CLARK v. THOMSON.

opinion that the fifth was in the same situation, but it was allowed.

Both parties petitioned against this judgment, but the Court adhered to their former interlocutor.

PRESENT,

THE LORD CHIEF COMMISSIONER.

1816. December 20.

SHEARLOCK v. BEARDSWORTH.

Damages found due to the commanding officer of a regiment for defamatory expressions used against the regiment.

THIS was an action of injury and damages at the instance of the lieutenant-colonel of the 4th Dragoon Guards against the defender, who was farmer of post-horse duty, for slandering and abusing the regiment.

DEFENCE.—The action is incompetent; but if competent, the defender denies the charge.

ISSUE.

" Whether the defender, John Beardsworth, " did, upon Wednesday the 20th day of July " 1814, or about that time, at Edinburgh, " loudly and openly declare before many of the " King's subjects then and there assembled, " that the 4th regiment of Dragoon Guards,

" of which the pursuer is lieutenant-colonel,
" was a regiment of cowards and blackguards,
" which had been degraded by the Duke of
" Wellington, or that the said Duke of Wel-
" lington had dismissed them from the army
" under his Grace's command, and sent them
" home to this country as cowards and black-
" guards; or that, as a mark of disgrace, the
" buttons had been taken off their coats, and
" that no gentleman would associate with them,
" as it was known they were a disgraced and
" cowardly regiment; or did, on the above oc-
" casion, utter other words in disparagement of
" and injurious to the character of the said re-
" giment as military men?

" The damages are laid at L. 5000 Ster-
" ling."

Some of the witnesses did not appear at first.

LORD CHIEF COMMISSIONER.—It must be proved that they were regularly cited; they will then be called, and if they fail to appear must be proceeded against.

At the trial the defender failed to appear, and it was stated, that, as he was out of Scotland, the notice for trial had been served on his mandatory.

SHEARLOCK
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The pursuer's agent swore that the notice of trial had been served on the agent for the defender, and upon his mandatory by his (the agent's) clerk.

LORD CHIEF COMMISSIONER.—We must have it from one who knows it of his own knowledge that the notice was served on the mandatory personally or at his house, knowing it to be his; the Court must take care that due notice was given to those who act for the defender. As the young man who served the notice is not present, the Jury may be called but not sworn, till it is proved that the notice was given. *

The mandate was read, the notice to the mandatory was proved by the agent's clerk, and the trial proceeded.

An affidavit before a Justice of the Peace was put in to prove some of the notices in this case.

The LORD CHIEF COMMISSIONER, after cross-examining the first witness, observed,—If any question occurs to the counsel for the pursuer he may put it; for though I cannot, as in Eng-

* The rest of the Jury were allowed to go away.

land, state myself to be counsel for the defender, yet I am bound to look after his interest.

LORD CHIEF COMMISSIONER.—In this case the words in the issue have been proved, so as to entitle the pursuer to a verdict. Under the general term "other words," my direction must have been the same, even if precise words had been proved with less accuracy.

The Court, by sending the issue, have sustained the action as competent, and the question here is merely the amount of damages. These are not for an individual injury, but for an injury done to the regiment. If the whole damages had been claimed, it must have made the case ridiculous; but the pursuer has restricted his claim to L. 100, and you may give any thing under that sum. The witnesses not knowing the defender at the time he used the expressions, there might be some doubt of his identity; but, taking the whole circumstances, I am of opinion it is sufficiently established.

Verdict for the pursuer, damages L. 80.

Clerk and *W. R. Robinson*, for the Pursuer.

(Agents, *Carncgy and Nelson*, W. S.)