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of the sum the pursuers had laid out in altering their machinery, patterns, &c. 3*d*, The abatement of price of goods returned to the pursuers. These were fairly considered by the jury, who found L. 4000, which was within the sum proved. In the other case, the counsel on both sides agreed to let a verdict be taken for the defenders, and to deduct the sum of L. 1666, the sum claimed by Sir Paul, from the sum of L. 4000 found by the jury. It appears that the jury followed a sound principle in considering the damages, and were within the sum proved in the accounts. It would, therefore, be unjust to grant the rule to show cause.

Jeffrey, *Cockburn*, and *Maitland*, for the Pursuers.
Hope, *Sol.-Gen.*, *Skene*, and *Whigham*, for the Defenders.
(Agents, *Ritchie* and *Miller*, s. s. c. *Allan* and *Bruce*, w. s.)

PRESENT,

LORD CHIEF COMMISSIONER.

1829. July 16.

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One shilling damages for defamation.

THIS was an action of damages by a person against his wife's mother for defamation.

DEFENCE.—The expressions were not used; but if they had, they would have been justified by the previous attack made by the defender on the pursuer.

ISSUE.

"Whether on or about the 18th of Septem-
" ber 1827, at or near the house of Fruitfield,
" near Airdrie, and in presence and hearing of
" the wife of the pursuer, the defender did
" falsely and calumniously say, that the pur-
" suer was an adulterous scoundrel, or did
" falsely and calumniously use or utter words
" to that effect, to the injury and damage of
" the pursuer.

"Whether, on or about the 15th October
" 1827, at or near the said house, and in pre-
" sence and hearing of John Weir, sheriff-offi-
" cer, Finlay M'Intosh, and John Whitelaw,
" who were then acting as concurrents with
" the said sheriff-officer, or in presence and
" hearing of one or other of the said persons,
" the defender did falsely and calumniously say,
" that there was no wonder Mrs Cleland,
" (meaning the wife of the pursuer,) was un-
" well, or should go mad, being connected
" with such a villain or rascal, (meaning the
" pursuer,) or did falsely and calumniously use

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" or utter words to that effect, to the injury " and damage of the pursuer."

Cuninghame opened for the pursuer, and stated the facts.

Incompetent to ask a witness what remark he made on hearing a defamatory expression.

A witness was desired to repeat a remark she made to another person after hearing the statement by the defender, but this being objected to, the question was given up, the Court at the same time intimating that it was not evidence.

In an action for slander, incompetent to prove a particular instance of violence.

Evidence having been given in chief that the pursuer was of a peaceable disposition, the witness was asked, on cross-examination, whether he ever heard of the pursuer having wounded a man with a pair of snuffers?

LORD CHIEF COMMISSIONER.—You may ask to general character, but are not entitled to bring forward particular facts.

Sommerville *v.* Buchanan, 11th February 1801. Borth. L. of Lib. No. xiii. Inglis *v.* Young, 28th Feb. 1801. Borth. L. of Lib. No. xiv.

Jeffrey, D. F. opened for the defender and said,—That the impression was against the pursuer, as he had brought this action against his mother-in-law, though he was the aggressor. That the words being uttered in heat were not actionable.

Boyd *v.* Reid, 11th July 1801, Borth. L. of Lib. No. xxiii.

The second issue is not actionable. It is a mere statement of opinion, and does not charge any act.

Cockburn in reply.—The points are whether the expressions were used, and whether there have been any observations or evidence to justify or exculpate them? Unless the witnesses are perjured, there is no doubt of the facts, and I will not argue the point that such provocation will take away the right to damages.

LORD CHIEF COMMISSIONER.—So far as we see this pursuer comes with a fair character, and though it must be the wish of all that no action should be brought between so near relations, still we must deal with it as with any ordinary case, and inquire whether the pursuer has made out one or both of the issues. It is not disputed that, if proved, the words in the first issue are actionable, and there is no attempt to prove the truth. There was no proof of what occurred before this meeting, and you must judge whether the provocation then given justified the words used.

The second is not proved by two witnesses as laid, but there is matter for your consideration.

If you find for the pursuer on the first, you

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will find damages. If on the second still more; but I trust you will deal with this part of the case with that moderation and propriety which ought in all cases to regulate juries.

Verdict—For the pursuer on the first issue, damages 1s. On the second for the defender.

Cockburn and *Cuninghame* for the Pursuer.
Jeffrey, D. F. and *Borthwick* for the Defender.
(Agents, *William Douglas*, W. S. *William Wotherspoon*, S S. C.)

PRESENT

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

1829. July 16.

GRAHAM *v.* LOCH.

Damages by a tenant against an adjoining proprietor for injury done by a dam-dike.

THIS was an action by a tenant for the damage done to his farm by a dam-dike, or cauld, erected across a stream.

DEFENCE.—No damages can be given till the right to erect the dam is ascertained in a depending process. The damage was not caused by the dam.

ISSUE.

"It being admitted that the pursuer was