

DUNLOP,
v.
BUCHANAN, &c.

carts were prevented. The passing of the former is evidence of the use of the road.

Verdict—"For the pursuers."

Hope, Sol.-Gen. Jeffrey and Cockburn, for the pursuers.
Moncreiff, D. F. J. A. Murray, and Ivory, for the defenders.
(Agents, *D. Fisher, and Gibson-Craigs, and Wardlaw.*)

PRESENT,

LORD CHIEF COMMISSIONER.

1828.
Nov. 7.

DUNLOP v. BUCHANAN, &c.

Damages against a party, his mandatory, and agent, for arresting the person, and poinding the property, of a protected and discharged bankrupt.

AN action of damages by a discharged bankrupt against one of his creditors and the agent and mandatory, for arresting his person, while he had a protection from the Court of Session; and for again arresting him and poinding his property after he obtained his discharge.

DEFENCE.—The defender, Buchanan, was not aware of the existence of the protection, and the pursuer refused to show it. He gave no authority for the second arrest, but both it and the poinding were justified by the illegal manner in which the discharge was obtained.

ISSUES.

The issues contained an admission that the pursuer's property was sequestrated,—that he obtained a protection,—and that the defender Buchanan, was a creditor, and held a horning and caption against him. The questions then were, Whether the pursuer was lawfully discharged of debts contracted by him prior to a certain date? Whether the defenders, or any of them, in July 1827, wrongously put in force the caption, and caused the pursuer to be apprehended, and detained? and Whether Buchanan, in November, caused him to be apprehended, and his goods to be poinded?

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When the case was called on for trial, it was stated by the pursuer, before the jury were sworn, that by a clerical error in the issue, the year 1827 was twice inserted instead of 1826. As the defenders stated no objection, though they did not expressly consent, the Court made the correction.

A clerical error in an issue corrected by the Court without express consent from the defender.

Macneil, opened for the pursuer, and stated the facts.

Cockburn, for the agent, maintained, That though the evidence went to establish that the protection had been shown, and the jury must

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Stewart v.
M'Donald, 6th
July 1784. M.
13989. See
Wood v. Fullar-
ton, 28th No-
vember 1710.
Mor. 13960.

go by that evidence, still damages ought not to be given as a punishment but reparation, and the pursuer had suffered very little.


Monteith, for the creditor and mandatory, stated, That the agent had misconducted himself, and as he was liable, the mandatory, who was merely present, without any interest in the matter, ought to be free. That the creditor having put his business into the hands of an agent with general instructions, is not liable for his misconduct.

LORD CHIEF COMMISSIONER.—I must hold, notwithstanding the case of Stewart, that when a person employs a man of business, and that man of business misconducts himself, the employer is liable in an action, and shall so state it to the jury, leaving Mr Monteith to move for a New Trial, or tender a bill of exceptions to that direction.

(*To the Jury.*)—This is an action for two imprisonments and a poinding, and for the agent I see no vindication ; and, if you believe the evidence, you must find him liable ; but in all cases the damages ought to be moderate, and, in the circumstances of this case, it would probably have been better had the action not been brought.

The case against the mandatory is rather stronger, as he had no professional call to be there, and he insisted on detaining the pursuer.

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The party I hold liable for all that was done either by himself or his agent, but it is by no means an aggravated case. On my view of the law you must give damages against him, but they ought to be reasonable, and moderate reparation for the injury done by his authorized agent. There has been a violation of the law, but no great injury done, and a jury ought in these circumstances to give moderate damages.

Verdict—“ For the pursuer on all the issues, —Damages against Buchanan L. 1—against Young L. 2—and against Laurie L. 2 Sterling.

On the 19th December, a motion was made to apportion the expences amongst the different defenders.

LORD CHIEF COMMISSIONER.—If they all rested on one ground of defence, they must be conjunctly and severally liable.

Moncreiff, D. F. and A. Macneil, for the Pursuer.

Cockburn and A. E. Monteith, for the Defenders.

(Agents, *Charles Fisher and Alexander Hamilton.*)