

No 9.
Found in conformity with the above.

1776. June 22.

JARDINE *against* CREECH, &c.

JARDINE schoolmaster at Bathgate, prosecuted Messrs Creech, Elliot, and others, as publishers of the Edinburgh Magazine and Review, for a defamatory paragraph inserted in their magazine for March 1774, bearing, ' That a letter ' from Bathgate, signed J—— D——NE, against a ball lately held at Whit- ' burn, is received; but is totally void of merit. It exhibits alternate strokes ' of superstition and blasphemy. The author, at the same time, possesses not ' any talent for composition. He writes with a total contempt of all the rules ' of grammar. It gives us pain to learn, from the letter which accompanied ' this reprehensible and unworthy essay, that it is the production of a school- ' master, and that it is approved of by a popular clergyman. At any rate, it ' would be improper to publish a paper, tending to foment dissention among ' neighbours, and to wound the character of respectable persons of both sexes.' The pursuer denied that he had ever sent such a letter or composition, or knew any thing about it; but *urged*, that being pointed out by so many marks or characters, which could apply to nobody but himself, his character and reputation had deeply suffered, and of course, his professional emoluments were either actually impaired or endangered. The defenders *urged*, That they had no intention to injure the pursuer, whom they did not know; they only stigmatized the writer of an unworthy and blameable composition: There was nothing in the paragraph that pointed out this pursuer. The letters might have applied to John Donne or James Downe, but could not apply to the pursuer; for commoners and private men never sign by their surnames alone. Besides, the interest of literature requires that there should be a freedom of criticism, and their publication being a review, they plead the privilege of all their brethren.—THE LORDS found damages and expenses due, and modified the same to fifty guineas.

Fol. Dic. v. 3. p. 179.

1787. June 13.

JOHN ANDERSON *against* WILLIAM RICHARDSON.

No 10.
Expressions injurious to a third party, uttered by a professor, in a private discourse with a few of his students, found to be actionable.

MR ANDERSON, one of the professors in the university of Glasgow, raised an action before the Commissary of the district, against Mr Richardson, another professor in the same university, libelling, That the defender had, in private, harangued three of the students with false and injurious invectives against the pursuer's character; affirming, in particular, that the latter was ' a bad man, ' and a detestable member of society.'

The Commissary, ' as it was not said, or offered to be proved, that any other ' persons than the three students themselves were present, found, That it would ' be unbecoming, and of bad example, to call students in that situation as wit- ' nesses in a court of law, in order to make them discover, upon oath, the pre-

‘cise terms or tenor of a private admonition given to them by one of their professors ; and therefore assolzied the defender.’

The cause having been brought before the Court by advocacy, it was

Pleaded for the defender ; A professor, in respect of his pupils, is like a father or a guardian. But ought the admonitions that are given under these relations, in the hours of retirement and confidence, to be made a foundation for actions of damages, such as the present ? Still more ‘unbecoming, and of worse example,’ would it be, that the pupils should be made to assume the treacherous character of witnesses against their monitors. This action, therefore, whether considered in itself, or with respect to the mode of proof to which it refers, is equally incompetent. The charge, besides, is not relevant. The expressions in question are plainly such as it may often be necessary to use for the purpose of admonition ; and thus the supposition of an *animus injuriandi* is excluded, it not being alleged that the pretended slander was disseminated. Sir George Mackenzie’s *Criminals*, tit. 30. § 2. ; Erskine, b. 4. tit. 4. § 80. ; Blackstone, b. 3. chap. 8. § 5.

Answered ; If the *animus injuriandi* can be proved, action should certainly be sustained, though the injury has been done in the course of private admonition, whatever be the relation between him who admonishes, and the person admonished. The expressions libelled, to use the words of Voet, *ad tit. D. de injuriis, et fam. libel.* § 20. ‘Per se, et propria significatione contumeliam inferunt ; hinc injuriandi animus adfuisse creditur, eique qui illa protulit probatio incumbit, injuriæ faciendæ consilium defuisse.’ Nor is it enough that the calumny was not disseminated. Dissemination is not of the essence of defamation ; for a person may be defamed, with as bad consequence, to an individual, as to a multitude. If, therefore, the offence itself is actionable, the admissibility of the witnesses mentioned must follow of course.

THE LORD ORDINARY reported the cause ; when it was

Observed on the Bench ; The doctrine of the defender is a dangerous one. Slander ought never to be allowed to pass under the disguise of private admonition.

‘THE LORDS repelled the objections stated against the relevancy of the libel.’

Reporter, *Lord Eskgrove.*
J. Millar, jun.

Act. Maclaurin, Ross.

Alt. Dean of Faculty, Craig.

S.

Fol. Dic. v. 3. p. 179. Fac. Col. No 333. p. 512.