

running his letters, no day being fixed for his trial within 60 days, insisting against the informer for damages and reparation; the informer *answered*, That he acted *bona fide*, and had good reason to believe the pursuer guilty. *Replied*, It is more equitable that the damage, which must be borne by one of them, should lie upon the rash accuser, than upon the person wrongfully accused; the one was in an error at least, the other in none. THE LORDS found the informer not liable in damages. See APPENDIX.

No 16.

Fel. Dic. v. 2. p. 341.

1750. June 19.

HAMILTON against ARBUTHNOT.

No 17.

A PERSON, having spread a calumnious report against a merchant advertising a sale, that the goods were an imposition, and rotten and mill-dewed trash, the LORDS condemned him in L. 40 Sterling of damages to the party injured.

Fel. Dic. v. 4. p. 228. Kilkerran.

* * This case is No 384, p. 7682, *voce* JURISDICTION.

1765. March 8. GRÆME and SKENE against CUNNINGHAM.

No 18.

ALEXANDER CUNNINGHAM Clerk to the Signet, having brought a process of divorce against his wife upon the head of adultery; and having described certain men, without naming them, as the persons guilty with his wife, he, by order of the COURT, specified Colonel Skene of Hallyards, and William Græme younger of Gartmore, as the persons described by him. And afterwards, having referred the facts libelled to their oaths, they deponed negative; upon which he deserted his process, and appeared to be convinced that his wife was innocent.

An *actio injuriarum* must have *dolus malus* for its foundation.

In a process of scandal, at the instance of these gentlemen against Mr Cunningham, his defence was, That in the process of divorce against his wife, he was appointed by the COURT to name those whom he suspected to have a criminal correspondence with her; that he named the pursuers, having been informed that they were the guilty persons, though he now was satisfied of their innocence, from their own depositions; that he never had any intention to injure them, but only to carry on his process against his wife, whom he thought guilty; and therefore that they can have no claim of damages against him.

“ Found, That Alexander Cunningham, the defendant, has grievously injured the pursuers, and defamed them in their characters and good name; and therefore that he is liable to them in damages and expenses.”

An *actio injuriarum*, where there is no patrimonial loss, and where the damages awarded are only *in solatium*, must be founded upon *dolus malus*, accord-