

## PART II.

### SCHOOLS AFTER THE REFORMATION.

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#### CHAPTER I.—THE CHURCH IN RELATION TO SCHOOLS.

- § 1. SCHEME OF EDUCATION PROPOSED BY THE REFORMERS.—§ 2. PLANTATION OF SCHOOLS.—§ 3. PROVISION FOR SCHOOLMASTERS.—§ 4. JURISDICTION OF THE CHURCH ; ACTS OF PARLIAMENT ; ACTS OF GENERAL ASSEMBLY.—§ 5. JURISDICTION EXERCISED.—§ 6. JURISDICTION RESISTED.

§ 1. WE have already seen the part taken by the Old Church in promoting education,<sup>1</sup> including the higher education, believing she was erecting thereby a strong bulwark in defence of the faith. The Reformed Church encouraged education—at least, general education—more zealously than her predecessor, not again so much for its own sake, the blessed sake of diffusing knowledge among the people, as for establishing the ‘true religion.’ Evidence enough is preserved to enable us to form some estimate of the part taken by the Protestant Church in encouraging and superintending burgh schools.

About the middle of the sixteenth century, the great reformer, John Knox, ‘the most Scottish of the Scots,’ proposed a plan of education so far in advance of his times, that we are *now* only attaining towards the high standard at which he and his brethren at that time aimed. In the

<sup>1</sup> *Supra*, p. 72, § 27.

year 1556 Knox urged that school and colleges should be established for instructing the youth in the 'tongues and human sciences,' because otherwise they 'cannot so well profit in knowledge;'<sup>1</sup> and in 1559 he pleads that schools should be established in all cities and chief towns.<sup>2</sup> In the 'First Book of Discipline,' of which a large part is devoted to the subject of education, the magistrates are requested to be most careful for the virtuous education of youth; and it is urged that each kirk should have a school connected with it, in which grammar and Latin should be taught;<sup>3</sup> further, that in every notable town a college—what we call a higher school—ought to be erected, in which the arts, logic, rhetoric, and the tongues should be read by sufficient masters, for whom, as well as for the poor scholars who cannot support themselves at letters, provision must be made; it is also proposed that the great schools or universities should be replenished with those who have aptness for learning; that no parent of whatever condition may 'use his children at his own phantasy,' especially in the days of their youth, but must bring them up in learning and virtue; that the rich shall be compelled to educate their sons at their own expense, but the children of the poor shall be supported at the charge of the church, the sons of rich and poor alike, if they have aptness for learning, continuing at the schools until the commonwealth have profit of them; that a certain time be allotted to instruction in the catechism, grammar, arts, philosophy, and tongues, and a certain time to that study in which the scholars intend chiefly to labour; and that at the expiry of the course the children must proceed to further knowledge to be acquired at the universities, or be sent to a handicraft, or some other profitable exercise.<sup>4</sup>

This scheme, drawn up by John Knox, with the probable assistance of the learned Mr John Wynram sub-prior of St Andrews, and Mr John Douglas provost of the New College, separates the parish from the burgh or higher schools, and

<sup>1</sup> Works of Knox, v., 520 (Laing's ed.).  
Ibid., v., 520.

<sup>2</sup> Ibid., 520.

<sup>4</sup> Ibid., ii., 209-212.

establishes grades of seminaries for conducting the scholar from the primary through the secondary schools to the universities. It will also be observed that the plan provides for the moral, intellectual, and technical training of the youth, places within the reach of the poorest child in the community, if he have 'engine,' the blessings of a liberal education, and makes school attendance compulsory. If Parliament had been liberal and patriotic enough to have seconded at that time the endeavours of the church to plant, no country in the world, as Principal Lee remarks,<sup>1</sup> would have been so well supplied as Scotland with the means of elementary and higher education.<sup>2</sup>

§ 2. Though no legislative enactment followed on this national scheme of education, it cannot be believed that the suggestions and advocacy of Knox and other energetic Reformers failed to produce beneficent results. The church continued the good work of diffusing the principles of useful knowledge, and, indeed, of the Three Estates of the realm, the clergy alone, for a long time after the Reformation, appeared to take any interest in this great subject; and it is not true, as has been alleged, that the Reformation in Scotland extinguished learning; a few extracts will show the earnestness with which the church sought to plant primary and secondary schools everywhere, and maintain them from the ecclesiastical revenues to which they had at least some right.

In 1563 and again in 1571, the General Assembly granted commissions for planting schools in Moray, Banff, Inverness, Ross, and the counties adjacent;<sup>3</sup> and in the year first named, the Assembly desired that 'some order be taken for the sustentation of poor scholars.'<sup>4</sup> In 1574, the whole kirk, with one voice, appointed certain loved brethren to visit schools in Caithness and Sutherland, planting in these bounds

<sup>1</sup> History of Church of Scotland, i., 200.

<sup>2</sup> No wonder that educationists have called the outline of this system a perfect one; according to Dr M'Crie, it contemplated the revival of the system adopted by some of the ancient republics, in which the youth were regarded as the property of the public rather than of their parents: Life of Knox, ii., 10.

<sup>3</sup> Booke of the Universall Kirke, pp. 34, 239.

<sup>4</sup> Ibid., 34.

masters, readers, and other members requisite for a 'perfectly reformed kirk,' and suspending such as they shall find unworthy of their office.<sup>1</sup> The church continued in advance of town councils and parliaments in striving to establish a higher class of schools than already existed in burghs. Thus, at a general visitation made by the kirk between 1611 and 1613, the visitors, being dissatisfied with the school at Burntisland, in which reading and writing only were taught, ordered the town council to establish a grammar school. The records show that the council were somewhat slow to follow out this order, and it was only upon a threat of legal proceedings that steps were taken to purchase ground and build a school-house, with residences for the master and doctor.<sup>2</sup> In 1641 the General Assembly overtured Parliament to erect and maintain grammar schools in all burghs and other considerable places,<sup>3</sup> on the ground that the 'good estate of the kirk and commonwealth mainly depended on the flourishing of learning.'

§ 3. It is impossible to regard without admiration the struggle made by the church to retain or recover for the use of schools some part at least of the pious donations made before the Reformation; and perhaps there is not a more painful page in our annals than that which records her complete failure in making the avaricious barons disgorge for the purposes of education even a fraction of the patrimony of the church, which they with impious hands appropriated. The following gleanings from the records of the church may suffice to show the protestation of the church against the secularisation of church property converted by the commendators into temporalities, and divided by the bishops among their friends and descendants, legitimate and otherwise.

In 1562 the Assembly urged that schools in burghs should be maintained out of the annual rents of 'sources hitherto devoted to idolatry.'<sup>4</sup> In 1565 the church prays Queen

<sup>1</sup> Booke of the Universall Kirke, 311.

<sup>2</sup> Report on Burgh Schools, ii., 95.     <sup>3</sup> Acts of Parliament, 1641, v., 646.

<sup>4</sup> Booke of the Universall Kirke, p. 17.

Mary to apply the emoluments of friars, annual rents, altar-ages, and obits of priests, to schools in towns and other places;<sup>1</sup> and in 1568, a petition to the regent prays that the surplus of benefices may be applied to schools, 'according to the will of God.'<sup>2</sup> In 1572 the kirk requests the regent and council to 'reform the nobility in the urangous vsing of the patrimony of the kirk to the great hurt of scullis;'<sup>3</sup> and in 1575 the kirk again implores the regent to provide for schools and for men of 'good engine,' that they may visit other countries and universities for acquiring more learning.<sup>4</sup> Among the 'grievs' of the kirk presented to the king in 1587, there is one to the effect that the youth are not sufficiently instructed in the knowledge necessary 'to come to the true meaning of the will of God.' 'How shall the youth be so trained up,' it is asked, 'or qualified men take charge of them in schools, so long as the patrimony of the kirk is so rugged' to profane persons, and erected into temporal lordships? For remedying this great evil, the church proposes that the Thirds be reduced to their first integrity; that no surplus be made until schools be sufficiently 'staked;' and that 'idle bellies' be deposed from benefices.<sup>5</sup> In 1601, the decay of schools caused by lack of provision for maintaining qualified schoolmasters, is assigned by the kirk, as a cause of defection from the true religion.<sup>6</sup>

The proper sources for supporting schools having entirely failed, the General Assembly in 1595 ordains every presbytery to deal with the magistrates for augmenting the stipends of masters of grammar schools;<sup>7</sup> and in 1641 the church prays Parliament to provide other means, so that poor children who are of 'good engine' may be educated.<sup>8</sup> In 1642 the Assembly overtures Parliament to 'hold hand' to grammar

<sup>1</sup> Booke of the Universall Kirke, 60.

<sup>2</sup> *Ibid.*, 127.

<sup>3</sup> *Ibid.*, 253.

<sup>4</sup> *Ibid.*, 339.

<sup>5</sup> *Ibid.*, 723.

<sup>6</sup> *Ibid.*, 965. For particular instances of the dilapidation of scholastic benefices, see Church Lands, as one of the sources from which the teacher's salary was derived.

<sup>7</sup> *Ibid.*, 856.

<sup>8</sup> Acts of Parliament, v., 646.

schools in burghs and other considerable places;<sup>1</sup> and in 1649 the kirk again supplicates Parliament to provide that teachers in burghs and landward schools receive what was granted to them before the establishing of the directory.<sup>2</sup>

Whilst thus appealing to the State and to the burghs on behalf of schools, the church herself did not fail to contribute liberally from her poor exchequer towards the sustentation of the ill-paid master and the free education of poor scholars. The ecclesiastical records abound with acts of charity like the following:

In 1641 the 'doctor to the English bairnis' in the grammar school of Stirling had, we learn, received from the session of the burgh £10 yearly during the last thirteen years in respect he was burdened with 'sume puir schollares';<sup>3</sup> in 1647 the kirk session of Dunfermline disburse 13s. 4d. for buying a 'book to John Anderson, a poor scholar';<sup>4</sup> in 1650, the same session pay the fees and books of poor scholars during the last quarter;<sup>5</sup> in 1658, it being represented to the kirk session of Aberdeen that James Duncan, schoolmaster, has a number of poor town bairns in his school, for whose learning he receives no payment, the collector is ordained to grant him yearly £20 Scots for teaching the said children;<sup>6</sup> in 1669, the kirk session of Crail, for the encouragement of an assistant to the schoolmaster of the burgh, pay him yearly £10 Scots out of the session box;<sup>7</sup> in 1671 the same session give to the schoolmaster of the burgh £10 for teaching poor boys during one year.<sup>8</sup> We read in the records of the

<sup>1</sup> Acts of Assembly.

<sup>2</sup> Ibid.

<sup>3</sup> Kirk Session Records of Stirling.

<sup>4</sup> Kirk Session Records of Dunfermline.

<sup>5</sup> Ibid. Cf. also Minutes of Session dated 14th March 1671, 1st May and 25th June 1672, and 23d December 1686. In 1685 the moderator accounted for £8, 8s., granted in charity to the poor by my Lord Drummond and the rest of the nobles who are scholars. This entry shows that the grammar school had been attended by children of nobility.

<sup>6</sup> Kirk Session Records of Aberdeen.

<sup>7</sup> Kirk Session Records of Crail.

<sup>8</sup> Ibid.

burgh on 26th December 1818 that the session had for a long time been at the expense of educating a certain number of poor scholars.<sup>1</sup> On 23d September 1761, the English schoolmaster of St Andrews obliges himself to teach the poor scholars, as mentioned in the acts of the kirk session.<sup>2</sup>

§ 4. It is improbable that a church which took so deep an interest in the welfare of the schools had no voice in their management. That the law vested in the church a right of superintendence over parish schools has never been doubted; but it has been much debated whether she had any control over public schools in burghs subsequent to the Reformation. Prior to that event, the church exercised superintendence to some extent over all schools; and it would appear that the Reformed Church continued to exercise part at least of the authority previously used by the ancient church. The question of interest here is, Had the church any jurisdiction over burgh schools? The Act of Parliament, 1567, c. 11, provides that in all schools to burgh and landward, no one may instruct the youth but such as shall be tried by the superintendent or visitor of the kirk.<sup>3</sup> Act 1584, c. 2, requires masters of schools and colleges to conform with all humility to the acts commanding obedience to the bishops or commissioners appointed to have spiritual jurisdiction in the diocese, under pain of deprivation.<sup>4</sup> Act 1662, c. 13, forbids any one to teach a public school or be pedagogue to the children of persons of quality, without a licence of the ordinary of the diocese.<sup>5</sup> Act 1693, c. 38, declares that all schoolmasters shall be liable to the trial, judgment, and censure of the presbyteries for their sufficiency, qualification, and deportment.<sup>6</sup> Act 1707, c. 6, incorporated in the Treaty of Union, provides that no master shall bear office in any school without submitting to the discipline of the Established Church,

<sup>1</sup> Burgh Records of Crail.

<sup>2</sup> Burgh Records of St Andrews.

<sup>3</sup> Acts of Parliament, iii., 24, 38; ratified 1581, c. 1, iii., 210.

<sup>4</sup> Ibid., 1584, c. 2, iii., 347.

<sup>5</sup> Ibid., 1662, c. 13, vii., 379.

<sup>6</sup> Ibid., 1693, c. 38, ix., 303.

before the presbyteries, by whatever gift, presentation, or provision he may be nominated.<sup>1</sup>

The church's own acts are more explicit with regard to her jurisdiction and control over masters, scholars, and schools. In 1565 and again in 1567, the church passed articles forbidding any one to have charge of schools, or to instruct publicly or privately, who shall not be tried and admitted by the superintendents or visitors.<sup>2</sup> In 1581 the synodal assembly of Lothian requested the Assembly to 'sute that the trial and admission of all masters of schools be joined to the presbytery.'<sup>3</sup> In 1645 the Assembly enact that no schoolmaster be admitted to teach a grammar school in burghs without examination by, and approval of, the presbytery.<sup>4</sup> The Assembly in 1700 ordain the presbyteries to take care that every schoolmaster shall sign the Confession of Faith; for 'negligence, error, or immorality' the presbytery shall apply to the civil magistrate in burghs, or to a commission of Parliament.<sup>5</sup> In 1706 the Assembly recommended presbyteries to visit all public grammar schools within their bounds,<sup>6</sup> and at later dates enjoined presbyteries to call before them all teachers, whether in parochial or other schools, and to take trial of their sufficiency and qualification;<sup>7</sup> in short, the Assembly claimed that the church had always been in the constant exercise of superintending all schools, and taking cognisance of the sufficiency and qualifications of teachers.<sup>8</sup>

The supervision exercised over tutors and scholars seeking higher education than that available at home shows that the jurisdiction of the church was not limited to public schools, but extended to the private acts of the inhabitants, and to

<sup>1</sup> Acts of Parliament, 1707, c. 6, xi., 403, 414.

<sup>2</sup> Booke of the Universall Kirke, pp. 60, 108.

<sup>3</sup> Ibid., 535. The Assembly agree to propone this matter to Parliament: Ibid., 537.

<sup>4</sup> Acts of General Assembly, 1645, c. 7.

<sup>5</sup> Ibid., 1700, c. 10.

<sup>6</sup> Ibid., 1706, c. 13.

<sup>7</sup> Ibid., 1799, c. 12; 1800, c. 11; 1801, c. 8; 1802, c. 6; 1808, c. 9.

<sup>8</sup> Cf. also Acts of Assembly, passed in 1638, 1642, 1649, and 1699.



private teaching. Of this character is an Act of Assembly passed in 1578, by which parents who send their children to be educated over seas where papistry is taught, are charged to call them back, under pain of excommunication.<sup>1</sup> In 1579 the kirk craves the king to make a general prohibition against sending children to Paris, or any other town professing papistry, to the end that the youth be not brought up in idolatry contrary to Christ's religion.<sup>2</sup> In 1601 the Assembly crave of the king and council that the religion of pedagogues who accompany noblemen's sons abroad be approved by a testimonial of the presbytery;<sup>3</sup> and in the following year the king declared in face of the whole Assembly that he would observe the tenor of this prayer,<sup>4</sup> which, however, was not at once embodied in an Act of Parliament; for the kirk, in 1606, asked that the Acts of the General Assembly as to noblemen's sons passing out of the country should be passed by statute in the next Parliament;<sup>5</sup> but it was not till 1609 that Parliament ordained persons sending their sons abroad for education, to get a testimonial from the bishop that the pedagogues who accompany them are of good religion.<sup>6</sup> In 1640, an Act ordains that presbyteries shall examine the pedagogues of sons of noblemen going abroad, and give them testimonials.<sup>7</sup>

In illustration of this interesting subject, we give only two examples. In 1604, at the request of the provincial assembly of Aberdeen, the presbytery examined Mr Thomas Gordon and Mr John Sinclair, pedagogues of my Lord Gordon and the Master of Caithness, as to their religion and how they are educating their pupils. The pedagogues profess, in presence of the

<sup>1</sup> Booke of the Universall Kirke, p. 435.

<sup>2</sup> *Ibid.*, 437. In compliance with this request, an Act of Parliament was passed in the same year, requiring persons going abroad for their education to obtain the king's licence, giving security for their constancy to the true religion: 1579, c. 9, iii., 138.

<sup>3</sup> *Ibid.*, 967.

<sup>4</sup> *Ibid.*, 990.

<sup>5</sup> *Ibid.*, 1025.

<sup>6</sup> Acts of Parliament, 1609, c. 3, 4, iv., 406, 428; 1647, c. 411, vi., i, 795; 1661, c. 8, vii., 26.

<sup>7</sup> *Ibid.*, 1640, v., 278.

presbytery, the established religion, and testify on their conscience that they have not attended the service of any other church in or out of Scotland; but Mr Sinclair, having been in France for two years, and unable to 'half the sight of the king except at the messe, went there, but gave no reverence to the messe, which he abhors.'<sup>1</sup> In 1663 the bishop of Aberdeen, with consent of the synod, ordains that in respect persons of quality have sent their children beyond seas to be educated in popish universities, a letter should be directed to the archbishop of St Andrews, praying his grace to 'interpose himself' with the king, in order that the 'spreading leprosy of poperie' may be restrained, that a solid course may be adopted for bringing up the youth in the Protestant religion—especially the young Marquis of Huntly—and that the children already sent abroad be 'speedilie reduced.'<sup>2</sup>

§ 5. The superintendence exercised by the kirk at this time appears to have been generally acquiesced in by the burghs, and a few cases may be quoted in proof of this. The schoolmaster of Stirling having, in 1563, been found guilty of fornication, the kirk ordains him to present his suit in the next Assembly, and abstain from teaching until the church of Stirling makes request to the superintendent for him.<sup>3</sup> In 1570 the council of Peebles appoint a teacher of the town bairns 'by the admission of the kirk.'<sup>4</sup> The council of Haddington, in 1576, undertake to appoint a schoolmaster whose life, conversation, and doctrine, 'tryit be the kirk and conforme to the ordour,' shall be unsuspected of any kind of idolatry.<sup>5</sup> In 1582 the council of Glasgow, 'by advice of the masters of the university, and others having power by Act of Parliament,' chose Mr John Blackburne to be master of the grammar school;<sup>6</sup> in 1615 the magistrates request the aid of the presbytery in choosing a successor to Mr Blackburne;<sup>7</sup> in 1685 the

<sup>1</sup> Presbytery Records of Aberdeen.

<sup>2</sup> Synod Records of Aberdeen.

<sup>3</sup> Booke of the Universall Kirke, p. 44.    <sup>4</sup> Burgh Records of Peebles.

<sup>6</sup> Burgh Records of Haddington.

<sup>6</sup> Burgh Records of Glasgow.

<sup>7</sup> Report on Burgh Schools, ii., 304.

masters of the college and the ministers of the city prepared a course of study for the grammar school;<sup>1</sup> and the presbytery of Glasgow ordained the regents in the college to try the Irish scholars in the grammar school touching the heads of religion.<sup>2</sup>

An act of Synod having in 1594 given the presbytery of Jedburgh commission to try a schoolmaster of Dunbar as to whether he could teach a grammar school, the brethren ordain him to compear on a certain day for his trial;<sup>3</sup> in 1596, the same presbytery ordain the whole schoolmasters within their bounds to compear before them, to show how they instruct the youth.<sup>4</sup> In 1604, the council of Paisley remitted a candidate for the office of master of the grammar school to the minister of the burgh and presbytery of Paisley, to take trial of his doctrine and abilities to teach;<sup>5</sup> in 1626, Mr William Hutcheson was appointed, after having been found qualified by the presbytery.<sup>6</sup> In 1608 the schoolmaster of Inverurie is appointed to teach the school, 'only on conditions to be intimated to him by the presbytery, bailies, and council.'<sup>7</sup>

In 1612, the archbishop of St Andrews, for himself and his successors, grants to the council of the city the election of 'ane master of the grammar school quhilk pertained of old to the archdeacon of St Andrews, and now to the archbishop, in respect of the annexation of the archdeaconry to the archbishopric,' but reserves to himself and to his successors jurisdiction in taking trial of the teachers' qualifications.<sup>8</sup> In 1620, the council of Jedburgh, with the advice of the bishop of Caithness, admitted a schoolmaster of the burgh for trial; if acceptable to the magistrates after being examined by the presbytery, he shall receive the appointment;<sup>9</sup> his successor was appointed in 1624, with the advice of the bishop

<sup>1</sup> The Original in the archives of Glasgow.

<sup>2</sup> Cleland's Annals of Glasgow, ii., 156.

<sup>3</sup> Presbytery Records of Haddington.

<sup>4</sup> Ibid.

<sup>5</sup> Burgh Records of Paisley.

<sup>6</sup> Ibid.

<sup>7</sup> Burgh Records of Inverurie; partly, however, landward.

<sup>8</sup> Acts of Parliament, 1612, c. 62, iv., 517.

<sup>9</sup> Burgh Records of Jedburgh.

of Caithness, and in respect of a certificate of competency granted to him by the presbytery of Jedburgh;<sup>1</sup> in 1649, in presence of the council, compeared Mr David Skeoch, who being found qualified and approved by the presbytery for the charge of the grammar school, and being remitted by that body to the magistrates and council, the latter did 'accord and agree' with him.<sup>2</sup> The town council of Cupar having, in 1628, elected a master of the grammar school, remitted him to the presbytery for trial in his 'religion, conversation, erudition, and fitness';<sup>3</sup> and in 1669, the doctor of the grammar school was appointed on the report of the minister.<sup>4</sup>

In April 1646, the town council of Paisley appointed a call to be given to Mr John Will, student in Glasgow, to be schoolmaster in Paisley, and 'the call to be drawn up and read before the session on Tuesday next';<sup>5</sup> on 21st May, we read in the records of the presbytery, he compeared before the presbytery to be approven by them; and the presbytery approved of him in respect of his known qualification.<sup>6</sup> On 21st October 1647, the same council resolve to admit a 'doctor offered to the schooll neamed John Tannahill, gif the minister find him qualified for the place.'<sup>7</sup> The town council of Perth, having nominated a master of the grammar school, desire him to present his admission to the presbytery, that they may approve of his appointment, 'conform to the order.'<sup>8</sup> In 1656, after debate and protest, the council of Montrose report to the minister that a doctor of the grammar school had been found qualified in his literature.<sup>9</sup> The town council of Cupar having, in 1670, appointed a schoolmaster, desire the presence of the ministers of the burgh at the council for their approbation of his qualification.<sup>10</sup> In

<sup>1</sup> Burgh Records of Jedburgh.

<sup>2</sup> Ibid: its constitution was changed in 1656.

<sup>3</sup> Burgh Records of Cupar.

<sup>4</sup> Ibid.

<sup>5</sup> Burgh Records of Paisley.

<sup>6</sup> Presbytery Records of Paisley.

<sup>7</sup> Ibid.

<sup>8</sup> Burgh Records of Perth.

<sup>9</sup> Burgh Records of Montrose.

<sup>10</sup> Burgh Records of Cupar.

1675, a master of the grammar school of Ayr, who did not favour the 'Indulgence,' having been appointed, and the magistrates being informed that the archbishop of Glasgow is displeased at the nomination, they take steps to deal with his 'grace for his condescendence to take away the misinformation anent the town.' The archbishop would not 'condescend' that the schoolmaster be continued in his office unless the lords of the Privy Council 'condescend.'<sup>1</sup> On the complaint of the archbishop of Glasgow against a doctor of the grammar school of the burgh, the town council, in 1688, removed him from his office.<sup>2</sup> The council of Stirling having appointed a Latin doctor in 1695, required him to procure a certificate from the 'commission for qualifying and examining schoolmasters to be produced to the united presbyteries of Stirling and Dunblane.'<sup>3</sup> In 1722, there was read before this council extract of an act of the presbytery approving the appointment of an English teacher for the grammar school; and this being considered by the council, they instal him.<sup>4</sup> Mr William Stewart, master of the grammar school of Paisley, having become the subject of church censure and discipline in 1689, was dismissed by the council at the instance of the church.<sup>5</sup> On a complaint from the united presbyteries of Dundee and Forfar against a master of the grammar school of Dundee for schism, the town council, in 1716, deposed him.<sup>6</sup>

The presbytery of Fordyce, on 14th August 1716, considering that by Acts of Parliament schoolmasters are obliged to subscribe the Confession of Faith and Formula, and understanding that Mr Alexander Davidson, master of the grammar school at Banff, has not fulfilled what the law requires, albeit he has taught that grammar school for a considerable time past, appoint him to be cited;<sup>7</sup> but after having been called 'three times at the most patent door of the church,' the heretic

<sup>1</sup> Burgh Records of Ayr. He was removed.

<sup>2</sup> Burgh Records of Glasgow.

<sup>3</sup> Burgh Records of Stirling.

<sup>4</sup> Ibid.

<sup>5</sup> Burgh Records of Paisley.

<sup>6</sup> Burgh Records of Dundee.

<sup>7</sup> Presbytery Records of Fordyce.

failed to compare; on 4th December, the presbytery, finding that though they have used all 'civil and discreet methods,' he still continues contumacious, depose him, and appoint Mr Gordon to intimate the sentence from the pulpit, earnestly entreating the magistrates to use their utmost diligence towards the speedy planting of a qualified schoolmaster conform to law;<sup>1</sup> on 15th January 1717, the council, considering that the presbytery have deposed their schoolmaster, declare, 'in compliance with secklyke,' the place of the grammar schoolmaster vacant, but request Mr Davidson to 'teach the scholars untill ane settled schoolmaster be had thairto.'<sup>2</sup>

The presbytery of the Chanonry of Ross, understanding in 1743 that a new schoolmaster had come to Fortrose, ordain him to appear at the next diet to undergo trial; he writes that his business does not allow him to attend at that time; whereupon the presbytery declare that they are informed that he has been guilty of several immoralities and gross errors. A 'charge' is formally drawn up accusing him of controverting the Confession of Faith, using profane language, ridiculing texts of Scripture and the habits of pious individuals, whose mode and words in prayer he imitated, etc. The libel having been served on the accused, he appeared, and being asked if he would sign the Confession of Faith, said he was ready to 'subscribe truth wherever he saw it; but in regard he was called, settled, and paid as schoolmaster of Fortrose by the magistrates and town council of Chanonry, which was not subject to the presbytery, he declined the jurisdiction of the court, and protested against their proceedings.' The presbytery threatened to depose him, but out of concern for the town of Chanonry, delayed sentence till the magistrates provided another schoolmaster<sup>3</sup>—a more liberal course than that followed by their brethren of Fordyce. In 1771, the presbytery of Kirkcaldy removed James Hunter, teacher of the burgh school of Kinghorn,

<sup>1</sup> Presbytery Records of Fordyce.

<sup>2</sup> Burgh Records of Banff.

<sup>3</sup> Presbytery Records of the Chanonry.

from his office 'on account of gross immoralities confessed by himself.'<sup>1</sup>

§ 6. The preceding extracts refer to cases in which the councils acknowledged the authority of the courts of the kirk or asked for their advice. The burghs did not, however, uniformly acquiesce in the interference of the church with the appointment of masters or with the management of schools under their patronage. Thus in 1631 the ministers of Perth complain to the presbytery that the burgh 'intend as patrons to place a schoolmaster without their trial in conversation, literature, and profession, whereby great prejudice might come to the seminary and to religion;' and in 1632 the ministers again complain that the magistrates had 'nominated a schoolmaster without acknowledging them, contrary to the custom of this burgh, and Acts of the General Assembly and Parliament, committing the trial of such men, their religion and qualification, to the church.' The council yielded the point in dispute, and 'the ministers of Perth reported that on Monday last, the master of the grammar school acknowledged his oversight in entering to the said school without being tried by them, and in presence of the bishop of Dunkeld and diverse others of the council of the burgh, offered himself to trial if it were their pleasure.' With this offer they rested content, and thereupon went to the grammar school accompanied by the bishop as moderator and divers of the council; and after admonishing the master of his duty in instructing the bairns in literature and manners, and the bairns' duty towards him as their master, did accept him by the hand.'<sup>2</sup> In 1711 the town council of Dundee, considering that the presbytery have appointed a visitation of the grammar school to be held on 1st August, without acquainting the magistrates, 'contrar to the constant custom of the place, and ane incroachment on the priviledges of the

<sup>1</sup> Burgh Records of Kinghorn. For other instances of teachers having been deposed for nonconformity, see *infra* under Removal of Masters.

<sup>2</sup> Presbytery Records of Perth.

town as patrons of the school, appoint the school to be visited by the magistrates on 1st September next, and the ministers of the place to be acquainted therewith.<sup>1</sup>

The collision of jurisdiction in this case led the rival parties—the presbytery and council, to vindicate their respective rights by appointing examinations to be held at such times as were convenient for each body concerned; but in no instance in which a burgh resisted positively the interference of the church in the affairs of the school was it successful. The illustrations of this point are of recent date; thus in 1817 we find the General Assembly commending the presbytery of Brechin for the firmness with which they had asserted their unquestionable right to examine schools of every description;<sup>2</sup> and in 1836, 1837, and 1838, similar cases occurred;<sup>3</sup> but the leading case on the subject is that of the presbytery of Elgin against the magistrates and town council there, which settled the question whether the right of superintendence over parochial schools vested by law in the presbytery extended also to burgh schools. In May 1844 the presbytery intimated to the town council that they had appointed the annual examination of the academy on 26th June; the council, while approving the time fixed, resolve that in future they alone shall appoint the day of examination; and on 16th June 1845, the town clerk intimated to the presbytery that the council had fixed the day, and invited the presbytery to attend. To this intimation the clerk of presbytery replied that according to the established practice, and in the exercise of their vested rights, the presbytery had resolved to examine the academy on different days—which that body accordingly did; on 6th May 1846 the clerk of presbytery issued the usual notices as to the examination, with the protest that their examining the school did not imply that they recognised as rector one who was a Free Churchman, not in communion with their own church.

On 16th June 1846 the presbytery having met to con-

<sup>1</sup> Burgh Records of Dundee.

<sup>2</sup> Acts of Assembly.

<sup>3</sup> Ibid.



sider what should be done with reference to an act of the town council fixing 22d and 23d June for the examination, resolved to examine the academy on 24th June, as previously appointed; accordingly, on that date they convened at the academy, but found the doors shut up. In these circumstances, they raised a summons of declarator against the council, concluding that the Elgin academy was a public school, and as such fell within the jurisdiction of the pursuers, who, in virtue of certain Acts of Parliament,<sup>1</sup> and of the common law, were entitled, they contended, to exercise over the masters of the school a right of trial with a view to induction, and a right of removal from office. They also maintained that the schoolmasters were bound before admission to subscribe, in presence of the presbytery, the Confession of Faith, to conform to the worship of the Established Church, and to submit to its discipline, as required by Act 1706, c. 6, and other laws applicable to public schools. The defenders resisted the conclusion, contending that the claims of the pursuers rested upon a series of old statutes which applied to parochial schools only; but even if it were held that they extended to burgh schools also, they have received a construction from the practice of the country, opposite to that now sought to be put on them by the pursuers, the presbytery.<sup>2</sup> The Court of Session held, in 1861, that the academy, which was provided by public subscription, and included the old grammar school and a sang school (the latter endowed out of the hospital of Maison Dieu, and in course of time becoming the English school), formed a public high school—the old constitution remaining the same—and as such was subject to the control of the presbytery.<sup>3</sup> The church naturally enough rejoiced at a decision which extended, or rather incontestably established, her jurisdiction over all schools—placing the burgh schools, like the parish schools, under her superintendence; and in the same year the

<sup>1</sup> *Supra*, p. 82, § 4.

<sup>2</sup> Session Papers, No. 541, pp. 63, 64. It would appear from the foregoing extracts that the 'practice of the country' was otherwise.

<sup>3</sup> Dunlop's Cases, xxiii., 287 (16th January 1861).

Assembly strongly recommended the claim of the presbytery of Elgin to pecuniary help for having vindicated the right of the church to examine burgh schools.<sup>1</sup> The church did not long enjoy the victory she had won, for it was in consequence of this decision that Act 24 and 25 Vict., c. 107, was passed, which entirely severed the class of schools we are now dealing with from the church, by providing that no master of any burgh school shall be subject to the government or discipline of the Established Church, or to the trial, judgment, or censure of the presbytery for his sufficiency, qualifications, or deportment in his office.<sup>2</sup>

<sup>1</sup> Acts of Assembly.

<sup>2</sup> The example set by the presbytery of Elgin was followed by its neighbour of Forres, which did not claim a right of examining the burgh school at a different period from that fixed by the council until 1849, when they intimated that they would examine it on days fixed by themselves. The council protested that the presbytery had no right to examine or superintend the schools of the burgh, but under reservation of that protest offered no opposition. Accordingly the two bodies continued to examine the school—one examination taking place in March and the other in June, until recently, when the presbytery discontinued their examination, and attended on the day fixed by the council: Burgh Records of Forres.