

1796. FERGUSON, & C.
 v.
DOUGLAS,
HERON & CO. rial justice which their case will entitle them to, in a distribution of the estate and effects of the late Andrew Grant. But it will be first incumbent on them to show the connection between Baron Grant and Andrew, which is to make the estates of the latter liable to the claims of the respondents.

“ I must, therefore, move your Lordships to reverse the whole interlocutors complained of by the appellants, except so much of one of them as finds that the prescription of the bills only runs from the last day of grace.”

It was ordered and adjudged that the several interlocutors complained of in the appeal be *reversed*, except as to so much of the interlocutor of 19th November 1793, as finds that the time requisite to completing the prescription in question, only began to run from the third or last day of grace; and therefore repels the plea of prescription, without prejudice to any claim which Douglas, Heron & Co. may make for payment of the two bills, out of the estate and effects of Baron Grant, or out of such part thereof, as have come to the hands of Andrew Grant, and for which he ought to have accounted in a suit for carrying into execution the trusts of the will of the said Andrew Grant.

For Appellants, *R. Dundas, Robt. Dallas.*

For Respondents, *W. Grant, John Anstruther.*

ALEXANDER MACDONALD, W.S.,	<i>Appellant;</i>
ROBERT BURT, Apothecary, Edinburgh,	<i>Respondent.</i>

Et e contra.

House of Lords, 29th November 1796.

DAMAGES.—MASTER AND ASSISTANT.—DISMISSAL.—Circumstances in which the Court of Session awarded damages to an apothecary's assistant, for an illegal and oppressive dismissal from service, by the son of his employer, without the employer's sanction and authority. Reversed in the House of Lords.

The appellant's mother had carried on the business of an apothecary, assisted by her youngest son, James, and the respondent, who was an assistant under her son James.

The respondent, Burt's mother, was also a niece of the appellant's mother, and, upon the death of James, the son, the whole management of the apothecary business devolved upon him. In consequence, however, of Mrs. Macdonald's executing settlements disinheriting the appellant and his children, and favouring Burt and his wife, the appellant resorted to certain harsh measures, upon which was founded the present action of damages.

The summons set forth :—“ That, in the month of August
 “ 1781, the pursuer was solicited by his grand aunt to assist her
 “ son, James Macdonald, in carrying on the apothecary busi-
 “ ness, and, from the steadiness and attention he paid thereto,
 “ they found him of so great utility, that his living in the house
 “ was absolutely necessary. Accordingly, the pursuer agreed to
 “ live with them, as the infirmity and weak state of health of
 “ both Mrs. Macdonald and her son, required all the assistance
 “ in his power ; and, at length, as a mark of their favour and
 “ approbation, they entrusted him not only with the man-
 “ agement of the business, but with the management of
 “ the house affairs, in which situation he continued till the
 “ month of January 1789, when Alexander Macdonald,
 “ Writer to the Signet, eldest son of the said Mrs. Macdon-
 “ ald, and a few of his friends, of their own accord, after
 “ the death of the said James Macdonald, illegally and un-
 “ warrantably entered the house of the said Mrs. Macdon-
 “ ald, and, among other acts of violence, he, the said Alex-
 “ ander Macdonald, turned the pursuer to the door, without
 “ concurrence and authority of Mrs. Macdonald, although
 “ he well knew that both she and her son James, during
 “ his life, always treated the pursuer with the greatest marks
 “ of esteem and approbation, and considered his services so
 “ essential, that they used every means to prevail upon him
 “ to reject a very profitable appointment abroad ; and not-
 “ withstanding Mrs. Macdonald had, after the death of her
 “ son James, expressed a wish that the pursuer should
 “ continue in her house, and conduct her business as for-
 “ merly. That by this treatment of the said Alexander
 “ Macdonald, the pursuer has not only been thrown out of
 “ employment, but, from the circumstances of his former
 “ situation, has, in other respects, suffered considerable loss
 “ and damage.” He therefore concluded “ That the conduct
 “ of the said Alexander Macdonald towards him has been
 “ illegal and unwarrantable, and contrary to law and justice,
 “ and it being so found and declared, that he ought and

1796.

MACDONALD

v.

BURT.

1796. " should be decerned and ordained, by decree of our said
 Lords, to pay £500 in name of damages, and as a *solutio*
 " *tium* for the injury done to him."
- MACDONALD
 v.
 BURT.
- A process of reduction was also raised by the respondent, to reduce a settlement executed by Mrs. Macdonald, at the last moments of her life, whereby she was made to revoke a previous settlement, leaving £100 of legacy, as well as the whole drugs, medicines, and shop utensils belonging to her, &c., to the respondent. The reasons of reduction were —undue influence, force, and fear. In the latter action, the reasons of reduction were repelled, and the defender assoilzied.
- Feb. 3, 1792. But the action of damages went on; and a proof being allowed therein, the Lord Justice Clerk, before whom the case at first came as Ordinary, pronounced this interlocutor: " Having heard parties procurators fully, assoilzies the defender, and decerns in the absolvitor." His Lordship stating at same time, that, as the respondent did not so much as pretend he had entered into any contract with Mrs. Macdonald, or with the appellant, it was impossible he could be entitled to any damages, even against her representatives, for being so dismissed from the shop. On reclaiming petition, the Court remitted to Lord Dreghorn, Ordinary, *ob contingentiam* of the reduction, to hear parties, and to dispose of the cause. Lord Dreghorn reported the case to the Court, who pronounced this interlocutor:—" Find the pursuer entitled to damages, modify the same to £100, and decern for payment thereof. Find the pursuer also entitled to expenses." On petition a proof was again allowed, upon advising which, the Court adhered to the above interlocutors. On two further petitions, and answers, the Court adhered.
- Nov. 28, —
 July 16, 1789.
 July 8, 1790.
 Nov. 29, 1792.
 Jan. 25, 1794.
 Feb. 13, —
 Mar. 11, —

Against these interlocutors the present appeal was brought, and a cross appeal by the respondent, on the score of the damages awarded him being too little.

Pleaded for the Appellant.—The reduction of the settlements has been dismissed, and the latter settlement of the deceased confirmed, and consequently the idea once entertained by the Court, of giving the respondent damages equivalent to the legacy left him by the former wills, can no longer apply, and any claim of damages on account of the execution of the settlements, cannot be entertained. Even if such a claim lay on account of his services, yet that could never go further than £20 a year, for the last year he attended Mrs. Macdonald's shop,

and this claim could then only lie against Mrs. Macdonald's representatives; but the appellant does not represent her. In like manner, a claim of recompense for refusing to take the appointment at Algiers, would be ridiculous, even against Mrs. Macdonald's representatives. Besides, it is proved by the respondent's own declaration, that the impropriety of his conduct in keeping no books, and inverting securities, made his dismissal expedient and necessary. His dismissal was also justifiable from his keeping his mother locked up from her friends and relations, and debarring them access to her. On the cross appeal, the damages awarded are too much. In point of fact, no damages have been sustained, nor ought to have been awarded.

Pleaded for the Respondent.—It was a most injurious and oppressive piece of conduct in the appellant, to turn the respondent from the house and employment of Mrs. Macdonald, upon which he entirely depended for his immediate subsistence, as well as for his future prospects in life. That dismissal was aggravated by the disgraceful and violent manner in which the appellant executed his measures. It is also aggravated by his having done so without any authority from Mrs. Macdonald, from whom the whole affair was concealed, up till the day of her death. His groundless and calumnious assertions against his mother, Mrs. Burnet, also aggravate the case, and the injury he has received. He therefore, on cross appeal, maintained that recompense for a personal injury, especially where it is attended with high consequential damages, ought to be estimated as in the case of property being injured, where the actual loss can be exactly ascertained; but the estimate of that damage ought to be made upon a complex view of the person's situation who is injured, the manner in which the injury is committed, with all the consequences attending upon it, as well as the circumstances of the person who is liable to the reparation. In considering these circumstances separately, the damages awarded by the Court below, appear far from adequate, and several of the judges were of that opinion. If the Court had given £500, instead of £100, it would have only covered the direct damage and injury which the respondent has sustained by his conduct.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors complained of in the original appeal be reversed, and the appel-

1796.

 MACDONALD
 v
 BURT.

1796.

—————
 DENNY, &c.
 v.
 MARQUIS OF
 LORNE, &c.

lant assoilzied ; and it is further ordered, that the cross appeal be dismissed.

For Appellant, *Wm. Adam, Geo. Ferguson.*

For Respondent, *Thomas Erskine, John Dickson, James Montgomery.*

JOHN DENNY, Eldest Bailie of Dumbarton,
 JOHN KEAY, Dean of Guild, DAVID
 PHILIPS, JAMES ROCHHEAD, JOHN DIXON,
 WM. EWING, GEORGE, WILLIAM, and
 JOHN MACARTHUR, all Councillors of the
 Burgh of Dumbarton, - - -

} *Appellants ;*

GEORGE, MARQUIS OF LORNE, Provost of
 Dumbarton, DAVID CONNELL, Second
 Bailie, ROBERT DAVIDSON, Treasurer,
 Captain ROBERT DAVIDSON, JAMES FER-
 RIER, ROBERT COLQUHOUN, and PETER
 HUTCHISON, all Councillors, - -

} *Respondents.*

House of Lords, 6th December 1796.

BURGH ELECTION—NOTICE—CUSTOM OF BURGH.—An ordinary meeting of council of the burgh of Dumbarton, taking place the day after the death of one of their number, the majority at this meeting, without any previous notice, proceeded to elect a new councillor in the room of the one deceased, though objected to by the minority. Held that this election was void, and that fourteen days' notice must be given to every councillor previous to such election, although it appeared from the records of the burgh, that it had been the practice for nearly a century, to proceed to the election without any such previous notice.

The Michaelmas election of magistrates of Dumbarton, for the year 1795, took place on 29th September, when the magistrates and councillors chosen, were the parties in this cause, with the exception of John Dixon.

Oct. 2. 1795.

William Dixon was also one of the councillors then elected, but having died three days after the election, the present dispute regards the validity of the election of John