

cedure, either in the church-courts or in private admonition to the parties themselves, was a matter merely ecclesiastical; but to propagate in public companies a story highly prejudicial to the reputation of a parishioner, or even to give it as a reason for his conduct, could not be justified by the character of a minister.

No 186.

A proof was allowed; on advising of which, the LORDS found, "That the pursuers have proved the facts set forth in their amended libel, and that the defender was liable to them in damages and expenses."

Lord Ordinary, *Kennet*. Act. *Crosbie, Elphinston, James Grant* Alt. *Ilay Campbell, Robertson*.
Clerk, *Menzies*.

Fol. Dic. v. 3. p. 346. Fac. Col. No 77. p. 132. & No 127. p. 201.

1781. December 21. MACQUEEN and SPOUSE, Petitioners.

DURING the dependence of the question between the petitioners and Mr Grant their parish minister, *supra*, No 186. p. 7466, Mr Grant requested the presbytery of Abernethy to take cognisance thereof. The presbytery gave a deliverance, declaring their opinion, "That Patrick Macqueen and his wife were not to be admitted, but to remain suspended from church privileges during the dependence of the action against Mr Grant; but that, upon their renouncing that process, and giving proper satisfaction to the presbytery, and conforming to the laws of the church, they should be restored to their former situation."

No 187.

Macqueen and his wife preferred to the Court of Session, a summary petition and complaint against this sentence, as oppressive, and highly derogatory to the dignity of this Court, before which the action depended; and concluded for a proper censure upon Mr Grant, and for such relief and protection to themselves as should be deemed necessary.

The petition was refused as incompetent.

For the Petitioners, *Crosbie*.

C.

Fac. Col. No 17. p. 35.

1785. November 17.

JOHN RUTHERFORD *against* The PRESBYTERY of Kirkcaldy.

THE Presbytery of Kirkcaldy having taken offence at the behaviour of Rutherford in their court, on occasion of the settlement of a minister, as disrespectful, and otherwise improper, passed a sentence, by which he, a writer by profession, and who had acted as an agent in causes before them, was "declared incapable of appearing in future in that character at the bar of this

No 188.

A sentence of a church-court affecting a party's civil concerns, though arising inci-

No 188.

dentially out
of a matter of
ecclesiastical
cognizance,
subject to
review by the
civil jurisdic-
tion.

presbytery; " and at the same time, Mr Rutherford was rebuked from the chair.

Rutherford, considering these proceedings as hurtful to his character and interest, instituted against the presbytery an action before the Court of Session, in which he concluded for the rescinding of the above sentence, for public notification of such rescission, and for a large sum in name of damages.

Pleaded for the defenders, *Concessa jurisdictione, concedi videntur omnia sine quibus jurisdictio ista explicari non potest.* The proceedings in question, therefore, as much as the purely ecclesiastical matter to which they referred, came under the independent jurisdiction of the church-courts, 11th August 1780, Robertson *contra* Kirk-session of Cupar, No. 185. p. 7465.

Answered, The incapacitating of the pursuer to act in the line of his profession, as it affects his civil, not his ecclesiastical state, belongs not to the jurisdiction of the church. Nor, until these proceedings be first shewn to have been necessary or proper, can they be justified by a maxim which it were absurd to conceive as giving a sanction to any act of injustice.

Observed on the Bench, This Court has not the power of reviewing those sentences which respect a man's *status* in the church. But the present is merely a civil matter; and though sufficient grounds for such a judgment, incapacitating the pursuer, might be figured, it appears in this instance ill founded.

Observed farther, The pursuer ought to have applied for redress by declarator merely, or by suspension, in neither of which processes the presbytery would have had occasion to appear; and if they had, they would, like a sheriff defending his own decree, have been found liable in damages. The presbytery having been improperly called in this action as parties, in support of their sentence, are entitled to expenses. As to these, however, this opinion was over-ruled.

The cause was reported by the Lord Ordinary; when

The Court sustained the reasons of reduction respecting the incapacity *in futurum*; but repelled them in all the other particulars; and found no expenses or damages due to either party.

Reporter, *Lord Henderland.* Act. *McCormick.* Alt. *Robertson.* Clerk, *Home.*

S.

Fel. Dic. v. 3. p. 347. Fac. Col. No 233. p. 361.

1791. December 9.

JAMES DUNLOP, and Others, *against* THOMAS MUIR, and Others.

No 189.

Questions
respecting the
right of elec-
tors of minis-

THE parish of Calder, in the presbytery of Glasgow, is one of those that obtained, under the authority of the statute of 1690, cap. 23. the right of nomi-