reconciling them. You must judge which are mistaken, or, if not mistaken, which are false; and in judging of this last, which I fear you are called upon to do, you will consider which are the most respectable, and which are best supported by any evidence existing in the cause to which the suspicion of intentional falsehood is not applicable. If you come to be of opinion that the letter is a forgery, it will influence the opinion you form on the evidence of the pursuer generally; for if, in a case of this aspect, you find fraud on one side, you will be more disposed to think that perjury is on the same side.

Verdict—"For the defender."

*Jeffrey* and *Whigham*, for the Pursuer.
*Hope, Sol.-Gen.*, *M'Neill*, and *Robertson*, for the Defender.
(Agents, *John Macandrew* and *J. B. Fraser.*)

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## GLASGOW.

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

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## DUNN *v.* ANDERSON, WALLACE *v.* ANDERSON.

1826. Sept. 19.

Damages claimed for being detained in prison after an alleged tender of the sum due.

AN action of damages for detaining the pur-

DUNN
*v.*
ANDERSON,
WALLACE
*v.*
ANDERSON.

suers in prison after a tender of the sums for which they were incarcerated.

DEFENCE.—Various defences were stated, but the question was reduced to the following

ISSUE.

" It being admitted that David Wallace, " pursuer, was imprisoned in the jail of Glas- " gow upon the 15th day of June 1825, and " remained a prisoner in the said jail until the " 9th day of July 1825, by virtue of letters of " caption at the instance of the defenders, Wil- " liam Anderson and Hector Grant, upon a " debt due to the said defenders, of the sum of " L. 5, 7s. 8d. :

" Whether, on or about Saturday the 9th " day of July 1825, the pursuer caused the " said sum of L. 5, 7s. 8d. to be tendered to " the said defenders, in payment of the said " debt ?—And whether, notwithstanding the " said tender of payment, the defenders, or ei- " ther of them, illegally refused to accept of " the said sum in payment of the said debt, " whereby the pursuer was detained in the said " jail until Monday the 11th day of the said " month of July, to the injury and damage of " the said pursuer ?"

*M'Neill* in opening said, The facts in both cases are the same. It is an oppressive case, and the defences are untenable. The case of Thom, which is relied on, was decided on the special circumstances. The defender ought to have granted a receipt for the money, which was all that was necessary to procure the liberation of the pursuer, the sum being under 200 merks Scots.

DUNN *v.* ANDERSON, WALLACE *v.* ANDERSON.

Thom *v.* Symington, 4th Dec. 1824. Ersk. b. iv. t. 3. § 15.—*Note* ||.

*Moncreiff*, for the defender, said, The case was not long, or very important. The pursuers had proved that the jailor refused the sum, and if so, the damage was not done by the defender.

The sum was for expense of process, and the agent is the party interested.—Hamilton *v.* Bryson, 17th June, 1813.—Thom *v.* Symington, 4th December, 1824.—M'Tavish *v.* Peddie, 13th June 1826, 4. Shaw and Dun. 704.

Thom's case is much stronger than this, and they should have gone to the agent; but even if this were not decided law, I would state it to the jury as reasonable.

But the pursuer might have consigned the money, and was then entitled to his liberation. Forbes *v.* Ledingham, 31st January 1823.

LORD CHIEF COMMISSIONER.—This case

DUNN
*v.*
ANDERSON,
WALLACE
*v.*
ANDERSON.

goes to you on the evidence for the pursuer, and on a statement and argument for the defender. It is clear that a creditor is entitled to imprison his contumacious debtor; but it is equally clear, that, if proper steps are taken, the creditor is bound to release him, and is liable in damages if he does not release him. But the steps taken must be correct and accurate; and unless they are so the law will not recognize them. You are to try the case, with the observations on the law and fact, and judging of the good faith of the parties.

The question to be tried in both cases is, whether the pursuer has acted in such a manner as to entitle him to damages, or whether the defender should not have a verdict?

The law of liberation on a tender has been clearly stated, and is not disputed, that, upon a tender of the sum to a magistrate, the party is entitled to his liberation; and on making such a tender the pursuer was liberated. But the question here is, whether the pursuer made such a tender on the Saturday? From the cases referred to, particularly those of Forbes and Rolland, it is the opinion of the Court of Session that a tender must be so distinct, clear, and fair, as to make the refusal of the defender to liberate a contumacious act. Whether it

was of this nature in the present case, or was of the nature of fraud, it is not for me to say; but if you should be of opinion on the facts, that the conduct of the pursuer indicates fraud, this taints his case, and takes away his right to damages. The cases were for expences, which are more properly due to the agent than the party, and you will consider whether the pursuer acted fairly and honestly, with the view of obtaining his liberty, or with a view to this action. The tender is made late on Saturday night to a person ignorant of the law of tender or joint obligation; and it is clear, that, as a writ cannot be executed on Sunday, so on the same principle the act to get quit of it cannot be performed on that day; but it is unnecessary to state this minutely.

You will consider the time and manner in which the tender was made—that the agent was the party interested, and to be consulted as to his consent. It rather appears to me that the right course has not been followed to obtain liberation—that the tender has not been made; but I leave it to you to consider whether the refusal to accept of the money was contumacious on the part of the defender, or whether the pursuer was not acting with a view to a claim for damages.

DOUGLAS
*v.*
MONTEITH.

Verdict—For the defenders.

*Hope, Sol.-Gen.* and *A. M'Neill,* for the Pursuer.
*Moncreiff* and *Shaw* for the Defender.
(Agents, *James M'Donald,* W. S., and *Charles Festus,* W. E.)

## GLASGOW.

PRESENT,

LORDS CHIEF COMMISSIONER, AND PITMILLY.

## DOUGLAS *v.* MONTEITH.

1826.
Sept. 19.

Damages for injury caused to one house by operations on the adjoining house.

DAMAGES for injury done to a house by alterations made in the adjoining house, and for the anxiety and inconvenience occasioned to the pursuer and his family by these alterations.

DEFENCE.—The operations were legal, and conducted by authority of the Dean of Guild. The house of the pursuer was cracked before, and was to be taken down. The defender offered to repair any injury done by his operations.

ISSUES.

"It being admitted, that the pursuer is pro-
"prietor of a house in Argyle Street, in Glas-
"gow, and that the defender is proprietor of a