

The judgment of the Lord Ordinary was as follows: "Having considered the libel, and having heard the cause argued at very great length, sustains action: Finds, That the paragraphs in the newspaper entitled the Edinburgh Gazette, on which the present action is founded, are not capable of an inoffensive sense, but, however dull and ill expressed, are malicious; that they tend to expose to ridicule and contempt, and to vilify, a Society established by grant from the Sovereign, and of which the pursuers are either representatives, or constituent members; and that the said paragraphs are calculated, by lessening their estimation, to injure the pursuers; and, therefore, that the publisher, or publishers, of the said paragraphs, are liable in damages and expenses to the pursuers: And, in respect that the defender, Thomas Robertson, acknowledges that he is in possession of that manuscript from which the said paragraphs were printed and published, and while he avers, that he is ignorant of the author of the paragraphs, declines to produce in process the manuscript itself for inspection of the pursuers, and thus precludes them from the means of investigating their real author; finds, that, in law, the said Thomas Robertson, the publisher, must be held as the author of the said paragraphs, and answerable accordingly; and therefore finds the said Thomas Robertson liable in damages to the pursuers; but, in regard that no special damages are proved, and that no great damages could have ensued from a publication meriting rather scorn than complaint, modifies the damages to L. 5 Sterling; and finds the defender, Thomas Robertson, liable in that sum, to be paid to Mr John Watson, Treasurer of the Society of Solicitors, before the Commisary, Sheriff-court, and city Courts of Edinburgh, in order that it may be divided by the said Society amongst its members, according to their respective claims and interests therein; also finds the said Thomas Robertson liable in expense of process; and modifies the same to L. 15 Sterling, together with the expense of the extract of this decret, as the same shall be certified by the collector of the clerk's dues; and decerns."

Upon advising a reclaiming petition for Robertson, with answers, the LORDS altered that interlocutor, by "finding no sufficient *animus injuriandi* proved; and therefore dismissing the action."

The Solicitors, however, in their turn, having reclaimed, the Court altered the preceding judgment, and "adhered to the interlocutor of the Lord Ordinary."

Lord Ordinary, *Hailes.* Act. *Crosbie, Hen. Erskine, Hume.*

Alt. *Ilay Campbell, J. Boswell, Arnot.* Clerk, *Menzies.*

S. *Fol. Dic. v. 4. p. 230. Fac. Col. No. 3. p. 4.*

1781. December 12. PORTEOUS against ISAT and Others.

ISAT and Others, residing in the parish of Gorbals, presented to the Presbytery of Glasgow a libel against Mr Anderson, their minister, charging him with

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No 23.

Verbal injury; how committed; how alleviated.

No 23. adultery, and other crimes. The Presbytery having allowed a proof, the Synod affirmed their judgment; and Mr Anderson appealed to the General Assembly.

Mr Porteous, one of the ministers of Glasgow, concurred with Mr Anderson in this appeal, and supported it at the bar of the General Assembly. He there described Mr Isat as a man of mean origin, and of a violent and factious spirit; attributed his prosecution of Mr Anderson to the most unworthy motives; and accused him, and his adherents, of having, in the course of the dispute, endeavoured, by suborning witnesses, and other unlawful means, to bring Mr Anderson to infamy and ruin.

The speech pronounced by Mr Porteous, on this occasion, was inserted, with his approbation and assistance, in one of the newspapers at Edinburgh, and in another at Glasgow. Mr Isat, and his associates, retorted in another Glasgow newspaper, accusing Mr Porteous, in very gross terms, of many falsehoods and calumnies in his management of the appeal; and threatening, "that he might soon expect a publication, in which his own *tete-a-tetes* would be introduced."

This performance Mr Porteous made the foundation of a process of damages in the Court of Session, concluding for L. 1000 Sterling.

Observed on the Bench, Mr Porteous is not answerable for any expressions used by him in his character of appellant, relative to the question before the Assembly, and suggested by the evidence under their consideration. But the encouragement and assistance given to the repetition of the same expressions in the newspapers, or other similar publications, being nowise connected with that character, and having an obvious tendency to vilify and injure his opponents, was undoubtedly actionable. Had the other party, therefore, confined themselves within the limits of a moderate retaliation, the mutual injuries would have compensated each other. But an insinuation of a charge of incontinency against Mr Porteous, a clergyman, and married person, cannot be justified on this principle.

The interlocutor was in these words: "Find, that the pursuer, Mr Porteous, acted improperly in giving his notes, or otherwise assisting the editors of the Edinburgh Caledonian Mercury, in publishing his speech before the General Assembly, in the cause of Mr Anderson, in said newspapers, and also afterwards in the Glasgow Mercury: Find, That Mr Isat, and the other defenders, acted more improperly, by their virulent and acrimonious paper, published in the Glasgow Journal, highly injurious to the character of the pursuer; and therefore find the defenders, conjunctly and severally, liable in damages; but as the conduct of the pursuer, above mentioned, was such as to exculpate and alleviate the conduct of the defenders in part, they modify the said damage to L. 5 Sterling; and find them, conjunctly and severally, liable in expense of process," &c.

A reclaiming petition was offered for the defenders; in which they *argued*, That the question before the Assembly, regarding merely the relevancy of the

libel, Mr Porteous acted injuriously, by introducing the character and conduct of the libellers, which could have no influence in the decision. But it appeared to be the practice of the ecclesiastical judicatories, in accusations against members of the Church, to inquire into "the origin and movers thereof;" and that Mr Porteous was therefore justified in insisting on these topics, so far as they had any foundation in evidence before the Assembly.

No 23.

"THE LORDS therefore adhered."

Lord Reporter, Gardenston. Act. Grosbie, Craig, Morihland, and Arch. Campbell.
Alt. Ilay Campbell, Cullen. Clerk, Campbell.

C. Fol. Dic. v. 2. p. 230. Fac. Col No. 13. p. 25.

1783. November 21. MACQUEEN against GRANT.

MACQUEEN and his wife pursued Grant, their minister, for having said in public companies that they had perjured themselves at a Circuit-court, and for having, on that account, refused them admittance to the sacrament. The Court allowed a proof, and, on advising the same, found the minister liable to the pursuers in damages and expenses.

No 24.

Fol. Dic. v. 4. p. 230. Fac. Col.

* * This case is No 186. p. 7468. voce JURISDICTION.

1785. February 22. ELIZABETH CHALMERS against HELEN DOUGLAS.

THIS being an action of damages, raised on the ground of the defender's having defamed the pursuer, the *veritas convicii* was urged in defence; and the Commissaries having found that plea to be irrelevant, their sentence was brought under review of the Court by bill of advocacy.

Pleaded for the defender, The maxim, that *veritas convicii non excusat a calumnia*, may indeed be received in public or penal prosecutions, but to civil actions for damages it is not applicable. In regard to the former, that breach of public peace which is the subject of judicial cognisance, may be equally committed by reproach, whether true or false, though still being a crime, the *animus injuriandi* is essential to it, L. 18. D. De Injur. Voet. ad eund tit. § 9.; Mackenzie, Tit. Of Injuries; Bankton, B. 1. Tit. 10. § 31. 34.; Erskine, B. 4. Tit. 4. § 42. But, surely, that damage to an individual character, which civil actions are intended to repair or compensate, cannot be produced by a faithful description of the character itself, which, however, is implied in the *veritas convicii*. In such a case, how absurd would it be to require a palinode? Berlich. Conclus. 62. § 23. This distinction is established in the practice of the Com-

No 25.

How far, in a civil action of damages, the maxim, *quod veritas convicii non excusat*, is to be received?