

WILLIAM YOUNG and COMPANY, WILLIAM YOUNG, JOHN YOUNG, ALEXANDER PITCAIRN, and GEORGE YOUNG, Appellants.—*Gifford—Jeffrey—Cunninghame.*
 JOHN LEVEN, Respondent.—*Warren—Wetherell—Moncreiff.* No. 39.

Slander—Reparation—Public Officer—Process.—Circumstances in which it was held, (reversing the judgment of the Court of Session,) that a pursuer having alleged that he had been dismissed from a public office in consequence of the false allegations of certain parties, and had otherwise suffered damage from their acts, was not entitled to recover damages against them jointly and severally, it appearing that the representations and acts alleged by him were not done jointly and severally by the defenders.

Question raised, but not decided, whether an action be relevant for damages on account of representations made, on probable grounds, against a public officer to his superiors in office, and in consequence of which he was dismissed?

EARLY in the year 1804, Mr. Leven, who had been for upwards of thirty years engaged in the business of the Excise, was appointed Collector for the county of Fife, and fixed his residence in the town of Burntisland. The appellants, William Young and Company, were distillers near to that town, (William and John Young being the partners,) and Alexander Pitcairn and George Young were members of the magistracy,—the former being the Provost, and the latter one of the Bailies. Immediately prior to Michaelmas 1806, it had become known that Parliament was about to be dissolved; and as Burntisland was the returning burgh, in the district in which it is situated, for sending a representative to Parliament, a good deal of excitement was produced. On the part of the appellants, it was alleged that Mr. Leven made an attempt to canvass for the office of Provost of the burgh, and otherwise to interfere with its politics. Mr. Leven admitted that a proposal had been made by some of the burgesses to elect him Provost, but denied that he had taken any active steps for that purpose, or that he had any political object in view. Having learned, however, that some communication had been made to the Board of Excise and Lords of the Treasury upon the subject, he required the Magistrates of Burntisland to explain to him whether this had been done by them, and in answer they addressed to him the following letter:—‘ Burntisland, 1st Nov. 1806.—
 ‘ Sir—After the communication you made to us respectively yesterday, we thought it our duty to meet together this morning to deliberate upon the business you mentioned, which you may believe we feel sincerely for your situation. After deliberating fully, the only determination we can bring ourselves to is, that we had no hand, directly or indirectly, in bringing any charge against you. We cannot see it our duty as Magistrates to in-

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‘terfere in wiping away any thing that has been laid to your
 ‘charge respecting the late Michaelmas election, more especially
 ‘as we were all perfectly ignorant of any information being lodg-
 ‘ed against you. It is true, Provost Pitcairn mentioned to-day
 ‘to us what he said to you yesterday in conversation, that the
 ‘last time he was in Edinburgh, about the 17th or 18th of Octo-
 ‘ber, that he was accosted by many people there, and by some
 ‘high in rank and office, who inquired at him if what they had
 ‘heard about Collector Leven’s interference at the late election
 ‘of Magistrates and Council in Burntisland was true, that he
 ‘wanted to be Provost, &c. Mr. P. gave as evasive and favour-
 ‘able answers as possible; but one gentleman insisted upon hav-
 ‘ing it in writing, which Mr. Pitcairn, with much reluctance,
 ‘complied with on the 22d ult. But, even previous to this in-
 ‘formation, it is evident that the complaint had been lodged with
 ‘the Lords of the Treasury without the knowledge of us, or any
 ‘of us, or any in this place that we know of.

‘As we cannot deny your interference at the late election, we
 ‘do not know how we can in any shape interfere in your favour,
 ‘as we understand there is nothing else laid to your charge but
 ‘that interference. These being our sentiments, we see nothing
 ‘we can do, either for or against you, in this disagreeable busi-
 ‘ness. (Signed) Alex. Pitcairn, Thomas Orrock, John Archi-
 ‘bald, George Young, John Haxton.’

A few days thereafter, the Magistrates of Burntisland addressed the following memorial to the Lords of the Treasury:—‘That
 ‘your memorialists are aware of the necessity of arming the offi-
 ‘cers of Excise with the most extensive powers, in order to ensure
 ‘the due collection of that most important branch of the public
 ‘revenue; and they rely with perfect confidence on the lenity
 ‘and justice of his Majesty’s Ministers, that they will not coun-
 ‘tenance any harsh or unnecessary exercise of these powers, and
 ‘still less permit the abuse of them by their officers for any pur-
 ‘pose unconnected with their proper duties, and protection of the
 ‘public interest. Your memorialists therefore venture, without
 ‘apprehension, to represent to your Lordships, that the inhabit-
 ‘ants of the burgh of Burntisland and its neighbourhood have of
 ‘late suffered much from a most rigorous, unnecessary, and par-
 ‘tial exercise of the authority of John Leven, Collector of Ex-
 ‘cise, and the officers acting under his direction. Your memo-
 ‘rialists further submit to your Lordships, that they are driven
 ‘to complain of the grievances they have already suffered by their
 ‘apprehensions of the future, inasmuch as they cannot help fear-
 ‘ing that the extraordinary and undue rigour which the Collector

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‘ has of late shown a disposition to exercise against certain indi-
 ‘ viduals of the burgh has not arisen merely from a zeal for the
 ‘ discharge of his duty; and they think themselves warranted in
 ‘ stating this suspicion by the conduct of the Collector in Septem-
 ‘ ber and October last, in interfering and endeavouring to obtain
 ‘ the political management of the burgh, and in employing some
 ‘ of the officers acting under him as agents for that purpose; and
 ‘ they have had occasion to observe that it is since the failure of
 ‘ that attempt they have had reason to complain particularly of
 ‘ the very undue exercise of his authority, which has been prin-
 ‘ cipally directed against such persons as, by resisting his solicit-
 ‘ ation, had exposed themselves to his resentment. That though
 ‘ your memorialists are persuaded that your Lordships would
 ‘ have strongly condemned such illegal and irregular interference,
 ‘ they have hitherto forborne to complain, and have no wish to
 ‘ excite your Lordships’ displeasure, but have stated these cir-
 ‘ cumstances only as their justification for earnestly entreating
 ‘ that he may be removed from the collection he at present holds,
 ‘ with the two officers that act under him in this burgh, and ex-
 ‘ changed for any other Collector and officers now employed in
 ‘ Scotland. (Signed) Alex. Pitcairn, *P.*; Thomas Orrock, *M.*;
 ‘ John Archibald, *M.*; George Young, *M.*—Burntisland, 10th
 ‘ March 1807.’—On the same day William Young and Company
 addressed the following letter to Mr. Wemyss of Cuttlehill, one
 of the Deputy Lieutenants of the county, with a view of having
 the conduct of Mr. Leven and his subordinate officers brought
 under the consideration of the Lords of the Treasury or the
 Board of Excise.

‘ Burntisland, 10th March 1807.—We are exceedingly sorry
 ‘ again to trouble you on a very disagreeable subject to us; but
 ‘ we hope your goodness will excuse us when we state to you our
 ‘ grievances, in consequence of the most oppressive severity and
 ‘ resentment of our Excise officers since our last burgh election—
 ‘ by Duncan Forbes, supervisor, John Drysdale and William
 ‘ Torrence, officers. Indeed, such rigorous and insulting conduct
 ‘ we never have heard of being exercised by any officers in the
 ‘ Excise. We have suffered so much inconveniency and real losses
 ‘ in the conducting of our business, and so much vexation, that
 ‘ we find it will not be in our power to carry it on, if left subject
 ‘ to the severe oppression of these officers. We can fix upon no
 ‘ other reason for their conduct than being influenced by Mr.
 ‘ Leven, Collector, who applied to us in the most pressing man-
 ‘ ner for our interest to elect him Provost at our last Michaelmas
 ‘ election. This we absolutely refused, telling him that our in-

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Mr. Wemyss transmitted this letter, accompanied by one from himself to Mr. Ferguson, member for the county, in which he made several severe reflections upon the conduct of Mr. Leven generally. The memorial and letter were sent by Mr. Ferguson to the Lords of the Treasury; and in consequence of a communication by them to the Board of Excise at Edinburgh, an official letter was addressed, on the 24th of April 1807, by the Solicitor to Mr. Leven, stating that an investigation would take place at Burntisland on the 30th, by which time he presumed that Mr. Leven would be no longer occupied in the collection in which he was then engaged. This letter Mr. Leven alleged he did not receive till the 28th, and the investigation proceeded before the Sheriff at the time appointed. Before, however, it commenced, Mr. Pitcairn, as Provost, laid before the Sheriff a paper, entitled 'Statement by Provost Pitcairn, in regard to the interference of Mr. Leven in the political concerns of Burntisland,' and in which he mentioned several circumstances in support of his allegation, and represented that the conduct of Mr. Leven and his officers had become most oppressive and tyrannical since the time when he failed in the election.* The investigation thereupon proceeded, and was directed not merely to an inquiry as to Mr. Leven's interference in political matters, but also as to his conduct towards the traders, and particularly in exacting interest on arrears from William Young and Company. After it was concluded, that Company addressed a letter to the Board of Excise, accompanied by an account-current, in which they represented that they had made two separate payments to Mr. Leven, the one on the 27th November 1804 of £400, and the other on the 18th of January 1806 of £823. 10s., for which he had not given them credit, although they held the receipts subscribed by him.

* The material parts of this Statement will be found recited in the opinion delivered by the Lord Chancellor. See postea. p. 198.

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For these sums they claimed credit, and also for a sum of £400 of interest, which they had paid to him on arrears, and which they alleged he was not entitled to exact.

The result of the investigation having been reported to the Lords of the Treasury, an order was sent by them to the Board of Excise, in consequence of which, the Secretary was instructed to write the following letter to Mr. Leven:—‘ August 11. 1807. ‘ The Commissioners have this day received a letter from the ‘ Secretary of the Treasury, dated the 8th instant, stating that ‘ their Lordships have had under consideration this Board’s re- ‘ port, transmitting one from Messrs. Bonar and Grant, relative ‘ to the investigation into the complaints against your conduct, ‘ and of other officers in Burntisland. And in regard to the first ‘ charge, their Lordships are of opinion that there is nothing in ‘ the evidence which calls for their interference, further than to ‘ express their entire disapprobation of officers of the revenue ‘ taking an active part in the local and municipal politics of any ‘ burgh. But with respect to that part of the second head of the ‘ charge which particularly affects you, namely that of taking in- ‘ terest from Messrs. Young and Company for the duties payable ‘ by them from the legal days of payment to the date of the actual ‘ receipt of the money, and receiving from Mr. Young a larger ‘ sum for duties than was actually due, their Lordships consider ‘ these charges as bearing a very different and much more serious ‘ complexion, and of such a description as to call for your imme- ‘ diate dismissal from your situation. In obedience, therefore, ‘ to their Lordships’ commands, the Commissioners of Excise dis- ‘ miss you from your office of Collector under them, and you are ‘ to deliver over the charge thereof, together with the books and ‘ stores, and your commission, to Mr. Campbell, General Super- ‘ visor, who is directed to repair to Burntisland for that purpose.’

At the same time the following circular letter was issued on the subject by the Board:—‘ In consequence of complaints having ‘ been presented to his Majesty’s Treasury against the Collector ‘ and two other officers of Excise, for interfering in the politics of ‘ a burgh, and other improprieties of conduct, and their Lord- ‘ ships having had under their consideration the result of the in- ‘ vestigation which took place regarding the same, are pleased, by ‘ letter dated 8th instant, to acquaint the Commissioners of Ex- ‘ cise, that, with respect to the first charge, they are of opinion ‘ there is nothing in the evidence which calls for their Lordships’ ‘ interference, further than to express their entire disapprobation ‘ of revenue officers taking any active part in the local and muni- ‘ cipal politics of any burgh, as such conduct must necessarily

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‘ hamper them in the due discharge of their duty as a revenue
 ‘ officer, and expose them to suspicions which cannot but be at-
 ‘ tended with prejudicial consequences ; and their Lordships have
 ‘ therefore desired to be expressed to the two officers their strong
 ‘ displeasure at their conduct. But with respect to that part of
 ‘ the second head of charge which particularly affects the Collector,
 ‘ namely that of taking interest from traders for the duties pay-
 ‘ able by them from the legal day of payment to the date of the
 ‘ actual receipt of the money, their Lordships consider these
 ‘ charges as bearing a very different and much more serious com-
 ‘ plexion, and of such a description as to call for the immediate
 ‘ dismissal of the Collector from his situation. In obedience to
 ‘ these orders, the Commissioners have dismissed this person im-
 ‘ mediately from the office of Collector, and have reprimanded the
 ‘ two officers. And I am directed by the Board, that if in any
 ‘ instance you shall be found to have thus improperly taken in-
 ‘ terest from any of your traders for money due by them to the
 ‘ revenue, you will also certainly receive the same censure ; and
 ‘ you, your supervisor, and officers, are in no manner of way to
 ‘ interfere or meddle with the local or municipal laws of any
 ‘ burgh, as before mentioned, or in elections, as so strongly point-
 ‘ ed out in your general instructions, otherwise you will meet with
 ‘ the severest displeasure of the Board ; and that none may pre-
 ‘ tend ignorance, you will enter this letter into your general letter-
 ‘ book.’

Soon after the dismissal of Mr. Leven, an action was raised by the Board of Excise against William Young and Company in the Court of Exchequer for payment of arrears of duties, which they had refused to pay, on the ground of the alleged double payments which had been made by them to Mr. Leven. Judgment passed against them, on the ground (as was alleged by them) that such a plea was not admissible against the Crown, and that they must seek their relief from Mr. Leven. A report of this trial having appeared in the Edinburgh Evening Courant, William Young and Company addressed and published a letter to the Editor, explaining that such was the ground of the decision, and that they had ‘ brought an action before the Civil Court against the Col-
 ‘ lector, not only for the repetition of the large sums of principal,
 ‘ but also interest, which had been illegally exacted from us.’ They further stated, that ‘ the Collector was dismissed by the
 ‘ Lords of the Treasury for receiving from us a larger sum for
 ‘ duties than was actually due, or was carried to account.’ They accordingly brought the action here alluded to ; but, after a great deal of investigation, Mr. Leven was assoilzied, with expenses,

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and this decision was affirmed on appeal. That gentleman then raised an action against William Young and Company,— William Young and John Young, the individual partners,— and Alexander Pitcairn, concluding for £20,000 of damages, on the grounds, which he thus set forth in the summons:—

‘ In the first place, the said William Young and Company, or
‘ the said William Young and John Young, and the said Alex-
‘ ander Pitcairn, who, with the concurrence of certain members
‘ of the Town-council of Burntisland, over whom they had an in-
‘ fluence, secretly transmitted to the Lords Commissioners of our
‘ Treasury in London, and to the Commissioners of Excise in
‘ Edinburgh, certain complaints against the pursuer, falsely and
‘ maliciously alleging that he had illegally interfered in politics
‘ while he held the office of Collector of Excise, and that he had
‘ used the influence derived from his office, unduly, to procure
‘ votes in his favour, and that he had harassed and oppressed
‘ those traders within the bounds of his collection who are said to
‘ have opposed his views. 2dly, The said William Young and
‘ Company, or the said William Young and John Young, falsely
‘ and maliciously alleged to the Commissioners of Excise, or to
‘ certain officers of Excise under them, that the pursuer had un-
‘ justly and dishonestly charged and uplifted from the said Wil-
‘ liam Young and Company, or William Young and John Young,
‘ a larger sum for duties than was actually due by them to Go-
‘ vernment, or was carried to account by him. 3dly, The said
‘ William Young and Company, or the said William Young and
‘ John Young, not only repeated, in various public companies,
‘ their calumnious and defamatory charges against the pursuer,
‘ but thereafter withheld duties from Government, on pretence
‘ that they had overpaid certain large sums of money to the pur-
‘ suer while Collector of Excise, and openly made the same false
‘ and malicious allegations in their defence against an action at
‘ the instance of the prosecutor for the Crown against them in our
‘ Court of Exchequer in Scotland. 4thly, The said William
‘ Young and Company thereafter inserted or caused to be in-
‘ serted in the Edinburgh Evening Courant, of date the 17th
‘ day of July 1810, a most calumnious advertisement, to the ma-
‘ nifest hurt and prejudice of the character and reputation of the
‘ pursuer, as will appear from a copy of that newspaper herewith
‘ produced. 5thly, The said William Young and Company, or
‘ the said William Young and John Young, having raised an
‘ action in the Court of Session at their instance against the pur-
‘ suer, for payment of the sums of money which they falsely and
‘ maliciously alleged had been illegally exacted from them by the

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‘ pursuer, and knowing that the pursuer had publicly advertised
 ‘ for sale a property in the town of Greenock belonging to him,
 ‘ they, upon the dependence of the said action, raised and exe-
 ‘ cuted letters of inhibition at their instance against the pursuer,
 ‘ for the malicious purpose of injuring the credit of the pursuer
 ‘ to the utmost of their power. 6thly, The said William Young
 ‘ and John Young, or either of them, raised and circulated a most
 ‘ groundless and injurious report that the pursuer had burned or
 ‘ destroyed his official books with some fraudulent intention. And,
 ‘ lastly, the said William Young and Company, and the said
 ‘ William Young and John Young as individuals, and the said
 ‘ Alexander Pitcairn, to the great injury of the pursuer’s reputa-
 ‘ tion and fortune, raised and circulated a variety of other un-
 ‘ founded and calumnious reports, to be more particularly conde-
 ‘ scended on in the course of the process to follow hereon.’

Mr. Leven thereafter brought a supplementary action against George Young, and in which he concluded against all the defenders jointly and severally. He then moved for and obtained a diligence for recovering from the Board of Excise the Memorial by the Magistrates of Burntisland to the Lords of the Treasury in March 1807, the letter by Young and Company to Mr. Wemyss, and all other letters transmitted to the Lords of the Treasury or Board of Excise respecting his conduct, and the Statement of Provost Pitcairn prior to the investigation. The Commissioners of Excise having objected that they were neither bound nor entitled to exhibit these documents, the objection was repelled both by the Lord Ordinary and the Court. The defenders then moved for a diligence to recover the reports which, in consequence of the investigation, had been made to the Board of Excise, and by them to the Lords of the Treasury; but this having been resisted by the Board of Excise, the Lord Ordinary refused the diligence, ‘ in respect the pre-
 ‘ sent action of damages at the instance of John Leven, late Col-
 ‘ lector of Excise, is founded upon the allegation of false and inju-
 ‘ rious charges having been made by the defenders against the pur-
 ‘ suer to the Board of Excise in Scotland, and to the Lords of the
 ‘ Treasury; that the investigation which took place by authority of
 ‘ the Board, or the opinion the Commissioners may have formed
 ‘ upon such information, cannot, in the opinion of the Lord Ordi-
 ‘ nary, although produced, afford a well-grounded defence against
 ‘ the conclusions of the present action, and that the Board are in no
 ‘ shape bound to exhibit the papers called for by the defenders.’ To this judgment the Court adhered, and refused to allow an appeal.

Thereafter the Lord Ordinary, on advising the case on the merits, found, ‘ That a memorial, in name of the Provost and

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‘ Magistrates of Burntisland, bearing date the 10th March 1807,
 ‘ and subscribed by Alexander Pitcairn, the defender, then Pro-
 ‘ vost, and by George Young, a member of the Council of Burnt-
 ‘ island, and son of William Young, was presented to the Lords
 ‘ of the Treasury, containing certain charges against the pursuer
 ‘ as acting oppressively and unjustly in his character of Collector
 ‘ of Excise, and interfering with the politics of the burgh, and
 ‘ craving his removal: That at the same time a letter, subscribed
 ‘ by William Young and Company, was presented to William
 ‘ Wemyss, containing similar charges of gross and grievous op-
 ‘ pression by the pursuer against them in carrying on their trade
 ‘ as distillers, and requesting Mr. Wemyss to transmit their com-
 ‘ plaints to Mr. Fergusson, in order to be laid before the Lords of
 ‘ the Treasury, in expectation of receiving relief: That, in con-
 ‘ sequence of these complaints, directions were given by the Trea-
 ‘ sury Board to the Commissioners of Excise in Scotland to in-
 ‘ quire into the truth of the allegations contained in these various
 ‘ complaints: That these proceedings took place without any
 ‘ communication with the pursuer, and without his knowledge;
 ‘ on the contrary, upon some surmises going abroad that such
 ‘ existed, on the pursuer applying to the Magistrates and Council
 ‘ to know the truth of such reports, he received an answer, sub-
 ‘ scribed by Alexander Pitcairn, George Young, and two other
 ‘ members of the Council, denying any knowledge of such com-
 ‘ plaints: That the first direct information that the pursuer had
 ‘ that any complaints had been made, or proceedings instituted
 ‘ against him, was on 28th April 1807, on his return home, after
 ‘ having been for some time absent on official duty, when he re-
 ‘ ceived a letter from the Solicitor of Excise, informing him, that
 ‘ in consequence of some complaints by the Magistrates of Burnt-
 ‘ island, he was directed to investigate the facts, and for that pur-
 ‘ pose he and Mr. Grant were to be at Burntisland on the morn-
 ‘ ing of 30th April 1807; adding, ‘ I believe your collection will
 ‘ then be over:’ That, from the proceedings which took place
 ‘ before the Sheriff-substitute of Fife, it appears that the defender
 ‘ Alexander Pitcairn took an active charge, and produced a State-
 ‘ ment, subscribed by himself, which he offered to instruct: That
 ‘ the principal witnesses then examined were the defenders, Alex-
 ‘ ander Pitcairn, William Young, and his three sons, who had
 ‘ either subscribed the memorial or letter above referred to, which,
 ‘ at their request, was laid before the Lords of the Treasury, and
 ‘ occasioned the investigation then going on, and the dismissal of
 ‘ the pursuer from the respectable and lucrative office of Collector
 ‘ of Excise for the county of Fife: That from the private corre-

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‘ spondence of the defenders themselves, and also letters from
 ‘ William Young to the Solicitor of Excise, and the personal
 ‘ communications alluded to in these letters by the defenders with
 ‘ the official persons intrusted with the investigation, the com-
 ‘ plaints and charges made against the pursuer for interference in
 ‘ politics, malversation in office, exacting double rates, and charg-
 ‘ ing interest, is to be held as one and the same proceeding, tend-
 ‘ ing to the same effect, and having the same object in view, viz.
 ‘ the removal of the pursuer from his office of Collector : That,
 ‘ after his removal, the same line of conduct and animosity against
 ‘ the pursuer continued ; and in different applications, made for
 ‘ copies of the proceedings and investigation taken at Burntisland
 ‘ in name of the Magistrates and petitioners,’ the declared object
 ‘ of the application being to support the decision of the Lords of
 ‘ the Treasury, and to resist any application that might be made
 ‘ by the pursuer to be reponed against the sentence of dis-
 ‘ missal, and also in the proceedings before the Sheriff-substitute,
 ‘ when an objection was stated to the examination of Messrs. Pit-
 ‘ cairn and Young as parties interested, the answers proceed upon
 ‘ the propriety of the same to support the complaints, and, as con-
 ‘ nected therewith, shows the joint interest the defenders took to
 ‘ support the complaints : That a suit in Exchequer being brought
 ‘ against William Young and Company for payment of duties to
 ‘ the Crown, they stated in defence against their liability the al-
 ‘ leged illegal exactions by the present pursuer when Collector, by
 ‘ levying double payments for the same duties, and charging in-
 ‘ terest on the duties from the time they became due, till paid :
 ‘ That judgment went against William Young and Company :
 ‘ That notwithstanding so large a sum as £1223. 10s. was al-
 ‘ leged to have been illegally exacted by Mr. Leven, no step was
 ‘ taken to recover this till nearly three years after dismissal, when
 ‘ an action was brought into this Court by William Young and
 ‘ Company against the present pursuer for repetition of the above
 ‘ sum of £1223. 10s. of duties, and interest, said to have been
 ‘ illegally exacted : That this action of repetition was founded on
 ‘ the same grounds that the charges of rigorous, unnecessary, and
 ‘ undue exercise of his authority were formerly made to the Lords
 ‘ of the Treasury and Commissioners of Excise ; but, upon a long
 ‘ discussion and full investigation, this Court found that the pur-
 ‘ suers had not made out their case, but the same was disproved
 ‘ by the productions made by the then defender ; and therefore sus-
 ‘ tained the defences, assoilzied the defenders, and found expenses
 ‘ due : That this judgment was affirmed on appeal, with £70
 ‘ costs. By these judgments the present pursuer has been assoil-

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‘ zied, and the grounds of action against him found to be dis-
 ‘ proved. Upon the same principles, the charges and complaints
 ‘ by Alexander Pitcairn, George Young, and William Young
 ‘ and Company, against the pursuer, for oppression and malver-
 ‘ sation in office, must be held to be equally unfounded. And in
 ‘ respect the pursuer’s dismissal from office proceeded from the
 ‘ unfounded and groundless complaints stated by the defenders
 ‘ against him, whereby he sustained a grievous injury and severe
 ‘ loss in point of income, repels the defences, finds the whole de-
 ‘ fenders, conjunctly and severally, liable to the pursuer in da-
 ‘ mages; but, before further answer as to the amount, appoints
 ‘ the pursuer, within ten days, to lodge a specific condescence
 ‘ of the amount of damages claimed, and appoints the defenders
 ‘ to answer the same within ten days after being lodged.’

Against this judgment the defenders reclaimed, and the Court then pronounced this interlocutor:—‘ Find that the first, second, and fourth articles of the principal and supplementary libels are relevant and proven: Find that the pursuer’s dismissal from office proceeded from the unfounded and groundless complaints stated by the defenders against him, whereby he sustained a grievous injury and severe loss in point of income: Repel the defences pleaded for William Young and Company, and also the separate defences pleaded for the said Alexander Pitcairn and George Young: Find the whole defenders in both actions conjunctly and severally liable to the pursuer in damages; but, before answer as to the amount of the damages, appoint the pursuer to lodge, within ten days, a specific condescence of the same, for the consideration of the Court; and find the whole defenders in both actions liable, conjunctly and severally, to the pursuer in the expenses of process.’ To this interlocutor they adhered, and thereafter remitted the following issues to the Jury Court:—‘ What loss and damage the pursuer has sustained by being dismissed from the office of Collector of Excise for the county of Fife, on the 13th day of August 1807, in consequence of the unfounded and groundless complaints of the defenders?

‘ What damage the pursuer has sustained, independent of the loss arising from his dismissal from said office, by the calumnies contained in the first, second, and fourth articles of the summons found relevant and proven, viz.—1. The said William Young and Company, or the said William Young and John Young, and the said Alexander Pitcairn, with concurrence of certain members of the Town-council of Burntisland, over whom they had an influence, secretly transmitted to the Lords Commissioners of the Treasury in London, and to the Com-

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‘missioners of Excise in Edinburgh, certain complaints against
 ‘the pursuer, falsely and maliciously alleging that he had ille-
 ‘gally interfered in politics while he held the office of Collector
 ‘of Excise, and that he had used the influence derived from his
 ‘office, unduly, to procure votes in his favour; and that he had
 ‘harassed and oppressed those traders within the bounds of his
 ‘collection who are said to have opposed his views.—2. The
 ‘said William Young and Company, or the said William Young
 ‘and John Young, falsely and maliciously alleged to the said
 ‘Commissioners of Excise, or to certain officers of Excise under
 ‘them, that the pursuer had unjustly and dishonestly charged
 ‘and uplifted from the said William Young and Company, or
 ‘from the said William Young or John Young, a larger sum
 ‘for duties than was actually due by them to Government, or
 ‘was carried to account by him.—3. The said William Young
 ‘and Company thereafter inserted or caused to be inserted in the
 ‘Edinburgh Evening Courant, of date the 7th day of July 1810,
 ‘a most calumnious advertisement, to the manifest hurt and
 ‘prejudice of the character and reputation of the pursuer.
 ‘The damages claimed are £20,000, of which, for the loss of
 ‘office during the period between 13th August 1807, when the
 ‘pursuer was dismissed, and the 5th of July 1809, when a new
 ‘arrangement took place, at the rate of £600 per annum, amount-
 ‘ing to

	£1023 8 2
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‘Salary at the rate of £600 per annum, from

‘5th July 1809 till 5th April 1817, seven

‘years and three quarters, amounting, after

‘deducting property-tax, to

	4245 8 2
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‘Also interest on the above sums quarterly,

‘as they became due, amounting, at 5th

‘April 1817, to

	1084 2 0
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	£6352 18 4
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‘For the value of the situation of Collector of Excise, or £600
 ‘per annum, from the 5th April 1817 until he shall be actually re-
 ‘instated in office, or until he shall be appointed to receive sa-
 ‘lary as above.

‘For damages arising, independent of his pecuniary loss, from
 ‘the foul calumnies to which he has been exposed, and the state
 ‘of degradation in which he has been placed, and from the
 ‘cruel state of anxiety and suspense in which he has been kept
 ‘for upwards of ten years.’*

* Before these issues were tried, an official letter had been sent to Mr. Leven, announcing that he was to be reinstated in his office of Collector as soon as a vacancy occurred; and he was subsequently allowed a pension of £400 per annum.

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A verdict was then returned by the jury, by which, ‘in respect of the matters of the said issues proven before them, they assess the damages due by the said defenders to the said pursuer at the sum of £2000 sterling.’

Mr. Leven, conceiving that these damages were too small, moved the Court for a new trial; and the Court accordingly set aside the verdict, remitted the case to be again tried by a jury, and directed that a separate return should be made on each of the issues. In consequence of this remit, a verdict was returned by another jury, ‘that, in respect of the matters of the said issues proven before them, they find for the pursuer on the first issue £1800, and on the second issue £200, and assess the damages at said sums accordingly.’ The Court thereupon (10th December 1818) found ‘the defenders conjunctly and severally liable to the pursuer in the two sums of £1800 and £200 sterling of damages, and decern for the same accordingly;’ and they also found them liable in £366 of expenses, including those of the new trial.*

The defenders then appealed on the following grounds:—

1. That the action was irrelevant, because, as Mr. Leven was a public officer, who the defenders believed had been guilty of illegal conduct in his official capacity, and as they had made their complaints to his superiors, and communicated them to no other parties than those to whom it was necessary to communicate them in order to the investigation; and as they had done so on probable grounds, as was established by the circumstance of Mr. Leven having been dismissed; and as no malice had been proved against them, the action ought to have been dismissed.

2. That as the dismissal of Mr. Leven had been on account of the unlawful exaction of interest, which had not been complained of by the defenders, but had been discovered in the course of the investigation, it was not consistent with justice to subject them in damages for his loss of office, seeing that it did not proceed on any of the charges which they had made against him; and if the Lords of the Treasury and the Board of Excise had erred in so dismissing him, the defenders ought not to be made answerable on that account.

3. That the Court of Session ought not to have allowed the Board of Excise to have produced the documents called for by Mr. Leven, seeing that they were private communications made as to the conduct of a public officer, which ought, on principles of expediency, not to be disclosed; and at all events they acted unjustly in withholding from the defenders the documents which they were desirous to have recovered in support of their defences,

* Not reported.

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4. That the issues which were sent to the Jury Court were erroneous, and of such a nature as to preclude the defenders from pleading their lawful defences; and that although it was competent to grant a new trial on account of damages being excessive, yet there was no authority for doing so because they were too small.

5. That the interlocutors were inconsistent with the libel and relative evidence, as the defenders were found conjunctly and severally liable in damages, although it was established that several of them were no parties to the acts for which these damages were awarded;—and,

6. That it was contrary to justice to subject them in the expenses of the new trial, on which the same verdict as the one which was set aside had in substance been returned.

To these pleas it was answered,—1. That the action was not rested on the ground that the pursuer had been dismissed for taking interest, but that he had suffered loss in consequence of the misrepresentations and the false charges exhibited against him by the defenders; that even with regard to the charge of exacting interest, it had been entirely misrepresented by the defenders, and the Board of Excise had become so satisfied that the pursuer had been unjustly treated, that shortly before the issues were sent to the Jury, he had been reinstated in office.

2. That although a public officer may have been dismissed on one charge as well founded, yet this could not protect the complaining parties, who made false and calumnious accusations, from being liable in indemnification; and that such had been the case on the part of the defenders, because both the charge of interference in political matters, and of withholding large sums of money, had been disproved; and further, that the advertisement in the newspapers was of itself sufficient to entitle him to damages;—and,

3. That as the defenders had been united together in the attacks which they had made upon the pursuer, he was entitled to redress from them conjunctly and severally.

The House of Lords found, ‘ That none of the acts alleged by ‘ the respondent, in his first and supplementary summons of da- ‘ mages, to have been done by all or some or one of the appel- ‘ lants, the defenders in such actions, are so alleged or proven, as ‘ to justify the finding that the first, second, and fourth articles ‘ of the principal and supplementary libels are relevant and pro- ‘ ven; and that the whole defenders in both actions are con-

‘ junctly and severally liable to the pursuer in damages, and
 ‘ therefore that the proceedings in the said actions are founded in
 ‘ error, and ought to be reversed; and on this ground it is or-
 ‘ dered and adjudged that all the interlocutors complained of be
 ‘ reversed, and that the appellants be assoilzied in such actions;
 ‘ the Lords not meaning hereby to determine any question with
 ‘ respect to any particular ground of appeal alleged by the ap-
 ‘ pellants as applicable to any of the several interlocutors com-
 ‘ plained of.’

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LORD CHANCELLOR.—My Lords, in this cause of *Young v. Leven*, we have had copies sent us of the condescence which was lodged in the action for damages, (which was of rather a singular description,) and of the answers of Messrs. Young and Company, (which company consists of William Young and John Young,) and also the answer of Alexander Pitcairn and George Young, all of which I have very carefully read.

My Lords, in the present state of the business, it will be desirable that I should not go minutely through this case. But the appellants state the case thus:—After representing that William Young and Company—a company formed, as I before stated, of William Young and John Young,—had long been established in the neighbourhood of the royal burgh of Burntisland in Fifeshire, as distillers and extensive farmers,—and after describing the extent to which they had carried on their business, and the extreme regularity with which they had carried it on, they proceed to represent what they state to have been the conduct of Mr. Leven, the Collector of Excise under whose survey they were, and the officers under him; and with respect to the allegations on both sides, perhaps it may be enough to say, that they are extremely contradictory to each other. It is then represented that the burgh of Burntisland is one of four burghs, in the district of Scotland in which it is situated, that send a representative to Parliament; that the member is chosen by a delegate from each burgh, who is chosen by the respective town-councils; and they state that this makes a seat in these corporations generally an object of some consequence; and those who know the manner in which the representatives in Parliament are elected in Scotland, can have little doubt upon that point.

My Lords, Mr. Leven suggests that his interposition with respect to the local politics of the place had no connexion whatever in fact with what may be called the election politics of the place; by election politics meaning elections for members of Parliament. On the other hand, it is the purpose of the appellants to represent that Mr. Leven, in consequence of a general election of members of Parliament being expected in Burntisland—that being what is called the returning burgh, entitling that burgh to the casting vote in case there should be an equality of votes,—a connexion with that corporation became, for that reason, of a good deal of consequence with respect to the elections for those four

July 8. 1822. burghs; and that, under those circumstances, as they allege, the respondent interfered in the politics of the burgh, and endeavoured to place himself at the head of the corporation by canvassing for the office of Provost; and they insist that his conduct was contrary both to positive statute, and to the special regulations which the Board of Excise circulate for observance by all their subordinate officers; and then they state, that the established Magistrates of the burgh were the parties first called upon to notice the conduct of the pursuer, as this was manifestly calculated to form a strong restraint on the traders in exciseable goods within the burgh, and thus to affect the independence of the corporation itself. But the Magistrates, as a corporation, at first, in the early part of the winter 1806-7, from a wish to spare the respondent, refrained from complaining, and their forbearance at that period has since been eagerly laid hold of by the respondent. 'Then they represent 'that the respondent's conduct having been represented to his superiors by both parties interested in the election of 1806, he applied to the Magistrates for a letter exculpating him from the charges. But the Magistrates could not go this length; on the contrary, they were obliged to tell the respondent that they thought the charges true, and they wrote to the respondent the following letter, in the statements of which the respondent, as they put it, acquiesced, as he never returned any answer to it.'

Now, my Lords, this letter, which was sent by the Magistrates, was of the date of the 1st of November 1806, and the memorial I shall have occasion to mention to your Lordships presently, was not dated till the 10th of March 1807; so that this letter cannot have a reference to that memorial as a communication made either to the Board of Excise or the Lords of Treasury, but must have reference to some other communication made by the Magistrates. What they state is this—[His Lordship here read the letter of 1st November 1806. See p. 179.] This letter is signed 'Alexander Pitcairn,—Thomas Orrock,' who is made no party to this suit,—'John Archibald,' who is made no party to this suit, '—George Young,' who is made a party to this suit,—and 'John Haxton,' who is not made a party to this suit.

They then proceed to represent that the conduct of the respondent was very much influenced by his disappointment in the pursuit of this office of Provost of the burgh, that he ceased to employ individuals whom he had before employed, and particularly this Mr. Haxton, who was Dean of Guild and a corporator, and that, by his officers, he was particularly rigorous to the appellants; and then they go the length of asserting, as a motive for that rigour, their refusing to vote for him, and to further his intention to become Provost of this burgh.

My Lords, upon the 10th of March 1807, the Magistrates of Burntisland sent the following memorial to the Lords of the Treasury:—
'Your memorialists are aware of the necessity of arming the officers of
'Excise with the most extensive powers, in order to ensure the due col-
'lection of that most important branch of the public revenue, and they

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‘ rely with perfect confidence in the lenity and justice of His Majesty’s
 ‘ Ministers, that they will not countenance any harsh or unnecessary ex-
 ‘ ercise of those powers, and still less permit the abuse of them by their
 ‘ officers for any purpose unconnected with their proper duties, and the
 ‘ protection of the public interest. Your memorialists therefore venture,
 ‘ without apprehension, to represent to your Lordships, that the inhabit-
 ‘ ants of the burgh of Burntisland and its neighbourhood have of late
 ‘ suffered much from a most rigorous, unnecessary, and partial exercise
 ‘ of the authority of John Leven, Collector of Excise, and the officers
 ‘ acting under his directions.’

It will be in your Lordships’ recollection, that in the course of what was stated from these papers, and stated from the Bar, it was represented that the complaint was of the officers acting under the direction of John Leven; but no one can read this passage without seeing that there is imputed to Mr. John Leven himself, as well as his officers, ‘ a most
 ‘ rigorous, unnecessary, and partial exercise of his authority.’ Then they say, that they ‘ further submit that they are driven to complain of the
 ‘ grievances they have already suffered by their apprehensions of the
 ‘ future, in as much as they cannot help fearing that the extraordinary
 ‘ circumstances and undue rigour which the Collector has of late shown,’ (this is the Collector again, and not the officers,) ‘ a disposition to exer-
 ‘ cise against certain individuals of the burgh, has not arisen merely from
 ‘ zeal for the discharge of his duty; and they think themselves warranted
 ‘ in stating this suspicion by the conduct of the Collector in September
 ‘ and October last, in interfering and endeavouring to obtain the political
 ‘ management of the burgh, and in employing some of the officers acting
 ‘ under him as agents for that purpose.’ It appears that the parties construe these words, ‘ the political management of the burgh,’ in different senses. On the part of Mr. Leven it has been represented, that all he had in view (and that view was suggested to him by others) was, that if he was placed in the situation of an officer of the burgh, he might remedy some malversations with respect to the property of the burgh; and that this being known to be his view, he was opposed by certain persons on that very account. Others represented, that as this was the returning burgh, it would naturally have a very great weight in the return of the members to Parliament, and that the obtaining this was his object.

Then they go on to state, ‘ And they have had occasion to observe,
 ‘ that it is since the failure of that attempt they have had reason to
 ‘ complain, particularly of the very undue exercise of his authority,
 ‘ which has been particularly directed against such persons as, by re-
 ‘ sisting his solicitation, had exposed themselves to his resentment. That
 ‘ though your memorialists are persuaded that your Lordships would
 ‘ have strongly condemned such illegal and irregular interference, they
 ‘ have hitherto forborne to complain, and have now no wish to excite
 ‘ your Lordships’ displeasure, but have stated these circumstances only

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‘ as their justification for earnestly entreating that he may be removed
 ‘ from the collection he at present holds, with the two officers that act
 ‘ under him in this burgh, and exchanged for any other collector and
 ‘ officers now employed in Scotland.’ Your Lordships will notice this
 concluding passage of the memorial particularly, because, with reference
 to the subject of Mr. Leven being removed by the Lords of the Treasury,
 it is contended on the part of the appellants that that was a step on the
 part of the Lords of the Treasury going much further than they intended,
 and that this was only an intimation that, for the reasons here stated,
 he might not be removed absolutely from his situation as an officer of
 Excise, but removed to some other place, and in some other place might
 hold the situation of an officer of Excise. . At the same time it is but
 fair to remark, that, on such a memorial as this, if they made good
 the allegations that are stated in this memorial, it was a very difficult
 thing for those who were to act upon the memorial, considering the na-
 ture of the circumstances stated, to say you cannot be permitted to re-
 main an officer of Excise in Burntisland on account of your conduct as
 an officer of Excise; but we expect that if we remove you to another
 place, you will forget all your political interference as an officer of Burnt-
 island, and will make a very fit and proper officer elsewhere. My
 Lords, this memorial was not signed either by William Young or by
 John Young. Neither William Young nor John Young were Magi-
 strates.

The appellants state, (and I will read their own statement,) ‘ that
 whilst this application was transmitted through the Magistrates of Burnt-
 island, the appellants were advised also to get their application for an
 inquiry into Mr. Leven’s conduct backed by the member of Parliament
 for the county. They therefore addressed a letter to Mr. Wemyss, one
 of the Deputy Lieutenants for the county, and who had a large estate
 adjoining to the burgh, in the following terms’—[His Lordship then
 read the letter. See p. 181.] Then, in the Case which they have laid
 upon your Lordships’ table, they desire it to be noticed, that it was not
 so much of the conduct of the respondent, as of his subordinate officers,
 that the appellants complained; but it appears to me very difficult to
 state that this was not a representation that the subordinate officers were
 acting under his influence, and that he was induced to do as he did by
 that which they state as the motive for his conduct.

My Lords, Mr. Wemyss forwarded this representation to Mr. Fer-
 gusson, then member of Parliament for the Fife burghs; and your Lord-
 ships will recollect there was some intimation at the Bar that the
 politics of the day in 1807 had something to do with this, and that there
 was an intention of electing a member for these burghs of a particular
 way of thinking in politics; but it turns out that though the complaint
 was made during the Administration which began in February 1806,
 and which existed till 1807, yet that the final act of the Treasury was
 an act done in the time of the Administration which succeeded the one

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that had existed from February 1806 to the beginning of 1807; so that the complaint was made in the time of one Administration, and the act done upon it in the time of the other.

Mr. Wemyss, in transmitting this application to Mr. Fergusson, who was then member of Parliament for the Fife burghs, certainly speaks very strongly in his letter with respect to Mr. Leven. One wonders a little, considering the part he actually took, that Mr. Wemyss himself was not made a defender in this action. His letter is in these terms:—
 ‘ The enclosed I received yesterday. Mr. Young is a man I have long
 ‘ known, and is much respected in his line. He carries on business to
 ‘ a great extent, and is one of the greatest improvers of land we have
 ‘ in the county; and if an Excise officer takes a dislike to a distiller, he
 ‘ can continually harass him, without being of the smallest use to the
 ‘ revenue. I know Mr. Leven was much disappointed at not being
 ‘ made Provost of Burntisland at last election, and that he is a man of
 ‘ very violent temper, and have no doubt he will trouble Young as much
 ‘ as he can. Some time ago, Captain Halkett of the Royal Navy, the
 ‘ minister of Aberdour, and myself as Depute Lieutenant for the parish,
 ‘ intended applying for his (Collector Leven’s) removal on account of
 ‘ his very bad usage of the sailors’ wives, fathers, and mothers who went
 ‘ to receive money from him, not only paying them irregularly, but
 ‘ abusing them for troubling him; but as Sir William Erskine, the
 ‘ member for the county, was not in London, we did not go on with it.
 ‘ I am perfectly convinced, from what I know of the man, you should
 ‘ lose no time in getting him removed.’

As I understand the Case, the gentleman to whom this letter was addressed, namely Mr. Fergusson, did write to the Lords of the Treasury, expressing very strongly his hope that Mr. Leven would be removed.

My Lords, in consequence of these representations to the Treasury, an inquiry was directed to be made into the conduct of Mr. Leven; and a gentleman of the name of Bonar, who was second Solicitor to the Excise, received the directions of the Board of Excise, in consequence of which he wrote to the respondent, on the 24th of April 1807, a letter stating that he had been directed by the Board, in consequence of a remit from the Treasury, to proceed along with Mr. Grant, general surveyor, to make an investigation into some complaints by the Magistrates of Burntisland, and that he had fixed for going over to Burntisland on that business on the morning of Thursday the 30th April, and taking the examination of such witnesses as might be adduced in regard thereto upon oath before Mr. Jameson, Sheriff-substitute. ‘ Your
 ‘ collection will then, I believe, be over, so that I suppose you can at-
 ‘ tend; and it will likewise be necessary that Mr. Forbes, supervisor,
 ‘ shall also attend, of which you may acquaint them.’ There is a good deal of representation contained in the Case on the part of the respondent, that he had no intimation given him of the intention that there should be this inquiry, till a day or two before the inquiry was set on foot; and

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much complaint is made of that, and likewise much complaint founded upon this allegation, that these proceedings on the part of the Magistrates were secret proceedings, and had not been disclosed to him, as proceedings intended to be had, with that degree of fairness which would enable him to know that the inquiry was to be made, and to meet the inquiry as he might or could otherwise have met it.

My Lords, the Case then goes on to state the commencement of the investigation, and it very particularly details the Statement then made by Mr. Pitcairn, and he alone seems to have made the charge upon which the witnesses were examined, and the inquiry proceeded; and I feel it to be proper to state this to your Lordships, because great stress was laid upon it in the discussion at the Bar. After mentioning Mr. Leven's canvass for the Provostship, and that that was unsuccessful, he proceeded to state—' After this, Mr. Leven's conduct was such as gave us every reason to suppose that he had neither laid politics aside, nor was sorry for his interference in them. He gave public dinners to the people that had supported him, and dined with some that I am convinced he would have disdained to have been seen in company with on any other occasion. Had he shown his resentment for his disappointment by only turning off his tradesmen, or giving public dinners to his supporters, we would not have made such conduct the subject of an application to the Treasury; but it did not terminate there. To show his spirit, I will mention one instance, that perhaps on any other occasion would be unworthy of notice. Lately, one of the present Magistrates, Bailie Thomas Orrock,' (who is one of the persons that writes the letter, but who is not made a defendant in this action,) ' was passing along the shore, by accident, where an old house had been pulled down. Some old wood, fit only for fuel, was thrown out, and some of the bakers of the town wanting to buy it, one of them asked Mr. Orrock what it was worth. He said 20 shillings, and added jocularly, who bids more? or something to that purpose. The Collector was pleased to summon him before the Justice of Peace Court to prove that he was an auctioneer without license, in order, no doubt, to throw a stigma on the Magistracy of the burgh. But the Justices saw through his design, and gave the decision which the case merited. All this I am now ready to prove, and I request to be allowed to prove it; but I have yet to mention the most serious part of the whole business, which I consider as particularly connected with the politics of the burgh, and which was the reason for bringing the present complaint. As the Messrs. Young did not support the Collector in his politics, they seem to have been selected for the objects of his resentment. Ever since the election, the conduct of the surveying officers has been much changed, and has been so hard upon the Messrs. Young in carrying on their business, that if it be not remedied, they are determined to give it up. Mr. William Young has been long known as a fair trader; his sons have been but a short time in business, but their character is every way fair,

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‘ and in no instance that ever I could learn, have they been detected in
 ‘ any fraud upon the revenue. Were there any doubts on this head,
 ‘ Messrs. Young’s free opposition to the Collector would effectually re-
 ‘ move them ; and as Messrs. Young never used the officers, nor any of
 ‘ them, but in the most civil and obliging manner, neither they nor the
 ‘ Magistrates could impute this change in the conduct of the officers to
 ‘ any other cause than to Mr. Leven’s disappointment ; and therefore, I,
 ‘ as chief Magistrate of the burgh, thought it a duty incumbent upon me to
 ‘ make a representation of the business, that an investigation might take
 ‘ place, that the grievances complained of might be inquired into, and that,
 ‘ if they did exist, they might be remedied, and that in future no trader
 ‘ should be distressed by officers of the Excise for the line of conduct
 ‘ they may choose to adopt with regard to the politics of the burgh of
 ‘ which they are freemen. I had heard frequent accounts of the severe,
 ‘ and as it was called, oppressive conduct of the officers who surveyed
 ‘ the Messrs. Young ; and, on making inquiry, circumstances were men-
 ‘ tioned to me, that in my mind went to confirm the accounts which I
 ‘ had heard. But, lest I should give a wrong statement, I beg you will
 ‘ call on Mr. William Young, and on Mr. John Young who presides
 ‘ at the distillery, and then on Mr. George Young and Mr. William
 ‘ Young junior, extensive spirit-dealers of the town, who will severally
 ‘ state to you their grievances, and, if required, will adduce the neces-
 ‘ sary proof. As Provost of the burgh of Burntisland, I request that
 ‘ this paper, signed by me, may be produced along with the whole pro-
 ‘ ceedings of this inquiry, and that I be furnished with extracts.’

My Lords, they then represent that the inquiry on the charges pro-
 ceeded. I do not trouble your Lordships with stating at present the
 evidence which was given in support of these charges. The respond-
 ent likewise produced a number of witnesses on his behalf. Your Lord-
 ships will find all the evidence stated in the papers.

The gentlemen appointed to make the inquiry having made their re-
 port to the Board of Excise, there was a letter written by Mr. Pearson,
 and thereafter another letter written by him, both of which it appears
 to me material to state to your Lordships. The first, which is dated
 the 11th of August 1807, is in these terms—[His Lordship here read
 the letter of dismissal. See p. 183.]

This letter, your Lordships will observe, expresses the entire disappro-
 bation of the Lords of the Treasury of officers of Excise taking an ac-
 tive part in the local and municipal politics of the burgh. With respect
 to receiving interest from the trader, it states that ground, if not as the
 sole ground, certainly as one of the grounds of the dismissal ; and it is
 material here to observe, that whether that be a good ground or a bad
 ground for the dismissal of an officer, this letter states it as the ground,
 at least as one of the grounds, which the Lords of the Treasury assign.

The circumstances, your Lordships will recollect, were of this nature,
 that the Excise officers permitted the trader not to pay the duties upon

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the days he ought to have paid those duties, but to pay the duties at subsequent days, taking interest from him computed from the day on which the duty ought to have been paid till the day of actual payment, and carrying that interest, not to the public account, but carrying that interest to their own private and personal account. Now, whether that mode of conduct was or was not a mode of conduct which the Lords of the Treasury should or should not have treated in the manner in which they have treated it in this case, it does appear to me that is a matter with which the defendants in the action had nothing to do. The Lords of the Treasury direct Mr. Leven to be dismissed for this cause, or for this cause among other causes; but whatever weight is to be given to this direction by the Lords of the Treasury on that account, that is not to be visited on those who made the complaint, but is a circumstance which the Lords of the Treasury are to account for, if there be any blame in the conduct of anybody in that respect. And I take this opportunity of simply stating, that, with respect to a subsequent proceeding in the Court of Session, I do not apprehend that any thing which passed in this House with respect to the taking of interest, was a representation of the opinion of any one of this House that that was a proper or a legal mode of proceeding. For whatever difference of opinion there may have been upon the question, (a question now set at rest by act of Parliament,) whether, when a public officer receives money, the interest he makes of it, before he pays it to Government, is an interest he might or might not keep to himself, there is a very wide difference between that case and the case of an officer saying, 'It is at my risk, I have not called for the money which is due from the trader,' or the case in which the revenue may call upon him for that interest, on the ground that public policy requires that that sort of dealing with public money should not be permitted. Your Lordships observe, however, that in this letter, as I read it to you, there is also this allegation, 'receiving from Mr. Young a larger sum for duties than was actually due.' That expression may bear two constructions, namely, that if he received interest, he had received from Mr. Young a larger sum than was actually due. That, however, does not appear to me to be the real meaning of this passage, because your Lordships find in the history of the transactions that William and John Young did conceive, or, whether they did conceive or not, did charge Mr. Leven with actually receiving in large sums a second payment for sums for which he had before given receipts; and yet, when you come to read the letter of Mr. Pearson,—(the same gentleman who wrote that letter of the 11th of August 1807,)—his second letter of the 14th of August 1807,—you will find that the chief cause of the respondent's dismissal appears to have been this matter of taking interest, for in that letter he does not again mention the circumstance of the charge of receiving more money than was actually due. That letter is a circular letter written by the Board of Excise to all their officers, in consequence of the investigation that had taken place in respect to Leven's conduct.

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It is therefore a general act of the Board of Excise, proceeding on the specific ground which is mentioned in this circular letter. [His Lordship here read the circular of 14th August 1807, see p. 183.] Your Lordships observe, there is no mention here of the taking sums beyond what were due, but it is put entirely upon the taking interest.

Now those two letters, the one of them alluding to two causes, the latter alluding only to one cause, express distinctly the grounds of the dismissal of this officer; and I observe that in the Court below it has been argued, as it was argued here, that it cannot be maintained, (and undoubtedly it cannot be maintained,) that if, in representations made maliciously and without probable cause, there have been several causes most maliciously, and without proper reason, stated as grounds for animadversion on my conduct, and it turns out that I am not dismissed from my office for any one of those causes, but my dismissal has been owing to a cause which has been stated as a ground for dismissing me;—if there be slander and calumny, malice, and improper motives in the other representations, and if they are representations not made in the course of the administration of justice, nor in any other proceeding which admits of consideration according to the principles of those cases which do occur in the administration of justice, it cannot, I say, be maintained that there is any reason in the world why I should not be able to maintain an action with respect to that slander and that calumny, although it did not lead to the dismissal. In this case, the damages which have been given are damages expressly calculated upon the dismissal from office; and whilst the reasons which are given by the Lords of the Treasury as the reasons for which the respondent is dismissed from office are not those stated by these parties, the consequences of the dismissal from office are taken as furnishing the rule for assessing those damages. There appears, therefore, to have been not any misstatement of the principles of law, but a misapplication of those principles to the circumstances which I am now pointing out.

After this there were representations made to the Board of Excise, and Mr. Leven complained (perhaps justly) that there were difficulties thrown in his way which he represented as unfair; but into this it is not necessary to enter.

My Lords, the appellants afterwards brought an action against Mr. Leven for an alleged balance of duties,—that is, for sums overpaid, and, as supposed, double payments,—the one of £800, and the other of £400, as exhibited in the different receipts they produced. I have read very carefully the papers which were on your Lordships' table when the appeal from the decision of the Court of Session came before us with respect to those double payments of £800 and £400, and I have no difficulty in representing to your Lordships that I concur entirely in the opinion which the Court of Session formed upon that occasion, namely, that it was satisfactorily proved that though receipts had been given for those sums of £800 and £400 specifically, yet, upon looking at the re-

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ceipts which were afterwards given for larger sums, it was quite clear that Mr. Leven had not doubly charged them in respect of that £800 and that £400. When your Lordships come to consider this case as a case in which all the defendants are made jointly and severally liable for damages,—and where one measure of the damages is this action having been brought by Young and Company, (and that occurring, too, some years after the proceedings with respect to the investigation,)—and when your Lordships also consider that this was an action in which it required considerable attention to develop the whole of the accounts, in such a way as to make out that those were not double charges, and when I will venture to say that there is hardly any man who looked at the papers produced that would not have thought them to be double charges; and because you could go the length (which perhaps some might be disposed to go) of saying that Young and Company must have known they were not double charges, or that they might have known the thing could be explained in the manner in which it was explained, and that therefore they, judging upon the surface of things, and because they judged wrong, they ought to be subjected to damages, and that those damages should be given also against parties who had not been proved to be in any manner whatever connected with those proceedings, is a proposition very difficult to be assented to.

My Lords, an appeal was taken from that proceeding in the Court of Session, relative to the double payments. I have before stated to your Lordships, that there also was a demand for repetition of the interest which had been taken, as well as those sums; and I observe, in this condescendence which I have in my hand, it is represented on the part of Mr. Leven, that this House was of opinion that there was no ground whatever for that repetition of interest. My Lords, I have likewise in my hand the short-hand writer's note of the judgment the House gave, and I am sure it must be in the memory of your Lordships, that we did not mean by any means to state that it was right in Mr. Leven to leave this money in the hands of the traders, and himself to take interest; but if the traders had voluntarily paid this interest, it was a very difficult thing for them to get back again the interest. That was interest which, if anybody was entitled to have it, it was the public that was entitled to have it from Mr. Leven, and not the traders; because that interest had been paid by the traders, in consideration of the agent for the Crown giving them time to pay the principal. It was therefore interest which, if due to anybody, was due to the Crown, and not to Messrs. Young; and upon that ground we thought that this action was not sustainable, and we held that the £800 and the £400 had been satisfactorily accounted for, and we did certainly affirm that decree.

My Lords, Mr. Leven then commenced an action in the Court of Session, in which he claimed a large sum for damages, and the grounds of action were stated, under the circumstances, to be these:—I do not intend to make any observation whatever upon the forms of pleading

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which are observed in this case, further than to say this, that I am quite sure that such pleadings as these would not have been allowed to have one minute's consideration in any Court of this country, having regard to the accuracy with which we are required to plead here. In the first place, it is stated in the summons that 'the said William Young and Company, or the said William Young and John Young,'—that is, either in their character of a company, or in their individual characters as William and John Young, but whether in the one or the other non constat,—'and the said Alexander Pitcairn, who, with the concurrence of certain members of the Town-council of Burntisland, over whom they had an influence, secretly transmitted to the Lords Commissioners of our Treasury in London, and to the Commissioners of Excise in Edinburgh, certain complaints against the pursuer, falsely and maliciously alleging that he had illegally interfered in politics while he held the office of Collector of Excise, and that he had used the influence derived from his office, unduly, to procure votes in his favour, and that he had harassed and oppressed those traders within the bounds of his collection who are said to have opposed his views.' Now, with respect to those complaints, if the words 'certain complaints' are to be taken to mean the complaints contained in the memorial, your Lordships will allow me to mention again, neither William nor John Young signed that memorial; and if, therefore, William and John can be considered as having taken any part in respect of that memorial, it must be, not because they signed it, for they did not sign it, but it must be because they took some other part in the sending it to the Lords Commissioners of the Treasury, which makes it imputable to them, though they did not sign it. My Lords, it is very remarkable that in the first summons George is no party, but George has signed it; and what is more, if your Lordships will look at the original summons and the supplementary summons, you will find that John and William, (neither of whom signed it, but who still might be, to use the expression which is found in the supplementary summons, 'art and part,') are charged as principals, whilst George, who did sign it, is by the supplementary summons charged, not as a principal, but as only being 'art and part.' Then it is said that William and John were members of the Town-council of Burntisland. They may have been members of the Town-council of Burntisland, but it is impossible that the words 'concurrence of certain members of the Town-council of Burntisland' can mean with the concurrence either of William or John; for the expression is, that 'William Young and John Young, with the said Alexander Pitcairn, who, with the concurrence of certain members of the Town-council of Burntisland, over whom they had an influence,' did so and so;—they cannot be persons who, with their own concurrence, did so and so.

Then the next allegation is this—'That the said William Young and Company, or the said William Young and John Young, falsely and maliciously alleged to the said Commissioners of Excise, or to cer-

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tain officers of Excise under them, that the pursuer had unjustly and dishonestly charged and uplifted from the said William Young and Company, or William Young and John Young, a larger sum for duties than was actually due by them to Government, or was carried to account by him.' Now, my Lords, allow me to call your Lordships' attention to this, that the first allegation is an allegation which contains not one single word about the uplifting or dishonestly charging a larger sum for duties than was actually due, and is an allegation of complaints having been made to the Lords Commissioners of the *Treasury*. The second allegation is an allegation, not that there was any complaint made to the Lords of the *Treasury* about taking a larger sum for duties from William Young and Company, but that a complaint of this nature was made to the 'Commissioners of *Excise*, or to certain officers of Excise under them.' By what rules they proceed in these actions for damages, I cannot undertake to say; but your Lordships know, if this had been a proceeding in our Courts, under the first allegation no evidence would have been permitted to be given that was not evidence to prove that this complaint, and this only, had been made to the Lords Commissioners of the *Treasury*; and if this first allegation did not contain one single word about uplifting larger sums of money than were due, no Judge in this part of the island would have permitted any evidence to be given of that sort. Then if they had turned round, and had been obliged to go to the second allegation, according to our rules of proceeding, a Judge would have said,—I cannot permit under this allegation any evidence that such and such representations were made to the Commissioners of the *Treasury*, but here you must confine yourself to allegations and representations being made to the Commissioners of Excise.

There is, my Lords, another circumstance to be remarked, that the charge here is, that they had 'falsely and maliciously alleged to the said Commissioners of Excise, or to certain officers under them, that the pursuer had unjustly and dishonestly charged and uplifted from the said William Young and Company, or William Young and John Young, a larger sum for duties than was actually due by them to Government, or was carried to account by him.' You observe that the respondent studiously omits there that the charge was, among other things, for taking interest on the money. He does not say one single word about that in this allegation, and that seems to be excessively material; because, when you come to look at Mr. Pearson's second letter, which expresses the cause for Mr. Leven's being dismissed, that letter (which is a circular to all officers of Excise) says expressly that his dismissal was for that which is totally omitted to be mentioned here, namely, the receiving interest upon money which he did not call for the payment of from the trader at the time it was due.

Then, my Lords, comes the third allegation, that 'the said William Young and Company, or the said William Young and John Young,

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‘ not only repeated, in various public companies, their calumnious and de-
 ‘ famatory charges against the pursuer, but thereafter withheld duties
 ‘ from Government, on the pretence that they had overpaid certain large
 ‘ sums of money to the pursuer while Collector of Excise, and openly
 ‘ made the same false and malicious allegations in their defence against
 ‘ an action at the instance of the prosecutor for the Crown against them
 ‘ in our Court of Exchequer in Scotland.’ My Lords, the Judges of the
 Court of Session were of opinion, and rightly of opinion, that the pro-
 ceedings in that action being proceedings in a Court of Law, were not
 proceedings in respect of which damages could be awarded. But your
 Lordships will permit me to observe here, that, so far as I have pro-
 ceeded in these three articles, (and the same observation applies to the
 fourth, the fifth, and the sixth,) the name of Pitcairn is never mentioned
 in any one of these six as a party in the concern ; and with respect to
 George Young, that in the whole seven he is never mentioned at all.

My Lords, I do not trouble your Lordships in calling your attention
 further to the third, nor shall I to the fifth, nor to the sixth, nor to the
 seventh, for this reason, among others, that the Court of Session was of
 opinion, that except the first, second, and fourth, none of them were re-
 levant ; that they were not, therefore, allegations that would admit of
 the production of proof. I may misunderstand, and before I have done
 with the matter, I should be glad to be set right, if I am wrong ; but I
 believe it was the fact, that this large condescendence in my hand be-
 came part of the proceeding, even before George Young was made a
 party in the suit,—that is to say, before, by the supplementary proceed-
 ing, he was made a party in the suit ; and I do not therefore wonder,
 that, with the exception of a few sentences, his name hardly occurs in
 the condescendence at all ; and yet he is made, under this judgment,
 jointly and severally answerable for the whole of these damages, and
 every shilling of them might be taken out of his pocket under the pro-
 ceedings which have been had.

My Lords, then, in order to enable the respondent to maintain his ac-
 tion, there was a summons against havers, in order to get papers from
 the Commissioners of Excise. The interlocutor of the Lord Ordinary
 directed the papers to be produced. The Commissioners of Excise ob-
 jecting to produce those papers, an interlocutor of the Lord Ordinary
 disallowed that objection of the Commissioners of Excise. The Excise
 petitioned the First Division of the Court of Session, limiting, however,
 their objection to particular papers. The First Division of the Court of
 Session, however, affirmed the interlocutor of the Lord Ordinary in fa-
 vour of the now respondent in this appeal, and directed the production
 of the papers called for. My Lords, it becomes a very material ques-
 tion, not only in this cause, but in others that are now before your Lord-
 ships, what ought to be done in cases of that nature ? Your Lordships
 will find, that when the appellants in this cause called for the production
 of papers from the Board of Excise, in order the better to sustain their
 defences, the Court of Session thought that they ought not to allow that

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production. There is a paper containing notes of what the Judges have said upon that subject, and they are right in the fact they state, namely, that, considering the nature of the action, the production of those papers would not assist the appellants at all; and perhaps I may feel an inclination of opinion to say they were right for another reason; but that is a reason not quite equally applying to a case where the one party had the production, and the other party was refused it. I have an inclination of opinion that the reasons on which, in this country, Judges have held that the public Boards should not be called on to produce their papers, might be reasons which might have induced the Court of Session, both at the request of the respondent and the appellants, to say, 'Make the best of your case; but there are reasons of policy, in respect of which we cannot order those productions.' However, that will be a question to be more considered in a case, *Earl v. Vass*, which remains for your Lordships' judgment.*

My Lords, this long condescendence was afterwards put in, and Lord Balmuto's interlocutor of the 12th of November 1816 was pronounced, which I do not trouble your Lordships with stating. It is a very long interlocutor. It proves great diligence and attention on the part of the Judge; but I observe the First Division afterwards were of opinion that my Lord Balmuto's interlocutor could not be sustained to the length to which it had gone; and on the 8th of February 1817 this interlocutor was pronounced by the Court of Session:—'Find that the first, second, and fourth articles of the principal and supplementary libels are relevant and proven: Find that the pursuer's dismissal from office proceeded from the unfounded and groundless complaints stated by the defenders against him.' Unquestionably your Lordships will have to determine whether that finding of the fact is according to the fact, whereby he sustained a grievous injury and severe loss in point of income: Repel the defences pleaded for William Young and Company, and also the separate defences pleaded for the said Alexander Pitcairn and George Young: Find the whole defenders in both actions conjunctly and severally liable to the pursuer in damages.'

I should have mentioned to your Lordships, that after the cause was over in the Court of Exchequer against Messrs. Young, the newspapers of Edinburgh, giving, as the newspapers in this town give, an account of the legal proceedings, gave an account of the proceedings in the action, from which Mr. William and John Young thought their character might suffer; and perhaps it would be a little better, if there was rather more mercy shown to character than is displayed in these publications now and then. They published, in consequence, an advertisement—this must have been four or five years, or, at all events, three or four years after the investigation—in which they desire the public to suspend their judgment upon the proceedings, and vindicating their

* See postea, No. 43.

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character ; and that paper has been considered as a libel against the respondent. Without, however, at present examining whether it is a libel, or is not a libel, and although it was alleged to have been published only by William Young and John Young, yet, without a semblance of any proof that George Young knew of it, or that Pitcairn knew of it, it is found ‘ that the whole defenders in both actions are conjunctly and severally liable to the pursuer in damages ; but, before answer as to the amount, appoints the pursuer, within ten days, to give in a special condescence of the same, for the consideration of the Court : Find the whole defenders liable conjunctly and severally to the pursuer in the expenses of process.’

Then, my Lords, there were certain proceedings with a view to settle the quantum of damages, and the Court thought proper to direct two issues. The first was, ‘ What loss and damage the pursuer has sustained by being dismissed from the office of Collector of Excise for the county on the 13th day of August 1807, in consequence of the unfounded and groundless complaints of the defenders ?’ Undoubtedly the question is, whether he was dismissed from that office in consequence of the unfounded and groundless complaints of the defenders ? Because, if he was dismissed from that office, not in consequence of unfounded and groundless complaints, but on the ground of his having taken interest, there is no reason whatever for saying the defenders might not be liable in damages on other accounts ; but they could not be liable in damages for dismissal from office, if he was dismissed from office for a cause they justly assigned, or for a cause they did not assign at all. But this goes to a Jury. Your Lordships observe, that, according to the terms of this issue, they are to take it for granted that he was dismissed from office in consequence of the unfounded and groundless complaints of the defenders, and then they state what these complaints are, which your Lordships will see presently. Then, ‘ What damage the pursuer has sustained, independent of the loss arising from his dismissal from said office, by the calumnies contained in the first, second, and fourth articles in the summons found relevant and proven, viz. First, The said William Young and Company, or the said William Young and John Young, and the said Alexander Pitcairn, with the concurrence of certain members of the Town-council of Burntisland, over whom they had an influence, secretly transmitted to the Lords Commissioners of our Treasury in London, and to the Commissioners of Excise in Edinburgh, certain complaints against the pursuer, falsely and maliciously alleging that he had illegally interfered in politics while he held the office of Collector of Excise, and that he had used the influence derived from his office unduly to procure votes in his favour, and that he had harassed and oppressed those traders within the bounds of his collection who are said to have opposed his views.’ That he was not dismissed upon this complaint, appears to me quite clear. ‘ Secondly, The said William Young and Company, or the said William

July 8. 1822. ‘ Young and John Young, falsely and maliciously alleged to the said
 ‘ Commissioners of Excise, or to certain officers of Excise under them,
 ‘ that the pursuer had unjustly and dishonestly charged and uplifted
 ‘ from the said William Young and Company, or John Young, a larger
 ‘ sum for duties than was actually due by them to Government, or was
 ‘ carried to account by him. Fourthly, The said William Young and
 ‘ Company thereafter inserted or caused to be inserted in the Edinburgh
 ‘ Evening Courant, of date the 17th day of July 1810, a most calum-
 ‘ nious advertisement, to the manifest hurt and prejudice of the charac-
 ‘ ter and reputation of the pursuer.’

Now, my Lords, nothing is more clear than this, that if these issues had been directed by any Court of Equity in England to any Court of Common Law, that Court would have been bound to suppose that all the parties to these issues as defenders were answerable jointly and severally for those damages. The Court, therefore, which tried the issues, could do no more than say what was the amount of damages. Taking all this statement to be true, (for they must take all this statement to be fact,) they could not try the fact at all;—they could not try for what cause he was dismissed from his office;—nor could they try the question, whether Alexander Pitcairn or George Young were, by reason of any act they had done, or omitted to do, liable to any of that damage which was referred to in the fourth allegation, namely, the advertisement in the Edinburgh Evening Courant;—nor could they consider whether that was a cause of action at all.

My Lords, they try it as well as they can. The damages are supposed to be estimated in this way: ‘ The loss of office during the period be-
 ‘ tween 13th August 1807 when the pursuer was dismissed, and the 5th
 ‘ of July 1809 when a new arrangement took place, at the rate of £600
 ‘ per annum, amounting to £1025 : 8 : 2 ;’ then ‘ salary at the rate of
 ‘ £600 per annum from 5th July 1809 to 5th April 1817, seven years
 ‘ and three quarters, amounting, after deducting property-tax, to
 ‘ £4245 : 8 : 2 ; also interest on the above sums quarterly as they be-
 ‘ came due, amounting at 5th April 1817 to £1084. 2s.—£6352 : 18 : 4.’
 My Lords, I should have liked very much to have been present at this trial. I have often seen my worthy friend the First Lord Commissioner exceedingly puzzled when I had the honour of arguing questions with him at the Bar of this House. I have often puzzled him, and he has often puzzled me; but I think he must have been more puzzled when this case came before him than ever he was in his life before. How he could get on with such issues as these, I cannot conceive; it does appear to me to be one of the most distressing cases possible. My Lords, the Jury, however, found that the damages were £2000 sterling.

Then there was a motion for a new trial, and, upon this motion for a new trial, the Court of Session were pleased to be of opinion that too little damages had been given. They do not grant a new trial on grounds very common with us, namely excess of damages; but they

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do not think the damages enough, and they desire that on the new trial the Jury will distinguish between the damages they will give upon the first ground,—namely, the being dismissed from the office of Collector of Excise, in consequence of the unfounded and groundless complaints of the defenders,—and the damage he sustained, independent of the pecuniary loss arising from his dismissal from the office. Then the Jury say, that in respect of the matter of the issue proven before them, they find for the pursuer on the first issue £1800, and on the second issue £200; the two constituting together this same sum of £2000 sterling. It is taken for granted, therefore, that he was dismissed from office for the causes charged; and they say he shall have £1800 for that. But what are we to do, if we shall be of opinion that the antecedent judgment of the Court of Session, that they were all jointly and severally liable for those damages, cannot be supported? Are we to affect those parties with the £1800 who were no parties to the transaction, or, if they were parties to the transaction, stated causes that were not maliciously stated, or which appear not to be the cause for which he was dismissed? He might have grounds of complaint, as my Lord President justly puts it, not because he was dismissed upon those grounds from his office, but that those charges of misconduct were improperly repeated, or that those charges ought not to have been made, and therefore might have been the ground of an action; but the damages are given, not upon these distinct and separate grounds, but on account of his dismissal from office. Then, if he was dismissed from office for the causes which have been stated, or if he was dismissed from office for the cause which they have stated, and that cause, in the judgment of the Commissioners of the Treasury, good ground of dismissal from his office, it is hard to say, that if a person makes a complaint to the Lords of the Treasury of a circumstance in an officer's conduct, in respect of which they feel it their duty to the public to dismiss him, the persons making the representation are to be answerable for the whole consequences of his dismissal. My Lords, it is impossible to sustain that.

With respect to the division of the damages, I have seen a circumstance of this kind, where a Jury has been told, on a new trial being granted, that they must find damages upon both issues; and that is very easily arranged. They say, we gave £2000 damages—that is what we meant; and if it is necessary to divide that, we will give £1800 upon the first issue, and £200 upon the second, and that will set the matter right.

My Lords, I will not enter now upon a number of points that arise in this cause,—namely, whether the principles on which it has been found that persons making complaints in Courts of Justice, which they cannot sustain, are therefore to be held to be liable in damages, and whether those principles will apply to complaints against public officers in respect of their conduct. Without entering into that, and keeping in view, certainly, that in the trial of such an action as this, whether those principles do or do not apply, you must not only make out that the charge

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was malicious, but that you must make out that it was without probable cause; and your Lordships know that it has been decided over and over again, that if a man's malice is as foul and black as it can be represented, but yet if he has probable cause for the complaint, he cannot be liable to any action for a malicious prosecution; and on the one hand, if it has been found that he has no probable cause of complaint, but if his mind is devoid of malice, neither can an action be maintained; and therefore the question here first to be considered is, Were there both malice and want of probable cause? Why, my Lords, with respect to what has been said here as to politics, there is a distinction taken as to the motives of Mr. Leven, who appears to be (and I ought to state this, that, as far as I can judge, he appears to have been) a very respectable man. The first question here will be, whether the distinction—I mean with reference to the conduct, which, your Lordships observe, the Commissioners of Excise and the Lords of the Treasury always declared, though they did not make it the ground of dismissal from office, they highly disapproved—the distinction between intermeddling in the local and municipal politics of the burgh, and intermeddling with a view to election purposes. If I knew that the Lords Commissioners of the Treasury and the Commissioners of Excise had prohibited Excise officers from intermeddling in the local and municipal politics of a burgh, and I complain of his having done so, I think it would be very difficult to say that I made that complaint without proper cause, unless it was malicious; and certainly I am not to be affected, because such a distinction as that is afterwards taken. It is impossible for me to know his motive, otherwise than by his conduct. I can judge of the intention of the party only from that which I see him doing; and if I see him doing that which would be the very thing which he would be doing, if he intended to have an influence in the elections of the burgh, I may very well conclude that that is his object.

With respect to the charge of taking interest, that charge is made out; but it is the charge assigned as one ground for his dismissal, and as a sufficient ground for his dismissal, inserted in the letter written by Mr. Pearson. Then, if he is dismissed for that reason, how is it possible to say that there was malice in making that charge, or that there was no probable cause? To take the other charge as to the double payments:—If you are to say that William Young and John Young made that charge maliciously; or if you please to put it so, that they made it both maliciously and without probable cause; is it possible to say that Pitcairn is a party to that charge, knowing it to be both malicious and without probable cause? If, because it has been demonstrated that there was not double payment—if, because reasoning upon the proof which at length made out that fact, we are to take it for granted that William and John Young, who had to do with the account, knew from the beginning to the end that that was the fact, still how can we say that George Young and Pitcairn are liable in damages for that trans-

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action? It appeared in the result that that transaction could be cleared up as between William and John Young and Mr. Leven. Take it, if you please even so to take it, that William and John Young knew it could be so cleared up, the moment these complicated papers were looked into, and the result of them was known, still I say George Young and Pitcairn are not affected by that.

Again, my Lords, I wish to know upon what possible ground it could be stated to the Jury, that the advertisement was one cause they were to look at as a cause of damages, and to look at that advertisement as connected with his dismissal from office, which had taken place some years before. Some years had elapsed between his dismissal from office and that advertisement, without the slightest mention of any circumstance occurring in those years in which Pitcairn was a party; and yet Pitcairn is made jointly and severally liable for that transaction, as a transaction expressly stated to the Jury, as that for which he was jointly and severally liable.

Then, my Lords, according to our notions of proceedings, supposing there had been a trial in this country, and the Jury found them all jointly and severally liable, and the Court, at the trial, had been of opinion that they were jointly and severally liable, but, on a motion for a new trial, the Court had been of opinion that they were not all jointly and severally liable, though the Court might have conjectured that the Jury would have done right if it had given those damages against one or more of them, even to the amount of the very damages given, there must have been a new proceeding; because the Court never could have said that those damages were given for one of those causes, and not for all of those causes—that those damages were given, because one is answerable for them, and not because all are answerable for them; for it was for the Jury to determine which of them was liable, and when it was found out which of them was liable, to consider the damages they would give against whoever was liable, regard being had to the fact, that those individuals only were so liable. My Lords, I am not saying that Mr. Leven may not have a good cause of action; I neither affirm that he has, nor deny that he has cause of action against these individuals, or some of them. I have gone the length of saying, that he appears to me to have been a very respectable man; it is not for me to say (for the matter is not before me) whether he was or has not been ill used; but the question is, whether, for that ill usage, (if it has taken place,) this liability, joint and several, of all these persons can be sustained? My Lords, I am very clearly of opinion that it would be going too far to support that proposition—that it is impossible to determine it in the affirmative,—and therefore I feel it my duty to state, (taking a few hours to consider in what way this judgment is to be pronounced,) that it is impossible to support this proceeding of the Court of Session. If Mr. Leven has received an injury, I am sorry he should not have his remedy; but I do think that such a proceeding as this cannot receive your Lord-

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LORD CHANCELLOR.—My Lords, it will be in your Lordships' recollection, that on a former day I endeavoured to explain the grounds on which it appeared to me that the judgment in *Young v. Leven* was not to be maintained. There are a great many questions arising in that cause, which, in the view I have taken, and which I have humbly submitted to your Lordships, it appears to me not necessary to go into. One would be, whether there was proof of malice and of want of probable cause. Another would be, whether the principle which requires that there should be both malice and the want of probable cause, which is applicable in cases in Courts of Justice, should or should not be applied in such inquiries as were made by the Treasury on the complaint in that case. Another question of very great importance would be with respect to the demands that individuals may have upon public Boards to produce their papers. A fourth question might be, whether the Court of Session were right or wrong in granting the production to Mr. Leven, and upon the grounds they state in their interlocutor refusing to compel production on the part of the defenders. But the grounds upon which I apprehend it is clear that the judgment of the Court of Session cannot be supported is this, that neither of the summonses (for there are two, the original summons and the supplementary summons,) alleged sufficiently the words to be the words of all to support the judgment, nor the evidence proved the words to be the words of all, so as to support the judgment.

In the view that I take of the case, I conceive that it will be sufficient that your Lordships should find, 'that none of the acts alleged by the respondent in his first and supplementary writs of summons of damages to have been done by all, or some, or one of the appellants, the defenders in such actions, are so alleged or proven as to justify the finding that the first, second, and fourth articles of the principal and supplementary libels are relevant and proven, and that the whole defenders in both actions are conjunctly and severally liable to the pursuer in damages;' and therefore, that being a finding in the interlocutor, I think, of the month of February 1817, which must be the basis of all the subsequent proceedings, I should propose to your Lordships to find, 'that the proceedings in the said actions are founded in error, and ought to be reversed, and on this ground to order and adjudge that all the interlocutors complained of in the said appeal be reversed, and that the appellants, the defenders in such actions, be assoilzied in such actions,' and that we do not mean to decide upon the other grounds on which the appeal has been brought to the House; and, with a view of avoiding misapprehension hereafter, to add, 'their Lordships not meaning thereby to determine any question with respect to any particular ground of appeal alleged by the appellants, as applicable to any of the several interlocutors complained of,' but reversing the whole proceedings upon the ground thus stated.

Appellants' Authorities.—(1.)—4. Ersk. 4. 80; 2. Fount. 477; Warren. Nov. 19. July 8. 1822.
1771, (13933); 2. Esp. p. 10; 1. Sand. 131; 3. Esp. 33; Buller's N. P. p. 14;
1. Camp. 206.

Respondent's Authority.—(1.)—Thomson, May 16. 1810, (F. C.)

J. CAMPBELL,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 28.*)

PATRICK CRAWFORD BRUCE, Esq. Appellant.—*Moncreiff*— No. 40.
Skene.

JOHN NORMAN M'LEOD, Esq. and NORMAN M'LEOD, Respondents.—*Jeffrey*—*Fullerton*—*Mackenzie*—*Robertson.*

Landlord and Tenant—Singular Successor—Sale—Relief.—Held,—1.—(reversing the judgment of the Court of Session,)—That a singular successor or purchaser of an estate is not liable to implement in favour of a tenant an obligation for payment of meliorations granted by the former proprietor, not contained in his tack or title of possession, but that the obligation is effectual only against the former proprietor; and,—2.—(affirming the judgment,) That there existed circumstances in this case sufficient to constitute in favour of the former proprietor a right of relief against the singular successor.

THE estate of Glenelg in the county of Inverness, belonging to the respondent John Norman M'Leod, Esq. having been advertised for sale, Mr. Duncan, W. S. the agent of the appellant Mr. Bruce, addressed to Mr. M'Donald Buchanan, W. S. the agent of Mr. M'Leod, a letter, on the 22d of November 1810, stating, that 'I am now authorized by a client who is very desirous to purchase the estate of Glenelg, to offer £97,500 sterling for that property, bearing interest from Martinmas last.' Mr. Buchanan having demanded £100,000, it was agreed to split the difference, and that the offer should be increased to £98,750, subject to the approval of the parties. Accordingly, on the 3d of December, Mr. Buchanan wrote to Mr. Duncan, that 'I communicated your offer, dated the 22d ult. of £97,500 for the estate of Glenelg, to M'Leod, and I have this day received his answer, authorizing me to close with your offer, with the addition which I mentioned to you verbally, and to which you agreed, of £1250, being half the difference between your offer and the price required by M'Leod.' He also stated, that 'it is not unusual, for the encouragement of the tenants in building proper steadings and making enclosures, to allow them the value of such, as the same shall be estimated at their removal. As the benefit of any such stipulations must now be derived by the purchaser, it is understood that he is to relieve M'Leod of all

July 8. 1822.

1ST DIVISION.
Lord Pitmilley.