

But, on a second bill, and answers, and it appearing that, of the above £18:15:6d., twelve guineas had been stated for the arbiters,—though not paid them,—at least they so averred; the Lords found it a practice illegal and corrupt, and therefore they reduced the decret-arbitral, and found expenses due by the party. They would have found them due by the arbiters,—but they were not parties to the process. (18th December 1776,) “Found that the arbiters decerning twelve guineas for their own trouble was illegal, and corrupt; and therefore sustains the reasons of reduction of the decret-arbitral, and reduce, decern, and declare accordingly. Found expenses due, and ordain the pursuer to give in an account thereof.”

On advising another reclaiming petition and answers; the Lords continued to be of opinion, That, although it was usual, and not unlawful for parties to give, and for arbiters to accept of a gratification for their trouble,—yet that, *de jure*, they were not entitled to any; much less could they award such in their own favours. But, as in this case, it appeared to have been done from ignorance of the law, and from *no bad* intention; it did not merit the epithet of corrupt: they therefore returned in effect to the Ordinary’s interlocutor, annulling the decret-arbitral, so far as it related to the decerniture of twelve guineas to the arbiters; but supporting it *quoad ultra*. (4th March 1777.)

1773. February . . . EWING against GARDNER.

AN oversman, in a submission, cannot intermeddle,—unless the arbiters differ in opinion, and choose him to be oversman on that account. See *Gordon* against *Abernethy*, 30th November 1716, observed by Dalrymple. June 1724, *Rigg*, observed by Lord Bankton, *B. I. tit. 23, § 9*. The point again occurred, *Ewing* and *Gardner*, February 1773. In this last case, the oversman was appointed by an inaccurate minute signed by the arbiters, but not formally tested,—and which did not bear that the arbiters had differed. But the decret-arbitral pronounced by the oversman bore it, and was signed by him with concurrence of one of the arbiters.

DELINQUENCY.

1774. July 6. . . . WARRAND against FALCONER.

FALCONER, merchant at Inverness, wrote a letter to Mr Oliphant, Postmaster-General of Scotland, accusing Mr Warrand of malversation in office. Mr Oliphant, considering the charge against Warrand to merit cognition, transmitted the letter to him, in order to give him opportunity to vindicate himself. Upon this, Warrand brought an action of damages against Falconer, who

pleaded in defence, That it was the privilege of every subject to give information against public officers. That he, as a merchant, interested in the good order of the Post-Office, had written the letter complained of, to Mr Warrant's superior, not to defame him, but that an inquiry might be made into his conduct. It was merely by way of information to the Postmaster-General, the truth of which was to be investigated by him. That letters of this kind were every day written to the Boards of Custom and Excise; and that it would be hard if a complaint could not be made to the Postmaster-General against a private postmaster without forcing the complainer to bring a proof of it in a court of law. Mr Warrant ANSWERED,—That no doubt it was the privilege of the subject to complain against public officers; but then, their complaints behoved to be founded in truth; and if heavy charges were made without foundation, the person who made them would be liable in damages.

The Lord Elliock, Ordinary, (1st March 1771,) found the action competent, and ordained the defender to say, whether he intended to support the charge in the letter, and how. And, on advising bill and answers, the Lords adhered. And a proof, *hinc inde*, being allowed, the Lords, finally, found the accusations against Mr Warrant to be groundless, and found him entitled to damages and expenses, (18th February 1774.) But afterwards they altered and assailed, (6th July 1774.)

In this case, the decision in Dictionary, *voce Delinquency*, James against *Watkines*, was much founded on by Mr Falconer. And a late one, *The Rev. Mr David Turner at Greenock* against *James Watson*, was founded on by Warrant. In this case, *Turner* brought an action against *Watson*, libelling upon a variety of letters wrote by *Watson* to different people, accusing *Turner* of perjury. One of these was wrote to the Moderator of the Presbytery, to be communicated to the Presbytery, in order that *Turner* might be rebuked. A number of circumstances were pointed out showing that there was an intention to defame. The Lords therefore gave decret against *Watson*.

DELIVERY OF A DEED.

1767. December 1. MISS MAITLAND of PITRICHIE *against* FORBES.

THE Lords found, That a bond of provision, by a brother to his sisters, was presumed to be delivered of its date.

AGNEWS *against* AGNEWS.

IN the case of Major Agnew's succession, a deed by a father, preferring one