

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. Ilay 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?