

* * * Lord Kames reports the same case :

No 3.

IN a suspension of a decret, obtained at the instance of a Procurator-fiscal, for a riot, notwithstanding of a disclamation made by a private party, the LORDS made no doubt but that a Procurator-fiscal may pursue *ad vindictam publicam*, and were clear, there is no parallel betwixt the case of a Procurator-fiscal of a Commissary-court, in the case of scandal, and of a Procurator-fiscal suing for a breach of the peace; that *dissimulatio*, abstractedly considered, is not a good answer to a Procurator-fiscal pursuing *ob vindictam publicam*, seeing he may pursue both parties; but then, upon perusing the proof, they found, that this was but a drunken squabble, in which the public is very little concerned, and that it was officious in the Procurator-fiscal to intent a process in such a case, and therefore suspended the letters *simpliciter*.

Fol. Dic. v. 1. p. 232.

No 4.

1738. November 8. FERGUSSON *against* The PROCURATOR-FISCAL of Carric.

ALTHOUGH a libel, at a Fiscal's instance, upon a crime of a public nature, was only for his interest, without bearing for himself and his interest, he was allowed to carry on the process, notwithstanding the disclamation of the private party.

Kilkerran, (DELINQUENCY) No 3. p. 156.

SECT. IV.

Scandal.

1708. December 31.

MR CHARLES JAMES, late register of the North British ships, *against* RICHARD WATKINS, Stationer in Edinburgh.

No 5.

A libel of scandal should be special as to persons, time, and place. The giving

MR CHARLES JAMES being turned out of his employment by the Commissioners of the Customs, upon information given to them, that he had drunk heartily to the Pretender's health, under the name of K. James 8. about the time of the late designed invasion, he raised a process of scandal before the Commissaries

of Edinburgh, against Richard Watkins, as having been the informer against him, and cited the Commissioners of the Customs as witnesses. Which action was advocated by Watkins from the Commissaries, upon this ground of iniquity, that they admitted the libel to probation, reserving the consideration of the import till advising; albeit the libel was altogether general, without condescending upon persons, time, or place; and the delating a person for a crime to his master, or such as had power over him, could never be the ground of a process of scandal, especially if it was a crime against the commonwealth, where there is no *animus injuriandi*.

Answered for James; *1st*, The libel is not altogether general, the injury being specially and circumstantially libelled; and as to persons and place, it bears, that the defender had defamed the pursuer to several persons of quality, whose names and characters should, if required, be condescended on, and the suppressing thereof was not to take advantage of the defender, but to shun offence to the Commissioners. *2dly*, The Commissioners are no ways challenged for their management in the disposal of their servants, but are only required to bear testimony of the false aspersion cast upon James by Watkins, who is not their servant, and ought to be punished as a false informer.

Replied for Watkins; *1st*, By the libel's being general, and not circumstantiate as to persons, time, or place, the defender is excluded from the mean of exculpation, by alleging *alibi*, &c. *2dly*, If the Commissioners of the Customs cannot receive private complaints of their own officers, without subjecting the informer to a process of scandal, wherein they must be cited as witnesses, as the pursuer has done, their servants may safely malverse; seeing no man will dare to table an accusation from the fears of a process of scandal.

THE LORDS found the libel of scandal ought to be special with respect to persons, time, place; and found, that giving the Commissioners of the Customs private information against any person employed under them, is no relevant ground of a process of scandal; and that these Commissioners cannot be convened as witnesses to depone upon such private information, and remitted to the Commissaries to proceed accordingly.

Fol. Dic. v. 1. p. 232. Forbes, p. 293.

* * * Fountainhall reports the same case:

CHARLES JAMES being register to the North British ships, put in by the Commissioners of the Customs, there is an information given in against him to them, bearing, that he, in company with sundry other Jacobites, had drank King James the VIII's health, whereupon he is turned out of his office, as disaffected to the government. He suspecting that Richard Watkins, the Barons of Exchequer's stationer, had given in this delation against him, raises an action of scandal and defamation before the Commissaries of Edinburgh against Wat-

No 5.
private information to the Commissioners of the Customs against any person employed under them, is not relevant to found a process of scandal; nor can these Commissioners be convened as witnesses to depone on such information.

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kins, as having wronged him in his good name, means and estate, and therefore craving reparation and punishment; and sought a diligence against the Commissioners of the Customs, as witnesses, to depone that Watkins brought them that false accusation against him: which being granted, Watkins presented a bill of advocation to the Lords, upon these reasons, that the Commissaries had committed iniquity in sustaining a scandal, where there was none; for the private delating of a person for a crime to his master, who had power to remove him from his service at his pleasure, can never be the ground of a process of slander, especially not being published nor spread abroad, but only told to the parties concerned in private; for what hinders a friend to acquaint me to be on my guard against such a servant, as dangerous and unfaithful. Shall this lay a foundation for the servant to pursue the informer for scandal, and lead the master as a witness to prove it? This would discourage all discoveries of malversation, and embolden either the public or private servants to be guilty of the highest misdemeanours; for, if any dare table an accusation against me, I shall immediately arraign them for defamation and scandal, and lead the masters as witnesses to get them punished, which is of the highest consequence to invite and embolden servants to malverse *impune*. *Answered*, The Lords are not judges to scandal and actions of injury *in prima instantia*; but only the Commissaries, who if they do wrong, the Lords can only rectify in a reduction and suspension; and Mr James the pursuer has no other design than to vindicate his honour against that malicious aspersion; neither doth he grudge his losing that lucrative post, as that he is refused to be employed in any other station so long as he lies under character of a disaffected person; and whatever inconveniency may be urged of emboldening bad servants, the danger lies greater on the other side, to discourage private and clandestine defamations, wherein a man's reputation is murdered under trust, and he knows not whence it comes. Such informers, sculking under the covert of secrecy, are the very firebrands and incendiaries of human society, and called by Tacitus, *delatores pessimum hominum genus*; and, by such hidden practices, the most innocent person may suffer.—THE LORDS considered that a scandal implied a public venting and spreading of the same, and that the informing the Commissioners of the Customs of one of their servants' misbehaviour could not make up a libel for scandal, and therefore remitted the cause back to the Commissaries as the most proper competent judges to such actions; but with this express direction and instruction, that such private information given was not relevant to found a process of scandal.

Fountainball, v. 2. p. 477.

No 6.

The editor of
a news-paper
fined for ex-

1733. July 3. M'EWAN *against* MAGISTRATES OF EDINBURGH.

THE author of the Edinburgh Evening Courant, in publishing the news of a mob that happened at the West Kirk, about settling a minister in that parish,