

## REPARATION.

1776. January . SNODGRASS, &c. against DR JOHN WOTHERSPOON.

IN an action of defamation and damages, Snodgrass and Others, inhabitants of Paisley, against Dr John Wotherspoon, the Lord Colston, Ordinary, pronounced this interlocutor:—"14th November 1764. Find that the preaching of the sermon complained of was fully justified by the proof brought before the kirk-session; but find that the printing and publishing said sermon, with the explanatory preface prefixed to it, in which the pursuers, by name, are charged as having been guilty of the facts therein mentioned, especially after the sentence pronounced thereanent by the Presbytery, was illegal, unwarrantable, and injurious to the pursuers; and, therefore, finds the defender liable in damages and expenses." His Lordship afterwards modified the damages to £30, and the expenses to £88:10s., "in respect that the preaching of the sermon, which gave rise to the action, was occasioned by an improper conduct on the part of the pursuers, and that the printing and publishing the sermon, and what followed, appeared rather to have been the effect of an intemperate zeal than of a malicious and deliberate intention to injure the pursuers." But, on a reclaiming petition of the pursuers, the Lords increased the damages to £150, and gave full expenses, since pronouncing the Ordinary's interlocutor modifying the former ones. In considering the damages, they took under consideration the personal expenses of the pursuers; for, although these are not given in ordinary cases, yet, where damages are given, personal expenses may be given as part of damages, and in this case were given *eo nomine*.

See Kilkerran, p. 181, *Mackail*. See *Scotlands* against *Mr James Thomson*.

— against M'NIEL.

How far the *veritas convicii* excuses, in an action of damages, has of late been much disputed. That it does not excuse in an action for censure, either in a civil or ecclesiastical court, is admitted; but, in a civil action for damages, it is alleged to be a relevant excuse. — M'Niel of Taynish, a Justice of Peace, sitting on the bench and examining a witness, told the witness, who was a preacher of the Gospel, that he was a damned perjured villain. In an action for damages, M'Niel founded his defence on the fact, *viz.* that, from the proceedings, he had reason to believe that the witness was guilty of perjury.

M'Niel was assoilyied.