PRESENT,

LORD CHIEF COMMISSIONER.

SCOTT v. SCOUGALL.

1821. July 16.

SCOTT v. SCOUGALL.

Damages for defamation, assault and battery.

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DEFENCE.—A denial of the summons as laid, and a plea of provocation and aggression, for which a separate action was brought.

ISSUES.

" Whether, on or about the 18th day of " November 1820, near the Exchange Build- " ings in Leith, and in presence and hearing " of Alexander Brodie, Patrick Hodge, and " Andrew Gray, merchants in Leith, or one " or other of the said persons, the defender " did falsely and injuriously say, that the pur- " suer was a liar, or a damned liar; or did " use or utter words to that effect, to the in- " jury and damage of the said pursuer?

" Whether, on the said 18th day of No-

SCOTT v. SCOUGALL.

"vember, in Bernard Street in Leith, the de-
"fender did violently assault and strike the
"pursuer, to the injury and damage of the
"said pursuer? Or Whether, on the said
"occasion, the pursuer struck the defender
"first?"

Damages laid at L.2000.

Buchanan opened the case, and stated—The real question is the amount of damages, which the defender seems to admit, by offering L.15 as compensation.

Jeffrey, for the defender.—I do not deny that a blow or push was given; but the pursuer called the defender a damned scoundrel, and the blow was merely an insult, and not attended with any injury. The Court cannot hold words a justification for a blow; but the whole case is in your hands, and I trust you will not give damages.

Cockburn, for the pursuer.—The defender is wrong in all his statements, and a counter-action brought by him has been dismissed. An apology would have been received, but the defender repeats the insult by an offer of L.15. A

blow, by the manners of this country, though not by morality or law, and still less by religion, justifies the taking the life of the aggressor; and what damages will you give to a peaceful citizen who comes to seek reparation for such an injury?

LORD CHIEF COMMISSIONER.—We are here, you will recollect, in a court of law, not of honour; and in a court nothing is better than coolness and deliberation in considering the cases which come before it. This case is peculiarly for you; but the sentiment with which the counsel for the pursuer concluded, makes me think it right to state to you, that moderation is the proper principle upon which to proceed in a civil court.

On the second Issue, the blow is admitted, and the manner in which it was given has been proved. There was much irritation between the parties; and probably you may be of opinion that, in the circumstances, it might have been as well settled out of Court. L.15 were offered, but no apology was made; and that sum not having been accepted, you are not entitled to take it into consideration. How it may affect the costs, will be matter for the consideration of the Court in term,

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in this, which is the first case of a tender of amends.

Verdict—"For the pursuer on both Issues, damages L.100."

Cockburn and *Buchanan* for the Pursuer.

Jeffrey and *Robertson* for the Defender.

(Agents, *John Young* and *John Robertson.*)

PRESENT,

LORDS CHIEF COMMISSIONER AND GILLIES.

1821. July 17.

WALKER *v.* ROBERTSON.

Damages for defamation from the pulpit, and in a printed paper.

DAMAGES against a clergyman for defamation from the pulpit, and in a printed paper.

DEFENCE.—The defender acted under the instruction of the Kirk-Session. The statements in the paper must be shewn to be unfounded. The injury, if any was done, has been compensated.

In this case, the Issues were, Whether