

1753. December 14. ELSPETH STEWART *against* AARON GRANT.

No. 3.

AARON GRANT prosecuted two Stewarts, brothers-in-law, criminally for theft before the Sheriff of Banff. One of them was convicted by the Jury of receipt of theft ; but as to the other the libel was found not proven. He thereupon pursued Grant for damages and expenses ; which action, after his death, was carried on by his wife as his executrix ; and a joint proof was granted before answer. On advising, the Court found the process not competent for expenses of the trial in the Sheriff-court, because none were asked or given there ; but found the process competent for damages for his long confinement before the trial ; and, *2dly*, Found the claim relevant, and him entitled to damages, notwithstanding his connection with the other pannel who was convicted. The defender brought a pretty convincing proof of another theft committed by him of a cow, and of his haunting with thieves, against which the pursuer brought a very strong proof of his character ; but several of us differed from the last part of the interlocutor, and the question is still *sub judice*.—The Court thereafter adhered. The case was appealed, but I am told the parties settled the matter, so the appeal was not heard.

See NOTES.