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[681] MICH. TERM,—1769, AND HILARY TERM, 1770.

I attended the Court of Exchequer.

HILARY TERM, 10 GEO. III.

February 9, 1770.—I kissed His Majesty's hand, on being appointed a Judge of the Court of Common Pleas, in the room of Mr. Justice Clive, who resigned upon a pension of 1200l. a year.

February 12.—I was called a Serjeant; the motto on my rings being, Secundis, dubiisque, rectus. And Mr. Justice Yates being desirous to retire into the Court of Common Pleas, I consented to exchange with him; and accordingly,

February 16.—I kissed His Majesty's hand on being appointed a Judge of the Court of King's Bench, and received the honour of knighthood. And the same night, Mr. Justice Yates resigned his office of Judge of the King's Bench, and he and myself were both sworn into our respective offices, before Lords Commissioners Smythe and Aston, at the former's house in Bloomsbury Square.

[682] EASTER TERM,—10 GEO. III. 1770.—K. B.

THE KING *v.* WILLIAM VARLEY. Forging the impression of money on an irregular piece of metal, without finishing it, so as to make it current, is an incomplete crime, and not high treason.

S. C. 1 East's P. C. 164; 1 Leach, 76.

The prisoner was found guilty at last York Assizes for forging and counterfeiting a forged and false coin, to the similitude of a half guinea. It appeared in evidence, that he had counterfeited the impression of a half guinea on a piece of gold, which was previously hammered, and was not round, nor would pass in the condition it then was. This, with many others, he delivered to one James Green, who carried them away, and what became of them afterwards could not be proved. Gould, J., who

2d, it was conclusive between the parties; and the right of the tenant ought not to be concluded by a single trial (*e*).

But the Court unanimously denied a rule to shew cause;—because, 1st, they were well satisfied with the verdict in point of evidence: 2dly, the law has purposely made this trial by the Grand Assise conclusive, ut sit finis litium; and the Court is not to be wiser than the law: 3dly, it may be doubted how far a new trial ought ever to be granted on a trial at Bar (*f*) in a writ of right, where the mise is joined upon the mere right. For it is pretty clear that no attaint lay in such a case (*g*). And the practice of granting new trials has been chiefly taken up since the disuse of attaints. But as to this, the Court gave no positive opinion; for cases of fraud, &c. may happen, wherein a new trial would perhaps be necessary, or else manifest injustice would be done.

(*d*) In general, where there is evidence on both sides, or it is only doubtful, the Court will not grant a new trial; *Smith dem. Dormer* v. *Parkhurst*, 2 Stra. 1105; *Ashley* v. *Ashley*, id. 1142; *Anon.* 1 Wils. 22; *Swain* v. *Hall*, 3 Wils. 45; *Collinson* v. *Larkins*, 3 Taunt. 1; *Wilson* v. *Stephenson*, 2 Price, 282: but see *Berks* v. *Mason*, Say. R. 264; *Norris* v. *Freeman*, 3 Wils. 38, contra; and *Marsh* v. *Bower*, ante, 851.

(*e*) *Swinnerton* v. *Marquis of Stafford*, 3 Taunt. 91.

(*f*) A new trial may be granted after a trial at Bar in personal actions; *Wood* v. *Gunston*, Sty. 462, 464; *Musgrave* v. *Nevinson*, 1 Stra. 584, 2 Lord Raym. 1358; *Bright* v. *Eynon*, 1 Burr. 395; *Reg.* v. *Bailiffs of Bewdley*, 1 P. Wms. 212.

(*g*) Roll. Abr. Attaint, (A), pl. 9; Vin. Abr. Ibid.; Bac. Abr. Juries, (M), s. 1.

SHARPE *v.* BRICE. New trials may be granted in actions for torts, in case of outrageous damages.

Trespass against a Custom-House officer for an unsuccessful search after prohibited and uncustomed goods (*h*). Verdict for the plaintiff, with 500l. damages. Perrot, B., who tried the cause, reported the damages to be very excessive, and that he advised an application for a new trial, which was accordingly moved for by Davy.

Kempe shewed for cause, that this was an action for a tort, in which there can be no given measure of damages, as in cases of contract, and cited *Redshaw and Brooke*, C. B. P. 8 Geo. 3, 2 Wils. 405, as in point.

De Grey, C.J.—It has never been laid down, that the Court will not grant a new trial for excessive damages in any cases of tort. It was held so long ago as in Comb. 357, that the jury have not a despotic power in such actions. The utmost that can be said is, and very truly, that the same rule **[943]** does not prevail upon questions of tort, as of contract. In contract the measure of damages is generally matter of account, and the damages given may be demonstrated to be right or wrong. But in torts a greater latitude is allowed to the jury: and the damages must be excessive and outrageous to require or warrant a new trial (*i*). In the present case there is great reason to suppose them so. But then the case is peculiarly circumstanced. It is admitted, that the present defendant has recovered, in a former action, a smuggling penalty of 300l. against the now plaintiff. This he offers to set off against this 500l., but the present defendant refuses it. This shows a want of candour on his side, and he is therefore entitled to no assistance.

Per tot. Cur.—

Discharge the rule.

(*h*) See *Bostock* v. *Saunders*, ante, 912.

(*i*) See *Fabrigas* v. *Mostyn*, ante, 929; *Leith* v. *Pope*, post, 1327.

HATTON *v.* YOUNG. Judgment entered up, in breach of the plaintiff's undertaking, set aside.

Debt on bond for 480l. dated the 7th of June 1773, and conditioned to pay 210l. and interest on the 7th of June, 1774, with a warrant of attorney to confess judgment. On a distinct paper, not under seal, dated the same 7th of June, 1773, the plaintiff engaged not to enter up judgment, or take out execution till the 7th of June, 1774, unless for sufficient cause. But soon after, he entered up the judgment, and took out fieri facias on the 20th of April, 1774.