

act of bankruptcy cannot compete with the commissioners. This would be setting himself against his own trustee.

KENNET. I had some difficulty formerly, but am now satisfied of the justice of the interlocutor. In the case of *Tabor*, it was thought that the subject did not vest in the assignees, but that they had an assignation to a right of action. The creditors here had no reason to imagine that the persons who had concurred in the trust, would have used separate diligence.

ALVA. Greater effects have been given to *comitas* in some cases than we are called to give *here*. The question here is upon strict law, founded on a *personalis exceptio*.

On the 7th August 1776, "the Lords preferred the trustees;" adhering to their own interlocutor, and to that of Lord Monboddo.

Act. W. S. Cathcart, H. Dundas. *Alt.* H. Erskine, R. M'Queen.
Hearing in presence.

1776. August 8. ROBERT, JOHN, and DAVID SCOTLANDS *against* MR JAMES THOMSON.

DELINQUENCY.

Limits of liberty of the pulpit with regard to censure.

[*Faculty Collection, VII. 277; Dict., App. 1, Delinquency, No. 3.*]

[Little was said in this case which had not been already said.]

JUSTICE-CLERK. We live in an age which knows *nec finem nec modum injuriarum*; but the pulpit has in general remained chaste. If, on any account, a minister of the gospel should think himself entitled to follow out his private resentments in the pulpit, the consequences would be dreadful.

PRESIDENT. I was not present when the former decision was pronounced. I do not choose to inquire whether the church judicatories have acted right or not in taking no notice of Mr Thomson's conduct: *that* is no concern of mine. I think that Mr Thomson was very much to blame, and I would not have the audience imagine, though I seldom address myself to the audience, that I do in any particular justify his conduct; but there is much here to alleviate. If the pulpit is to be kept chaste, so also ought the press. Both were in the wrong. I would send both out of Court without expenses.

MONBODDO. The tendency of the conduct of this minister is to make a bear-garden of the house of God.

KAIMES. No provocation can justify the minister for railing in the pulpit; but the damages ought to be restricted as to Robert Scotland, or rather he should have none at all.

On the 8th August 1776, "The Lords adhered to their former interlocutor, modified the damages to Robert Scotland to L.5, with L.25 jointly to the other two; decerned for fifty guineas of expenses."

Act. H. Dundas, &c. *Alt.* Ilay Campbell.

Diss. Gardenston, Alva, Stonefield, Hailes, President.

1776. November 13. JOHN DORWARD *against* JANET DORWARD.

BATTERY.

What to be understood to be battery *pendente lite*? and whether the statute applies to women?

[*Faculty Collection*, VII. 308; *Dict.*, *App.* 1, *Battery*, No. 2.]

HAILES. I am not much moved by the objections to the witnesses; because, in criminal matters, especially when transacted *intra privatos parietes*, the best evidence must be received that the nature of the thing admits; and, in the circumstances of this case, it behoved the witnesses to the intimation of the suspension naturally to be persons connected with the suspender; besides, what they say is corroborated by the other witnesses, so far as they heard or saw.

[This seems to be better ground than *that* taken up by the pursuer,—That in this age of knowledge there can be no fear of perjury. If the knowledge of the age is to be judged by the candour and impartiality of witnesses, *this* is not an age of knowledge. The nature of the thing must always give place to the matter of fact.]

I do not think that any stress can be laid on the omission of *she* in the statute. Our statutes are not like the English, which abound in *he*, *she*, or *they*. It would be dangerous to suppose that *he* in the statute did not comprehend *she*, for the instigator and outhounder is as much within the statute as the actual invader.

But I have two doubts,—*1st*, Whether this case comes within the statute? Here is a stroke by a woman with her hand: the blood shed seems to have been in consequence of a push which she gave. The man did not expect it, and was off his guard, and lost his balance: Is this such an *invasion* or *assault* as the statute meant?

It was about the period of this statute that one Lord of Session was excused from his attendance in Court, because his road lay through the country of people with whom his chief was at variance. And that another Lord of Session was assaulted and slain, in broad day-light, between Edinburgh and Leith, on account of a quarrel about the management of a tutory? These were fierce times, and in them the violent remedies of the statute were held necessary.

2dly, How can Dorward, the pursuer, be allowed, in consequence of the bat-