the whole matter is open; but if the application had been rested on the first ground alone, I am of opinion, that there has not been enough stated to induce us to grant the rule. It is clear, that, if the matter is of the same nature with the matter in issue, then it is admissible to show *quo animo* the defender acted.

2 Camp. 72. 2 Phillipps, p. 152.

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But, with respect to the direction to the Jury as to the compensation, I think it very important to have the whole direction sifted, as the doctrine of *compensatio injuriarum* appears to me to require, and will receive elucidation by more discussion. We therefore grant the rule.

PRESENT,

THE THREE LORDS COMMISSIONERS.

Feb. 6, 1824.

ON this day, when his Lordship reported the trial, he stated, that, as the publication in 1821 was of the same libel, he had admitted it to prove *quo animo* the defender acted.

That, on the other point, he had directed the Jury to consider on the evidence, whether the pursuer was ignorant of the publications in the newspaper, of which he was a part proprietor; and that, if they thought him ignorant then, that they were not to take the compensation into consideration, but were to take the case as a simple case of slander. It is said, that the pursuer approved of the conduct of the editor of the newspaper, and was present at the Inverness meeting. If the defender rests on this, the application ought to be on the ground, that

the verdict is contrary to evidence; because it holds that the Jury were of opinion that the pursuer was not ignorant of the publication, but that he knew the publication, and yet, that the Jury did not consider the compensation.

The question of law is, whether I was right in stating, that only delicts of the same nature could be pleaded in compensation of each other.

The Solicitor General, in showing cause against the rule, did not consider it necessary to argue the first point. On the 2d, he said there were two points, though on the same principle. Whether the Judge did wrong in stating that the defender had failed to prove enough to make out *compensatio injuriarum*. If the evidence had been rejected, this would have been a direction in law, but the evidence was admitted, and the observation made was, that it did not make out the plea, as he did not prove the pursuer personally connected with the libel.

The 2d point is, that compensation is not applicable to the facts as proved. This rests on the principle, that slander is a personal injury, arising from personal feeling, not compensation of a debt, and that, to compensate this, there must be the same personal feeling, either direct or implied.

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The right to bring an action, and plead compensation, are not convertible. It is not a bar to the action, but an answer on the damages. The principle in Finnerty and Tepper does not apply.

Reid *v.* Douglas, June 11, 1814. 2 Camp. 72. Scotlands *v.* Thomson, Aug. 8, 1776. M. 13934. Porteous, Dec. 12, 1781. M. 13937. Chalmers *v.* Douglas, Feb. 22, 1785, and July 28, 1784, M. 12439 and 12441. Goddard *v.* Haddoway, Vol. I. 156. Staig *v.* Hislop, do. p. 15.

Compensation can be pleaded only where the libels arose out of the same transaction, or where the pursuer makes a subsequent publication. There is no instance of provocation being sustained, unless where it was in heat of blood.

Forsyth.—We proved both the provocation and compensation, and the balance of injuries ought to have been struck. The pursuer had been personally connected with the newspaper, and, being printer, he was publisher of the slander.

Starkie, L. of Slander, 416.

Starkie, p. 20. Stair, 1. 9. 4.

We trusted to this defence, or would have taken an issue on the *veritas*,—this is surprise.

LORD CHIEF COMMISSIONER.—I am confirmed, by the reference you have now made, in the opinion, that the law of England ought not to be referred to, even in illustration of this subject.

It was impossible for the Court to do otherwise than to grant you an issue, as you stated him as connected with the paper in all, or one

or other of the various characters; and there is no doubt that, in some of them, compensation would have been competent.

Forsyth.—Compensation is recognized by Stair, and in the cases of Scotland and Izatt. It is competent where the cases come under the *actio injuriarum*. In this case, the Jury were directed not to consider the issues, and the presumption is, that they took the direction. The case of Reid and M'Call has no application here.

Auchinleck *v.* Gordon, March 4, 1775. M. 7348. Wilkie *v.* Wallace, Feb. 15, 1765. M. 7360. Hutchison *v.* Naismith, May 18, 1808. Miller *v.* M'Kay, Nov. 26, 1811. Bankton, B. I. t. 24, § 4. Ersk. B. III. t. 4, § 15.

LORD CHIEF COMMISSIONER.—Though this is a species of action which the Court would not be anxious to encourage, still, when such an action is brought, the Court ought, as far as possible, to give satisfaction to the lieges in general, and the individuals interested. As this is a case of great importance, and will be a leading one, the Court will not give judgment till next Term.

On the 2d of June it was intimated to the parties, that the Court wished to hear farther argument, confined to the point of *compensatio injuriarum*.

Rutherford, for the defenders, maintained, June 18.

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Compensatio injuriarum, a competent defence in an action for libel, but though rejected at the trial, a new trial was not granted, but judgment delayed.

That the injuries were of the same species,—that the claim was for *solatium*,—and the pursuer does not come into Court with clean hands. In the Roman law, the rule of *paria delicta* holds, but there are no recent authorities on the subject, though the principle was admitted, but not decided in the case of Rose and M'Leod. The proprietor of a newspaper is liable, because he ought to be acquainted with its contents.

LORD PITMILLY.—Is there not a point of relevancy here, whether the issues ought to have been allowed?

Forsyth and *Rutherford*.—We think it quite clear; and having got issues, we trusted to their being sent to the Jury.

The Solicitor General—When the issues were prepared, it was stated that this would be open at the trial.

LORD CHIEF COMMISSIONER.—You hold compensation as taking away the right of action; and it is a very important question, whether the Court, by granting issues before the proof, are to be bound to send them to the Jury, independent of the facts proved. If the Court

come to be of opinion, that, being a proprietor, is not sufficient to found the plea of compensation, would it be bound by having permitted these issues to be inserted? It never was or could be held, that a proprietor was not liable in an action; but the question is, whether a case founded on civil responsibility can compensate one founded on personal motives? It was left to the Jury to say whether the pursuer was connected with the paper in any other character than that of a sleeping proprietor.

June 24.

J. A. Murray.—If the issues fix the law, this is the only case where a crime is classed with a civil responsibility; and, therefore, the argument as to their being *paria delicta*, and the pursuer not coming with clean hands, does not apply.

Compensation is a plea in equity, to which a slanderer is not entitled. Even if the point of law was wrong decided, the Court ought not to grant a new trial, as material justice has been done.

Grant on New Trials, 140.

Lord Chief Commissioner.—There is no doubt that that is the principle followed in England, and that the same has been adopted here; but this is not one of the cases where

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it applies. This is a fundamental objection in point of law, not a mere incidental point, which, if tried again, would be decided otherwise. I removed this point of compensation so entirely from the consideration of the Jury, that, if the Court think me wrong, a new trial must follow.

Kitchen *v.* Fisher, Vol. II. p. 595.

J. A. Murray.—The other party objected to our proving recompensation, which depends on the same principle as compensation.

On a question by Lord Pitmilly, *Mr Forsyth* would not admit that the pursuer was to get recompensation, provided the Court allowed proof of compensation; upon which the Lord Chief Commissioner observed, that the Court would not allow the case to go out of their hands without settling this. And, upon an observation as to the resolutions entered into at Inverness, his Lordship said, There was no name mentioned there, and no proof of who was meant. Such a point falls under the principle mentioned, that a new trial will not be granted; because a small part of a case has been wrong decided, but differs totally from the great principle as to compensation.

LORD CHIEF COMMISSIONER.—The case has

been twice argued with ability; and if, in this case, compensation ought to have been admitted by the law of Scotland, then my rejecting it was undoubtedly error.

The two learned Judges, by whom I am assisted, inform me, that, under all the circumstances of this case, they are of opinion, that compensation should have been allowed to go to the Jury; and, therefore, the direction I gave must be held erroneous. We are all of opinion, that, in the position in which the case now stands, the proper remedy, according to the law of Scotland, is, by having the compensation ascertained in a separate action, and then having the damages in the one case set off against those in the other. In the Court of Session, in a similar situation, extract would have been superseded till the debt or damage to be set off was ascertained; and this Court, under the discretion with which it is vested in granting or refusing a new trial, may deal with the case in a similar manner.

Ersk. B. III. t. 4. § 16. Mor. Dict. 2566.

The matter ruled in this case, goes to the very foundation of the question; and the case stands in this position—a verdict is found for the pursuer, which could not be questioned if his case stood alone, but the defect is, in the other action, the compensation not having been

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well tried. If the Court have the power, the verdict should, therefore, not be disturbed, and the rule should be dismissed *in toto*, but the judgment on the verdict should be deferred, so as to enable the defender to bring and try his action, and set off the damages he may recover against the damages found in this case.

This saves going again over the pursuer's action, and puts the damages in the one case distinctly and in a liquid state against those in the other.

By what I am about to say, I have no intention to shake the judgment of the Court, but to show that I did not propound as law a doctrine entirely without foundation.

It appeared to me, that, in compensation of delinquencies, there must be a connection of subject, that the act of the pursuer must have been excited by, or connected with the delinquency on which the action is founded.

It also appeared to me, that, to entitle a party to plead compensation, the libels must be the same, that is, there must be a similarity in the gist of the actions which would arise out of them. A proprietor of a newspaper is undoubtedly liable for damage done by the publication of a libel, and when the damage is

ascertained, it may be set off against damages found for a malicious libel—but remove the malice by proving his ignorance, and a different case arises.

The one case is a delinquency, and founds an action *ex dilecto*, the other is no delinquency, but founds an action *ex contractu*,—the implied contract being, that when a party is gaining by the act out of which the injury arises, he is bound to warrant that every thing is correctly managed.

This doctrine I considered fortified by Thomson's, and all the cases in the Court of Session, and by Dempster's case in this Court, in all of which, the pursuer was personally concerned in the compensatory libels, and also by what Mr Erskine says on the subject.

Gilchrist *v.* Dempster, *ante* p. 363.

B. III. t. 4. § 15 and 16.

I thought the damages in the present cases could never be considered to be commensurate, and that those pleaded in compensation could not become "clear beyond dispute." But, knowing the opinion entertained on each side of me, I shall only say, that the direction being erroneous, we ought now to make such an order as will enable the parties to come at the true justice of the case. This can only be accomplished by taking the recompensation also into view, which was insisted on at the trial,

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and forms a material feature in this case. I therefore propose, that the order should be to discharge the rule, reserving to the defender his right to bring an action. *

LORD PITMILLY.—As a matter of sound discretion, and to do justice to both parties, I think the defender ought to have time to bring an action. This is what would have been done, in similar circumstances, before the Jury Court was established. The whole case would not have been gone over again, but the party would have been allowed time to make out his claim. This is what would have taken place in a civil claim for money, and the same holds here.

If the whole is to be again discussed by Macintosh, then Edwards must have a right to bring the other matter before the Court. This must be done whether a new trial is granted, or if it is made out as a separate claim. I concur in thinking, that we are entitled to allow him to make out his claim in either way.

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* Being otherwise engaged, I was not present until nearly the conclusion of Lord Pitmilly's opinion, but what is stated above, is taken from a note of the Lord Chief Commissioner's opinion, on the accuracy of which I can completely rely.

LORD GILLIES.—I have double reason to apologise for expressing my opinion, as I really have nothing to add.

It appears to me that the plea of compensation ought to have been admitted, and it would not be easy in Scotland to find a difference of opinion on the subject. Erskine expresses himself loosely on this subject, but I agree with Lord Pitmilly, that this is to be illustrated by the case of debts. It is loose to say that debts of the same species alone may be compensated for, though it is true that 100 quarters of wheat cannot be compensated by 20 hogsheads of sugar, yet the price of the one may be compensated by that of the other. It is true the old act limits compensation *de liquido in liquidum*, but this has long been departed from; and if both are illiquid, each party may take a term for ascertaining the amount in money. So, when a claim is made for a sum of money, on account of an injury, this may be compensated by a counter-claim on the part of the defender.

On the second ground I am perfectly clear,—the object of allowing compensation is to prevent accumulation of actions,—for a person is not to pay a debt which is not due, or beyond what is due. Where an inferior court has refused to admit the plea, the Court of Session

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have delayed till a counter action has been brought. Here an action has been brought, and a certain sum awarded, and so far the case has been fairly and properly tried, and I hold that the true sum due by Macintosh to Edwards has been given. Let Macintosh bring his action, and a different Jury will award to him the true sum due by Edwards, and then all that remains is the simple operation of subtracting the one from the other. It is now too late to prevent the multiplicity of actions; but we do what the Court formerly did to prevent a person paying a sum which was not due.

This may, by possibility, be in favour of Macintosh, but it is much better than having the trouble and expence of a new trial,—why should the party have the whole expence of travelling over the same ground?

The Solicitor-General inquired whether the Court were of opinion that it would be better for Edwards to bring a counter action.

LORD GILLIES.—That seems a most extraordinary inference, when we give this as a relief on the ground that compensation had been refused.

LORD CHIEF COMMISSIONER.—The decision of the Court is a reversal of the principle of the decision given at the trial, which was, that the claim by Edwards could not be met by the passages relied on, because he only derived a profit from the sale of the newspaper; and had not done any act personally to render him responsible.

Rutherford moved that the Bill of Exceptions should be perfected. Nov. 13.

LORD CHIEF COMMISSIONER.—As I am alone at present, I cannot hear this discussed; but I wish to know the ground of your exception. The Court were of opinon, that it was expedient to divide the case, and you must make out that *in law* we were wrong. The question is, whether the order to separate the case was a legal order for the Court to make? In England in general the whole case is fought again, but here the principles of pleading differ; and in Lord Fife's case a part was sent to a second trial.

On a subsequent day, when the same motion was made in presence of the whole Court, his Lordship said, We are of opinion that there is a point of law to which you may except, but it Nov. 16.

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will be necessary to have it well defined. You have the opinion of the Court that I was wrong in the decision excluding the compensation. The natural remedy for this was to grant a new trial, but, instead of this, we discharged the rule, but coupled this order with a condition. You cannot except to the decision of the Court, as it reverses my decision; you must except to it only in so far as it couples the discharge of the rule with certain conditions.

PRESENT,

THE LORD CHIEF COMMISSIONER.

1824. Jan. 14.

WALKER v. STEEL.

Finding for the defender on an issue, whether a woman was facile, and whether she required a deed to be returned for the purpose of being cancelled.

AN action of reduction of a disposition and deed of settlement, on the ground that the granter had been prevailed on, and concussed to grant it.

ISSUES.

"It being admitted that, on the 28th "day of March 1822, the late Margaret "Walker signed the disposition and deed of "settlement in process, and that the said deed