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him, you will find for the pursuer; and, on the whole case, you will give such moderate damages as you think an indemnity for what he suffered.

Verdict—"For the pursuer, damages L.200."

Jeffrey, D. F. and *Russell,* for the Pursuer.
Cockburn and *Ivory,* for the Defender.
(Agents, *John Cullen,* w. s. and *Gibson-Craigs & Wardlaw,* w. s.)

PRESENT,

THE LORD CHIEF COMMISSIONER.

1829. July 18.

GRAHAM'S TRUSTEES, &c. v. WHITE.

Finding for the defender on an issue whether, at the time two bonds were assigned to him, he knew that they were granted for money lost at play.

THIS was an action by the defender, White, for payment of the sums contained in two bonds, or for repayment, with interest, of the sums given by him for these bonds.

DEFENCE.—The bonds were granted for money lost at play.

ISSUE.

"It being admitted that the pursuer, Charles Ferrier, is trustee on the sequestrated estate

" of John White, late merchant in Edinburgh,
" and that the defenders, James Brown and
" Edward M'Millan, are trustees on the estate
" of the defender, William Cunninghame Cun-
" ninghame Graham of Gartmore, Esquire:
" It being also admitted that, on the 21st
" day of May 1810, the late Sir John Lowther
" Johnstone, Baronet, granted to the said Wil-
" liam Cunninghame Cunninghame Graham
" two bonds in the English form, the one for
" the sum of L. 4000 Sterling, voidable on
" payment of the sum of L. 2000 on the 21st
" day of May 1813; the other also for the sum
" of L. 4000 Sterling, voidable on payment of
" the sum of L. 2000 Sterling on the 21st of
" May 1814:
" It being also admitted that, on the 22d
" day of January 1811, the said John White
" obtained right, by an assignation, to the bond
" first mentioned; and, on the 1st day of May
" 1811, obtained right, by an assignation, to
" the said last mentioned bond:
" It being also admitted that, by an interlo-
" cutor in this action, dated 6th July 1819,
" the trustees of the said Sir John Lowther
" Johnstone were assoilzied, on the ground
" that the said bonds had been granted by the
" said Sir John Lowther Johnstone for money

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" lost to the said William Cunninghame Cun-
" ninghame Graham at play, contrary to the
" statute 9th Anne, and that, in a process of
" reduction at the instance of Sir John Lowther
" Johnstone's trustees, against the said John
" White, the said bonds were found to be void
" and null.

" Whether, at the time the said bonds, or
" either of them, were assigned as aforesaid, the
" said John White knew that the said bonds,
" or either of them, were granted by the said
" Sir John Lowther Johnstone to the said Wil-
" liam Cunninghame Cunninghame Graham
" for money lost at play as aforesaid?"

Cockburn opened for the pursuer, and said, The late Sir J. Johnstone lost money to Mr Graham at play. An action was brought against Sir John's trustees, in which their defence was sustained, and the bonds found to be null. White now claims the money from the trustees of Mr Graham; to which their answer is, you knew these bonds were for game debts, and if you interfere with gamblers, you buy such bonds with all their risks. White's knowledge is the question here, and though we may not be able directly to prove it, we say from the circumstances he must have known, as he was involved in these transactions to the extent of L. 23,000.

An objection was stated to a witness reading a letter which had not been produced.

LORD CHIEF COMMISSIONER.—The course in such a case is perfectly understood. If a witness is called to speak to facts, and can refresh his memory by a letter or note made at the time, he may speak to the facts by reference to the letter or note.

A witness may refresh his memory by reading a letter written by him, though not produced before the trial.

Hope, Sol.-Gen. opened for the defender.—The case of the pursuers has completely broken down, and they have preferred resting their case on suspicion or indirect evidence, to calling those who knew the facts.

Direct evidence, and not mere suspicion, is necessary to warrant a Court or Jury in finding that a person knew that bonds were granted for money lost at play.

LORD CHIEF COMMISSIONER.—In cases of this sort clear legal evidence is necessary coming home to the transaction, but here we have only letters and witnesses mentioning the subject indirectly, and stating generally the condition and habits of these parties. This is not evidence which can warrant a Court in directing, or a jury in finding, that this was known to the defender. Suspicion is not a ground on which you can find.

The jury having stated that they did not think it proved, but that they were satisfied

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that White could not have been ignorant of the nature of the transaction,

Jeffrey, D. F.—If this is not a case to go to the jury, we wish the ground why it is withdrawn from them to be embodied in a proposition of law. They state that they are satisfied of it, and whether the evidence is direct or indirect is of no consequence.

LORD CHIEF COMMISSIONER.—As they are of opinion that it is not proved, they cannot find for the pursuer. If they found a verdict on their impression, when they think it not proved, it would be set aside, as contrary to law. But I shall state my views to the jury. The issue is, whether White knew that the bonds were granted for money lost at play? and to entitle you to find that he did, you must be satisfied by legal evidence, laid before you, that he knew it at the time of the assignation. The documents show the familiarity of intercourse between Mr Graham and the defender, and in one letter allusion is made to bonds; but there is nothing in the letters showing that he knew that the bonds were granted in a gambling transaction. To aid this, witnesses were called who knew nothing of this particular transaction, but who state generally that it was notorious

that the parties gambled, and that bonds were granted in consequence of reference to arbitration. But no knowledge of that is brought home to the defender at the time of the transaction. There is also evidence of the intimacy of Graham and the defender, and of the money being advanced for the payment of his debts, but there is no evidence that these were gambling debts.

The question for you to consider is, whether the pursuer has proved his case, and, if not, then the regular course is to find for the defender? If this is wrong, a motion may be made for a New Trial, and then all the Judges will have an opportunity of considering the matter with more deliberation. It would be extremely dangerous if a jury were to decide on their belief of the facts, if that belief is not supported by evidence. If this direction contains a proposition of law, which I think it does not, the party may have his redress, and I have followed this course, as the Solicitor-General said he did not intend to lead evidence.

Jeffrey.—The direction I understand to be, that if there is no legal evidence of a fact, it is dangerous to go on belief or suspicion impressed on their minds by circumstantial evidence.

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v.
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LORD CHIEF COMMISSIONER.—I think they are not entitled to find a fact, when they state that they think it not proved.

Verdict—For the defender.

Jeffrey, D. F., Cockburn, and *Spiers,* for the Pursuer.
Hope, Sol.-Gen. and *Forsyth,* for the Defender.
(Agents, *Walter Cook,* W. S. and *Lockart* and *Swan,* W. S.)

PRESENT,

LORDS CHIEF COMMISSIONER, AND MACKENZIE.

1830.
Jan. 4.

CADZOW *v.* WILSON.

Finding that the defender was indebted to the pursuer in a certain sum as the balance of the price of a property.

THIS was an action to recover the balance of the price of certain property sold by the pursuer to the defender.

DEFENCE.—The pursuer failed to put the defender in possession of seven acres of the property sold, containing a lime-quarry, and has not given, and cannot give, a sufficient title.

ISSUES. *

"Whether, in the year 1809, the pursuer

The want of a stamp, though not insisted in by the party, renders a document inadmissible.

* This case was originally set down for trial on the 18th July 1829, and opened by the counsel for the pursuers, but