

ALEXANDER
v.
MACDONALD.

PRESENT,

LORDS CHIEF COMMISSIONER, PITMILLY, AND MACKENZIE.

ALEXANDER v. MACDONALD.

1826,
July 15.

Damages for a
libel.

DAMAGES by a professor in a university against the editor of a newspaper for a libel.

DEFENCE.—The words published are not calumnious or actionable. They are substantially true.

ISSUE.

The issue was, whether the words represented the pursuer as “ unfit for the discharge of, or “ as neglecting his duty as a professor? Or “ whether the class was in a state of insubordi- “ nation,” &c.

Robertson opened the case and stated the facts.

Jeffrey, for the defender said, This is an ill-advised case, but one in which I appear not only in defence of an honest tradesman, but also in defence of free discussion.

It may be a libel on the scholars, but not on the professor, to publish falsely that a class is in a state of insubordination. But you are not

to strain words to find out malice, especially in a newspaper, and when an apology was offered.

Cockburn said, That such an allegation was most injurious to a professor. If an apology equal to a retractation had been offered it would have been accepted. The name of the author was refused. No man can state too strongly the advantages of a free press, but it must keep to general discussion, and not attack private character.

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LORD CHIEF COMMISSIONER.—Much has been said of the liberty of the press to induce you to find a verdict for the defender ; but that is a subject with which here we have nothing to do, though we must feel anxious that nothing done here, or in any Court, should interfere with that great public right. By the law of the country every one is free to publish, but is liable to prosecution or action for what he so publishes ; and you must deal with the present case according to the evidence and sound sense. You are not to put any strained construction, or far-fetched meaning on the words, to draw them into a libel, but are to judge of them according to the sense of mankind.

Libel or no is a question for the Court ; and we are of opinion that the words are libellous, but the pursuer has limited himself to a parti-

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cular meaning of the words, and you are to judge whether he has put the true one, and whether they represent him as unfit for the situation of professor, or as having neglected his duty.

There are many protected cases, and in these it is necessary to state malice, which may be proved either from the false and calumnious nature of the libel, or by direct evidence ; but where there is no protection, the law infers malice from the falsehood and calumny. The present must stand as an unprotected libel, as this is a subject which a newspaper is not entitled to discuss.

On the second issue the pursuer anticipated the case of the defender, by proving the falsehood ; and though it is to be regretted that such a case was brought, yet we cannot control a party in bringing his action. It is fair to state the paragraph in a subsequent paper, though it goes only in mitigation of damages. If you find a verdict for the pursuer, you must also assess the damages, as money is the only measure which a court of common law can apply in estimating the injury.

Verdict—“ For the pursuer, damages L.50.”

Cockburn and *Robertson*, for the pursuer.

Jeffrey, for the defender.

(Agents, *Walter Cook*, w. s., and *Ramsay* and *Imrie*, w. s.)