
 PRESENT,
 LORD PITMILLY.

GORDON'S
EXECUTORS.

v.
DUNLOP.

GORDON'S EXECUTORS v. DUNLOP.

1825.
July 13.

AN action of damages against the trustee on a sequestrated estate for having caused the pursuer to be apprehended and detained for some hours by virtue of an incompetent decree of the Judge-Admiral.

Circumstances in which a trustee was held liable in damages for incarcerating a person on a decree of an incompetent Court.

DEFENCE.—The defender, in discharge of his duty, was bound to put in force the decree which he got from the bankrupt.

ISSUES.

The issues contained admissions that the defender was trustee on a sequestrated estate—that Mrs Gordon was apprehended at his instance, by virtue of a decree obtained by the bankrupt in the Admiralty Court—that the decree had since been set aside in the Court of Session, and decree of repetition pronounced in favour of the pursuer.

The question then was, What loss and damage the pursuers had suffered in consequence

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of the Admiralty decree having been put in force.

An objection was taken by the defender to the question, whether the bankrupt had said that the decree was not to be put in force.

LORD PITMILLY.—I think I must admit the evidence.

The defender afterwards tendered the bankrupt as a witness; to which it was objected, that he is undischarged.

On the other side, it was maintained, that the action was against the trustee personally, and that the bankrupt had no direct interest in the result of this case.

LORD PITMILLY.—I think he is not admissible. He is an undischarged bankrupt, and this is an action by which his estate may be diminished.

Jeffrey and *Brownlee* maintained, That damages must be found.

Cockburn admitted, That, if carelessly read, the issue might imply this, but maintained that the defender was bound to act as he did.

LORD PITMILLY.—This case has detained

you longer than I expected, and there is some nicety in it, but I am of opinion that you must find a verdict for the pursuer; but there is every thing to extenuate the blame of the defender.

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It is clear from the way in which the issue is drawn, that you must find against the defender, as the question is not whether damage was suffered, but what loss and damage? Independent of the construction of the issue, this is clear, as Mrs Gordon was apprehended for a debt that, so far as appears, was not due by her; and if she was apprehended for a debt not her own, that was an illegal act, and must infer damage. Being a decree of an incompetent court, I would not have held sufficient, as it is a common practice to bring such cases before the Admiralty Court; but the pursuer being apprehended, and in the hands of a messenger for a debt not her own, entitles her to a verdict. A person ought to be cautious in apprehending another, but there was every thing in the conduct of Mrs Gordon to diminish the damages; and if the defender had been able to prove that he sent the letters that were mentioned, the verdict might have been for him; as a person receiving such letters, and not answering them, must take the consequences. A Bill of Suspension

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was proper, but not necessary to entitle the party to damages, as every one ought to be cautious in using diligence.

I could wish the case had not been brought ; and if the defender were personally liable, scarcely any sum would be too small for the damages.

Verdict—" For the pursuers.—Damages
" L. 10."

Jeffrey and Brownlee for the Pursuers.

Cockburn and Robertson for the Defender.

(Agents, *Gilbert Lang and Mackenzie & Innes, w. s.*)

PRESENT,

LORD PITMILLY.

SCOTT v. WILSON.

1825.

July 15.

Finding for the defender on two issues, one as to a deed being the deed of a party, the other as to the property being conveyed in trust.

REDUCTION of two deeds on the ground of facility, fraud, and intoxication ; or to have it found that they conveyed the property in trust.

DEFENCE.—The conclusions of the summons are inconsistent ;—trust can only be