

No 6. prietor cannot incur such high penal consequences as are now to be attached to a negligence in which so many shared.

THE LORDS (9th February 1804) " find the defender William Caddell liable in damages and expenses, and appoint a condescendence of damages, and an account of expenses, to be given in *."

Lord Ordinary, *Polkemmet.*

Act. *Erskine, Forsyth.*

Agent, *John Sommerville.*

Alt *Boyle.*

Agent, *Ro. Cathcart, W. S.*

Clerk, *Menzies.*

F.

Fac. Col. No 147. p. 320.

SECT. II.

Seduction.—Adultery.—Breach of promise of Marriage.

1696. *July 15.*

HISLOP against KER.

No 7.

CROCERIG reported William Ker, writer, and Isobel Hislop, the stationer's daughter, who pursued him for refunding her damages, in so far as he had induced her, by false and flattering insinuations, to grant him the use of her body, and got her with child, and by letters promised to make her happy, only he behoved to conceal it from his friends for a while; and he made her give over her shop, and take a greater house; and, after all this, married another, and so perfidiously deceived her expectation; and all the casuists are clear that such a fraud *obligat ad reparationem damni*. *Answered*, He denied the child to be his, which she must prove, conform to the decision, January 1665, Barclay *contra* Bapty, No 26. p. 8413.; et is tantum est filius quem nuptiæ demonstrant, et vulgo quæsitum patrem habere non censentur; et semel mala, semper præsumitur in eodem genere; et mater tenetur lactare infantem, and can crave no expense *eo nomine*. THE LORDS found a woman's being got with child was no ground of action for damages, else a hundred such processes would be intended by whores; as also they thought that every promise and insinuation of marriage was not sufficient to found this action, because these are made at such times very lightly; yet, on the other hand, such debauchery and fraudulent designs ought not to pass undiscouraged, therefore, in such a circumstantiated case, the LORDS declared they would allow damages against the man who had *dolore in-*

* The damages and expenses were afterward ascertained by the Court, damages L. 800, expenses L. 100.

duced a party to trust him, and referred it to the Reporter to examine the circumstances, and modify as he saw cause. By Moses's judicial law, such a man was bound *stupratam aut dotare aut nubere*.

No 7.

Fol. Dic. v. 2. p. 341. Fountainhall, v. 1. p. 728.

1743. June 17. & 1744, January 20. STEDMAN against STEDMAN.

No 8.

STEDMAN, a shopkeeper, having obtained a divorce against his wife for adultery, brought an action before the Court of Session against the adulterer for damages. *Alleged*, That the action was not competent, unless a criminal prosecution had been first brought before the Court of Justiciary. *Answered*, That where a man is hurt in his property, he may bring a civil action for the damages, without intending a criminal prosecution for punishment of the offender, as for example, in the case of fire-raising. THE LORDS sustained the action as competent; found the defender liable in the expenses of the process of divorce, and of an appeal to the House of Lords, and of the present process; and appointed the pursuer to specify what damage he had sustained through the loss consequent to his business, and how he could liquidate the same.

Fol. Dic. v. 4. p. 221. Kilkerran. C. Home.

* * * This case is No 72. p. 7337, *voce* JURISDICTION.

1748. December 14. ELISABETH LINNING against ALEXANDER HAMILTON.

No 9.

ELISABETH LINNING, daughter of the deceased Mr Thomas Linning, minister at Walston, brought an action of declarator of marriage before the Commissaries of Edinburgh, against Alexander Hamilton, younger of Gilkerscleugh; and as she did not pretend to have any proof of her libel by writ or witnesses, she referred the verity thereof to the defender's oath, which is in the following words; Depones, " That, after the pursuer's mother's death, who was the deponent's aunt, the pursuer was invited by the deponent's father to come and live in family with him; That she accordingly came to his family about the end of October 1744, where she continued until about the beginning of December 1746; That while she thus staid in the family, the deponent had frequent toyings with her, kissing and clapping her, and frequently told her that he loved her; That in December 1745, the deponent went one night into the pursuer's bed-room, and slipt into the bed with her, at which she seemed to be pretty much surprised, and offended; but the deponent told her that he would do her no harm; but she having ordered him to go out of the room, he, after some little stay, went out; That next morning he observing her a little pen-

Reparation awarded to a young woman against the man who had corrupted her.