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We are also of opinion that the slander in this case is actionable.

No special damages have been proved, and vindictive damages ought not to be given in any case.

Verdict for the pursuer, damages L.50.

Jeffrey and *Fullarton*, for the Pursuer.
J. A. Murray and *D. Dickson*, for the Defender.
(Agents, *John Orr* and *Robert Stewart*.)

PRESENT,
LORDS CHIEF COMMISSIONER AND GILLIES.

1816. July 19.

ROSE v. GOLLAN.

L.900 assessed as damages for breach of promise of marriage.

Hogg v. Gow, 27th May 1812.

THIS was an action of damages for breach of promise of marriage.

DEFENCE.—Till lately this was not considered actionable. It is no ground of action among persons in the lower ranks. This was an attempt to inveigle the defender to marry the pursuer. She was engaged to marry another at the time of her correspondence with the defender.

Damages were found due by the Lord Ordinary, and it was sent to the Jury to ascertain the amount on the following

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ISSUE.

" Whether, in consequence of the breach of " promise of marriage made by the defender to " the pursuer, the pursuer sustained damages, " and to what sum of damages the pursuer is " entitled, on account of the defender's said " breach of promise of marriage ?"

The pursuer was daughter of the tenant of a small farm in the county of Inverness, and the defender, who was a relation, was at one time his cow-herd. Mrs Gollan, the widow of his uncle, having intimated her intention to make him her heir, put him to school, and afterwards to the academy at Inverness. She died in 1812, leaving property to the amount of about L.17,000, burdened, however, with annuities to the extent of L.250 per annum. She directed her trustees to purchase an estate, to be entailed on the defender, and a certain series of heirs, and till this was done, he was to receive L.100 per annum.

In July 1815, a correspondence commenced between the parties, in the course of which

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proposals of marriage were made and accepted. It was not denied that this engagement was afterwards broken. An offer had been made of L.300, with the view of preventing the action.

It is irregular to ask a witness the amount of legacies contained in a deed of settlement.

In the course of the examination of the pursuer's witnesses, the LORD CHIEF COMMISSIONER said, That proving the contents of a deed by parol, whether on cross-examination or in chief, was not admissible; and, therefore, to ask a witness the amount of the late Mrs Gollan's property, or the annuities affecting it, could not be allowed.

Letters, though in process, stated in the condescendence, and mentioned in narrative by the opening counsel for the pursuer, must be produced by the defender, if he means to found on them as evidence.

Grant, for the defender, insisted, Two letters from the pursuer ought to be read, as part of her evidence, and I shall in that case not lead evidence. The letters are in process; they were founded on by the opening counsel for the pursuer; they are admitted on the record of the Court of Session, in a condescendence for the pursuer, and I am entitled to have the record read before I speak.

Jeffrey, for the pursuer.—These letters were not stated as evidence to the Jury. They are in the same situation as the facts of the early history of the defender, which, though stated in narra-

tive, it was not thought necessary to prove. The letters were admitted to save the trouble of proving the hand-writing; but we do not, on that account, produce them as evidence. It is not competent to bring forward here admissions made in the Court of Session, with the view of raising an hypothetical argument. When a proof is allowed, I am entitled to withdraw any admission made; and the paper containing the alleged admission is, by an interlocutor of Lord Alloway, allowed to be withdrawn. If they insist on the record being read, this is adducing evidence, and will entitle me to reply.

LORD CHIEF COMMISSIONER.—Being in process does not render the letters evidence. The hand-writing must be admitted or proved. In a proof on commission from the Court of Session, the examination goes on from day to day, and there is an opportunity of cutting down the letter, if it be a forgery, but here the diet is peremptory. The form of proceeding is this,—the counsel for the pursuer opens his case, so as to make his evidence intelligible; if he states any fact, he may be asked if he means to prove it; and when his attention is thus called to it, he must not found on it unless he will undertake to prove it; but, if not called on in

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this manner, it would be drawing the rule too tight to say that he is bound to prove it, to the effect of depriving him of the right of reply. Had his attention been called to the necessity of proving the fact, his opening speech might have been very different.

This Court is established to try Issues in fact, and the procedure cannot be pure unless the rules of Jury trial are strictly observed. It is the fact which is here to be tried, and the record of the other Court, which is here in some respects accidentally, cannot be held as evidence till it is produced to the Jury.

We must proceed here either by proof or solemn admission of the facts. If the defender can make the record evidence, it may be read as evidence for him.

Grant requested his Lordship to take a note of this decision, and afterwards produced the letters and examined witnesses.

LORD CHIEF COMMISSIONER.—It is established law, that breach of a promise of this nature subjects a party in damages, and the only question is the amount. This is a delicate question, and the whole circumstances must be taken into view, and a sound discretion exercised. Money is the only compensation

which a Court can give in reparation of such an injury. In this case, there is some contrariety of evidence as to the station of this pursuer; but, in the lower ranks, undoubtedly, the feelings may be as grievously wounded as in the higher. It is impossible, however, to keep out of view the situation in which this lady stood at the time she commenced her correspondence with the defender. A person seeking damages ought to come into Court with clean hands; and it is clear from one of her first letters, that, at the time she wrote it, she committed the offence of which she now accuses the defender. Another circumstance, in considering the wound given to her feelings, and which ought to diminish the damages, is the short time within which she applies for legal redress. The interval between the date of the letter breaking off the match and the signature of the summons is short. The letter is certainly very coarse, unfeeling, and improper; but, if allowance is made for the preparatory inquiry necessary before bringing the action into Court, it shews how soon she had moved in this business.

It is impossible to take any one case as a rule in another, each depending on its special circumstances. The offer made for the purpose of preventing the action must be thrown

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wholly out of view, and neither that sum nor the jointure she might have had, can afford you any criterion in judging of the amount of damages. I do not think the damages should be great; at the same time, they ought not to be merely nominal.

Verdict for the pursuer, damages L. 900. *

Jeffrey and *Cockburn*, for the Pursuer.
Grant and *P. Robertson*, for the Defender.

(Agents, *Donald M'Intosh*, W. S. and *James Robertson and Son*, W. S.)

PRESENT,

THE THREE LORDS COMMISSIONERS.

1816. Oct. 29, 30, 31.

JAMES EARL of FIFE *v.* The TRUSTEES of the late JAMES EARL of FIFE and Others.

REDUCTION of a trust-deed and deed of entail subscribed by the late Earl of Fife.

29th November 1816.

* On an application in the Court of Session for expences,

Grant, for the defender.—The expences in the Jury Court necessarily follow the verdict for the party. But, if your Lordship is of opinion that sufficient compensation has been awarded, there is nothing to take away the power (formerly possessed) of regulating the question of expences in this Court.

LORD ALLOWAY.—I know no case in which damages have been awarded, where expences have not followed of course.