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terfere, as you are not entitled to reply on the Court. If I make an error in the view of the case, it is merely submitted to the sense of the jury, and they will set it right. If there is an error in law, then a bill of exceptions may be tendered, or if any mistake in fact, I am ready to correct it.

(*To the Jury.*)—The advice I gave you was on the view in which the case struck my mind, but it is subject to be corrected by you, should you think me mistaken.

Verdict—For the pursuer on the 1st, 3d, and 5th issues, with damages on each. For the defender on the 2d, 4th, and 6th issues.

Jeffrey and Pyper, for the Pursuer.

Moncreiff and Maitland, for the Defender.

(Agents, *J. G. Barr*, s. s. c., and *A. W. Goldie*, w. s.)

PRESENT,

LORDS CHIEF COMMISSIONER, CRINGLETIE, AND MACKENZIE.

BRITTON v. LANG.

1826.
March 21.

Damages for injury done to a dam dike.

THIS was a suspension of a charge on a decree in absence in the Court of Session for the sum of L.159, 8s. 9d. as damage said to be done to

the pursuer's coal-work by certain operations by the defender on the river Nethan.

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ISSUE.

“ It being admitted that Thomas Lang, the
“ pursuer, is proprietor of the lands of Cross-
“ ford in the county of Lanark, and of a mill
“ situated upon the said lands, and of the coal
“ under the said lands :

“ It being also admitted, that, prior to 1821,
“ the pursuer was in possession, by means of a
“ dam-dike, of part of the water of the river
“ Nethan, for the use of the said mill and ma-
“ chinery for working the said coal :

“ It being also admitted that the defender,
“ John Britton, is tacksman of certain coal-pits
“ on the side of the river, opposite to the pro-
“ perty of the pursuer :

“ Whether, in the month of June or July
“ 1821, the defender did break down the said
“ dam-dike, or cause the same to be broken
“ down, to the loss and damage of the pursu-
“ er ?”

M'Neill opened the case, and stated that the pursuer had been in possession of the dam-dike for forty years for the use of his mill ;—that the defender destroyed part of the dike, which injured the coal-work, and stopped the working

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A person thinking himself interested in a cause, does not disqualify him as a witness.

till the dike was replaced, and caused much additional shift-work, and other damage.

An objection was taken to the examination of one of the servants of the pursuer, who had been thrown out of employment, as he expected something when the plea was settled.

LORD CHIEF COMMISSIONER.—It is established that the opinion of a witness does not render him incompetent, but goes to affect his credit. The question is, Whether he has a legal claim? and as he was out of employment by the act of his master, I do not think his claim good in law.

Jeffrey.—The pursuer had dealings with him, and does not deny his claim. He has at least a contingent interest.

LORD CHIEF COMMISSIONER.—It is clear, that if he has an interest, however small, that he is disqualified; but the opinion of the witness that he has an interest only goes to his credit. He says he spoke to the pursuer of being paid, who laughed, but gave him no answer. There is nothing that establishes a pecuniary interest, but there is what materially affects his credit.

Quære, whether evidence a-

A book was produced, kept by the pursuer,

to show the quantity of coal turned out prior to the work being stopped.

Mr Jeffrey objected, as the book might have been made *de recenti* ; but Mr M'Neill said it was the book by which the witnesses were paid.

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mounting to
semiplena probatio
is admissible
in trial by Jury?

LORD CHIEF COMMISSIONER.—It is produced now, not to prove the payments, but the quantity of coal turned out, which is quite different. It is not in the situation of regular books kept by a trader, which in some cases are *semiplena probatio*, though in this judicature I have great doubt if what is only *semiplena probatio* ought to be admitted.

Jeffrey, in opening the case for the defender, said, this is an ill-natured case. There is no claim for carrying off the water, but for breaking the dike by moving a little gravel to make a track in the bed of the river. There was no regular dike, and the questions are, Whether I took down a dike, of which he was in possession in 1821 ; and if this is proved, what is the damage?

He has not proved the damage ; and if he was prevented from working his coal, he has it still to sell.

LORD CHIEF COMMISSIONER.—There are

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two questions in the issue, to the terms of which you must attend.

The first is, Whether there was a trespass? There was much evidence to show the state of this dike; and if the accumulation of sand and gravel served to convey the water from the river for Lang's use, this must be held a dam-dike, in terms of the issue.

The next question is, Whether the operations performed by the defender broke down this dike? It is said he only removed the gravel, and that he was entitled to do so. You have the evidence as to the use of the bed of the stream as a road; and under all the circumstances, you must judge whether the carting carried off any water from the mill, and whether the act of the defender was wrongful or not; but if the pursuer has not clearly proved his case, you must presume for the defender. The pursuer being in possession was entitled to retain the water; and if he has been deprived of it by the defender, he is entitled to damages; but the proof of the amount is very loose.

Verdict—"For the pursuer, damages L. 50."

D. N' Neill and Graham Bell, for the Pursuer.

Jeffrey and Walker, for the Defender.

(Agents, *Linning & Niven, w. s.*, and *Walter Duthie, w. s.*)