

FIFE *against* ———.

FIFE pursued one of her neighbours for damages, for saying that she kept a house of bad fame; her neighbour averred it was true. A proof was allowed, and having proved the fact accordingly, the defender was assoilyied.

In the case of

PROVOST HAMILTON *against* RUTHERFORD,

the Court, in the beginning of the cause, did refuse to allow a proof of the *veritas convicii*. But afterwards, especially when the conclusion *quoad* the public was passed from, and that the pursuer restricted his libel to damages, they seemed to wish that they had allowed it; but they could not, the interlocutor having become final.

See also *5th December 1738, Gordon*, observed by Home; and Blackstone, *B. 3, c. 8, § 5, and B. 4, c. 11, § 13.*

1776. *August 8.* SCOTLANDS *against* THOMSON.

IN an action for damages, Scotlands against Mr James Thomson, minister of Dumfermline, on account of defamation from the pulpit, accusing them of betraying their party in the burgh, receiving bribes, &c.; the Lords pronounced this interlocutor:—"20th December 1775, In respect of the improper conduct of the defender, Mr James Thomson, unsuitable to the character of a minister of the gospel, contrary to the decency, dignity, and purity of the pulpit, and highly injurious to the pursuers, Find the said Mr James Thomson liable to the pursuers in damages and expenses, of which ordain a condescendance and account to be given in; and in this case refuse to allow a proof of the alleged *veritas convicii*."

And this day, 8th August 1776, they adhered, modifying the expenses to fifty guineas; and as to damages, "in respect of the behaviour of Robert Scotland, giving him only L.5 of damages, to the other two jointly L.25.

1767. SUMMER. JOHN SINCLAIR of FRESWICK *against* The JUSTICES of CAITHNESS.

CERTAIN Justices of the Peace, in the county of Caithness, in the course of a proceeding against one M'Beath, who was servant to Mr Sinclair of Freswick, Sheriff of Caithness, and one Thomson, took an opportunity of throwing out injurious allegations against the Sheriff, who was no party to the process; and particularly, in their sentence, they went out of the cause before them, and

thought proper to introduce a history of the Sheriff's character in very severe terms, convicting him of several alleged malversations in the duty of his office *qua* Sheriff, and in the partial administration of justice; and this sentence they ordered to be placarded at the several churches throughout the county.

The Sheriff having brought an action of damages, the defence chiefly insisted on for the Justices was the *veritas convicii*, as they not only offered a special condescendence of his alleged malversations but undertook to prove them. But the Lord Alemore, Ordinary, having limited the proof concerning the conduct and behaviour of Mr Sinclair to those facts which regarded the present cause, the Lords adhered, and though the Justices appealed, yet they withdrew their appeal before hearing.

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1763. January 28. FINLAY *against* RUDDIMAN and NIELL.

RUDDIMAN, publisher of the Caledonian Mercury, and Niell, publisher of the Edinburgh Chronicle, for 17th September 1760, had published a paragraph, in which one John Finlay, a shoemaker, was said to be taken into custody for committing a rape on a servant-maid at Glasgow, which had occasioned her death. Of this, a few days after, Finlay complained to the publishers, who assured him that no such paragraph would have been published, had they suspected it to be false, as they now found it, or had they imagined that he was the person pointed at; neither was it possible for them to have had any such suspicion: in respect, that though his name was John Finlay, yet he was a merchant, and not a shoemaker; and further, they offered to publish any paragraph he pleased contradicting the former, and to join in any measure he should think proper for the vindication of his character. This Finlay rejected, and brought his action.

They published a most full and explicit recantation of the offensive article; and further, they proved that Mr Finlay was no shoemaker, nor had ever made a shoe in his life; that of late he had entered into a copartnery for exporting shoes to America, but that he never was known by the designation of a shoemaker until he added it to the title of merchant in the present libel.

“The Lords found the publishers liable in damages and expenses.”

In this case there was not only an offer of recantation, but a recantation itself,—there was no particular *animus injuriandi*,—there was unacquaintance with the person, and uncertainty of the person. Yet all did not avail. As to the particular *animus injuriandi*, it was observed that the want of it was not material. It was clear that a person of the name and designation of John Finlay, shoemaker, was intended to be published as guilty of the most infamous crimes. A man who shoots among a crowd, or with his eyes shut, if he happens to kill, is as guilty as if he had taken a steady aim at a particular person. Mr Carnegy, when he killed Lord Strathmore, intended to kill Mr Lyon of Bridgeton, but it was adjudged to be murder. In cases of an atrocious accusation, or defamation, such as here, there is no necessity to prove an *animus injuriandi*; it will be presumed.