

DENHAM  
v.  
OGILVIE.

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PRESENT,

LORDS CHIEF COMMISSIONER, PITMILLY, AND CRINGLETIE.

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DENHAM v. OGILVIE.

1827.  
March 19.

AN action of damages by a gardener against a lady for defamation, in a letter addressed to his master.

Damages for de-  
famation.

DEFENCE.—The accusation does not imply moral guilt ; and it is true that the pursuer is an insolent and troublesome man.

ISSUE.

The issue contained a quotation from the letter, and put the question, Whether it was of and concerning the pursuer, &c.

*Jeffrey*, for the pursuer, said, That the pursuer being in a humble station made his character the more valuable to him ; and that, though law presumed the falsehood of such accusations, he would prove how false they were.

DENHAM

v.

OGILVIE.

In damages for  
defamation, and  
no issues in jus-  
tification, unne-  
cessary for the  
pursuer to prove  
his character  
good.

When a witness was asked his opinion of the pursuer's character,

**LORD CHIEF COMMISSIONER.**—That is evidence for reply in case his character is attacked. I do not, however, in this case, mean to stop it, though law presumes a good character, and in many cases it would be necessary to enforce the rule.

Where no issue is taken in defence, there can be no evidence of facts ; but the general reputation may be proved, and the evidence now offered is good to meet such evidence.

*More*, for the defender, said, I admit that a poor man's character is valuable, but is not to be made the means of oppressing the rich. The expressions are angry ; but they ought never to have gone beyond the master, being a fair communication to him of the impression made by the conduct of his servant.

**LORD CHIEF COMMISSIONER.**—It is desirable that this case should not have been brought ; and it would have been better if the pursuer had remained satisfied with what his master said in his favour. Reference has been made to the law of England, but the practice there is very different. This lady had no call to give any

2 Starkie L. of  
Ev. 862.

— Slander.  
273. Fairman  
v. Ives, 5 Barn.  
and Ald. 642.

character of the servant ; and the question is on the last words of the letter, “ whose character is so little approved of, and so despised “ by every one in the neighbourhood.” It was not, however, intended to go farther than the master ; and but for this action it would not have gone further.

The first part of the letter I do not consider actionable, but the latter part is sufficient to sustain a verdict for the pursuer ; and one for the defender would be inconsistent with law. You will therefore consider the whole circumstances, and say what damages you will give as *solatium*, for there has been no pecuniary loss.

Verdict—For the pursuer, damages L. 10.

*Jeffrey and Skene*, for the Pursuer.

*More*, for the Defender.

(Agents, *Peter Crooks*, w. s. *J. Campbell Junior*, w. s.)

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PRESENT,

FOUR LORDS COMMISSIONERS—LORD PITMILLY ABSENT.

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M'CANDIES v. M'CANDIE.

1827.  
March 21.

AN action of damages by a nephew and his

Damages for  
defamation.

M'CANDIES  
v.  
M'CANDIE.