BEATSON v. DRYSDALE.

LORD CHIEF COMMISSIONER.—That is a matter we cannot take into consideration. The damages are in the hands of the Jury, and we cannot say that we are to affect their verdict in giving expences.

LORD PITMILLY.—This is impossible, it would be taking the question of damage out of the hands of the Jury.

LORD GILLIES.—On the principle contended for at the Bar, if we thought the damages too low, we might give high expences, and thus render the Jury a nullity.

PRESENT,
LORD CHIEF COMMISSIONER.

MACKENZIE *v.* MURRAY.

1819. July 9.

Damages claimed for defamation.

AN action of damages for defamation.

DEFENCE.—There was no intention to defame, and no injury followed.

ISSUES.

"1*st*, Whether, on or about the 6th day

" of January 1818, the defender did falsely " and injuriously assert, to divers persons as- " sembled in his, the defender's house, near " Perth, that the pursuer had become bank- " rupt, or insolvent, to the injury and da- " mage of the said pursuer?

" 2*d*, Whether, in the beginning of the " said month of January 1818, the defender " having gone to Dundee, did falsely and in- " juriously say, or assert, to various and sun- " dry persons in said town, and in particular " to Mr John Duff, junior, that the pur- " suer was bankrupt or insolvent, to the da- " mage and injury of said pursuer?

" Damages laid at L.5000 sterling."

In examining a witness, a counsel may lead up to the point, but not in the question.

The first witness called was the servant of the defender, who was asked, if such and such persons were present. This was objected to, as leading the witness.

She was afterwards proceeding to state what one of the ladies said.

LORD CHIEF COMMISSIONER.—You may ask who were the persons present. You may lead up to the point, but must not lead in the question at issue.

Cockburn, for the pursuer.—The second

MACKENZIE v. MURRAY.

Issue is given up, but the defender being a friend of the pursuer, made the calumny the worse.

Jeffrey.—A verdict for the defender will not only do justice to him, but be of service in checking frivolous and vindictive actions of damages. The defender being cautioner for the pursuer, was entitled to mention the subject of his affairs in presence of his near relation. No malice is stated, or pretended.—

Starkie, 241. *Starkie's Law of Slander.* 2d, If a report is mentioned, when occasion calls for it, the party is not answerable if he mentions the words, and from whom he heard them. The party must go against the first who stated the

Starkie, 244. report.

LORD CHIEF COMMISSIONER.—If the defender insists on calling evidence, or if the Jury wish it, I am ready to receive it; but I have no hesitation in saying, that I think the pursuer has made out no case to entitle him to a verdict. It is perhaps sufficient to say, that the servant being a single witness, not supported, but contradicted by circumstances, her testimony is not sufficient to prove the case.

Even if her testimony were sufficient in

law, it is clear the case is not made out, for she did not prove any thing said as to the pursuer being bankrupt or insolvent, but merely that he had stopped payment, which is a very different libel. There is every circumstance of extenuation: there was no malice; not even flippancy in the manner; and it was not afterwards the subject of conversation; and malice is the very gist of the action.

In England, the law on this subject is very particularly defined. There, no action will lie for words spoken, unless they are such as impute a positive crime, or a contagious disorder, or injure a person in his profession and calling. In this country, the tendency of the law is different. Here any thing that produces uneasiness of mind is actionable; and therefore Juries ought to be the more cautious in the amount of the damages they give.

Verdict—"For the defender."

Forsyth and *Cockburn*, for the Pursuer.
Jeffrey, for the Defender.

(Agents, *D. Fisher*, and *Geo. Andrew*.)