

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-

nating their ministers; which, in the first instance, is vested in the heritors and elders.

A vacancy having happened, those of Calder split into two parties, each contending that it composed a legal majority of electors.

An action of declarator having been instituted by one of the parties against the other, for ascertaining their legal qualifications; it was

Objected, That such action was incompetent before a civil court. For the statute ordains, that upon the heritors and elders naming and proposing to the congregation a person as their minister, "to be approved or disapproved by them; if they disapprove, the disapprovers shall give in their reasons, to the effect the affair may be cognosced upon by the presbytery of the bounds, at whose judgment, and by whose determination, the calling and entry of a particular minister is to be ordered and concluded. And thus it appears, that every point in dispute among the collective body of heritors and elders, is subjected to the exclusive determination of the church-courts.

Answered, The objection has arisen from inattention to the distinction between matters of a spiritual nature, which belong to the ecclesiastical judicatories, and those which, being patrimonial, fall under the jurisdiction of civil courts. Among these last, rights of patronage have always been reckoned, as comprehending the disposal of the benefice or stipend. The church-courts indeed may have the exclusive cognizance of the pastoral or spiritual relation, but the temporal benefice is placed under the controul of the civil power; in-somuch, that in the case of the parish of Lanark, * a person, though invested with the ministerial office, was, by this Court, denied the enjoyment of the stipend.

Nor is the case of a single patron different from that in which, by the statute in question, the power of nomination is conferred on a plurality; for the circumstance of a right being vested in an individual, or in a collective body, does not vary its nature, 16th June 1772, Logan *contra* Snodgrass, No 95. p. 7374.

The LORD ORDINARY reported the cause upon informations.

The Court found the action competent.

Reporter, *Lord Justice Clerk.* Act. *Jo. Millar, junior.* Alt. *Muir.* Clerk, *Home.*
S. *Fol. Dic. v. 3. p. 347.* *Fac. Col. No 194. p. 404.*

1793. November 26. MICHAEL McCULLOCH *against* WILLIAM ALLAN.

WILLIAM ALLAN having been appointed schoolmaster of the parish of Bothwell, by a majority of the heritors, the presbytery of the bounds found him qualified for the office.

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ters under
act 1690,
competent in
the civil
courts.

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Found com-
petent to the
Court of Ses-
sion, and not
to the supe-