

suer, was malevolent and injurious; and therefore find them, conjunctly and severally, liable in expenses of process, of which ordain an account to be given in; but not in damages, in respect the pursuer has passed from any."

No 19.

The defenders gave in a reclaiming petition, maintaining chiefly, That they ought not to be found liable in expenses; and in particular, as they had at first admitted all that had subsequently been proved, that the pursuer ought to be found liable to them in the expenses that had in that manner been unnecessarily incurred. Upon advising this petition with answers, the COURT "adhered to their former interlocutor, so far as respects the principal cause, and refuse the petition: They also find expenses due, and ordain an account to be given in; reserving to the Court, at advising said account, to modify the expense of the proof, so far as the same shall appear to have been unnecessary."

Lord Ordinary, *Stonefield.* For Hamilton, *A. Lockhart, Sol. H. Dundas, J. Boswell.*
For Rutherford, &c. *Macqueen, Ilay Campbell, Crosbie, Claud Boswell.* Clerk, *Tait.*

R. H.

Fac. Col. No 103. p. 308.

1771. November 19.

ROBERT WARRAND, Postmaster at Inverness, against HUGH FALCONER, Merchant in Inverness.

WARRAND having had a quarrel with Falconer upon his not having delivered his letters one night when the post had arrived later than usual, and Falconer having, upon that occasion, insulted Warrand, a criminal prosecution was brought against him, in which he was found guilty, and fined in 600 merks.

Before this trial was brought, Falconer, in a letter to the Postmaster-general, made a complaint of Warrand, and stated, "I am a merchant here, who have suffered greatly by the bad behaviour of your deputy; I have the most convincing proof of his keeping up my letters; and have great reason to fear that he may greatly hurt my interest by such practices. It could likewise be proved that he detained letters for others in this town; and that he opened and read them."

The contents of this letter having been communicated to Warrand by the Postmaster-general, he, in order to vindicate himself, brought an action of injury and damages against Falconer; who, in defence, stated, That the letter had not been written with the design of calumniating the pursuer, but had been intended merely as a private piece of information to the Postmaster-general; who, he did not conceive, would have made it public. If he entertained suspicions of the pursuer's conduct in office, he was authorised to give information of them to his superior, that inquiry might be made; and, in the case, 31st December 1708, James *contra* Watkins, No 5. p. 3432, it was found, That in

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No 20.

Where one wrote a private letter, accusing an inferior postmaster to his superior of malversation in office, the same held to be an injurious libel and actionable, the accuser having declined to make good his charge.

No 20. formation sent to the Commissioners of the Customs, of the misbehaviour of one of their servants, was no foundation for a libel of scandal.

THE LORD ORDINARY "repelled the defences pleaded for Hugh Falconer the defender; finds the action competent; and ordains the defender to say, Whether he intends to support his accusation of the pursuer in terms of said letter; and in what manner?"

Falconer gave in a petition to the Court; upon advising which, with answers, it was observed upon the Bench, That, in cases of this nature, if information had been given in a cool and decent manner, with a view to the public benefit, and to get an abuse, in a public officer, rectified, the *animus injuriandi* would not be inferred; and, though the information even had been erroneous, yet if the informer had, upon some probable ground, been misled, no action would lie. The Judges were, however, clear, That no circumstances of that nature occurred in this instance; but that the letter had been written with an injurious intention, more especially as the defender declined to make good his accusation.

THE LORDS, November 19. 1771, accordingly adhered.

Lord Ordinary, *Ellock*. For Warrand, *A. Murray*. For Falconer, *Elphinston*.
Clerk, *Pringle*.

R. H.

Fac. Col. No 107. p. 323.

No 21.

A clergyman found liable in damages for defamatory language and decently used in the pulpit.

1776. August 8.

SCOTLANDS against THOMSON.

MR JAMES THOMSON, minister of Dunfermline, in a sermon preached after the Michaelmas election 1774, after congratulating by name Colonel Campbell, whose political interest had prevailed at that election, remarked, "That he and his friends had reason to be thankful that they had escaped the snares laid for them by that person who had betrayed the trust reposed in him, and who was eating his bread and wearing his apparel, yet had lifted up his heel against him, to his own disgrace and that of his generation for ever." Robert Scotland, who had been political agent for Colonel Campbell, considering himself as the person pointed at in this censure, published a letter in the *Caledonian Mercury*, denying his ever having betrayed his trust, and adding, that "every report to the contrary, whether from the pulpit, by a blustering blunderbuss of an old military chaplain, or other such busy bodies, is false and slanderous, &c. Soon after the publication of this letter, Mr Thomson delivered a sermon on Ephes. chap. xxiv. verse 25, "Wherefore putting away lying, &c," in which, after describing the different kinds of liars, looking towards Robert Scotland, then in church, and pointing him out with his hand, "Will any man (said he) pretend to tell me, after the testimony of three incontestable witnesses, that you do not lie, when you maintain that you did not engage to support Colonel Campbell's interest?" Then looking towards David Scotland, the brother of