

important nature, contained in the condescence; limited however thus, that the evidence of each fact was to be confined to the particular year condescended on relative to it, and to a particular month in that year, with the addition of the two preceding, and the two subsequent months.

No 25.

Lord Ordinary, *Braxfield.*  
Alt. *Crosbie, et alii.*

Act. *Lord Advocate, et alii.*  
Clerk, *Home.*

S.

*Fol. Dic. v. 4. p. 231. Fac. Col. No 200. p. 313.*

1793. March 6. SAMUEL PEAT against The Reverend Dr JOHN SMITH.

No 26.

MR PEAT having obtained a presentation to the parish of Gigha, in Argyleshire, was taken upon trials by the presbytery of Kintyre. As a great majority of the inhabitants of that parish understood Gaelic only, the presbytery thought it proper to examine Mr Peat on his knowledge of that language, particularly as he was born in the low country, and had resided there for the greater part of his life. This examination having been declined by the presentee, who *alleged*, That the presbytery had no right to insist on it, he was found by them not qualified to supply the vacancy.

A proof of the *veritas convicii* limited to specific circumstances.

Mr Peat appealed against this sentence to the synod of Argyle, which meets at Inverary, where Dr Smith was appointed by the presbytery to defend their judgment.

Mr Peat *alleging* that Dr Smith had, on this occasion, out of the synod, and in presence of three gentlemen, whose good opinion was of the greatest importance to him, made use of certain expressions injurious to his moral character, brought an action of damages against him.

THE LORD ORDINARY, upon advising a condescence and answers, "allowed the pursuer a proof of the facts and circumstances contained in his condescence, and the defender a proof of the facts and circumstances contained in the answers, and of all facts and circumstances they may think material, and to each party a conjunct probation thereanent."

Mr Peat, in a petition against this interlocutor,

*Pleaded*, If the charge against the pursuer's character were well founded, the the defender ought to have made it the subject of a public inquiry before the presbytery, when the pursuer would have had an opportunity of entering into his own vindication. But there being no question with regard to it in dependence before the ecclesiastical Court, the defender, in whispering it about to individuals, could only be actuated by a desire to injure the pursuer. The *veritas convicii*, therefore, cannot exculpate the defender, Erskine, B. 4. Tit. 4. § 80.; 21st November 1783, Macqueen against Grant, No 24. p. 13939., and no proof of it should be allowed.

No 26.

At any rate, the defender must state the specific facts on which his bad opinion of the pursuer's character is founded, and of these only, provided they are relevant, a proof can be admitted. Were the parties to go to proof in the general terms of the interlocutor, every action of the pursuer's life might be ripped up, without his being prepared to meet any one accusation which might be brought against him.

Dr Smith, in his answers to the petition, stated certain facts as the ground of his charge, and craved a proof, not only of them, but of every circumstance tending to justify his conduct; and

*Urged, imo*, When the truth of a charge against character is established by sufficient evidence, there is no room for an action of damages, although, perhaps, in some cases, a prosecution *ad vindictam publicam* may still be competent, Blackstone, B. 4. C. 2. § 13. B. 3. C. 8. § 5.; Stair, B. 1. Tit. 9. § 4.

*2do*, It was the duty of the members of the presbytery to inquire into the pursuer's moral character; and it was necessary to mention the result of their inquiries to those immediately interested; and this was all that was done by the defender. Since, therefore, he had no *animus injuriandi*, whether the charge against the pursuer should turn out to be true or false, he cannot be subjected to punishment, Voet. ad Tit. De Injur. § 9.; Buller's Introduction to the Law relative to Trials at *nisi prius*, p. 8.

*Observed* on the Bench, A proof of the *veritas convicii* can, in no case, be allowed in general terms. But as specific circumstances are here stated, they may, if proved, alleviate the defence, or altogether exculpate the defender.

THE COURT allowed the pursuer a proof of his libel, in common form, but limited the defender's proof to certain specific facts stated by him as articles of charge against the pursuer.

Lord Ordinary, Justice-Clerk.

Act. Solicitor-General, Arch. Campbell, Connel, Fletcher.

Alt. Dean of Faculty and W. Robertson.

Clerk, Sir James Colquhoun.

R. D.

Fol. Dic. v. 4. p. 231. Fac. Col. No 45. p. 94.

See APPENDIX.

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#### SECT. IV.

#### Inquiry by erroneous subscription of witnesses.

No 27.

A witness,  
who had sub-  
scribed a  
bond, without

1684. February 12. BLAIR and ALLAN against PEDDIE.

In a cause, Mr Hugh Blair, and Mr Thomas Allan, ministers, against Peddie, a bond having been improved, at least found null, because on of the two wit-