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v.
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pursuer having brought it, must stand by the consequences of a disclosure of his conduct in the delicate affair to which it relates.

Verdict—For the pursuer on the first seven issues, and for the defender on the eighth; damages L. 20.

Jeffrey and M'Neill, for the Pursuer.

Cockburn and Maitland, for the Defenders.

(Agents, *Ed. Hoygan*, w. s., *Rt. Strachan*, and *John Patison jun.*, w. s.)

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PRESENT,

THE LORD CHIEF COMMISSIONER.

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1823.
March 4.

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Findings that a written agreement had not been departed from, and a verbal one entered into.

THIS was a suspension of a decree of the Sheriff of Caithness, on the ground that the Sheriff had no jurisdiction. That he refused to allow the pursuer to establish a parol agreement by parol evidence.

ISSUES.

“ It being admitted that a written agreement,
“ dated 12th March 1819, was entered into be-
“ twixt the pursuer Alexander Craig, and the

“ defender William Budge, whereby the said
 “ defender was employed, to fish herrings for
 “ the pursuer during the fishing season 1819 ;
 “ for which the pursuer became bound to pay
 “ the said defender at the rate of 18s. per crane
 “ of herrings, and to allow salt for curing, at the
 “ rate of five barrels to each boat employed by
 “ the defender in fishing.

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“ Whether at Wick, on or about the 5th day
 “ of June 1819, the said parties mutually agreed
 “ to depart from the said agreement, and to
 “ settle for payment of the herrings furnished
 “ to the pursuer, upon the same terms upon
 “ which the said pursuer Alexander Craig
 “ should settle with the other fishers employed
 “ by him during the fishing season aforesaid ?
 “ And, whether the pursuer did settle with the
 “ other fishers as aforesaid, at the rate of 14s.
 “ 6d. per crane, and perquisites ?

“ Whether the defender furnished, during
 “ the fishing season aforesaid, the pursuer with
 “ 148½ cranes of herrings, or with only 137½
 “ cranes ?”

An objection was taken to the first witness called, that he was not in the pursuer's list, to which it was answered he is in the list for the defenders.

A witness in the defender's list called for the pursuer, though not in his list.

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On an issue, whether a written agreement was departed from, and a verbal one entered into, competent to prove the practice of her-ring-fishers to depart from written agreements?

LORD CHIEF COMMISSIONER.—The object of a list is to give you notice ; and as he is in your own list, you must have had notice of him. *

The witness was then examined, and was asked whether it was the practice to depart from the agreements, and settle according to the rate in the district.

J. A. Murray objects.—This is not within the issue, which relates to a specific agreement. It is contrary to law to allow proof of this nature to cut down a specific agreement.

Jeffrey.—This is not yet intelligible, and is merely the foundation for other proof. We admitted that we had no direct proof.

LORD CHIEF COMMISSIONER.—I understand you do not mean to contend that the agreement being in writing, it must be defeated by writing. I am not now to prejudge the case of the pursuer. There is a written agreement, and the question is, whether it was departed from, and a subsequent one entered into. The pursuer is to prove this by facts and circumstances. It may be difficult for him to do so, but, in the beginning of proof of facts and circumstances, I cannot say

* By 6 Geo. IV, c. 120, § 35, list of witnesses are not to be furnished previous to trial.

that transactions of a similar nature are to be entirely disregarded. If the proof rests entirely on facts of this nature, I shall tell the Jury to disregard it, and find for the defender.

To do away with a written agreement, the proof must be solemn and clear, and I shall watch it. This is merely inchoate, and may be explanatory of the facts and circumstances; but, if no more is proved, it will do the defender no harm; but, if more is proved, this will be matter to be considered by the Jury, and, therefore, I admit it at the present stage of the cause.

When similar questions were put to the next witness, his Lordship said, This is not a case upon usage of trade, but on a specific agreement,—you will never make out this case.

The third witness having stated, on his cross-examination, that he had refused to communicate to the defender what he knew on the subject, as he understood it to be improper to speak on the subject after citation.

LORD CHIEF COMMISSIONER.—I have endeavoured to get the better of this, but I am informed, that this is so inveterate, that we must submit to the inconvenience of having the pre-cognition taken in the country. If you (the

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But proof of the practice alone, is not sufficient.

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counsel for the defender) take my advice, you will put no questions.

Incompetent to prove a charge of contract with one party, to affect the contract with another.

Another witness was asked, whether another fisher had entered into a written agreement, and afterwards departed from it.

LORD CHIEF COMMISSIONER.—This is a specific fact in a concern with another party, which cannot be brought to affect the contract with this one.

At the close of the evidence, his Lordship expressed a doubt whether there was any case to go to the Jury; but Mr Jeffrey suggested, that, in the evidence of one of the witnesses, a fact was mentioned, which, even if there was doubt of it coming up to the issue, ought to be indorsed.

Whyte opened the case, and stated, That they would prove the universal practice in this trade, to depart from the agreements, and settle at the rate of the season.

J. A. Murray.—This was an action in a Sheriff Court by a poor fisherman, upon a written contract, against his rich employer, who thinks he may make any bargain, and then settle on other terms. The general principle is not to receive parol evidence against a written agree-

ment. The sum in the second issue is so small, that I shall leave it on the opening of the other party.

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LORD CHIEF COMMISSIONER.—You judge rightly, but the *onus* of proving the second lies on you.

This is not a case for damages, but in which a verdict is to be returned to the other Court ; I wish there was a precise rule as to cases of this sort, where no proof is brought in support of an issue. If I were to follow my original opinion, I would hold it a case where the party bound to prove, having failed to do so, there ought to be a verdict for the other party, but there is a course here of finding it not proven,—this, in the present case, is little else than a finding for the pursuer on the second issue, and, as I consider it more consonant to the course of Jury Trial, I think you had better find it for the pursuer.

On the first issue, the case is as clear for the defender.

The admission establishes, that there was a written agreement, which stated the employment and the remuneration. It is not a writing of the highest order, and requiring writing to dissolve it, or even an express declaration that

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it is dissolved, for this may be done by facts and circumstances,—but the proof necessary to dissolve a written contract, must be clear and perspicuous.

After going through the evidence, his Lordship stated that it was far too loose to undo a written contract, and that there was no evidence of any new contract having been entered into.

Verdict—For the defender on the first issue, and for the pursuer on the second issue.

Jeffrey and Whyte, for the Pursuer.

J. A. Murray and J. W. Dickson, for the Defender.

(Agents, *David Clyne, s. s. c., and James Lawson, w. s.*)

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PRESENT,

THE LORD CHIEF COMMISSIONER.

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WILSON v. WILSON.

1823.

March 5.

Reduction on the
ground of imbecility.

REDUCTION of a disposition and deed of settlement, on the ground of fraud and circumvention, and of mental imbecility. The first ground