

this case, considering the pursuer was situate so as to be exposed to the defender, who ought to have been her protector.

No 9.

THE LORD ORDINARY upon advice, 1st December, " remitted the cause to the Commissaries, with this instruction, that they should restrict the damages to L. 200 Sterling, beside the full expenses of process."

On a reclaiming bill, wherein it was *pleaded*, The defender had suffered by his oath not being fully taken down as emitted; which was not thought of consequence by his lawyers, as the action wherein it was taken, was a declarator of marriage, which it denied;—that if it had been justly marked, or if he were now re-examined, it would appear he was not so much in fault; as she voluntarily exposed herself to his company, even after she might have been put on her guard; and, by her whole behaviour, shewed a purpose of inflaming him with a passion strong enough to induce him to marry her, which he always denied on its being proposed by her, and thereon gave over his solicitations, till she threw in his way another opportunity, and at last yielded to his courtship;—and on a bill for her, reclaiming against the restriction of the damages;

" THE LORDS adhered."

Reporter, *Kilkerran.* Act. *Ferguson & Graham.* Alt. *Lockhart & Dundar.*

*N. B.* A bill of advocacy was offered for her, insisting that there appeared sufficient matter from his oath, notwithstanding his general denial, to infer a marriage, which therefore ought to be declared; or if any dubiety remained insisting for a re-examination; whereon it was observed, it was inconsistent in the same action to insist for damages on account of a seduction, and for marriage; and that the Commissaries had done preposterously in conjoining the processes;—that the pursuer could not insist in her declarator of marriage, while the judgment stood giving her damages; and if that were taken away, the defender could not be re-examined, as he had denied upon oath any marriage, or promise of marriage.

*D. Falconer, vol. 2. No 22. p. 27.*

1767. June 27. JAMES THOMSON against ELIZABETH WRIGHT.

IN a process brought at the instance of James Thomson against Elizabeth Wright, for breach of promise of marriage, and for damages thence arising; the defences pleaded for her, and offered to be proved, were three; *1mo*, The pursuer had passed for a man of substance, whereas he was bankrupt; *2do*, He was a spendthrift, a drunkard, debauched, and excommunicated; *3tio*, He was impotent from being castrated.

No 10.

No 10. The Sheriff repelled the defence founded on Thomson's irregularity, but allowed a proof of the bankruptcy and castration.

Wright having applied by bill of advocacy against the Sheriff's interlocutor, the Lord Ordinary refused the bill, but remitted to the Sheriff, with instruction to allow her a proof of all the facts set forth in her defences; to which interlocutor, on a reclaiming bill and answers, the Lords adhered, limiting the proof of character to three years.

Act. Charles Brown.

Alt. M<sup>c</sup>Laurin.

J. S. Tertius.

Fac. Col. No 64. p. 110.

1770. December 21.

MARY JOHNSTON, Daughter of the deceased Mr Johnston of Selkoth, *against*  
JAMES PASLEY of Craig.

No 11.

Breach of a promise of marriage, and in justification thereof writing an injurious letter, if relevant to infer damages?

MR PASLEY, when 75 years of age, made proposals of marriage to the pursuer, a young woman of 25, of a good family. His offer was accepted of; and the pursuer, with his approbation, went to visit her friends, in order to inform them of her marriage. In her absence, Mr Pasley changed his mind, and wrote to a friend and companion of the pursuer the following letter:—

‘MISS GRAHAME,

‘I cannot go out but I am dunned with poor Mally's light carriage with the tenants and others in the neighbourhood, which you cannot but know. If she behave so now, what will she do afterwards; which has given me more uneasiness than all I heard from Moffat. It is not my children, but every body will talk: I wish I may be preserved at this time of life, and not be made a speech to the whole country. I hope there is no harm done. Is all from, Madam, your most humble servant. (Signed) JAMES PASLEY.’ Dated at Barr, 4th April 1769.

The match being thus broken off, the pursuer brought an action before the Commissaries, concluding, that the defender should either celebrate the marriage, or make payment to her of L. 500 Sterling in name of damages; and, in vindication of her character, should write and deliver a palinode or recantation. The defender objected to the relevancy of these conclusions; but the Commissaries pronounced an interlocutor, assoilzieing from the marriage; and as to the damages, allowed a proof—They pronounced this judgment. “Having again considered the libel at the pursuer's instance, find the defender's having made his addresses to the pursuer for marriage, and his having thereafter resolved to break off the engagement settled betwixt them in manner libelled, and said pursuer being wronged and injured thereby, relevant to infer damages; and, *separatim*, find said defender's writing the letter libelled, and said pursuer having been wronged, injured, and affronted thereby, also relevant to infer dam-