

No 7. uttered the said expressions, and to wish Mrs Fleeming might be reconciled to her.

Allason was nevertheless indiscreet enough to report to Mrs Fleeming the defamatory expressions which Mrs Scott had uttered; whereupon Mrs Fleeming and her husband brought a process of scandal against Mrs Scott before the Commissary of Glasgow, concluding for damages and a fine, and proper palinode, for that the expressions were scurrilous and malicious; and the defender, along with her answers, gave in a fresh declaration, that she was sorry for the expressions she had uttered, that she had no just cause for them, but was moved by passion.

The Commissary, upon advising the proof, which he had allowed before answer to either party, and which came out just as is above related, 'Assoilzied the defender from damages and fine, and ordained her to compear on a day and hour certain, in the house of the said John Allason, and there, in the presence of the bailie of Port-Glasgow, and of the persons who were present at uttering the expressions, or others whom the pursuer might call, acknowledge and declare she had no just cause for the said expressions, and beg the pursuer's pardon, all under the penalty of L. 5, to affect the defender's part of her husband's executry, if incurred.'

The pursuer presented a bill of advocation, which the Ordinary, upon advising with the Lords, 'refused;' and the pursuer having reclaimed, 'the petition was refused without answers.'

*Vol. Dic. v. 3. p. 178. Kilkerran, (DELINQUENCY) No 17. p. 165.*

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1763. January 28. JOHN FINLAY *against* RUDDIMAN.

No 8.  
The publisher of a newspaper was condemned in L. 15 Sterling as damages to a gentleman who thought himself pointed out by an indirect and unguarded expression.

IN the Edinburgh Caledonian Mercury, dated 17th September 1760, the following paragraph was inserted upon the authority of an anonymous letter from Glasgow: 'Saturday one John Finlay a shoemaker was taken into custody for committing a rape on a servant-maid belonging to one of our present magistrates, which, with other bad usage, has occasioned her death. He is a worthless fellow, and it is hoped will receive a punishment adequate to his many atrocious crimes.' The publishers of this paper soon being convinced that their information was false, published the following article in their paper, 27th of December 1760: 'We have reason to believe, that several paragraphs of the letter from Glasgow, inserted in our paper of the 17th, are groundless; particularly that concerning John Finlay shoemaker. This letter appears to us to have been wrote with a malicious design. We are sorry we took any notice of it; and are making every inquiry that can tend to a discovery of the imposition. In the mean time, in justice to Mr Finlay, we can assure the public, that the above mentioned paragraphs are void of foundation.'

John Finlay merchant in Glasgow, was a member of the incorporation of shoemakers in Glasgow; and in that character carried on an extensive manufactory of boots and shoes. This gentleman imagining himself to be pointed out by the paragraph first mentioned, brought a process against the publishers for damages. It was clear that there was here no *animus injuriandi* with respect to the pursuer; because *1mo*, The designation of John Finlay shoemaker could not point out the pursuer, who never carried that designation till he thought proper to assume it in the present process. *2do*, The paragraph bears that Finlay the shoemaker was taken into custody, which was not the pursuer's case. And *3tio*, The defenders could have no intention to defame the pursuer their good friend, with whom they had a constant correspondence, by sending him weekly their news-papers.

The pursuer *urged*, *1mo*, That the defenders must have had an *animus* to defame some person under the name of John Finlay shoemaker, and being *versantes in illicito*, that they must be liable for all consequences. The *answer* was, That they had no *animus* to defame any person, but barely to state a fact as an article of news.

It was *urged*, in the *next* place, That they ought to insert no article but where their information can be depended on. It was obvious to *answer*, that the purpose of a news-paper is to publish facts wherever happening; and such a paper must be extremely defective, if no intelligence be admitted but what proceeds from unexceptionable authority; for the profits of a news-paper will not defray the expense of establishing faithful correspondents in every corner.

When this cause, which concerns the liberty of the press, was advised, it occurred as a matter of no slight difficulty to ascertain the boundary betwixt that liberty which must be indulged to a news-writer, in order to inform or divert the public, and that licentiousness which, without any evil intention, may do mischief. One thing is clear, that the writer of a news-paper is not privileged to communicate to the public any private transaction, however certain his information may be. He must confine himself to what is publicly transacted, and what must spread, of course, without a news-paper; in which case a news-paper has no other effect but to quicken the intelligence. The article challenged is of that nature; for nothing can be more public than a man's being taken into custody in a great city to be tried for a crime. News-writers, however, are not privileged to defame a person by characterising him as a worthless fellow, deserving punishment adequate to his atrocious crimes. This was certainly rash and unguarded, and the less excusable, that such virulent expressions are by no means necessary for carrying on the purpose of a news-paper.

'THE LORDS accordingly found the defenders liable in damages, and modified the same to L. 15 Sterling.'

*Fol. Dic. v. 3. p. 179. Sel. Dec. No 204. p. 270.*