

No 26.

At any rate, the defender must state the specific facts on which his bad opinion of the pursuer's character is founded, and of these only, provided they are relevant, a proof can be admitted. Were the parties to go to proof in the general terms of the interlocutor, every action of the pursuer's life might be ripped up, without his being prepared to meet any one accusation which might be brought against him.

Dr Smith, in his answers to the petition, stated certain facts as the ground of his charge, and craved a proof, not only of them, but of every circumstance tending to justify his conduct; and

Urged, imo, When the truth of a charge against character is established by sufficient evidence, there is no room for an action of damages, although, perhaps, in some cases, a prosecution *ad vindictam publicam* may still be competent, Blackstone, B. 4. C. 2. § 13. B. 3. C. 8. § 5.; Stair, B. 1. Tit. 9. § 4.

2do, It was the duty of the members of the presbytery to inquire into the pursuer's moral character; and it was necessary to mention the result of their inquiries to those immediately interested; and this was all that was done by the defender. Since, therefore, he had no *animus injuriandi*, whether the charge against the pursuer should turn out to be true or false, he cannot be subjected to punishment, Voet. ad Tit. De Injur. § 9.; Buller's Introduction to the Law relative to Trials at *nisi prius*, p. 8.

Observed on the Bench, A proof of the *veritas convicii* can, in no case, be allowed in general terms. But as specific circumstances are here stated, they may, if proved, alleviate the defence, or altogether exculpate the defender.

THE COURT allowed the pursuer a proof of his libel, in common form, but limited the defender's proof to certain specific facts stated by him as articles of charge against the pursuer.

Lord Ordinary, Justice-Clerk.

Act. Solicitor-General, Arch. Campbell, Connel, Fletcher.

Alt. Dean of Faculty and W. Robertson.

Clerk, Sir James Colquhoun.

R. D.

Fol. Dic. v. 4. p. 231. Fac. Col. No 45. p. 94.

See APPENDIX.

SECT. IV.

Inquiry by erroneous subscription of witnesses.

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A witness, who had subscribed a bond, without

1684. February 12. BLAIR and ALLAN against PEDDIE.

In a cause, Mr Hugh Blair, and Mr Thomas Allan, ministers, against Peddie, a bond having been improved, at least found null, because on of the two wit-

nesses therein subscribing, though he confessed his subscription, yet acknowledged he saw not the party subscribe the same, but that he heard the notary led his hand, he being paralytic; and an action of damage and interest being raised at the creditor's instance against this witness, because by his subscription, and not seeing the principal party subscribe, he had lost his bond, and yet confessed the subscription as witness to be his;—the LORDS found the witness liable for the sum, both principal and annualrents, though he declared that the notary, in presence of the debtor and creditor, asserted to him, that, before he came in, the debtor had signed that bond, and they were silent, which was assent and inducement enough to him to sign witness.—This was thought a new decision, to make the witnesses liable; but there were some specialties concurred here to move the Lords, which will not readily meet in other cases. The 5th act Parliament 1681, makes somewhat for this decision, for it declares witnesses accessory to forgery who see not the party subscribe. See WRIT.

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seeing the granter subscribe, by which the bond was rendered null, found liable in damages.

Fol. Dic. v. 2. p. 341. Fountainhall, v. 1. p. 269.

* * P. Falconer reports this case :

ALLAN having pursued Blair, minister at ———, as he who had subscribed witness to a bond granted by ——— to the said Allan; and there being improbation of the said bond, raised at the instance of the heir of the granter, Blair being examined, and having deponed, That albeit he was a subscribing witness in the bond, yet he did not see the granter subscribe the same; upon whose deposition, the bond being declared null, and to make no faith, the said Allan intended action against Blair, for damage and interest, as he who had subscribed himself witness to the bond, and yet depones, that he was not witness; whereas, if he had not subscribed witness, the said Allan would have caused the granter subscribe a legal bond before witnesses;—it was *alleged* for Blair the defender, That there was no law for making him liable for damage, seeing it was frequent and ordinary to subscribe witness, albeit they did not see the party subscribe: And if this action were sustained, it would preclude from all improbation, seeing the witnesses subscribing behoved either to bide by, or be liable for damage and interest. It was *replied* for the pursuer, That the subscribing witness to a deed, that he did not see signed by the party, was *species falsi*, and that such witnesses might cheat and circumvene the most provident men, who could not but rest satisfied with the legality of their writs, when they saw them signed by famous witnesses, whose hand writing they knew, and yet these witnesses might evacuate the deed, by deponing, they did not see the party subscribe. THE LORDS sustained the action of damage against Blair, the subscribing witness, by whose deposition the bond was declared to make no faith.

P. Falconer, No 79. p. 54.