

No 20. formation sent to the Commissioners of the Customs, of the misbehaviour of one of their servants, was no foundation for a libel of scandal.

THE LORD ORDINARY "repelled the defences pleaded for Hugh Falconer the defender; finds the action competent; and ordains the defender to say, Whether he intends to support his accusation of the pursuer in terms of said letter; and in what manner?"

Falconer gave in a petition to the Court; upon advising which, with answers, it was observed upon the Bench, That, in cases of this nature, if information had been given in a cool and decent manner, with a view to the public benefit, and to get an abuse, in a public officer, rectified, the *animus injuriandi* would not be inferred; and, though the information even had been erroneous, yet if the informer had, upon some probable ground, been misled, no action would lie. The Judges were, however, clear, That no circumstances of that nature occurred in this instance; but that the letter had been written with an injurious intention, more especially as the defender declined to make good his accusation.

THE LORDS, November 19. 1771, accordingly adhered.

Lord Ordinary, *Ellock*. For Warrand, *A. Murray*. For Falconer, *Elphinston*.
Clerk, *Pringle*.

R. H.

Fac. Col. No 107. p. 323.

No 21.

A clergyman found liable in damages for defamatory language and decently used in the pulpit.

1776. August 8.

SCOTLANDS against THOMSON.

MR JAMES THOMSON, minister of Dunfermline, in a sermon preached after the Michaelmas election 1774, after congratulating by name Colonel Campbell, whose political interest had prevailed at that election, remarked, "That he and his friends had reason to be thankful that they had escaped the snares laid for them by that person who had betrayed the trust reposed in him, and who was eating his bread and wearing his apparel, yet had lifted up his heel against him, to his own disgrace and that of his generation for ever." Robert Scotland, who had been political agent for Colonel Campbell, considering himself as the person pointed at in this censure, published a letter in the *Caledonian Mercury*, denying his ever having betrayed his trust, and adding, that "every report to the contrary, whether from the pulpit, by a blustering blunderbuss of an old military chaplain, or other such busy bodies, is false and slanderous, &c. Soon after the publication of this letter, Mr Thomson delivered a sermon on Ephes. chap. xxiv. verse 25, "Wherefore putting away lying, &c," in which, after describing the different kinds of liars, looking towards Robert Scotland, then in church, and pointing him out with his hand, "Will any man (said he) pretend to tell me, after the testimony of three incontestable witnesses, that you do not lie, when you maintain that you did not engage to support Colonel Campbell's interest?" Then looking towards David Scotland, the brother of

the former, he addressed him in a similar strain, and concluded thus: "And you, Robert Scotland, who have written a paper which appeared in the Caledonian Mercury, giving me the epithet of an old military chaplain, this is a name I glory in; but when you term me a blustering blunderbuss, I refuse it. Will any man pretend to maintain but that *you lie*, by saying you are a faithful agent for Colonel Campbell, when the contrary can be proved, &c. I therefore think it is plain that no person is safe to do any business with you or your friends; wherefore, my brethren, refrain from lying." Messrs Scotlands having brought an action for damages against Mr Thomson in the Court of Session, the defender pleaded the duty of his function to censure vice and immorality from the pulpit, the *veritas convicii*, and the provocation received by the publication of the letter in the newspaper. THE LORD ORDINARY sustained the defences; but the LORDS found the defender liable in damages and expenses, in respect of his improper conduct, 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; and, on advising a condescendence of damages and account of expenses, modified the latter to L. 52 Sterling, with the expense of extract; and in respect of the behaviour of Robert Scotland, found him entitled only to L. 5 Sterling of damages; but as to John and David Scotland, found them entitled jointly to the sum of L. 25 Sterling of damages.

See APPENDIX.

Fal. Dic. v. 4. p. 229.

1781. November 16.

THE PRESSES, and SOCIETY of SOLICITORS, before the Commissary, Sheriff, and City Courts of Edinburgh, *against* THOMAS ROBERTSON, Printer.

THE Society of Procurators, practising in the Commissary and inferior Courts at Edinburgh, obtained a charter from the Crown, erecting them into a Corporation, under the name of "The Society of Solicitors before the Commissary, Sheriff, and City Courts of Edinburgh." This grant was notified in the London Gazette; and an advertisement to the same purpose appeared likewise in the Edinburgh newspapers; in which, however, instead of the word Solicitors, as above, the appellation Solicitors at law was used; and in addition to the article contained in the Gazette, it was said, that the Society, by their charter, were invested with "the sole and exclusive right of pleading and conducting suits before those Courts, the Honourable Faculty of Advocates excepted."

Soon after, the following paragraph, apparently drawn up in allusion to these variations, was inserted in a paper called The Edinburgh Gazette, published by Thomas Robertson. "A correspondent informs us, that he hears the worshipful Society of Chaldeans, Cadies, or Running-Stationers, of this city, are re-

No 21.

No 22.

A slight verbal injury, to a body-corporate, actionable.