

libel, Mr Porteous acted injuriously, by introducing the character and conduct of the libellers, which could have no influence in the decision. But it appeared to be the practice of the ecclesiastical judicatories, in accusations against members of the Church, to inquire into "the origin and movers thereof;" and that Mr Porteous was therefore justified in insisting on these topics, so far as they had any foundation in evidence before the Assembly.

No 23.

"THE LORDS therefore adhered."

Lord Reporter, Gardenston. Act. Grosbie, Craig, Morihland, and Arch. Campbell.
Alt. Hlay Campbell, Cullen. Clerk, Campbell.

C. Fol. Dic. v. 2. p. 230. Fac. Col No. 13. p. 25.

1783. November 21. MACQUEEN against GRANT.

MACQUEEN and his wife pursued Grant, their minister, for having said in public companies that they had perjured themselves at a Circuit-court, and for having, on that account, refused them admittance to the sacrament. The Court allowed a proof, and, on advising the same, found the minister liable to the pursuers in damages and expenses.

No 24.

Fol. Dic. v. 4. p. 230. Fac. Col.

* * This case is No 186. p. 7468. voce JURISDICTION.

1785. February 22. ELIZABETH CHALMERS against HELEN DOUGLAS.

THIS being an action of damages, raised on the ground of the defender's having defamed the pursuer, the *veritas convicii* was urged in defence; and the Commissaries having found that plea to be irrelevant, their sentence was brought under review of the Court by bill of advocation.

Pleaded for the defender, The maxim, that *veritas convicii non excusat a calumnia*, may indeed be received in public or penal prosecutions, but to civil actions for damages it is not applicable. In regard to the former, that breach of public peace which is the subject of judicial cognisance, may be equally committed by reproach, whether true or false, though still being a crime, the *animus injuriandi* is essential to it, L. 18. D. De Injur. Voet. ad eund tit. § 9.; Mackenzie, Tit. Of Injuries; Bankton, B. 1. Tit. 10. § 31. 34.; Erskine, B. 4. Tit. 4. § 42. But, surely, that damage to an individual character, which civil actions are intended to repair or compensate, cannot be produced by a faithful description of the character itself, which, however, is implied in the *veritas convicii*. In such a case, how absurd would it be to require a palinode? Berlich. Conclus. 62. § 23. This distinction is established in the practice of the Com-

No 25.

How far, in a civil action of damages, the maxim, *quod veritas convicii non excusat*, is to be received?

No 25. missary Court, as confirmed by the Supreme Court, and has been exemplified in many late cases, such as, those of Ramsay *contra* Jarvie;* of Fife;* of Turner *contra* Watson;* and of Oliphant *contra* Macniel.* By the law of England, where such actions of damages are much more frequent than in this country, to which law Lord Stair, B. 1. Tit. 9. § 4. has, on this head, referred, as worthy to be adopted, the point is invariably fixed, Blackstone, B. 3. Ch. 8. § 5.; B. 4. Ch. 11. § 13.; 5 Rep. 125.; Hol. 253. 1.; Danv. 162.; 3 Salk.

Answered, That the above maxim of our law, which is confessedly admitted in criminal actions, should be rejected in matters of civil jurisdiction, has not been proved by the authorities quoted, and does not seem warranted by reason. To recal from oblivion the story of a person's failings, may be to involve him in misfortune and ruin; and could it then be said that he had sustained no damage? It is natural surely to question the right of the aggressor to produce so great a calamity. When one's own safety, indeed, or the benefit of the public, requires it, such an accusation may be preferred with impunity; for there the immediate result is salutary, as the motive is right; but if the purpose be to hurt and injure, the only effect which proceeds from it is immoral and unlawful; and if damage has arisen to one party from the unlawful acting of another, the law will award reparation; so that the distinction supposed seems to have no foundation in reason. As to the observation about palinodes, it has proceeded from the erroneous idea, that without this no other reparation could be obtained.

THE LORD ORDINARY refused the bill of advocation.

The general opinion of the Court seemed to be, that in a civil action the proof of *veritas convicii* may be admitted, in order to alleviate the award of damages.

The judgment on this point was the following:

“In respect the libel before the Commissaries contains a conclusion for a palinode, and for a sum of money in the name of damages to the private prosecutor; find the defence offered of *veritas convicii* competent in this cause to exculpate or alleviate.”

Afterwards, on advising a special condescence, exhibited by the defender, which set forth facts alleged to have happened at the distance of about thirty years, the Court adopted the following rule, that, *in hoc statu*, such particulars only should be admitted to probation, as clearly involved guilt; it being deemed unjust, while no real criminality had been established, to tarnish the character of a party, by a proof of trifling or equivocal incidents, though these might eventually be received to fill up the measure of evidence. Some difficulty, likewise, occurred with respect to the specification of the times assigned to the different acts charged against the pursuer.

The interlocutor of the Court was, to remit the cause to the Commissaries, with the instruction, to allow a proof of the direct and specifical charges of an

* Not reported.—See APPENDIX.

important nature, contained in the condescence; limited however thus, that the evidence of each fact was to be confined to the particular year condescended on relative to it, and to a particular month in that year, with the addition of the two preceding, and the two subsequent months.

No 25.

Lord Ordinary, *Braxfield*.
Alt. *Crosbie, et alii*.

Act. *Lord Advocate, et alii*.
Clerk, *Home*.

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Fol. Dic. v. 4. p. 231. Fac. Col. No 200. p. 313.

1793. March 6. SAMUEL PEAT against The Reverend Dr JOHN SMITH.

No 26.

MR PEAT having obtained a presentation to the parish of Gigha, in Argyleshire, was taken upon trials by the presbytery of Kintyre. As a great majority of the inhabitants of that parish understood Gaelic only, the presbytery thought it proper to examine Mr Peat on his knowledge of that language, particularly as he was born in the low country, and had resided there for the greater part of his life. This examination having been declined by the presentee, who *alleged*, That the presbytery had no right to insist on it, he was found by them not qualified to supply the vacancy.

A proof of the *veritas convicii* limited to specific circumstances.

Mr Peat appealed against this sentence to the synod of Argyle, which meets at Inverary, where Dr Smith was appointed by the presbytery to defend their judgment.

Mr Peat *alleging* that Dr Smith had, on this occasion, out of the synod, and in presence of three gentlemen, whose good opinion was of the greatest importance to him, made use of certain expressions injurious to his moral character, brought an action of damages against him.

THE LORD ORDINARY, upon advising a condescence and answers, "allowed the pursuer a proof of the facts and circumstances contained in his condescence, and the defender a proof of the facts and circumstances contained in the answers, and of all facts and circumstances they may think material, and to each party a conjunct probation thereanent."

Mr Peat, in a petition against this interlocutor,

Pleaded, If the charge against the pursuer's character were well founded, the the defender ought to have made it the subject of a public inquiry before the presbytery, when the pursuer would have had an opportunity of entering into his own vindication. But there being no question with regard to it in dependence before the ecclesiastical Court, the defender, in whispering it about to individuals, could only be actuated by a desire to injure the pursuer. The *veritas convicii*, therefore, cannot exculpate the defender, Erskine, B. 4. Tit. 4. § 80.; 21st November 1783, Macqueen against Grant, No 24. p. 13939., and no proof of it should be allowed.