

the former, he addressed him in a similar strain, and concluded thus: "And you, Robert Scotland, who have written a paper which appeared in the Caledonian Mercury, giving me the epithet of an old military chaplain, this is a name I glory in; but when you term me a blustering blunderbuss, I refuse it. Will any man pretend to maintain but that *you lie*, by saying you are a faithful agent for Colonel Campbell, when the contrary can be proved, &c. I therefore think it is plain that no person is safe to do any business with you or your friends; wherefore, my brethren, refrain from lying." Messrs Scotlands having brought an action for damages against Mr Thomson in the Court of Session, the defender pleaded the duty of his function to censure vice and immorality from the pulpit, the *veritas convicii*, and the provocation received by the publication of the letter in the newspaper. THE LORD ORDINARY sustained the defences; but the LORDS found the defender liable in damages and expenses, in respect of his improper conduct, unsuitable to the character of a minister of the gospel, contrary to the decency, dignity, and purity of the pulpit, and highly injurious to the pursuers; and, on advising a condescendence of damages and account of expenses, modified the latter to L. 52 Sterling, with the expense of extract; and in respect of the behaviour of Robert Scotland, found him entitled only to L. 5 Sterling of damages; but as to John and David Scotland, found them entitled jointly to the sum of L. 25 Sterling of damages.

See APPENDIX.

*Fal. Dic. v. 4. p. 229.*

1781. November 16.

THE PRESSES, and SOCIETY of SOLICITORS, before the Commissary, Sheriff, and City Courts of Edinburgh, *against* THOMAS ROBERTSON, Printer.

THE Society of Procurators, practising in the Commissary and inferior Courts at Edinburgh, obtained a charter from the Crown, erecting them into a Corporation, under the name of "The Society of Solicitors before the Commissary, Sheriff, and City Courts of Edinburgh." This grant was notified in the London Gazette; and an advertisement to the same purpose appeared likewise in the Edinburgh newspapers; in which, however, instead of the word Solicitors, as above, the appellation Solicitors at law was used; and in addition to the article contained in the Gazette, it was said, that the Society, by their charter, were invested with "the sole and exclusive right of pleading and conducting suits before those Courts, the Honourable Faculty of Advocates excepted."

Soon after, the following paragraph, apparently drawn up in allusion to these variations, was inserted in a paper called The Edinburgh Gazette, published by Thomas Robertson. "A correspondent informs us, that he hears the worshipful Society of Chaldeans, Cadies, or Running-Stationers, of this city, are re-

No 21.

No 22.

A slight verbal injury, to a body-corporate, actionable.

No 22. solved, in imitation, and encouraged by the singular success of their brethren of an equally respectable Society, to apply for a charter of their privileges, particularly of the sole privilege of procuring, in the most extensive sense of the word, exclusive of chairmen, porters, penny-post men, and all other inferior ranks, their brethren, the R—Y—L S—L—RS, *alias* P—C—RS, before the inferior Courts of this city, always excepted. Should the Worshipful Society be successful, they are farther resolved not to be puffed up thereby, but to demean themselves with more equanimity and decency than their R—y—l, learned, and very modest brethren, above mentioned, have done upon their late dignification and exaltation."

The Solicitors, thinking themselves injured by the inuendoes conveyed in this paragraph, instituted an action against Robertson; and, in their libel, concluded for very high damages, both in behalf of the Society, and of themselves as individuals.

*Pleaded* for the defender, A body corporate, which is not a real, but a fictitious person, is as little susceptible of hurt by defamatory words as by blows. Such ineffectual abuse has been thrown even on those public bodies that are of the highest description; as the learned professions, the Judges, the Parliament of Great Britain; yet in no instance has any action like the present ever been brought. But the raillery, of which these pursuers complain, is also in its own nature harmless and inoffensive; an effusion of mirth and pleasantry, upon an appearance of vanity in their deportment. Nor should such a *jeu d'esprit*, by any forced construction, be made to bear a malicious meaning. Too much zeal for restraining innocent freedoms of this kind, has ever been deemed inconsistent with the spirit of political liberty. The paragraph alluded to, betrays no *animus injuriandi*; which, however, is essential to every kind of injury, especially the verbal; Voet. Lib. 47. Tit. 10. § 8, 10.; Blackstone, Vol. 3. p. 124, 126.

*Answered* by the pursuers, It is a mistake to suppose, that political bodies are not capable of receiving verbal injury; or that in fact no actions have really been brought on that ground; for many such instances have occurred; Bacon's Abridgement, *voce* Libel, vol. 3. p. 494,—5.; Ewing *contra* Magistrates of Edinburgh, No 6. p. 3434. With as little propriety is the sarcasm in question stiled innocent. An intention to injure is not to be concealed under an ironical mode of expression. If the latter be easily understood, the former is punishable, Bac. Abridg. *ibid.* p. 493. The pursuers are no enemies to civil liberty; but the defenders claim the privilege of being licentious. The doctrine of the Roman law, on this subject, is, that "*injuria committitur, si quis ad infamiam alicujus libellum, aut carmen, aut historiam, scripserit, composuerit, ediderit, dolove malo fecerit, quo quid eorum fieret,*" Instit. § 1. De Injuriis: A rule which has been adopted by most nations of Europe, and, in particular, is received into our law, Bankton, Lib. 1. Tit. 10. § 24.; Ersk. B. 4. Tit. 4. § 80.

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

No 22.

No 23.

Verbal injury; how committed; how alleviated.