

HAMILTON
v.
ANDERSON, &c.

able to write, and said it amounted to a presumption ; but that the evidence of the agent on the other side was clear and direct, and went to support a deed and the law, against the evidence of a person in the situation of the witness for the pursuer who came to undo his own act.

Verdict—“ For the defender.”

Jeffrey, D. F., Clephan, and Aytoun, for the Pursuer.

Cockburn, and D. M'Neil, for the Defender.

(Agents, *Aytoun and Greig, w. s. and Thomas Darling, s. s. c.*)

PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

1830.
July 19.

HAMILTON v. ANDERSON, &c.

Damages against a party, his agent, and the messenger, for executing diligence against a son, on a bill accepted by his father.

THIS was an action of damages for wrongous imprisonment against a party, his agent, and the messenger, for apprehending the pursuer on diligence raised on a bill accepted by the pursuer's father.

DEFENCE.—The pursuer acted as if the bill had been his—the agent gave no instructions to the messenger—the messenger acted in the execution of his duty.

ISSUE.


HAMILTON
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“ Whether, on or about the 14th day of
 “ April 1829, the defenders, or any of them,
 “ did wrongfully apprehend the pursuer, or
 “ wrongfully cause the pursuer to be appre-
 “ hended ; or did wrongfully imprison the pur-
 “ suer, or wrongfully cause him to be imprison-
 “ ed, to the loss, injury, and damage of the
 “ pursuer ?”

M'Neill opened for the pursuer and stated the facts, and that the case was an aggravated one, and particularly on the part of the agent, though he now wishes to shake himself free of it.

Jeffrey, D. F., opened for the defenders, and admitted, That, by mistake, the son had been apprehended instead of the father ; but the question was, Whether this arose from the neglect or improper conduct of the defenders, or the want of sense in the pursuer ? The only fault of the leading defender was, not explaining that one of the parties in the bill was dead, and that he had a son of the same name ; the pursuer did not offer any evidence that he was not the party, and the agent and messenger would not have been warranted in not taking him.

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LORD CHIEF COMMISSIONER.—The issue expresses what you have to try; and if you think the case made out against any or all of the defenders, you will find damages, but, in the circumstances, I would advise you to find moderate damages. A creditor is bound to know his debtor, and, knowing that the father of the pursuer was dead, he ought not to have allowed the agent to make out a mandate to execute the diligence against the son.

As to the agent, he lived near the spot; and you will judge from what has been proved of his conduct, whether he was not bound to make farther inquiry before allowing the messenger to execute the diligence. The question is, whether he had probable cause for his conduct, it being established that there was no cause for imprisonment? and whether, if he had good reason to capture him, he did not go beyond in taking him to a distance and imprisoning him without a sufficient inquiry? but it is not a case where you will lean strongly against a man of business.

With regard to the messenger, he no doubt is an officer bound to obey his instructions; but he must act with common sense. In the circumstances, he was not wrong in taking this person; but when he was informed that he was

not the party to the bill, you will consider whether he ought not immediately to have communicated this to his employer.

It appears to me a case for moderate damages, and though you might find generally against all the defenders, I would recommend to you to find specially against each.

Verdict—"For the pursuer, — damages
" against Anderson, L. 30, against Gilfillan,
" L. 15, against Millar, L. 5."

Robertson and A. M'Neill, for the Pursuer.

Jeffrey, D. F. and E. Monteath, for the Defenders.

(Agents, Charles Fisher, and Wotherspoon and Mack.)

PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

BUTCHARD *v.* WALKER AND WEST.

1830.
July 20.

THIS was an action by a tenant to recover compensation for improvements made on a farm.

Finding for the defenders in a claim for indemnification for improvements made on a farm.

DEFENCE.—The pursuer is not entitled to the profit arising from the improvements, but