

HACKNEY  
v.  
DAGGERS.

PRESENT,  
LORD CHIEF COMMISSIONER.

1820.  
Feb. 20.

HACKNEY v. DAGGERS.

Damages for  
assault and de-  
famation.

THIS was an action for assault and defama-  
tion, in which the defence was an accusation  
that the pursuer was the aggressor.

The first witness called was David Craik,  
constable at Portobello, who was cited by  
the name of Craig.

The LORD CHIEF COMMISSIONER ob-  
served—The description of constable at Por-  
tobello, I think sufficient to enable you to  
find him out;—*idem sonans* is the rule in  
such a case.

A person who  
had been con-  
sulted about a  
case, an incom-  
petent witness.

Another witness, on his examination *in in-  
itialibus*, admitted that he had been at a con-  
sultation about this case with Mrs Hackney,  
and Mr Dick the agent—that Mr Dick  
shewed him the summons, which he approved  
of—that he told Mr Dick he had seen what  
took place, and thought an action should be

brought, but was not present at the precognition.

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*Cockburn*, for the defender, took the objection of agency.

*Jeffrey*, for the pursuer.—It is a question for the Jury, whether they will believe him.

LORD CHIEF COMMISSIONER.—The tendency of my mind is to allow objections of this sort to go to the credit rather than the competency of a witness; but if agency is proved, it is an objection to receiving the witness.

If there was a *penuria testium*, I should be disposed to admit the witness *cum nota*, and leave Mr Cockburn to seek for redress; but as it is, I reject him, leaving Mr Jeffrey to apply for redress.

*Jeffrey* opened the case, and stated the facts.

*Cockburn*.—This is a short, simple, and silly case. It is not proved which party began, and the pursuer has not proved any injury.

LORD CHIEF COMMISSIONER.—If you

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find the second Issue proved, it forms a defence to the action; but if you think the defender struck first, you must find damages.

On the evidence you must dispose of the case, though it would have been much better if the action had not been brought. The question of costs the Court dispose of, not the Jury.

Verdict—"For the pursuer, damages  
"L.25."

*Jeffrey* for the Pursuer.

*Cockburn* for the Defender.

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PRESENT,

LORD CHIEF COMMISSIONER.

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GUNN v. GARDINER, &c.

1820.  
Feb. 28.



Damages  
against the  
proprietors,  
&c. of a stage  
coach, for in-  
jury done by  
the negligence  
or improper/  
conduct of  
their servants.

AN action against the proprietors of a stage-coach, and the guard and driver, on account of the negligence, carelessness, or improper conduct of the guard and driver.

DEFENCE.—The coach was not overset by any cause for which the proprietors are liable.