

PRESENT, LORD CHIEF COMMISSIONER.

1820. Feb. 20. HACKNEY V. DAGGERS.

Damages for assault and defamation. THIS was an action for assault and defamation, 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 Portobello, I think sufficient to enable you to find him out;—*idem sonans* is the rule in such a case.

A person who had been consulted about a case, an incompetent witness.

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Another witness, on his examination in initialibus, admitted that he had been at a consultation 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.

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.

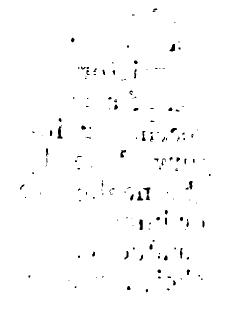
If there was a *penuria testium*, I should be disposed to admit the witness cum nota, and leave Mr Cockburn to seek for redress; but as it is, I reject him, leaving Mr Jeffrey to apply for redress.

HACKNEY ν. DAGGERS.

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 in-Jury.

LORD CHIEF COMMISSIONER.—If you N



## CASES TRIED IN Feb. 28,

HACKNEY U. DAGGERS. 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.

## PRESENT,

LORD CHIEF COMMISSIONER.

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## GUNN V. GARDINER, &c.



Damages against the proprietors, &c. of a stage coach, for injury done by the negligence or improper/ conduct of their servants. An action against the proprietors of a stagecoach, 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.