

Answered for the pursuer ; It is *the crime libelled*, and not *the thing* on which the crime is committed, which, in criminal prosecutions, constitutes the *corpus delicti* ; thus, in trials of murder, the commission of the murder must be libelled, but the production of the person murdered is not required ; so also in this case, as the forgery of a certain writing is libelled, the production of the writing itself is not necessary ; indeed, were it otherwise, the law would be daily eluded ; and offenders, especially forgers, screened from punishment ; for that, according to the position laid down for the defender, a forger might, at any time, by destroying the forged writing, prevent all possibility of prosecution. There are also two precedents in point for the pursuer ; one in the case of Captain Barclay, mentioned by Mackenzie, Criminal Law, title FALSEHOOD, § 5. and more fully related by Stair, in his decisions, Barclay against Barclay, *voce* WITNESS ; and Lady Towie against Captain Barclay, *IBIDEM* ; and the other in the case of Gilchrist and Breadie, determined about thirty years ago. See IMPROBATION.

‘ THE LORDS repelled the objection.’

Act. R. Dundas, R. Craigie, Binning, & Advocatus. Alt. A. Pringle & Lockhart. Clerk, Pringle...
D. Fol. Dic. v. 3. p. 176. Fac. Col. No 60. p. 92.

SECT. VIII.

Crimen Falsi.

1747: January 20.

ANDREW LEITCH against ROBERT HALL.

THERE being a contention in the town of Rutherglen, about the election of their Magistrates at Michaelmas 1746, one of the parties obtained a sist on a bill of suspension of the rights to vote of certain coaliers, burgesses of the town, and intimated it at the time of the election ; but Robert Hall, notary-public, had added in the bill the names of three more coaliers not contained therein, when the sist was granted.

This occasioned a complaint, to which he pleaded youth, and ignorance of the offence ; and produced very ample certificates of his character from the Judges and practisers in the courts at Glasgow, where he acted as a procurator, and other persons of credit there.

No 19.

No 20.

A notary having filled up names in a past bill of suspension, which were not in it when presented, was deprived of his office.

No 20. THE LORDS, on the 15th, found the filling up the names of three persons more than were contained in the bill, to have been a practice illegal and unwarrantable, and highly dangerous to the public, and deprived him of his office of notary, and found him liable in the expenses of the complaint, and fined him in forty shillings Sterling to the use of the poor. And this day refused a petition, and adhered.

Fol. Dic. v. 3. p. 177. D. Falconer, v. 1. No 155. p. 197.

* * * Lord Kilkerran, p. 159, referring to this case, uses the following words: 'The adding the names of more suspenders to a bill of suspension, after it had passed the Ordinary's hand, found illegal, and punished.'

SECT. IX.

Theftboot.

1757. July 2.

JOHN WARRAND and JOHN M'DONALD *against* WILLIAM M'PHERSON.

No 21.
The transacting theft, but not concealing the crime, found not to be theft-boot.

JOHN M'DONALD having been robbed on the highway by Evan M'Pherson, for which Evan M'Pherson had been imprisoned, but liberated upon bail, William M'Pherson, a friend of Evan's, a few days after the bail, granted a bond for L. 26 to John M'Donald, which was the value of the goods lost, and of the expenses M'Donald had laid out in finding out the robber. In consideration of which, John M'Donald granted a disclamation of the following tenor: 'I John M'Donald, chapman in Stratherick, do hereby disclaim all action, instance, and execution that may be competent to me against Evan M'Pherson in Gargask of Badenoch, for and on whatever account, preceding this date; and particularly any criminal action that I might have against him, the said Evan, for and on account of a robbery and atrocious riot and attack committed by him upon my person, and merchant-goods, on the King's high-road, in the hill of Corrieyarrick, on the 4th June last, with all that may be competent to follow thereon, for now and ever.'

M'Donald, neither before nor after this, ever made any secret of the robbery; and Evan M'Pherson was afterwards tried, condemned, and executed for the crime, at the instance of the King's Advocate. M'Donald being cited, appeared as an evidence against him in the trial.

In an action at the instance of M'Donald, and Warrand, his assignee, against William M'Pherson, for payment of this bill of L. 26 Sterling, it was *objected* by William M'Pherson, That, in the above transaction, M'Donald had been