

S E C T. II.

Perjury.

1695. November 12.

THOMAS YEAMAN in Leith *against* JOHN ROGER Writer.

THE LORDS advised the concluded cause, Thomas Yeaman in Leith against John Roger writer, who being charged on a ticket of L. 20 Sterling, suspended, on this reason, that he offered to prove, by Yeaman the charger's oath, he was paid of L. 15 Sterling of it. And he having deponed *negative*, except as to L. 54 Scots, Roger afterwards, on a bill, gets a diligence to produce a bond of corroboration he had given him only for L. 5 Sterling, as resting of a greater sum: And it being produced, at the advising, he made use of it to controul and redargue his oath, together with a bond of presentation, &c.—THE LORDS found the charger's oath was the only rule by which they behoved to judge; and found it did not prove the reason of suspension; and therefore decerned, except *quoad* the sum acknowledged; seeing the exception of perjury does not elide the debt, but only founds a criminal pursuit; and for expiscating where the knavery and unfair dealing lay, recommended to my Lord Rankielor, who had formerly heard the cause, to try the same, and report.

No 2.
The exception of perjury does not elide the debt, but only founds a criminal pursuit.

Fol. Dic. v. I. p. 232. Fountainball, v. I. p. 677.

S E C T. III.

In what cases a Procurator Fiscal may Prosecute without Concourse of the Private Party.

1738. July 25. GILMOUR *against* The PROCURATOR-FISCAL of Linlithgow.

FOUND, That a procurator-fiscal could not pursue *ad vindictam publicam*, notwithstanding the *dissimulatio* of the private party, the crime not having been of a public nature, and which required punishment *ad vindictam publicam*.

Fol. Dic. v. I. p. 232. Kilkerran, (DELINQUENCY) No 2. p. 156.

No 3.

* * * Lord Kames reports the same case :

No 3.

IN a suspension of a decret, obtained at the instance of a Procurator-fiscal, for a riot, notwithstanding of a disclamation made by a private party, the LORDS made no doubt but that a Procurator-fiscal may pursue *ad vindictam publicam*, and were clear, there is no parallel betwixt the case of a Procurator-fiscal of a Commissary-court, in the case of scandal, and of a Procurator-fiscal suing for a breach of the peace; that *dissimulatio*, abstractedly considered, is not a good answer to a Procurator-fiscal pursuing *ob vindictam publicam*, seeing he may pursue both parties; but then, upon perusing the proof, they found, that this was but a drunken squabble, in which the public is very little concerned, and that it was officious in the Procurator-fiscal to intent a process in such a case, and therefore suspended the letters *simpliciter*.

Fol. Dic. v. 1. p. 232.

No 4.

1738. November 8. FERGUSSON *against* The PROCURATOR-FISCAL of Carric.

ALTHOUGH a libel, at a Fiscal's instance, upon a crime of a public nature, was only for his interest, without bearing for himself and his interest, he was allowed to carry on the process, notwithstanding the disclamation of the private party.

Kilkerran, (DELINQUENCY) No 3. p. 156.

SECT. IV.

Scandal.

1708. December 31.

MR CHARLES JAMES, late register of the North British ships, *against* RICHARD WATKINS, Stationer in Edinburgh.

No 5.

A libel of scandal should be special as to persons, time, and place. The giving

MR CHARLES JAMES being turned out of his employment by the Commissioners of the Customs, upon information given to them, that he had drunk heartily to the Pretender's health, under the name of K. James 8. about the time of the late designed invasion, he raised a process of scandal before the Commissaries