

tice to alter and amend libels, et quod quisque juris in alium statuerit ut ipse eodem utatur. Bangour could not complain, whatever sentiment the English may have when they see such incorrect libels. THE LORDS, by plurality, allowed Bangour's summons to be transmitted as well as the other.

No 315.

Fountainball, v. 2. p. 717. & 726.

SECT. XVI.

Res Judicata. Reclaiming Days.

1731. *January.* BUNTEIN *against* BUCHANAN.

A CRIMINAL libel for theft having been brought before the Court of Justiciary, wherein there was also a conclusion of damages, and the Judges having found the same relevant to infer the pains of law, and after the facts were found proved by the jury, having pronounced a sentence *condemnator*, but without pronouncing any sentence upon the damages; the LORDS of Session found this not to be a *res judicata* to bar a civil action for damages upon the same fact. See APPENDIX.

No 316.

Fol. Dic. v. 2. p. 203.

1782. *November 15.*

ALEXANDER-JAMES GRANT, and his TUTOR, *against* The CREDITORS of SKELBO.

IN the ranking of the Creditors of Skelbo, Alexander-James Grant, then an infant, and his tutor, presented a claim, which was rejected by the Lord Ordinary; and, before the days appointed for representing had elapsed, the tutor died.

No 317.
The reclaiming days do not run against a pupil whose tutor is dead.

More than two years afterwards, Mr Grant and a new tutor having for the first time offered a representation, the LORD Ordinary found, "That he was barred from insisting in his present claim, by a final interlocutor."

Upon advising a reclaiming petition for Mr Grant, with answers for the Creditors,

THE LORDS found, "That there was no *res judicata*; and remitted to the Lord Ordinary to proceed accordingly."

Lord Ordinary, *Kames.* For Mr Grant, *James Grant.* For the Creditors, *Geo. Ferguson.*
Clerk, *Hume.*

C.

Fac. Col. No 65. p. 103.