

The question came before Lord Stonefield as Ordinary, when it was *pleaded* for the charger, That the sentence of deposition, said to be pronounced by the presbytery was void and null, in terms of the act of Parliament 1686, cap. 3. and sundry acts of assembly, not having been signed by the moderator, or any of the members of the presbytery; and farther, that the proceedings upon which the sentence is said to be founded, were so irregular and informal, that no faith whatever could be given to them, or effect to the decree pronounced upon them.

Answered for the suspenders; The act of Parliament 1686 relates only to civil, but not to ecclesiastical judicatories; that it was not the practice of church-judicatories to sign their sentences; and, as an extract of the sentence of deposition under the hand of the presbytery-clerk had been produced, the suspenders were not in safety to pay to the charger. And it was further *argued*, That it was not competent for the civil court to look into the proceedings of the ecclesiastical court, as an extract of the sentence was produced.

THE LORD ORDINARY, before answer, allowed a proof as to the practice of the presbytery of Peebles in signing their minutes and proceedings; and a proof being led, and reported, his Lordship ordered memorials to the Court; upon advising of which, the following judgment was pronounced.

“ On report of Lord Stonefield, and in respect there is no proper evidence produced of the charger Mr Dickson’s being deposed, the LORDS find the letters orderly proceeded, and decern.”

For the Charger, *Al. Elphinston.* For the Suspenders, *Al. Wight.* Clerk, ———.
A. E. *Eol. Dic. v. 3. p. 346.* *Fac. Col. No 73. p. 128.*

1780. August 11.

THOMAS ROBERTSON *against* ROBERT PRESTON, GEORGE CAMPBELL, and
 ALEXANDER MELVIL.

THE Reverend Messrs Preston and Campbell, ministers, and Mr Melvil, one of the elders, of the parish of Cupar, in their capacity of members of the kirk-session, had resolved that, on account of certain alleged immoralities, Mr Robertson ought not to be admitted to participate of the sacrament of the Lord’s Supper; and had ingrossed this resolution in their records. On that ground, Mr Robertson brought against them an action of defamation before the Commissary of St Andrew’s, concluding for a palinode, and for damages. In a process of advocacy which followed, it was

Pleaded for the defenders; That being an ecclesiastical court, they were not subordinate to any civil one, but to their ecclesiastical superiors alone; and that even supposing their proceeding to have been improper, yet having acted

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 their clerk.
 The Lords found, that the extract was not proper evidence of the deposition, and decerned for the stipend.

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 The civil courts have no jurisdiction in matters of ecclesiastical concern.

No 185. in their judicative capacity, with which they were by law invested, and not as individuals, they were not to be accountable for an error in judgment.

Answered; This is an action brought for reparation of an injury. It has been occasioned by scandal and defamation, a matter proper to the cognizance of the consistorial, and not belonging to the ecclesiastical courts. These last have no powers to give to the party injured, redress by palinode, money, or otherwise.

THE LORDS adhered to the Lord Ordinary's interlocutor, 'remitting the cause to the Commissary, with this instruction, that he refuse a proof as to what these defenders said or acted at the meeting of the kirk-session, or in their collective capacity.'

Lord Ordinary, *Hailes.* Act. *G. Wallace.* Alt. *Wm. Robertson.*
S. *Fol. Dic. v. 3. p. 347.* *Fac. Col. No 126. p. 232.*

. See additional particulars of this case, p. 7468.

1781. July 25.

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A clergyman having refused to a parishioner admittance to the sacrament, it was found, that he was not amenable to a civil court; but he having said, in public companies, that he refused such admission, because the person was guilty of perjury, the Lords found him liable in damages.

PATRICK M'QUEEN, Forrester at Abernethy, and his Wife, JANET M'GREGOR,
against Mr JOHN GRANT, Minister at Abernethy.

The pursuers having applied to the defender for tokens of admission to the sacrament, were refused on account of some depositions emitted by them before the circuit court at Inverness; in which depositions, it was alleged, that they had perjured themselves. The pursuers, upon this, complained to Mr M'Gregor, factor of Sir James Grant, and he wrote to the defender upon the subject. In answer Mr Grant said, that he, 'heard them (the pursuers) charged in face of court with having perjured themselves; that Lord Kennet and Mr Nairne (the depute advocate) had passed by their evidence altogether; that, by the generality of people, they were censured and condemned in the severest terms; and that, while they were under such scandal, they could not be admitted,' &c. &c.

Mr M'Gregor then wrote to Mr Nairne, who, in answer, said, he 'had no impression that the pursuers were guilty of perjury, nor could they appear in that light to Lord Kennet, otherwise he would have committed them to prison; and that it would be exceedingly unjust if every slight discrepancy of witnesses were to be considered as perjury, or made the ground of ecclesiastical censure,' &c. &c.

This answer of Mr Nairne's was transmitted to the defender Mr Grant, and produced a second letter to Mr M'Gregor, in which he, in general, adhered to his former one, and particularly, alleged, that 'there was a *mala fama* universally against the pursuers as to this matter; and that their characters could