STYLES OF WRITS,

AND

FORMS OF PROCEDURE,

IN THE

CHURCH COURTS OF SCOTLAND.

Revised, and adapted to the present state of the Law of the Church,

BY

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PREFACE.

THE Book of Styles was compiled under the superintendence of the Church Law Society, by a Committee of their number, and was published in the year 1838.

It is believed that it has served the purpose which its compilers had in view, and has been found most useful to Presbyteries and Session-Clerks, and to others either officially or otherwise interested in the business of the Church.

The original edition being exhausted, it appeared desirable that the book should be reprinted with those additions and alterations called for by the material changes which have taken place in many important points of Church-law since its publication.

As it was certain that this would not be done by its original compilers, in the altered situation in which most of them stood to the Church, the present Editor was induced to agree to do so, provided the consent of that body could be obtained.

On communicating with them through the medium of James Crawford, Esq., jun., their consent was given at once and in the most courteous manner, and the Editor desires thus publicly to express his acknowledgment of the handsome terms in which it was conveyed to him.

Of their labours he has most liberally availed himself, large portions of the work remaining in great measure as they stood in the original edition, at the same time the alterations he has made have necessarily been many and important.

The work of revision and alteration has been one of time and care, and he trusts that on the whole, the book may continue to be regarded as a safe and satisfactory guide for the procedure and forms of business in Church-courts. He can scarcely hope that some matters calling for revision may not have been overlooked, or that there may not be some points unnoticed, that it might have been desirable to introduce.

MANSE OF HADDINGTON,
15th May, 1850.

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STYLES OF PROCEDURE

IN THE

CHURCH COURTS OF SCOTLAND.

KIRK-SESSION.

The Kirk-Session is the lowest judicatory in the Church of Scotland, and is composed of the minister of the parish, together with a certain number of lay elders. It is the business of the session to exercise a general superintendence over the religious state of the parish, and the morals of the people; to settle the time for dispensing the ordinances of religion; to judge of the fitness of those who desire to partake of them; to exercise discipline on those accused or guilty of scandalous offences, and to grant certificates of character to parties removing from the parish.*

* "The elders being elected, must be admonished of their office, which is to assist the minister in all publicke affaires of the kirk; *to wit*, in determining and judging causes, in giving admonition to the licentious liver, in having respect to the manners and conversation of all men within their charge. For by the gravitie of the seniors, the light and unbridled life of the licentious must be corrected and bridled."—*First Book of Discipline*, chap. x., § 4.

The several duties of the ministers and elders are thus set forth in the Second Book of Discipline :—

With a view to the efficient discharge of these duties, it is common, especially in large parishes, to assign special districts to the several elders, with the state and condition of which they are expected to make themselves acquainted; and it is usual to meet together at stated times—not unfrequently on a Lord's day, after the conclusion of the service, that such information as may seem important may be communicated to the session, and that ordinary cases

"Unto the pastors apperteinis teaching of the word of God, in season and out of season, publicklie and privatelie, alwayes travelling to edifie and discharge his conscience, as God's word prescryves to him.

"Unto the pastors onlie apperteinis the administration of the sacramentis, in lyke manner as the administration of the word: for baith are appointit be God as meanes to teach us, the ane by the ear, and the uther be the eyes and uther senses, that be baith knawledge may be transferrit to the mynde.

"It apperteinis, be the same reason, to the pastors to pray for the people, and mainly for the flock committed to his charge, and to blesse them in the name of the Lord, who will not suffer the blessings of his faithfull servants to be frustrat.

"He aucht also to watch over the manners of his flock, that the better he may apply the doctrines to them in reprehending the dissolute persons, and exhorting the godlie to continue in the fear of the Lord.

"It apperteinis to the minister, after lawful proceiding be the elderschip, to pronounce the sentence of binding and lowsing upon any person, according unto the power of the keyes grantit unto the kirk.

"It belongs to him lykewyse, eftir lawfull proceiding in the matter be the elderschip, to solemnizate marriage betwixt them that are to be joynit therein; and to pronounce the blessing of the Lord upon them that enter in that holie band in the fear of God.

"And generallie all publick denunciations that are to be made in the kirk before the congregation, concerning the ecclesiasticall affaires, belong to the office of a minister; for he is a messenger and herauld betwix God and the people in all these affairs."—*Second Book of Discipline*, chap. iv., from § 6 to the end.—*Peterkin's Compendium, Part I.*, p. 116, 117.

"Their office (that of elders) is als weill severallie as conjunctlie, to watch diligently upon the flock committit to their charge, both publickly and privately, that na corruption of religion or manners enter therein.

"As the Pastors and Doctors sould be diligent in teaching and sawing the seid of the word, so the elders sould be cairfull in seeking the fruit of the same in the people.

"It apperteinis to them to assist the pastor in examination of them that cumis to the Lord's table: *Item*, in visiting the sick.

of discipline may be proceeded with. When the business brought before them is likely to occupy much time, or when of that miscellaneous kind to which we shall afterwards advert, it is more seemly to summon the session for one of the other days of the week. The session has its moderator, which the minister is *ex officio;* its clerk, who holds his appointment during pleasure, unless specially appointed *ad vitam aut culpam*, by whom a regular record

"They sould cause the actes of the Assemblies, als weill particular as generall, to be put in execution cairefullie.

"They sould be diligent in admonishing all men of their dewtie according to the rewl of the Evangell. Things that they cannot correct be privat admonitions, they sould bring to the assemblie of the elderschip.

"Their principall office is to hald assemblies with the pastors and doctors who ar also of thair number, for establishing of gude order, and execution of discipline. Unto the quhilks assemblies all persones ar subject that remain within their bounds."—*Second Book of Discipline*, chap. vi.—*Peterkin's Compendium, Part I.*, p. 118, 119.

Principal Hill, in his valuable work, entitled "View of the Constitution of the Church of Scotland," thus sets forth the respective duties of pastor and elder:—

"In teaching, in dispensing the sacraments, in presiding over public worship, and in those private functions by which he ministers to the comfort, the instruction, and the improvement of the people committed to his care, a pastor acts within his own parish according to his discretion; and for his discharge of all the duties of the pastoral office, he is accountable only to the presbytery from whom he received the charge of the parish. But in every thing which concerns what is called discipline—the exercise of that jurisdiction over the people with which the office-bearers of the Church are conceived to be invested—a Presbyterian minister is assisted by lay elders. They are laymen in this respect, that they have no right to teach or to dispense the sacraments; and on this account they form an office in the Presbyterian Church inferior in rank and power to that of pastors. They generally discharge the office which originally belonged to the deacons, of attending to the interests of the poor. But their peculiar business is expressed by the name ruling elder; for in every question of jurisdiction within the parish, they are the spiritual court, of which the minister is the officiating moderator; and in the presbytery, of which the pastors of all the parishes within its bounds are officiating members, lay elders sit as the representatives of the several sessions or consistories."—*Hill's View*, pp. 37, 38.

of its proceedings is kept; and its officer, who carries out its orders, and executes its summonses. The session is legally convened when summoned by the minister from the pulpit, or by personal citation to its members. The meetings are opened and closed with prayer. It is represented in the presbytery of the bounds by one of the elders, who is elected for six months; and his election must take place within two months of the meeting of the Synod within whose bounds the parish is.

QUALIFICATIONS AND MODE OF ELECTION OF ELDERS.

Intrusted with duties so important and responsible as those that devolve on the eldership, the Church has ever shown the greatest anxiety that her elders should be in all respects fitted for their charge, both by personal character and by connection with the parish over which they are to rule. The First Book of Discipline directs "that it shall be men of best knowledge in God's Word, and cleanest life—men faithfull and of most honest conversation that can be found in the Kirk, that should be nominat in election;" and in the "Short Summe of the Buik of Discipline" it is again said—"Men of the best knowledge, judgment, and conversation, sould be chosin for elderis and deaconis. . . . . Elderis and deaconis being judges of uther menis manners, man, with their household, live godlike, and be subject to the censure of the kirk."

The Second Book of Discipline, including them with other persons bearing ecclesiastical functions, says, with respect to all such, "The qualities and general requisits in all them who sould beir charge in the kirk, consist of soundness of religion and godliness of life, according as are sufficiently set forth in the word." In 1772, sess. 11, act ix., "The General Assembly do earnestly beseech, exhort, and require, elders and deacons to be faithful in

the discharge of their respective offices, tender and circumspect in their walk, and punctual in their attendance on ordinances, and strict in their observation of the Lord's day, and in regularly keeping up the worship of God in their families; and the General Assembly appoints the judicatures of the Church to take good heed that none be admitted to or continued in their offices but such as are qualified, and do behave themselves as above required; and appoints kirk-sessions, presbyteries, and synods, strictly and impartially, without respect of persons, to observe this and former acts of Assembly relative to office-bearers in the Church." Repeated references to this act, and to the necessity of attending to its provisions, occur in subsequent Assemblies.

The act x. 1816, sess. ult., bears reference to another most important requisite in addition to the character of an elder, namely, his connection with the parish in which he is ordained:—

Whereas irregularities have crept into the Church with respect to the ordination of elders, the General Assembly, with the consent of a majority of the presbyteries of this Church, did, and hereby do enact and ordain, "That hereafter, no person shall be set apart to the office of an elder, unless he hath attained the age of *twenty-one* years complete, and produce a certificate to that effect, to remain *in retentis*, and unless he is a communicant. That no person be ordained an elder who is not an inhabitant of the parish, or who does not reside therein at least six weeks annually, or who is not an heritor in that parish, liable to pay stipend and other parochial burdens, or who is not the apparent heir of an heritor of that description in the parish. That when any person who does not generally reside, but only occasionally, as aforesaid, shall be proposed to the kirk-session to be ordained an elder, there shall be produced a certificate under the hands of the minister and kirk-session of the parish where he generally resides, that

he is of unblemished character, and regular in giving attendance on the public ordinances of religion.

"And further, it is enacted, That if any elder be ordained in future, without being qualified as above, he shall not be held as entitled to any of the privileges of that office.

"But in any city or town where there are more congregations than one, that they shall be held as one parish, in as far as this act is concerned."

With respect to the election of elders, the First Book of Discipline enjoins, that the names of those nominate to be in election (not specifying by whom this nomination is to be made), must be publicly read to the whole kirk by the minister, giving advertisement that from them must be chosen elders and deacons: "If any of these nominate be noted with publick infamie, he ought to be repelled; for it is not seemly that the servant of corruption should have authoritie to judge in the kirk of God. If any man know others of better qualities within the kirk then these that be nominate, let them be put in election (with them) that the kirke may have the choice." After providing for an annual election, lest, of long continuance of such officers, men presume upon the liberty of the kirk, they conclude by saying: "How the votes and suffrages may be best received, so that every man may give his vote freely, every severall kirk may take such order as best seems [to] them."

The mode of procedure adopted in Edinburgh, and afterwards ratified by act of Assembly, as the "General Order" to be observed throughout the church, was as follows:*—"Of the principals of such as war known to be men of good conversation and honest fame in the privie church, war chosen eldaris and deaconis, to rule with the minister in the publick church: which burden they patiently sustened a zeir and more: And then because they could not, without neglecting their awin private houses, longer wait upon

* Dunlop's Confessions, vol. ii. p. 637.

the publict charge, they desired that they might be releaved, and utheris might be burdened in there roume, which was thought a petition reasonable of the whole church; and therefore it was granted unto them, that they shuld nominat and give up in election such personages as they in there consciences thoght most apte and abil to serve in that charge; providing that they shuld nominat double moe persones then were sufficient to serve in that charge, to the end that the whole congregation might have there fre vote in there election. And this ordour hath been ever observed since that tyme in the church of Edinburgh; that is, the old session, before there departing, nominates twentie-four in election for eldars, of whom twelve ar to be chosen; and two and thirtie for deacons, and of them sixtene to be elected; which persones ar publictlie proclaimed in the audience of the whole church, upon a sonday before noon, efter sermon, with admonition to the church, that if any man know any notorious cryme or cause, that might unable any of those persones to enter in such a vocation, that they should notifie the same the next *thurisday* to the session, or, if any knew any persones more able for that charge, they shuld notifie the same unto the said session, to the end that no man without the church shuld complein that he was spoiled of his libertie in electioun.

"The sonday following, in the end of the sermon before noon, the hole communicantes are commanded to be present at after noon to geve there votes, as they will answer before God, to such as they think most able to bear the charge of the church with the ministers. The votes of all being receaved, the scrolles ar delivered to any of the ministers, who keipeth the same secret from the sight of all men till the nixt thurisday, then in the session, he produces them that the votes may be counted, where the maniest votes, without respect of persone, hath the first place in the eldarschip, and so proceding till the number of twelf

be compleit: so that if a poor man excede the rich man in votes, he precedeth him in place; and is called the first, second, and thrid eldar, evin as the votes answereth. And this same method is observed in the election of the deaconis."

In the Second Book of Discipline the office of elder is declared to be perpetual, instead of being merely for a year, as under the First Book; but no special provision was made for their election.

By a subsequent act of Assembly, however, (April 1582, session 12), the order of election above quoted was approved. The act is as follows:—"Concerning ane general order of admission to the office of eldaris, referris it to the order usit at Edinburgh, quhilke we approve."

Under the system thus established, the acting session of a congregation for the time, was not necessarily composed of the whole elders, and particularly in towns, where a large number could easily be obtained, a new session was appointed yearly out of the whole body of the elders of the congregation. No provision, however, seems to have been made as to the rule by which the selection of elders to compose the session for the year should be made; and there is evidence that in Edinburgh this power was attempted to be usurped by the magistrates of the city. In Glasgow, also, a dispute arose in 1642, in consequence of which,* the General Assembly of that year (sess. 5) passed the following act:—"Anent the question moved to the assembly, concerning the election of kirk-sessions. The assembly ordaines the old session to elect the new session, both in burgh and land. And that if any place shall vaik the session chosen, by death or otherwise, the present session shall have the election of the person to fill the vacand roome."

For some time after this enactment, with this alteration,

* Baillie's Letters, vol. i. p. 345.

the session, where there was a large body of elders, continued to be chosen yearly, but ultimately it came to consist of all who held the office of elder; and in practice, the above-recited act of 1642 continued until a recent period to regulate the original admission to the office of elder, it being, however, understood that intimation of the choice be made to the people, and opportunity afforded them of bringing forward any objections to the parties thus proposed.

In the Assembly 1842, session 5, a very important change was made in the manner of electing elders. It was provided, that when a kirk-session should have motioned to add to their number, that intimation of that intention, and of the number required, should be made to the people, who should thereon be called on to give in lists containing names to the amount of one-half more than the number required; that from these, if satisfied of their fitness and qualifications, the session were to select the required number, or, if they saw reason for it, proceed to ordain the whole, the usual steps being followed out towards their ordination. The nomination was thus transferred to the people, and the session placed in the somewhat invidious position of being possibly compelled to vindicate the purity of the eldership by the rejection of parties unanimously approved of by the congregation.

The General Assembly, May 1845, session 14, upon the report of a committee, transmitted an overture to presbyteries in the following terms:—It is overtured, in accordance with the report of the committee on the eldership, that with the consent of the presbyteries of this church, the act of the General Assembly 1842, as to the mode of electing elders, be rescinded; and in the following Assembly (sess. 8) that consent having been gained, this was accordingly done, and the former practice of the church again resorted to.

The following, in consistence with that practice, is the order of procedure. After the election of certain elders has been agreed upon at a meeting of session, their names are read from the pulpit in a paper called an edict, appointing a day, at the distance of not less than ten days, for their ordination, and intimating that at a previous meeting of the session, either on the day of moderation, or previously, the session will be prepared to receive any objections that may be urged against them. If no member of the congregation offers any objection on that day, or if the session finds the objections that are offered frivolous or unsupported by evidence, the minister proceeds in the face of the congregation to ordain the elders; that is, to set them apart to that office by prayer, accompanied with an exhortation to them, and address to the people.

The following styles mark out more particularly the distinct steps to be taken.

The session being satisfied that the persons of whom they make choice are duly qualified in terms of the acts of Assembly and constitution of the church, the minute recording their election may be in the following terms.

1. *Minute when Elders are proposed.*

(Place and Date.)

The session met this day, and was constituted with prayer. Sederunt, Rev. M. N. Minister, C. D., E. F. and G. Elders.

The session having taken into consideration the propriety of adding to the number of elders in this parish, and being persuaded of the good character of Messrs A. B., &c., (here add their designations,) and that these persons are in every way qualified, in terms of act of Assembly 1816, and the other acts of the General Assembly, which respect the qualifications of elders, they (unanimously) made choice of the said Messrs A.

B., &c., to be members of this kirk-session, [and appoint their ordination to take place in presence of the congregation, on Sabbath the day of *]. They likewise appoint an edict to this effect to be served on Sabbath the day of , and intimation to be made to the people, that if they have any objections to state why the above-named persons should not be ordained to the eldership, they will have an opportunity of doing so at a meeting of session to be held for this purpose on the [said] day of [previous to the commencement of public worship†]. Closed with prayer.

If the elder has been already ordained, the minute may run in the following form.

2. *Minute when the Elder has been already ordained.*

The session having taken into consideration the propriety of adding to the number of elders in this parish, made choice of Mr A., presently residing within their bounds, to be a member of this kirk-session. And the said Mr A. having been already ordained an elder of the Church of Scotland, in the parish of , and his resignation of the eldership in that parish having been accepted by the kirk-session of , the session appoint his admission to take place in presence of the congregation, on Sabbath the

* Should any valid objections, however, be lodged, the day of ordination must of course be postponed.

† It is not necessary that this meeting be held on the day on which the ordination is appointed to take place. It may be on a previous day, provided that there be ten free days between the serving of the edict and day of ordination.

day of , and* an edict to this effect to be served on Sabbath the day of .

And so on as in foregoing minute, *admitted* being put for *ordained.*

The edict in the *first* case may be as follows.

3. *Edict of Ordination.*

The session having made choice of Messrs A. B. &c., to be elders in this parish, and having appointed their ordination to take place on Sabbath the day of , it is hereby intimated, that if any of the parishioners have objections to state against the ordination of the said Messrs A. B. &c., they will have an opportunity of doing so at a meeting of session to be held on the day of .

But if the proposed elder has been already ordained in another parish, the edict runs as follows.

4. *Edict when already ordained.*

The session having made choice of Mr A., formerly an elder in the parish of , to act along with them in the eldership in this parish, have appointed his admission to take place on Sabbath the day of ; and it is hereby intimated, &c. (as in the former case, only substituting *admission* instead of *ordination.*)

The session meet on the day appointed, when the edict is returned, and objections received and considered, should

* Although it is according to the law of the church, that the admission of elders previously ordained takes place in presence of the congregation, yet it is believed that this is not generally the case in practice.

any be offered. Notice of this having been inserted in the minutes, the session order that the ordination be proceeded in as formerly agreed upon. The minute of this meeting may be as follows.

5. *Minute recording the return of the Edict.*

(Place and Date.)

The session met here this day, &c. The session having convened for the purpose of hearing any objections against the ordination of Messrs A. B. &c., and the Rev. M. N. having reported that their edict was duly served, and the people having been thrice called by the church-officer, no person appeared to object. Whereupon it was agreed, in terms of the former resolution, that the ordination of the said Messrs A. B. &c., be proceeded in on the day of . The session adjourn, to meet after divine service on the said day of . Closed with prayer.

The alterations necessary in the minute when the elder has been already ordained are too obvious to require notice.

After divine service on the day of ordination, the minister, after stating the different steps which have been taken in the matter, proposes the following questions to the persons about to be ordained, to which satisfactory answers must be given in presence of the congregation.

6. *Questions put before Ordination.*

1. Do you sincerely own and declare the Confession of Faith, approven by former General Assemblies of this Church, and ratified by the law in the year 1690, to be the confession of your faith; and do you own the doctrine therein contained to be the true doctrine, which you will constantly adhere to?

2. Do you own and acknowledge the Presbyterian church government of this church, now settled by law, by kirk-sessions, presbyteries, provincial synods, and general assemblies, to be the only government of this church; and do you engage to submit thereto, concur therewith, and never endeavour, directly nor indirectly, the prejudice or subversion thereof?
3. Do you promise to observe uniformity of worship, and of the administration of all public ordinances within this church, as the same are at present performed and allowed?

The above questions are in the words of the formula, act xi. Ass. 1594.

The General Assembly, in 1799, (May 31,) found that in the ordination of elders, it is most unwarrantable and unconstitutional to put questions different from those which are implied in the formula 1694.

Satisfying answers having been given to the above questions, the minister then proceeds by prayer to set apart those persons to the office of the eldership, after which he delivers a suitable address to them and to the congregation.

Elders *admitted* are required generally to answer if they adhere to their profession made at ordination in answer to the above questions.

The following formula must also be signed. Act xi. Ass. 1694.

7. *Formula to be signed.*

I, A. B., do sincerely own and declare the above Confession of Faith, approven by former General Assemblies of this church, and ratified by law in the

year 1690, to be the confession of my faith; and that I own the doctrine therein contained to be the true doctrine which I will constantly adhere to: As likewise, that I own and acknowledge Presbyterian church government of this church, now settled by law, by kirk-sessions, presbyteries, provincial synods, and general assemblies, to be the only government of this church; and that I will submit thereto, concur therewith, and never endeavour, directly nor indirectly, the prejudice or subversion thereof; and that I shall observe uniformity of worship, and of the administration of all public ordinances within this church, as the same are at present performed and allowed.

The minute of the meeting of session after divine service, at which the fact of the ordination or induction is recorded, may be in the following form.

8. *Minute recording the Ordination.*

(Place and Date.)

The session met agreeably to adjournment. In accordance with former resolutions, the moderator did this day, after sermon from , put to Messrs A. B., &c., the questions appointed to be put to persons before their ordination to the eldership; and they having given satisfactory answers to the same, he did, by solemn prayer to Almighty God, set apart the said Messrs A. B., &c., to the office of the eldership; after which they and the people were severally addressed on their respective duties.

Messrs A. B., &c. being now present, received the right-hand of fellowship from the other members of session, and their names were ordered to be added to

the roll. Thereafter they signed the formula.* Closed, &c.

In case the elder has been before ordained, the clause of the minute may be as follows.

9. *Minute recording an Admission.*

. . . . . the moderator did, &c. admit Mr A. to the office of the eldership in this parish; after which, &c.

When an elder ceases to reside in a parish, it is competent for the kirk-session to find, "that if he does not, within the space of twelve months, return to reside, he can no longer continue one of their number; and to intimate to him, by letter, that they have come to this resolution." Ass. 1806, sess. 7.

JUDICIAL PROCEDURE.

While it is considered necessary to give the following forms under this head, they are not to be deemed so essential as that no case can be rightly conducted unless they are rigidly adhered to; far less are they intended to do away, or to interfere with, those duties which belong to the kirk-session as a court of conscience. The grand end of church discipline being to bring offenders to a proper sense of their guilt, so that the soul may be saved in the day of the Lord, and to promote the spiritual edification of the people in general, a session must always consider themselves called upon to use those means in every particular case most likely to effect this great object.

* It is desirable, though not absolutely necessary, that the formula be signed immediately after the ordination.

I.—CITATION OF PARTIES.

Process may be instituted before kirk-sessions either at the instance of a party complaining, or by order of the judicatory." A verbal citation by the beadle is the method usually adopted in summoning the party accused, and, generally speaking, is all that is necessary. But in certain cases it may be proper to give a written citation to the party to appear before the kirk-session. And when the process is grounded upon a written petition or information, a copy of these writings should be served. A simple warrant of citation may be issued, bearing the title of the court to which the party is to be cited, the name of the pursuer, (if the action be not instituted by the court itself,) the ground of the action, and the time and place where compearance is to be made.* This warrant runs in name of the court, is addressed to its officers, and directs them to summon the party accused. It may be in the following terms.

10. *Summons.*

The Rev. A. B., minister, and remanent members of the kirk-session of C. To P. S., our officer. We require you, that, upon sight hereof, ye pass, and lawfully summon D. E. personally or at his dwelling-house, to compear before the said session within the session-house at the day of next to come, in the hour of cause, to answer to the information or libel against him for the sin and scandal of laid to his charge; with certification, &c. Given at

* Form of Process, chap. ii.

It has been decided by the General Assembly, 1827, sess. 9, (Lamb,) that no law-agent can be allowed to appear for a party before a kirk-session.

the day of by warrant of the said session.
(Signed) T. G., Session-Clerk.

A citation is then given in writing by the officer to the party in the following terms.

11. *Citation by the Officer.*

I, P. S., church-officer of C., by virtue of a warrant from the kirk-session, dated the day of , lawfully summon you, D. E., to compear before the said kirk-session, within the session-house at the day of next, at o'clock forenoon, to answer to the information or libel against you for the sin and scandal of laid to your charge; with certification, conform to the principal warrant. This I do upon the day of between the hours of and , before these witnesses, N. K. and L. M., both residenters in .
(Signed) P. S., Officer.

This citation is either given to the party personally, or left at his dwelling-house, with his wife, children, or servants, or by affixing a copy on the door, if he cannot get access, after knocking audibly several times. The citation must be made in presence of two witnesses, whose names are inserted therein, and the warrant or summons is returned by the officer, accompanied by an execution, subscribed by himself and the witnesses, setting forth the mode in which the service was made.* Thus:

* By 1st and 2d Vict. c. 114, sect. 32, it is enacted that more than one witness shall not be required for service or execution of citations. Probably however, this Act would be held to extend only to civil suits, and the safe course will therefore be to adhere to the established practice of serving ecclesiastical writs before two witnesses, who shall also subscribe the execution as above directed.

12. *Execution by the Officer.*

Upon the day of , by virtue of a warrant from the kirk-session of C., dated the day of , I, P. S., church-officer, passed, and in name and authority of the said session, lawfully summoned D. E. to compear before the said kirk-session, within the session-house at , upon the day of , at o'clock forenoon, to answer to the information or libel against him, for the sin and scandal of laid to his charge; with certification, conform to the said warrant in all points. A just copy of citation, to the effect foresaid, I delivered to the said D. E., personally apprehended, (or I left for the said D. E., within his dwelling-place at , with his wife, to be given to him, because I could not find himself personally; or, I affixed or left at the most patent door of the dwelling-place of the said D. E. at because I could neither find himself personally, nor could I get access to the said dwelling-place, after giving several audible knocks at the most patent door thereof;) which copy of citation was signed by me, did bear the date hereof, and the date of the said warrant, and contained the names and designation of N. K. and L. M., both residenters at , witnesses present at the premises, and hereto with me subscribing.

N. K., witness. (Signed) P. S., Officer.
L. M., witness.

A party can be cited only by the kirk-session within whose bounds he resides, and this may be done upon forty-eight hours' notice. If the person accused lives within the bounds of another parish, the kirk-session of that parish

should be desired to direct the party to be cited to answer to the session before which the process depends.

If the party cited fails to appear, being called at the door by the church-officer, a second, and afterwards a third citation follows; the two first are called dilatory, but the third is peremptory, and contains a certification to the party cited, that the court will proceed to the cognition of the cause, though he should not appear, or that they will proceed against him as contumacious. Citations *apud acta* are likewise peremptory.

If any under process for scandal abscond, they should, after being called before the judicatory, and not compearing, be cited first from the pulpit of the parish where the process depends, or where they reside; and if they do not thereupon appear, they are, by order of the presbytery, to be cited from the pulpit of all the kirks within their bounds to compear before the presbytery; or if they do not then compear, they are to be declared fugitive from church discipline, and the same intimated in all the kirks within the bounds of the presbytery, desiring that if any one know of the said fugitives, they may acquaint the minister or elder of the bounds thereof. See "The Form of Process in the Judicatories of the Church of Scotland, with relation to Scandals and Censures." Act. xi. Ass. 1707, cap. ii. and vi.

II.—CITATION OF WITNESSES.

The citation of witnesses is in the same form as that of parties, bearing the names of the pursuer and defender in the case;* and on their refusal to obey the citation, they may be proceeded against as contumacious, or application may be made to the civil court to compel their at-

* It may be noticed here likewise, as in the case of parties, that a verbal citation of witnesses by the beadle is usually found sufficient.

tendance. Act. xi. Ass. 1707, cap. ii. § 9, and Pardovan, B. iv. tit. 3, § 14.

The kirk-session issues citation to witnesses not only at its own instance, but at that of the pursuer and defender in any case. The forms of diligence may be as follows, *mutatis mutandis.*

13. *Warrant to cite Witnesses.*

Mr A. B. moderator, &c. Forasmuch as C. D., pursuer in a process presently depending before us against E. F., for the sin and scandal of having applied to us for a diligence to cite witnesses in the said matter, in manner and to the effect underwritten: Therefore, we require you, that, upon sight hereof, ye pass and lawfully summon, G., H., and L., personally, or at their dwelling-places, to compear before us within the kirk of upon the day of , in the hour of cause, with continuation of days, to bear leal and soothfast witnessing upon the points and articles of the said process, in so far as they know, or shall be inquired at them; with certification as effeirs. And this our precept you are to return, duly executed and endorsed. Given, &c. by warrant, &c.

The summons and execution against witnesses are the same as in the forms given above.

The witness being before the court, the oath administered is the following, the witness standing and holding up his right hand.

14. *Oath administered to Witnesses.*

I swear by Almighty God, and as I shall answer to God in the great day of judgment, that I will tell the truth, the whole truth, and nothing but the truth, so far as I know, or shall be asked.

It is provided by Act of Assem. xi. 1707, cap. ii. § xi., that the witnesses are solemnly to be purged of malice, bribe, or good deed done, or to be done, and of partial counsel. In reference to this the following initial questions were put to them.

15. *Purgation of Witnesses.*

Has any person told you what to say, or promised or given you any thing for your evidence?

Have you any malice or ill will against any of the parties?

Have you any interest in the case? Act. xi. 1707, cap. ii. § 11, 12.

It is perhaps not now necessary to observe this form, (3 and 4 Vict. c. 59 § 2,) but it is of course still competent either for the court or for the party against whom any witness may be adduced to examine him *in initialibus* relative to any matter likely to affect his admissibility as a witness.

All evidence must be taken down in writing at the time, and the depositions signed by the witnesses at the bottom of each page; or, if they cannot write, the clerk must state that they declare this to be the case. Every deposition of a witness must be signed by the moderator.

It may sometimes happen that the proof led in cases of adultery and fornication may not be sufficient to establish the guilt of the accused party, and yet the presumption may be such as to prevent his acquittal by the kirk-session, and at the same time not so strong but that the suspicion created by it may be done away by a solemn denial of the party on oath. In this case, the form of process directs the court to sist procedure till God in his providence gives further light; or the oath of purgation may be administered to the individual if he desire it, and provided leave to this effect has been asked of and obtained from the Presbytery. It is as follows.

16. *Oath of Purgation administered to a party accused.*

I, C. D., now under process before the Presbytery of for the sin of alleged to be committed by me with E. F., and lying under that grievous slander, being repute as one guilty of that sin; I, for ending of the said process, and giving satisfaction to all good people, do declare before God and this congregation, [kirk-session, or presbytery,] that I am innocent and free of the said sin of , or having carnal knowledge of the said E. F., and hereby call the great God, the Judge and Avenger of all falsehood, to be witness and judge against me in this matter if I be guilty; and this I do by taking his blessed name in my mouth, and swearing by him who is the great Judge, Punisher, and Avenger, as said is, and that in sincerity of my heart, according to the truth of the matter and my own innocence, as I shall answer to God in the last and great day, when I shall stand before him, to answer for all that I have done in the flesh, and as I would partake of his glory in heaven after this life is at an end.

In administering this oath, all tenderness and caution are to be used. It should be admitted only when the suspicion cannot be removed in any other way, and when there is reason to suppose that by taking the oath this may be done. This oath may be taken before the kirk-session, the presbytery, or the congregation, as the presbytery shall determine; but it is always to be intimated to the congregation that such an oath has been taken, when it has not been done in their presence.

III.—REFERENCE TO THE PRESBYTERY.

In process for incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, heresy, and error, vented or made public by any in the congregation, schisms, and separation from the public ordinances, processes, in order to the highest censures of the church, and continued contumacy, the session are not to proceed further than summoning the accused person before them, and dealing with him to confess, but are then to send an extract of their procedure to the presbytery; and if there has been no confession, they are to receive from them permission to lead probation; and after this has been done, the session are again to apply to the presbytery for direction, sending a further extract of their proceedings. See Form of Process, ch. vi.

IV.—EXCOMMUNICATION.

The sentence of *lesser excommunication* may be inflicted by a kirk-session, and involves suspension of sealing ordinances. When the party resides within the bounds of another kirk-session, it is necessary that the sentence be intimated to them. *Vide* p. 30.

The sentence of *greater excommunication* can only be inflicted by the presbytery, and the form of procedure in such a case will be found under the head of Judicial Procedure before the presbytery.

V.—FORMS OF MINUTES.

In reference to the above, the following may be given as forms of

17. *Minutes of Session in cases of Judicial Procedure.*

(1.) In the case of a woman against whom a scandal

has broken out, and who has been ordered by the session to be summoned to appear before them to answer to a charge of fornication.

(Place and Date.)

The session met, &c. It was reported by the clerk, that, agreeably to the directions of the session, A. B. had been duly summoned to appear before them this day; and the said A. B., having been called, appeared; and on the question being put, whether she had been guilty of the crime of which she was accused, answered that she had. Being solemnly exhorted by the moderator to speak the truth, and further interrogated, she declared that C. D., an unmarried man residing in this parish, had been guilty with her, and was the father of her child. The session order the said C. D. to be summoned to appear before them the day of , to which meeting the woman was cited *apud acta*. After a suitable admonition she was dismissed for the present.

(2.) It sometimes happens that a woman comes voluntarily forward to make confession; in which case, the minute may run thus:—

Voluntarily compeared A. B., residing at , in this parish, confessing that she had been guilty of the sin of fornication. Being solemnly exhorted, &c., *ut supra*.

(3.) It sometimes happens that the man accused by the woman resides in a different parish; in this case, his particular residence must be stated, and the conclusion of the minute may be in these terms:—

The session instruct their clerk to write to the kirk-sion of , informing them of the accusation made against the said C. D., and requesting them to

cause him to be summoned to appear here on the day of , that he may be confronted with the woman.* To this meeting the woman was cited *apud acta*, and, after a suitable exhortation, she was dismissed for the present.

(4.) Form of minute of a meeting at which the man is summoned to appear.

Compeared A. B., agreeably to citation at last meeting, and adhering to her former statements. C. D. having been duly summoned, was called, and appeared. The former minute having been read over to him, he was asked whether he had been guilty with A. B., and was the father of her child. He acknowledged guilt, whereupon both parties, having received a serious admonition, were dismissed for the present.

(5.) If the case be one of adultery, the man or woman or both, having been married persons, then the minute, after stating the acknowledgment of guilt, on the part of the man accused, and the admonition of the parties by the moderator, may run as follows:—

The session considering that this is a case of adultery, order their clerk to transmit extracts to the next meeting of presbytery, that their advice may be obtained.

The minute may run in similar terms in the case of a trilapse in fornication, in which it is also necessary to obtain the presbytery's leave to proceed.

(6.) In the event of a denial on the part of the man, the minute may run thus:—

* When the parish of the man's residence is very distant, it is common to request the kirk-session of that parish to call him before them, and to receive his declaration.

After the question being put to him whether he had been guilty, &c.

Whereupon he answered, that he was not the father of A. B.'s child, and never had been guilty with her. A. B. was then asked whether she could adduce any evidence of the truth of the charge which she had brought against C. D.—She answered that she could, and requested that the following witnesses might be summoned, viz. E. F. and G. (mention residence.) C. D. also requested that L. M. and N. might be summoned as witnesses in his defence. The session instruct their clerk to cause the said persons to be cited to appear before them as witnesses in this case, on the day of next, to which meeting the parties were summoned *apud acta.*

If the case be one of adultery or trilapse in fornication, the advice of the presbytery must be asked at the stage of the business referred to in the above style.

(7.) Form of minute of meeting, at which the session proceed to probation :—

Compeared A. B. and C. D. according to citation, both adhering to their former statements. The clerk having reported that all the witnesses in this case had been duly summoned, the session agreed to proceed with the proof.

E. F. being called, compeared, and having been solemnly sworn, purged of malice and partial counsel, deponed that, &c.

And so on with the other witnesses.

After the examination of whom, the deliverance of the session on the evidence must be recorded.

(8.) Supposing that the guilt of the man is not clearly

established, but that, in consequence of strong presumption against him, he may express a desire to take the oath of purgation,* the minute may run as follows :—

C. D. still persisting in his declaration of innocence, expressed a desire to have the oath of purgation administered to him; whereupon the session agreed to take the advice of the reverend the presbytery of and ordered the clerk to transmit extracts.

(9.) Supposing that the presbytery grant leave to the session to administer this oath, the minute may be as follows :—

The presbytery having granted leave to the session to administer the oath of purgation to C. D. charged by A. B. with the crime of —and C. D. being now present, and having expressed the same desire that this oath should be administered to him, he took it accordingly in presence of the session; whereupon the said C. D. was declared free from scandal, and restored to the privileges of the church.

If the presbytery determine that the oath shall be taken before the congregation, the minute must be varied accordingly.

(10.) Supposing that guilt is not proved, that the oath of purgation is not offered to be taken, or that it is not seen for edification to administer it, then the minute may run thus :—

The session, on consideration of the evidence adduced, do not find the charge against C. D. to be established; and they therefore delay this case, until God in his providence shall give further light.

(11.) Supposing a case to be concluded in so far as re-

* See No. 16, p. 23.

spects the truth of the charge made by the woman, either by the confession of the man, or the production of sufficient evidence against him; and supposing that one or both parties come forward craving absolution and restoration to church privileges, which the session agree to grant, then the following may be the minute. It may be remarked, however, that it is not advisable that absolution be granted at the time confession is made, or guilt established; the case should be allowed to stand over, until the parties have given some evidence of their penitence.

Compeared A. B. and C. D. last mentioned in minute of as having been guilty of the crime of fornication, (or adultery), craving absolution from scandal, and restoration to the privileges of the church; and the said A. B. and C. D. having expressed their deep sorrow for the sin of which they had been guilty, and their resolution that henceforth, through Divine grace, they will walk in newness of life, and endeavour to adorn the doctrine of God their Saviour, the Moderator, after a serious rebuke and solemn admonition, did, in name of the session, absolve them from the scandal of their sin, and restore them to the privileges of the church.

(12.) In cases of antenuptial fornication, the parties are very generally rebuked and restored to church privileges on one appearance; it being understood, however, that the minister or some of the elders, or both, have previously conversed with the parties. In these cases the minute may run thus:—

Compeared A. B. and C. D., confessing that they had been guilty of the sin of antenuptial fornication, and having expressed their penitence, the Moderator, &c.

The above forms refer to adultery or fornication. It is considered quite unnecessary to give forms of minutes in

the case of all the different crimes of which a session ought to take cognizance.

(13.) When a person incurs suspension from church privileges, (*lesser excommunication*), the same may be thus recorded:—

In consideration, &c., the session did, and hereby do, suspend the said C. D. from the privileges of the church, and order public intimation of this their sentence to be made.

(14.) If the guilty person belongs to another parish, then the following addition may be made:—

And the session instruct their clerk to send an extract of this sentence to the kirk-session of the parish of where the said C. D. resides.

DISSENTS, COMPLAINTS, AND APPEALS.

Any member may dissent from "any determination which he conceives to be contrary to the word of God, the acts of the Assembly, or the received order of this kirk," and may urge his dissent to be marked in the register.*

Reasons of dissent may be lodged within ten days with the moderator or session-clerk, and must be read in open court, and kept *in retentis*, but are not to be engrossed in the minutes.

Such a dissent, however, does not entitle the dissentient to be heard in the superior court in support of his dissent.

But any member of court may not only dissent, but dissent and protest for leave to complain; in which case, he must lodge reasons of dissent and complaint within ten

* Vide act June 4, 1644, sess. 7. This act only speaks of members of presbyteries and synods, but it may be understood as applying to kirk-sessions also.

days; and the effect of this procedure is to sist the parties and the members concurring and complaining at the bar of the superior court, where the whole case is brought under review.

A *party* may also bring a cause under review of the superior court, but in this case it must be done by a protest and appeal, taken at the time that the judgment is intimated, and reasons of appeal must be lodged within ten days. All *dissentients* or *appellants* must *take instruments* in the clerk's hands, and *crave extracts* at the time of their dissent or appeal, in order to enable them to bring the case properly before the superior court.

A superior court cannot entertain any appeal or dissent and complaint, unless duly authenticated extracts of the judgment of the inferior court are properly brought before them.

Form of a minute in the case of a dissent and complaint.

18. *Form of Minute when a Member of Court Dissents and Complains.*

From which judgment Mr G. K. dissented, and protested for leave to complain to the presbytery of A., promising to give in reasons in due time, took instruments in the clerk's hands, and craved extracts, which were granted.

In the case of a Protest and Appeal.

19. *Minute when Party Protests and Appeals.*

Against which judgment Mr L. M. protested, and appealed to the presbytery of A., promising to give in reasons in due time, took instruments in the clerk's hands, and craved extracts, which were granted.

ELECTION OF DEACONS.

The office of deacon is secular, having for its object the charge of the poor, and the administration of the funds which may be raised for their support. They have no vote in matters of church discipline, but have a right to sit in the kirk-session, and to join in the deliberations of that court. But although their office be secular, the Church has been no less strict in requiring that they be men "tender and circumspect in their walk, punctual in their attending upon ordinances, and strict in their observation of the Lord's day, and in regularly keeping up the worship of God in their families." Act ix. Ass. 1722, sess. 11.

The forms to be gone through in the election and ordination of deacons are so similar to those already given for the election and ordination of elders, that it is considered unnecessary here to suggest any styles. There must be a minute recording their election, and appointing their edict to be served. There must be a minute stating that the court (kirk-session with deacons) had met for the purpose of receiving any objections which might be lodged by the people; and there must be another, recording the fact of their ordination, and stating that they had signed the Confession of Faith, and that their names had been added to the roll of deacons.

MISCELLANEOUS BUSINESS.

I.—MINUTES.

Forms of minutes have been already given where they are severally applicable; but, as a general rule, it should be remembered that all minutes should contain the date of the sederunt, and the name of the members present. They must also bear at the commencement, that the meeting was constituted with prayer; and at the end,

that the meeting was closed with prayer. They should record distinctly the whole business transacted at the meeting; but for the mode in which this is to be done no styles can be given, as these must be varied according to the description of business before the meeting. It will be seen, however, that in many parts of this compilation, as many styles have been suggested as could properly be given.

II.—ADMISSION OF MINISTERS.

Although this is the act of a presbytery, yet it seems desirable, that at the first meeting of session thereafter, the fact of his admission, the date thereof, &c., be stated in the minute.

III.—ROLL OF COMMUNICANTS.

Every kirk-session ought to keep a correct roll of all the communicants in the parish. It is essential to the accuracy of the certificates granted by them to parties on removal from the parish or otherwise; and it is important, in reference to the Church Benefices Act, that there should be the means of thus ascertaining, simply and accurately, who are members of the congregation. When individuals are admitted members of the congregation for the first time, their admission should be recorded in a minute of session, and their names ordered to be added to the roll. It should likewise be stated in a minute of session, when any certificate of church membership from another parish is presented, and by whom—also when a certificate is granted, and to whom, and the names of the individuals ordered to be added to or taken from the roll.

There should be a book kept for the express purpose of

the enrolment of communicants. The following is given as a form:—

20. *Roll of Communicants.*

Name.	Occupation.	Residence.	When received as young communicants, or when received on certificate from other parishes, and from what parish.	Date of death, or date at which certificate to another parish may have been granted, and to what parish.	Remarks.

It is of importance, especially in large parishes, that an alphabetical arrangement of the names be followed; and for this purpose, a certain number of leaves in the book should be reserved for each letter.

21. *Certificate given to Communicants when removing to another Parish.*

(Place and Date.)

We hereby certify that A. B. (designation), and C. D. his spouse, have resided in this parish for years: That they are in full communion with the Church, and leave this parish free from all ground of church censure, so far as known to the kirk-session.

E., Minister.
F., Session-Clerk.

In absence of the minister, the certificate is signed by two elders and the session-clerk.

IV.—ELECTION OF AN ELDER TO REPRESENT THE SESSION IN PRESBYTERY AND SYNOD.

It is enacted, by Act xii. Ass. 1776, "That all presbytery elders shall be elected within two months after the sitting of synod, to attend the presbytery and ensuing synod of that bounds; and in case of death or demission, that a new election shall be made within one month of the same. That every elder so chosen produce an extract of his election under the hand of the session-clerk, before he be received on the roll of either presbytery or synod."

By Act xii., Ass. 1839, it is enacted, "That no ruling elder shall be deemed qualified to be chosen or to sit as a commissioner in any presbytery, synod, or general assembly of this Church, who is not *bona fide* an acting elder in the congregation in which he holds office; and that in all commissions in favour of ruling elders as commissioners to presbyteries and synods, it shall be certified, that the commissioner is *bona fide* an acting elder of the congregation."

The minute of session electing the representative may be in the following terms:—

22. *Minute electing Elder to represent, &c.*

The session elect Mr A. B., one of their number, and a *bona fide* acting elder of the congregation, to represent them in the presbytery of and synod of during the current half-year.

The elder will receive an extract of this minute, to produce as his commission to the presbytery.

V.—BURGH ELDER'S COMMISSION TO THE GENERAL ASSEMBLY.

By act of Assembly, July 15, 1648, and Act ix. Ass. 1718, it is ordained, that no commissions for royal burghs to their representatives in Assembly be sustained, unless they are consented to and approven by the kirk-session of the burgh; and by Act x. Ass. 1783, the following is given as the form of the attestation to be employed by the kirk-session :—*

23. *Attestation of Burgh Elder's Commission.*

At the day of years. The which day the kirk-session of having had laid before them a commission by the magistrates and town-council of to ruling elder, to represent the said burgh in the ensuing General Assembly of this national church, do, in terms of the 4th act of Assembly, 1720, testify and declare, that the said is an elder lawfully ordained, and that he has signed the *formula* prescribed by the 11th act of the General Assembly 1694, and likewise that he is (a residenter in the said burgh), or (an heritor in the said burgh), or (an heritor in the bounds of the said presbytery of within which the said burgh lies), or (has formerly resided and officiated as an elder in the said burgh), or (presbytery of within which the said burgh lies).

Attested by E., Moderator.
F., Clerk.

* By an overture transmitted on 1st June 1759, the General Assembly, "considering that the acts respecting the election and qualification of members of Assembly are very much scattered, having been made on different occasions, and therefore are not sufficiently attended to, and that difficulties and disputes have often arisen in the application of them," did propose certain forms, &c., which were enacted by the following acts, vii. 1766, iv. 1768, and, lastly, the act x. 1783, which now regulates these forms.

MARRIAGE, BAPTISM, BURIAL.

I.—PROCLAMATION OF BANNS, REGISTRATION OF MARRIAGES, &c.

Before parties can be married, they must, according to the laws of the church, be proclaimed three times in the parish church of each of the parties.

For this purpose, the names of the parties must be given in to the session-clerk, who being satisfied that one or both have resided in the parish for the space of six weeks,—that they are unmarried persons,—and not within the forbidden degrees of consanguinity, is to make the following entry in the register which is kept for proclamations and marriages.

24. *Form of Entry of Proclamation in Session Record.*

A. B. residing in this parish, (or whatever the parish of the man's residence may be,) and C. D. residing in this parish, (or in whatever parish the woman may happen to have her residence,) have given in their names in order to proclamation of banns.

In populous parishes, the session-clerk may have no personal knowledge of the parties; in which case, they must bring him a certificate, signed by two householders, or by an elder, stating that one or both of them have been residenters in the parish for six weeks or more; that they are unmarried, &c.

The certificate of the householder may be as follows.

25. *Certificate of Householder.*

At B. the day of 18 , I, A., householder in the parish of B., and residing in , and I, C., householder in the same parish, and residing in ,

do certify that and one of whom has been a residenter (or both of whom have been residenters) in said parish for the space of six weeks or more, are personally known to us; and that we have good cause to believe that they are unmarried persons, and not within the forbidden degrees of consanguinity.

A., Householder.
C., Householder.

The elder's certificate may run thus—

26. *Certificate of the Elder.*

At B. the day of 18 , I, A., one of the elders of the parish of B., do hereby certify, that and , one of whom has been a residenter (or both of whom have been residenters) in the said parish for the space of six weeks or more, are believed and reputed to be unmarried persons, and not within the forbidden degrees of consanguinity.

A., Elder.

According to Act viii. Assembly 1784, session-clerks are prohibited from proclaiming parties until the leave of the minister to this effect has been obtained. This act declares that no session-clerk in this church shall proclaim "any persons in order to marriage, until he give intimation to the minister of the parish in a writing, dated and subscribed by him, of the names, designations, and places of residence of the parties to be proclaimed, and obtain the said minister's leave to make the said proclamation; with certification, that if any certificate of proclamation of banns is given without observing the above order, the said certificate shall be held as a false certificate, and the session-clerk who subscribes it shall be censured accordingly;

and in case of a vacancy, the above intimation is to be made to two of the elders of the parish."

The names being thus entered in the parish register, and the minister's leave having been obtained, the parties are to be proclaimed in the parish church three several times in the following terms:—

27. *Form of Proclamation of Banns.*

There is a purpose of marriage between residing in and residing in of which proclamation is hereby made for the first (second or third) time.

The proclamation having been made, and no objection offered, the session-clerk is to grant a certificate of proclamation in the following terms.

28. *Certificate of Parties having been proclaimed.*

At the day of 18 . It is hereby certified, that A. B., residing in and C. D., residing in have been three times proclaimed in order to marriage in the parish church of and that no objections have been offered.

E. F., Session-Clerk.

On producing such a certificate to a minister, he is warranted to marry the parties; and having done so, he is to certify the marriage in the following terms.

29. *Certificate by Minister marrying Parties.*

I hereby certify, that and were married by me the day of 18 .

G. H., Minister of K.

The parties must be careful to report the marriage to the session-clerk, in order that it may be recorded.

In general, the date of marriage, &c., is registered in the same entry as was originally made when the names were given in.

For this purpose, the session-clerk leaves a sufficient space after the words "proclamation of banns," in Style 24, and adds,

30. *Form of Registration of Marriage.*

They were regularly proclaimed the and married by on the day of 18 .

II.—BIRTHS AND BAPTISMS.

A register is kept in every parish for births and baptisms.

The following may be given as the form of an entry.

31. *Registration of Birth.*

A. B. and C. D. had a lawful (son or daughter,) born and baptized by before the congregation, (or when done privately, this must be stated, and the names of two witnesses given,) called .*

* It having been found that many people are careless about the registration of births and baptisms at the proper time, and that they come forward to have their children's names entered in the record many years after their birth, some presbyteries have instructed the kirk-sessions within their bounds not to allow any registration to be made when more than a year has elapsed, until the parents or persons interested appear before them with sa-

III.—BURIALS.

The following may be given as a form of entry in a record of burials.

32. *Record of Burials.* 18—.

Names.	Name and Designation.	Diseases.	Ages.			
			Y.	M.	W.	D.
B.	A. B., son of C. D., (profession and residence,) died and was buried	Hooping-Cough.	1	5	3	1
F.	E. F. (designation,) died day of , and was buried day of	General Debility.	81			

Abstract of Funerals in 18—

Age.	Consumption.		Inflammation.		Apoplexy.		Dropsy.		Accident.		Asthma.		Palsy.		Ossification.		Water in the Head, &c., &c.	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Under 5, ...																		
5 to 10, ...																		
10 to 20, ...																		
20 to 30, ...																		
30 to 40, ...																		
40 to 50, ...																		
50 to 60, ...																		
70 to 80, ...																		
80 and upwards,																		

tisfactory evidence of the truth of their statement respecting the time of birth and baptism.

The minute of session bearing that such an appearance had been made may be as follows:—

APPLICATIONS FOR THE BENEFIT OF THE POOR'S ROLL IN CIVIL COURTS.

In accordance with the benevolent spirit of the Law of Scotland, provision is made for conducting gratuitously, in all Courts of Justice throughout the country, the pleas of those parties whose poverty renders them unable to bear the expense of a law-suit, (1 Ja. cap. 45, 12th March 1424.) This provision was first made by an Act of Parliament passed upwards of four centuries ago, and the different legal bodies practising before the Civil Courts, both Supreme and Inferior, now annually appoint certain of their number to act in their respective departments, as the legal advisers and agents of the Poor. Parties admitted, as it is termed, to the benefit of the *Poor's Roll*, are not only entitled to have their cases conducted altogether gratuitously by their counsel and agents, but are not liable in payment of any of the dues of Court, or of fees to the Clerks and Officers of Court. As this exemption necessarily confers a very important advantage on a poor party over his antagonist, who is liable in payment of the usual expenses attending legal proceedings, various regulations have been adopted for the purpose of preventing improper parties from obtaining the privilege. One branch of these regulations is directed towards ascertaining whether the *cause* which the applicant is desirous of suing is one which appears to be a fit object for legal

Compeared A. B., desiring that the session would permit the registration of his lawful son (or daughter,) born and baptized .

The session being satisfied by the evidence produced of the facts stated by the said A. B., they order the following entry to be made in the register of baptisms, together with an extract of this minute.

A. B. and C. D. had a lawful (son or daughter) born and baptized by before the congregation, (or when done privately, the names of the witnesses should be given,) called

investigation, or, in technical language, whether there is *probabilis causa litigandi.* The other branch, and the only one to which it is necessary here to advert, refers to the very important question, Whether the party is in such circumstances as to be entitled to this benefit.

The form of procedure in this matter in the Court of Session is regulated by Act of Sederunt, of date 21st December 1842.

The act proceeds upon the preamble—"Whereas by the 45th act of the second parliament of James I., in the year 1424, a provision is made for appointing advocates to assist indigent persons who cannot afford the expense of prosecuting their just claims in courts of law; and whereas acts of sederunt concerning the poor's roll were passed on 20th November, 1686; 9th June, 1710; 16th June, 1742; 10th August, 1784; 11th July, 1800; and 16th June, 1819. And whereas there is reason to believe that many persons have been admitted to the benefit of the poor's roll who are not proper objects for it, and who have otherwise obtained undue advantage over their adversaries; and it is therefore expedient that provision should be made to correct these and certain other abuses which are believed to exist: And whereas in order to secure, at the smallest expense, the benefit of the poor's roll to those who really deserve it; and, at the same time, to regulate the mode of recovering for the dues of court and professional charges when the adverse party shall be found liable in expenses, it is necessary to make the following regulations."

Various regulations are then made as to admission to the poor's roll, and those more immediately applicable to kirk-sessions, are as follows:—

"§ 2, 3. No person shall be entitled to the benefit of the poor's roll, unless he shall produce a certificate under the

hand of the minister and two elders of the parish where such poor person resides, setting forth his entire circumstances, according to a formula hereto annexed. If the party's health admits of it, he or she shall appear personally before the minister and elders at the time and place to be appointed by them, to be examined as to the facts required by said formula; and the minister and elders shall then certify how far the statement given by the party consists with their own proper knowledge, or that of any one of them, or whether its credit rests on the information of others, or solely on the statement of the applicant; in which latter case they shall certify whether he or she be of good character, and worthy of credit."

"§ 4. Ten days' previous intimation, by letter, post-paid, shall be given to the adverse party, of the time and place fixed for making the said declaration and statement before the minister and elders,—the dispatch of such letters to be certified by the agent of the pauper, or by a messenger-at-arms or other officer of the law, and one witness,—the certificate to be in the form of schedule B, hereto annexed."

The following is the formula annexed to this act:—

33. *Formula for the use of the Clergy in framing Certificates of Poverty before referred to.*

We, the undersigned, Minister and Elders of the parish of , do hereby certify, that on the day of , A. B., residing at , applying for the benefit of the poor's roll to enable him [or her] to carry on a law-suit about to be brought [or presently depending] before the Court of Session, appeared personally before us, and did in our presence

[*if the adverse party or his agent be present, add*, and in presence of C. D., *designing him*] emit the following statement in regard to his [or her] circumstances and situation.

That he [or she] is years of age.

That he [or she] is unmarried [or married, as the case may be.] That he [or she] has number of children under such an age, or in such or such circumstances.

That he [or she] has resided in this parish [*specify the time.*]

That he [or she] is possessed of such and such property [*here specify particularly the applicant's property of every description.*]

That he [or she] is [*state the trade or occupation*] in which his [or her] earnings amount to so much.

That he [or she] has or has not at present any other law-suit depending before this or any other court [*or, if the applicant has any other law-suit, the case should be particularly mentioned.*]

To be signed by the Minister and two Elders.

N.B.—The minister and elders will then add whether the whole or any, and what part of the foregoing statement is consistent with their own proper knowledge, or with the proper knowledge of any one of them, or whether it is verified by persons known to them, or whether its credit is to depend entirely on the statement of the applicant, and whether he or she is of good character and worthy of credit, or, if the case admit of it, they may add any other *causa scientiæ* that may occur to them.—Schedule A.

34. *Certificate of Intimation made to adverse party by the agent of the Pauper or messenger-at-arms, &c.*

I, , [*agent or messenger*], certify, that of the date hereof I put into the post-office of between the hours of and , in the presence of A. B., residing in , and hereto subscribing, a letter or notice addressed to "C. D., merchant in ," intimating that is to appear before the minister and elders of the parish of , within the manse, [*or wherever the minister and elders may fix*], upon , at o'clock noon, for the purpose of emitting a declaration, in terms of the act of sederunt, with a view to his [or her] admission to the poor's roll, to enable him [or her] to carry on a lawsuit in the Court of Session, against the said C. D. [or] in which the said C. D. is pursuer. Witness my hand at , this day of , 18 .

Signature of Witness. Signature of Agent or Messenger.

Schedule B.

The regulations in regard to applications in Sheriff and other inferior courts are less complicated, it being enacted by Act of Sederunt, 11th July 1839, sess. 135, that in such cases there shall be produced by each applicant "a certificate, signed by the minister of the parish, or by the heritor on whose lands the pauper resides, or by two elders, bearing that it consists with their personal knowledge, that the person prosecuted, or who means to bring the action, is not possessed of funds for paying the expense thereof." If the minister or elders are able to certify this fact upon their personal knowledge, they will of course do so; but

as it may frequently happen, particularly in large parishes, that they do not possess this personal knowledge, it seems expedient that, in such cases, a declaration, similar to that prescribed in the formula above quoted, should be required from the applicant, and that the minister and elders should certify how far the facts stated consist with their own knowledge, and how far they consider the applicant as worthy of credit. It would be proper likewise that notice of the time and place fixed for receiving this declaration should be given to the adverse party, so as to afford him an opportunity of being present.

If the adverse party attend at the declaration, any proper suggestions or interrogatories proposed by him ought to be received, and the result embodied in the report.

It must also be carefully observed, that in this investigation the *merits* of the pleas of parties cannot be touched upon, as the circumstances of the applicant are the only point which it is competent to investigate or report upon.

It may be remarked, in conclusion, that although the Acts of Sederunt above referred to do not authoritatively bind the clergy in their ecclesiastical capacity, and although they cannot be compelled to report in the specific mode thereby prescribed, yet this is a duty which ought to be carefully performed, both from respect to the courts from which these regulations emanate, and from a regard to the interests of the poor; and although courts of justice cannot compel ministers and elders, in their official character, to comply with these salutary regulations, yet they are entitled, by virtue of their inherent authority, for the investigation of all facts necessary for accomplishing the ends of justice, to compel the attendance of the ministers and elders at their bar, in the character of *witnesses*, who are bound to state whatever they know in regard to the matter under consideration. Some instances of this na-

ture have recently occurred, in which ministers and elders have been summoned before the bar of the Supreme Court, and required to give evidence there, and that, too, where their failure to report, in the terms prescribed, arose not from any reluctance to do so, but from want of information as to the course which they ought to have followed.

PRESBYTERY.

A Presbytery consists of the ministers of all the parishes within the bounds of the district, of the professors of divinity of any university that may be situated within the bounds, provided they be ministers, and of an elder from each of the kirk-sessions in the district. One of the ministers is chosen to act as moderator, and it is the general practice, that the moderator elected continues in office for six months. The business of presbyteries is to examine students of divinity, and license them to preach the gospel; to take trial of presentees to parishes, and, if they find them qualified, to ordain them to the ministry, and grant them induction; to see that the word is preached, divine ordinances regularly dispensed, and the various duties of the ministry discharged within the bounds; to take cognizance of the conduct of each minister, and in the event of any charge being made involving censure, suspension, or deposition from his office, to libel the person accused, to take evidence, to judge of the same, and pronounce sentence accordingly. It belongs to presbyteries to examine schoolmasters, and confirm their election; also to try them when accused, and depose them from their office, should the crime proved involve that sentence. It is their duty to make an annual examination of all the

schools within their bounds, and to judge of all complaints, appeals, and references, which may come from an inferior court. And, as a civil court, it belongs to them to judge and determine, in the first instance, all matters connected with glebes, and the erection or repair of churches and manses.

STUDENTS OF DIVINITY—PRELIMINARY EXAMINATION OF THEM BY PRESBYTERY—LENGTH OF THEIR ATTENDANCE ON THE DIVINITY HALL, AND COURSE OF STUDY —TRIAL AND LICENSING OF PROBATIONERS.

The order of procedure as regards the admission of students of divinity to the Divinity Hall, their examination during the course of their studies there by the presbyteries, the length of their attendance, the course of study to be followed, the manner of their being proposed with a view to being licensed to preach the Gospel, and the nature of the examination to which, before receiving licence, they are subjected, have formed the subject of numerous acts of assemblies from the earliest period of the history of the Church. Taking into consideration the importance of consolidating these acts with a view to the guidance of presbyteries in their important duties in this respect, the General Assembly 1849 passed an act, —Act XI., in which a most clear and precise directory for their procedure is given, under the following title— "Act consolidating the several Acts of former Assemblies respecting the Study of Divinity and the Licensing of Probationers."

The following is the provision of the act with reference to the examination of students previous to enrolment at the Divinity Hall:—

"That no student shall be entered upon the roll of any

professor of divinity, unless he shall produce to the said professor a certificate from the minister of the parish in which he has his usual residence; or, in his absence, or during a vacancy in said parish, from some neighbouring minister, bearing that his character is suitable to his views; together with a diploma of master of arts, or certificates from the several professors of philosophy under whom he had studied, from which it may be clearly ascertained that in some university or universities of Scotland he had gone through a full course of philosophy, in some winter sessions of college preceding that in which the certificates are produced,—it being understood that he shall produce certificates of having attended all the classes required of such as apply for the degree of master of arts, viz., Greek, Latin, logic, mathematics, moral philosophy, and natural philosophy, in such order, that, after Greek and Latin being attended during the first session, the classes of logic, moral and natural philosophy must have been attended separately during three successive seasons, and that mathematics shall have been studied in a university at least during one session before entering the class of natural philosophy.

"That, previously to the enrolment of any student as a student of divinity, he shall be examined by the presbytery within the bounds of which he chiefly resides, upon literature, science, and philosophy,—particularly upon Greek and Latin; and also upon his knowledge of the Christian religion, as it is exhibited in the catechetical standards of the Church; and shall produce to the professors of divinity under whom his studies are to be conducted, a certificate from the presbytery, bearing that he has passed such examination in a satisfactory manner."

The following may be the terms of the certificate granted by the presbytery after the examination above referred to:—

35. (Place and date.)

That A. B. appeared this day before the presbytery of , with a view to his entering the Divinity Hall for the first time; that he was examined in terms of Act xi. Ass. 1849; and that he passed such examination in a satisfactory manner, is attested by

C. D., Presbytery-Clerk.

The act further provides, section 3—

"That every student of divinity be examined by the presbytery within whose bounds he chiefly resides, every year; and be required to produce to the professors of divinity, every session of his attendance at the Hall, a certificate from the presbytery of his having been examined by them on the progress made by him in his studies, and of the presbytery's satisfaction with the same, as well as a certificate of his good moral character from the minister of his parish, before he can be enrolled."

36. *Certificate requisite for a Student of Divinity previous to his enrolment for every succeeding session of his course.*

(Place and Date.)

That A. B., student of divinity, appeared this day before the presbytery of with a view to his entering on the year of his course; that he was examined in terms of the 4th act of Assembly 1849 on the progress made by him in his studies; and that the presbytery were satisfied with the same, is attested by

C. D., Presbytery-Clerk.

To meet the case of students not resident within the bounds of the Church of Scotland, the 4th section of the act provides—

"That students not resident within the bounds of the Church of Scotland, who have finished a course of philosophy in any of the universities of Scotland, may, previous to their enrolment as students of divinity, or for any of the sessions of their attendance at the Hall, be examined by the presbytery within whose bounds the university at which they have studied is situated, either at the end of the last session of their course of philosophy, or immediately before the commencement of the session in divinity for which they are to be enrolled."

Similar certificates in this case, as in Styles 35, 36, may be granted, the ground of his appearing before that presbytery being embodied in them.

In sections 5, 6, 7, and 8, of the act, the length of attendance at the Divinity Hall requisite under different specified circumstances, is stated; the classes to be attended; the discourses to be delivered; the periods at which, so far as practicable, they are to be so; and the time when the student shall be entitled to apply to his professors for his certificates with a view to be taken on trials.

§ 5. "That all the students who have been enrolled by professors of divinity in the manner prescribed by this act, shall continue to prosecute the study of divinity for the term of six sessions: Provided always, that all students of divinity shall give at least one year of regular attendance at the Divinity Hall, and that such year of regular attendance shall be the first, second, or third of his course: Provided, also, that if any student has given regular attendance in the Divinity Hall during three sessions, his course shall be considered as completed in four sessions, and that if

he has given regular attendance during two sessions, his course shall be considered as completed in five sessions: Provided, also, that every student of divinity shall attend the classes of church history and Hebrew during at least two of the sessions which he may claim to be considered as sessions of regular attendance at the Divinity Hall, if such classes shall exist in the university or universities at which he has prosecuted his theological studies.

§ 6. "That in each of these cases the students shall be enrolled by the professors of divinity during the several sessions of their respective courses, and shall deliver in the Divinity Hall, in the manner herein afterwards provided, an exegesis in Latin on some controverted head in divinity, a homily in English, a critical exercise on some portion of the original text of the Old Testament, an exercise and addition on some portion of the original text of the New Testament, a lecture on some large portion of Scripture, and a popular sermon, together with such other exercises as the professors shall think proper to prescribe. And the student shall be entitled to apply to the professors for his certificates, that he may be proposed for trials, and that the preliminary steps may be taken by the presbytery, during the currency of the last session of his course, as above described, with this limitation, that if the said last session is to be claimed as a session of regular attendance, he shall, at the conclusion thereof, obtain a new certificate of his attendance during its currency, and produce the same to the presbytery or synod.*

* The following interim regulation, in force till the meeting of Assembly 1850, provides for anticipating the time prescribed by the above provision of the act:—

"The General Assembly, having considered the regulations of last Assembly, anent the trial and licensing of students of divinity, and being desirous that the course of study, as prescribed by law, shall be resumed as

§ 7. "Professors of divinity are required to attend, as much as circumstances may permit, to the conduct of such students as are under their care; and, as far as they find it practicable, to insist that every student shall deliver his first discourse some time during his second session at the latest, and the remainder of his discourses at such periods as may enable him to deliver the whole of them before the end of January of the last session of his course.

The act then proceeds to regulate the procedure when a student is proposed for and taken on trials, in sections 8 and 9.

§ 8. "When a student is proposed to any presbytery in order to be taken upon trials, the presbytery shall be alone, and the motion for that purpose shall lie upon the table till their next ordinary meeting. In the mean time, the presbytery shall appoint the member by whom the student has been proposed, to lay before the said meeting the certificate or certificates in favour of the student that are specified in the third paragraph of the ninth section of this act; to desire him to attend the same, and to inform him, that previously to the meeting, he ought, as far as circumstances may permit, to wait on such ministers of the presbytery as have not formerly had an opportunity of conversing with him in private."

speedily as possible, did, and hereby do, resolve, that the following regulation shall continue in force until the meeting of next General Assembly:—

"That when a student shall have completed three sessions of regular attendance at the Hall, or two sessions of regular attendance and two sessions of occasional attendance, and shall have delivered all his discourses at the Hall, the presbytery shall be entitled to take him upon trials for licence, so as to bring his certificates, as required by act of Assembly 1813, before the synod which meets in July, August, September, October, or November —application to the synod which meets in April or May being competent only in the case of those synods which have no other meeting except in those months; and that no presbytery shall proceed with the trials of a student till the authority of the synod has been obtained."

§ 9. "When the time appointed for considering the motion is arrived, the presbytery shall strictly observe the following regulations:—

"1*st*, The presbytery shall be alone while they are employed in discussing the several preliminaries respecting students who are proposed for trials.

"2*d*, They shall require satisfying evidence that every student who is proposed for that purpose has completed the 21st year of his age.

"3*d*, No student shall be admitted to trial unless he produces to the presbytery a certificate or certificates from the professor or professors of divinity under whose tuition he hath studied, bearing that he hath prosecuted his studies, and delivered his discourses, in the manner prescribed by this act, and that his conduct, as far as it consists with the knowledge of the said professor or professors, has been in every respect suitable to his views in life. And the General Assembly do likewise hereby enact, that the presbytery shall record at full length the said certificate or certificates in their minutes. And it is hereby enacted and declared, that the student having lodged such certificate or certificates, shall be entitled to obtain extracts of the same, if demanded.

"4*th*, No presbytery shall receive any student upon trials unless they are satisfied that he is of good report; sound in his principles; pious, sober, grave and prudent in his behaviour; of a peaceable disposition; and well affected to the happy establishment in this kingdom both in Church and State; and that the presbytery may proceed with all due caution in a matter of such peculiar importance, they shall not agree to the motion in behalf of the student, unless his residence during the year preceding has been chiefly within their bounds, or he shall produce sufficient testimonials from the presbytery in whose bounds his residence has chiefly been during that term, bearing that his charac-

ter is such as is described in the immediately preceding sentence of this paragraph, and recommending him in those respects to the presbytery before whom the proposal is made, as a proper person to be entered upon trials.

"*5th*, The presbytery shall not agree to the motion in favour of the student, unless they are satisfied that he has made a competent degree of proficiency in those several branches of knowledge which are necessary to enable him to be a useful preacher of the Gospel. And the General Assembly ordain, that the presbytery, in order to procure full information in this respect, shall examine the student strictly and privately on his knowledge of the Greek and Latin languages, and of philosophy and theology.

"*6th*, If, after these preliminary steps have been taken, the presbytery shall be of opinion that the student is duly qualified in these several particulars, they shall record this opinion in their minutes, and order their clerk to write letters to the several presbyteries within the bounds of the provincial synods, two calendar months at least before the meeting of the same, informing them of the presbytery's intention to take the student upon public trials; and bearing that the certificate or certificates in his favour, which are required by this act, have been regularly laid before them. But it is hereby provided, that within the bounds of such synods as meet only once a-year, a student may be entitled to have these circular letters written half a year sooner than would be otherwise competent." *

* DAYS OF MEETING OF SYNODS.

Aberdeen	Aberdeen, and occasionally Banff, second Tuesday of April and October.
Angus and Mearns .	Fourth Tuesday of April and October.
Argyll	Inverary, first Wednesday in September.
Dumfries	Dumfries, third Tuesdays of April and October.

37. *Form of Minute when a Student of Divinity has been examined and found qualified to be taken on public probationary trials.*

At the day of , which day the presbytery of met, and was duly constituted with prayer: Sederunt, Rev. A. B., Moderator, Messrs C. D. E. F. and G., Ministers, Messrs H. and K., Ruling Elders.

The motion that A. B., student of divinity, be taken on trials, having lain on the table since last meeting, was now taken up, and the presbytery being alone, Compeared the said A. B., and produced satisfactory evidence to the presbytery that he had completed the

Fife	Kirkcaldy, second Tuesday of April; Cupar, second Tuesday of October.
Galloway	Newton-Stewart, fourth Tuesday of April and October.
Glasgow and Ayr . .	Second Tuesday of April and October. The order of meeting is, twice at Glasgow, then once at Ayr; twice at Glasgow, then once at Irvine.
Glenelg	Kyleakin, last Wednesday of July.
Lothian and Tweeddale	Edinburgh, first Tuesdays of May and November.
Merse and Teviotdale .	Kelso, Jedburgh, or Dunse, second Tuesday of April; and Kelso, fourth Tuesday of October.
Moray	Alternately at Elgin and Forres, fourth Tuesday of April.
Orkney	Kirkwall, third Wednesday of April.
Perth and Stirling .	Stirling, third Tuesday of April; at Perth, third Tuesday of October.
Ross	Chanonry, Dingwall, and Tain, alternately, third Tuesday of April.
Shetland	Lerwick, last Wednesday of April.
Sutherland and Caithness .	Wick, last Wednesday of April.

twenty-first year of his age, and also the following certificates from the Professors of Divinity under whom he had studied. *(Here copy them verbatim.)* The said A. B. also produced satisfactory evidence of his character and manner of life being in accordance with the acts of Assembly anent probationers; [or, in the words of the act, That he is of good report; sound in his principles; pious, sober, grave and prudent in his behaviour; of a peaceable disposition; and well affected to the happy establishment of Church and State.] The presbytery, having considered these certificates and testimonials, and having examined the said A. B. strictly and privately in his knowledge of the Greek and Latin languages, and of philosophy and theology, are of opinion that he is duly qualified to be taken on public probationary trials, and order their clerk, two months at least before the next meeting of the provincial synod, to write to the other presbyteries within its bounds, intimating this opinion, and the intention of this presbytery to proceed accordingly. The sederunt was closed with prayer.

38. *Form of Circular Letters to be addressed to Presbyteries.*

Rev. Sir,—The presbytery of having had the necessary certificates in his favour regularly laid before them, propose to take on public probationary trials A. B., student of divinity.—I am, &c.

C. D., Presbytery-Clerk.

To the Rev. the Moderator of the Presbytery of .
(To be communicated.)

The above circulars having been sent to presbyteries,

the 12th section of the act proceeds to regulate the procedure of the synod.

§ 12. "The General Assembly ordain, that if a presbytery propose to take a student upon public trials, and have, with that view, written the circular letters, as is herein required, public intimation thereof shall be made at some diet of the next meeting of the provincial synod, which shall not be the last diet thereof. And the presbytery clerk is hereby required to transmit to the synod clerk an extract of the certificate or certificates laid before the presbytery in favour of the student, in order that the same may be produced at this diet of the synod. And it is likewise hereby ordained, that at some subsequent diet of the synod, particular inquiry shall be made, whether any of the members of the court has any objection to offer against the student being entered upon public trials; and that the synod then, taking into consideration the extract produced, and the whole of the case, shall judge of the expediency of allowing the presbytery to admit the student on trials; or if, in any case, the presbytery-clerk shall fail to transmit the extract of the certificates above mentioned, the student may produce to the synod, by himself, or by any member of the court, the extract of the same, which by this act he is entitled to obtain."

The 13th and 14th sections of the act then detail the various steps to be taken, as follows:—

§ 13. "If the synod shall allow the student to be taken upon public trials, the presbytery shall proceed therein with all convenient speed; and the Assembly appoint the following trials to be taken of the student, and in the order herein mentioned:—1*st*, Catechetical trials on divinity, chronology, and church history; 2*d*, A trial in the Hebrew and Greek languages; 3*d*, An exegesis in Latin, on some controverted head in divinity; 4*th*, A homily in English; 5*th*, An exercise and addition; 6*th*, A lecture on some large

portion of Scripture; *7th*, A popular sermon; it being understood that, if the presbytery see cause, they may examine the student upon the subject of these several discourses.

§ 14. "The student having gone through the several trials which are mentioned in the immediately preceding section of this act, the presbytery are ordained to proceed in the following order:—

"*1st*, They shall deliberately and seriously take a conjunct view of the whole trials, and if they shall be of opinion that the student is not properly qualified to perform the duties incumbent upon a preacher of the Gospel, they shall by no means grant him a licence in his present circumstances.

"*2d*, If, upon this review of the trials, the presbytery are fully satisfied therewith, they shall record this opinion in their minutes.

"*3d*, That the presbytery shall then propose to the student the questions that are appointed to be put to all who pass trials by the Act 10th, Assembly 1711, and require him to subscribe the formula which is prescribed by the said act. And the General Assembly strictly prohibit all presbyteries from licensing any student to preach the Gospel, who shall not give explicit and satisfying answers to these questions, and subscribe the said formula.

"*4th*, The presbytery shall order the act of Assembly 1759, against simoniacal practices, to be read to the student in their presence.

"*Lastly*, The presbytery shall appoint their moderator to license the student to preach the Gospel, and order their clerk to furnish him with an extract of his licence."

It is competent, however, after leave has been granted by the synod to take the student on trials, for the presbytery, on the request of the student, to transfer the receiving of the public trials, or any part thereof, certifying

to the presbytery to which the transference is to be made that the various preliminary steps have been taken according to the directions of the act of Ass. 1849; and that such parts of the public and private trials as have been already gone through, have been received with approbation.

Such a certificate would run as follows:—

39. *Form of Minute transferring Student to another Presbytery.*

(Place and Date.)

Which day the presbytery of considering that A. B., student of divinity, had laid before them proper certificates from the professors of divinity with whom he studied, respecting his proficiency and moral character, and that he had been privately examined by a committee of presbytery, who reported their satisfaction with the manner in which he had acquitted himself; (or, and that he had been examined by the presbytery, and had acquitted himself in a satisfactory manner;) that, in consequence thereof, he had been proposed in due form to the synod of and its concurrence obtained to his being taken on public probationary trials, in order to his being licensed to preach the gospel; that having been afterwards publicly examined, and the presbytery satisfied with his knowledge of Divinity, Chronology, and Church History, and his skill in the Hebrew and Greek languages, he had the following subjects of discourse prescribed to him; for Exegesis , for Homily , for Exercise and addition , for Lecture , and for popular Sermon , to be delivered in presence of the presbytery, (and that of these he had delivered before them the which had been approved of, and sustained by the presbytery as part of his trials.) Considering also that the said A. B. being about to

leave the bounds of this presbytery, it would be more convenient for him to have the remainder of his trials transferred to the presbytery of within the bounds of which he is going to reside; and A. B. having requested to be duly recommended for that purpose, the presbytery agreed to grant him that recommendation, and appointed their clerk to make out an extract of their minute accordingly.

The extract is a copy of the minute, with the following words added:—

Extracted from the minutes of the presbytery,
by
C. D., Presbytery-Clerk.

After the student has completed his public trials, the presbytery take a conjunct view of the whole, and if they are satisfied therewith, and consider him duly qualified to preach the gospel, they record this opinion in their minutes; (for the form of this minute, see the Extract of Licence, p. 66;) they must then proceed to propose to him, through their moderator, the following questions appointed by Ass. 1711, Act x. to be put to all who shall pass trials.

40. *Questions put to Probationers before they are licensed to preach the Gospel.*

1. Do you believe the Scriptures of the Old and New Testaments to be the word of God, and the only rule of faith and manners?
2. Do you sincerely own and believe the whole doctrine of the Confession of Faith, approven by the General Assemblies of this National Church, and ratified by law in the year 1690, and frequently confirmed by divers acts of Parliament since that time, to be the

truths of God, contained in the Scriptures of the Old and New Testaments; and do you own the whole doctrine therein contained as the confession of your faith?

3. Do you sincerely own the purity of worship presently authorised and practised in this church, and asserted in the fifteenth act of the General Assembly 1707, entitled, "Act against innovations in the worship of God;" and also own the Presbyterian government and discipline, now so happily established in this church; and are you persuaded that the said doctrine, worship, discipline, and church government, are founded upon the Holy Scriptures, and agreeable thereto?
4. Do you promise that, through the grace of God, you will firmly and constantly adhere to, and in your station to the utmost of your power assert, maintain, and defend the said doctrine, worship, and discipline, and the government of this church by kirk-sessions, presbyteries, provincial synods, and general assemblies?
5. Do you promise that in your practice you will conform yourself to the said worship, and submit yourself to the said discipline and government of this church, and shall never endeavour, directly or indirectly, the prejudice or subversion of the same?
6. Do you promise that you shall follow no divisive courses from the present establishment in this church?
7. Do you renounce all doctrines, tenets, or opinions whatsoever, contrary to, or inconsistent with, the said doctrine, worship, discipline, and government of this church?
8. Do you promise that you shall subject yourself to the several judicatories of this church? Are you willing to subscribe to those things?

If the student shall give satisfactory answers to the above

questions, the presbytery must then require him to subscribe the following formula, which is prescribed by the same act of Assembly, 1711, C. 10.

41. *Formula to be signed by Probationers.*

I, , do hereby declare, that I do sincerely own and believe the whole doctrine contained in the Confession of Faith, approven by the General Assemblies of this National Church, and ratified by law in the year 1690, and frequently confirmed by divers acts of Parliament since that time, to be the truths of God; and I do own the same as the confession of my faith; as likewise, I do own the purity of worship presently authorised and practised in this church, and also the Presbyterian government and discipline now so happily established therein, which doctrine, worship, and church government, I am persuaded, are founded on the word of God, and agreeable thereto; and I promise that, through the grace of God, I shall firmly and constantly adhere to the same; and to the utmost of my power shall in my station assert, maintain, and defend the said doctrine, worship, discipline, and government of this church, by kirk-sessions, presbyteries, provincial synods, and general assemblies; and that I shall, in my practice, conform myself to the said worship, and submit to the said discipline and government, and never endeavour, directly nor indirectly, the prejudice or subversion of the same; and I promise that I shall follow no divisive course from the present establishment in this church, renouncing all doctrines, tenets, and opinions whatsoever, contrary to, or inconsistent with, the said doctrine, worship, discipline, or government of this church.

Thereafter the presbytery must order the 8th act of

Assembly 1759,* against simoniacal practices, to be read to the student in their presence, and then appoint their moderator to license him to preach the gospel, and order their clerk to furnish him with an extract of his licence. (Ass. 1813, Act viii. § 10.) This extract is in the following form, the latter part of which will also serve to show the proper form of the minute of presbytery at this concluding stage of the business.

42. *Extract of Licence.*

At , the day of , one thousand eight hundred and . The which day the presbytery of having taken into consideration that A. B., student of divinity, had passed the usual course of literature and philosophy at the university of , and thereafter studied divinity for a competent time, as required by the General Assembly of this church, in the case of those who are candidates for the holy ministry; that he had produced satisfactory testimonials from the professors of divinity with whom he studied, giving an account of his proficiency, of his having delivered all the discourses prescribed according to the act of Assembly, and of his character and conduct during his attendance having been suitable to his views; that they (or a committee of their number) had privately taken trial of his knowledge in divinity, and other necessary branches of study, and found him qualified (or reported him as qualified) to be entered upon public probationary trials, in order to his being licensed to preach the gospel; that the neighbouring presbyteries, as also the synod of the bounds, having been duly acquainted with the design of admitting him to trials, their concurrence had been obtained; and that, in consequence of these preliminary steps, the

* This act will be found in the Appendix.

said A. B. had accordingly been admitted by the presbytery to the several trials, appointed by acts of the General Assembly of the Church of Scotland, all the parts of which probationary trials he had now finished, —did, on a review of his whole appearances, declare their satisfaction with the specimens which he had given of his literature and other qualifications requisite for becoming a licentiate of this church, and agree that he should accordingly be licensed to preach the gospel. Whereupon, the questions appointed, by the 10th act of Assembly 1711, to be put to such as are to be licensed, were put to him, and he gave satisfying answers to all the same; also, the act 1759, against simoniacal practices, was read to him, and he judicially subscribed the formula annexed to the forementioned act 1711. By all which he came under the engagements to the doctrine, worship, discipline, and presbyterian government of this church, contained in the said act, questions, and formula. Wherefore, the presbytery of did, and hereby do, license the said A. B. to preach the gospel of Christ, and exercise his gifts as a probationer for the holy ministry; and moreover, grant him this extract of licence, and testimonials in common form.

Extracted on this and the preceding pages of stamped paper, from the records of the presbytery of by

C. D., Presbytery-Clerk.

The above is written on a L.2 stamp.

By Assembly 1736, act ix. it is enacted, 1st, That every probationer residing two months within the bounds of any presbytery, shall present his licence to the same, and that the said presbytery mark in their register the probationer's name, and the presbytery which licensed him. 2d, That

each presbytery extract from their records annually, in March or April, a complete list of probationers then residing, or who have resided for the above space within their bounds, mentioning in their extracts, first, the names of their own licentiates, and then the names of the others residing as above, with the presbytery who licensed them. 3d, That their extracts be made out upon the schedule which bears the presbyteries' commission to their members to the General Assembly, and be signed in like manner by the moderator and clerk.

In order to facilitate the observance of this act, as well as for other purposes, many presbyteries keep two separate lists or registers, 1st, Of all the probationers licensed by them, with the dates of their license: 2d, Of all the probationers residing within their bounds, during the year preceding the making out of the commission to their representatives in the Assembly, with the presbyteries by whom they were licensed,—from which the extract referred to in the above act is made.*

In certain cases the General Assembly reserves to itself the synod's duty of authorising a presbytery to proceed with trials. It has been ruled in the case of persons affected with blindness, that leave to take them on trials must be obtained from the General Assembly (Ass. 1761, act vi. 1815, sess. 5, Thomson; 1829, sess. 9, Maclean); and a similar course has been pursued in the case of a person affected with deafness (Ass. 1823, sess. 6, Gordon). It

* Great care ought to be taken, both by presbyteries and probationers, duly to observe the above provisions of the act 1736; as it has lately been found by the General Assembly, that a presbytery ought not to sustain a presentation in favour of a probationer, until he produces along with it a presbyterial certificate from the presbytery within the bounds of which he has last resided before receiving his presentation; and there may be difficulty in procuring such a certificate, unless the party has been duly enrolled as a probationer within the bounds of the presbytery of his late residence.—(Case of Rev. Hugh Niven, Assembly 1849, sess. 5.)

has also been so provided in the case of dissenting probationers and ministers.

ADMISSION OF MINISTERS AND LICENTIATES BELONGING TO DISSENTING BODIES INTO THE CHURCH.

Overtures regulating the procedure in this matter have been recently transmitted every year to presbyteries, and at the same time passed into interim acts, but the sanction of a majority of presbyteries has not yet been obtained. The overture and interim act of Assembly 1849, sess. ult., sets forth in its preamble the desire of the Assembly, on the one hand, that there should be no obstruction to the admission of such parties, when truly and rightly prepared for it; and, on the other hand, that great care should be taken in all cases that their admission be not agreed on till full inquiry has been made, and entire satisfaction obtained with regard to their education, qualifications, and character. With a view to this it is enacted and ordained,

1. "That the application shall be made to the presbytery within whose bounds the person making such application has officiated, if a minister, or has chiefly resided during the last year, if a probationer; or otherwise, that a certificate from that presbytery in his favour shall be produced to the presbytery to which the application is made.

2. "That certificates shall be produced to the presbytery, showing that he has completed his attendance on a full course of Literature and Philosophy, during four sessions, in one or other of the Universities of Scotland.

3. "That certificates shall also be produced, that he has attended a course of Theology on Professors who hold the same doctrines as those in the Confession of Faith, during at least an equal period of years with that for which the Church requires of students belonging to her own commu-

nion attendance at the Divinity Hall, and, in addition, for one full session on all the Theological classes in one of the Universities of Scotland.

4. "That satisfactory testimonials of character shall be produced up to the time of his application.

5. "That at a meeting subsequent to that at which such documents have been produced, the presbytery shall take such preliminary trial of his qualifications as they may deem suitable, and shall report the whole case to the next General Assembly, to whom they shall transmit all the foresaid documents, along with a report of the foresaid preliminary trial.

6. "That in cases of application for admission from a minister and his congregation jointly, additional documents, showing the circumstances in which the application is made, and the persons by whom, or in whose behalf, it is made, shall be produced to the presbytery and transmitted to the General Assembly, who shall then give judgment in the case as they shall see cause.

7. "That when the application of a minister shall be favourably entertained by the General Assembly, it shall be competent for the presbytery recommending him to make use of his services as a missionary during the currency of his year of probation, it being understood that his admission to the status of a licentiate of this church does not take place sooner than one year after the meeting of presbytery at which the application was made; and that in the case of all licentiates whom the General Assembly shall authorise presbyteries to take steps towards admitting, the presbytery shall carefully abstain from employing them in any such capacity till the expiry of said year, when they shall be taken on probationary trials in the same manner as students are taken on trials after leave from the synod, and, if then found qualified, shall be declared to be licentiates of this Church."

It will be observed that it is at a meeting subsequent to that at which the certificates are produced that the presbytery proceed, if these are found satisfactory, to the preliminary trials. The minutes subsequent to the Assembly's deliverance, with a few alterations which will naturally suggest themselves, will be similar to those in the case of trials of probationers.

ADMISSION OF MINISTERS.

When a cure becomes vacant by the death of the minister, the brethren who attend his funeral meet thereafter, and appoint one of their number to preach in the parish church on the following Lord's day, to declare the charge vacant from the date of the minister's death, and to intimate the vacancy to the patron of the parish. A minute of this meeting is made and reported to the presbytery, who at their first meeting approve of it, and appoint it to be entered in their minutes.

1. PROCEEDINGS ON OCCASION OF THE DEATH OF A MINISTER.

43. *Minute of Meeting of the Brethren after the Funeral.*

At the manse of , the day of . Which day the following brethren met here after the funeral of their late *brother, the Rev. A. B., minister of this parish, who departed this life on the instant, viz. C. D., E. F., G. H., and having chosen the said C. D. to be moderator *p. t.*, the meeting was constituted by prayer. Mr L. M. was ap-

* Some presbyteries are in the habit of here recording an expression of their esteem.

pointed to preach in the church here on Sabbath next; and after divine service to declare this charge vacant from the instant; and they instruct the clerk to enter the said Mr A. B.'s decease in the separate register. Closed with prayer.

C. D., Moderator, *pro tem.*
G. H., Presbytery-Clerk.

Should there be no ordinary meeting of presbytery for some time thereafter, then the above minute may be thus continued :—

The meeting farther direct the said Mr L. M. to intimate the vacancy by letter to the patron of the parish; and they appoint the following supplies for the parish, viz. Mr C. D. to preach on the day of Mr G. H. on the day of . Closed, &c.

44. *Letter of Intimation to Patron.*

(Place and Date.)

SIR,—As directed by a meeting of ministers of the Presbytery of , held in the manse of on current, after the funeral of the deceased Mr A. B., late minister of that parish, I now intimate to you, as patron of the parish, that the cure thereof is vacant from the current, the day of the said A. B.'s death, in order that you may take the necessary steps for exercising your right of presentation to the said charge.—I am, Sir, &c.

L. M., Minister of .

If the ordinary meeting of presbytery takes place soon, then the above intimation is made by the moderator or clerk.

In case of a vacancy by translation, resignation, or deposition, intimation must likewise be made to the patron.

OATHS TO BE TAKEN BY PATRON.*

The patron, before presenting to the vacant cure, must qualify by taking the oaths to government, and a certificate of his having so qualified must be given in to the presbytery along with the presentation.

45. *Oath of Allegiance.*

I , do sincerely promise and swear, that I will be faithful, and bear all true allegiance to Her Majesty Victoria, by the grace of God queen of this realm. So help me God.

46. *Oath of Assurance.*

I , do, in the sincerity of my heart, assert, acknowledge, and declare, that Her Majesty Queen Victoria is the only lawful and undoubted sovereign of this realm, as well *de jure*, that is, of right queen, as *de facto*, that is, in the possession and exercise of the government; and therefore, I do promise and swear, that I will with heart and hand, life and goods, maintain and defend her right, title, and government, against the descendants of the person who pretended to be Prince of Wales during the life of the late King James, and since his decease pretended to be, and took upon himself the style and title of King of England, by the name of James the Third, or of Scotland by the name of James the Eighth, or the style and title of King of Great Britain, and their adherents, and all other enemies, who, either by open or secret attempts, shall disturb or disquiet Her Majesty in the possession and exercise thereof.

* The same oaths must be taken by presentees before the presentation can be sustained, and by schoolmasters before their election can be confirmed by the presbytery.

47. *Oath of Abjuration.*

I , do truly and sincerely acknowledge, profess, testify, and declare, on my conscience, before God and the world, that our sovereign Lady Queen Victoria is lawful and rightful Queen of this realm, and all other Her Majesty's dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and since his death pretended to be, and took upon himself the style and title of the King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of the King of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce, refuse, and abjure my allegiance or obedience to any of them, and I do swear that I will bear faith and true allegiance to Her Majesty Queen Victoria, and her will defend to the utmost of my power, against all traitorous conspiracies and attempts whatever, which shall be made against her person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, and her successors, all treasons and traitorous conspiracies which I shall know to be against her or any of them; and I do faithfully promise to the utmost of my power to support, maintain, and defend the succession of the crown against the descendants of the said James, and against all other persons whatsoever; which such succession, by an act, entitled "An act for the farther limitation of the Crown, and better securing the rights and liberties of the subject," is and stands limited to the Princess Sophia, Electress and Duchess-Dowager

of Hanover, and the heirs of her body, being Protestants; and all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever; and I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian. So help me God.

48. *Certificate produced to the Presbytery that the Patron has taken these Oaths.*

Mr appeared before me this day, and subscribed and took the several oaths of allegiance, assurance, and abjuration. Given under my hand, at this day of , 18 .

A., Justice of Peace for the County of .

II.—PRESENTATION.

49. *Form of Presentation by a Patron to a vacant Benefice.*

I, A. of B., Esq., undoubted patron of the parish church and parish of M., lying within the presbytery of K., and sheriffdom of , considering that the said church and parish is now vacant, and become at my gift and presentation, by the death of Mr C., late minister of the gospel at the said church of M., and I being sufficiently informed of the literature, loyalty, qualifications, good life and conversation of D., preacher of the gospel, do therefore, by these presents, nominate and present the said D. to be minister of the said parish and church of M. during all the days of his lifetime, giving, granting, and disponing

to him the constant, localled, and modified stipend, with the manse and glebe, and other profits and emoluments belonging to the said church for the crop and year and during his lifetime, and his serving the cure at the said church; requiring hereby the Rev. moderator and presbytery of K. to take trial of the qualifications, literature, good life and conversation of the said D., and having found him fit and qualified for the function of the ministry at the said church of M., to admit and receive him thereto, and give him his act of ordination and admission, in due and competent form. Recommending hereby to the Lords of Council and Session, upon sight of this presentation, and the said presbytery's act of ordination and admission, to grant letters of horning on a single charge of ten days only, and other executorials needful at the instance of the said D., against all and sundry the titulars, heritors, liferenters, feuars, farmers, tacksmen, tenants, possessors and occupiers of lands within the said parish, subject and liable in payment of the said localled and modified stipend, for causing the said D., and others in his name, be readily answered and paid thereof in such due and competent form as effeirs. And I consent to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation. And thereto I constitute my procurators, &c. In witness whereof, these presents, written on this and the preceding page of stamped paper by L. M., clerk to N. O., writer to the signet, are subscribed by me at the day of one thousand eight hundred and years, before these witnesses, P. and Q., both my servants.

P., Witness. (Signed) A.

Q., Witness.

A patron may delegate the power of presentation to a commissioner, he being, however, a qualified person, of which the usual certificate must be produced to the presbytery. This delegation is effected either by the introduction of the following clause in a deed appointing a commissioner for the management of the patron's affairs generally, or by a writing in the following terms.

50. *Clause to be introduced in a general Commission.*

GIVING and GRANTING to the said commissioner full power, warrant, and commission for me, and in my name and behalf, in case of the vacancy of any churches whereof I am patron, to name and present fit and qualified persons, in terms of law, to serve the cure as ministers of the said churches.

51. *Special Commission to exercise the Right of Patronage.*

I, A., undoubted patron of the parishes of in the presbytery of K. and sheriffdom of L., CONSIDERING that I am preparing to go abroad with the intention of remaining there for many years, and that, during my absence, vacancies may occur in the office of minister in one or all of the said parishes, while, from my distance, it may be impossible for me personally to exercise my right of presentation: THEREFORE, I hereby NAME, CONSTITUTE, and APPOINT B. to be commissioner to the effect after mentioned, GIVING, GRANTING, and COMMITTING to him, in case of the vacancy of any of the said parishes whereof I am patron, by the death, deposition, translation, or resignation of the present incumbents, full power and authority to name and present fit and qualified persons in terms of law, to serve the cure as minis-

ters of the said parishes, and to declare them entitled to the accustomed stipend from the respective terms of their entries, and that in the same way and manner, and as fully and freely in all respects, as I might do myself if personally present, promising to hold firm and stable whatever my said commissioner shall lawfully do or cause to be done in the premises. And I consent to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation, and that letters of horning on six days' charge, and all other necessary execution, may pass on a decree to be interponed hereto in form as effeirs: And thereto constitute my procurators, &c. In witness whereof, (as on page 76.)

A presentation to a church of which the Crown is patron is obtained by a letter passing under the Privy Seal, in consequence of a warrant which is superscribed by Her Majesty and subscribed by the Secretary of State for the Home Department. This letter should not be presented to or received by the presbytery without being regularly passed at the Privy Seal, as directed by the Royal grant. Such admission of the presentee and proceeding of the presbytery is not only irregular, but null and incomplete. It is merely a warrant for expeding the gift, and the Queen, if she finds it has not passed the Privy Seal, may issue a new presentation to another person, who, by completing it, may go to the presbytery and insist on effect being given to his preferable right; and this they cannot legally refuse to do.

A licentiate receiving a Crown presentation must take the warrant which he receives from the Home Office to the Queen's Remembrancer in Exchequer, who records it in the books of the Court of Exchequer, and grants a certificate to this effect on the back of the warrant. It is then

necessary to record it in the Privy Seal Office. The writer to the Privy Seal gives out an extract, to which the Keeper of the Privy Seal appends a seal and retains the warrant. The extract with the seal is then ready for being laid before the presbytery. The fees paid at the several offices amount to about L.6.

By the law of Scotland, six months have been allowed to patrons to present to vacant benefices.* The time is computed by the earlier statutes, (1567, c. 7, and 1592, c. 117,) not from the date of the vacancy, but from the period when it came to the knowledge of the patron; but by the statute of Queen Anne (10 Anne, c. 12) it is limited to six months after the vacancy happens. The day of the vacancy is the point from which the six months run, but is not included therein. By 5 Geo. I. c. 19, § 8, there are three cases in which the course of the six months is not interrupted; 1st, The presentation by the patron of one who has not qualified by taking the oaths to government. 2d, Of a minister of another parish; and, 3d, Of one who shall not accept the presentation. If, however, the presentee be qualified in terms of the statute, the currency of the six months is suspended by the presentation, and the presentee's acceptance of it: "And although the presentee shall afterwards be rejected by the church courts, in respect of heterodoxy, immorality, or any other cause, competent to them in regard to his examination and admission, the patron will undoubtedly have as much time left him to present after their final sentence, as remained of the six months when the presentation was lodged," (Dunlop, p. 56.) "It is not enough that the patron have

* Vide Ersk. i. 5, 17, and Dunlop on the Law of Patronage, Chap. iv. and Connell on Parishes, Chap. iv.

subscribed the presentation within the six months: it must within that period have been lodged with the presbytery, their clerk, or moderator: but where the patron has duly subscribed a presentation in proper time, and adopted the requisite measures for having it lodged before the expiry of the six months, and which would have been effectual but for accidental circumstances beyond his control, the court do not consider him to have refused or neglected to present within the six months, so as to give room for the exercise of the *jus devolutum*," Dunlop, p. 56; Connell on Parishes, p. 501; and Case of Portnahaven, Ass. 1837, sess. 3.

It is also necessary that the acceptance by the presentee have been executed before the expiry of the six months. The acceptance should at all times be lodged with the presentation. In one case it has been found, where the acceptance was executed within the six months, though not laid before the presbytery till after that period, the *jus devolutum* had not taken place. A presentation to a minister of another parish will not interrupt the currency of the six months. If no acceptance be lodged by him within that period, or if he accepts, and afterwards withdraws his acceptance, or has been rejected by the presbytery on any ground competent to them, the presbytery will be entitled to present, at the end of the six months, *jure devoluto.*

52. *Form of Presentation by the Presbytery* jure devoluto.

We, the members of the presbytery of A., considering that, by the statute law of Scotland, patrons not presenting to vacant benefices within the period of six months from and after the day on which the vacancy occurs in those churches and parishes of which they are patrons, lose and forfeit all right and title which they may have to nominate, present, and appoint to

the vacant benefice, and that such right is, in that case, declared to pertain and belong to the presbytery of the bounds within which the said parish lies: and that the church and parish of B., within the bounds of the said presbytery, did become vacant by the death of C., the late minister, on the day of last, and that E., the undoubted patron of the said church and parish, has not exercised his right of nominating, presenting, and appointing a qualified person to be minister of the same within the time required by law, do hereby find that the right of presentation has fallen into our hands *jure devoluto*, and *considering* that much hurt and inconvenience will arise to the people of the said parish, if the pastoral relation between them and a resident minister is any longer dissolved; and being sufficiently informed of the literature, loyalty, qualifications, good life and conversation of D., preacher of the gospel, do, &c., (as in No. 49.)

In witness whereof, we, the Rev. E. F., moderator, and G. H., clerk of the said presbytery of A., and as authorised by, and acting for behoof of the said presbytery, do hereby subscribe these presents, written on stamped paper by L., clerk to M., writer to the signet, at N., the day of one thousand eight hundred and years, before these witnesses, O. and P., both clerks to the said M.

O., Witness.	E. F., Moderator.
P., Witness.	G. H., Clerk.

Along with the presentation there must be given in to the presbytery the following papers:—

1. A certificate of the patron's qualification to government.

2. The presentee's letter of acceptance.
3. A certificate of his having taken the oaths.
4. An extract of his licence as a preacher of the gospel.
5. A presbyterial certificate.

If the presentee is a licentiate of the presbytery within whose bounds the parish to which he is presented is situated, then the papers 4 and 5 will not be required.

53. *Form of Letter of Acceptance by Presentee.*

REV. SIR,—A., Esq. of B. having been pleased to grant a presentation in my favour to the church and parish of M., I hereby beg leave to intimate to you my acceptance of the same.—I am, &c.

D.

To the Moderator of the Presbytery of
(To be communicated.)

In some cases the patron grants a commission to an agent to follow out the presentation. The following may be given as the form of such a commission:—

54. *Commission to an Agent to follow out the Presentation.*

I, A. of B., undoubted patron of the parish and kirk of M., do hereby give full power and commission to F. to prosecute and follow forth the settlement of D., preacher of the gospel, to be minister at M., in the presbytery of K., upon the presentation of me the said A., patron of the said parish, and to do every thing requisite thereanent that I might have done therein myself; all which I hereby promise to ratify and approve.—In witness whereof, &c.

III.—PROCEEDINGS CONSEQUENT ON THE LODGING OF A PRESENTATION.

Although a presentation can only be issued by a patron in favour of a licentiate or ordained minister of the Church, that is, of one whom the Church has declared to be qualified for preaching the Gospel of Christ, or for exercising the functions of the holy ministry, the ordination or admission of the presentee does not immediately follow upon his presentation, and the accompanying documents being submitted to the presbytery. The Church claims the right of collation, and that claim has been admitted in the acts by which she was established. A brief statement of the nature of that claim, and of the extent to which it has been admitted by the State, and acted upon by the Church, may not unsuitably introduce the forms for the procedure of presbyteries in the settlement of presentees.

In the year 1565, an Assembly of the Church, which prepared matters for the establishment of Presbyterian government in Scotland, thus expressed, in a message to the Queen, their opinion concerning the best method of settling vacant parishes:—"Our mind is, not that her Majesty or any other patron should be defrauded of their just patronages; but we mean, whensoever her Majesty or any other patron do present any person unto a benefice, that the person presented should be tried and examined by the judgment of learned men of the Church, such as are the present superintendents; and as the presentation unto the benefice appertains unto the patron, so the collation, by law and reason, belongs unto the Church; and the Church should not be defrauded of the collation, no more than the patrons of their presentation; for otherwise, if it be lawful to the patrons to present whom they please, without trial or examination, what can abide in the church of God but mere ignorance?" The claim thus made by the

Church was distinctly admitted at the establishment of Presbytery, and has again and again been recognised by statute; and the terms of such recognition it is important to know, because it is by these that the power of the Church in the matter is limited and defined; and her own regulations are valid only in so far as they are in accordance with, and express accurately the meaning of the statutes of the realm. In the act of the Parliament of Scotland 1567, c. 7, following, at a brief interval, the claim just referred to, "It is statut and ordained be our soveraine Lord, with advise of his dearest Regent and three estatis of this present parliament, that the examination and admission of ministers within this realme be only in the power of the Kirk, now openlie and publickly professed within the samin: The presentation of laick patronages alwaies reserved to the just and auncient patrons: And that the patroun present ane qualified persoun within six months, &c., providing, that in case the patron present ane person qualified to his understanding, and failing of ane anuther within the said six months, and the superintendent or commissioner of the Kirk refusis to receive and admit the person presented to the patron as said is, it sall be lesum to the patron to appeale to the superintendent and ministers of that province quhair the benefice lyis, and desire the person presented to be admitted, quhilk gif they refuse, to appeale to the General Assembly of this haill realme to quhare the cause beand decyded, sall take end as they sall decerne or declair."

To the same purpose the act 1592, c. 116, "ordainis all presentations to benefices to be direct to the particular presbyteries in all time cumming, with full power to give collation thereupon, and to put ordour to all matters and causes ecclesiastical within their boundes, according to the discipline of the Kirk; providing the foresaid presbyteries be bound and astricted to receive and admitt quhatsum-

ever qualified minister presented be his Majestie or laick patrones."

At the Revolution, patronage was abolished, and in place of that mode of supplying parishes, it was, by the act 1690, c. 23, enacted, "That in case of the vacancy of any particular church, and for supplying the same with a minister, the heritors of the said parish, (being Protestants,) and the elders, are to name and propose the person to the whole congregation, to be either approven or disapproven by them;" but this act was repealed by an act of the British Parliament 1711, act 10, Queen Anne, which provides, "That in all time coming the right of all and every patron or patrons to the presentation of ministers to churches and benefices be restored, settled, and confirmed to them, and that from and after the first day of May 1712, it shall and may be lawful for her Majesty, her heirs and successors, and for any other person or persons who have right to any church or churches, to present a qualified minister; and the presbytery shall and is hereby obliged to receive and admit in the same manner such qualified person or persons, minister or ministers, as shall be presented by their respective patrons, as the persons or ministers presented before the making of this act ought to have been admitted."

The last reference to the subject, up to a very recent period, is in an act, 5th Geo. I. cap. 29, respecting the taking of the oaths appointed by law, which concludes in these words—"And it is further declared and enacted, that nothing herein contained shall prejudice or diminish the right of the Church, as the same now stands by law established, as to the trying of the qualities of any person presented to any church or benefice."

Differences of opinion arose in the Church as to the extent of her powers under these acts, and the act entitled the Veto Act, was passed in the General Assembly 1834, whereby it was provided, that if, at the moderating in a

call to a vacant pastoral charge, the major part of the male heads of families, members of the vacant congregation, and in full communion with the Church, shall disapprove of the person in whose favour the call is proposed to be moderated in, such disapprobation shall be deemed sufficient ground for the presbytery rejecting such person, and that he shall be rejected accordingly, and due notice thereof forthwith given to all concerned. Regulations for carrying into effect this act were sent down to presbyteries, and were in operation at the publication of the former edition of this work; but in 1842 it was declared illegal, and *ultra vires* of the Church, by a final decision of the House of Lords; and in terms of this finding, the General Assembly of 1843, sess. iv. act 9, passed the following act:—"The General Assembly having considered the overtures on the subject of the repeal of the act on Calls, commonly denominated the Veto Act, and finding that the same infringes on civil and patrimonial rights, with which, as the Church has often declared, it is not competent for its judicatories to intermeddle, as being matters incompetent to them, and not within their jurisdiction, did, and hereby do, enact and ordain, that all the presbyteries of this Church shall proceed henceforth in the settlement of parishes, according to the practice which prevailed previous to the passing of that act, keeping specially in view the undoubted privilege of parishioners to state any relevant objections to the induction of presentees; upon which presbyteries, after hearing parties, shall decide, it being in the power of those parties to appeal to the superior Church courts if they see cause,"—thus reverting to what, previous to the passing of the Veto Act, had been the invariable practice of the Church.

On the 17th August of the same year, an act of the Legislature was passed, under the title of "An Act to remove doubts respecting the Admission of Ministers to

Benefices in that part of the United Kingdom called Scotland," which lays down certain instructions for the conduct of presbyteries on the receipt of a presentation, and which defines, at much greater length than any former enactment, what is the extent of the power of the Church under their right of collation to the benefice. It is by that act, and by the regulations founded on it, and passed into an interim act, Ass. 1849, sess. ult., that the procedure of the Church, in the settlement of a minister, is at present regulated.

The act of Assembly provides, that any presentation to a vacant charge shall be lodged in due time in the hands of the moderator or clerk, for the time being, of the presbytery of the bounds; and if so lodged with the clerk, shall be by him immediately delivered to the moderator, who shall lay the same before their next ordinary meeting, if such meeting have been previously fixed for a day distant not more than one calendar month from the time when said document has been put into his hands.

Supposing that the papers are given into the moderator's hands at such a time as to be laid by him before the next ordinary meeting, then the minute may be in the following terms:—

55. *Minute of the Presbytery when Presentation is laid on the table, and sustained.*

The Rev. A. B., moderator, laid on the table of the presbytery the following papers:—

1*st*, Presentation by C., patron of the parish of , in favour of F. G., preacher of the Gospel, to be minister of the church and parish of , dated , which presentation he, the said Rev. A. B., moderator, had received on the of , being within one calendar month from this date.

2d, Certificate by K., clerk to her Majesty's Justices of the Peace for the county of , that the said C. has duly qualified to Government.

3d, Letter of acceptance by the said F. G.

4th, Certificate by K., clerk to her Majesty's Justices of the Peace for the county of , that F. G. has duly qualified, &c.

5th, Extract of F. G.'s licence as a preacher of the Gospel.

6th, A presbyterial certificate in his favour.*

Which papers being read, it was moved, seconded, and unanimously agreed to, that the presbytery sustain the presentation, with relative documents; whereupon A,† as agent for the patron (or presentee), took instruments and craved extracts.

If no ordinary meeting shall have been fixed to take place within the period of one calendar month from the date of the presentation being lodged with the moderator, the moderator shall, within three days after its coming into his hands, call a meeting of presbytery, to be held on a day not less than ten, nor more than fourteen, days after the date and dispatch of the intimation by which it is called, for the purpose of receiving, examining, and judging, of such presentation.

In this latter case, the following may be given as the form of the moderator's letter:—

(Place and date.)

SIR,—A presentation in favour of the Rev. ,

* The regulations omit the presbyterial certificate in their enumeration of documents to be required relative to the presentee. It must, however, be produced.—(*Niven*, Assembly 1849, sess. 5.)

† The presentation may be put into the hands of the moderator by an agent of the patron, in the presence of the presbytery, and, along with it, a document from the patron, empowering him to act as his proxy, and to take the necessary steps for following out the settlement.

to be minister of the church and parish of , having been lodged with me the day of , (or this day) I hereby call a meeting of the presbytery of , to be held at , on the day of , at o'clock, when the same will be laid before them.

(Signed) A. B., Moderator.

To the Rev. ,
Manse of .

The presbytery having convened agreeably to such intimation, their minute may be as follows:—

56. *Minute when Presentation is laid on the table at a Special Meeting of Presbytery.*

(Place and date.)

The presbytery met here this day, in consequence of a circular addressed by the moderator to the several members, intimating that he had received a presentation to the church and parish of .

Sederunt, &c.

The meeting having been constituted by prayer, the moderator laid on the table the following papers, &c.

Then the minute may proceed as in Style No. 55.

Having sustained the presentation, the presbytery next proceed to appoint the presentee to preach in the church of the vacant parish. The direction of the statute is, that this shall be done "at such times as the presbytery may direct, or as may be directed by any regulation of the General Assembly to that effect." The regulations of Assembly 1849 accordingly provide, "That he shall preach on at least one Sabbath-day, and thereafter on a week-day, when a committee of at least two ministers of the

presbytery, specially appointed thereunto, shall be present; it being optional to other members of presbytery to attend also; and this committee shall, on the conclusion of the public worship at that time, receive from the presentee the manuscripts of his sermons delivered that day, and on the other appointed occasion or occasions of his preaching, to be laid, if need be, before the presbytery. It being provided, that intimation of the days of such preaching shall be given to the congregation on the Lord's day immediately preceding the first of them, by edictal notice, under the authority of the presbytery; it being also provided, that, in the case of a united parish having two churches, the presentee shall be appointed so to preach one Sabbath at least in each of these churches."

"After providing that the presentee shall preach, as in the preceding regulation, the presbytery shall, at the same time, appoint a meeting to be held in the church, or one of the churches of the vacant parish, for the purpose of moderating in a call in favour of the presentee, and of receiving objections to his settlement, if such shall be offered; such meeting to be at the distance of at least ten free days from the said week-day appointed as above, for the presentee's preaching, and to be intimated by one of the members of presbytery then present, in the form hereunto appended."—For form, see Style 58, page 91. (A.)

The minute may then proceed as follows:—

57. *Minute of the Presbytery appointing the Presentee to preach in the vacant church, and fixing the day for moderating in the call.*

The presbytery then resolved to appoint the said F. G. to preach in the church of , on Sabbath the day of , and on the following ; and they appoint the Rev. Messrs

C. and D. a committee to be present on that day, and to receive from the said Rev. F. G. the manuscripts of his sermons delivered that day and on the Sabbath preceding; and the presbytery further resolve to meet in the said church of , on the day of , for the purpose of moderating in a call in favour of the presentee, and of receiving objections to his settlement, if such shall be offered, Mr to preach on that occasion; and they appoint the Rev. Mr to preach in the vacant church next Lord's day, and to make due and lawful intimation of these their appointments and resolutions to all concerned.

The following may be the form of intimation to be made by the minister appointed to preach on the following Sabbath, respecting the days on which the presentee is appointed to preach:—

58. *Form of Intimation of Presentee's preaching, and Edict previous to the Call being moderated in.*

The presbytery of having received a presentation from , patron of the parish of , in favour of F. G., preacher of the Gospel, to be minister of this church and parish; and having sustained the same, did resolve to proceed with the settlement of the said F. G. according to the rules of the Church. I therefore hereby give notice to all concerned, that the said presbytery have appointed the said F. G. to preach here on Sabbath the day of , and on the thereafter at the usual hour.

And, further, (A) by appointment of the presbytery, I hereby intimate, that the presbytery have resolved to meet in this place on the day

of , for the purpose of moderating in a call in favour of Mr F. G., to be minister of this church and parish; and also, that if any one or more of the parishioners, being members of this congregation, and personally present, have any objection to the said Mr F. G., in respect to his ministerial gifts and qualities, either in general or with reference to this particular parish, or any reason to state against his settlement in this parish, the presbytery will be ready on that day, and in this place, or, if so required, at their next meeting, and in this place, to receive the same in writing, or to write down the same in their minutes, in the form and manner which such parishioners may require.

When the day for moderating in the call has come, the presbytery meet at the vacant church, and, being constituted, and having ascertained from the committee appointed that the presentee had duly fulfilled the appointments, and had put his manuscripts into their hands, and that the edict was duly served, or due intimation given, the minister who was appointed to preach and preside will then go to the pulpit, and, after divine service, intimate to the people, that in terms of the previous intimation, a call will be moderated in in favour of F. G.

The form of call will then be read by the clerk, which, by Appendix to the Regulations, is as follows:—

59. *Form of Call.*

We, heritors—elders—members of the congregation of , and parishioners of the parish of , being Protestants,—desirous of promoting the glory of God, and the good of His Church, being destitute of a fixed pastor, and being

satisfied, by good information, and our own experience, of the ministerial abilities, and of the suitableness to our capacities, of the gifts of you, Mr F. G., have agreed to invite, as we hereby do invite and call, you to undertake the office of pastor among us, promising you all dutiful respect, encouragement, and obedience in the Lord. In witness whereof, we have subscribed this call, before the presbytery of
on the day of years.

The moderator will then invite the heritors, elders, and others, being members of the congregation, or parishioners, being Protestants, to subscribe and concur in the same.

After the call, and concurrence has been subscribed by all persons who are willing and entitled to do so, or an opportunity afforded for so doing, intimation must next be made to the congregation by the moderator, that if any one or more heritors, elders, or others, being members of the congregation, and parishioners, being personally present, have any objection to the individual so presented, in respect to his ministerial gifts or qualities, either in general or with reference to that particular parish, or any reason to state against his settlement in that parish, and which objections or reasons do not infer matter of charge against the presentee, to be prosecuted and followed out according to the forms and discipline of the Church, the presbytery are ready, either then or at their next meeting, to receive the same in writing, or to write down the same in their minutes, in the form and manner which such parishioners may require. If, on this intimation being made, no parties appear either to give in specific objections, or to intimate their intention of objecting at a subsequent meeting, the presbytery shall then sustain the call, and resolve to proceed to the settlement of the presentee, appointing him to appear before them at their next meet-

ing, to undergo his questionary trials; and they may also then, or at their next meeting, appoint him the subjects for his discourses.

The minute may run as follows:—

60. *Minute of Presbytery sustaining the Call.*

(Place and date.)

The which day the presbytery of met here agreeably to their resolution of the day of last, and was constituted—sederunt A, B, C, &c. The edict intimating Mr F. G.'s appointment to preach in the parish church of was returned, duly executed. It was reported by Messrs A. and B. that the said Mr F. G. had fulfilled these appointments, and that they had been present, as appointed by the presbytery, on the second of these occasions, and had received from Mr F. G., at the conclusion of the service, the manuscripts of his sermons delivered that day and on the former occasion. The presbytery thereupon repaired to the church, when the Rev. C. D. preached from , and, at the conclusion of the service, intimated that the presbytery were now to proceed to moderate in a call to the Rev. F. G. A form of call and concurrence was then produced and read by the clerk, which was signed by heritors, elders, members of the congregation and parishioners, being Protestants. Thereupon intimation was given, that the presbytery were now ready to receive objections to the presentee, but none were offered. Whereupon the presbytery unanimously agreed to sustain the call, and to proceed to the ordination of the presentee, on which took instruments and craved extracts. The presbytery then appointed Mr F. G. to appear before them on day of ,

at , in order to undergo his questionary trials in theology, &c., and also prescribed to him the following subjects for discourse.

If, however, objections are given in, or the intention to do so intimated, the presbytery have then to proceed, in terms of the act, to the consideration of the same. In entering on this part of their proceedings, they are to bear in mind the respective interests of the following parties: They are to have regard, 1. To the rights of the patron, as guaranteed and reserved to him by statute.

2. To the rights of the presentee acquired under his presentation, and at the same time to his right to be protected, as a probationer of the Church, by his ecclesiastical superiors, from any combination that may have causelessly, or from prejudice, been formed against him.

3. To the rights of the parishioners to the fullest and most complete examination of the grounds on which they allege the unfitness of the presentee profitably to discharge the functions of the ministry among them.

In following out the case, the following points require the attention of the presbytery:—

(1.) The parties who have a right to object.

(2.) The time and manner of giving in objections.

(3.) The nature of the objections.

(1.) The parties who have a right to object are stated in the act to be parishioners, being members of the congregation. The expression, members of the congregation, has been ruled, in the practice of the Church, to mean not persons in the habit of attendance, but persons who are in communion with the congregation; and parties objecting must therefore be prepared to prove, by reference to the communion roll, or, where none has been kept, in a manner

satisfactory to the presbytery, that they are communicants in the congregation.

(2.) The parties thus entitled to object must appear personally on the day appointed for receiving such objections, and they may then give in their objections in writing, or they may state them "*viva voce*," to be taken down by the clerk; or they may intimate their intention to object, and crave an adjournment to a future day. The said adjourned meeting, if an adjournment is required, must be held within fourteen days after that for the moderation of the call; and the presbytery will observe, that it is only those parties who appeared at the former meeting, and intimated their intention to object, who are entitled to object at the adjourned meeting. Parties who have given in their objections at the meeting for moderating in the call, are not entitled to urge additional objections at the adjourned meeting.

(3.) With respect to the nature of the objections, the act provides that the people may state objections to the individual so presented in respect to his ministerial gifts and qualities, either in general, or with reference to that particular parish, or any reason against his settlement in that parish; but these general expressions are subject to the following important limitations: "Such objections or reasons are not to be discussed by the presbytery under this act, as infer matters of charge to be prosecuted according to the forms and discipline of the church,"—that is, which infer deprivation of license, or deposition from the ministry, or other ecclesiastical censures. "And further, the presbytery are to have regard only to such objections and reasons so stated, as are personal to the presentee, in regard to his ministerial gifts and qualities, either in general, or with regard to that particular parish, but shall have regard to the circumstances and

condition of that parish, to the spiritual welfare and edification of the people, and to the number and character of the persons by whom the said objections shall be proposed. Under these limitations it would seem obvious that, on the one hand, charges of heresy, or of such conduct as, if proved, would be held as a relevant ground of libel, cannot be entertained by the presbytery; and therefore ought not, in the form of objections under this act, to be preferred by the people; and, on the other hand, that the objections must be strictly personal to the presentee. The words, "but shall have regard," &c., not being to be understood as setting aside this principle of the bill, but as indicating that the gifts of the presentee are to be judged of in connection with the field in which he is to labour, and as conveying a warrant to decide that, in respect of the extensive sphere, the great labour and experience, the high ministerial gifts and qualities which the presbytery may consider to be required in a certain congregation, a presentee whose fitness for a less important charge would not be disputed, may be held as not possessing the necessary requirements for that congregation.

If objections are tendered on the first day, the presbytery may proceed to the immediate consideration of them, or adjourn it to a subsequent meeting. Their course, in this respect, must be regulated by circumstances. The objections may be of a trifling or irrelevant character, or, having respect to the character and number of the objections, they may not see cause for delaying procedure; but, on the whole, it will perhaps generally be most advisable to adjourn, that all parties may have due notice, and that the objectors may be fully satisfied that there is, on the part of the presbytery, every disposition to give the most patient and deliberate consideration to the objections they adduce.

When the presbytery then, or at such subsequent meeting, proceed to the consideration of the objections, the first

point to be discussed is their relevancy, that is, whether they are such objections as, if proved, would warrant the presbytery in setting aside the presentee, and such as are admissible under the act.

The relevancy of each objection must be separately discussed. In judging of it the presbytery must be guided by the language of the act, defining the nature and limiting the field of objections, to which reference has already been made. Decisions of the General Assembly as to what are relevant, and what are not relevant objections, form precedents to which, for their guidance, presbyteries may refer. Some of these decisions are here subjoined.*

* No. 1.—The following objections have been admitted as relevant:—That A. B.'s voice is so feeble for the size of the church, that he often, especially in parts remote from the pulpit, becomes perfectly inaudible.

That his style of speech is so different from what we have been accustomed to hear, that many of us, especially the old, do not understand what he says.

No. 2.—That the population of the parish of H. consists chiefly of persons in that class of society who will derive little or no benefit from a minister, unless he keeps up a constant and vigilant superintendence over them, and domiciliary visitation among them, whatever his other qualifications may be for the office of minister.

That C. D. has been notoriously deficient in the duties of pastoral superintendence and domiciliary visitation in the parish of K., of which he is at present minister, besides frequently absenting himself altogether from his parish for unreasonable times, and without good cause.

That the said C. D.'s style of preaching, and manner of expounding the Scriptures, is not level to the capacities of the parishioners generally of H., nor calculated to instruct and edify them.

No. 3.—Because E. F.'s voice is so feeble, that he cannot be understood in remote parts of the church, and especially by the aged, &c.

2. Because his pronunciation and delivery are so peculiar, that even when heard, he is frequently not understood by the congregation in general.

3. Because, to our experience, his preaching is neither instructive nor impressive; and because his prayers are inappropriate, and devoid of fervour and unction.

4. Because he has the misfortune to labour under bodily infirmities, and

If the presbytery find any or all of the objections relevant, the next step they have to take, if the facts on which they are founded are denied, is to allow a proof of them; and this proof is to be proceeded with, notwithstanding any appeal against their judgment on the relevancy, or on any matter connected with the proof; and they then, in like

especially an unnatural conformation of one of his feet, with entire weakness in one of his limbs, and apparently of his whole side; and is thereby incapacitated for the active exertions necessary to the efficient discharge of the pastoral duties in a country parish.

5. Because, from the same unfortunate cause, he halts in his gait, and assumes grotesque and unnatural attitudes and action in the pulpit and elsewhere, which tend to withdraw the attention of his hearers, and especially of the young; and to detract from the respectability of the ministerial office.

No. 4.—That G. H.'s ministerial gifts and qualities are unedifying and unprofitable: That we have reason to believe that his constitution is not strong, and his general state of health for some time past so indifferent, as to incapacitate him for the vigorous yet necessary performance of ministerial and parochial duties in such a large and populous parish.

No. 5.—That I. K.'s discourses are cold, dry, and unedifying, and not calculated to awaken the attention and impress the hearts of his hearers.

That the said I. K.'s prayers are lukewarm and unimpressive, and are delivered in a cold, heartless, and perfunctory style.

That the inhabitants of the parish are persons in the humbler walks of life without exception, and comparatively illiterate, and quite unable to comprehend or derive benefit from discourses which are not characterized by perspicuous and clear statements of evangelical truth, couched in plain and familiar language; and that the said I. K.'s discourses are not so characterized, but teem with learned disquisitions and classical allusions, altogether beyond the reach or conception of the inhabitants of these parishes.

Because, in the whole circumstances of the case, and having regard to the whole circumstances and condition of the parish, to the spiritual welfare and edification of the people, and to the character and number of the parties by whom these objections are signed and preferred, it appears that the said I. K. is not qualified and suitable for the charge of the said parish.

No. 6.—That, from repeated opportunities of hearing L. M.'s ministrations from the pulpit by many of the objectors, and by most if not all of them on Sunday last, the 20th August, the subscribing objectors are strongly

manner, pronounce a judgment on each objection separately, as proven or not proven.

If the presbytery find that relevant objections have been judicially admitted, (that is, that the facts on which they rest are admitted before them by the presentee,) or that they have been established by evidence, they then pronounce a judgment, finding such objections proven, specifying the precise grounds on which such judgment is founded, and declaring that such presentee is not fit and

impressed with the conviction, that his illustrations do not bear upon his text,—that his whole subject is incoherent, unconnected, and ill-deduced; and conscientiously feel that his doctrine is not such as to edify them, or to advance their spiritual interests; and they crave production of those sermons "in modum probationis" of the facts advanced, no member of presbytery having been present to witness and attest them.

That the church of H. is very large and peculiarly constructed, with an unusually high pulpit to suit the high galleries, and stated by ministers to be difficult to preach in; and the said Mr L. M., from a natural defect of utterance, is incapable of being so distinctly heard as to be followed or understood by a large proportion of the congregation (particularly in the galleries), this defect increasing as he extends his voice, which is of a harsh and grating description.

No. 7.—That N. O.'s prayers in our opinion are lukewarm, desultory, and unimpressive.

That his sermons, in our opinion, are cold and dry discourses, and not well calculated to arouse the attention, and impress the hearts of his hearers.

No. 8.—That the discourses delivered by P. Q. in the parish church of E., while in themselves destitute of all appearance of research or study, were delivered under great embarrassment, and in a dull, monotonous, and unimpressive manner, exhibiting none of that zeal, energy, and affection, which ought always to be found in every preacher of the Gospel, whose own heart is at all affected by the truths of the Gospel which he professes to expound and enforce.

That during the whole, and more especially at the conclusion of the services, at the different diets at which the presentee officiated, he exhibited a debilitated, languid, and exhausted appearance, leading the objectors to the conclusion that he has a weak, diseased constitution, totally unfitting him for the pastoral duties of such a populous and extensive parish.—*See cases of disputed settlement, Assembly* 1844.

qualified, in respect of objections to his fitness, made and substantiated, to take the pastoral charge of the parish to which he has been presented; and they then pronounce a deliverance, refusing to proceed with his settlement as minister of that parish, of which deliverance an extract shall be immediately transmitted to the patron.

The following may be the forms of minutes when objections are tendered:—

61. *Minute when the Objections tendered are found irrelevant.*

Thereafter intimation was given, in terms of the act, that the presbytery were now ready to receive objections to the presentee, whereupon A., B., C., being members of the congregation, compeared and gave in in writing the following objections:—

1st,

2d,

3d,

And D. appeared and stated, that he objected to the settlement of F. G. for the following reason, which was taken down by the clerk at the table, and having been read to him, he signed the same.

No other parties appearing, and no farther objection having been tendered, the presbytery then proceeded to the consideration of the relevancy of the objections now before them, in the order in which they were given in; and, after reasoning, it was moved and seconded, and unanimously (or by a majority) agreed to, that Objection 1st is not a relevant objection, in respect that (here follows the ground of the finding,) and parties being called, and the finding intimated, K., as agent for A., B., C., and D., protested for leave to complain to the next meeting of the synod of , took instruments, and craved extracts.

It was then, after reasoning, moved and seconded, that Objection 2d (and so on as before.)

Whereupon the presbytery, in respect of the preceding findings, sustain the call, and resolve to proceed to the ordination of the said F. G. with all convenient speed, according to the rules of the Church: And parties having been called, and this deliverance, intimation, &c., for the patron and presentee acquiesced in, the same took instruments, and craved extracts, and the agents for the objectors protested, &c.

62. *Form of Minute when Objections are found relevant.*

The presbytery then proceeded to consider the relevancy of the objections, in the order in which they stood. After reasoning, it was moved and seconded, and unanimously (or by a majority) agreed to, that Objection 1st is a relevant objection: And parties being called, &c.

K. for the objectors acquiesced, &c., and L. for the patron or presentee, or both, protested for leave to complain, &c.

It was then moved and seconded, and unanimously agreed, that Objection 2d is relevant, &c., and so on to the end of the objections, finding them relevant.

Whereupon the presbytery unanimously resolve, that as Objections 1 and 2, &c., have been found to be relevant objections, they will now proceed to take proof of the same, at a meeting to be held at this place, on day of , at twelve o'clock, of which meeting the clerk is appointed to give due intimation to all parties concerned.

The usual course in taking the proof is, to examine, in the first instance, the witnesses for the objectors upon all of the objections, and, when their case is closed, then to

proceed with the examination of the witnesses for the presentee. At the close of the proof on both sides, the presbytery must find each objection, separately, either proven or not proven; and they will then come to a general conclusion in reference to these findings, either resolving to proceed or refusing to proceed with the settlement of the presentee.

When the objections apply to the discourses of the presentee, the objectors may produce, or put in, the written discourses as their proof; and in some cases this has been done without examining any witnesses as to their opinion of the sermons, or the impression made upon them by hearing them.

The following may be the form of minute when the objections are found to be proved:—

After minuting sederunt, &c.

The presbytery then resolved to proceed to take proof of the objections to the settlement of Mr F. G. in the parish of H., given in and found relevant at their former meeting. Parties having been called, compeared A. for the objectors, and B. for the patron and presentee. The presbytery then intimated that they would proceed, in terms of the regulations of Assembly, to take proof of the objections; whereupon A., agent for the objectors, adduced the following witnesses: (Here take in their depositions.)

A. having stated that his proof was now closed, B., agent for the presentee, adduced the following witnesses: (Here take in.)

B. having stated that his proof was closed, and parties having been heard, the presbytery, after reasoning, found that the 1st Objection is proved. (Specify the grounds.)

(In the same manner the presbytery will proceed with the remaining objections.)

Whereupon the presbytery having, in terms of the regulations, separately considered each objection, and given judgment thereon, unanimously came to the following finding:—

That whereas the following objections have been given in, by competent objectors, to the settlement of F. G. in the parish of H., (here take them in,) and have been found relevant by the presbytery; and whereas probation having been taken on them, they have been substantiated in the judgment of the presbytery; therefore the presbytery find and declare, that Mr F. G., in respect of these objections, is not fit and qualified to take the pastoral charge of the said parish, and they refuse to proceed with his settlement as minister thereof: Of which deliverance the clerk is instructed to make intimation to the patron.

Should the objections be found not proven, the presbytery in the same manner, at the conclusion of the probation, will come to a general finding, to the effect—

That whereas certain objections were given in by competent parties, &c., and were found relevant by the presbytery, and a day appointed for taking probation of the same; and whereas the presbytery, having this day proceeded to do so, have found that the objectors have failed to substantiate the same; therefore the presbytery resolve to sustain the call to the Rev. F. G., and to proceed to his settlement in the parish of H., in the same way as if no such objections had been offered.

In reference to the above forms, it has to be observed, that at each finding parties must be called, and the same

intimatedto them, that they may have opportunity of acquiescing in or protesting against it.

The call having been sustained, and the presbytery having resolved to proceed to the induction of the presentee, they then prescribe to him, if he is a probationer, the customary trials and discourses, which are the same as in the case of licensing probationers. If, on the day appointed for such examination and hearing of discourses, the presbytery find the presentee unqualified, their judgment may be brought by him, in the form of an appeal, to the higher courts, or by any of the minority of the court in form of complaint. Should the presbytery find him qualified, they sustain his trials, and appoint a day for admission into the charge.

The presbytery then appoint one of their number to preach in the vacant church on a Lord's day, at least ten free days before the day fixed for the admission, and to intimate the same from the pulpit at the close of the service, and before pronouncing the blessing, by reading an edict in the form to be after given, and causing a copy thereof to be affixed on the most patent door of the church: And this edict, being served before witnesses thereto subscribing, and endorsed under the hand of the minister serving the same, shall be laid before the presbytery, when met for the admission of the presentee; and the fact of its being so returned shall be recorded in their minutes as part of the proceedings of the day.

The following may be the minute sustaining his trials, and appointing the day for his ordination:—

(Place and date.)

Sederunt, &c. Mr F. G., presentee to the parish of H., appeared; and after examination of his knowledge in Divinity, Chronology, and Church History, he delivered the following discourses, (here state them,) which were severally approved of by the presbytery. The

presbytery then proceeded to examine him on his knowledge of the Hebrew and Greek languages, and having taken a conjunct view of his trials, and being satisfied therewith, they appoint his ordination to take place in the church of H., on the day of , Mr N. to preach and preside. They also appoint Mr C. to preach in the said church, on and to serve an edict to the above effect.

The following is the form of the edict for admission:—

63. *Edict for Admission.*

The presbytery of having completed all the necessary steps towards the of Mr to the pastoral charge of this parish, and resolved to proceed to his on the day of , I am instructed to make intimation of this resolution; and further, to give notice to all concerned, especially the members of the congregation, that if any of them have any thing to object to the life and doctrine of the said Mr they may repair to the presbytery, which is to meet in this place, on the said day of at o'clock; with certification, that if no such objection be offered and verified, the presbytery will then forthwith proceed to the induction of the said Mr and admit him to the pastoral charge of this parish.

INDORSEMENT.

Church of this day of years.
The within edict was this day duly served by me,
C. D., Witness. A. B., Minister.
E. F., Witness.

On the day appointed for the ordination, the presbytery meet at the vacant church, and call for the return of the

edict, which being produced, and found to be regularly served, they must cause public proclamation to be made at the most patent door of the church, three several times, that any of the congregation or parishioners having aught to object to the life or doctrine of the person to be admitted or ordained, may still state their objection to the presbytery there met, and verify the same *instanter*. If no such objection be made, or at once established, the presbytery shall proceed immediately to the ordination or admission of the presentee.

At the admission of a preacher of the Gospel to a vacant parish, the minister presiding, after having preached, shall narrate the cause of the vacancy, and the steps which have been taken towards filling it up, and shall then put the prescribed questions to the Candidate; and on receiving satisfactory answers, shall descend from the pulpit, and shall by solemn prayer, and imposition of hands, in which all the ministers present are to join, ordain him and set him apart to the work of the Holy Ministry in that parish and congregation, and solemnly admit him to the pastoral charge thereof. After which the right hand of fellowship shall be given to him by the brethren present, and suitable exhortations shall be addressed from the pulpit to him, and to the people. After the congregation is dismissed, the presbytery shall resume their sitting, at which the minister so admitted shall be required to subscribe the formula of this Church, and his name is then added to the roll of the presbytery.

The following may be given as the form of the minute relative to the ordination:—

64. *Minute of Ordination.*

(Place and date.)

Which day the presbytery being met and constituted.

Sederunt, Mr moderator; Messrs .

The edict of Mr F. G.'s ordination having been returned duly served, the officer was ordered to go to the most patent door of the church, to give due notice to the people that the presbytery were now met, and were ready to hear any objections* which might be made to the life or doctrine of Mr F. G., but none having appeared, the presbytery resolved to proceed to the ordination, whereupon the moderator proceeded to the pulpit, and having preached from , he put to Mr F. G. the questions appointed to be put to all ministers previous to ordination; and Mr F. G. having returned satisfactory answers, he was then, by solemn prayer, and imposition of the hands of the presbytery, set apart to the office of the holy ministry. He then received the right hand of fellowship from the brethren present, and was admitted to the pastoral charge of the parish of C., and to all the rights and privileges belonging thereto. The moderator afterwards delivered suitable addresses to the minister and people on their respective duties. Divine service being concluded, Mr F. G. subscribed the Formula, and his name was added to the roll.

The following may be given as a form of the words with which the ordination service is commenced. After sermon, the minister who presides says—

65. *Form in which the Ordination Service is commenced.*

A. of B., Esq., the undoubted patron of this parish, having been pleased to present Mr F. G., preacher of the gospel, to be minister of this parish and congregation, vacant by the death of , the said presentation,

* Should any charges be made against the presentee, they must be proved on the spot.

with Mr F. G.'s letter of acceptance, and other relative papers, were laid on the table of the presbytery of C., and sustained; whereupon the presbytery appointed the day of last for moderating in a call to the said presentee, and the call having been sustained, and Mr F. G. having gone through, with the approbation of the presbytery, the various trials prescribed by the church, the presbytery further appointed this day for his ordination, whereof intimation was duly given. And no one having appeared to state objections to the life or doctrine of Mr F. G., the presbytery will now proceed to ordain him to the holy ministry, and admit him to be minister of this parish. Previous to this, however, I shall put to Mr F. G. the questions appointed by Act x. Ass. 1711.

The person to be ordained is then called upon, and the following questions put:—

66. *Questions put to Presentee before his Ordination.*

1. Do you believe the Scriptures of the Old and New Testaments to be the word of God, and the only rule of faith and manners?
2. Do you sincerely own and believe the whole doctrines contained in the Confession of Faith, approven by the General Assemblies of this Church, and ratified by law in the year 1690, to be founded upon the word of God; and do you acknowledge the same as the confession of your faith; and will you firmly and constantly adhere thereto, and to the utmost of your power assert, maintain, and defend the same, and the purity of worship as presently practised in this national church, and asserted in Act xv., Assembly 1707, entitled, Act against innovations in the worship of God?

3. Do you disown all Popish, Arian, Socinian, Arminian, Bourignian, and other doctrines, tenets, and opinions whatsoever, contrary to and inconsistent with the foresaid Confession of Faith?
4. Are you persuaded that the Presbyterian government and discipline of this Church are founded upon the word of God, and agreeable thereto; and do you promise to submit to the said government and discipline, and to concur with the same, and never to endeavour, directly or indirectly, the prejudice or subversion thereof, but to the utmost of your power, in your station, to maintain, support, and defend the said discipline and Presbyterian government by kirk-sessions, presbyteries, provincial synods, and general assemblies, during all the days of your life?
5. Do you promise to submit yourself willingly and humbly, in the spirit of meekness, unto the admonitions of the brethren of this presbytery, and to be subject to them, and all other presbyteries, and superior judicatories of this church, where God in his providence shall cast your lot; and that, according to your power, you shall maintain the unity and peace of this Church against error and schism, notwithstanding of whatsoever trouble or persecution may arise, and that you shall follow no divisive courses from the present established doctrine, worship, discipline, and government of this Church?
6. Are not zeal for the honour of God, love to Jesus Christ, and desire of saving souls, your great motives and chief inducements to enter into the function of the holy ministry, and not worldly designs and interest?
7. Have you used any undue methods, either by yourself or others, in procuring this call?
8. Do you engage, in the strength and grace of Jesus

Christ, our Lord and Master, to rule well your own family, to live a holy and circumspect life, and faithfully, diligently, and cheerfully, to discharge all the parts of the ministerial work, to the edification of the body of Christ?

9. Do you accept of and close with the call to be pastor of this parish, and promise, through grace, to perform all the duties of a faithful minister of the gospel among this people?

67. *Formula to be subscribed by the Person ordained.**

I, , do hereby declare, that I do sincerely own and believe the whole doctrine contained in the Confession of Faith, approven by the General Assemblies of this National Church, and ratified by law in the year 1690, and frequently confirmed by divers acts of Parliament since that time, to be the truths of God; and I do own the same as the confession of my faith: As likewise, I do own the purity of worship presently authorized and practised in this Church, and also the Presbyterian government and discipline, now so happily established therein; which doctrine, worship, and church government, I am persuaded, are founded upon the word of God, and agreeable thereto: And I promise that, through the grace of God, I shall firmly and constantly adhere to the same; and, to the utmost of my power, shall, in my station, assert, maintain, and defend the said doctrine, worship, discipline, and government of this Church by kirk-sessions, presbyteries, provincial synods, and General Assemblies; and that I shall, in my practice, conform myself to the said worship, and submit to the said discipline and government, and never endeavour, directly or in-

* In some presbyteries the Formula is subscribed before ordination.

directly, the prejudice or subversion of the same: And I promise that I shall follow no divisive course from the present establishment in this Church: Renouncing all doctrines, tenets, and opinions whatsoever, contrary to or inconsistent with the said doctrine, worship, discipline, or government of this Church.

By a note appended to the regulations, page 27, Acts of Ass. 1849, it is provided that the preceding regulations are to be applied in all cases of the admission and settlement of ministers of chapels of ease, and other congregational charges, in so far as they may be found applicable in the circumstances of each such charge; it being especially required, that in every such case full opportunity for the tendering of objections shall be given, as in Regulation 7th; as also, that intimation of the day of admission and settlement shall, in every case, be made by edict of at least ten free days.

When the person presented to a vacant charge is minister of another parish, and a member of another presbytery, the same procedure takes place up to the sustaining of the call. The call being sustained, a process of translation is then instituted before that presbytery, by presenting to them the call which has been sustained, and a full extract of the procedure with regard thereto, together with reasons setting forth the expediency of the translation. To this process the parishioners and congregation under his charge are made parties, by citation from the pulpit, and their objections, if they compear and do object, heard and judged of along with the reasons of translation by the presbytery, before whom the process is instituted. Should they grant the translation, an extract of their judgment is laid before the presbytery into whose bounds he is to be translated, and is their warrant for fixing the day of his admission.

The first step to be taken then by the presbytery, in such a case, after sustaining the call, is to appoint commissioners to prosecute the translation. After the minute states that the call has been sustained, it then proceeds as follows:—

68. *Form of Minute after Call has been sustained.*

The following members were appointed to prosecute the translation of Mr D. before the presbytery of F., or any other competent judicatories of this church, viz., Mr A., Mr B., and Mr C., ministers; with Mr D. and Mr E., ruling elders. After which the sederunt was closed with prayer.*

No further procedure takes place until the commissioners give in their report.

Should the commissioners be unable to attend personally, they may grant a mandate to some one (generally a legal practitioner) to appear on their behalf, and to take all necessary steps to effect the translation.

69. *Form of Mandate.*

We, the Rev. A., minister of C., &c., commissioners appointed by the presbytery of E., at their meeting held on the day of , to prosecute the translation of the Rev. Mr D. before the presbytery of F., considering that we cannot conveniently attend the meeting of the said presbytery of F., do hereby nominate and appoint to be our mandatory to that effect underwritten, giving and granting full power to the said to appear for us, and in our names to take such steps as he may consider necessary to effect the translation of the said D. to the said parish of , within

* The number of members appointed is at the option of the presbytery.

the bounds of the presbytery of , and generally to do anything in relation to the same as fully and effectually as we or any one of us could have done ourselves if personally present. Signed by us at , the day of , one thousand eight hundred .

The procedure to be adopted by the presbytery from which the presentee is to be translated, on the compearance before them of the commissioners or their mandatory, will be seen from the following forms:—

70. *Form of Minute when Commissioners appear to prosecute Translation.*

(Place and date.)

Which day the presbytery of F., having met and been duly constituted, &c., Compeared as commissioner of the presbytery of G., the Rev. Mr C., of the church and parish of D., and Mr E., of the church and parish of F. in that presbytery, and gave in the following papers, viz.

1. Presentation by A. B., Esq., undoubted patron of the parish of C., in favour of the Rev. C. D., of the church and parish of M., to the church and parish of C.
2. Mr D.'s letter of acceptance.
3. Certificate of his having qualified to Government.
4. Reasons of translation.
5. Extract minutes* of the presbytery of G.

The presbytery agreed to take the usual steps towards Mr D.'s translation with all convenient speed. Whereupon Mr C. acquiesced therein, took instruments in the clerk's hands, and craved extracts, which were

* This extract contains the whole procedure adopted prior to the sustaining of the call.

granted. Mr L. was appointed to preach (two diets) in the church of M. on Sabbath the day of next, and there, after divine service, to summon* Mr D., the other members of the kirk-session of M., the male heads of families in communion with the church, and all others interested, to appear at the next ordinary meeting of presbytery, to be held here on the day of next,† that they may state their reasons, if they have any, why Mr D.'s translation should not proceed; with certification, that if none compear, the parties concerned will be held as consenting to said translation. Closed, &c.

In general, the parties do not appear at the meeting of presbytery, and they are therefore held as consenting to the translation. It is then reported to the presbytery by the brother who preached and gave intimation, that the parties had been duly summoned, and the presbytery, on the day fixed for their meeting, agree to translate. The minute may be as follows:—

71. *Form of Minute of Presbytery agreeing to Translate.*

(Place and date.)

It was reported that the summons to Mr D. and the other members of the kirk-session of the church and parish of M., to compear at this meeting of this presbytery, and give reasons, if they have any, why Mr D.'s translation to the church and parish of C., presbytery of G., should not proceed, had been duly served in the church of M. on the day of . Parties were called, and no compearance being made,

* The edict, in this case, is not only served by intimation from the pulpit, but it is also generally put upon the church-doors.

† Ten free days must intervene from the day of intimation to the day of meeting of presbytery.

they were held as consenting to Mr D.'s translation. The question was then put, TRANSLATE Mr D. to the church and parish of C., or NOT; and it carried unanimously, translate.

Wherefore the presbytery did, and now hereby do, translate the Rev. C. D., of the church and parish of M., to the church and parish of C., presbytery of G., declaring, at the same time, that his pastoral relation to M. shall subsist until he be actually admitted to the charge aforesaid; and they enjoin him, the said C. D., to wait for and obey the orders of the presbytery of G. as to the time of his admission to C.; and they also hereby request the Rev. the presbytery of G. to give them intimation of Mr D.'s admission so soon as it takes place. Mr D.'s presentation, letter of acceptance, call, &c., were then delivered over to Messrs A., minister of C., &c., the commissioners from the presbytery of E., or their mandatory, Mr , in presence of the presbytery, upon which the said Messrs A. of C., or their mandatory, took instruments and craved extracts; which were allowed. Closed, &c.

The intimation of the settlement is made by the presbytery-clerk.

An extract of these minutes is then laid before the presbytery within whose bounds the parish is situated to which the minister is to be translated; and this is the report of the commissioners. The following will then show the course of procedure on the part of the presbytery to which he is to be translated:—

72. *Minute when Presbytery receive Report of the Commissioners, and their resolution to admit Presentee.*

(Place and date.)

Sederunt, &c. The presbytery of G. having met, and

been duly constituted, Mr A., one of the commissioners appointed to prosecute the translation of Mr D., laid on the table an extract minute of the presbytery of F., which was read, and from which it appears that all the steps requisite to the translation of Mr D. to the church and parish of C. have been taken by that presbytery, and that, on the day of the said presbytery resolved unanimously to translate Mr D. from the parish of M. to the parish of C., declared the parish of M. vacant from the day on which Mr D. shall be admitted to the parish of C., and appointed Mr D. to wait for and obey the orders of the presbytery of G. as to the time of his admission.

The presbytery agreed to meet for the admission of Mr D. in the parish church of C., on the day of at o'clock, Mr B. to preach and preside; and Mr C. was appointed to serve the edict there after divine service, on Sabbath the day of .

It is to be remembered, that ten free days must elapse between the day on which the edict is served and the day of admission.

At the admission of the presentee to his new charge, after the usual steps appointed to be taken in the case of a probationer have been gone through, the member of presbytery appointed to preside, after delivering an appropriate discourse, shall narrate the cause of the vacancy, and the steps which have been taken towards filling it up. He shall then read over to the minister the questions appointed by the act of Assembly to be put to ministers at their ordination, and call on him to declare his adherence to and renewal of the answers formerly given. On his making such declaration, the minister presiding shall, in the name of the Lord Jesus Christ, the great King and Head of the Church, and by authority of the presbytery,

solemnly admit him to the pastoral charge of that parish or congregation; after which the right hand of fellowship shall be given him, and the remaining part of the service shall proceed, and be concluded in all respects as in the ordination and admission of a probationer.

73. *Minute when Presentee is Admitted.*

Parish church of , the day of , 18 , noon.

The presbytery of having met here, agreeably to their resolution of the day of last, and having been duly constituted sederunt, Mr A., &c.

The minute of presbytery appointing this meeting having been read, Mr D.'s edict was returned duly served, and those concerned were three times called, but no objections to his life and doctrine were offered. Thereafter, the congregation having convened, Mr B. went to the pulpit and preached from , and, after divine service, represented that the parish of C. having become vacant by the death of the late Rev. N. O., A. B., Esq., as patron, had been pleased to grant a presentation in favour of the Rev. C. D., minister of M., presbytery of F., to supply the said vacancy; which presentation, and Mr D.'s letter of acceptance, had been laid before the presbytery of G. in due time, and had been sustained; and that, in consequence thereof, a call to the said Mr D. had, by appointment of the presbytery, been moderated in at the church of C., which was subscribed by persons having a right to do so, and sustained by the presbytery; that thereafter, by appointment of presbytery, a process for his translation had been orderly carried on and finished before the proper judicatories, and the report thereof duly made; that this day had been fixed by the presbytery for his admission, and

that his edict also having been duly served and returned without objections, the presbytery were now to proceed to his admission as minister of the church and parish of C.

Mr B. then called Mr D., and read to him the questions appointed by act of Assembly to be put to such as are to be admitted to new charges, to which Mr D. gave satisfying answers. And Mr B. did then, in the name of the Lord Jesus Christ, the great King and Head of the Church, and by authority of the presbytery, solemnly admit Mr D. to be minister of the church and parish of C., and the brethren present gave him the right hand of fellowship, and he and the congregation received suitable exhortations from Mr B., who presided; and afterwards, when the congregation was dismissed, Mr D. subscribed the Formula, and his name was added to the roll. The sederunt was closed with prayer.

The settlement being completed, an intimation of it is then made by the presbytery-clerk to the moderator of the presbytery from which the presentee has been translated.

74. *Form of Letter intimating Settlement.*

(Place and date.)

Rev. Sir,—By desire of the presbytery of G., I have to intimate to you, that the Rev. C. D., late of M., has been this day admitted to the church and parish of C. I am, &c.

M. N., Presbytery-Clerk.

To the Rev. the Moderator of the Presbytery of F.

(To be communicated.)

Intimation being received of the settlement having taken place, the presbytery at their next meeting record

this fact, and appoint one of their number to preach and declare the church vacant.

75. *Form of Minute declaring the Vacancy.*

(Place and date.)

Intimation was received from the presbytery of G. that Mr C. D. was admitted minister of C. on the day of .

Mr P. was appointed to preach (two diets) next Sabbath in the church of M., and to intimate the vacancy occasioned by Mr D.'s translation to C. Closed, &c.

The reasons for translation depend so much upon particular cases, that forms cannot be given to meet every emergency; but the following may be given as always applicable.

76. *Reasons for Translating a Minister.*

Reasons for translating the Rev. C. D., minister of the church and parish of M., presbytery of F., to the church and parish of C., presbytery of G.

1. It has always been the practice of the judicatories of this Church to translate ministers, when a call has been given to those parishes where an extensive field of usefulness is opened for the employment of their talents.
2. Because the inhabitants of C. have given an harmonious call to the Rev. C. D., to supply the vacancy in that parish, to come and labour among them in the work of the ministry, and that he has accepted of this call.

For which, and other reasons to be mentioned *viva voce*, (if needful,) it is humbly hoped that the Reverend the presbytery of F. will find no difficulty in taking the steps necessary for translating Mr D. from M. to C.

with all convenient speed, according to the rules of the Church.

The reasons are signed by the commissioners.

When the translation of the minister is from one parish to another in the same presbytery, some of the steps above narrated are obviously not necessary to be taken; but the congregation and parish from which it is proposed to remove the minister, must be made parties by citation before the presbytery come to a resolution to translate.

It may be added, that though in general no obstacle is thrown in the way of a translation, yet the Church courts have not unfrequently exercised the right of refusing to allow it when it did not, in the whole circumstances of the case, appear expedient, or *ad majus bonum ecclesiæ*, that it should take place.—(Decl. 1720, sess. 9; Molyson, 1794, sess. 5; M'Naughton, 1838, sess. 5, and other cases, might be quoted.)

DEMISSION OR RESIGNATION OF MINISTERS.

It sometimes happens, that a minister, not having been presented to any other charge, wishes to resign his office and present benefice.

This is not to be allowed, as a matter of course. The parishioners must be cited edictally, in the usual manner, to offer objections, if they any have, to the resignation being allowed; and it is obvious, that were this not so, the expedient of a resignation might sometimes be improperly resorted to as a way of escape from discipline.

The citation of the people allows time also to the incumbent for deliberation on a step which sometimes has been hastily taken and repented of; and there are instances in which the General Assembly has held resignations to be null and void on account, principally, of an omission to cite the parishioners to appear for their interest.—

(Lumsdaine, 1736—index, page 4; Macpherson, 1820, sess. 5; Wood, 1848, sess. 7.

JUDICIAL PROCEDURE.

[In this department, accuracy is so essentially necessary, and so difficult of attainment by those not familiar with the minutiæ of law, that it has been thought advisable to depart a little from what has been the general plan of the work, by admitting matter which does not fall under the denomination of "Forms" or "Styles." The observations made under the head "LIBEL," are necessary to make the forms of libel which follow of any practical use, and those on the law of evidence will be found to embrace, within a short space, almost all the points which can occur in practice, and cannot fail, therefore, to be of service as a guide to presbyteries in their judicial procedure.]

I. LIBEL.

A libel may proceed at the instance either of the presbytery within whose bounds the parish is situated, or of individual parishioners. A presbytery ought not to libel without sufficient grounds. They ought to proceed either on application or petition from persons in the parish, or on a general *fama* or rumour in the neighbourhood.*

A libel at the instance of individuals ought regularly to be signed only by males, being of age, heritors, or inhabitants of the parish. It is not, however, necessary to the title of a libeller, that he should be in communion with the Church. In the case of the libel against the Rev. James Scott, minister of Banchory-Ternan, the objection to the title of the prosecutor, who was patron and one of the principal heritors in the parish, that he was not also in

* The forms of the minutes of presbytery will be found at p. 139 *et seq.*

communion with the Church, was repelled (Ass. 1845, sess. 8); and in another more recent case, the fact that the libeller, the principal heritor and vice-patron of the parish, was not a member of the Church of Scotland, although brought under the notice of the Assembly, was not founded upon as an objection to his title, (*Hope*, Ass. 1849, sess. 10, 11.)

The body of the libel consists of three parts, which, together, should form a regular syllogism. The first, or major proposition, sets forth the criminality of the *species facti* charged, and alleges the guilt of the accused; the second, or minor, narrates the facts of the particular offence; and the third, or conclusion, deduces the justice of punishing the individual offender.

The major proposition should be made as brief and comprehensive as possible. By overloading it, the logical structure of the libel is impaired, and unnecessary discussions on relevancy may be raised. It may be difficult to bring ecclesiastical offences under specific and generic names to the degree in which crimes are classified in the civil law. But it is desirable that this should be done as far as possible, in order to facilitate certainty and simplicity in the criminal proceedings of Church courts. Where it is necessary to use circumlocution in expressing the general nature of the offence, nothing should be introduced which is not essential to the criminal charge. Where it is impossible, from the nature of the offence, to bring it under any generic denomination, the particular offence intended to be charged should be set forth in the major as criminal in the abstract, and should be repeated in the minor as having been committed by the accused at a certain time and place.

If more than one offence is included in the same libel, the different charges should be set forth separately in the major proposition, connected by the words "*as also*."

Such a libel runs thus—"That albeit drunkenness, *as also* profane swearing, are crimes," &c.

If a statute or act of Assembly is to be founded on, the passage of the statute or act should be quoted at length in the major proposition. If there is a common-law, as well as a statutory charge, the statute should be libelled after the other, connected by the words, "AND ALBEIT *it is provided* and *declared* by" the statute or act of Assembly in question.

When aggravations of the crime charged are introduced into the libel, they should follow the enunciation of the general offence to which they apply, preceded by the word "especially." Thus, "drunkenness, *especially* when committed on the Lord's day."

In libelling aggravations, care should be taken that they are strictly analogous to the principal crime. For instance, it would be incompetent to libel a former censure for heresy in aggravation of a charge of immoral conduct. But as the moral character of a minister is of paramount importance, it would seem that a conviction, censure, &c., for one act of immorality will form a relevant aggravation of another of the same kind. Separate crimes should not be libelled as aggravations of others.

The minor proposition commences with the words, "YET TRUE IT IS AND OF VERITY, that you," &c. Where there are alternative charges in the major, the minor should be expressed alternatively. "Yet true it is and of verity, that you the said A. B., are guilty of *one or other* of the crimes above libelled."

The minor proposition ought to contain a detail of circumstances which amount to the general offence, set forth as criminal in the major. The narrative is introduced by the words, "IN SO FAR AS." Where there are cumulative or alternative charges in the major proposition, the narrative in the minor should correspond. In the first instance,

the separate narrative should be connected by the words "AND FARTHER," and in the second, by "OR OTHERWISE."

The minor must clearly set forth the time, place, and circumstances of the alleged offence. Accuracy and precision in these points are essential.

Great latitude has frequently been allowed as to time. Libels have been sustained which have set forth a tract of three years as the time within which the offence was committed. It is not easy to lay down a general rule on this subject, as too strict a limit in respect of time would be injurious. But, in general, a term of six or even three months is reasonable. The term is left blank in the Styles below. The party accused should not be obliged to extend the proof of his innocence of a special act over an extensive period of time; and most charges, if capable of proof at all, can be brought within a reasonable limit. Great latitude holds out encouragement to false and malicious accusations, and leads to a want of precision in practice, which results in the escape of the guilty.

Some crimes do not admit of an exact specification of the time of their commission. Thus, in cases of forgery or embezzlement, the prosecutor is obliged to libel a considerable period. In the same way, if a course or habit of conduct is the thing charged, it is competent to libel the whole time during which the habit was indulged.

The *place* at which the crime was committed ought to be specified with clearness. It is just that the party accused should have distinct information on this head, that he may know to what point to direct his exculpatory evidence. The defence of *alibi*, for instance, which is frequently most important, is altogether excluded by a careless or slovenly specification of the *locus delicti*. The degree of precision should be such, that the accused should be under no reasonable doubt regarding the place where he is charged with having committed the offence. It is

not necessary that the *locus* should be specified as minutely as in the Styles given. However, the degree of latitude to be given to the prosecutor in this respect must be greatly regulated by the nature of the crime charged; some offences being of a nature so concealed, as to be impossible to say where they were committed. In such cases, it is enough that the prosecutor shall have libelled the *locus delicti* as accurately as his knowledge allowed.

In the detail of the circumstances, regard should always be had to the crime which is the object of the indictment, and nothing should be introduced which does not directly bear upon it.

Where the prosecutor intends to produce documents or other real evidence, the articles produced should be libelled on in the close of the minor proposition, "in proof of which, there will be produced at your trial," &c.

The CONCLUSION should follow logically from the major and minor propositions. It commences with the words, "ALL WHICH, *or part thereof, being proven*," &c. It has sometimes been the practice, in ecclesiastical libels, to conclude for a specific punishment. But it is more according to principle to leave that to the court before which the libel is brought. The duty of the prosecutor is only to establish criminality. The punishment rests with the judge.

In general, libels will be most accurately drawn in which regard is paid to the strict logical form, and in which no details are introduced which are not absolutely necessary. It is useful to distinguish between the statement of the thing to be proved, and the statement of the proof itself. The introduction of the latter into the libel is always clumsy, and gives opportunity for objection and cavil. An inaccurate libel is not only unfair to the party accused, if he is innocent, but is frequently his best protection if he is guilty.

77. *Form of Libel.*—No. I.

Mr A. B., minister of (or presentee to) the church and parish of C., in the presbytery of D., You are indicted and accused at the instance of A., moderator, and A., B., C., D., and E., members of the said Reverend presbytery of D., (or if the libel is raised at the instance of the parishioners, of A., B., C., D., &c., being heritors or inhabitants of the foresaid parish, and in communion with the Church, where the fact is so) THAT ALBEIT, by the word of God, and the laws and discipline of the Church of Scotland, (here state the denomination of offence,) is an offence of a heinous nature, unbecoming the character and the sacred profession of a minister of the gospel, and severely punishable by the laws and rules of the Church: YET TRUE IT IS AND OF VERITY, that you, the said A. B., are guilty of the said offence, actor, or art and part: IN SO FAR AS, on the

twenty-first day of *April*,
eighteen hundred and thirty ,*

or on one or other of the days of that month, or of *March* immediately preceding, or of *May* immediately following, you, the said A. B., did, within the house in the village of , then and now or lately occupied by (here describe the circumstances of the offence,) all which, or part thereof, being found proven against you, the said A. B., by the said Reverend presbytery of D., before which you are to be tried, in terms of your own public confession, or after habile and competent proof, you, the said A. B., ought to be punished according to the rules and discipline of the Church, and the usage observed in

* It is convenient to print the date thus.

such cases, for the glory of God, the edification of the church, and to the terror of others holding the same sacred office, not to commit the like offences in all time coming.

Signed at in name, presence, and by appointment of the presbytery of D., this day of 18 years, by

L. M., Mod.
N. O., Clerk.

78. *Form of Libel.*—No. II.

Alternative Charge.

Mr A. B., minister of the church and parish of C., in the presbytery of D., You are indicted and accused at the instance of A., moderator, and E., F., and G., members of the said presbytery, THAT ALBEIT, by the word of God, and the laws and discipline of the Church of Scotland, drunkenness, AS ALSO disorderly and riotous conduct, are offences of a heinous nature, unbecoming the character and the sacred profession of a minister of the gospel, and severely punishable by the laws and rules of the Church: YET TRUE IT IS AND OF VERITY, that you, the said A. B., are guilty of *one or other* of the said crimes, actor, or art and part: IN SO FAR AS, on the

1st day of May, 1836,

or on one or other of the days of that month, or on one or other of the days of the three months immemediately preceding, or of the three months immediately following, you, the said A. B., did, within the house of N., in M. Street of G. (here describe the circumstances applicable to the charge of drunkenness.) OR OTHERWISE, time and place foresaid, you, the said A. B., did behave in a riotous and disorderly

manner, to the great scandal of religion, and disgrace of your sacred profession, (here narrate circumstances applicable to the second charge.) All which, or part thereof, &c.

79. *Form of Libel.*—No. III.

Cumulative Charge.

Mr A. B., &c. That albeit, by the word of God, and the laws and discipline of the Church of Scotland, simony, as also bribery and corruption, are crimes of a heinous nature, unbecoming the character and the sacred profession of a minister of the gospel, and severely punishable by the laws and rules of the Church. AND ALBEIT, it is provided and declared by the Act of Assembly 1753, (here narrate terms of act,) and it is farther provided and declared by the Act of Assemby 1759, (narrate terms of act,) YET TRUE IT IS AND OF VERITY, that you, the said A. B., are guilty of *both*, or one or other of the said crimes, actor, or art and part: IN SO FAR AS, on the 1st day of May 1837, , or of one or other, &c., you, the said A. B., did, within the manse of C., or elsewhere, to the prosecutor unknown, (narrate circumstances of Simony.) LIKEAS, it having been declared and enacted by 6th and 7th Vict. cap. 61, that after a presentee shall have preached in the parish church, &c.: AND FURTHER, that if the presbytery, or other judicatory of the church, &c., (down to "they shall pronounce a deliverance to that effect,") you the said A. B. did, &c., make offer to M. H., weaver, residing in F., of the sum of to induce him not to appear as an objector against you, the said A. B., at the moderating in of your call, (or not to give in objections of which he had given notice;)

which sum he, the said M. H., accepted, and engaged accordingly to abstain from entering his dissent against you, the said A. B., and was thus bribed and corrupted by you, the said A. B. All which, or part thereof, &c.

80. *Form of Libel.*—No. IV.

Charge of a Course or Habit of Conduct.—Aggravation.

Mr A. B., &c., you are indicted and accused, &c. That albeit, by the word of God, and the laws and discipline of the Church of Scotland, drunkenness, especially when committed habitually, is a crime of a heinous nature, unbecoming the sacred profession of a minister of the gospel, and severely punishable by the laws and rules of the Church: YET TRUE IT IS AND OF VERITY, that you, the said A. B., are guilty of the said offence, aggravated as aforesaid: IN SO FAR AS, on the 1st day of May 1836, or on one or other, &c., you, the said A. B., within the manse of C., or elsewhere, to the prosecutor unknown, did drink to excess and were intoxicated, to the great scandal of religion, and disgrace of your profession. AND FARTHER, YOU, the said A. B., are an habitual drunkard, and during the period between the 1st day of January 1835, and the 1st day of February 1837, you, the said A. B., indulged in the habit of intoxication, and were guilty, on various occasions within that period, of the offence of drunkenness. In particular, (here detail special instances.) All which, or part thereof, &c.

If the libel is raised at the instance of individual parishioners, their signatures and designations should be here given.

Then follows a list of witnesses, (which is to be regularly served on the accused, with a full copy of the libel,) in the manner stated below—viz.

81. *List of Witnesses, and Documents produced.*

List of witnesses to be adduced against you, the said A. B., for proving the foregoing libel.

1. E. F., presently gardener to C. D., Esq., now or lately residing at D.
2. G. H., now or lately residing at F.

If there are articles to be produced in evidence, they should be thus expressed after the list of witnesses.

There will also be produced a farther proof of the foregoing libel.

(*Here mention documents produced.*)

The lists of documents and of witnesses ought to be authenticated by the signatures of the moderator and clerk of the presbytery, and by that of the libeller, if he is a private party.

II. CITATION OF PARTY.

The party may be cited either by the officer of the presbytery, or by a messenger-at-arms or sheriff-officer.

82. *Warrant of Citation.*

At D., the , day of , 18 years, which day the presbytery of D. being met and constituted, *inter alia*, the said presbytery having heard, read, and considered the foregoing libel, at the instance of the said presbytery against Mr A. B., minister of C., for the crime of ; they did, and hereby

do, grant warrant to, and authorize P., presbytery-officer, (or sheriff-officer or messenger-at-arms,) to serve copies thereof, and of the list of witnesses thereto subjoined, and of this deliverance, on the said A. B., and to cite him to appear personally before the said presbytery at their next meeting, which is appointed to take place at , the day of next, to answer thereto, and to give the said citation in writing, either personally or at his dwelling-place, bearing a competent time for his giving in his answers and objections to the said libel, and list of witnesses, if he be so advised, at least ten days before the day of compearance.

N. O., Presbytery-Clerk.

83. *Citation thereon.*

I, P., presbytery-officer, by virtue of the foregoing libel, at the instance of the reverend presbytery of D., against you, Mr A. B., minister of C., for the crime of , and of the warrant and authority thereon by the said reverend presbytery, of which libel, with the list of witnesses thereto subjoined, and warrant and authority thereon by the said reverend presbytery, what is contained on this and the preceding pages is a just and exact copy, do hereby lawfully cite you, the said A. B., to compear personally before the said presbytery at their next meeting, which is appointed to take place at , the day of next, in the hour of cause, at o'clock noon, to answer to the said libel; and I further charge and ordain you, the said A. B., to give in answers and objections to the said libel and list of witnesses, if you be so advised, within days, at least ten free days before the said day of

compearance. This I do upon the day of , in presence of these witnesses, L. and M.

L., Witness. P., Presbytery-Officer.

M., Witness.

84. *Certificate of Execution.*

I, P., officer to the reverend presbytery of D., hereby certify, that upon the day of , 18 years, I did, in virtue of a libel at the instance of the reverend presbytery of D. against Mr A. B., minister of C., for the crime of , and of the warrant and authority thereon granted by the said presbytery, lawfully cite the said A. B. to appear personally before the said presbytery, at their meeting, which is appointed to take place at , on the day of next, in the hour of cause, at o'clock noon, to answer to the said libel; and I farther charged and ordained him to give in answers and objections to the said libel, and list of witnesses thereto subjoined, if he be so advised, before the said day of appearance; a just and exact copy of which libel, and of the list of witnesses thereto subjoined, and of the warrant and authority granted thereon by the said presbytery, consisting in whole of pages, subscribed by me on each page, and having a citation attached thereto to the above effect, subscribed by me and the following witnesses, I delivered to the said A. B., personally apprehended, (*if not personally*, by delivering the same at his dwelling-house,) before and in presence of L. and M., witnesses to the premises, and hereto with me subscribing.

P., Presbytery-Officer.

L., Witness.

M., Witness.

The copy served upon the accused must not only be exact as far as it goes, but complete. In one case, a libel was held to have been improperly served, when in the service copy the signature of the moderator appended to the list of witnesses had not been copied from the principal libel.—(*M'Intyre*—Commission, June 1846.)

III. CITATION OF WITNESSES.

The same forms are used here as in the cases before Kirk-Sessions.—*Vide* p. 20, *et seq.*

IV. OBSERVATIONS ON ORDER OF PROCEDURE AND LAW OF EVIDENCE.

On the day fixed for the trial, the presbytery being met and constituted, call for the minister, and if he appear, personally or by his agent, and state no objection to the citation, the libel is then read over, along with his answers, if he have lodged any. The presbytery then proceed to consider the relevancy of the libel. Should the libel appear to be partly relevant and partly irrelevant, it is competent to amend it by striking out the irrelevant part, if that can be done without altering the nature of the charge. Should the libel be found irrelevant, the whole proceedings fall to the ground.

If the libel be found relevant, the minister is dealt with, with a view to confession; but should he still deny the truth of the libel, a proof is then taken by the presbytery.

The prosecutors then proceed to call witnesses in support of the allegations of the libel.

It is impossible here to enter at any length into the law of evidence, but the following remarks may be of use in practice:—

1. Who are competent witnesses?

Insane or imbecile persons are, of course, disqualified from being witnesses.

It is not usual to examine children under twelve years of age on oath; but their testimony ought always to be received in corroboration, and is generally found accurate.

If unsupported, however, it should not be relied on.

The character of a witness may affect his credibility, but will not, in general, disqualify.

Interest in the issue of a case amounts to a disqualification.

A direct pecuniary interest will exclude the testimony of a witness.

A contingent or possible interest will affect credibility, but will not exclude.

In general, an interest in character should attach to the witness's credibility, but should not exclude him. In criminal charges it frequently happens that those can give the most important testimony who are more or less involved in the crime. But no witness is bound to criminate himself.

Relationship, within certain degrees, formerly disqualified a witness; but by 3d and 4th Vict. c. 59, § 1, it is enacted, that after the passing of the act, "it shall by the law of Scotland be no objection to the admissibility of any witness that he or she is the father or mother, or son or daughter, or brother or sister, by consanguinity or affinity, or uncle or aunt, or nephew or niece, by consanguinity, of any party adducing such witness in any action, cause, prosecution, or other judicial proceeding, civil nor criminal; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship."

Husband and wife cannot be witnesses either for or

against each other, except in the special case of injury to the person of either by the other.

Agency, malice, or partial counsel, are valid objections to a witness.

Agency, to exclude, must be agency in the cause itself.

Malice or enmity against the accused is a legal disqualification, but mere casual expressions of dislike or momentary animosity will not be held to amount to malice.

Partial counsel includes all acts tending to aid in the cause on one side or the other, by getting up evidence, &c. But in general, although such conduct may be competently proved in order to affect the witness's credibility, it should not exclude him.

If a party have been instructed how to depone, he is not a competent witness. It is not easy to lay down any general rule as to the degree of instruction which will absolutely disqualify. But all acts tending to bias the mind of a witness, as precognition along with other witnesses, consultations on the cause with the prosecutors or the party, and the like, should be avoided.

There is a peculiar delicacy in the position of a member of presbytery on this head. Where the libel is at the instance of the presbytery, they must, of course, unite the functions of prosecutors and judges. When the testimony of any member of presbytery is required in any cause before the presbytery, it would appear to be the more correct course that such member should abstain from judging in the cause; but in one case it was deliberately decided by the General Assembly, "that a person having been examined as a witness in any part of a process, does not disqualify him from being a judge."—(*M'Lagan*—Assembly 1847, sess. 7, *et ult.*) Where, on the other hand, the libel is at the instance of a private party, the members of presbytery are bound to confine themselves strictly to

the judicial character, and assistance given by them to the preparation of the cause, will disqualify them for taking part in the deliberations.

Advocates and agents are not bound to disclose matters entrusted to them by their clients in their professional capacity, if their clients object to their doing so.

These are some of the most important points affecting a witness's admissibility. The tendency should always be rather to admit than reject testimony.

When the witness is adduced, the opposite party is then entitled to object, and he may prove his objection either by evidence or by examination of the witness *in initialibus.* If he adopt the latter mode, the witness is then sworn, (as in Kirk-Session, p. 21.)

If the objection is repelled, the examination of the witness proceeds. Witnesses must not be examined in presence of each other; and it is a good objection to a witness, that he has been in Court while another was giving his testimony, if it should appear that this has arisen from any improper motive on his part, such as a wish so to frame his testimony as either to contradict or corroborate other witnesses; but it is not now imperative upon any Court to reject a witness merely on the ground that he has been present in Court during all or any part of the proceedings, (3d and 4th Vict., cap. 59, § 3.)

The prosecutor then examines the witness in chief relative to the charge in the libel.

2. What is competent evidence?

The questions put must be more or less pertinent to the cause. A witness must depone not only to his knowledge, but to his cause of knowledge. He must likewise speak to what he himself knows, not to what he has heard. It must be particularly remarked, that it is not competent for a witness to tell what a third party may have told him. This is hearsay—not evidence—and such questions

ought never to be permitted to be asked or answered, with the following exceptions:—It is competent to ask a witness to speak to what he has heard said by a party deceased—or by the accused—or by any one in the presence of the accused—or to what was said at the time the act charged took place, if such observations formed part of the *res gesta*, or to a common rumour or *fama* in the neighbourhood.

A witness examined as to facts cannot be competently asked his opinion generally; but he may be asked what belief or impression was produced at the time by the facts sworn to. But persons of skill may be examined as to their opinion on the facts, or on incidental points of the cause. Engineers, medical men, &c., are admissible in this capacity.

A witness may look at writings of his own made at the time, to refresh his memory, but not at those of another.

Leading questions are incompetent. A witness must not be asked, "Did he do so and so?" but, "What did he do?"

Although no witness is bound to criminate himself, it is competent to ask the witness questions having criminatory tendency, he being warned by the Court that he is not bound to answer them. If the witness declines to answer, the circumstance is, of course, taken as an element of proof.

The depositions of witnesses are taken down in writing, and signed by them, and the moderator and clerk.

It sometimes happens that the depositions of aged persons, or parties about to leave the country, are taken out of Court, and produced in evidence. It seems impossible to fix any general rule as to the admissibility of such depositions. If, however, the parties so examined shall be in a situation, on the day of trial, to be adduced as witnesses, the deposition will, of course, go for nothing.

The examination for the prosecution being concluded, the accused is entitled to cross-examination, and when the whole proceedings for the prosecution are closed, he is entitled to call and examine witnesses on his own behalf.

The presbytery then declare the proof concluded, and proceed to consider its import.

V.—FORMS OF MINUTES RELATIVE TO LIBEL, &c.

In connection with this head of *judicial procedure*, the following may be given as Styles of Minutes.

In the case of a *fama* prevailing against a preacher of the gospel, or minister of a parish within their bounds, the presbytery may appoint a committee of their number to make inquiry, and to report as to the steps proper to be taken by the presbytery.

85. *Minute of Presbytery appointing Committee of Inquiry.*

At D., the day of 18 , which day the presbytery of D. met, and was constituted, and being alone, it was stated by a member of court that certain very unpleasant reports were prevailing in regard to the character of Mr A. B., preacher of the gospel within their bounds, (or their brother, Mr A. B., minister of the parish of C.,) whereupon the presbytery, after due consideration of the same, appointed the following members, viz. E., F., G., and H., a committee to make further inquiry into the nature of the *fama* now prevailing against the said A. B., and to report to the presbytery at their next meeting as to the procedure which it may be proper to adopt in this matter. Closed, &c.

If the prevailing rumours relate to a minister of their

bounds, the presbytery, instead of appointing a committee, may order a visitation of the parish to which the minister belongs. In which case, the minute, after stating the prevalent rumour, may run thus:—

86. *Minute appointing Presbyterial Visitation.*

The presbytery having taken this matter into their serious consideration, did, and hereby do, appoint a visitation of the parish of C., to take place on day of next, that the heritors, elders, and communicants of said parish may be examined respecting the rumours now prevailing in regard to their minister. The presbytery instruct Mr E. F. to preach that day; and they further appoint Mr G. H. to preach in the church of C., on Sabbath, the day of , that due intimation of said meeting of presbytery may be given to all concerned.*

It may so happen that proceedings against a minister may be instituted in consequence of a petition being presented to the presbytery by certain of his parishioners.

87. *Minute when Petition against a Minister is presented.*

The presbytery being met, &c. Compeared Mr L. M., and presented a petition, signed by certain persons, styling themselves heads of families in the parish of C., and members of the Established Church there, praying the presbytery to inquire into certain reports now prevalent in regard to Mr A. B., minister of said parish, (the particular crime alleged must be stated.) The presbytery being alone, resolved, after due deliberation, that the petition should lie on the table till their next ordinary meeting, then to be taken into

* Ten free days must elapse between the intimation and the meeting of presbytery.

consideration, and (should the person accused be absent) they appointed their clerk to give intimation thereof to the said Mr A. B.

If the result of the appointment of the committee, or the presbyterial visitation, or the consideration of the petition, as in the foregoing Style, be such as to convince the presbytery that there are grounds for a libel against the minister, they will then proceed accordingly. If the parishioners are to become the libellers, then the presbytery will ordain them to give in a libel with the witnesses to be adduced in support of the charge within a certain time. And if the presbytery be compelled to become libellers, they will appoint a committee to draw out the libel, and to submit it to the court. Of these judgments of the presbytery it is deemed unnecessary to give any forms; but the following is given as the form of a minute, when the libel is given in by the parishioners.

88. *Minute when Libel given in by the Parishioners.*

Compeared Mr L. M., agent for parishioners of C., who gave in a libel against Mr A. B., minister of said parish, which was authenticated by the signatures of the moderator and clerk, the tenor whereof follows, (here take it in.) The presbytery having considered said libel, order a copy thereof, and of the list of witnesses annexed thereto, to be served on the said A. B., and direct their officer to cite him to compear before the presbytery to answer the same at their next ordinary meeting, to be held on the day of next, at o'clock; said citation to be made ten free days at least before said meeting.*

* Such a form as above will, generally speaking, be quite sufficient, and so supersede the necessity of the more lengthened form of which the warrant of citation, in Style No. 82, is to be considered an extract.

89. *Minute of Meeting when accused Party appears, and the relevancy of the Libel is considered.*

The presbytery-officer returned execution of citation against the said Mr A. B., properly attested, bearing that he had, on the day of last, regularly served the said A. B. with a copy of the libel and list of witnesses, and duly summoned him to compear before the presbytery this day, to answer to the same. Mr A. B. being called, compeared with him K. L. as his counsel. Mr L. M. attended on behalf of the libellers. The libel having been read over, the following defences were given in on the part of Mr A. B. (here take them in.) Parties were then heard on the relevancy of the libel; and being removed, the presbytery did, and hereby do, find the major proposition of the libel relevant; they also find the articles of the minor proposition relevant. Parties being called in, this sentence was intimated to them. The presbytery appoint their next meeting to be held at on the day of next, for the purpose of dealing with the said A. B. according to the form of process; or of resolving to proceed to the probation of said libel according to law, and of granting warrant for summoning the witnesses, for proving thereof, as they shall see cause; and they instruct their clerk to give timely information of said meeting to Mr A. B., and that the presbytery require that he appear personally.

Should the presbytery be unsuccessful in bringing the accused party to an acknowledgment of guilt, they then resolve to proceed to probation.

90. *Minute when Presbytery resolve to proceed to Probation.*

The presbytery having resolved to proceed to a proof of the charges in the libel, appointed their next meeting

to be held at , on the day of for this purpose, and they authorized and empowered any sheriff-officer or constable, within the county of , or messenger-at-arms, to summon such witnesses in the list appended to said libel, as to the libellers may seem meet, to appear in said place, on that day, to give evidence in the cause, and they appointed their clerk to issue their edict for that purpose. Parties were summoned *apud acta* to attend said meeting.

The witnesses are cited, put on oath, and examined, in the same way as before, *vide* Kirk-Sessions, pp. 20, 21.

No Style is necessary for the taking of the proof. The witnesses on the part of the prosecution having been examined, the defender is then allowed an exculpatory proof, the presbytery granting warrant for the citation of the witnesses, as in the former case. The exculpatory proof being finished, the presbytery come to a deliverance, after hearing parties on the evidence. If the libel infer deposition, and the crime be proved, sentence is then carried into execution, provided no appeal be taken to a superior court.

91. *Form of Minute in case of Deposition.*

(Place and date.)

Which day the presbytery of D. being met, and duly constituted, &c. Sederunt, &c. The presbytery having had under their consideration the libel, at the instance of against Mr A. B., minister of the parish of C., which set forth, &c., and the citation of the said A. B.—his compearance—his answers to the said libel against him—the proof adduced—and having found the same relevant by the acts and practice of this Church, to infer deposition, as also the articles of

the said complaint, sufficiently proved by the depositions of the witnesses, and other proof adduced, viz. That, (here narrate the charges found proven,) as the proof adduced bears. Therefore, the presbytery did, by their vote, depose the said A. B., likeas they hereby do, in the name of the Lord Jesus Christ, the alone King and Head of his Church, and by virtue of the power and authority committed by him to them, depose the said A. B. from the office of the holy ministry; prohibiting and discharging him to exercise the same, or any part thereof, in all time coming, under the pain of the highest censures of the church.

Previously to the moderator pronouncing the solemn sentence of deposition, prayer is offered by one of the brethren.

92. *Form of Deposition.*

In the name of the Lord Jesus Christ, the sole King and Head of this Church, and by virtue of the power and authority committed by Him to it, I do now solemnly depose you, Mr A. B., minister of the parish of C., from the office of the holy ministry, prohibiting and discharging you from exercising the same, or any part thereof, in all time coming, under the pain of the highest censure of the Church; and I do declare the church and parish of C. vacant, from and after the day and date of this sentence.

If signs of penitence have been given, and the crime proved does not demand so severe a punishment as deposition, but still that so much guilt has been proved as that some punishment is called for, the court may *suspend* the accused from the exercise of his ministerial functions, and that either for a limited or unlimited period, as to the

presbytery may seem most proper in the circumstances of the case.

If the person accused be a preacher of the gospel, he is, in the event of the libel being proved, deprived of his licence.

93. *Minute in the case of Deprivation of Licence.*

The presbytery therefore did, and hereby do, deprive the said Mr A. B. of his licence as a preacher of the gospel, declare that he cannot be admitted into any pulpit within the bounds of the Church of Scotland, and that he is disqualified to accept a presentation, or be received into any pastoral charge.

In the case of a minister being deposed, or a probationer deprived of his licence, intimation thereof must be made to the clerk of the Assembly.*

VI.—GREATER EXCOMMUNICATION.†

Although this division of the section of Judicial Procedure is, in many respects, different from the five preceding, it has yet been thought necessary to insert it here. The preceding relate entirely to ministers and preachers of the gospel; the following to members of the church generally.

* Pardovan says, book iv. tit. 4, § 19, "The Assembly, August 5, 1648, considering that, according to the ancient order and practice of this kirk, the censures of suspension and deposition are both *ab officio et beneficio;* therefore, they discharge deposed or suspended ministers to exercise any part of the ministerial calling or intromit with the stipend, under pain of excommunication to the deposed minister, and of deposition to the suspended.

† Pardovan, b. iv. t. 6.

In cases of obstinate contumacy, or continuance in scandalous practices, where the communicant hath lain under the sentence of lesser excommunication* for some considerable time, and yet is found frequently relapsing into the same vices for which he was censured, there is ground for a process for the censure of the higher excommunication. The lesser excommunication, however, is sufficient, where there has been no scandal proved, and where there only follows simple contumacy, by not appearing. But if the scandal be of a heinous nature, and spreading and infectious, as in cases of heresy and schism, the contumacy is to be proceeded against in the manner herein after mentioned.

The matter comes before the presbytery by a reference from the kirk-session, who have already brought the process to an intimation of the sentence of the lesser excommunication. The presbytery, if they find the lesser excommunication not sufficient, cause the party to be cited, and if he appear and deny the scandal alleged, they are then to lead probation, as in other cases.

But if the party do not appear, but contemn the citation, he must be formally cited three times, and then cited from the pulpit; intimation being given, even though he be absent, that if he do not appear, the presbytery will notwithstanding proceed to investigate the case. After this, the presbytery appoint the minister to acquaint the congregation with the proceedings that have hitherto taken place, and the contumacy of the party, and on three several Sabbaths gravely to admonish the party, if present, to repent, and submit himself to the discipline of the church; and if he be absent, the minister is to acquaint the people that the church requires him to repent and submit. As every step in this procedure must be taken with all caution and

* See page 24.

deliberation, it is appointed that a meeting of the presbytery shall intervene between each admonition.

If he still remain impenitent, the presbytery appoint public prayer to be made for him on three several Sabbaths, a meeting of presbytery intervening, as before, between each of these Sabbaths.

If all these steps prove ineffectual, then the presbytery is to appoint a minister to intimate their intention of passing sentence.

94. *Minute of Presbytery's appointing Edict to be served.*

(Place and date.)

Which day the presbytery having met, and been duly constituted; Sederunt, &c. The presbytery resumed consideration of the case of A. B., and finding that there had been adduced full and sufficient proof of his guilt, and that notwithstanding, he showed no signs of true penitence or contrition; considering also, that he had been guilty of obstinate contumacy, inasmuch as, although he had been duly cited in the ordinary form, and thrice seriously admonished by order of the presbytery, from the pulpit, and although thereafter, public prayer had been made on three several Sabbaths, that God would deal with his soul, and show him the evil of his ways, he had yet refused to submit himself to the discipline of the church, they did and hereby do resolve, that on Sabbath the day of they will proceed in the parish church of C. solemnly to pronounce the sentence of the higher excommunication upon him, in the face of the congregation, unless either the party, or some for him, signify some relevant ground to stop their proceedings. And they appoint C. D. to preach in the parish church of C. next Sabbath, and make intimation accordingly.

An edict is accordingly served in terms of the above minute.

On the appointed day, after sermon, the minister narrates to the congregation all the steps of the process, and shows the obstinate impenitence of the scandalous person, and there, after solemn prayer, he pronounces the sentence, speaking to him in the second person, if present, and of him in the third person, if absent. See *Pardovan*, b. iv. tit. vi. § 9.

95. *Sentence of Greater Excommunication.*

Whereas thou, A. B., hast been, by sufficient proof, convicted of the sin of , and after due admonition and prayer, remainest obstinate, without any evidence or sign of true repentance, and dost contumaciously resist the authority of the church; therefore, in the name of the Lord Jesus Christ, and before this congregation, I pronounce and declare thee, A. B., excommunicated, shut out from the communion of the faithful; debar thee from their privileges, and deliver thee to Satan* for the destruction of thy flesh, that thy spirit may be saved in the day of the Lord Jesus.

If, after prayer, or before pronouncing the sentence, the scandalous person make any public signification of his penitence, and of the desire to have the censure stopped, the minister may, on any apparent seriousness in him, delay pronouncing him excommunicated, upon his public engagement and promise to appear before the presbytery at their next meeting, of which the minister is to make report.

After the sentence is pronounced, the minister is to warn the people of the effects thereof; such as, that they hold

* 1 Cor. v. 5.

that person to be cast out of the communion of the church, and therefore they are to shun all unnecessary converse with him: nevertheless, excommunication dissolveth not the bonds of civil or natural relations. Then he shall conclude the censure with solemn prayer, and dismiss the congregation with the blessing, after singing the last part of the 101st Psalm. *Pardovan*, iv. vi. 13.

In case the excommunicated person continues obstinate, after the sentence of the presbytery is intimated in all the kirks within their bounds, they are to give an account thereof to the synod, who are to cause similar intimation to be made, and if this be also ineffectual, the synod must report it to the general assembly.

If a person under sentence of excommunication manifest signs of repentance, the presbytery may give warrant for his absolution. There ought, in this case, to be an edict of absolution counterpart to the edict of excommunication.

The minute authorising the absolution may be as follows:—

96. *Minute ordering Edict to be served before the Excommunicated Person is absolved.*

(Place and date.)

Which day, the presbytery of C. being met, and duly constituted, &c., A. B., an excommunicated person, compeared before the presbytery, and professed repentance for his sin. Whereupon the presbytery, being satisfied of his penitence, ordained him to compear before the congregation of on the day of , and make free confession of his sin, and did, and hereby do, give warrant to C. D. to absolve him, on the day of . Whereof they appointed the said C. D. to give due intimation on Sabbath next.

The edict is served in the usual way.

97. *Sentence of Absolution.*

Whereas thou, A. B., hast been shut out for thy sin from the congregation of the faithful, and hast now manifested thy repentance: In the name of the Lord Jesus Christ, I pronounce and declare thee absolved from the sentence of excommunication formerly pronounced against thee, and do receive thee into the communion of the church, and the free use of all the ordinations of Christ, that thou mayest be partaker of all his benefits, to thy eternal salvation.

CHAPELS OF EASE AND *QUOAD SACRA* CHURCHES.

In consequence of the rapid increase of the population in Scotland, the church accommodation provided by the parochial churches became, in many large parishes, inadequate for the accommodation of the people. An endeavour was made to supply, to a certain extent, this deficiency, by the erection of what were called Chapels of Ease. They were erected by voluntary contribution, and supplied by an ordained clergyman, for whom a stipend to a certain amount was secured by bond granted by trustees on the part of the congregation, the seat-rents being set apart to relieve the bond-holders, and otherwise to provide for the maintenance of the chapel, and the performance of public worship in it.

Clear and distinct regulations respecting the erection of chapels of ease were laid down by the General Assembly in an act passed May 28, 1798. The preamble of this act sets forth, that "the General Assembly, judging it expedient that no chapel of ease should be erected without the knowledge and approbation of the General Assembly, un-

animously did, and hereby do ordain, that in future if any petition should be laid before any presbytery of this Church for the erection of a chapel of ease, the said presbytery shall strictly observe the following regulations:—

"At the next ordinary meeting, unless it shall appear to the presbytery, from the circumstances in which the petition is offered, that the erection of the said chapel of ease is unnecessary and inexpedient, they shall cite the minister and kirk-session of the parish within which the chapel is intended, and shall summon, by edictal citation, the heritors of the parish, and, if there is a burgh in the parish, the magistrates of that burgh, to attend the next meeting of presbytery, and to appear for their interest in the subject of the petition, if they shall see cause. That such presbytery, after having heard the parties, shall sufficiently ascertain the circumstances on which the petition is founded;—the facts stated as reasons for the necessity or expediency of the chapel intended;—the general plan of the chapel itself;—the estimate of the expense to be incurred in completing it;—the scheme laid down for discharging the debts which it may be necessary to contract;—the plan on which it is proposed to dispose of the collections to be made at the chapel;—the names and designations of the persons in whom the property is to be vested;—the mode proposed for the election of the minister;—the stipend to be provided to him;—and the security offered for the regular payment of the stipend:—That such presbytery shall thereafter report the whole above-mentioned circumstances of the case, from their minutes, to the next meeting of the General Assembly; and shall not pronounce any final judgment on the petition, till they shall have received the special directions of the Assembly thereon; and that it shall be competent for the petitioners, and for all parties having interest, to be heard on the subject at the bar of the Assembly."

The first step to be taken, therefore, is, to apply by petition to the presbytery within whose bounds the chapel is to be erected; and it is desirable that the whole circumstances connected with it should be distinctly set forth in the petition—such as the number of persons who may be accommodated in the building—the sum subscribed for its erection—the persons or body in whom it is proposed to invest the property—the wished-for mode of electing the minister—the provision made for keeping the chapel in repair, for defraying the expense of communion elements, and all such other circumstances as it is necessary for the presbytery to be acquainted with.

The following may be the form of a petition, the preamble, of course, varying according to the description of the parties who may have originated the proposal for its erection:—

98. *Petition for the Erection of a Chapel of Ease.*

Unto the Rev. the Presbytery of A., the petition of C. D. E. F., and G., for themselves and other subscribers to a chapel of ease proposed to be erected in the parish of H.

Humbly sheweth,

That in consequence of the great increase of population in the said parish, the accommodation provided in the parish church is wholly inadequate for the wants of the people; nor is there any way in which it can be altered or enlarged so as to afford a sufficient number of sittings: That under these circumstances your petitioners, being heritors and parishioners of the said parish, were led to consider the expediency of erecting a chapel of ease in the parish for their own accommodation, and that of others similarly situated, and that they have subscribed the sum of £ for that purpose.

(Then insert the particulars referred to respecting minister, for its maintenance, &c.)

That your petitioners are earnestly desirous of obtaining the sanction of the Church for the erection of such chapel, and a constitution, in the manner prescribed by the act of Assembly 1798, and of having it regularly incorporated with the Established Church of Scotland.

May it therefore please the Reverend the Presbytery of A. to take the premises into their consideration, and to adopt the necessary measures for giving effect to the object of this petition.

And your petitioners shall ever pray.

The petition, having been presented to the presbytery, must lie on their table till next ordinary meeting.

99. *Minute of Presbytery, when Petition is presented.*

(Place and date.)

The presbytery having met, &c.,

There was presented to the presbytery a petition from C. D. E. F. and G., in name of themselves and other subscribers to a chapel of ease proposed to be erected in the parish of H., which, having been read, was ordered to lie on the table till next meeting. Closed, &c.

At next meeting, the presbytery proceed to consider the petition, and unless the proposed erection shall appear to them unnecessary and inexpedient, they resolve to cite the minister and kirk-session of the bounds within which the said chapel is to be erected; and the heritors of the parish, and the magistrates of the burgh, if there is a burgh in the parish, are also summoned by edictal citation

to appear at the next meeting of presbytery for their interest on the subject of the petition, if they shall see cause.

The citations are generally given in the church by the minister.

100. *Citation to Minister and Kirk-Session as to proposed Chapel of Ease.*

Agreeably to an appointment of the presbytery of A., at their meeting on the day of last, the minister and kirk-session of the parish of K. are hereby cited to appear at the meeting of presbytery, which is to be held at on the day of next, at o'clock, on the subject of the petition which has been presented to the presbytery, as to a place of worship proposed to be erected at H., within the bounds of the said parish.

101. *Citation to Heritors.*

Agreeably to an appointment of the presbytery of A., at their meeting on the day of last, the heritors of the parish of K. (or magistrates of burghs, as may be,) are hereby summoned to appear at a meeting of said presbytery, to be held at , on the day of next, at o'clock, to state objections, if they have any, to the erection of a chapel of ease at H., in connexion with the Established Church of Scotland.

The presbytery-clerk requires to be satisfied of the citations having been regularly given, by their being returned duly certified.

102. *Certificate of Citation having been given.*

Church of K., the day of , 18 . The

above citation was this day duly served by
L. M., Minister of .

The parties cited having appeared, and been heard by the presbytery, the minute may be—

103. *Minute of Presbytery when Parties have appeared.*

(Place and date.)

The presbytery having met and been duly constituted; Sederunt, &c. The presbytery took into their consideration the petition relative to the erection of a new church in the parish of K. Parties being called, compeared C. D. for the petitioners; the Rev. L. M., minister of the parish of K., as moderator, and in name of the kirk-session of that parish; N. O., Esq., an heritor in the said parish, &c., who were severally heard on the merits of the petition. Parties having been removed, the presbytery resolved that an additional place of worship is requisite in the said parish of K., and, with the view of furthering the views of the petitioners by every means in their power, Messrs O. and P., ministers, and Q., ruling elder, were named a committee, to inquire into the circumstances stated in the petition, to prepare a draft of a constitution, and to report to next meeting of presbytery. P. to be convener. Closed, &c.

The committee will accordingly meet, and obtain all information in their power in regard to the new church, either by written or parole evidence.

In drawing up the constitution, the committee will be guided by Act of Assembly x., 1826, by which the following report was approved of and adopted:—

"The committee appointed last year to revise the constitutions which have been given to different chapels of

case, and prepare a form, &c., report unto the venerable the General Assembly as follows:—

"That the committee have examined the constitution given to twenty-two chapels of ease in the course of the last twenty-seven years, and respectfully suggest, that, after having observed the provisions of the 5th act of Assembly 1798, the articles in the constitution of any proposed chapel shall, in time coming, be introduced in the following order:—

"1. The property of the chapel to be invested in whom.

"2. To be exclusively for the use of a minister of the Church of Scotland.

"3. Management and application of the seat-rents.

"4. If debt incurred in erecting the chapel, how to be liquidated.

"5. Managers and administration to be under the inspection of the presbytery.

"6. Manner of electing managers, and supply of vacancies, when they occur.

"7. If a treasurer and clerk, how appointed and paid.

"8. Amount of stipend.

"9. What security for the same, and time of payment.

"10. Plan of augmenting the stipend when necessary.

"11. Collections, and application of the money collected.

"12. Who are to choose the first minister, and how long to have this power.

"13. The manner of supplying vacancies after the chapel is permanently established.

"14. Supply of the pulpit during vacancies.

"15. Names of candidates to be laid before the presbytery.

"16. Certificates of candidates to be laid before the presbytery, and judged of.

"17. Day of election, how to be appointed, and mode of calling meetings for this and other purposes.

"18. Election, letter of acceptance, certificate of having taken the usual oaths, and renewed bond of security, to be laid before the presbytery.

"19. Duty to be performed by the minister when inducted.

"20. If a Gaelic chapel, what portion of the service to be performed in that language, and what in English.

"21. Bounds within which he is to labour, if any are fixed.

"22. When the sacrament is to be dispensed.

"23. How persons are to be admitted to partake of the same.

"24. Allowance for communion elements, and to the minister, when the sacrament is dispensed.

"25. Mode of letting the seats, and time when to be done.

"26. Persons to be proposed, if any preference is to be given.

"27. Precentor, by whom appointed, and with what salary.

"28. Officer, by whom appointed, and with what allowance.

"The committee have only farther to remark, that, when circumstances occur not requiring some of the particulars mentioned to be specified, they may be omitted, while the above order is observed in specifying those which are introduced. When, on the other hand, it is found necessary to introduce other particulars, they may be added after those which occur in the above enumeration."

By 3 Geo. IV. c. 72, § 27, it is declared "lawful for the Commissioners of Customs and Excise of England, Ireland, and Scotland, respectively, with the consent and

under the authority in writing of the Lord High Treasurer of the United Kingdom of Great Britain and Ireland, or of any three or more of the Commissioners of His Majesty's Treasury for the time being, respectively, to remit all or any proportion of the duties of customs or excise respectively, or to order the same to be drawn or repaid, for, upon, or in respect of any stone, slate, bricks, timber, or other materials, which shall have been, or shall be *bona fide* procured for, or have been, or shall be used, in the re-building, or enlarging, or increasing, the accommodation of any churches or chapels under the provisions" of the said acts.

"And such duties shall, in every such case, be remitted, drawn back, or repaid, as the case may be, under such rules, regulations, and restrictions, and in such manner as shall be ordered and directed by the Lord High Treasurer, or any three or more of the Commissioners of His Majesty's Treasury, in that behalf."*

The following are the instructions issued by the Excise Office, regarding the receiving of the drawback.

104. *Declaration by the Party.*†

I (or We) [insert the names, residence, and trade of the party or parties making the declaration,] do solemnly and sincerely declare, that I (or We) contracted for the performance of the [state the nature of the work contracted for] in [state whether in building, rebuilding, or enlarging the church or chapel] at in the parish of , in the county of , and that in the

* From a Return ordered by the House of Commons, on 26th April 1836, it appears, that between October 1830 and March 1836, there were fifty-nine places where drawbacks and duties "used in the construction of churches and chapels in connexion with the Kirk of Scotland," were allowed.

† To be made by the contractor.

execution of such contract I (or We) used the following materials, namely:—* [state the number of bricks, and the weight, and the superficial measure of the glass] and that the duty on such materials was paid at † on the day of , 18 ; and I (or We) make this solemn declaration, conscientiously believing the same to be true. (Signed)

Solemnly declared at , this day of 18 , before me,
(Signed)

105. *Certificate by the Architect.*

I, C. D., the architect who superintended the [building, rebuilding, or enlargement of the church or chapel] at , in the parish of , do hereby certify, that the quantity of materials enumerated in the above declaration were actually used therein. Dated

(Signed) C. D.

After all the facts and circumstances mentioned in the petition have been fully inquired into, the report to the presbytery may be—

106. *Report of Committee of Presbytery on the Chapel proposed to be Erected in the Parish of H.*

The committee having considered the facts and circumstances stated in the petition, and had sufficient evidence before them, were fully satisfied, from the statements laid before them, of the necessity of an additional place of worship for that part of the parish of H. in which the chapel of ease is proposed to be

* The quantities must be written in words at length, and not in figures.

† If the contractor should not, after the most diligent inquiry, be able to state the date of payment of the duty, it must be so declared.

erected, and were unanimously of opinion, that the presbytery should accompany the transmission of the usual documents to the General Assembly, with a recommendation in its favour.

The committee having taken into consideration a draft of the proposed constitution, approved generally of the same, and recommended that it should be transmitted to the General Assembly.

Having examined the state of the funds, the committee were satisfied that there is every probability of the chapel being free of debt before the ordination of the first minister; and having also examined the papers connected with the government drawback on the exciseable articles used in the erection of the church, recommend that these should be signed by the moderator of presbytery, and also transmitted to the General Assembly.

Humbly reported by

L., Convener.

In the above report, many particulars may be stated, viz. the general plan of the chapel—the expenses yet to be incurred—how these are to be discharged, all as stated in the act, and which are generally embodied in the articles of the constitution.

After the presbytery has had the report of the committee submitted to them, and the draft of the constitution of the chapel of ease, the minute may be as follows:—

107. *Minute of Presbytery when a Report considered.*

(Place and date.)

The presbytery having met and been duly constituted; Sederunt, &c.; there was laid on the table the following documents.

1. Report of committee of presbytery, appointed at their

meeting on the day of last, in regard to the chapel of ease proposed to be erected at H., in the parish of K.

2. Draft articles of constitution of the said chapel of ease.
3. Statement by X., builder in W., relative to account of wood, glass, &c., likely to be used in the erection of the new church, and the government drawback thereon, which the presbytery having considered, they resolved to transmit the same to the venerable the General Assembly. Closed, &c.

The draft constitution and other papers are then laid before the General Assembly by petition, through their committee of bills, in the usual form.* When approved of, it is recorded in the books of Assembly, and an extract is afterwards furnished by the clerk, which again is usually recorded in the minutes of presbytery.

The manner of appointing the minister will be regulated by the articles of the constitution. On receiving from the proper parties a presentation or nomination to the chapel in favour of a qualified person, the presbytery will proceed to his trials, and then fix a day for his ordination. All subsequent presentees will fall under the laws regulating the settlement of ministers, so far as in the circumstances they can be applied.

The presbytery, however, will not proceed to ordain the minister till a bond for a certain amount of stipend be laid on the table, and approved of by them.†

The ministers of chapels of ease are not members of the courts of the Church.

* For detailed directions as to the manner in which presbyteries are to proceed in transmitting applications for the erection of additional places of worship, and the relative documents, see Standing Orders, Ass. 1849, cap. 27, under the head "General Assembly."

† For bond, see Appendix.

They have no territorial districts assigned to them, but are authorized to perform all ministerial services for the members of their own congregation; particularly, to perform every part of public worship in their own pulpits, to which they have an exclusive right under the authority of the presbytery; to marry, after legal proclamation of banns; and to baptize, after legal registration.

They are not assisted by a kirk-session of their own, the parish remaining under the ecclesiastical superintendence of the parish minister and his session; "but upon a certificate of the moral character of the persons to be admitted to the sacraments from members of the parochial sessions to which they belong, the minister may dispense the sacraments of baptism and the Lord's Supper to the people who shall attend his ministry in the chapel, according to the word of God, and the standards and practice of the National Church."* In reference to this, in dispensing the communion, it is orderly that they should be assisted by some one or more of the elders of the parish within which the chapel lies.

In reference to what was felt to be the anomalous position of ministers of chapels of ease, and to the disadvantages under which they were laid thereby, the General Assembly passed an interim act in the year 1834, sess. x., the object of which was to place them in all respects on the same footing with the parochial clergy, assigning to them certain territorial limits within which they were to labour, and erecting them into parishes *quoad sacra*—appointing them kirk-sessions, and granting them seats in the Church courts.—(See Acts of Assembly, p. 1035.)

By a decision of the supreme civil courts, however, in 1842, this act was found to be *ultra vires* to the Church, and, in consequence, in the Assembly of 1843, the following act was passed:—

* Constitution of Gælic Chapel—Assembly 1798.

"*Edinburgh*, 24*th May*, 1843. *Sess.* 6.

"The General Assembly having taken into their consideration the overtures for repealing or declaring null and void the enactments 1833 and 1834, relating to the ministers of parliamentary churches and *quoad sacra* parishes, and the enactment of the General Assembly 1839, declaring the ministers of certain seceding congregations to be on the same footing as the ministers of parishes *quoad sacra*, did and hereby do rescind the acts of Assembly of 1833, 1834, and 1839, by which the ministers of chapels of chapels of ease, parliamentary churches, and of certain seceding congregations, became members of the Church courts, the same having been incompetently passed; at the same time, the Assembly, deeply impressed with the vast benefits which have been thus obtained for the people of this country by the extension of the blessings of religious instruction, by means of the services of the *quoad sacra* ministers, and feeling most anxious that these great and useful services should be secured to the country on a proper and permanent basis, desire to express a most sincere hope that measures will be taken to have these unendowed districts created (legally and properly) into parishes, and endowments granted to their ministers; and appoint a select committee, consisting of the following members, to draw up a loyal and dutiful address to the Queen, praying that Her Majesty would be graciously pleased to take the same into her most favourable consideration,viz., the Moderator, Dr Cook, Principal Lee, Mr Proudfoot, Mr Robertson (Ellon), Dr Hill, Mr John Cook, Dr Mearns, Dr Haldane, Mr Macleod (Loudon), Mr Paull, Mr Bisset, Mr Smith, Sir Charles Ferguson, Mr Milne, the Procurator, Mr Smythe of Methven, the Earl of Selkirk, Lord Belhaven, Mr Hugh Bruce, Sir R. Anstruther, Mr James Hope, Mr John Tait, Mr Macduff Rhind—Lord Belhaven to be convener."

Consequent upon this act of Assembly, a bill was introduced into Parliament, and an act passed, Vict. 7, 8, chap. 44, 19th July 1844, entitled, "An act to facilitate the disjoining or dividing of extensive or populous parishes," &c.*

Under this enactment, considerable additional facilities were afforded for the disjunction and erection of parishes.

It provides, that a parish may be held or deemed to be too large in respect of its population, although the superficial measurement may not be too large for one parish.

It provides, that the consent of the heritors of a major part of the valuation of the parish, shall be necessary and sufficient in all cases in which the consent of the heritors of three parts of four of the valuation of such parish was required by the act of Queen Anne, 1707, cap. 9, except when otherwise hereinafter expressly provided—that it shall not be valid ground of objection to a process, that this has not been obtained previous to such process being brought into Court, and that, after special intimation has been made in such form and manner as the Lords of Council and Session shall direct, to such of the heritors as have not already given their consent, or stated judicially their dissent, if within a time to be fixed by the said Lords of Council and Session, and specified in such intimation, they do not judicially state their dissent, they shall be held as consenting heritors.

It provides, further, that if it shall be shown to the Lords of Council and Session that there is already built or erected, and in good repair, a church or place of worship suitable for the church of the new parish proposed to be erected, whereby the expense of erecting such new or additional church will not be incurred by the heritors; and that the titulars or others having right to the teinds, out of which is to be paid not less than three-fourths of the additional stipend, to be modified by reason of such disjunction, have consented thereto, or have stated no

* For the act in full, see Appendix.

objection thereto—after due intimation has been given them by direction of the Lords of Council and Session, it shall be lawful and competent for the said Lords to allow such process to proceed, and to give judgment and decree thereon, if, upon consideration of the whole case, it shall appear to them that there are good and sufficient reasons for so doing, although the heritors of a major part of the valuation of the parish to be disjoined or divided, may not have consented.

With respect to the patronage of the new parishes thus erected, the act provides, that it shall belong to the patron of the original parish from which the same has been disjoined or divided; or, if the parish has been disjoined or divided from more than one parish having different patrons, the patronage shall belong to the patrons of the parishes from which the same has been disjoined or divided, and shall be exercised by them either jointly or in a certain order of rotation, as may have been agreed upon by them; or failing of such agreement, then their respective interests in the right of patronage, and the manner of exercising the same, shall be fixed by the Lords of Council and Session in the process for erecting such new parish; provided that the patron or patrons of the original parish or parishes bear the burden of not less than one-half of the stipend to be provided to the minister of such new parish; and that no patron of the original parishes who shall not bear the burden of one-fourth part of the stipend, shall have any right or interest in the patronage of such new parish by virtue of his right of patronage in the original parish.

In every case where the patron or patrons do not thus bear one-half the burden of stipend, then the patronage of the new parish shall be lodged in the person, or, if there be more than one, and not more than three, in the persons alternately who bear the burden of the whole sti-

pend; and if they exceed three, the patronage and right of presentation shall be vested in and exercised by three trustees; or, in case of difference, by the majority of three trustees, who shall be chosen for their respective lives in manner following; (that is to say,) the three trustees first chosen shall be elected by a majority of votes at a meeting of the heritors of such new parish, and of the persons liable to the payment of the stipend, or who have contributed the sum of five pounds towards the fund out of which any part of the stipend is provided, or towards the expense of providing the church for such new parish; and upon the death, disability, or resignation, of any of the trustees so chosen, another trustee in his place shall be elected for life by the heritors and kirk-session of the parish; and as often as any vacancy shall happen by the death, disability, or resignation, of any trustee, his place shall be supplied in like manner by another trustee, to be elected for life by the heritors and kirk-session of the parish: Provided always, that no person shall be qualified to hold the office of trustee who is not a member of the Church of Scotland in full communion therewith.

The act further provides, that in so far as regards the management of the poor, it shall be lawful for the Lords of Council and Session, if they see cause, to decide that, notwithstanding such disjunction, the new and original parishes shall remain and be regarded as one parish, and that no division of any parish shall affect the law and practice as to the management of roads, or levying and applying the statute-labour, unless it shall be considered expedient by the county or district trustees.

After the above provision for the erection of parishes *quoad omnia*, the act then proceeds, in the 8th section, to make the following provision for the erection of parishes *quoad sacra*:—

§ 8. "That if any person or persons shall, at his, her, or

their expense, have built or shall have acquired, or shall have undertaken to build or acquire, a church, and shall have endowed or shall have undertaken to endow the same, it shall be competent for the Lords of Council and Session, acting in their capacity aforesaid of Commissioners for the Plantation of Kirks and Valuation of Teinds, and they are hereby empowered and authorized, on the application of such person or of such persons where they do not exceed five in number, or of two-thirds or any ten of such persons where they do exceed five in number, and without any concurrence of heritors, to inquire into the circumstances, and to erect such church into a parish church in connection with the Church of Scotland, and to mark out and designate a district to be attached thereto *quoad sacra*, and to disjoin such district *quoad sacra* from the parish or parishes to which the same, or any part thereof, may have belonged or been attached, and to erect such district into a parish *quoad sacra* in connection with the Church of Scotland; and it shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland: Provided always, that nothing herein contained shall be construed so as to deprive any party who has a legal interest in the fabric of any place of worship of any right which by law belongs to such party to prevent such place of worship from being used or appropriated as a place of worship in connection with the Church of Scotland: Provided also that due intimation of every such application as aforesaid shall be made to all parties having interest, that they may have an opportunity of appearing and being heard; which intimation to be made by notice in the Edinburgh Gazette, or by advertisement in one or more Edinburgh newspapers of general circulation, or in any other form or manner that may be directed by the Lords of Council and Session

in any act or acts of sederunt, or any order to be made by them for that purpose: And provided also, that the titles to the said church shall bê taken and conceived so as that the said church shall be inalienably secured as the church of the said new parish in connection with the Church of Scotland, and that due provision shall be made for the future maintenance of the fabric of the said church; and that the endowment for the minister of the said new parish shall not be less than a stipend of one hundred pounds per annum, or seven chalders of oatmeal, to be calculated at the highest fiars of the county, exclusive of the sum necessary for communion elements, with a suitable dwelling-house or manse and offices and appurtenances, or a stipend of not less than one hundred and twenty pounds, or eight and a quarter chalders of oatmeal, to be calculated at the highest fiars of the county per annum, where there shall be no such dwelling-house or manse; and that such stipend of not less than one hundred pounds, or not less than one hundred and twenty pounds, shall be permanently provided and secured in all time coming for the minister of the said parish; and that if there shall be a dwelling-house or manse, the title to such dwelling-house or manse and offices and appurtenances shall be taken and conceived so that such dwelling-house or manse and offices and appurtenances shall be inalienably secured as the dwelling-house or manse and offices and appurtenances for the minister of the said parish; and that due provision shall be made for the future maintenance of the fabric of such dwelling-house or manse and offices and appurtenances, all to the satisfaction of the said Lords of Council and Session; and the right of presbyteries to present to vacant parishes *jure devoluto*, according to the law of Scotland, shall have place in regard to all parishes erected *quoad sacra* as aforesaid, in the same manner as in regard to other parishes."

The remaining sections of the act provide for the allo-

cation of sittings, the granting of sites by heirs of entail and others, the burdening of entailed lands for endowments, the erecting of Gælic congregations into parishes, the erecting the Highland churches, commonly called Parliamentary churches, into parishes *quoad sacra*, and the arrangements to be made if it should be desired to erect any of them into parishes *quoad omnia*.

The erection of parishes *quoad omnia*, under the provisions of this act, is, as under the former statute, entirely a civil matter, and must be conducted throughout before the Court of Session. The procedure is by summons, which may be at the instance of the presbytery, or of one or more heritors, in which latter case the presbytery must be called as defenders, as also the minister and kirk-session of the parish or parishes out of which the new parish is to be erected. If any of the parties called as defenders have any objection to the proposed erection, they give in defences stating this, and the Court of Teinds give judgment on the matter. In reference to the facilities afforded under this act for the erection of parishes *quoad sacra*, the General Assembly's committee for the endowment of chapels of ease have directed their attention to the forms of deeds and procedure best calculated to secure the sanction of the Court to such disjunctions and erections.* They have issued the following instructions and forms of procedure, and directed that they shall be strictly adhered to in all cases of disjunction and erection, in which the committee might become parties.

108. *Instructions to Presbyteries in reference to Disjunctions and Erections of Churches* Quoad Sacra.

Upon receiving intimation, by petition, of the intention of any person or persons to apply to the Court of

* Applications with these forms are now before the Court of Session, but no decision has yet been given.

Teinds, for the disjunction and erection of a new parish, *quoad sacra*, in terms of the 7th and 8th Vict. c. 44, the presbytery or presbyteries of the bounds shall, within ten days after such petition shall have been lodged with their clerk, call a meeting to consider the general circumstances of the case; and if, upon such consideration, it shall appear to them that such disjunction and erection is *ex facie* desirable and proper, they shall, at said meeting, direct all parties having interest to be cited to appear before them at a second meeting, to be held within fourteen days; and such citation shall be made edictally in common form upon all the parties interested; and also, if the presbytery or presbyteries shall think proper, specially on the following parties, if within Scotland, viz. the titular or titulars, patron or patrons, and heritors of the parish or parishes from which the proposed new parish is intended to be disjoined, including the magistrates of any burghs that may be within the parish or parishes, and also on the minister or ministers, and kirk-session or kirk-sessions of such parish or parishes, and such special citation shall be made by service of a copy of the petition, and deliverance of the presbytery or presbyteries thereon, by the presbytery-officer, or by a sheriff's-officer or messenger-at-arms; and the edictal citations shall be in the form, or as nearly as may be, in the form of Schedules A and B hereto annexed, and the special citation to the parties above mentioned shall be in the form, or as nearly as may be in the form, of Schedule C, hereto annexed; and the presbytery or presbyteries shall farther, at the said first meeting, direct the promoters of the disjunction and erection to lodge with their clerk or clerks, before the date of said second meeting, a county map, with the boundaries of the proposed

new parish distinctly marked thereon relatively to the parish or parishes from which the same is proposed to be disjoined, and also to the other parish or parishes immediately adjacent: and the deliverance of the presbytery, at the said first meeting, may be in the form hereto annexed, or as nearly in such form as circumstances will permit.

And at the second meeting, to be held as above mentioned, the presbytery or presbyteries shall hear all parties interested who may appear and object; and if, after hearing parties, they shall still be of opinion that the said disjunction and erection is expedient and proper, they shall at once proceed to designate the lands delineated on the foresaid map, and shall direct their clerk or clerks to sign a copy or copies of the said map as relative to the deliverances of the presbytery or presbyteries upon the said petition, and to deliver the same to the promoters of the said disjunction and erection: and the deliverance of the presbytery at the said second meeting, if they shall then approve of the said disjunction and erection, shall be in the form hereto annexed, or as nearly in such form as circumstances will permit: but if at said meeting the presbytery shall be of opinion that the said disjunction and erection is not expedient and proper, *as proposed*, they shall take such steps, and pronounce such deliverances, as shall appear to them best calculated to promote the same in the way most conducive to the religious interests of the district; and they shall take care that no undue delay shall take place in preparing the case for a final deliverance upon the petition: and if the presbytery or presbyteries shall ultimately approve of the disjunction and erection, they shall proceed to designate the lands, and shall direct the map to be signed and delivered

as aforesaid: and the final deliverance on the said petition shall be in the form of the deliverance hereto annexed, or as nearly in such form as circumstances will permit. And the presbytery or presbyteries shall farther minute all the proceedings had or taken by them in reference to the foresaid disjunction and erection, in order that extracts thereof, if required, may be produced along with the application to be made to the Court of Teinds.

The following is the form of petition to be submitted to the presbytery:—

109. *Petition to Presbytery.*

Unto the Reverend the Presbytery of , the Petition of , for themselves and for the other parties* promoting the Disjunction and Erection of a new Church and Parish *quoad sacra*, under the act 7th and 8th Victoria, c. 44, to be called the Church and Parish of

Humbly sheweth,

That your petitioners, considering that the disjunction of certain lands hereinafter particularly specified, from the parish (or parishes as the case may be) of , and the erection of the same with a church thereon (if a church had been already built, then say "the church at ") into a church and parish *quoad sacra*, under the act 7th and 8th Victoria, c. 44, would be highly conducive to the moral and religious interests of the inhabitants residing in the afore-

* It is desirable that the parties who present the petition to the presbytery, should also be the parties who are to pursue the process of disjunction and erection in the Court of Teinds, and it will therefore be necessary to insert the names of the whole subscribers as petitioners, where they do not exceed five in number, and the names of two-thirds, or any ten, at least, where they do exceed five in number.

said district; and, further considering, that in order to obtain the said disjunction and erection, it is necessary to raise a process before the Court of Teinds; and, that it is desirable and proper that the same should proceed with the approbation and consent of the presbytery of the bounds, have, as required by the foresaid act, undertaken to build (if the promoters have already built a church, say "have already built," instead of "undertaken to build;" and if the church had been previously built by other parties, say "undertaken to acquire") a church (or "the church") at , together with a dwelling-house or manse, and offices and appurtenances; and have provided (or have undertaken to provide) a permanent endowment or stipend for the said church, amounting to pounds; and have provided (or have undertaken to provide) for the repair and maintenance of the foresaid buildings; and have agreed that the titles to the said church, and to the said dwelling-house or manse, and offices and appurtenances of the said proposed new parish of , in connection with the Church of Scotland, in all time coming; and your petitioners have also delineated and coloured red on a map produced herewith,* the lands proposed to be disjoined and erected as aforesaid, in order that the same may be marked off and designated by the presbytery in common form, all in terms of the foresaid act of Parliament, and the enactments of the General Assembly thereanent.

May it therefore please the reverend the presbytery of , to take the foresaid proposed disjunction and erection into consideration; to

* If the map be not produced with the petition, it must be produced in the subsequent proceedings before the presbytery—but much time will be saved by producing it at first.

appoint the same to be intimated to all parties interested, in such manner as they may think proper; to hear all parties who may be entitled to object; to approve of the said disjunction and erection; to find the same to be expedient and proper; to consent to the application to be made to the Court of Teinds therefor; and to mark off and designate the district to be attached *quoad sacra* to the church proposed to be erected as aforesaid; or to take such farther or other steps in the premises as shall appear to them best calculated to carry the object of the petitioners into effect.

And your petitioners shall ever pray.

(Signed)

The following is the form of minute, if, upon consideration of the general circumstances of the case, it shall appear to them that disjunction and erection is *ex facie* desirable and proper.

110. *Deliverance by Presbytery on Petition.*

At the day of ; which day the presbytery of having met and been duly constituted; *inter alia*, the presbytery having heard read and considered the foregoing petition at the instance of , they appointed, and do hereby appoint the same to be edictally (and specially,*) served in common form upon all parties interested [and in particular† they did and hereby do grant warrant to and authorise presbytery-officer, (or sheriff-officer, or messenger-at-arms, as the case may be), to serve copies thereof upon the titular (or titulars), patron

* If so determined.

† If the presbytery have determined to give special citation.

(or patrons), and heritors of the parish (or parishes) of (and the magistrates of the burgh or burghs, if there be any burghs), and that by delivery of a copy of the said petition, and of this deliverance, either personally to the said parties, or at their respective dwelling-places], and required, and do hereby require, all such parties to appear personally before the presbytery at their next meeting, which is appointed to take place at on the day of next, then and there to make any answer, or state any objection they may have, to the said petition. And the presbytery farther directed and appointed, and do hereby direct and appoint, the petitioners, on or before the said day of , to lodge with the presbytery-clerk (if not already lodged with the petition) a county map, with the boundaries of the proposed new parish distinctly marked thereon, relatively to the parish or parishes from which the same is proposed to be disjoined, and also to the other parish or parishes immediately adjacent. And in the mean time the presbytery adjourned, and do hereby adjourn, the further consideration of the said petition to the foresaid meeting to be held on the said day of

(Signed) , Moderator.
, Presbytery-Clerk.

The following is the form of citations referred to in the instructions under the titles Schedules A, B, C.

111. *Edictal Citation.**

In accordance with an appointment and deliverance of

* The Edictal Citations must be written on separate sheets of foolscap paper, and the respective Returns, or Certificates of Service, must be appended thereto, in order that the whole may be produced with the Petition to the Court of Teinds, as well as in the proceedings before the presbytery.

the presbytery of , made at their meeting on the day of ,—after considering a petition by , setting forth, *inter alia*, that a church and dwelling-house, or manse and offices and appurtenances, had been built and acquired (or were intended to be built or acquired, as the case may be), at in the parish of ; that a permanent endowment or stipend amounting to L. had been (or was intended to be) provided for the minister thereof; that due provision had been made for the future maintenance of the said church and dwelling-house, or manse, and offices and appurtenances; that the titles thereto would be, of the said proposed new parish of , in connection with the Church of Scotland in all time coming; and that application was about to be made to the Court of Teinds, in virtue of the act 7th and 8th Victoria, c. 44, for the disjunction of certain lands from the parish (or parishes, as the case may be) of , and for the erection of the same, along with the foresaid church, into a church and parish *quoad sacra*, in connection with the church of Scotland, all as therein mentioned; and praying *inter alia* that the presbytery would approve of the said disjunction and erection, consent to the application to be made to the Court of Teinds therefor, and mark off and designate the district to be attached *quoad sacra* to the church proposed to be erected as aforesaid;—the titular (or titulars), the patron (or patrons), and the heritors (and the magistrates of the burgh or burghs of , if there be any burghs), and all others interested of the foresaid parish (or parishes) of , are hereby summoned to appear at a meeting of said presbytery, to be held at , on the day of next, at o'clock, to state objections, if they any have, to the

foresaid disjunction and erection *quoad sacra* of the proposed new church and parish.

Schedule A.

112. *Return, or Certificate of Service, to be appended to the Citation.*

Church of , the day of .—The above edict and deliverance was this day duly served by

(Signed) , Minister of

(Signed) , Witness.

, Witness.

113. *Edictal Citation.*

In conformity with an appointment and deliverance of the presbytery of (and so on as in Schedule A, down to "titular, or titulars," &c., for which substitute):—the minister and the kirk-session of the parish (or parishes, as the case may be) of are hereby cited to appear at the meeting of presbytery, which is to be held at , on the day of next, at o'clock, for the purpose of proceeding with the farther consideration of the foresaid petition.

Schedule B.

114. *Return, or Certificate of Service, to be appended to the Citation.*

Church of , the day of .—The above citation was this day duly served by

(Signed) , Minister of

(Signed) , Witness.

, Witness.

115. *Special Citation.*

I, , presbytery-officer (or sheriff's officer or messenger-at-arms, as the case may be,) by virtue of the foregoing petition at the instance of , and deliverance made thereon by the presbytery of at their meeting on the day of , of which petition and deliverance what is contained on this and the preceding pages is a just and exact copy, do hereby lawfully cite you, , to compear personally before the said presbytery at their next meeting, which is appointed to take place at on the day of next, in the hour of cause, at o'clock noon, then and there to make any answer or state any objection you may have to the said petition. This I do upon the day of , in presence of these witnesses,

and

(Signed)

(Signed) Witness.

Witness.

Schedule C.

116. *Return, or Certificate of Service, to be appended to the Petition.*

I, , officer of the reverend presbytery of , (or sheriff's officer or messenger-at-arms, as the case may be,) hereby certify, that, upon the day of years, I did, in virtue of a petition presented by to the reverend presbytery of , and of the warrant and authority contained in the deliverance of the said presbytery, made at their meeting on the day of , lawfully cite to appear

personally before the said presbytery at their next meeting, which is appointed to take place at on the day of next, in the hour of cause, at o'clock noon, then and there to make any answer or state any objection he might have to the said petition; and that by delivering thereon a just and exact copy of the said petition, and of the warrant and authority granted thereon by the said presbytery, consisting in whole of pages, subscribed by me on each page, and having a citation to the above effect attached thereto, subscribed by me and the following witnesses, and to the said personally apprehended (if not personally, say, by delivering the same at his dwelling-house,) before and in presence of and witnesses to the premises, and hereto with me subscribing.

(Signed) Presbytery-Officer.

(Signed) Witness.
Witness.

At their next meeting, the presbytery proceed to hear the above, or any of the above parties who may appear before them; and if, after so doing, they should still be of opinion that the said disjunction and erection is expedient and proper, they shall come to a deliverance, in the form subjoined, or as nearly in such form as circumstances will permit.

117. *Final Deliverance of the Presbytery.*

At , on the day of ; which day the presbytery of having met and been constituted; *inter alia*, the presbytery having resumed consideration of the foregoing petition, examined the

map lodged by the petitioners, considered the executions of citations, and heard parties upon the whole case; they did, and do hereby approve of the proposed disjunction and erection; found and hereby find the same to be expedient and proper; consented and hereby consent to the application to be made to the Court of Teinds therefor; and authorized and recommended, and hereby authorize and recommend, the parties interested to take all necessary steps to have the same carried through with as little delay as possible, in terms of the foresaid act 7th and 8th Victoria, chap. 44, and the enactments of the General Assembly thereanent. The presbytery further marked off and designated the district to be attached *quoad sacra* to the church, proposed to be erected in manner mentioned in said petition, and which district is delineated and coloured red on the foresaid map; and directed and do hereby direct their clerk to sign a copy of the said map, as relative to their deliverances, and to deliver the same to the petitioners.

(Signed) Moderator.
Presbytery-clerk.

To the above Instructions and Styles are appended—

1. Form of Deed of Constitution for *Quoad Sacra* Churches.
2. Form of Bond and Assignation in Security for Stipend.
3. Form of Bond and Disposition in Security by an Heir of Entail.
4. Form of Feu-Charter.
5. Form of Feu-Charter by an Heir of Entail.

For which see Appendix.

CIVIL PROCEDURE REGARDING CHURCHES, MANSES, AND GLEBES.

Presbyteries exercise an important civil jurisdiction in regard to Churches, Manses, and Glebes.

This jurisdiction was originally conferred by the legislature upon the Episcopal clergy, and on the abolition of Prelacy, it devolved upon presbyteries.

The decisions of presbyteries, in so far as an exclusive jurisdiction is conferred upon them by statute, cannot be appealed to the superior Church Courts, but are subject to the review of the Court of Session. Presbyteries have no power of enforcing their decrees; these are carried into effect under the authority of the Civil Courts.

The form of bringing the decisions of presbyteries under the review of the Court of Session is by advocation or suspension, and their decrees are enforced by letters of horning and poinding, and other ordinary legal diligence; the proceedings before the Court of Session, in relation to both these matters, being the same as in the case of complaints or appeals from decisions of other inferior civil judicatories.

I.—PROCEEDINGS CONNECTED WITH THE REBUILDING AND REPAIRING OF CHURCHES.

The only legislative enactments on this subject are the act 1563, cap. 72, Proclamation of the Privy Council, 13th Sept. 1563, and act 1572, cap. 74.

Petitions for rebuilding or repairing of churches are presented in name either of the minister of the parish, or of some of the heritors, or of both. The presbytery is entitled to proceed in the absence of the heritors, provided the forms required by law are observed. In addition to

the ordinary edictal intimation from the pulpit, it is customary and proper, that notice by letter should also be given to the absent heritors, or those acting for them.

When the church is to be *rebuilt*, the presbytery is entitled to require accommodation to be afforded in the new church to such an extent as may seem necessary; not exceeding two-thirds of the examinable permanent population of the parish, without regard to the difference of language, or of religious profession. (M'Leod *v.* Carment, (Roskeen,) 9th February 1830, Shaw and Dunlop, Reports, vol. viii. p. 475.)

When a church is in good and sufficient repair, the heritors are not bound either to pull it down, and erect a new church, or to enlarge the old one, on the ground that it does not afford accommodation for two-thirds of the examinable population. (Cunningham *v.* Deans, (Stewarton,) 12th Dec. 1811, *Fac. Coll.;* Lord Lynedoch, (Methven,) 14th May 1828, VI. Shaw and Dunlop, 791; Earl of Glasgow, &c. *v.* Miller, (Neilston,) 1st Feb. 1831, IX. Shaw and Dunlop, 370, affirmed on appeal, 7th April 1834.)

What degree of disrepair will warrant an order for the rebuilding of a church, is a question of circumstances. In the case of Methven above quoted, it was stated by the Court, that a demand for enlargement could not be made, unless the church was in such a state of disrepair, as to render it necessary to make repairs of so extensive a nature, that an enlargement of the building became of little moment, in reference to the comparative addition to the expense. In the case of the parish of Roskeen, where the church was so ruinous, that the expense of a thorough repair fell little short of what it would cost to erect a new one of the same size, the heritors were held to be bound to erect a new church.

The burden of building and upholding parish churches

is borne solely by the heritors. By heritors are meant proprietors of heritable property, excluding titulars of teinds, superiors, and liferenters.

The expense is usually apportioned among the heritors according to the valued rent of their respective properties. But where the parish consists partly of a landward district, and partly of a town or populous village, the expense is apportioned over the whole lands and houses, according to the real rent. (Parish of Peterhead, 19th January 1802, Dunlop's Parochial Law, p. 8.)

Lands annexed *quoad sacra* are liable to be assessed for the expense of upholding the church of the parish to which they are so attached, but for no other parochial burden.

The heritors are entitled to take the charge of procuring plans, contracts, &c., for rebuilding or repairing churches; failing whom, the presbytery may do so, and may assess the heritors for the expense. This assessment includes, besides the contract price of the building, the expense of the attendance of tradesmen at visits, of plans, estimates, and the seating of the church. The assessment must be made according to the real amount of the expense, and not upon any hypothetical or random statement.

118. *Petition to Presbytery for rebuilding a Church which has become ruinous.**

Unto the Reverend the Presbytery of A., the Petition of B., Minister of the Parish of C.,

Humbly sheweth,

That, by the law and usage of Scotland, the heritors of

* The term *ruinous*, though liable to objections, has been used, as it comes nearer than any other to explain the state of the church. "Insufficient," "in a state of decay," are also liable to objections. "Ruinous" has been adopted, as it is used in the Dean of Guild courts when describing any property requiring to be repaired or rebuilt.

each parish are bound to rebuild and repair such churches as have become ruinous, gone to decay, or are insufficient, and require to be repaired.

That the church of the parish of C. (*a*)* has, through the lapse of time, and the progress of natural decay, (or whatever other reason may render the application necessary,) become so ruinous and insufficient, as to render it unsafe for the attendance of the parishioners upon divine service; and the present application is therefore made, to have the church rebuilt in a substantial and sufficient manner.

The present church, as the petitioner is informed, was built about the year , and has since that time undergone a variety of alterations and repairs. In particular, an additional gallery was built in the east end of the church about ten years ago, and the weight of this erection has had the effect of shaking and weakening the walls of that part of the church to such a degree, as to create imminent danger of the whole mass falling to the ground. The remaining parts of the walls are also so much shaken and cracked, as to render it extremely hazardous to perform divine service within the church. In consequence of the general weakness and decay of the building, it would be impossible, by any operation or repair, to render it substantial and safe; so that the present church requires to be taken down and rebuilt (*b*.)

That the present church, although it may originally have been adapted to the extent and population of the parish, is now altogether inadequate, and does

* The letters (*a*) (*b*) (*c*) &c., are referred to in the subsequent Styles under this section.

not afford accommodation suited to the increased population and present condition of the parish. The population, which fifty years ago amounted to no more than , has now, by a gradual and regular increase, been raised to ; and as a large number of the parishioners cannot procure accommodation in the parish church, they are under the necessity either of seeking it elsewhere, or of abstaining altogether from attendance upon divine service. The present examinable population of the parish amounts to persons, for two-thirds of whom, at the least, sufficient accommodation ought to be provided (*c*.)

[Or otherwise, as the case may be: the object of the petition being to show, 1*st*, That the present church has become ruinous and unsafe, and incapable of being repaired, so as to be rendered sufficient, without incurring an expense equal, or nearly equal, to what it would cost to re-build it; and, 2*d*, The extent of the accommodation required to be provided in the new church.]

May it therefore please the Reverend Presbytery to appoint a visit to be made to the parish of C., and to direct this application and the proposed visit to be intimated to the heritors, and all concerned, from the pulpit, and upon the church-doors, in common form, and also by letter to the absent heritors or their agents (*d*): To direct the attendance at the visit of such tradesmen, or other persons, as may be considered qualified to assist at the inspection (*e*): Thereafter, to visit and inspect the church, and if necessary, to require the said tradesmen or others to report upon oath as to its state and

condition, and whether it is ruinous and unsafe for the attendance of the parishioners on divine worship; and also whether it is capable of being repaired so as to be made safe and sufficient, and at what expense, as compared with that of rebuilding: Thereafter, to find that the church is ruinous and unsafe, and incapable of being repaired and rendered sufficient, and that it must be taken down and rebuilt (*f*): To appoint the necessary plans, specifications, and estimates for rebuilding the church upon such a scale as will afford comfortable accommodation for at least sitters to be procured, and to authorise a contract to be entered into conform to such plans, specification, and estimates, as may be approved of: Thereafter, to remit to the clerk of court, or other proper person, to prepare a scheme of division of the expense of the operations among the whole heritors of the parish, who are liable in payment thereof, and to proportion and assess the amount (*g*) of the contract price and other contingent expenses (including the expense of plans and estimates, and a remuneration to the tradesmen for attendance and reports, as well as the usual allowance to the presbytery-clerk, and the expense of collecting and administering the assessment) among the said heritors, according to the valued rent of their respective properties, or other just proportion: To appoint a proper person to collect and administer the said assessments; and to decern and ordain the heritors to make payment to such collector of the proportions thereof due by them respectively: Or otherwise (*h*) in the

premises to do, as to the reverend presbytery shall seem just.

According to justice, &c.

Signed by the petitioner or his agent.

The presbytery will order the petition to be intimated.

119. *Minute of Presbytery when Petition is laid on the Table.*

The presbytery having considered the foregoing petition, appoint the Reverend D., E., and F., and G., clerk of presbytery, a committee, to visit and inspect the church of the parish of C., upon Wednesday, the day of next, at 12 o'clock noon, and direct intimation of this application, and of the time hereby fixed for the visit, to be made from the pulpit and upon the doors of the church, and also by letters to the absent heritors or their agents, at least ten days previous to the time fixed for the visit; appoint the committee to secure the attendance, at their visit, of such tradesmen as they may consider qualified to assist them in their inspection, and to require the tradesmen to report upon oath, in terms of the petition, and direct the committee to report to next meeting of presbytery.

120. *Form of Edictal Intimation made by the Minister from the Pulpit, and affixed to the Church-door.*

Intimation is hereby given to the heritors of this parish, and all concerned, that a petition has been presented to the reverend the presbytery of A., craving them to ordain the present church of this parish to be taken down as ruinous, and unsafe for public worship, and a new church to be built, according to such plan as

may be approved of by the presbytery; and that a committee appointed by the presbytery are to visit and inspect this church upon Wednesday, the day of , at 12 o'clock noon, in order to report to the presbytery; at which time the heritors and all others concerned, or persons duly authorised to act for them, are requested to attend.

Intimation by letter is then made by the minister to non-resident heritors or their agents.

It does not seem to be necessary that these letters should be written in such a formal style as the preceding intimation, as they may be varied according to the circumstances and situation of the persons to whom they are addressed. But, of course, distinct intimation must be given of the object of the petition, and the time appointed for the visit.

121. *Certificate of Intimation by the Minister.*

I, B., minister of the parish of C., hereby certify, that the foregoing petition, and the time fixed by the committee of presbytery for visiting and inspecting the church, were duly intimated from the pulpit, and upon the church-doors of the said parish, upon Sabbath, the day of last, and also by letters to H. and I., and to the agents of K. and L., the only absent heritors.

(Signed) B., Minister of C.

122. *Report by the Inspectors.*

We, M. and N., having been appointed by a committee of the reverend the presbytery of A. to inspect the church of the parish of C., and to report whether the church is ruinous, and unsafe for the performance of

public worship, and whether it is capable of being repaired, so as to be rendered safe and suitable for that purpose; and having visited and inspected the said church in presence of the committee, and of several of the heritors of the parish, and their agents, and having previously deliberately inspected and examined the whole building, find, [here the condition of the church must be described, so as to show that it has become ruinous and incapable of being repaired:] And upon the whole, we humbly report that the church is at present in a ruinous and dangerous condition, and unsafe for the performance of divine service; that it is incapable of being so repaired as to be rendered suitable and safe for that purpose, (except at an expense little short of that for which a new church of similar dimensions might be built;) and it is necessary that the church be taken down and rebuilt.

(Signed) M.
N., Inspectors.

123. *Oath administered to the Inspectors.*

We, M. and N., having been severally examined by the Rev. D., one of the members of the committee of presbytery, in presence of the said committee, do hereby severally and respectively swear and depone, that the report above written is a just and correct statement of the matters therein set forth, according to the best of our judgment, as we shall answer to God.

(Signed) M., Inspector.
N., Inspector.
D., Minister of .

124. *Report by the Committee of Presbytery.*

The Committee appointed by the presbytery of A. upon the day of last, to report upon the petition of B., minister of the parish of C., craving the reverend presbytery to ordain the church of that parish to be taken down and rebuilt, hereby report that, after due intimation of the petition and time fixed for our visit, we, in presence of the minister, and several of the heritors of the parish and their agents, and along with M. and N., who attended to assist us in our inspection, upon the day of last, visited and inspected the church, and heard the statements of the parties present, and having required the said M. and N. to report in writing upon the present condition of the church, and the practicability of rendering it safe and sufficient, by means of repairs; and having procured their report, which they verified upon oath in our presence, we now lay it before the presbytery, and beg to give it as our opinion, both in consequence of the statements contained in the said report, and of what we ourselves saw and heard upon the occasion of our visit, that the church is in a ruinous and dangerous condition, and is unsafe for the attendance of the parishioners upon divine service, and that the present building is incapable of being repaired, so as to be rendered safe and suitable for that purpose.

(Signed) D.
E.
F.
G., Presbytery-Clerk.

125. *Deliverance of the Presbytery condemning the Church, and ordering Plans, Specifications, &c., to be lodged.*

The presbytery having resumed consideration of the petition of B., minister of the parish of C., craving the presbytery to ordain the church of that parish to be rebuilt, together with the report of the committee appointed to visit and inspect the church, and the report of the tradesmen therein referred to, Find, in terms of these reports, that the church of the parish of C. is in a ruinous and dangerous condition, and unsafe for the attendance of parishioners upon divine service, and that it is incapable of being repaired so as to be rendered safe and suitable for that purpose; and therefore decern and ordain the said church to be taken down, and a new church to be built for the said parish, capable of affording comfortable accommodation for sitters, being two-thirds of the examinable persons within the parish, and agreeably to such plan as may be approved of by the presbytery; and appoint the petitioner, or the heritors of the parish, to procure the necessary plans, specifications, and estimates, in order to re-building of the said church, and to lay the same before the presbytery, at a meeting to be held by them at , upon Wednesday the day of next; with certification.

126. *Decree of Presbytery approving of Plans and Estimates, and authorising Contract to be entered into.*

The presbytery having resumed consideration of the petition of B., minister of the parish of C., craving the presbytery to ordain the church of that parish to be re-built, and of the various procedure which has already taken place, in pursuance thereof, and having

considered the several plans, specifications, and estimates given in by P., R., and S., approve (*a*) of the plans, specifications, and estimates, produced by the said R., and authorise the heritors of the parish, whom failing, the petitioner, to enter into a contract with the said R., for taking down and re-building the church, conform to the plans, specifications, and estimate, lodged by him, upon the said R. finding sufficient security that the work shall be finished within the period, and in the manner, stated in the said plans, specifications, and estimate (*b*): Find that the contract price for taking down and rebuilding the church, amounting to £ , as well as £ , being the expense incurred by the attendance of tradesmen, and the reports referred to in the previous proceedings, and other incidental expenses connected therewith; as also £ , being the usual allowance to the clerk of presbytery; and £ , as the expense of collecting and administering the assessment after-mentioned; amounting in all the said sums to £ sterling; are a burden (*c*) upon the whole heritors of the parish of C., and fall to be borne by them in proportion to the valued rents of their respective properties, and decern accordingly: Farther, remit to the clerk of presbytery to prepare a scheme of division of the said sum of £ among the heritors of the parish, allocating and assessing each heritor in proportion to the valued rent of each respectively, and to report to the next meeting of presbytery.*

* Where there is a burgh of barony or regality in the parish, (as in the case of *Peterhead*,) the expense is allocated upon the heritors, according to their *real* rents.

127. *Decree of Presbytery assessing the Heritors for the amount of Sums in Estimates, &c.*

The presbytery having considered the scheme of division prepared by the clerk, allocating the sum of £ , being the expense of re-building the church of the parish of C., upon the heritors of that parish, in proportion to the valued rent of their respective properties, approve of the same, and appoint T. to collect from the heritors the proportions allocated upon them respectively, and to administer the same; decern and ordain the heritors of the parish to make payment to the said T. of the sums allocated upon each of them respectively as follows, viz., A. the sum of £ , being the proportion effeiring to the valued rent of his property in said parish, B. the sum of £ , being his portion thereof, C. the sum of £ , (and so forth.) Appoint the said T., before an extract hereof shall be given out, to find sufficient security for the due and faithful collection and administration of the foregoing assessment, and decern.

128. *Petition for Alteration in the Site of the Church.*

When a petition is presented to the presbytery for alteration of the site and re-building of a church, the form of the petition will be similar in style to the preceding petition, Style No. 118, with the addition of a statement at letter (*b*) of the grounds upon which a removal is craved, so as to show the necessity of such a measure. The conclusion of the petition will be the same as the preceding, until the letter (*f*), when it will proceed as follows:—

"And also to report whether the site upon which the church at present stands is suitable and proper, or whether it is necessary, in consequence of the reasons before set forth, that the church be removed to

another and more suitable situation. Thereafter, to find that the church has become ruinous and unsafe, and incapable of being repaired and rendered sufficient, and that it must be taken down and rebuilt; and farther, that the present site of the church is unsuitable and improper, and that the church must necessarily be removed to a more suitable and convenient situation; to design and set apart a piece of ground in a convenient situation, and of proper dimensions and quality, as a site for the church; to ascertain the value of the said piece of ground, and to ordain the persons in possession to remove therefrom. To appoint the necessary plans," &c., and so forth, as in the preceding Style No. 118, to the letter (*g*,) when there will be added, "of the value of the piece of ground chosen as a site of the new church and church-yard."

The proceedings following upon the petition will of course be liable to corresponding alterations and additions.

129. *Petition to Presbytery for Repairs and Additions to a Church.*

This petition will be prepared in a similar style to the preceding petition, Style No. 118. The narrative between letters (*a*) and (*c*) must of course be suited to the particular circumstances of the case, and must show the necessity of the repairs and additions, if the latter be craved. The conclusions of the petition, and the subsequent procedure, must also be subjected to corresponding alterations.

130. *Petition when Re-building or Repairing of a Church is completed.*

Unto the Reverend the Presbytery of A., the Petition of B., Minister of the Parish of C.; D., E., and F.,

Heritors of that Parish; R., Builder in S.; and T., residing there—

Humbly sheweth,

That upon the day of last, a petition was presented to the Reverend Presbytery by the petitioner B., craving the presbytery to ordain the then existing church of the parish of C. to be taken down and re-built: That after the usual preliminary proceedings had been gone through, the presbytery approved of the plans, specifications, and estimates, given in by the petitioner R., and authorised a contract, in terms thereof, to be entered into by the heritors, or minister, of the parish for re-building the church, and thereafter decerned the whole heritors of the parish to make payment to the petitioner T. of the proportion of the contract price, and other contingent expenses connected with the re-building of the church, corresponding to the valued rent of their respective properties, and authorised the said petitioner to collect and administer the assessment.

That the petitioners D., E., and F., heritors of the said parish, accordingly entered into a contract with the petitioner R. for re-building the church, at the price and according to the plans and specifications approved of by the presbytery, and the petitioner R. lodged with the clerk of court a bond of caution, that the operations should be performed in the manner, and within the period, stated in the plans and specifications.

That the re-building of the church, and relative operations, as specified in the plans, specifications, estimates, and contract, have been finished to the entire satisfaction of the minister and heritors of the parish, and the church is now ready to be used for the performance of divine service.

That the petitioner T. also lodged with the clerk of court a bond of caution, for the due and faithful collection and administration of the assessment: That he has accordingly collected the whole sums assessed upon the parish, and has paid out of the proceeds the several expenses connected with the operations, and the contract price of the building, with the exception of the last instalment, amounting to £ , being the free balance at present in his hands, which is retained, in terms of the contract, until the church shall be inspected and approved of by the presbytery.

May it therefore please the Reverend Presbytery to visit and inspect the church, and, if necessary, to remit to tradesmen to report upon the same, and thereafter to find that the church has been re-built in a proper and substantial manner, and in terms of the plans, specifications, estimates, and contract, and that it is a suitable and sufficient church for the parish; to authorise the clerk of court to deliver up to the petitioner R. his bond of caution; and to direct the petitioner T. to pay over to the said R. the foresaid sum of £ , being the last instalment of the contract price of the building; thereafter to exoner and discharge the petitioner T. of his office of collector of said assessment, and to authorise the clerk of court to deliver up to him his bond of caution. Or otherwise, &c., (as at letter (*h*) of petition, Style No. 118.)

Signed by the petitioners or their agents.

The presbytery, upon considering this petition, will appoint a committee of their number to visit and inspect the church, and to procure a report from tradesmen as to the execution of the work, and also direct the clerk, or a com-

mittee, to examine the accounts and vouchers of the collector. And upon satisfactory reports being given in, the following (or a similar) decree will be pronounced.

131. *Minute of Presbytery appointing Committee to inspect the Church.*

The presbytery having considered the foregoing petition, appoint A., B., and C. to visit and inspect the church therein mentioned, upon Wednesday the day of at 12 o'clock noon, and to procure a report from qualified tradesmen as to the execution of the work, and also to examine the accounts and vouchers of the collector, and to report to the presbytery at their next meeting.

132. *Report of Inspectors.*

We, N. and O., appointed by the committee of presbytery to inspect the church of , humbly report, that after minutely inspecting the same, and comparing the work with the specification, plans, and contract, we find that the work has been substantially and properly executed, and that the said building is, in all respects, finished in a proper and substantial manner.

(Signed) N.
O.

133. *Report of Committee of Presbytery.*

We, the committee of presbytery appointed to inspect the church, &c., hereby report, that, along with N. and O., we visited and inspected the same, and were satisfied with the execution of the work; and we farther report, that, upon examining the accounts and vouchers of T., the collector appointed by the presbytery, we find the same correctly stated and vouched,

and that the balance in the hands of the said T. amounts to the sum of L. .

(Signed) A.
B.
C.

134. *Minute of Presbytery on receiving Report.*

The presbytery having resumed consideration of the foregoing petition, and the reports of the committee, and of the tradesmen appointed by them, Find that the rebuilding of the church of the parish of C., and relative operations, have been performed by the petitioner R. in a sufficient and substantial manner, and in terms of the plans, specifications, estimates, and contract referred to in the petition, and that the church now built is suitable and sufficient for the parish; authorise the clerk of court to deliver up to the said R. his bond of caution; appoint the petitioner T. to make payment to the said R. of the sum of L. , being the last instalment of the contract price of said building; approve of the report of the committee upon the accounts of intromissions of the petitioner T., as collector of said assessment; and upon the said sum of L. being paid by him to the petitioner R., exoner and discharge the said T. of the office of collector of said assessment, and of his whole intromissions in relation thereto; and direct the clerk of court to deliver up his bond of caution, and decern.

II.—PROCEEDINGS CONNECTED WITH THE REPAIRS OF A CHURCH-YARD WALL.

The powers and responsibilities of heritors in regard to

church-yards are strictly analogous to those relative to churches.

The statute 1597, cap. 232, directs all parishioners of every parish church to build and repair the church-yard dykes of their own parish church, with stone and mortar, to the height of two ells, and to make sufficient stiles and entrances in the dykes to pass to the church and church-yard: and ordains the Lords of Session to direct and give letters and charges thereupon in form as effeirs.

The burden here laid upon the parishioners is borne by the heritors, and although no power of enforcing the statute is thereby conferred upon presbyteries, the jurisdiction which in practice they have exercised in this matter has never been challenged.

135. *Petition for Repair of Church-yard Wall.*

Unto the Reverend the Presbytery of A., the Petition of B., Minister of the Parish of C.,

Humbly sheweth,

That the upholding and repairing the wall of the church-yard is a burden incumbent upon the heritors of each parish, and the duty of enforcing the performance of this obligation belongs to the presbytery of the bounds.

That the wall of the church-yard of the parish of C. has lately become ruinous and insufficient, part of it having fallen down, and the remainder being in a very dilapidated and insecure condition. [Or otherwise, as the case may be, so as to show the insufficiency of the wall to afford protection to the church-yard, and the necessity of it being rebuilt or repaired.]

May it therefore please the Reverend Presbytery, (and so forth, to letter (*d*) in petition, Style No. 118, then proceed as follows:) Thereafter to visit and inspect the wall of the said church-yard,

and, with the assistance of such persons as may be considered necessary, to find that the said wall has become ruinous and insufficient for the protection of the church-yard, and must be taken down and rebuilt; to appoint the necessary estimates to be procured for rebuilding the said wall, and to authorise a contract (*a*) to be entered into in terms of such estimates as may be approved of; thereafter, &c. (as in petition, Style No. 118, omitting the words within parentheses.)

This petition is signed by the minister or his agent.

The proceedings of the presbytery upon this petition will be similar, *mutatis mutandis*, to those of which examples have already been given.

III.—PROCEEDINGS CONNECTED WITH THE DESIGNATION OF A MANSE, OFFICES, AND GARDEN.

By the act 1663, cap. 21, the burden of upholding manses once "built and repaired" at the expense of the heritors, is laid upon each minister during his incumbency.

No special rules are laid down in the statute as to the mode in which this enactment is to be carried into effect. By custom, there has been introduced the form of an application to presbytery to inspect the manse and declare it FREE. So strictly has the rule thus introduced been interpreted, that it would appear, nothing short of the technical term "free," in the decree of the presbytery, will have the effect of removing this burden from the heritors, and placing it upon the incumbent. Thus, it seems not to be enough that the presbytery finds that the manse affords

sufficient accommodation for the minister. (See the cases of Botriphnie and Avondale, referred to in Connell on Parishes, p. 308, *et seq.* and Dunlop's Parochial Law, p. 133, *et seq.*)

Each minister is entitled, upon his entry, to have the manse inspected and repaired before the burden of upholding it is laid upon him. By the manse being declared "free," the minister is burdened with ordinary repairs only, and not with those arising from accidental causes, or from the decay occasioned by time and weather.

136. *Petition to Presbytery to design a Manse, Offices, and Garden.*

Unto the Reverend the Presbytery of A., the Petition of B., Minister of C.,

Humbly sheweth,

That the petitioner, as minister of the parish of C., which is a landward parish, is by law entitled to a competent manse, including offices and garden.

That by the act 1663, cap. 21, it is declared, "That where competent manses are not already built, the heritors of the parish, at the sight of the bishop of the diocese, or such ministers as he shall appoint, with two or three of the most knowing and discreet men of the parish, build competent manses to the ministers;" and the jurisdiction thus conferred upon bishops is now transferred to and exercised by presbyteries.

That no manse, offices, and garden, have ever been possessed and enjoyed by the petitioner or his predecessors, (it may here be proper to mention any circumstances to which it is owing that there have previously been neither manse, offices, nor garden;) and as he is now desirous of having a suitable manse, offices, and garden designed, built, and set apart for the use of himself and his successors in office, ministers of

the said parish, the present application becomes necessary.

May it therefore please the Reverend Presbytery, *(and so forth, to letter (d) in petition, Style No.* 118:) and thereafter, with the assistance of such persons as may be considered qualified for that purpose, to design and set apart a piece of ground in a convenient situation, near to the church, and of suitable dimensions and quality, for a manse, offices, and garden, to the petitioner, as minister of the parish of C., and his successors in office (*a*): To ascertain the value of the said piece of ground, and to ordain the persons in possession to remove therefrom: To appoint the necessary plans, specifications, and estimates for the building of the manse, offices, and garden wall, to be procured, and to authorize a contract, *(and so forth, as in the petition, Style No.* 118, *adding at the letter* (*g*) "the value of the piece of ground designed as aforesaid," *and omitting the words within parenthesis.)*

The presbytery will appoint intimation of this petition to be made to the heritors, and reports, plans, and estimates, to be procured, as in the proceedings upon petition, Style No. 118, and decree in terms similar to the following will then be pronounced.

137. *Decree of Presbytery, approving of Plan and Estimates, &c.*

The presbytery having resumed consideration of the petition of B., minister of the parish of C., craving the presbytery to decern for a manse, offices, and garden, Find that the said parish of C., being a landward parish, (or "partly landward and partly burgal,") the

minister thereof is entitled by law to a competent manse, offices, and garden; and that none have ever been designed or built in the said parish; and having considered the report of the committee appointed to inspect the parish, and the documents therein referred to, hereby design and set apart as a site for a manse, offices, and garden, for the petitioner and his successors in office, ministers of the said parish, all and whole that piece of ground presently possessed by G., consisting of *(here describe the piece of ground,)* and ordain the said G. to remove therefrom within ten days after intimation of this decree shall be duly made to him; and find that the value of the said piece of ground amounts to L. ; and having considered the several plans, specifications, and estimates for building the manse, offices, and garden wall, given by P., R., and S., approve, *(and so forth, from letter* (*a*) *to* (*b*) *of preceding Style No.* 126, *and then proceed as follows:)* Find that the value of the said piece of ground, being L. , and the contract price for building the manse, offices, and garden wall, being L. , together with L. , being the expenses already incurred, and to be incurred, in collecting the assessment and otherwise, amounting in all the said sums to L. sterling, are a burden, (*and so forth, as after letter* (*c*) *of Style No.* 126.)

For the garden and site of the manse and offices, half an acre is allowed; the accommodation also includes stable, barn, and byre, with a garden and garden wall.

Lands annexed *quoad sacra* are not burdened with any part of the expense of building and upholding manses.

138. *Petition to Presbytery for removal and rebuilding a Manse which has become ruinous.*

Unto the Reverend Presbytery of G., the Petition of H., Minister of the Parish of L.,

Humbly sheweth,

That the petitioner is minister of the parish of L., which is a landward parish, and he is by law entitled to a competent manse, offices, and garden.

That the manse and offices of the said parish were built, as the petitioner is informed, nearly years ago, and have during that period undergone various alterations and repairs. The petitioner was ordained to the ministry of this parish in the year , at which time, upon his application, certain repairs were made upon the manse and offices, and by a decree of the reverend presbytery, of date the day of , the manse was declared to be a free manse, and the petitioner to be bound to uphold it in repair during his incumbency. The petitioner has, from time to time, expended considerable sums of money in repairs upon the manse and offices, and has bestowed much care and attention to preserve the buildings. But in consequence of the extreme age of the buildings, and the insufficient manner in which they appear to have been originally constructed, the manse and offices have fallen into entire disrepair, and become almost ruinous, and are altogether defective in safety, comfort, and accommodation, for the use of the petitioner as minister of the parish.

That the present manse and offices were originally of a very limited and incommodious construction—the house consisting of rooms only, of inconvenient shape and small dimensions, and the plan of the offices being equally defective, and even although it were

practicable to get them repaired, and rendered habitable, no operations, which could be performed upon the present buildings, could possibly render them a suitable or convenient residence for the petitioner.

That the site of the present manse is also extremely inconvenient and improper, it being placed upon marshy ground, which renders it damp, unhealthy, and uncomfortable, and situated on the remote border of the parish, and at a considerable distance from the church, (or otherwise, as the case may be; the narrative being of course adapted to the particular circumstances of the case, and the peculiar nature of the application.)

That the petitioner is, therefore, under the necessity of applying to the reverend presbytery to design and ordain to be built and set apart for the use of the petitioner and his successors in office, ministers of the said parish, a new and suitable manse, offices, and garden, instead of those of which the petitioner is at present in possession.

May it therefore, &c. *(and so forth, to letter (e) of petition, No.* 118:) Thereafter to visit the said parish, and to inspect the present manse, garden, and offices, and, if necessary, to require the said tradesmen, or others, to report whether the present manse and offices are capable of being repaired, so as to render them a suitable and convenient residence for the petitioner: Thereafter to find that the present manse and offices are deficient in safety, comfort, and accommodation, and are incapable of being repaired, so as to be rendered a safe, suitable, and convenient residence; also, with the assistance of persons properly qualified, to find that the site of the present manse, offices, and garden, is unsuitable and

improper, as being damp, unhealthy, and inconvenient; and thereafter to design and set apart a piece of ground within the petitioner's glebe in a convenient situation, and of suitable dimensions and quality, for a manse, offices, and garden to the petitioner, as minister of the parish of L., in room of those presently possessed by him: To ascertain *(and so forth, as after letter* (*a*) *in the preceding Style, No.* 136, (*f.*)

139. *Deliverance of Presbytery ordaining New Manse, &c.*

The presbytery, after the necessary preliminary steps, as in the case of a church, will (if satisfied of the accuracy of the statements in the petition) pronounce a judgment, finding "the manse and offices of the said parish of L. to be defective in safety, comfort, and accommodation, and incapable of being repaired, so as to be rendered a safe and suitable residence for the minister of the said parish; farther, find that the present manse, garden, and offices, are situated in a damp and unhealthy situation, and in every respect unsuitable for a comfortable residence."

The presbytery will then, as in Style No. 137, decern for a manse, offices, and garden, in a suitable situation.

If the manse be in good repair, the minister is not entitled to claim additions on the ground of it being deficient in accommodation. On the other hand, where repairs of any importance are required, the Court generally sanctions any necessary additions; (Robertson *v.* Earl of Roseberry, (Dalmeny,) July 28, 1788, M. 8515; Heritors of Strathblane, July 10, 1827, 5 S. & D. 913.)

140. *Petition to Presbytery for Additions and Repairs to a Manse, and Offices, and Garden Wall.*

Unto the Reverend the Presbytery of L., the Petition of M., Minister of the Parish of N.,

Humbly sheweth,

That the petitioner, in the month of December last, was ordained to the ministry of the parish of N., and is by law entitled to a competent manse, offices, and garden.

That the present manse was, by the directions of the reverend presbytery, repaired in the year upon the appointment of the last incumbent, but no farther repairs seem to have been performed upon it since that time. In consequence, the manse and offices have now fallen into a state of disrepair, the roof of the manse having become insufficient, the floor of the principal room being quite decayed, and various parts of the building having given way.

That the manse and offices were originally constructed upon a very small and inconvenient scale, the manse consisting of three rooms only, of a small size, besides a kitchen and closets, and the whole building is unsuitable for the comfort and accommodation of the petitioner. That, in order to render the manse and offices suitable and convenient, it is necessary not only that the present building should undergo a thorough repair, but also that there should be an addition to the manse of two rooms of a convenient size, so as to form a comfortable parlour and bed-room, and also that a sufficient stable should be added to the offices.

That the wall of the petitioner's garden, which seems to have undergone no repair for a great length of time, has also become insufficient, part of it having fallen down; but it appears to be still capable of being repaired, *(or otherwise, as the case may be.)*

May it therefore, &c. *(and so forth, to letter (s) of petition, Style No.* 118.) Thereafter to visit and inspect the petitioner's manse, offices, and garden wall, and to require the said tradesmen, or others, to report upon oath, whether the manse, offices, and garden wall, are in a state of disrepair, and what repairs are necessary in order to render the premises safe and comfortable; and likewise what additions are required to make the manse and offices a suitable and convenient residence for the petitioner, and his successors in office, ministers of the said parish. To appoint the necessary plans and estimates of the expense of these repairs and additions to be procured, and to authorize a contract, *(and so forth, as in No.* 135, *after letter* (*a.*)

The presbytery, after visiting and procuring reports, as above exemplified, will give the following deliverance.

141. *Minute of Presbytery after visiting Premises.*

Find the manse, offices, and garden wall, to be in a state of disrepair, inasmuch as *(here insert briefly the nature of the defects and the repairs required.)* Farther, find that, in order to render the manse and offices, when repaired, a suitable and convenient residence for the minister of the parish, and his successors, the following additions are necessary to the manse and offices, viz., *(here state them shortly, and proceed, as in No.* 126, *and subsequent examples,* MUTATIS MUTANDIS.)

142. *Petition to Presbytery for Designation of a Garden.*

Unto the Reverend the Presbytery of M., the Petition of N., Minister of the Parish of P.

Humbly sheweth,

That the petitioner, as minister of the parish of P., is by law entitled to a suitable manse, offices, and garden.

That many years ago the present manse and offices of the parish were provided by the heritors to the minister without any application to presbytery upon the subject, but no garden was then set apart to him, nor has there at any time been a garden designed to or enjoyed by the petitioner's predecessors or himself, (or otherwise, as the case may be; the particular circumstances why no garden has previously been designed ought to be stated.) That as the petitioner is desirous of having a suitable garden designed to him, and his successors in office, ministers of the said parish, the present application becomes necessary.

May it therefore please the reverend presbytery, *(and so forth, to letter* (*e*) *of petition, No.* 118.) Thereafter to visit the parish, and with the assistance of such persons as may be considered qualified for that purpose, to design and set apart a piece of ground in a convenient situation, near to the manse, and of suitable dimensions and quality, for a garden to the petitioner and his successors in office; to appoint estimates to be given in of the expense of the building a suitable wall round the said piece of ground, and to authorise a contract to be entered into for that purpose, in terms of such estimate as may be approved of; to ordain the persons in possession of the said piece of ground to remove therefrom, to ascertain, *(and so forth, as in petition, No.* 138, (*f*.)

The proceedings upon this petition will be similar to those following upon No. 138.

143. *Petition to Presbytery to have a Manse and Offices declared "Free."*

Unto the Reverend the Presbytery of A., the Petition of B., C., and D., Heritors of the Parish of E.,

Humbly sheweth,

That upon the application of G., minister of the said parish, the reverend presbytery, upon the day of last, appointed certain repairs to be done upon the manse, offices, and garden-wall, and these having accordingly been performed in a sufficient manner at the expense of the petitioners, the premises are now in a state of complete repair, and of a substantial structure, and in every way suitable and sufficient for the accommodation of the minister and his successors in office.

That by the act 1663, cap. 21, whereby the burden of building and repairing the manses of the clergy is laid upon the heritors of each parish, it is, *inter alia*, declared, that the manses being once built and repaired by the heritors, the same shall thereafter be upholden by the incumbent ministers during their possession.

That the said G., as minister of the parish, is therefore bound to uphold and maintain the said manse and offices during his incumbency, and the petitioners are entitled to have the same declared a free manse, and to be relieved of the burden of upholding the same during the possession of the said G.

May it therefore please the reverend presbytery to appoint a visit to be made by them, and this petition, and the time of the said visit, to be duly intimated to the said G. Thereafter to visit and inspect the said manse and offices, and, if necessary, to remit to tradesmen, or other persons of skill, to report as to the sufficiency thereof, and

to find the said manse and offices to be sufficiently built and properly repaired, and to declare the same to be a free manse and offices, and that the petitioners are freed and relieved from maintaining the same during the possession of the said G.; and that the said G. is bound to uphold the said manse and offices during his incumbency; or otherwise, &c., *(as at letter (h) petition, No.* 118.)

The presbytery, upon considering this petition, will appoint a visit, and direct intimation to be given to the minister. The report of tradesmen, if considered necessary, will also be procured. Deliverance will then be pronounced as follows:—

144. *Minute of Presbytery declaring Manse free.*

That the manse and offices referred to in the petition have been repaired in a sufficient manner, in terms of the order of presbytery therein mentioned, and that they are a suitable and sufficient manse and offices for the parish: Find the same to be a free manse and offices, and that the said G. is bound to maintain and uphold them in repair during his incumbency; and decern accordingly.

If the situation of an old manse be objectionable, the presbytery, when ordering a new one, may fix a different site for it; this must necessarily be within the glebe; (Fountainhall, 31st January 1712, Steele.)

It is always a question of circumstances whether a manse is capable of being repaired, or whether it must be taken down and rebuilt. When the old manse clearly admits

of a proper repair, the Court never sanctions a new one; (Hog *v.* Ritchie, 25th June 1808;) on the other hand, when the fabric has become ruinous, the Court refuses to allow a repair; (Dempster *v.* Headrick, 3d December 1813.) They are generally guided by the report of skilful persons as to the best mode for rendering the manse a suitable and comfortable residence for the minister.

There are several old statutes relative to the providing of manses and glebes. The leading enactment is the act 1663, cap. 21, which, in so far as regards the building, repairing, and upholding of manses, is as follows: "Our sovereign Lord, with consent foresaid, statutes and ordains, that when competent manses are not already built, the heritors of the parish, *at the sight of the Bishop of the diocese*, or such ministers as he shall appoint, with two or three of the most knowing and discreet men of the parish, build competent manses to their ministers, the expenses thereof not exceeding 1000 pounds, and not being beneath 500 merks; and where competent manses are already built, ordains the heritors of the parish to relieve the minister and his executors of all cost, charges, and expenses, for repairing of the foresaid manses; declaring hereby, that the manses being once built and repaired, and the building and repairing satisfied and paid by the heritors in manner foresaid, the said manses shall thereafter be upholden by the incumbent ministers during their possession, and by the heritors in time of vacancy out of the readiest of the vacant stipend."

Two previous acts (1644, cap. 68, and 1649, cap. 221) had been passed during the usurpation, containing nearly the same provisions as those above quoted, with the important difference, that the power of designation was thereby conferred upon *presbyteries*. These statutes fell under the act rescissory of Charles II., but after the abolition of Episcopacy, presbyteries assumed the jurisdiction con-

ferred upon bishops by the act 1663, and have since continued to exercise it without question.

Every minister of a parish wholly landward, or of a burgh parish with a landward district attached, is entitled to a manse, but ministers of parishes within royal burghs, and having no landward district attached, have no right to manses; (Minister of Dunfermline *v.* Heritors, 19th November 1805; Auld *v.* Magistrates of Ayr, 13th June 1827; Shaw and Dunlop, IV. p. 99; Reversed in House of Lords, II. Wilson and Shaw, 600.)

Presbyteries are entitled to fix the situation of manses. In practice, they are generally designed in a convenient situation, near to the church. The presbytery may proceed to the designation in absence of the heritors; nor is the presence of any of the parishioners, as required by the act 1663, now necessary; (Lochmaben, 1712.)

By the act 1663, the maximum to be allowed for building a new manse is L.1000 Scots, or L.83, 6s. 8d. sterling. It is not definitively settled, whether, in the event of no manse having been built at the date of the act, heritors would be bound to expend more than this sum upon the building. But it is fixed, that when a manse is gone to decay, and requires to be rebuilt, heritors are bound to supply a "competent" manse, although the expense far exceeds L.1000 Scots. The usual sum now allowed by the Court is about L.1000 sterling.

By a "competent" manse is now understood one which is substantial and comfortable, and suitable for the accommodation of the minister and his family, according to the state of society, and the rank which they hold.

GLEBES.

Every minister who is entitled to a manse has also a right to a glebe of arable land.

The statutes by which the right of ministers to ARABLE GLEBES is conferred and regulated are, 1563, cap. 72; 1572, cap. 48; 1592, cap. 118; 1593, cap. 165; 1594, cap. 202; 1606, cap. 7; and 1663, cap. 21.

This glebe must consist of not less than four acres of arable land, lying as near and contiguous to the manse as can conveniently be obtained. It formed a question of some difficulty under the statutes, to determine whether church-lands were not primarily liable to be designed as glebes; the result of the decisions is stated by Sir John Connell to be, that the distinction which was at one time observed between church-lands and temporal lands is (as to this particular burden) now altogether disregarded. (Connell on Parishes, p. 370.)

The alternative of allowing four soums of grass in lieu of each acre of arable land was introduced by 1606, cap. 7. This alternative can be claimed by the minister only when a proper arable glebe cannot be provided to him. A soum of grass consists of as much land as will pasture one cow or ten sheep.

145. *Petition to Presbytery to design a Glebe of Arable Land.*

Unto the Reverend the Presbytery of A., the Petition of B., Minister of the Parish of C.,

Humbly sheweth,

That the petitioner, as minister of the parish of C., is entitled to a glebe of arable land; and the power of designing glebes, which was formerly exercised by the Episcopal clergy, has now devolved upon presbyteries.

That the *minimum* extent of the arable glebe to which the petitioner is entitled, is four acres of arable land near to the church or manse, and if there be no such arable land, then the petitioner has a right, in lieu thereof, to sixteen soums of grass, out of the most

commodious and best pasturage lands lying nearest to the church.

That no glebe of arable land, or of pasturage in lieu thereof, has (so far as the petitioner can learn) ever been designed to the minister of the said parish, at least no such glebe has been enjoyed by the petitioner, or his predecessors in office, for a century back, (or otherwise as the case may be.) That the petitioner is now desirous that the arable glebe to which he is by law entitled should be designed and set apart to him and his successors in office, ministers of the said parish.

May it therefore please, &c., (to letter (*d*) of petition, No. 118.) Thereafter, with the assistance of such persons as may be considered qualified for that purpose, to design and set apart as a glebe to the petitioner, as minister of the parish of C., (*a*) and his successors in office, a piece of ground of proper quality, extending to at least four acres of arable land, near to the church or manse; or if no such ground can be obtained, then to design and set apart, in lieu thereof, a glebe of pasture land, extending to sixteen soums of the most commodious and best pasturage lying nearest to the church; to ordain the persons in possession of the said lands to remove therefrom; to ascertain the value of the said lands, and to apportion the amount thereof, and other contingent expenses, among the whole heritors, &c., (and so forth, as in petition, No. 138.)

The proceedings upon this petition will be similar to those already exemplified, with the necessary alterations to suit the particular circumstances.

By the act 1663, cap. 21, it was provided, that "every minister, (except such ministers of royal burghs who have not right to glebes) have grass for one horse and two kine, over and above their glebe, to be designed out of the kirk-lands, and with relief according to the former acts of Parliament standing in force. And if there be no kirk-lands lying near the minister's manse, out of which the grass for one horse and two kine may be designed, or otherways, if the said kirk-lands be arable land, in either of these cases, ordains the heritors to pay to the minister and his successors yearly the sum of L.20 Scots for the said grass for one horse and two kine, the heritors always being relieved, according to the law standing, off other heritors of kirk-lands in the said parish."

When there are no church-lands in the parish, there can be no designation of grass in kind. It is not settled whether in such a case the minister is entitled to the commutation of L.20 Scots.

The claimant is bound to show that there are church-lands in the parish. The designation is made from the church-lands nearest to the manse. If all the church-lands are arable, the commuted sum is allocated upon the heritors of the nearest church-lands; in either case, the heritor burdened, or whose land is taken, has a claim of relief against the heritors of other church-lands in the parish.

146. *Petition for Designation of Minister's Grass.*

Unto the Reverend the Presbytery of A., the Petition of B., Minister of the Parish of C.,

Humbly sheweth,

That the petitioner, as minister of the parish of C., is entitled by law, over and above an arable glebe, to a grass glebe for a horse and two cows out of church-lands near to the manse, and where there are no such

church-lands in the parish, to the sum of L.20 Scots in lieu thereof, and the proprietors out of whose lands the grass glebe may be designed, or who may be ordained to pay the said sum of L.20 Scots, are entitled to a proportional relief against other proprietors of church-lands in the parish.

That no grass glebe or legal allowance in lieu thereof has ever been designed to the minister of the parish of C., which renders the present application necessary.

May it therefore, &c. *(and so forth, to letter (a) of preceding example, then proceed,)* a grass glebe for a horse and two cows, of the proper quality and extent, out of church-lands near to the manse; to ordain the persons in possession of the ground to remove therefrom, and to ascertain the value thereof; or, in case no such grass glebe can be designed, to find the petitioner, and his successors in office, entitled to L.20 Scots yearly in lieu thereof; to allocate the value of the said ground and contingent expenses, or the foresaid sum of L.20 Scots, as the case may be, upon the heritors of church-lands in the said parish liable for the same, according to their valued rent, &c. *(as in the preceding example.)*

See remark subsequent to the preceding Style.

147. *Petition to Presbytery to authorise the Excambion of a Manse and Glebe.*

Unto the Reverend the Presbytery of A., the Petition of B., Minister of the Parish of C.,

Humbly sheweth,

(This petition must contain a description of the present manse and glebe, and also of those proposed to be received in exchange; and detail the circumstances

which render the excambion beneficial to the parish, and the terms upon which the exchange is to be made.)

That it is necessary, in terms of law, that the proposed excambion should be made under the authority and with the sanction of the presbytery; and the present application is therefore necessary.

May it therefore please, &c. (*and so forth, to letter* (*d*) *of petition*, No. 118.) Thereafter, to visit and inspect the present manse, offices, garden, and glebe of the parish, and also the house, offices, and ground, which are proposed to be excambed therefor; to find that the proposed excambion would be highly beneficial to the parish, and to the petitioner and his successors in office; to authorise the petitioner to enter into a contract of excambion in the terms above set forth, and to execute all necessary deeds for completing the proposed transaction, and to interpone the authority of the presbytery thereto, or otherwise, (*as at letter* (*h*) *of petition*, No. 118.)

The presbytery, after visiting the parish, and, if necessary, obtaining the report of tradesmen upon the subject of the petition, will, if satisfied of the propriety of the proposed transaction, pronounce a judgment in conformity with the prayer of the petition.

SCHOOLMASTERS AND SCHOOLS.

From a very early period, the system of parochial instruction in Scotland has been connected with the national Church Establishment, and the schoolmasters held amenable to the ecclesiastical judicatories for their conduct and

doctrines. This arrangement has been at various times confirmed and regulated by acts of Parliament, as well as by the laws of the Church. Formerly, the administration of these laws was the subject of much discussion; for, although there could be no doubt of the powers of the *Presbytery* in regard to the examination, admission, and superintendence of the schoolmasters within their bounds, the law was far from being explicit on the question, whether the presbytery thus acted as a proper ecclesiastical court, from whom a right of appeal lay to the higher Church courts, or whether this was a mere civil jurisdiction, (such as the presbytery exercises regarding churches, manses, and glebes,) committed to them by the Legislature, and in exercising which they were under the control of the supreme civil courts alone. This question is now rendered of comparatively little consequence, as the last act on the subject, 43 Geo. III., cap. 54, has declared that in all matters regarding the admission, censure, suspension, and deprivation of schoolmasters, (so far as regulated by that statute,) the judgment of the presbyteries shall be final, "and shall not be reviewed or suspended by any court, civil or ecclesiastical." Should any question, however, arise before a presbytery concerning matters not regulated by this statute, it may be said, that from the tenor of former decisions, the presbytery would be held to exercise proper ecclesiastical functions, and that their proceedings would be under the cognizance of the superior Church courts. Notwithstanding the declaration referred to in the statute, it is now decided, that when a presbytery exceeds its powers under the act, or neglects to comply with its injunctions, the judgment is liable to be suspended or reduced by the Court of Session, to the effect at least of compelling the presbytery to proceed strictly in terms of the statutory enactments. There will now be given such forms as are observed in regard to the election, ad-

mission, censure, or deprivation, of schoolmasters, and in the regulation of the schools over which they preside, so far as under the controul of the presbytery.*

I.—ELECTION AND ADMISSION OF SCHOOLMASTERS.

(1.) INTIMATION OF VACANCY.

Whenever a vacancy occurs in the office of schoolmaster in a parochial school, "the minister of the parish shall, within fifteen days, intimate, or cause to be intimated, from the pulpit, immediately after divine service in the forenoon, the vacancy which has taken place, and communicate the knowledge of the same by letter to such heritor or heritors as may be non-resident," (43 Geo. III., cap. 54, § 14.)

It does not appear that the minister is to use any particular form of words in making these communications, but simply that he shall, within *fifteen* days from the vacancy occurring, intimate the fact verbally from the pulpit, and by letters to the non-resident heritors.

(2.) ELECTION OF NEW MASTERS.

The next step is the election of a new master. This may be either by the heritors and minister, or, *jure devoluto*, by the commissioners of supply.

(3.) ELECTION BY THE HERITORS AND MINISTER.

Those entitled to vote on this occasion are the minister of the parish, and all heritors who are "proprietors of

* For a very full and accurate account of parochial schools, and of the laws regulating them, reference is made to Mr Dunlop's Parochial Law.

lands within the parish, to the extent of at least L.100 Scots of valued rent appearing in the land-tax books of the county." These parties must elect within *four months* from the date of the vacancy, and the election must take place at a meeting called by the minister on thirty days' notice by public intimation from the pulpit, and by letters addressed to each heritor entitled to vote, whether resident or not. The duty of calling this (as well as all other meetings of the heritors and minister) is imposed upon the minister, and when the cure is vacant, the presbytery are directed to appoint one of their number to make the necessary intimations.*

At the meeting thus called, or at any time to which it may be adjourned, the heritors and minister have each a single vote. The preses of the meeting, or if there be no preses chosen, the heritor present having the largest qualification, has a casting vote, as well as a deliberative vote. If there be only one qualified heritor in the parish, he is entitled to the same privilege. The heritors may vote by letter or proxy under their hand.

The schoolmaster is, of course, elected by the majority of votes, and of this a minute is made out in this form.

148. *Minute when Schoolmaster elected.*

Minute of meeting of the heritors and minister of the parish of A., held in terms of legal advertisements within the parish church, (or session-house, or manse, &c.,) the day of 18 , for the purpose of electing a parish schoolmaster in the room of L., deceased, (or resigned, or deposed.) Present A., B., C. and D., the said D. having a proxy to act for E. and F., all heritors qualified to vote for the election of a schoolmaster, in terms of 43 Geo. III. c. 54, by being

* 43 Geo. III. cap. 54, § 14 and 15.

proprietors of lands within the parish, of at least L.100 Scots yearly rent, as appearing in the land-tax books of the county. As also the Reverend G., minister of the said parish.

A. was unanimously chosen preses. The Reverend G. stated, that he had called the meeting in terms of the act of Parliament, upon a vacancy occurring in the office of parochial schoolmaster, by open proclamation from the pulpit on Sunday, the day of , and by circular letters addressed by him to the several qualified heritors, as well resident as non-resident, on the following day, being the statutory period of thirty free days before this day of meeting, and that it now became the duty of the meeting to make the necessary election.

B. then proposed X. as a proper person to fill the vacant situation, and the nomination was seconded by the Reverend G.

C. proposed W. as a proper person to fill the situation, and produced and read certificates of his education and qualifications, and the nomination was seconded by D.

A vote was then taken, when there voted for X., B., the Reverend G., and the preses; and for W., C., and D. for himself and as proxy for G. and F., being three votes for X. and four votes for W. In respect of which vote, the meeting elected and hereby elect the said W. to the office of parochial schoolmaster in this parish, if found qualified by the presbytery.

This minute may either be signed by the preses in name of the meeting, or preferably by the whole persons present. Although the above form is applicable to the case of a contested election, it may be remarked that this is seldom necessary, the matter being in general made the subject of

previous arrangement, which will of course shorten the minute, only one candidate being proposed, and immediately declared elected.

The minute when signed is delivered to the schoolmaster, in order that it may be by him laid before the presbytery of the district, as after directed.

(4.) ELECTION BY THE COMMISSIONERS OF SUPPLY, *jure devoluto.*

Upon the failure of the heritors and ministers to elect a person within four months from the occurrence of the vacancy, the case must be taken up by the presbytery, who are authorised to apply to the commissioners of supply to elect *jure devoluto.* This application is in the form of petition as follows, which, after being agreed to at a meeting of presbytery, will be transmitted by the clerk to the convener of the commissioners of supply.

149. *Petition to the Commissioners of Supply to elect a Schoolmaster.*

Unto the Honourable the Convener and Commissioners of Supply for the County of , the Petition of the Moderator and remanent Members of the Presbytery of B.,

Humbly sheweth,

That upon the day of 18 , a vacancy occurred in the situation of parochial schoolmaster in the parish of A., situated within the jurisdiction of the petitioners, by the death (removal or deposition) of L., formerly schoolmaster there.

That by the act of Parliament, (43 Geo. III. cap. 54,) regulating parochial schools, it is enacted, "That if the heritors, qualified as is hereby required, and minister, shall fail to elect a schoolmaster *within four calendar months* from the time the vacancy shall have

taken place, then the presbytery, within the bounds of which the parish is situated, shall apply to the convener of the commissioners of supply of the county or stewartry, who, or any five of them, at a meeting to be called by the convener upon thirty days' notice, shall have power, *jure devoluto*, and are hereby directed, to elect a person to supply the vacancy."(*b*)

That upwards of four months have now elapsed from the date of the vacancy occurring in the said parish of B., but no election of a person qualified to supply it has yet been made by the heritors and minister of the parish. (*a*)

That, in these circumstances, it is necessary for the petitioners to apply to your Honours to proceed in terms of the above-recited statute, to elect a proper person to supply the said vacant office of schoolmaster in the parish of A.

May it therefore please your Honours to take the premises into your consideration, and to proceed, *jure devoluto*, to elect a proper person to supply the said vacancy, in terms of, and conform to, the provisions of the statute above quoted.

According to justice, &c. Signed for, and in name of the said presbytery, by

B., Moderator.

In the event of an election having been made, but the person elected found unqualified by the presbytery, insert at (*a*,) "The person chosen by them at their meeting having been found unqualified by the petitioners when they proceeded to examine him, conform to extract from their minutes herewith produced;" and add at (*b*,) "And that it is further enacted, 'that in case the person elected is not found duly qualified, the heritors and minister shall only be allowed what remained of the four months at the time

of his election, with so many days more, as required by this act.' And that this time has also now elapsed, as will be apparent from a reference to the dates, as mentioned in the said extract minute herewith produced."

Upon receiving this petition, it is the duty of the convener without delay to summon a meeting of the commissioners on the statutory notice of thirty days. This meeting will make the necessary election, and furnish their presentee either with the minute of his election, or a certified extract thereof.

In the event of the presbytery neglecting in the manner provided to give notice to the commissioners of supply that it falls to them, *jure devoluto*, to elect the schoolmaster, it is provided by act 8th and 9th Vict. cap. 14, entitled "An Act for amending an Act for making provision for Parish Schoolmasters in Scotland," that failing such election as aforesaid, (*i. e.*, by minister and heritors,) and such application by the presbytery to the convener of the commissioners of supply, then, within twenty-one days after the expiration of the four months after which the presbytery is so required to apply to the convener of the commissioners of supply, it shall be lawful for any heritor of the parish to make intimation of the vacancy, whether now existing, or that may hereafter occur, by letter, to the convener of the commissioners of supply of the county or stewartry within which the parish is situated, requiring him to call a meeting of such commissioners upon thirty days' notice; and the commissioners of supply, or any five of them assembled at such meeting, or any adjourned meeting, shall have power, *jure devoluto*, to take the matter of such vacancy into consideration, and, unless good cause be shown to the contrary, to proceed forthwith to the election of a schoolmaster according to the intent and meaning of said recited act, and such objection shall be good and valid to all intents and purposes.

(5.) EXAMINATION AND ADMISSION OF THE PERSON ELECTED.

The schoolmaster being elected either by the heritors and minister, or by the commissioners of supply, *jure devoluto*, must forthwith take the oaths of allegiance and abjuration before any one of her Majesty's justices of the peace, and subscribe the same with the assurance,* and obtain a certificate of his having done so. This certificate, together with the minute of his election, he then lays before the presbytery of the bounds, craving that they may make trial of his sufficiency for the office.

The presbytery, it is enacted, "shall thereupon take trial of his sufficiency for the office, in respect of morality and religion, and of such branches of literature as by the majority of heritors and minister shall be deemed most important and necessary for the parish, by examination of the presentee, by certificates and recommendations in his favour, by their own personal inquiry, or otherwise, and shall see him sign the Confession of Faith, and Formula of the Church of Scotland." Of this examination a minute will be entered on the presbytery records in such terms as follow, and an extract furnished to the schoolmaster, which completes his right to the office and its emoluments, the decision of the presbytery as to his qualifications being final and without review.

150. *Minute of Examination of Schoolmaster.*

Minute of examination, by the presbytery of B., of L. presentee to the vacant situation of schoolmaster in the parish of A.

Compeared L., and produced the principal (or certified copy) minute of a meeting of the heritors and minis-

* These oaths are the same as those taken by ministers, of which the form is already given, pp. 73, 74.

ter of the parish of A., held on the day of 18 , at which the said L. was duly elected to the vacant situation of schoolmaster in the said parish, as also a certificate or attestation by G. H., Esq., one of her Majesty's justices of the peace for the county of K., dated the day of 18 ; declaring that the said L. had appeared before the said justice, and there taken and subscribed the oaths of allegiance and abjuration, with the assurance, in terms of the act of Parliament; which being laid on the table, the said L. craved to be examined by the presbytery, in order to his instalment into the said office. Whereupon the presbytery having caused the said minute and certificate to be read to them, proceeded to examine the several certificates of character and abilities produced to them by the said L., and to take trial of his proficiency in the several branches of education commonly taught in the parish school, particularly Latin, English, reading, and grammar, geography and arithmetic, (or otherwise, as the case may be,) and being fully satisfied with the same, they required him to sign in their presence the Confession of Faith and Formula of the Church of Scotland;* and the said L. having subscribed his name thereto in token of his assent to the doctrines therein set forth, the presbytery found and hereby find him duly qualified, and did and hereby do declare him legal schoolmaster in the said parish, and entitled to the salary and school-wages attached to that office. Whereupon the said L. craved extracts of the minutes of this sederunt, in so far as they related to his examination, that his admission and right to the emoluments of the office may be completed in terms of the act of Parliament, which were allowed, and the clerk instructed accordingly.

* For this Formula, see "Licensing Probationers," p. 65.

The election of the schoolmaster, and his right to the emoluments of office, are thus completed. If, however, the person elected be rejected by the presbytery as deficient in the necessary qualifications, the heritors and minister will proceed to a new election, but this they are required to complete within such a period after the decision of the presbytery, as there remained unexpired of the four months and thirty days, at the time of their former election. If they permit this time to elapse, the presbytery apply to the commissioners of supply, as already stated.

Should the person be found unqualified, it will be well to mention specially the reason of it in the minute, whether it be his deficiency in any branch of education, defect of moral character, or refusal to sign the Confession of Faith. In any of these events the minute will conclude thus:—

151. *Minute when Schoolmaster found unqualified.*

In respect of which deficiency, (or otherwise,) the presbytery found and hereby find the said L. not to be qualified to fill the office to which he has been elected; therefore refuse to admit him as such. Further, the presbytery remit to the heritors and minister of the said parish, to proceed to elect of new a person qualified to fill the said office, and appoint the clerk of presbytery to make intimation of this decision, and remit to the said minister and heritors without delay.

II. CENSURE AND DEPOSITION OF SCHOOLMASTERS.

The schoolmaster is, as already stated, at all times under the cognizance of the presbytery within whose bounds the parish lies, both as regards his moral character, and the performance of his duties as schoolmaster. There seems no reason, consequently, to doubt that in the event of any *fama* regarding the conduct of a schoolmaster becoming prevalent, the presbytery might *ex proprio motu* institute

an inquiry into the matter, and take such steps in the exercise of their duty as superintendents of schools, as might seem necessary and consistent with the provisions of the statutes conferring upon them this jurisdiction. In general, however, any proceeding against a schoolmaster for neglect of duty, criminal conduct, or other fault, now originates with a petition to the presbytery from the heritors, minister, or elder of the parish, founded upon the 43d Geo. III. c. 54, § 21, and praying for an inquiry into the subject of the petition. The form of the petition may be as follows:—

152. *Petition and Complaint against a Schoolmaster.*

Unto the Reverend the Moderator and remanent Members of the Presbytery of B.,

The Petition and Complaint of A., Minister, and B., C., D., E., and F., Elders, of the Parish of A.,

Humbly sheweth,

That L. is schoolmaster of the said parish of A., having been appointed to that situation in the year 18

That the said L. has recently wholly neglected the duties of his office, being frequently absent for long periods at a time, engaged in other occupations, or at least to the total neglect of his duty; in particular, (here state specific acts of dereliction of duty alleged.) That the said L. has also been guilty of several acts of a grossly immoral nature, and unbecoming his situation as parochial schoolmaster, in so far as, (here state specific acts.) And that the said L. has been guilty of cruel and improper treatment of the pupils entrusted to his care; in particular, that (here state the acts alleged.) That the said offences on the part of a parochial schoolmaster are of a grievous nature, and severely punishable by censure, suspension, or deprivation, according to the laws and discipline of the Church of

Scotland, as well as the laws of the realm, particularly the act of Parliament after mentioned.

That it is enacted by the 43d Geo. III. cap. 54, § 21, "That when any complaint from the heritors, minister, or elders, against the schoolmaster, charging him with neglect of duty, either from engaging in other occupations, or from any other cause, or with immoral conduct, or cruel and improper treatment of the scholars under his charge, shall be presented to the presbytery, they shall forthwith take cognizance of the same, serve him with a libel, if the articles alleged appear to be of a nature which requires it; and having taken the necessary proof, they shall acquit, or pass sentence of censure, suspension, or deprivation, as shall appear to them proper upon the result of such investigation, which judgment shall be final, without appeal or review by any court, civil or ecclesiastical."

That, in these circumstances, the petitioners find it necessary to make this application to your Reverend Presbytery.

May it therefore please your Reverend Presbytery, to take the premises into your consideration, and to proceed in terms of, and conform to, the provisions of the above-recited act of Parliament, to serve the said L. with a libel, setting forth the above articles; and, at a subsequent diet to be fixed by your Reverend Presbytery, to which the said L. may be cited, to receive proof of the said libel, and thereafter to pronounce sentence, censuring, suspending, or deposing the said L. from his office; or to do otherwise in the premises as to your Reverend Presbytery shall seem just.

And your petitioners shall ever pray,

Signed by the petitioners.

This petition and complaint being presented to the presbytery, they forthwith take cognizance of the same, and if the "articles alleged appear to them to be of a nature which requires it," they serve the schoolmaster with a libel.

153. *Minute of the Presbytery when Petition and Complaint is presented.*

(Place and date.)

Which day the presbytery of B. being met, &c., and duly constituted; sederunt, &c. Compeared A., minister of the parish of A., and gave in a petition and complaint in his own name and in name of B., C., D., E., and F., elders, against L., schoolmaster of the said parish, which being read, was marked by the moderator and clerk, and ordered to be kept *in retentis*. Thereafter the presbytery, having deliberately considered the said petition and complaint, did and hereby do unanimously find that the charges there set forth are of a very serious nature, and require the most solemn and deliberate investigation; and that, in these circumstances, it is the duty of the presbytery to proceed, in terms of the act of Parliament quoted, to raise a libel against the said schoolmaster. They therefore remit to the moderator, Mr B., and the clerk, to prepare a libel against L., charging the articles alleged in the petition and complaint, accompanied with a list of the witnesses to be adduced against him, to be laid before the presbytery at their next meeting.

It is competent for the presbytery, if they do not themselves choose to become libellers, to receive one at the instance of the heritors.

The proceedings in this libel will be the same as those

already noticed in the case of ministers,* p. 139, *et seq.*, up to the final sentence, which may be as follows:—

154. *Form of Minute in case of Deposition.*

(Place and date.)

Which day the presbytery of B. being met and duly constituted; sederunt, &c. The presbytery having had under their consideration, (as in Style ;) wherefore the presbytery did, by their vote, and hereby do, depose the said L. from the office of schoolmaster in the parish of A., and declare the said office vacant from this date. The said L. being then called in, the above sentence was read over, and the presbytery did further ordain A., minister of the parish, to intimate the same the first Lord's day in the parish kirk, immediately after divine service, and ordain all concerned to proceed to have the vacancy supplied with all convenient speed.

With regard to the *effect* of the sentence of deposition when pronounced by the presbytery, it is enacted, "That his right to the emoluments and accommodations of the same shall cease from the time of his deposition; and in case he shall fail or refuse to remove from the school, schoolhouse, and garden, within the space of three months from the date of such sentence of deposition, the sheriff of the shire, or stewart of the stewartry, upon having an extract or certified copy of the sentence of deposition by the presbytery laid before him, shall forthwith grant letters of ejection against such schoolmaster, against which no bill of suspension, or advocation, nor action of reduction, shall be competent."

* In the libel, the terms of the act 43d Geo. III. cap. 54, should be set forth in the major proposition.

155. *Petition to the Sheriff to grant Warrant of Ejectment.*

Unto the Honourable the Sheriff or Sheriff-Substitute of the Shire of C.,

The Petition of A., Minister, B. and C., Heritors, and E. and F., Elders of the Parish of A.,

Humbly sheweth,

That on the day of 18 , the petitioners applied by petition and complaint to the presbytery of B. against L., parish schoolmaster. That thereafter, the presbytery, upon consideration of said complaint, directed a libel against the said L., and after sundry procedure thereon, pronounced sentence of deposition against him upon the day of , all in terms of the act of Parliament, 43d Geo. III. cap. 54.

That the said L. has refused to remove from the school, schoolhouse, and garden, although three months have since elapsed: That by the act of Parliament above mentioned, it is enacted, that, "in case the schoolmaster shall fail or refuse to remove from the school, schoolhouse, and garden, within the space of *three months* from the date of such sentence of deposition, the sheriff of the shire, or stewart of the stewartry, upon having an extract or certified copy of the sentence of deposition by the presbytery laid before him, shall forthwith grant letters of ejection against such schoolmaster, of which no bill of suspension, or advocation, or action of reduction, shall be competent."

That, in these circumstances, it is necessary for the petitioners to apply to your Lordship; and they produce herewith an extract under the hands of D., clerk of presbytery, of the sentence, deposing the said L. in manner foresaid.

May it therefore please your Lordship to take the premises into your consideration, and thereafter to grant letters of ejection against the said L., in terms of the above-recited statute, in common form.

According to justice, &c.

Signed by the petitioners or their agent.

On this petition, warrant of ejection will be granted *de plano*, and carried into execution as in an ordinary civil case.

It only remains now to notice the procedure in matters not specially provided for by the statute 43 Geo. III.; and this cannot be better done than in the words of Mr Dunlop. "Although," he states, "in regard to those matters specially provided for by the 43 Geo. III., its regulations must be complied with, yet the powers of presbyteries under prior enactments, not thereby expressly interfered with, remain untouched; and in such case, the presbytery may proceed without regard to the forms prescribed by the statute. Thus, they are entitled to require all schoolmasters to appear before them, and subscribe the Formula of the Church of Scotland, and, on refusal, to depose them without any libel." This, indeed, seems to be *the only case* which does not fall under the statute, and it may be right, therefore, to conclude with the form of the minute of presbytery in such a case.

156. *Minute when Schoolmaster refuses to sign Confession of Faith.*

(Place and date.)

Which day the presbytery being met, and duly constituted, &c.; sederunt, &c. The clerk reported he had,

according to the appointment of the presbytery, issued warrant of citation to M., presbytery-officer, to be served on L., parochial schoolmaster in the parish of A., to attend the present meeting, and that the officer had returned an execution, of date the day of , bearing that he had cited said L. in terms thereof, conform to certificate produced. And the said L. having been called in and compeared, and having heard the complaint against him, declares that he is a member of , and is not in communion with the Established Church of Scotland; and farther, being interrogated, he declines, and positively refuses, to subscribe the Confession of Faith and Formula of the Established Church. The above declaration having been read over to him, he admits that it is correct; but on being requested to sign it, he refuses to do so, whereupon the said L. was removed; and the presbytery having considered his declaration, Find that there are in it good and sufficient grounds, in conformity with the laws and practice of the Church, to deprive him of the office of parochial schoolmaster in the parish of A., and therefore deposed, and hereby depose, him from the said office; and they farther did, and hereby do, declare the situation of schoolmaster in the said parish vacant from this date. The said L. being again called, and the above sentence of the presbytery being read over to him, he protested and appealed to the synod of D., took instruments at the clerk's hands, and craved extracts, which were allowed.*

* In the event of the schoolmaster refusing to obey this sentence, by removing from the schoolhouse, the sheriff will grant a warrant of ejection. —*Vide* preceding Style.

III. REGULATION OF THE SCHOOLS.

It rests with the heritors* and ministers to determine the branches of education to be taught, and the rate of fees to be exacted from the scholars. These are fixed at meetings convened by the minister on thirty days' notice, in the same manner as the meeting for the schoolmaster's election, and may be altered from time to time as such meetings may appoint, in terms of the 43 Geo. III., c. 54, § 18, which enacts, "That the heritors qualified, as is hereby directed, and minister, in a meeting called on thirty days' notification from the pulpit, and by letter from the minister to the non-resident heritors, and by notice to be left at the mansion-house of each heritor, resident or not, shall have the power of fixing the school-fees from time to time, as they shall judge expedient; and a table of fees, signed by the preses of the meeting, shall be hung up in the school-room; provided always, that the schoolmaster shall be obliged to teach such poor children of the parish as shall be recommended by the heritors and minister at any parochial meeting."

The presbytery of the bounds have a general superintendence over the parochial schools, and are bound by several acts of Assembly to visit them at least once a-year, and to make a report of that visitation. These visitations and examinations have not been so regular as they should be, and in many presbyteries where they have annually taken place, no written record of them has been preserved, which is much to be regretted, for it must always be considered as one of the chief excellencies of the Scottish parochial system, that the schools are placed so immediately under the control of the Church and her courts.

* At all meetings of those parties, the heritors may vote by proxy.

When the season fixed for a presbyterial visitation in the several parishes occurs, committees of two or three members are appointed by the presbytery to visit the several schools, and to report thereon. The reports consist of answers to queries, which are transmitted to presbyteries by the General Assembly's Education Committee, of which the following is a specimen :—

157. *Queries put to Presbyteries on the State of Schools.*

I.—PAROCHIAL SCHOOLS.

1. How many parochial schools have been this year examined by presbytery, or committee of presbytery?
2. Have any of the parochial schools within the bounds of the presbytery not been this year examined—which of them—and the reason?
3. Number of scholars attending the parochial schools examined at the time of examination?
4. Number of scholars then present learning branches not elementary, viz., Greek, Latin, Mathematics, including Mensuration, Algebra, and Navigation, Geography, French, ?
5. Do any of these schools appear inefficiently taught, or not so well attended as they might be,—from the use of unskilful methods, the incompetency or carelessness of the teachers, or any other cause?
6. Are the Scriptures daily read in all these schools? the schools opened and closed with prayer? and other means of religious instruction employed? specifying those schools in which due attention does not appear to have been paid to religious instruction.
7. If any of the parochial teachers have been appointed during the last year, state whether they have been examined and found qualified by presbytery; and

whether they have signed the Confession of Faith, and taken the oaths to Government.

8. Whether assistants or substitutes are employed by any of the teachers; on what account they are employed; how remunerated; by whom they are appointed; and how their qualifications have been tried?

9. Whether, from any cause, any of the schools examined have been vacant during the last year, beyond the usual term of vacation?

II.—SCHOOLS NOT PAROCHIAL.

10. Number of schools within the presbytery bounds, supported wholly or in part by subscription, examined this year.

11. Number of schools supported wholly or in part by contribution from burgh or other public funds, examined this year.

12. Number of schools wholly or in part endowed, but not parochial; *e. g.* schools supported by education societies, examined this year.

13. Number of schools on teachers' own adventure, examined this year.

14. Number of schools of all kinds not parochial, within the presbytery bounds, *not* this year examined; in what parishes situate; and for what reasons not examined.

15. Total number of scholars attending all the schools not parochial, this year examined, at the time of examination.

16. Total number of scholars in all such schools learning branches not elementary, viz., Greek,
Latin, Mathematics, including Mensuration,
Algebra, and Navigation, Geography,
French, .

17. Do any of these schools appear inefficiently taught, from the use of unskilful methods, the incompetency, or carelessness of teachers, or any other cause?
18. Are there any of these schools in which due attention does not appear to have been paid to religious instruction?
19. How many of the teachers of these schools examined do not belong to the Established Church?

There is also a space left in the Schedule for General Remarks.

PROCEEDINGS CONNECTED WITH PROCESSES OF ADHERENCE.

By act of Parliament 1573, cap. 55, it is enacted, "That quhat sumever persone or persones, joyned in lawful matrimonie, husband or wife, divertis frae uthers' company, without any reasonable cause alleged or reduced before an judge, and remainis in their malicious obstinacie be the space of four zeires, and in the meantime refuses all privie admonitions, the husband of the wife, or the wife of the husband, for dew adherence: That then the husband, or the wife, shall call and pursue the obstinate person offender before the judge ordinary for adherence; and in case no sufficient causes be alleged quhairfor na adherence suld be, but that the sentence proceeds against the offender refusand to obey the samin: The husband or the wife sall meene themselves to the superior magistrate, viz., the Lords of Session, and sall obteine letters in the four forms, conform to the sentence of adherence, quhich charge being contemned, and therefoir being denounced rebell and put

to the horne; then the husband or the wife, to sute the spiritual jurisdiction and power, and require the lauchful archbishop, bishop, or superintendent of the countrie quhair the offender remains, to direct privie admonitiones to the said offender, admonishing him, or her, as befoir for adherence, quhilkes admonitions gif he or she contemptuously disobeys; that archbishop, bishop, or superintendent to direct charges to the minister of that parish quhair the offender remaines, or in case there be nane, or that the minister will not execute, to the minister of the nixt adjacent kirk thereto, quha sall proceide against the said offender with public admonitiones, and gif they be contemned, to the sentence of excommunication; quhich ance being pronounced, the malicious and obstinate defection of the partie offender to be ane sufficient cause of divorce, and the said party offender to tyne and lose their tocher and *donationes propter nuptias*."

The injured party having, in terms of the statute, obtained a decree of adherence before the civil court against the offender, and having caused a charge to be given on letters of horning, (now used instead of the letters of four forms mentioned in the statute,) and the offender having been denounced rebel, and the letters duly recorded, an application is then made to the presbytery, as coming in place of the Episcopal clergy, to admonish the defender to give obedience to the decree, and failing this being done, to proceed to excommunication. If the presbytery *admonish without effect*, an action of divorce may then be raised. The course, however, now usually followed by the presbytery is to *refuse* the petition, upon which the complainer protests, that having done all in his power to comply with the requisites of the statute, he shall be entitled to proceed with the action of divorce, as if the presbytery had acted upon the petition in the manner described. The defender is charged on the decree of adherence, if within

Scotland, on fifteen days, and if furth thereof, on sixty days, and that edictally, in the usual form. When resident furth of the kingdom, the defender is called on to appear before the presbytery of the bounds where the pursuer has his domicile.

The petition to the presbytery, and their deliverance refusing to interfere, are as follows:—

158. *Petition to the Presbytery.*

Unto the Reverend Presbytery of A., the Petition of B. C.,

Humbly sheweth,

That the petitioner, upon the day of last, obtained sentence and decree in an action raised at her instance before the Court of Session against D. E., her husband, decerning and ordaining him to adhere to the petitioner, his wife, her society, fellowship, and company, and to cohabit, converse with, treat, cherish, and act towards her as a married person should do to his wife, and that during their joint lives. That the petitioner thereafter raised letters of horning at her instance against her said husband, which are dated and signeted the day of last, in virtue whereof she caused a messenger-at-arms, upon the day of last, charge her said husband to adhere to the petitioner, his wife, in terms of the said decree; and the said D. E. having disobeyed the charge, he was, upon the day of last, orderly denounced rebel, and put to the horn, conform to the said decreet, letters of horning, and executions thereof, duly registered, herewith produced. That the petitioner's said husband still continues obstinately to refuse to adhere to the society, fellowship,

and company of the petitioner, and the present application becomes necessary.

May it therefore please the reverend presbytery to admonish the said D. E., or otherwise to direct the minister of the parish of , within which the petitioner's husband resides, to admonish him publicly, to adhere to the petitioner, his wife, in terms of the decree above set forth; and in the event of his contemning the said admonition, to pronounce sentence of excommunication against him in terms of law; Or otherwise in the premises to do as to the reverend presbytery shall seem meet.

According to justice, &c.

Signed by the petitioner or her agent.

159. *Deliverance by the Presbytery.*

The presbytery having considered the foregoing petition, decline to interfere in the matters therein set forth, leaving it to the petitioner, if so advised, to adopt the necessary measures before the civil courts for the protection of her interests.

Upon this deliverance being pronounced, a protest against the proceedings of the presbytery is taken by a notary-public in name of the petitioner, and the notary takes instruments in the hands of the clerk of court, and craves extracts. An instrument of protest is then prepared in the following terms.

160. *Instrument of Protest taken by the Notary-Public.*

At the day of in presence of me, notary-public, and of the witnesses after named and designed, and hereto subscribing, compeared person-

ally F., as procurator and attorney for and in name and behalf of B. C., whose power of attorney was sufficiently known to me, notary-public, and passed with us to the personal presence of the Reverend A. B., moderator, the Reverend C. D., clerk, and the remanent members of the presbytery of A., assembled at and then and there the said F., as procurator and attorney foresaid, in terms of the statute 1573, c. 55, presented to the said presbytery a petition in name of the said C. D., in the following terms: [The petition to be inserted here verbatim:] And the said procurator and attorney having desired and required the said presbytery to grant the prayer of the said petition, they were pleased to decline to interfere in the matters therein set forth; whereupon the said procurator and attorney protested that the refusal of the presbytery to proceed in terms of the foresaid statute, as craved in the said petition, should not prevent or prejudge the said B. C. from proceeding to obtain a divorce against the said D. E., her husband, in the same manner as if the presbytery had followed the course thereby prescribed; whereupon, and upon all and sundry the premises, the said procurator asked and took instruments in the hands of me, the said notary-public, subscribing; and, at the same time, I, the said notary-public, asked and took instruments in the hands of the said clerk of said presbytery. These things were so done in open presbytery, betwixt the hours of and of the day, month, and year of our Lord respectively first above written, before and in presence of L. and M., witnesses to the premises specially called and required, and hereto with me subscribing. G. H., *N.P.*

L., Witness.

M., Witness.

An entry is made in the records of presbytery stating the nature of the application; the refusal of the presbytery to interfere; and that a notary-public, in name of the petitioner, protested, took instruments, and craved extracts.

Instead of following this course, the presbytery is entitled to adopt the measures prescribed by the statute, of admonishing the offender, and, in case of obstinacy, of proceeding to excommunication. This, however, is seldom done; and as it is apt to lead to embarrassment and difficulty, the former method seems to be preferable.

AUGMENTATION OF STIPENDS.

The statute 48 Geo. III., c. 138, (30th June 1808,) enacts, that no stipends augmented after the passing of the act shall be again augmented for twenty years; nor at any future period is a stipend to be augmented until twenty years after the date of the last decree of modification. It also provides, that all augmentations shall be in grain or victual, (unless where peculiar circumstances render it necessary to modify them in money,) according to the fiar prices of the grain or victual of which the stipend consists, as appearing from the annual fiars of the county in which the parish is situated. The highest fiar price of that county is understood, and if no fiar prices have been struck, or if the parish lies in two counties, those of two adjoining counties are to be taken.

A process of augmentation, modification, and locality of stipend, may be raised at the instance either of the minister or the patron; or the moderator of presbytery, when the charge is vacant.

By act of sederunt, of date 12th November 1825, the pursuer is required to state in the summons, "as accurately as he can, the number of inhabitants, the precise extent of the parish, and other circumstances on which he founds in support of his claim." It is of course of importance to state all circumstances which are likely to induce the Court to grant a suitable augmentation, such as, that the parish includes a royal burgh, or populous village, within the bounds—that it is a presbytery seat, or at a distance from schools, or where fuel or the necessaries of life are expensive, or that some public works, such as manufactories, distilleries, or coal-pits, have been erected in the parish, or any other local circumstances which may tend to increase the expense of living, or render the minister's duty greater, or to make his situation more important in the eye of the country. It is also proper to mention the amount of unexhausted teinds in the parish.

The parties to be called as defenders in this action are the patron, titulars, and tacksmen of teinds, heritors, liferenters, and all others having, or pretending to have, an interest in the teinds of the parish, and the moderator and clerk of presbytery. By 48 Geo. III., cap. 138, and relative act of sederunt, of date 5th July 1809, the following public notices are prescribed as an alternative mode of citing these parties to the action, instead of the mode of citation usually followed in civil causes.

Intimation must be made by the precentor from his desk, upon three several Sundays, before the congregation is dismissed from the forenoon's service. The first of these must be given not less than six weeks previous to the summons being called in Court, and the others upon two of the intervening Sundays. This must be done in presence of two of the parishioners, as witnesses, who sign

the certificate of intimation along with the precentor. The following are the forms of the intimation and certificate.

161. *Form of Intimation by the Precentor.*

Notice is hereby given that C., minister of this parish, has raised before the Court of Teinds a summons of augmentation, modification, and locality of his stipend, against the patron, titular, tacksmen of the teinds, heritors and liferenters, and all others having, or pretending to have, interest in the teinds of the said parish, which will be called in Court upon the day of next.

162. *Certificate by the Precentor.*

I, A., precentor of the parish church of B., hereby certify, that I gave public notice from my desk, before the dismissal of the congregation, upon three several Sundays, viz. upon Sunday the day of ; Sunday the day of ; and Sunday the day of , That C., minister of the said parish, had raised, (and so forth, as in the preceding Style, and then add,) Which several intimations were made in presence of D. and E., both parishioners of the said parish, witnesses to the premises, specially called and required, and hereto with me subscribing.

A., Precentor.

D., Witness.
E., Witness.

A similar notice in writing is required to be affixed to the church door by a messenger-at-arms or constable, in presence of two witnesses. This must be done on the

same day upon which the first intimation is given by the precentor. It is not necessary in this case that the witnesses should be parishioners. A certificate will be given in the following form:—

163. *Certificate by Messenger-at-arms.*

I, A., messenger-at-arms, hereby certify, that, on the morning of Sunday the day of , I affixed to the most patent door of the parish church of M. a notice in writing, bearing that C., minister of the said parish, had raised, (and so forth, as in the preceding Style.)

By the statute above-mentioned, it is enacted, that every minister insisting in a process of Augmentation, shall cite the moderator and clerk of the presbytery of the bounds, and furnish them with a statement of the amount of his present stipend, and the addition to the stipend which he means to crave, in order that the presbytery, if they shall judge it proper, may appear as parties to the process; and, by the relative act of sederunt, of date 5th July 1809, it is further enacted, that it shall be sufficient citation to the moderator and clerk of the presbytery, that the pursuer himself shall write them in terms of the statute, *provided always that such letters shall be inserted in the Presbytery records one month before the summons is called in Court.* It is of importance to observe, that these notices to the moderator and clerk of presbytery must be given whether the pursuer means to avail himself of the mode of citation allowed by the statute or not; and if this mode be chosen, the minister ought not only to transmit these notices in due time, but should also satisfy himself that they are duly recorded within the specified period, and receive

from the clerk of presbytery such a certificate as the following:—

164. *Certificate by Presbytery-Clerk of Notice having been given.*

I, A., clerk of the presbytery of L., hereby certify, that upon the day of , there were inserted in the records of this presbytery two notices in writing, addressed by the Reverend C., minister of the parish of M., to the moderator and clerk of this presbytery respectively, bearing, that he had raised, &c., (*as in the first example, with the following addition,*) and also intimating that his present stipend amounted to L. , and that he intended to crave under the said action an augmentation to the extent of L. .

A., Clerk of the Presbytery of L.

It is farther necessary that a notice, in similar terms to those already exemplified, be inserted three several times in each of the Edinburgh Evening Courant, Caledonian Mercury, and Edinburgh Advertiser newspapers, the first advertisement in each paper being at least six weeks before the date of calling the summons in Court.

When the Crown has an interest in the process, the Officers of State must be made parties to the action; they are cited in the usual manner, but upon an *induciæ* of six weeks.

So soon as the summons is raised, the pursuer must lodge, with the clerk of the Teind Court, a note stating the amount of the stipend, distinguishing how much is paid in money, and how much in victual, and in what species of victual, and the measure by which it is paid, and also stating the sum allowed for communion-elements. He must at the same time produce a rental of the parish,

distinguishing the rent of each heritor as exactly as he can.

By the statute above referred to, it is also enacted, that in the event of the presbytery entering no appearance in the action, the minister shall forthwith transmit to the moderator or clerk of the presbytery, a certified copy of the interlocutor pronounced by the Court; and it shall be competent to the presbytery, within five months after such interlocutor is pronounced, to enter an appearance, and to show, if they shall see cause, that the decree of modification pronounced is collusive and prejudicial to the benefice: Provided, that if the presbytery shall enter an appearance in such process, it shall be competent to the Court to subject the minister insisting in such process in the whole, or any part, of expenses of process incurred by the presbytery.

The legal terms at which stipends fall due to ministers are Whitsunday (15th May) and Michaelmas, (29th September.) At Whitsunday, the corns are presumed to be fully sown, and at Michaelmas to be fully reaped. If the incumbent be admitted to his charge before Whitsunday, he has right to that whole year's stipend; and if he is received after Whitsunday and before Michaelmas, he is entitled to the half of that year; because, though the corns were sown before his entry, he was admitted before the term at which they were presumed to be reaped. For the same reason, if he dies or is translated before Whitsunday, he has right to no part of that year; if before Michaelmas, to the half; and if not till after Michaelmas, to the whole. After the minister's death, his executors have right to the annat—the right which law gives to the executors of ministers of half-a-year's stipend, besides what is due to the minister himself for his incumbency, act of Par-

liament 1672, c. 13; so that if the incumbent survives Whitsunday, his executors have the half of that year for the deceased's incumbency, and the other half as annat; if he survive Michaelmas, they have that whole year for his incumbency, and the half of the next in name of annat.*

It need scarcely be mentioned, that as most of the stipends are payable in grain, they are not made available to the incumbent till the spring of the following year. The sums due by the Exchequer are paid a day or two after the terms of payment. A receipt by the minister, along with a declaration and certificate of his being alive and in possession of his living at the time the stipend became due, is presented to the Auditor of the Exchequer, who gives an order on the Royal Bank for the sum due, which, with the minister's receipt, qualifies him to get the amount.

The receipt must be as follows:—

165. *Receipt for Stipend payable by Exchequer.*

(Date.)

Received from the Cashier of the Royal Bank of Scotland the sum of , in full of the amount necessary for augmenting my stipend, as Minister of the Parish of , for the half-year ended at , conform to the annexed check.

The following is the form of the declaration and certification:—

* Erskine, b. ii. tit. 10, § 54.

166. *Declaration and Certificate to be presented by the Minister.*

I, , do hereby solemnly declare that I am the minister of at this date.

Declared before me, one of Her Majesty's Justices of the Peace for the County of , at , this of , 18 .

I, , clerk of the presbytery of , do hereby certify, that the Rev. , minister of , is alive, and in possession of said living at this date.

Given at , this day of , 18 .

MISCELLANEOUS BUSINESS.

I. MINUTES.

Minutes ought to commence with the statement, that the meeting was constituted with prayer. Then ought to follow the names of the members present, mentioning first the moderator,* then the ministers in the order of their

* Should the minister who is moderator for the current half-year be absent, the chair is taken by another of the brethren, commonly the individual present who last occupied it; but in this case, the letters P. T. must be added to the word moderator in the minute, signifying that he presides only *pro tempore*. If the regular moderator appears before the close of the sederunt, he must take the chair, and the fact that he has done so must be recorded.

ordination; and, last, the ruling elders. After this, the proceedings in the order in which they took place, the day to which they adjourn, and conclusion with prayer. Signed by the moderator and clerk.*

The commencement will run as follows:—

167. *Form of Minute of an ordinary Meeting of Presbytery.*

(Place and date.)

Which day the presbytery of A. met and was constituted with prayer. Sederunt, Rev. A. B., moderator; C. D., F. G., and H. K., ministers; and Messrs L. M. and M. N., ruling elders.

The minutes of last meeting were read, &c.

The conclusion thus—

The presbytery appoint their next meeting to be held at , the day of , which having been publicly intimated, this meeting was closed with prayer.

A. B., Moderator.
F. G., Clerk.

Besides their ordinary, presbyteries may hold *pro re nata* meetings. Provision is made by the Assembly's Regulations anent Induction of Ministers, whereby the moderator is instructed to summon such a meeting, when it so happens that no ordinary meeting of presbytery takes place within one calendar month after the presentation to a vacant charge has been lodged with him; (see p. 88.) But a moderator may at any time call a *pro re nata* meeting on a requisition from the brethren to that effect, or when any matter appears to himself sufficiently urgent to justify such a measure. When the presbytery assemble in

* Care ought to be taken that the day of adjournment be mentioned, as the presbytery cannot meet again for ordinary business without leave from a superior court, unless the adjournment be specially minuted.

this way, the first thing done is to express an opinion on the conduct of the moderator in calling them together; and in the event of their approval only, the business proceeds.

168. *Form of Minute of a* pro re nata *Meeting of Presbytery.*

(Place and date.)

Which day the presbytery of A. met in consequence of a circular letter transmitted to the members by the moderator, the tenor whereof follows. (Here take it in.) And being constituted, sederunt, &c.

It was moved, seconded, and unanimously agreed to, that the presbytery approve highly of the conduct of the moderator in calling them together on the matter stated in the circular.

(The business of the meeting then follows, after which the presbytery is concluded with prayer.)

The minute should be signed by the moderator and clerk.

In regard to such meetings, it must be understood, 1*st*, That they can be called only by the individual who is moderator for the current half-year, not by any person who may have been lately occupying the chair as moderator *pro tempore.* 2*d*, That a sufficient time must elapse between the date of the circular and the meeting called. 3*d*, That the business on account of which the meeting is summoned must be stated in the circular; and, 4*th*, That no other business whatever can be transacted excepting that for which the presbytery are brought together. Commissions from kirk-sessions to representative elders cannot be received at such meetings.

The minutes of *pro re nata* meetings are always read at the first ordinary meeting of presbytery thereafter, when, if any member who has been absent from such a meeting

has objections to state in regard to the mode in which it was called, &c., he may have an opportunity of doing so, and even of complaining to the superior court should his objections be overruled. If the presbytery approve of the minute of the *pro re nata* meeting, such approbation is recorded.

Besides such meetings as those now referred to, extraordinary meetings of presbytery can be held by the authority of a superior court; see Synod.

In regard to erasures or interlineations in the minutes, Act ix., Ass. 1706, must be attended to, whereby it is "Recommended to all the judicatories of this Church, to take special care that all the registers be correctly written, and that they allow no blottings or interlinings; and if anything shall happen to be blotted out as superfluous, that it be marked on the margin, how many words or lines are blotted out, and that it was done by the authority of the judicatory, and that it be subscribed by the moderator and clerk; and if anything be omitted, that it be written upon the margin, and subscribed by the clerk of the judicatory." Although the act does not require it, yet it would be proper that marginal additions, as well as erasures, be signed by the moderator as well as the clerk.

II. ELECTION OF COMMISSIONERS TO THE GENERAL ASSEMBLY.

The representation of the several presbyteries in the General Assembly is proportioned to the number of parishes in each. The Ass. 1694, act v., enacts, "That all presbyteries consisting of twelve parishes or under that number, shall send two ministers and one ruling elder; and that all presbyteries consisting of eighteen parishes or under that number, but above twelve, shall send three ministers and

one ruling elder; and that all presbyteries consisting of twenty-four parishes or under that number, but above eighteen, shall send four ministers and two ruling elders; and, lastly, that all presbyteries consisting of twenty-four parishes shall send five ministers and two ruling elders to the General Assembly. And it is hereby declared, that collegiate kirks, where there used to be two or more ministers, are, so far as concerns the design of this act, understood to be so many distinct parishes." The Ass. 1712, act vi., enacts, "That each presbytery whose number doth exceed thirty ministerial charges, shall send to the General Assembly six ministers and three ruling elders." The Ass. 1835, act xix., enacts, "That in future every presbytery, the ministerial charges in which shall exceed thirty-six, shall send to the Assembly seven ministers and three ruling elders; and every presbytery, whose ministerial charges shall exceed forty-two, shall send eight ministers and four ruling elders: And further, that in every case in which a Principal or Professor of Divinity in a university shall be entitled, in virtue of his office in such university, to a seat in the presbytery of the bounds, (the said Principal or Professor not holding at the same time a cure of souls within the presbytery,) the office of such Principal or Professor shall be held, as far as regards the number of representatives to be elected by the presbytery, to be a ministerial charge."

The Assembly of 1839, act vii., sess. 10, enacts as follows:—"Whereas, by the 5th act of Assembly, 1694, and the 6th act of Assembly, 1712, and the 19th act of Assembly, 1835, appointing the number of representatives for presbyteries, a proportion is observed between the number of ministerial charges in each presbytery and the number of its representatives, yet the regulations contained in the said acts are no farther expressed than to allow eight ministers and four ruling elders as the representatives of each

presbytery whose members exceed forty-two; the General Assembly, according to the design of said acts, enact and declare, that in future every presbytery, the ministerial charges in which shall exceed forty-eight, shall send to the Assembly nine ministers and four ruling elders; and every presbytery whose ministerial charges shall exceed fifty-four, shall send ten ministers and five ruling elders: And further, that in every case in which a Principal or a Professor of Divinity in a university shall be entitled, in virtue of his office in such university, to a seat in the presbytery of the bounds, (the said Principal or Professor not holding at the same time a cure of souls within the presbytery,) the office of such Principal or Professor shall be held, as far as regards the number of representatives to be elected by the presbytery, to be a ministerial charge. The General Assembly, at the same time, instruct the presbyteries of Edinburgh and Glasgow to take into their early consideration the propriety of adopting measures for their speedy division respectively into presbyteries, of an extent fitted for the most effectual execution of the peculiar duties of these Courts."

Assistants and successors are not considered as separate ministers with reference to the above acts, for they and their principals are not both reckoned members of presbytery at the same time, the assistant being only accounted as such in the absence of his principal. It is quite competent, however, for presbyteries to elect an assistant and successor as one of their representatives to the General Assembly, provided it be not the same year in which his principal is returned.

By Ass. 1768, act iv., re-enacted by Ass. 1783, act x., it is required that the election of commissioners to the Assembly by presbyteries, burghs, and universities, be made at least* forty days before the meeting of Assembly,

* In the printed forms of commissions it is stated, "that the election

and within a month preceding the first of these forty days, except the presbyteries in the Northern and Western Isles. And that the day of election be appointed at a meeting to be entered in their minutes, at least ten free days before such election; and also that on the day of election, the election be made between the hours of one and eight o'clock in the evening.

With respect to the presbyteries of the Northern and Western Isles, it is enacted by Assembly 1838, act xi., sess. ult., "That in respect of the situation of the Northern and Western Islands frequently rendering it difficult or impossible for the presbyteries in these islands to assemble on particular days during the months of winter and spring, it shall be competent for these presbyteries to elect their commissioners to the General Assembly at any time before the first day of May in each year, due notice of the intention to elect having been given fifteen days preceding."

It is moreover enacted, That all such commissions and attestations as are not conceived and attested in the very words of the form prescribed by the above act, shall be rejected. The forms enjoined by the said act are as follows.*

169. *Form of Commission by Presbyteries.*

At A., the day of one thousand eight hundred and years. The which day, the

must take place not less than forty, and not more than seventy days, before the meeting of the Assembly." But in the General Assembly, 1833, which met on the 16th of May, the commission from the University of Edinburgh was sustained although dated on the 6th of March, seventy-one days before the meeting of the Assembly, though within a month preceding the first of the forty days; thus showing, that "a month," as stated in the act, and not *thirty* days, as implied in the printed form, is the *legal* time.

* By applying to the Clerk of Assembly or Agent for the Church, presbyteries, burghs, and universities, may be furnished with printed forms which have only to be filled up. Were these always made use of, errors would be more effectually guarded against, and commissions less frequently rejected.

presbytery of A. being convened betwixt the hours of one and eight o'clock in the evening, in order to elect their representatives in the ensuing Assembly, pursuant to a resolution entered into their minutes, on the day of , did, and hereby do, nominate and appoint Mr A. B., minister at C., and Mr C. D., minister at E., and Mr F. G., ruling elder, their commissioners to the next General Assembly of this church, indicted to meet at Edinburgh, the day of May next to come, or when or where it shall happen to sit; willing them to repair thereto and to attend all the diets of the same, and there to consult, vote, and determine in all matters that come before them, to the glory of God, and the good of his church, according to the word of God, the Confession of Faith, and agreeable to the constitution of this church, as they will be answerable; and that they report their diligence therein at their return therefrom. And the said presbytery does hereby testify and declare, that all the ministers above named have signed the Formula enjoined by the 10th act of Assembly 1711; and the ruling elder above written has signed the Formula prescribed by the 11th act of the Assembly 1694: And further, that the said elder is of unblemished character, circumspect in his walk, regular in giving attendance on the ordinances of Divine institution, and behaves in other respects agreeable to his office. All which the presbytery have hereby attested, on proper information.

Extracted by C. D., Clerk.

170. *Form in the case of an after Election.*

At A., the day of years. The which day the presbytery of A. being convened betwixt the hours of one and eight in the evening, and (here the

occasion of the new election to be narrated) did, and hereby do, nominate and appoint in his place Mr G. H., minister at K., (or, if an elder, L. M., ruling elder,) their commissioner to the next General Assembly; and do hereby testify and declare, (if a minister,) that he hath signed the Formula enjoined by the 10th act of Assembly 1711; or, (if an elder,) that he is in all respects qualified in the same manner as their commissioner in whose room he is chosen, which the presbytery hereby attests, upon proper information.

Extracted by C. D., Cls.

171. *Attestation of Commission.*

At A., the day of 18 years. The which day the presbytery of A., having had the above extract of their commission to their representatives in the ensuing Assembly laid before them, they caused it to be read, and having revised and considered the same, they did approve thereof.

Attested by A. B., Moderator.
C. D., Cls.

172. *Attestation of Commission from Universities.**

At A., the day of 18 years. The which day the presbytery of A., having had before them a commission given by the university of to , to represent the said university in the ensuing General Assembly of this national church, do, in terms of the 4th act of Assembly 1720, the 7th act of Assembly 1723, and the 4th act of Assembly 1724, testify and declare that the said is a minister (or an elder) lawfully ordained; that he has signed the Formula enjoined by the 10th act of Assembly 1711;

* For Form of a Commission from a University, see Appendix.

(or, if an elder, hath signed the Formula prescribed by the 11th act of Assembly 1694,) and that he is a master of the said university of . And further, that the said commissioner is every other way qualified to be a member of the Assembly according to the acts of Assembly.

This signed by A. B., Moderator.
C. D., Cls.

173. *Attestation of Commission from Burghs.**

At A., the day of 18 years. The which day the presbytery of A., having had produced before them a commission given by the magistrates and town council of B. to C. D., to represent the said burgh in the ensuing General Assembly of this national church, with an attestation of the kirk-session of said burgh, conform to the direction of the 9th act of Assembly 1718; act 4th of Assembly 1720; and act 4th of Assembly 1724; do, in terms of the foresaid acts, likewise testify and declare that the said C. D. is an elder lawfully ordained, and that he has signed the Formula prescribed by the 11th act of Assembly 1694; and likewise that he is (a residenter in the said burgh,) or, (an heritor in the said burgh), or, (an heritor in the bounds of the presbytery of A., within which the said burgh lies,) or, (has formerly resided and officiated as an elder in the said burgh,) or, (presbytery of A., within which the said burgh doth lie.) And further, that the said commissioner is every other way qualified to be a member of the Assembly, according to the acts of Assembly.

This is signed by the moderator or clerk.

* For Form of Commission from a Burgh, see Appendix.

In addition to the attestations formerly required for ruling elders representing burghs and presbyteries, the General Assembly of 1834, sess. ult., enacted and ordained, "That no ruling elder shall be deemed qualified to be chosen or to sit as a commissioner in any presbytery, synod, or General Assembly of this church who is not *bona fide* an acting elder in the congregation in which he holds office; and that in all commissions in favour of ruling elders as commissioners to presbyteries and synods, it shall be certified by the kirk-session that the commissioner is *bona fide* an acting elder of their congregation; and that alongst with every commission in favour of a ruling elder as commissioner to the General Assembly, there be produced a certificate to the said effect by the kirk-session of which he is a member, otherwise the commission to be rejected; declaring always that the provisions of this act shall not be construed to extend to the case of teaching elders or theological professors in universities, inasmuch as their proper and peculiar function consists not in ruling in a particular congregation, but in teaching."

The following is the form of certificate which the elder must transmit to the Assembly along with his commission, it being specially attended to, that it is the certificate itself, and not an extract from the minutes of session, that must be lodged along with the commission.

174. *Form of Certificate.*

At the day of 18 years. Which day the kirk-session of the parish of being met and constituted; sederunt, the Rev. , Moderator, and (naming them), elders. The said session did, and hereby do, certify and declare that A. B., (describing him,) ruling elder and member of the said session, is *bona fide* an acting elder of their congregation.

(Signed) , Moderator.
, Clerk.

The Church in India is represented in the General Assembly by a minister and elder. The Assembly 1845, sess. 15, on the recommendation of a committee on India churches, agreed that the following should be used as the form of commission for the return of such representatives.

175. *Form of Commission from India.*

"The kirk-session of being met and duly constituted this day of , in the year eighteen hundred and ; Sederunt , resolve, in terms of the charter given to the Presbyterian Church in India by the General Assembly 1814, to proceed to the election of a minister and elder to represent the Church in India at the General Assembly of the Church of Scotland, indicted to meet at in the month of May, eighteen hundred and , and did, and hereby do, with the concurrence of the kirk-sessions of and , nominate and elect the Reverend and , elder, to be their representatives in the said Assembly, willing them to proceed thereto, and therein to sit, vote, and deliberate in all matters coming before it, for the glory of God and the good of the church. And they hereby attest that M. has signed, or is ready to sign, the Confession of Faith and Formula of this church, and is an acting *bona fide** elder in the congregation of .

, Moderator.

, Clerk.

* This provision when the representative elder is, at the time of his election, a *bona fide* acting member of one of the kirk-sessions of the church in India; but if the representative elder resides at home, and is not an acting member of any kirk-session in India, the said elder must furnish the usual *bona fide* certificate.

III. PRESBYTERIAL VISITATIONS.

Presbyterial visitations, not having some particular object in view, have long fallen into disuse. Should any cause arise rendering, in the judgment of the presbytery, such visitations necessary or expedient, the presbytery will cause intimation to be made of the appointed day for the visitation of the parish from the pulpit, immediately after the forenoon's sermon on Sabbath, ten days preceding the day for the visitation. The edict will bear, in the first place, the date of meeting and resolution of the presbytery to hold the visitation, and will then summon the different parties in the parish interested to wait on the presbytery. On the day of meeting one of the members of the presbytery will conduct the service, and after that the business for which the presbytery has met will be proceeded with. The minute will bear, that the presbytery met at such place and time, and was constituted. That then the congregation having convened, Mr A. B. went to the pulpit, and preached from , and thereafter the proceedings of the presbytery. Much of the information which it was the object of such presbyterial visitations to acquire may now be obtained by answers to queries which, by act xvi., Assembly 1848, presbyteries are instructed to transmit to the ministers within their bounds. The act is as follows :—

Act anent Privy Censures.

"The General Assembly, with the concurrence of a majority of presbyteries, did, and hereby do, enact and ordain that presbyteries shall obtain answers to the following queries from the different ministers within their bounds, and shall record these annually in their presbytery records, and transmit a copy thereof to the synod:—

"1. What is the stated number of diets of public worship on the Sabbath in your parish?

"2. Which is the usual form of divine worship?

"3. Was the sacrament of the Lord's Supper dispensed once, at least, in the course of last year?

"4. If the sacrament of the Lord's Supper was not dispensed, what was the cause of this?

"5. What is the number of elders in the parish?

"6. Is there any regular visitation or catechising of the parishioners?

"7. Is there any deficiency in the means of religious instruction in consequence of distance or want of accommodation?

"8. Is there adequate provision for the education of the young?

"9. Is there any Sabbath-school in the parish?

"10. What parochial records or registers are kept?

"11. Are there any mortifications for educational purposes; if so, what are they, and how managed?

"12. Is a collection made in the parish for the several schemes of the church?"

IV. REVISING OF SESSION REGISTERS.

By Assembly 1700, act ix., it is declared that the General Assembly, considering the great import to this church that all its registers be exact and well kept, do require all provincial synods and presbyteries to be careful in revising of the registers of the judicatories under their immediate inspection; and that they appoint a competent number of the most fit and experienced ministers for that work; and when they find nothing to challenge in any register, they give the same the attestation following.

176. *Form of Attestation as applicable to Session Records.*

The presbytery of having heard the report of those appointed to revise the session-records of B., and having heard the remarks thereupon, and the said session's answers thereto; and it having been inquired by the moderator, if any other had any complaints to make against the actings of that session, and nothing appearing censurable, ordered the clerk to attest this in the said session-records.

But if there be anything truly censurable in the said book, and in itself material in respect to discipline, that it be recorded as censurable both in the presbytery book and attestation.

In practice it has not been usual generally to bring up all the session-records annually to the presbytery, and it would be found difficult to enforce the regular observance of such an arrangement; but the same end may be in great measure attained, by making it an injunction on the committees appointed for the examination of the parochial schools, to make, at the same time, a careful examination of the state of the registers, and to report thereon.*

V. SEPARATE REGISTER.

By Ass. 1744, act iv., every presbytery is enjoined to keep a separate register, in which shall be entered the names and parish churches of all the ministers then members of presbytery, or who shall thereafter be admitted into it; with a particular account if they are married, and when; when they were ordained or admitted to a benefice in the Church of Scotland—the names of their children now alive—the day, month, and year of the birth of such

* The registers which ought to be called up are, 1. Minute-book of session; 2. Record of proclamation and marriages; 3. Record of births and

as are under sixteen—the names of such as may afterwards be born—their deaths, and the deaths of ministers within their bounds. They shall also record the names of the widows of ministers residing at the time of their deaths or marriages within their bounds. These and all other facts deemed by the Trustees of the Widows' Fund, necessary to be recorded, shall be regularly entered in the register, signed by the moderator, the clerk, and the minister concerned. By Ass. 1745, act iv., each minister is required duly to report to the presbytery, either by himself or by letter, any alteration which shall happen from time to time in his family, at the first diet immediately subsequent to such alteration, or as soon as he possibly can.

By Ass. 1757, act iv., it is further enacted, that the separate registers be divided into as many parts as the respective presbyteries consist of parishes; and that the facts respecting the ministers and vacancies of every parish be stated under its own proper head or division, marked with the name of the parish. The following will give a general idea of the manner in which such registers, according to the above acts, should be kept.

177. *Form of entry in Register when a Minister is Inducted.*

Parish of B.

That the vacancy in the church and parish of B., occasioned by the death of the fore-mentioned C. D., was filled up by the ordination or induction of F. G., formerly minister of the church and parish of H., in the presbytery of K., on the day of one thousand eight hundred and ; that the fore-mentioned F. G. was ordained minister of the church and parish of H. by the presbytery of K., on the day of one thousand eight hundred and ;

baptisms; 4. Record of burials; 5. Record of the names of communicants and male heads of families, if a separate book is kept for this purpose.

that he was married to M. N. the day of , by whom he has the following children alive, P., born , (specifying the dates of birth if under sixteen,) as appears from the separate register of the presbytery of K., is attested and signed at B., in presence of the presbytery, on the day of , by

F. G.
Q. R., Moderator.
S. T., Clerk.

178. *Attestation by Presbytery of Minister's Marriage, &c.*

That the above-mentioned F. G. was married to M. N., on the day of , is attested, and signed at , on the day of , by

F. G.
Q. R., Moderator.
S. T., Clerk.

That the above-mentioned F. G. and M. N. had a son born on the day of , named P., is attested and signed, &c., *ut supra.*

That A. B., daughter (or M. N., wife) of the above-mentioned F. G., died on the day of as attested, &c.

179. *Attestation by Presbytery of Minister's Death, &c.*

That the church and parish of B. became vacant, by the death of the fore-mentioned F. G., (or by the translation of the fore-mentioned F. G. to the church and parish of ,) (or by the deposition) (or by the resignation of the fore-mentioned F. G.,) on the day of one thousand eight hundred and , is attested, and signed at , in presence of the presbytery, on the day of , by

Q. R., Moderator.
S. T., Clerk.

VI. WIDOWS' FUND.

In order to furnish the Trustees of the Widows' Fund with the information necessary for conducting the business of the Fund, presbyteries are appointed to transmit a report to the clerk of the trustees at Edinburgh, on or before the 1st day of February in each year, the form of which is here given.

180. *Presbytery of* *Report to the Trustees of the Ministers', &c., Widows' Fund.*

The presbytery of do report to the Trustees of the Fund for a Provision for the Widows and Children of the Ministers of the Church, and Professors in the Universities, of Scotland, concerning the facts relative to the hundred and year of the said Fund, computed from the twenty-second day of November one thousand eight hundred and at twelve o'clock noon, to the twenty-second day of November one thousand eight hundred and at twelve o'clock noon, as follows, viz.—

1. List of the ministers admitted to parishes in this presbytery within the year as above computed, who *were formerly* ministers of the church, or professors in a university, of Scotland, and, as such, contributors to the Fund,—showing as under:—

1. Names of the Ministers.	2. Former Presbyteries.	3. Former Parishes.	4. Present Parishes.	5. Dates of their Admission.

This list respects even such ministers as may have been translated from one parish to another within the bounds of the same presbytery.

2. List of ministers admitted to parishes in this presbytery within the year as above computed, who, *before said admission, were not* ministers of the church, or professors in a university, of Scotland, and, as such, contributors to the Fund,—showing as under:—

1. Names of the Ministers.	2. Parishes.	3. Dates of their Admission.	4. Age, viz., Forty years, or under.	5. Bachelors, or Married.	6. Widowers with or without a child or children.

In order to ascertain the facts falling to be entered in column 4 of this, and column 6 of the immediately succeeding list, the Intrants must produce the usual legal evidence of their birth, and the dates must be entered and subscribed by them in the separate register; or, if they cannot produce, or decline to produce, such evidence, they must subscribe a declaration in the separate register, bearing, as the case may be, that *they were*, or that *they were not*, forty years of age at the time of their admission—or, in the case of assistants and successors, at the time of their coming to the full enjoyment of their benefices.

3. List of the ordained assistants in this presbytery who, within the year as above computed, came to the enjoyment of their full benefices,—showing as under:—

1. Names of the last incumbents.	2. Names of the ordained Assistants.	3. Parishes.	4. Causes of their coming to the full Benefice.	5. Time when.	6. Age at said time, Forty years or under.	7. Bachelors or Married.	8. Widowers with or without a child or children.

4. List of the Ministers, contributors to the Fund, who were translated within the year as above computed, from this presbytery, or from one parish to another within the bounds of it,—showing as under:—

1. Names of the Ministers.	2. Late Parishes.	3. Places to which they were translated, viz.		4. Time of their admission to New Parishes.
		Parishes.	Presbyteries.	

5. List of the Ministers, contributors to the Fund, who did marry within the year as above computed, and who, at the time of their marriage, were members of this presbytery, or did reside within the bounds of it,—showing as under:—

1. Names of the Ministers.	2. Present or late Parishes.	3. Presbyteries of which they are or were members.	4. Dates of their respective Marriages.	5. To an Annuitant or not.

If the marriage of a contributor to an annuitant shall be reported, the presbytery must subjoin a note to this list, containing her name, and the name and designation of her former husband, and the dates of the births of such of her children by him as may have been under sixteen years of age at the time of her last marriage.

6. List of the Ministers, contributors to the Fund, who died within the year as above computed, who, at the time of their death, were members of this presbytery, or did reside within the bounds of it,—showing as under:—

1. Names of the Ministers.	2. Late Parishes.	3. Late Presbyteries.	4. Time of their Death.	5. Names of their Widows.	6. Names and ages of their children.	7. Names and designations of the heir or heirs of the deceased Minister, if he left no widow or child.

If the children are above twenty-one years of age, it will be sufficient to state this fact in column 6; but the exact date of birth of every child under that age, at the date of the father's death, must be given.

7. List of the several Benefices within the bounds of this presbytery which were vacant at the commencement of the year, or which became vacant during the currency of the year as above computed,—showing as under:—

1. Names of the Parishes.	2. Names of last Incumbents.	3. Dates of the Vacancies.	4. Time when the Vacancy was intimated to the Collector and Heritors.	5. Causes of the Vacancies.	6. Time when supplied.

8. List of the Ministers, contributors to the Fund, who were members of this presbytery, or who did reside within the bounds of it, on the last day of the year, as above computed,—showing as under:—

I. CONTRIBUTORS, BEING MEMBERS OF THE PRESBYTERY.

1. Names of the Ministers.	2. Present or late Parishes.	3. Present or late Presbyteries.	4. Bachelors, married, or widowers.
II. CONTRIBUTORS RESIDING WITHIN, BUT NOT MEMBERS OF, THE PRESBYTERY.			

It is requested that the names of the two classes of contributors under this list, may be arranged *according to their seniority as contributors to the fund*, as this is the rule according to which the lists in the office of the fund are framed.

9. List of the Widows of ministers and professors, contributors to the Fund, who died within the year as above computed, and who, at the time of their death, did reside within the bounds of this presbytery,—showing as under:—

1. Names of the Widows.	2. Relicts of	3. Late Ministers or Professors of	4. In the Presbyteries or Universities of	5. Time when the Widows died.	6. Names and Ages of their late Husband's Children.

In case any of the deceased widows shall have been married oftener than once, it is to be noted that the children, to whom column 6 refers, are her children only *by her last husband.* The precise dates of birth of any of them under sixteen years of age, are to be given.

10. List of the Widows of Ministers and Professors, contributors to the Fund, who did marry within the year as above computed, and who, at the time of their marriage, did reside within the bounds of this presbytery,—showing as under:—

1.	2.	3.	4.	5.	6.	7.
Names of the Widows.	Relicts of	Late Ministers or Professors of	In the Presbyteries or Universities of	Time when the Widows married again.	To contributors or not.	Names and Ages of their former Husbands' Children.

The precise dates of the births of the children must be given in column 7, if they were under the age of sixteen at the time of the widow's marriage.

11. List of all the Widows of Ministers and Professors, contributors to the Fund, who did reside within the bounds of this presbytery on the last day of the year as above computed,—showing as under:—

1.	2.	3.	4.	5.
Names of the Widows.	Relicts of	Late Ministers or Professors of	In the Presbyteries or Universities of	Remained Widows, or married again.

The presbytery is requested to add a note under this list, of any widows known to them as residing furth of Scotland, with the places of their residence.

12. List of the Children of Ministers and Professors, contributors to the Fund, now under eighteen years of age, whose fathers died without leaving widows, residing within the bounds of this presbytery on the last day of the year as above computed.

1.	2.	3.	4.
Names of the Children.	Father's Name.	Late Minister or Professor of	Presbytery or University of

The above facts relative to the hundred and year of the Fund for a Provision for the Widows and Children of the Ministers of the Church, and Professors in the Universities, of Scotland, computed from the twenty-second day of November, at twelve o'clock noon, one thousand eight hundred and , to the twenty-second day of November, one thousand eight hundred and , at twelve o'clock noon, are attested in name and by appointment of the presbytery of , the day of , one thousand eight hundred and , by

Moderator.
Clerk.

Presbyteries will observe that ministers entitled to the benefits and subject to the burdens of the scheme, are such only as are or have been ministers of legally constituted parishes; and no others need be returned by presbyteries. Names of assistants and successors in parishes, however, are to be given, (though not, as such, contributors,) the letters A and S being added. The supreme

court has decided that even ministers of parishes erected by the Court of Teinds, under the act 7 and 8 Victoria, are not, as such, contributors, provided the erection shall have taken place subsequently to their admission. The following instructions must also be attended to:—

1. That the blanks in the *title* and *attestation* of the return must be filled up in words, and not in figures.

2. That when no facts have occurred requiring insertion in any of the lists—as, for instance, List 1—the word *none* is to be inserted in the first column under the list.

3. That a return must be made under List 8, although the facts respecting the same may remain as in the preceding year.

4. That when ministers and professors who have ceased to have right to their benefices or offices do not reside within the bounds of the presbytery or university of which they were members, it is necessary that they should procure an extract of the state of their families from the separate register of the said presbyteries or universities, and cause enter the same in the separate register of the presbytery within whose bounds they reside, and cause also enter into that register such variations respecting their families as shall happen thereafter, that the presbyteries may have proper and certain *data* for ascertaining the facts in their reports concerning such ministers or professors.

5. That the report of each year, computed from the 22d November, twelve o'clock at noon, to the 22d November, twelve o'clock at noon, is appointed by the new statute to be transmitted to the trustees' clerk, residing

at Edinburgh, on or before the first day of February yearly, under the forfeiture, in case of neglect, of £10 sterling; with this proviso, That presbyteries in the Western and Northern Isles shall not be subject to the said forfeiture, in case they transmit their reports on or before the first day of May yearly; but it is hoped they will not avail themselves of this indulgence, except where it is unavoidably necessary, as great inconvenience arises from reports being delayed beyond February.

6. That for the better securing the more regular transmission of reports, the General Assembly 1745 did ordain, "That every presbytery shall meet annually on such day, betwixt the 22d November and the 22d of December, as they shall respectively judge most convenient, (the presbyteries in the Western and Northern Isles excepted,) and shall at such meeting prepare and transmit their respective lists for the preceding year, to the end the trustees may be the better enabled with accuracy to carry on the scheme."

7. It is hoped and expected, that presbyteries and universities will carefully observe the directions respecting the keeping of their separate registers, as contained in the "Account of the rise and nature of the fund."

8. Universities are desired to give particular attention to what is, *inter alia*, enacted by the statute 1778, respecting the tax of £3, 2s., payable out of every half-year's vacant salary, viz.,

"That all the persons concerned in the payment of the vacant salaries may be duly apprised of the aforesaid tax, the principals of universities, or their respective clerks, are hereby required, within three calendar months after these rates shall from time to time fall due, to intimate

the same to the persons who are liable in the payment of the vacant salaries; which intimation shall be made by a writing or letter delivered to them personally, or left at their dwelling-houses, in the presence of two witnesses; and the said principals or their respective clerks are hereby further required to acquaint the general collector or receiver hereinafter named, of their having made such intimation, by a letter, bearing the time thereof; and if they shall neglect so to do, they shall be liable for the full expenses and damages which the fund may sustain through such default."

"That if the principals of universities, or their respective clerks, shall neglect to intimate, from time to time, the sums that shall fall due out of vacant salaries within the time, and to the persons hereinbefore particularly appointed, it shall and may be lawful for the said general collector or receiver to charge them with horning, for compelling payment of the damages and expenses which the fund may sustain through such default."

Lastly, Presbyteries are warned, that by the new statute in 1814, it is provided, "That as often as any portion of vacant stipend shall occur in any parish within the bounds of any presbytery of the Church of Scotland, the moderator of such presbytery is hereby expressly required, within three months (or, if the parish be situated within the Western or Northern Isles, within six months) after the terms of Whitsunday or Michaelmas, at which such vacant stipends shall become due, to make intimation thereof, by a writing under his hand, to the general collector of the said fund, at his office in Edinburgh, which writing shall also contain an attested list of the several heritors, or others by whom such stipend is payable, and of the proportions thereof payable by each of them, according to the best of the knowledge and belief of such

moderator, after having used all the means in his power to procure information. And such moderator is also hereby required, within three months after such vacant stipend shall become due, to give intimation or notice in writing to the several heritors, and others by whom the same may be due, that they are required, under the authority of this act, to make payment thereof to the said general collector, or his deputies or factors demanding the same, on or before the first day of May immediately following. And if the moderator of any presbytery shall in any case neglect to make such information in manner hereinbefore mentioned, such moderator, and the other members of such presbytery, shall in that event be liable, and they are hereby required, to pay and make good to the said general collector the whole of such vacant stipend at their own expense. But in such event, such moderator, and other members of the presbytery becoming liable for such payment, shall be entitled to levy, uplift, and receive such vacant stipend from the respective heritors and others by whom the same may be due, and to grant receipts for the same, and shall have the same remedies for recovery thereof as the said general collector would have had."

In connexion with this subject, it is deemed advisable to give the notifications which will also be found at the conclusion of the trustees' report.

"Contributors being frequently at a loss to know in what terms, and within what time, they should signify their option of the annual rate to which they choose to be subject, and many mistakes having happened with respect to the certificates granted to widows in order to their receiving their annuities, forms of both these deeds

are subjoined, and copies of the report ordered to lie in the Trustees' Hall, to be given *gratis* to the contributors."

In addition to this, it would be of essential service to entrants, if the presbytery-clerks were to warn ministers, at the time of their induction, of the danger of omitting to intimate their choice of a rate to the collector within the time limited by act of Parliament.

[Let there be no figures, either in the notification or certificates, but dates and sums expressed in words at length.]

181. (1.) *Form of a Notification, intimating a Minister's Election of the Annual Rate to which he chooses to be subject.*

I, , admitted, upon the day of , one thousand eight hundred and years, minister of , in the presbytery of , and shire of , do hereby, in consequence of an act of the nineteenth year of the reign of His Majesty George the Third, for the better raising and securing a fund for a Provision for the Widows and Children of the Ministers of the Church of Scotland, &c., and of another act of the fifty-fourth year of his said Majesty's reign, relating to the same subject, give notice to the Trustees under the said acts, that I make choice of, and do subject myself to, the yearly rate of *, lawful money of Great Britain, and to the other pay-

* The four annual rates, one of which must be inserted in the above blank, are three pounds three shillings; four pounds fourteen shillings and sixpence; six pounds six shillings; seven pounds seventeen shillings and sixpence.

N.B.—It is enacted by the statute now in force, that every minister having a benefice in the Western and Northern Isles, must signify his election of one or other of the above annual rates, on or before the 26th of January that shall first happen after he has had right to the fruits of his benefice for one year; and every other minister, on or before the 26th

ments consequent thereupon, in virtue of the said acts of Parliament, and this my option. And I appoint this notification to be delivered by any person to whose hand the same may come, at the General Collector or Receiver's Office in Edinburgh. In witness thereof, I have written and subscribed these presents, at , the day of , one thousand eight hundred and years.

When the contributor has been an ordained assistant and successor, the notification should run thus—

182. (2.) *Notification.*

I, , admitted, upon the day of , assistant and successor to Mr , late minister of , in the presbytery of , and who came to the full possession of the said benefice at the term of one thousand eight hundred and , in consequence of the death of the said Mr on the day of preceding, do hereby, in consequence, &c., (as in preceding Form.)

183. (3.) *Form of a Certificate to be granted to an Annuitant.*

At , the day of , one thousand eight hundred and years. Which day, widow of , late minister of , within the presbytery of , presently residing within the parish of , within the presbytery of , did compear before me, , minister of the said parish of

January after he has had right to his benefice for one half-year; and every professor in any of the universities, on or before the 26th of January after he has held his office four calendar months; and if any minister or professor neglect to do so, he shall be adjudged to have made his election of the annual rate of £4, 14s. 6d., and shall be liable to pay the same during his life.

, and before us, elders of the said parish; and declared, that she has continued a widow since the death of the , her husband. We therefore hereby certify, that the said is alive, and, to the best of our knowledge, has remained unmarried since the death of her said husband. In testimony whereof, we have subscribed this certificate, place and date foresaid.

Minister.
Elder.
Elder.

If the certificate shall be dated on the 26th of May, it must be expressed as follows:—"At , the twenty-sixth day of May, one thousand eight hundred and years, after twelve o'clock noon. Which day," &c., (as above.)

When the parish where the annuitant resides is vacant, or if the incumbent is from home, she must compear before the minister of the next adjacent parish, who, together with two elders of the parish where she resides, must give her a certificate in the above form, changing only the clause of her compearance thus:—"——— did compear before me, , minister of the parish of , the parish of being vacant, (or , the minister of the parish, being from home,) and before us, and , elders of the said parish of , and declared," &c., (as above.

It is scarcely needful to say, that the same Forms, *mutatis mutandis*, must be observed with respect to Professors in Universities and their widows; but let it be carefully remarked, that there must be no figures, either in the notifications or certificates, but every fact must be inserted in words at length.

As the children of contributors now receive advantages

from the New Fund, under the restrictions specified in the last act of Parliament, which are to be continued with their respective families till the youngest child in each of them shall have attained the age of eighteen complete, it is now of more importance than at any former period, that presbyteries shall attend to the accuracy with which the births of the children of contributors are inserted in their separate registers, as well as in the annual report to the trustees, which contain the attestation of the death of their parents respectively.

184. (4.) *Form of a Certificate, in case of the Death of a Contributor leaving a Child or Children under Eighteen years of age, but no Widow.*

At , the day of , one thousand eight hundred and , we, the minister and two elders of the parish of , do hereby certify, That , child (or children) of the deceased Mr , minister of , in the presbytery of , (or of the deceased , professor of in the university of ,) is now alive, and residing in this parish. In witness whereof, we have subscribed this certificate, place and date foresaid.

Each contributor is entitled to a copy of the report for his own private use, which may be had upon sending to the Trustees' Hall for the same, but the most convenient way is for the commissioners from presbyteries and universities to the General Assembly to call at the Hall, where they will receive, upon a proper receipt, copies equal to the number of ministers or professors within their respective presbyteries or universities, by which means they will be furnished with them sooner than in the ordinary course."

VII. TRANSMISSION OF OVERTURES.

It is competent for any member of presbytery to move the transmission of an overture on any particular subject to a superior court. Of his intention to do so, it is usual to give notice at a previous meeting. If the overture is adopted by the presbytery, it is transmitted in the form of an extract from the minutes.

The minutes may be as follows:—

185. *Meeting when Notice of Overture is given.*

Mr A. B. gave notice that he would, at next meeting of presbytery, move the transmission of an overture to the general assembly (or synod) on the subject of

186. *Meeting at which Motion is made.*

Agreeably to notice given at last meeting, Mr A. B. now moved that the presbytery transmit the following overture to the general assembly (or synod.)

(Here take it in.)

Which motion having been seconded, the presbytery unanimously agreed to transmit the said overture.

Or, (if the presbytery are not unanimous,)

Which motion having been seconded, it was also moved and seconded, that this overture be not transmitted. It was agreed that the state of the vote should be *transmit* or *not*, and the roll being called and votes marked, it carried *transmit*. Whereupon the presbytery did, and hereby do, transmit an overture to the General Assembly in the above terms.

The extract may be given thus—

(Place and date.)

The presbytery of being duly met and constituted; Sederunt, Mr A. B., Moderator, &c.

Inter alia,

(Here take in the proceedings of the second meeting, Style No. 186.)

Extracted from the records of the presbytery of A. by E. F., Clerk of Presbytery.

VIII. REFERENCES FROM KIRK-SESSIONS.

While it is competent for kirk-sessions, and also their duty, to refer to the superior court for advice in any difficulty which may occur, there are certain cases mentioned in Form of Process, chap. vi., and already noticed at p. 24 of this work, which, by the law of the Church, they are bound to refer to the presbytery. It is the usual practice of presbyteries to remit such cases to the kirk-session in which they originate, and the following is given as the form of a minute of presbytery in regard to those matters.

187. *Minute in regard to a Reference from a Kirk-Session.*

There was laid on the table the following reference from the kirk-session of . (Here take it in.) The presbytery remit this case to the kirk-session, with instructions to proceed therein according to the laws of the Church.

If the accused party or parties be summoned by the kirk-session to attend the presbytery, they will be called after the reference is read, and if they appear, they will be dealt with according to the nature of the case. If they have previously made a confession before the inferior court, they will be solemnly rebuked by the moderator, after

which the presbytery will remit them to the kirk-session for farther censure, and for absolution on their giving proper signs of repentance. If they have not previously acknowledged guilt, they will be dealt with by the presbytery in order to confession, and if they still persist in a denial, the presbytery will remit the case to the kirk-session for probation, instructing them, however, after probation has been led, again to bring the matter before the presbytery.

It is quite unnecessary to give any forms for such cases, the method of procedure being so very obvious.

IX. COMPLAINTS AND APPEALS FROM KIRK-SESSIONS.

As formerly stated at p. 30, any member of a kirk-session has a right to complain to the presbytery if he disapproves of the session's judgment; and a party, if he considers himself aggrieved by the sentence of the inferior court, may appeal.

When a complaint or appeal is brought up, the presbytery, in the first place, orders the extract minutes of session to be read. If the complaint or appeal is found competent, parties are then called, and their compearances recorded, after which the presbytery proceed to hear them in the following order—First, the complainer or appellant, by himself or counsel, the appellant taking the precedence of the complainer, if there be both an appeal and complaint in the cause. Next, the kirk-session are heard in defence of their sentence, and afterwards the complainer or appellant in reply. Parties are then removed, the court deliberates, and, after judgment, parties are again called, and sentence intimated.

188. *Form of Minute when Appeal is brought up.*

Compeared A. B., who gave in extract minutes of the kirk-session of C., in regard to his appeal against sentence of the said kirk-session, of date ; which extracts having been read, parties were called, when there appeared A. B. for himself, D., moderator, and E. and F., members of the kirk-session of C.

A. B. was then heard in support of his appeal, D. in defence of the sentence of the kirk-session, and the said A. B. in reply.

Parties being removed, the presbytery (here give the judgment.)

Parties were then called in, and sentence intimated.

X. DISSENTS, COMPLAINTS, AND APPEALS.

As what is stated on this subject under the division "Kirk-Session" applies particularly to presbyteries, it is considered unnecessary to do more than refer to that part of the work; *vide* pp. 30, 31.

XI. OVERTURES TRANSMITTED BY THE ASSEMBLY.

In terms of the Barrier Act,* no new law can be enacted by the General Assembly, nor can an existing one be rescinded, without the consent of a majority of presbyteries. With the view, therefore, of obtaining the mind of the church on any general measure approven by a majority of the supreme court, the Assembly transmit an overture on the subject to the several presbyteries, who are instructed

* See page 312.

to consider the same, and send up their opinions thereon to the next General Assembly.

It is of the *greatest importance* that presbyteries punctually attend to this instruction of the Assembly; and, as by delaying the consideration of the overtures transmitted to them until it be near to the time of the Assembly's meeting, they are prevented from doing full justice to the subject, or perhaps from sending up any opinion at all, it is believed that the object of the Assembly will be most speedily accomplished, and the good of the church most effectually attained, by presbyteries taking up such overtures as soon as possible after they receive the printed acts in which they are contained; and, in those cases where the presbytery is large, or the overtures numerous, by appointing a committee, or committees, whose business it shall be to give them a full consideration, and to report in sufficient time to enable the presbytery to come to a deliberate judgment in the matter, that the same may be transmitted to the Assembly.

It ought to be understood, that those presbyteries only who approve of an overture *simpliciter*, are reckoned by the Assembly among the number favourable to the measure being passed into a law of the church.

SYNOD.

PROVINCIAL SYNODS are composed of the members of the several presbyteries within the bounds prescribed to them by the General Assembly; and neighbouring synods, *i. e.*, those whose boundaries are contiguous, have the power of sending each a minister and ruling elder, as corresponding members. Thus, the synods of Fife, Perth and Stirling, Glasgow and Ayr, and Merse and Teviotdale, correspond with the synod of Lothian and Tweeddale.* The synod is the intermediate court between the presbytery and General Assembly, and, unless express instructions to that effect be given in any case by the Assembly, or it should so happen that there be no intervening meeting of synod, no business can be brought from the presbytery direct to the General Assembly. It belongs to synods to hear and judge of all overtures, references, complaints, and appeals brought up from the inferior court, and generally to review the conduct of that court, by examining the minutes of its proceedings, and otherwise. And as it is competent for a presbytery, so also for a synod, to transmit an overture on any subject to the supreme court.

I. COMMISSIONS, ETC.

189. *Form of a Commission to Corresponding Members.*

At , the day of one thousand eight hundred

* The times and places of meeting of the various synods will be found at pp. 57 and 58.

and . Which day and place the synod of having met and been constituted, did, and hereby do, nominate and appoint the Reverend A. B., minister at C., and C. D., ruling elder, their commissioners to correspond with the reverend synod of at its ensuing meeting.

Willing them to repair in due time thereto, attend the several diets thereof, and consult, vote, and determine in all matters that shall come before the said synod, to the glory of God, and for the good of the church, according to the word of God, the Confession of Faith, and acts and constitution of this church; and that at next meeting of this synod, they report or certify that they have fulfilled this appointment.

Extracted from the records of the synod of by

G. H., Synod-Clerk.

Upon the production of this commission, the names of the corresponding members are added to the roll of the synod to which they are sent. The following certificate of their attendance may be procured, if considered necessary.

190. *Certificate of Attendance.*

That the Reverend A. B., minister at C., and C. D., correspondents from the reverend the synod of , did, in terms of their commission, attend the synod of on the days of , as corresponding members thereof, is attested by

G. H., Synod-Clerk.

II. PETITIONS TO COMMITTEES, ETC.

At the first meeting of each synod a committee is ap-

pointed, consisting generally of all the members present, for the purpose of receiving all petitions for the transmission of bills, overtures, references, and appeals, and considering the same. Petitions for transmission of business are made to this committee according to the following forms.

191. *Petition to Committee for the Transmission of an Overture.**

Unto the Committee on Overtures, &c., appointed by the Synod of

The Petition of A. B., Minister of C.,

Humbly sheweth,

That your petitioner herewith presents an overture regarding *(state the subject)* which he prays the committee to transmit to the synod for consideration.

May it therefore please the committee to transmit the said overture accordingly.

According to justice, &c.

A. B.

192. *Petition to Committee for Transmission of an Appeal.*

Unto the Committee appointed by the Reverend the Synod of , for Bills, References, Appeals, &c.,

The Petition of A. B., Minister of C.,

Humbly sheweth,

That your petitioner having found it necessary to appeal from a sentence pronounced by the presbytery of , and having lodged his reasons in due time with the clerk of that court, now lays on your table a copy of the said reasons, together with extracts of the minutes of the proceedings to which they refer, in

* It is believed that the general practice of this committee is to receive overtures without any accompanying petition.

order that they may be transmitted to the synod for their consideration.

May it therefore please the committee to transmit the said papers accordingly.

According to justice, &c.

A. B.

Complaints and references must likewise be given in by petition, for the form of which the foregoing Style will be a sufficient guide.

193. *Report of the Committee on Bills, Overtures, &c.*

The committee having met, and been duly constituted with prayer, by the Reverend in the chair; the following overtures were laid before the committee, all which having been examined, the committee agree to transmit the same to the synod, viz.:—

The following appeals (or complaints, or references) were given in, and these the committee also agree to transmit, viz., (or otherwise, as the case may be.)

K. L., Convener.

Should the committee refuse to transmit any papers, it is competent for the party to appeal to the synod.

III. PRESBYTERY RECORDS.

The duty of revising presbytery records* is likewise performed by a committee or committees. After examining these records they report their proceedings to the synod, who thereupon attest the books, if found correct, or direct

* The records which ought to be brought up to the synod are the Minute-Book of Presbytery, and the Separate Register.

them to be corrected if anything is amiss. The following form of an attestation is given in Ass. 1700, act ix., which may be varied according to the circumstances of each case.

194. *Minute of Synod on Revising Presbytery Records.*

At , the day of , the provincial synod of having heard the report of those appointed to revise the presbytery books of C., and having heard their remarks thereupon, and the said presbytery's answers thereto, and it having been inquired by the moderator, if any others had any complaints to make against the actings of the said presbytery, and nothing appearing censurable, ordered the clerk to attest this in their presbytery book.

If any defects are found in the presbytery's books, this report must be varied to meet the case, of which the following may serve as an example.

195. *Minute appointing Errors to be Corrected.*

Having heard the report of the committee, bearing that (here state the circumstances referred to in the report,) did, and hereby do, appoint the presbytery to supply those deficiencies, and make those corrections accordingly, so far as it is now practicable to do so, and with these instructions the book is ordered to be attested.

Extracted by

G. H., Synod-Clerk.

A very simple way, and common in some synods, is to order the presbytery book to be attested, with the remarks made by the committee.

In addition to the revisal of their record, it is the duty

of synods to examine presbyteries generally as to their method of conducting business, and on the manner in which they fulfil the appointments of the superior courts, and discharge the various duties incumbent on them. This examination used to be called the "Trial of Presbyteries." In regard to the particular subjects on which it is the business of the synod to inquire, they are such as the General Assembly enjoins the visitors of synod books to advert to, act iv., Ass. 1713, which instructions will be found under the head "General Assembly—Synod Records."

IV. JUDGMENT ON REPORT REGARDING STUDENTS.

By act xi. Ass. 1849, anent the licensing of probationers, it is declared and enacted, "That if after taking the preliminary steps enjoined by the act, the presbytery shall be of opinion that the student is duly qualified in the several particulars therein specified, they shall record this opinion in their minutes, and order their clerk to write letters to the several presbyteries within the bounds of the provincial synod, two calendar months at least before the meeting of the same, informing them of the presbytery's intention to take the student upon public trials; and bearing that the certificate or certificates in his favour, which are required by this act, have been regularly laid before them. But it is hereby provided, that within the bounds of such synods as meet only once a year a student may be enabled to have these circular letters written half a year sooner than would otherwise be competent. It is further enacted, That if a presbytery propose to take a student upon public trials, and have with that view written the circular letters, as is herein

required, public intimation thereof shall be made at some diet of the next meeting of the provincial synod, which shall not be the last diet thereof; and the presbytery-clerk is hereby required to transmit to the synod-clerk an extract of the certificate or certificates laid before the presbytery in favour of the student, in order that the same may be produced at this diet of the synod. And it is likewise hereby ordained, that at some subsequent diet of the synod, particular inquiry shall be made whether any of the members of the court has any objection to offer against the student being entered upon public trials; and that the synod then taking into consideration the extract produced, and the whole of the case, shall judge of the expediency of allowing the presbytery to admit the student on trials; or if in any case the presbytery-clerk shall fail to transmit the extract of the certificates above mentioned, the student may produce to the synod, by himself or by any member of the court, the extract of the same, which, by this act, he is entitled to obtain."

The particulars specified in this act having been complied with, the judgment of the synod will be given in the following terms:—

196. *Minute allowing Student to be taken on Trials.*

The synod resumed consideration of the extracts relative to Mr A. B., student of divinity mentioned in the minutes of the diet; and particular inquiry having been made whether any member of court had any objection to state against him, none was brought forward. Whereupon the synod, considering the certificates, the report of the presbyteries regarding the due receipt of the requisite circulars, and all the circumstances of this case, did, and hereby do, allow the said Mr A. B. to be admitted on public trials for

licence by the presbytery of C., in conformity with the 11th act of Assembly, 1849, respecting the licensing of probationers.

The synod-clerk will give an extract of the above deliverance to the presbytery before whom the student of divinity is to be tried, or, according to the practice of some synods, he may simply indorse the extract minutes of presbytery as follows, returning the extract to the presbytery-clerk:—"The synod of authorise the presbytery of to proceed with the public probationary trial of Mr A. B., student in divinity."

C. D., Syn.-Clk.

It is competent for a presbytery to crave leave to hold a meeting during the synod's sittings, and competent for the synod to grant it. The request may be made by petition, or verbally by the moderator of the presbytery.

V. OVERTURES, COMPLAINTS, APPEALS, AND REFERENCES.

The synod proceed to consider the different overtures, &c., transmitted through the committee in the order they find convenient.

Some member of synod is heard in support of the overture introduced, and by him generally a motion is made in regard to its transmission to the Assembly, or the disposal of it otherwise as the case may be; which motion, if seconded, is discussed by the Court, and then adopted or rejected as they see fit.

In regard to *causes*, (complaints, &c.,) they are brought up and disposed of in a manner precisely similar to what takes place in presbyteries and the General Assembly, and

there is, therefore, no need for repeating the form in this place.

It is always understood that a *reference* from an inferior court brings up all the parties in the case.

VI. COMPLAINTS AND APPEALS TO GENERAL ASSEMBLY.

The same privilege belonging to members of presbyteries and kirk-sessions, of complaining against the sentences of their respective courts, belongs also to the members of synod; and parties have it in their power to appeal from the synod's judgment to the General Assembly, by whom the cause "beand decyded, taks end as they decern and declare." On this subject reference is again made to pp. 30, 31, of this work.

VII. MINUTES.

The following form of the minutes of the first, and conclusion of the last, sederunt of synod, may afford a specimen of the mode in which these are to be framed, the statements being always of course suited to the particular circumstances occurring in each case.

197. *Minute of first Diet of Synod.*

At B., the day of one thousand eight hundred and . The provincial synod of A. met at B., after sermon in by the Rev. A. B. of C., their moderator, on this text, .

After prayer by the said A. B., the clerk produced the following roll of all the ministers having parishes within the bounds of this synod.

(Here take it in.)

The roll having been called, and the elders present having produced their commissions from their respective sessions, the following sat down as members of court.

(Here take in sederunt.)

Correspondents from the neighbouring synods having been called, there was produced a commission from the synod of D., in favour of the Rev. E. F., minister of G., and H. K., ruling elder, which having been read and sustained, the names of these commissioners were added to the roll as corresponding members, and E. F. being present, took his place accordingly.

The synod proceeded to elect a moderator for the ensuing half-year, when a leet having been made, the roll called, and votes marked, the Rev. L. M. was chosen, and took the chair accordingly, (or, after "chosen," but as he was not present, the former moderator was continued in the chair.)

The records and separate registers of the several presbyteries having been called for, the following were given in, (here mention them,) when A., B., C., and D., were appointed a committee, &c.

The following members were then appointed a committee for bills, overtures, references, and appeals, five to be a quorum, three being ministers, viz. (here take in the names.) The Synod appoint this committee to meet in at .

There were produced and read extracts from the records of the presbytery of A., including copies of certificates from the Rev. A. B., professor of , in favour of C. D., student of divinity, whom the said presbytery propose to take on public trials for licence as a probationer. The receipt of the necessary circulars announcing this resolution having been acknowledged by the presbyteries present, the extracts

were ordered to lie on the table till a subsequent diet.

The moderator of the presbytery of A. having requested leave for the said presbytery to meet during the interval between this and next sederunt, the synod granted said request, and appointed the presbytery of A. to meet in , at o'clock, whereof public notice was given.

The synod then adjourned to meet in , at o'clock, whereof public intimation having been made, this sederunt was closed with prayer.

205. *Minute of Conclusion of last Sederunt.*

The synod having called on the correspondents appointed at last meeting, to report diligence, Messrs and gave in a certificate of their attendance at the synod of . The synod sustain the excuse of , who was unable to attend the synod of .

The following correspondents were then appointed, viz. to the synod of , Mr at , and , ruling elder, &c., &c.*

The following members were appointed a committee to revise all the minutes of this synod, and were instructed to meet at the close of this sederunt, viz.

The synod then adjourned to , whereof public intimation having been made, this sederunt was closed with prayer.

The scroll minutes of synod should be signed by the moderator and clerk so soon as revised, and when engrossed in the record, they must also be signed by these officials.

* It is not to be understood that the appointment of correspondents, &c., is *necessarily* the last business transacted by synods before the close of their sederunts.

GENERAL ASSEMBLY.

THE GENERAL ASSEMBLY is the highest Ecclesiastical Court in Scotland. It meets annually in Edinburgh, in the month of May, on the first Thursday after the 15th, and continues to sit from Thursday to the Monday se'en-night. It is composed of representatives from Presbyteries, Royal Burghs, Universities, the Scottish Church in India and at Campvere. There are sixteen Synods, eighty-three Presbyteries, and upwards of one thousand and seventy ministers,* connected with the Church of Scotland.

* See "Wilson's Clerical Almanack for 1850"—Church of Scotland.

Ministers of regular parishes are there stated	952
Parliamentary districts, most of them now erected into parishes, .	42
Chapels of Ease and ministers on the Royal Bounty, ...	78

A number of chapels of ease are at present vacant.

The word "Clergy" is unpresbyterian. The doctrine of the Church of Scotland is, that ministers, as such, do not form a separate order in the state. Such terms as *clergy* and *lay*-elders are unknown in the Acts of Assembly, being inconsistent with the declaration of the Second Book of Discipline—"the eldersship is a spiritual function as is the ministrie." James Melville writes, "He (Adamson) distinguishes between the clergy and the laicks. This smelleth of papistry and arrogancy of the shavelings." "Before we come to speak of those elders of which our purpose is to treat, it is fit we should call them by their right name, lest we nickname them and miscall them. Some reproachfully, and others ignorantly, call them lay elders. But the distinction of the clergy and laity is popish and antichristian; and they who have narrowly considered the records of ancient times, have noted this distinction as one of the grounds whence the mystery of iniquity had the beginning of it. The name of clergy, appropriate to ministers, is full of pride and vain-glory, and hath made the people of God to be despised, as if they were profane and unclean in comparison of their ministers."—*An Assertion of the Government of the Church of Scotland*

The Court, in 1849, was composed of—

Ministers, ...	207
Presbytery-Elders, . .	92
Burgh-Elders, . . .	54
Universities, . . .	5
Churches in India, . . .	2
Church of Campvere, . .	
	360

By the erection of new churches, and the consequent increase of the number of members of presbyteries, additional members are occasionally added to the Assembly under the regulations which proportion the representation of a presbytery to the number of its members.

Commissions of members must be transmitted to the agent for the Church, at least one week before the meeting of Assembly, to be revised so far as regards the regularity of the commission in point of form, by a meeting of the procurator, clerks, and agent for the Church. Such commissions only as these parties may find to be objectionable in form are referred to the committee on disputed and objected commissions.

"On the day appointed for the meeting of Assembly, a sermon is preached by the moderator of the last Assembly, who intimates, at the conclusion of public worship, that the supreme ecclesiastical judicatory is about to sit, and afterwards opens its meeting by prayer. The clerks read the roll of members which they have prepared, and one of the ministers upon that roll is chosen moderator."* The Lord High Commissioner, appointed to represent the Royal Person in the General Assembly, then presents his com-

in the points of Ruling-Elders, and of the authority of Presbyteries and Synods, by G. Gillespie. Edinburgh, 1641.

* Dr Hill's Practice in Church Courts.

mission and the letter from the Sovereign, which, after permission is obtained, are read by the clerk of Assembly, and ordered to be recorded. The Commissioner next addresses the Assembly from the throne; and the moderator, in their name, replies to the speech of his Grace.

I. COMMITTEES.

Several committees are appointed after the moderator is chosen; one to answer the King's letter, and another for revising commissions, "censuring absents from the diets of Assembly, naming ministers to preach before his Grace the Commissioner, and receiving lists of probationers in the several presbyteries."

At the same diet, committees are named for bills and overtures, and for deciding on all commissions objected to in the revising committee, and all appeals or complaints touching the election of members. The committee for bills and overtures generally meet that evening and Friday morning. They meet on any other day when there is business to come before them; but these subsequent meetings are by the special appointment of the Assembly, and the house has always been reluctant to give any indulgence to parties desiring to transmit papers to the Assembly after the first Saturday of their sittings.

Distinct instructions as to the transmission of papers, in all references, appeals, and complaints, will be found in the Standing Orders.

The Committee of Overtures consider nothing but overtures, and these are brought before them by members of the committee, and not by petition, as cases are brought before the committee of bills. The meetings are constituted and concluded with prayer. There is no limitation of the number of overtures which a member of committee may bring before them. It sometimes happens that mem-

bers lay before the committee overtures similar to those given in by their presbytery or synod, thus giving an appearance of a much greater number of courts or individuals desiring a change than there really are. If a presbytery overtures, it seems irregular for a member of that presbytery to overture in the same terms, on the same subject. Synods, presbyteries, and individual members of Assembly, may overture that court. It is not customary for kirk-sessions to do so, nor for members of the Church generally; and there is no case on record of a burgh or university overturing the Assembly.

The Committee of Bills meet on the same days, and generally at the same time, as the Committee of Overtures. After being constituted with prayer, and a chairman chosen, they take into consideration the various references, appeals, complaints, petitions, &c., which are laid before them; and it is through this committee only that papers can in any case be brought under the cognizance of the Assembly. The mode of laying papers before them is by petition.

199. *Petition to Committee of Bills by an Appellant.*

Unto the Reverend and Honourable the Committee of Bills of the Venerable the General Assembly of the Church of Scotland,

The Petition of Mr A. B., Presentee to the Church and Parish of C., Presbytery of D.,

Humbly sheweth,

That your petitioner herewith produces the following papers, relative to his protest and appeal against a decision of the presbytery of D., on the day of last, regarding his presentation to the said church and parish, and of the synod of L., on the day of , affirming said sentence.

1. Certified copy minutes of the presbytery of D. rela-

tive to the steps taken to fill up the vacancy in said parish.

2. Certified copy alleged roll of communicants in said parish.
3. Certified copy call to the petitioner from said parish.
4. Certified copy mandate from E. F., Esq. of G.
5. Extract minutes of the synod of L. in the petitioner's case.

Which papers the petitioner humbly craves the committee to transmit to the venerable the General Assembly.

According to justice, &c.

This is signed by the petitioner or his counsel or agent.

200. *Petition to the Committee of Bills by a Respondent.*

Unto the Reverend the Committee of Bills of the Venerable the General Assembly of the Church of Scotland,

The Petition of the Rev. A. B., Presentee to the Church and Parish of C., Presbytery of H.,

Humbly sheweth,

That your petitioner herewith produces the following writs along with his case, relative to his presentation to the church of C., presbytery of H., which he is under the necessity of laying before the venerable the General Assembly, on account of a protest and appeal at the instance of certain parishioners of D., and a dissent and complaint at the instance of the Rev. F. G., complaining of a decision by the synod of G., in favour of your petitioner.

1. Extract from the records of synod of G., relative to the case of C., dated the day of , 18 .
2. Extract proceedings of the presbytery of H. relative to the above case, of various dates.

Your petitioner humbly moves the committee of bills to pass the same in the usual form.

And your petitioner shall ever pray.

This is signed by the petitioner or his counsel or agent.

These petitions are signed either by the parties themselves, or by their counsel or agent in their names. If the committee agree to transmit the papers to the Assembly, the word "Transmit" is written on them by the clerk of the committee; but, if they refuse to transmit them, an appeal to the Assembly is competent to the party feeling himself aggrieved. A minute of the proceedings is taken and submitted to the Assembly next day in the form of a report. The committee close their proceedings with prayer.

The reports of the committees on bills and overtures are referred to a committee for the arrangement of the business of the Assembly, appointed at its first diet. By a standing order of the General Assembly 1846, sess. 7—"In the meeting of committees, the greatest care must be taken to avoid encroaching, for the shortest space, on the hours when the Assembly is convened; and the officers of the house are directed to give notice to all the committees whenever the moderator is about to take the chair."

II. SYNOD AND COMMISSION RECORDS, ETC.

There are various acts requiring synod-clerks to bring up the books of their respective courts to the General Assembly. By act sess. 3, July 29, 1642, "The Assembly in one voyce ordaines, That the books of every provincial assembly shall be brought and produced to every General Assembly; and, that this may be performed, ordaines

that every clerk of the provincials either bring or send the said books yearly to the General Assemblies, by the commissioners sent to the assemblies from these presbyteries where the clerks reside. Which charge the Assembly also layes upon the said commissioners, sent from the said presbyteries where the clerks reside, ay and while some meanes be provided, whereby the clerks' charges may be sustained for coming with the said books themselves, and that under the pain of deprivation of the clerk, in case of his neglect, and of such censure of the saids commissioners, in case of their neglect, as the Assembly shall think convenient."

By act xi., Ass. 1698, "Synod books are appointed to be timeously produced to the General Assembly yearly, in order to their being revised."

Punctuality in sending up synod books is likewise strictly enjoined by Ass. 1702, act iii.; and 1792, act vii.

On an early day after their meeting, the Assembly call for the production of the synod books, and remit them to examinators, called "visitors" of the synod books. These examinators are commonly two ministers and one elder, and there are generally as many committees appointed as there are books to be revised.

The duty of the visitors is given in act iv., Ass. 1713. The General Assembly thereby appointed "that the following roll or list of the said matters be put in the hands of the revisers of synod books at each Assembly for their direction and assistance in visiting the said books. And the Assembly do appoint the said visitors in their going through the said synod books carefully to advert,

1. "If the advices marked in the former attestations of the synod books be observed.

2. "If the synod books be completely filled up and signed by the moderator and clerk, as is enjoined by the 11th act of the General Assembly 1698, and be produced

yearly, according to the 3d act of the General Assembly 1702.

3. "If the synod's proceedings be agreeable to the constitution of this Church, and acts of the General Assembly, and if the register be correctly written and spelled without contractions; and when there is anything written on the margin which should have been in the body, if it be signed by the clerk; and where words are blotted out as superfluous, if it be marked on the margin how many words or lines are blotted out, and that it was done by authority, and if the said marginal writing be signed by the moderator and clerk; and also observe if there be any blottings or interlinings in the register. See act ix., General Assembly 1706.

4. "If synods do call their presbyteries to an account as to their care about ministers reading and expounding a large portion of scripture in their congregations every Lord's-day, according to the 9th act of the General Assembly 1694, 5th act of Assembly 1704, and 10th act of General Assembly 1706; and as to their preaching Catechetical Doctrine, according to the 18th act of General Assembly 1695.

5. "If care be taken that the Sacrament of the Lord's Supper be administered in each parish at least once every year, and where any ministers neglect the same, if they be called to an account, and if their excuses be either approven or disapproven, as is enjoined by the 11th act General Assembly 1712.

6. "If synods inquire concerning presbyteries holding parochial visitations, and ministers visiting of families, according to act 16th General Assembly 1706. The buying and reading of the acts and overtures of the General Assembly, according to the 16th act General Assembly 1700, and 18th act General Assembly 1705, and concerning their diligence in observing the acts against profanity,

particularly the 7th act General Assembly 1699, and inquire after mortifications for pious uses, as enjoined by the 22d act General Assembly 1700.

7. "If synods call their presbyteries to account as to the pains they take to get a school settled in every parish, and provided with a sufficient master, and maintenance according to law, and take care that the school be visited conform to the 5th act General Assembly 1705, and 5th act General Assembly 1707. And if presbyteries contribute for bursars having Irish, according to the 13th act General Assembly 1706. And if the synod's advice be taken anent licensing probationers according to the 10th act Assembly 1711.

8. "If synods inquire at presbyteries concerning the increase and decrease of Popery and other errors, and the pains taken to reclaim erroneous persons. See act 8th, General Assembly 1707, &c.

9. "If synods take care to have the acts of the General Assembly, particularly the 5th act of the late Assembly, concerning a contribution for promoting Christian knowledge, observed, and if the account of their diligence in these matters be recorded, conform to the 11th act General Assembly 1710, &c.

10. "If presbytery books be punctually produced, revised, and attested, and if presbyteries undergo their privy censures every synod, and if there be a roll made up of matters recommended by the General Assembly to synods, and the said roll be recorded, and a copy thereof given to visitors, according to the 18th act General Assembly 1712.

11. "That the visitors of synod books communicate all their remarks on these books to some of the synod, and hear them thereupon, before they bring in the same to the General Assembly, as has been frequently enjoined by former assemblies."*

* The most of these acts will be found in the Appendix.

A few additional directions are also given by act 5th, Assembly 1723; and by a standing order of Assembly 1841, sess. ult., synods are enjoined to notice in their books that inquiries have been made at the several presbyteries if collections have been made within their bounds for the different schemes of the church, and the Assembly directs that in future all such omissions, with other remarks of the visitors, shall be printed in the acts of Assembly.

If the visitors report that every thing is correct, an attestation is written out at the end of the last minute, and is recorded and signed by one of the clerks of Assembly.

201. *Attestation of Synod Books.*

The General Assembly having heard the report from the Rev. A. B., and C. D., and Mr E. F., the visitors appointed to revise the books of the synod of G., and having heard their remarks thereon, and the said synod's answer thereto, and it having been inquired by the moderator if any other had any complaints to make against the actings of the said synod, and nothing appearing censurable, ordered their clerk to attest this in the synod books, to approve of and express their satisfaction with the same.

If there are any irregularities, such as are noticed in the directions, the report varies accordingly.

The record of the commission of the last General Assembly, and of the committee for managing the Royal Bounty, are examined and attested in the same way.

III. OVERTURES.

The proposal of making a new general law or of repeal-

ing an old one, which, in ecclesiastical language, is termed an Overture, originates with some individual, who generally lays it before his presbytery or synod, that, if they approve, it may be sent to the General Assembly as their overture.*

Overtures, however, are by no means confined to proposals for making new general laws or repealing old ones. There may be overtures to *declare* what is the law of the church, overtures to enjoin the observance of former enactments, overtures for the appointment of fasts and thanksgivings, overtures indeed on any subject falling within the legislative or executive functions of the Assembly.

Three overtures are given from the printed papers of the General Assembly 1849.

202. (1) At Thurso, the 27th day of March 1849:—Which day the Presbytery of Caithness met according to adjournment, and being constituted:

Inter alia, The Presbytery agreed to transmit the following Overture to the General Assembly:—

"Whereas it is highly expedient that regular employment should be provided in the work of the ministry for the licentiates of the church, in order that they may have more frequent and favourable opportunities of exercising, improving, and exhibiting their talents and gifts, and be enabled to devote themselves entirely and exclusivelyto the service of the church; and whereas there is at present, especially in some parts of the church, great difficulty experienced in obtaining temporary supplies and permanent appointments for the vacant churches and chapels throughout the bounds of the church, it is humbly over-

* Hill's View of the Constitution, p. 66.

tured by the Presbytery of Caithness, That the General Assembly shall instruct the Home Mission Committee to adopt such measures as may be most effectual for securing these objects."

The Presbytery closed with prayer.

(Signed) WILLIAM PHIN, Moderator.
WILLIAM LILLIE, Pres. Clerk.

Extracted from the records of the Presbytery of Caithness, by

(Signed) WM. LILLIE, Pres. Clerk.

203. (2.) At Aberdeen, the 10th day of April 1849 years.—Which day the Provincial Synod of Aberdeen being met and constituted by prayer:—

Inter alia,—Resumed consideration of the overture deferred from last synod on the extension of the parochial system, and read the same. Members were heard; and it was moved, seconded, and agreed to, That the synod adopt this overture; and transmit it to the ensuing General Assembly. Wherefore the synod adopted the overture, and appointed the clerk to transmit an extract thereof from the record to the ensuing General Assembly. The tenor of which overture here follows, viz:—

"Whereas it is of very great importance to the interests of religion and the welfare of the people, that the benefits of the parochial system should be extended to those congregations adhering to the church, which have been already formed in chapels of ease and other missionary stations, so that said parochial system may be made, at least in some measure, adequate to the large increase of the population in our country; and whereas the Act, commonly called Sir James Graham's Act, affords facilities

for this, which the church has received with great gratitude, and in which a comfortable beginning of the work has been made; and whereas yet the said Act does not appear to this synod to afford such facilities as the full need of the case seems to require, especially as the case stands, with respect to our large towns,—It is humbly overtured by the Synod of Aberdeen to the ensuing General Assembly, That the Assembly, acknowledging with gratitude the benefits already received, and rejoicing in the good progress already made in it, do apply to the legislature for such farther facilities for the work, especially in large towns, as to the wisdom of the Assembly may seem meet and needful."

Extracted from the record of the Provincial Synod of Aberdeen on this and the preceding pages by

AL. CUSHNY, Synod Clerk.

204. (3.) At Glasgow, the 10th day of April 1849,—The Synod of Glasgow and Ayr met and was constituted.

Inter alia—The Synod unanimously agreed to transmit the following overture to the General Assembly:—

"Unto the Venerable the General Assembly of the Church of Scotland, indicted to meet at Edinburgh on the 24th May next,

"It is humbly overtured by the Synod of Glasgow and Ayr, that the Act of last Assembly '*anent Privy Censures*' be either abrogated or altered, as, in the opinion of the Synod, it is cumbrous in its operation, and presbyteries and the synod experience much difficulty in obtemperating the present enactment."

Extracted from the records of the Synod of Glasgow and Ayr, by

ROBERT AULD, Synod Clerk.

The adoption of an overture by the General Assembly does not, however, result in its being passed immediately into a standing law of the church.

The General Assembly 1639, ordains, That no innovation which may disturb the peace of the church and make division, be suddenly proposed and enacted; but so as the motion be first communicated to the several synods, presbyteries, and kirks, that the matter may be approved by all at home, and commissioners may come well prepared, unanimously to conclude a solid deliberation upon these points in the General Assembly.

In the Assembly 1695–6, sess. 7, Dec. 25, the following overture and act anent novations was passed:—"The Assembly having heard an overture brought in from the committee for overtures, that no new acts relating to the doctrine, worship, or government of this church be made until they be first transmitted to the several presbyteries of this national church; which being considered, the General Assembly recommends it to the members of this assembly to discourse upon the said overture with their respective presbyteries, that the next General Assembly may be more ripe to determine anent the conveniency thereof." . . . The result was, in the following Assembly, the passing of act ix., Ass. 1697, Jan. 8, commonly called the Barrier Act, which is as follows:—

"The General Assembly, taking into their consideration the overture and act made in the last Assembly concerning innovations; and having heard the report of the several commissioners from presbyteries, to whom the consideration of the same was recommended, in order to its being more ripely advised and determined in this Assembly: and considering the frequent practice of former Assemblies of this church, and that it will mightily conduce to the exact obedience of the acts of Assemblies that General Assemblies be very deliberate in making of the

same, and that the whole church have a previous knowledge thereof, and their opinion be had therein, and for preventing any sudden alteration or innovation, or other prejudice of the church, in either doctrine, or worship, or discipline, or government thereof, now happily established; do therefore appoint, enact, and declare, That before any General Assembly of this church shall pass any acts which are to be binding rules and constitutions to the church, the same acts be first proposed as overtures to the Assembly, and being by them passed as such, be remitted to the consideration of the several presbyteries of this church, and their opinions and consent reported by their commissioners to the next General Assembly following, who may then pass the same into acts, if the more general opinion of the church, thus had, agree thereto."

By this act the legislation of the church continues still to be regulated; and, in terms thereof, if an overture is not dismissed, it is transmitted in its original or its amended form, to the several presbyteries of the church for their consideration, with an injunction to send up their opinion to the next General Assembly, who may pass it into a standing law, if the more general opinion of the church agree thereunto, that is, if not less than 42 presbyteries approve. That the opinion of a presbytery may be reckoned in favour of an overture, it must approve, without any alteration of the overture as it is transmitted to them.

When, however, the immediate enactment of the new law proposed in an overture appears essential for the good of the church, the General Assembly exercises the power of converting the overture into what we are accustomed to call an interim act;* and with respect to such acts, Principal Hill thus expresses himself in his "View of the Constitution of the Church of Scotland:" "It is acknowledged by

* Assemblies 1711, 1719, 1731, 1737, 1739, 1742, &c.

all who understand our constitution, that till the meeting of the next Assembly, such temporary enactments are binding upon all the members of the church."*

A power, however, thus to pass temporary enactments, in anticipation of the mind of those bodies by whose authority alone they can be enacted into standing laws, is, of course, liable to be abused, and the object of the Barrier Act thereby defeated, and this is most likely to occur just at those times when its operation is most required. To guard against this, therefore, the General Assembly 1848, sess. ult., passed the following act, under the title of Act anent the Passing of Interim Acts:—

"Whereas it is of great importance to maintain the act of Assembly 1697, commonly called the Barrier Act, in its letter and spirit; and whereas the passing of interim acts has in some instances appeared at variance with the foresaid act, the General Assembly, with the consent of a majority of presbyteries, enact and ordain, that no overture shall be converted into an interim act which involves an essential alteration of the existing law or practice of the church; it being understood that this does not apply to measures which may be necessary for carrying out more effectually the subsisting regulations or forms of the church."

IV. CAUSES.

Intimation is given on a board at the door of the Assembly-house when a cause is to be heard. Parties are heard at the bar by themselves, or by counsel on their behalf. The counsel for the appellant opens the case, and has the privilege of reply. When an appearance is made by an inferior judicatory, in support of the same sentence which the private party defends, the Assembly are in use

* Hill's View, pp. 110, 111, 112, &c., for much interesting information on this subject.

to hear only one member of the judicatory. When the synod has affirmed the sentence of the presbytery, separate appearances and pleadings are not admitted for both courts; but if the synod appears, it is held to include the presbytery. When the sentence of the presbytery has been altered by the synod, they are of course entitled to a separate appearance, to defend their judgment.

The parties being heard, are removed, and the house consider the cause. When a decision takes place, (which is arrived at according to the standing orders, quoted pp. 321, 322,) the parties are recalled to hear it. After the judgment is read by the clerk, the successful party takes instruments, and craves extracts.

V. ACT ANENT THE STANDING ORDERS OF THE CHURCH.

Edinburgh, 27*th May* 1848. *Sess.* 13.

The General Assembly, having considered the report of the committee on the standing orders, hereby enact and declare, that in future the following shall be strictly observed and enforced as the standing orders of the church:—

Standing Orders on the Conduct of Causes, Printing Papers, &c.

1. In causes, all papers, whether forming part of the record, or which may have been produced in evidence, in any of the inferior courts, shall, at the time when they are lodged, be dated and numbered by the clerk of such court, and marked with his initials; and no paper not so authenticated shall be received in the courts of review, unless upon special cause shown.

2. The libel and defences,—or, when the cause commences without a libel, the petition, or other initiatory

step, and the answers thereto, with the sentences of the inferior courts, shall be held to be the record.

3. In cases brought up to the General Assembly by reference, complaint, or appeal, the same, together with the record and the evidence adduced, shall be printed in the quarto form used in the Court of Session, in sufficient numbers,—viz., 450 at least,—so as to afford a copy to every member of Assembly, which shall be lodged with the agent for the church on or before the Monday preceding the meeting of Assembly, excepting when they relate to matters arising after that date, otherwise they shall not be received nor founded on in the Assembly, and the appeal or other application shall be held to have been fallen from accordingly, unless, upon the earliest opportunity, the parties concerned make it appear to the Assembly that insuperable difficulties did withhold them from lodging the same in manner above set down, when the Assembly may, if it pleases, allow the defect to be supplied, before the day fixed for taking up the case.

4. The clerks of the several judicatories shall transmit to the clerk of Assembly within the time foresaid, all references made by the respective judicatories to the General Assembly. But when there is no appeal or reference, it shall be optional to the individual members of inferior courts, when they find it their duty to bring the proceedings of these courts under the review of the Assembly by complaint, either to comply with the regulations as to printing, or to furnish a complete written copy of the whole papers and proceedings to the clerk of Assembly, on or before the said date, as in the case of printed papers.

5. When the appeal, complaint, or reference is merely upon a point of law or relevancy, it shall only be necessary to print such part of the evidence, if any, as the party bringing up the case may think necessary for the determination of such point; but in such cases he shall deliver

a copy of his print to the opposite party, or his known agent, on or before the said Monday, to enable him to judge whether any more of the evidence requires to be printed, which it shall be competent for him to do, and to lodge the same with the agent for the church, on or before the first Saturday of the Assembly's meeting.

6. Reasons of dissent or appeal, and the answers thereto, when made, as well as all the other papers in the cause not included in the record, nor requiring to be printed, shall, when printed by parties of their own accord, be lodged with the agent along with the printed papers as aforesaid.

7. When an inferior court shall refer a cause to the Assembly, the expense shall be borne by the parties mutually, under the certification that the party refusing to pay his share thereof before the time appointed for laying the same on the table, shall be considered as having deserted the cause, and shall not be entitled to be heard. And when this order has not been complied with, the agent for the church shall give notice thereof to the Assembly upon the cause being called.

8. Causes arising out of trials for license or ordination, and matters relating to church ordinances,—petitions for opinion of the procurator, or for aid,—and merely formal applications, which do not contain statements on their merits;—as also, references on matters which do not affect the interests of parties in a cause, shall be excepted from the rules as to printing, unless the parties think proper to print of their own accord, when they shall come under the operation of the above standing orders.

9. Extracts from the minutes of inferior courts shall always be printed entire.

10. A copy of every printed paper shall be kept by the clerk of Assembly, to be bound up and kept in the records

of Assembly, with a copy of the judgment annexed, and another copy shall be lodged in the library.

11. All reports to the Assembly shall be written upon foolscap paper, so as to admit of their being bound up in volumes, after which it shall not be necessary to engross the same in the record.

12. All overtures transmitted through the committee, and all petitions or other applications to the Assembly transmitted through the committee of bills, shall be printed and laid on the Assembly's table, in sufficient numbers for the use of members, on or before the first Monday of its sitting.

13. The last rule shall not be held to apply to matters excepted under article 8, or to matters occurring during the sitting of Assembly, or within ten days previously, which it shall still be competent to bring under the consideration of the Assembly; and the parties interested therein shall, in that case, be bound to get the papers printed and laid upon the table in time to admit of their being discussed during the sitting of Assembly.

14. When a presbytery acquiesces in the sentence of the synod, it shall not be entitled to appear as a separate party at the bar of the Assembly; but members of presbytery may be heard for the synod, when that is wished.

15. In no case shall more than two speeches be allowed for each party at the bar, besides the reply, to which the appellant or complainer shall be entitled, and when there are more than two parties on one side, there shall be only one speaker and one speech for each, besides the reply; it being understood, that where there is more than one complainer, they shall not be considered as different parties, unless it shall appear to the Assembly that the complaints rest on distinctly separate grounds.

Regulations as to Motions and Votes.

16. A motion, whether original or amended, shall be given in to the clerk in writing, as soon as it shall have been made to the House, and immediately read to the House by the moderator.

17. When a motion is duly seconded, and is in possession of the House, it shall not be competent to make any alteration upon it, excepting in the shape of an amendment, or second or third motion, as the case may be, regularly proposed to the House, unless it shall be consented to by the mover and seconder of every other motion or amendment then before the House.

18. The person who makes the first motion shall have right to reply; after which the debate shall be held to be definitively closed, and no other person shall be entitled to speak thereafter.

19. All motions, except the first, shall be considered as amendments on the first, and disposed of accordingly.

20. When there are only two motions before the House, the question put to the House shall be, motion, or amendment.

21. When there are three motions, the first question shall be, Whether the second or third motion shall be put, as the amendment, against the first; And the second question shall be, Whether the first motion, or the amendment thus fixed, shall be the determination of the House.

22. When there are more than three motions, the first question shall be, Whether that last proposed shall be put as the amendment, and so on till only three remain, when the procedure shall be as prescribed by Article 21.

Standing Orders on other matters now in force.

23. A copy of the act 1839, anent representative elders,

together with a copy of the form of certificate approved by the General Assembly 1840, shall be transmitted to every minister of this Church, to be preserved in the session-book of the parish; and no certificate will henceforth be received or held a fulfilment of the act of 1839, unless exactly agreeing with the form prescribed by the Assembly in 1840; it being specially attended to, that it is the certificate itself, and not an extract from the minutes of session, that must be lodged along with the commission.

24. Presbyteries are entitled to attest such commissions, although there be no certificate produced to them from the session to which the commissioner belongs, that he is *bona fide* an acting elder, provided they have other sufficient grounds of information as to his truly being so; and, on the other hand, such certificate, when produced to them, while it ought not to be disregarded except on the strongest grounds, is not to be holden as necessarily conclusive as to the qualification of the party in this respect.

25. All commissions shall be transmitted to the agent for the Church at least one week before the meeting of the Assembly, and those so transmitted shall be revised, so far as regards the regularity of the commission in point of form, by a meeting of the procurator, clerks, and agent of the Church, and their report as to the commissions being correct shall supersede the passing the same under review of the usual revising committee; and such commissions as these parties may find to be objectionable in form, shall at once be remitted to the committee on disputed and objected commissions.

26. The Assembly observing, in a few instances, that no notice is taken of inquiry having been made by the synods of the several presbyteries of collections having been made within their bounds for the different schemes of the Church,

direct that all such omissions, with other remarks of the visitors, shall be noticed in the acts of the Assembly.

27. All applications for the erection of new churches, and the relative documents, after passing through the respective presbyteries, shall, along with the drafts of the feudal titles of the church and ground, be transmitted, one month before the meeting of each Assembly, to the standing committee on the home mission, or such other committee as the Assembly may have specially appointed for receiving the same; and such committee shall revise the proposed constitutions and titles, and report to the Assembly their opinion as to any alterations that should be made therein: the said committee giving to all parties who may have appeared before the respective presbyteries eight days' notice of the day fixed for the consideration of their case, in order that they may attend for their interest; certifying all parties applying for the erection of new churches, that if they fail so to transmit for revisal the documents aforesaid, their applications will not be entertained by the Assembly; provided always, that where the said documents have been transmitted, they must also be thereafter regularly passed to the Assembly through the committee of bills in common form; but all parties who have made compearance in the presbytery shall be entitled to be heard before the Assembly to which the application is so passed, or any committee to be appointed by them, on their objections to the erection of the proposed church, or to the report of the home mission, or other specially-appointed committee, as aforesaid.

28. The drafts of titles of the new churches lodged or to be produced by the respective parties, shall be remitted to the revising committee on the constitutions of new churches, that they may be satisfied that they are framed in terms of the constitutions; and the agent of the Church shall give out extracts of the constitutions to

the parties, only on the production of a certificate from the committee, to the effect that the feudal titles are framed, or sufficient security given that the titles shall be framed, in terms of the constitutions; and such committee shall, for that purpose, have access to the constitutions and relative papers before extract; and the substance of this order shall be communicated, by the revising committee, to all parties bringing up constitutions to the General Assembly.

29. Applications of ministers and licentiates of dissenting bodies for admission into the Church, with all the necessary documents, shall be lodged in the hands of the agent for the Church on or before the meeting of the Assembly, and none shall be received after that day.

VI. DISSENTS.

"Any member of court may dissent from proceedings which he conceives to be contrary to the word of God, the acts of Assembly, or the received order of this kirk; and may cause his dissent to be marked in the record. By so doing, he saves himself from any censure or danger that may arise from these proceedings. The dissent must be given in immediately when the judgment dissented from is pronounced. It cannot be received at a subsequent meeting of the court; although, in the case of the General Assembly, other members besides the dissentient are allowed, at the subsequent meeting, to express their adherence to his dissent, immediately after the minutes are read.

"In the Assembly 1828, a question arose as to dissents being received on the day subsequent to that on which the judgment dissented from was pronounced; and it appeared that repeated instances had occurred of dissents

having been so received. But the Assembly appointed a committee to search for precedents with regard to the time and manner of giving in dissents from the judgments of that house, and received from its committee a report to this effect:—That it was long the invariable practice, that dissents were entered on the day upon which the sentences dissented from were pronounced, leave in this case being given to members to adhere to the dissent on a subsequent day; but that, in some recent instances, dissents had been entered on a subsequent day. The Assembly, on the suggestion of the committee, enjoined that the ancient practice should in future be enforced and uniformly observed."*

It is scarcely necessary to give any form of dissent, as these vary with every case. The preamble or statement of the opinion or judgment against which the dissent is taken, is all that could properly be given.

A dissent can be given in only by those who were present when the judgment dissented from was pronounced, and no *protest* can be taken against a decision of the Assembly. Dissents are not entered in the minutes, but kept in a separate book.

VII. PROTESTATIONS.

When a party does not proceed with his appeal or complaint from the decision of an inferior court, but falls from it, it is proper that the opposite party should enter a protestation of the appeal or complaint having been fallen from, and crave extracts of its being admitted. The decision of the inferior court thereupon becomes final. The following is a form of such:—

* Dr Hill's Practice in Church Courts, p. 30.

205. *Protestation.*

Protestation that the protest and appeal (dissent and complaint) of A. is fallen from; protestation craved at the instance of the Rev. B. C., minister of D., in name of the presbytery of F., that an appeal taken by the Rev. G. H., minister of I., against a sentence of the said presbytery, dated the day of , 18 , is fallen from, and therefore that the said sentence has become final.

There are no reasons given in with this; simply the protestation, which the clerk records in the minutes. The word "admitted" being substituted for "craved."

VIII. PETITIONS AND COMPLAINTS.

Where an inferior court has wrongfully obstructed the ordinary channel by which review of their sentence may be obtained, the party aggrieved may apply by Petition and Complaint to the Assembly, who will thereupon grant warrant for summarily citing the inferior judicatory, and all other parties concerned, to their bar, and if satisfied of the justice of the complaint, will rescind their proceedings.*

IX. PEREMPTORY MANDATES.

These are sometimes issued by the General Assembly for summoning individuals and inferior courts to appear at their bar. When a case occurs of a person refusing to appear, a letter from the clerk in name of the Assembly

* See Case of Parishioners of Eskdalemuir *v.* the Presbytery of Langholm, and Synod of Dumfries, 21st and 27th May 1836.

is now generally sent. This is a part of the supreme executive power of the Assembly.

The Assembly sends precise orders to particular judicatories, directing, assisting, or restraining them in the discharge of their functions.* These orders were issued when there arose disputes regarding vacant parishes, such as the presbytery refusing to settle a presentee from a deficiency in his call, or "from regard to the wishes of the people, or from some local circumstances."

X. COMMISSION OF THE ASSEMBLY.

The commission in former times was composed of a certain number of individuals selected for the purpose, but for many years it has been the practice to include in it all the members of the Assembly, and also one other person not a member, who is generally a past moderator, and is named by the moderator. Those also are added who, from defect in their commissions, did not sit in the Assembly.

A quorum of the commission requires 31 members, whereof 21 are ministers. It meets the day after the Assembly is dissolved, and on the second Wednesday of August, third Wednesday of November, and first Wednesday of March, and oftener, when and where the Assembly may appoint and find it convenient. They have power to adjourn from day to day. It is also competent for the moderator to call a special meeting of commission on any emergency.

The *Instructions* to the commission have been the same every year for upwards of half a century. They are ordered "to advert to the interests of the Church on every occasion, that the Church, and the present establishment

* Dr Hill's View.

thereof, do not suffer or sustain any prejudice which they can prevent." There is a renewal of the Instructions given by the General Assembly 1717 to their commission, and it "appoints the same to stand in full force as instructions to the commission before named, and to be observed by them in all points, as if the same were specially inserted." They are to inquire into the publication of all books inconsistent with the Confession of Faith—to see that the impressions of the Holy Scriptures, Confession of Faith, and Catechisms, be correct—that means be adopted for the suppression of popery and superstition,—"and, if need be, to apply to Government for a proper remedy and speedy redress;" besides several orders as to the giving of advice in references from synods, but not to determine private processes not referred to them by the Assembly, &c.

The Instructions in Act vi., Ass. 1717, are always understood to be renewed, and are as follows:—

"1. The commission are empowered and appointed to take care that that was enacted and ordered by this and preceding Assemblies be duly observed by all concerned.

2. The commission, as often as they see cause, are empowered to apply to his Majesty, or any inferior magistrate, for the countenancing of and concurring with the judicatories of the Church in what the law allows, and for putting in execution the laws against popery and profaneness, and seeking redress of grievances and abuses committed contrary to the established doctrine, worship, discipline, and presbyterian government of this Church, the contempt of the censures of the judicatories thereof inflicted on scandalous persons, and to assist presbyteries and synods in planting vacant kirks, as they shall be applied unto by them for that effect.

3. The commission are empowered and appointed to use all proper means to preserve and maintain all the

rights and privileges of this Church, and to lose no opportunity of applying to obtain a redress of what is grievous with respect to the same, and to send commissioners to London for that effect if they see cause.

4. The said commission are empowered to appoint fasts and thanksgivings as they shall see occasion, and specify the causes thereof, and apply to his Majesty for the civil sanction thereto.

5. The commission are empowered to give advice and assistance to any synod or presbyteries in difficult cases, as they shall be applied unto by them for that effect.

6. The commission are empowered to take special care to keep and maintain unity in the church upon all emergents, especially among the ministers thereof, and to gain such as separate therefrom, and to suppress error and schism in this church, and prosecute the authors and spreaders of books and pamphlets tending thereto, and to take notice how any who have been censured by preceding Assemblies or commissions of the same have carried, and to proceed to further censure as the commission shall see cause.

7. The commission are to take notice of what misrepresentations shall be made either at home or abroad, of the doctrine, worship, discipline, or constitution of this church, and to take all proper methods for the vindication thereof.

8. The said commission are appointed to use their best endeavours to obtain a fund for erecting schools in the Highlands and Islands, and to get the same rightly proportioned, and to do what else may tend to the advancement of religion and reformation in these places, and to keep a correspondence with the Society for Propagating Christian Knowledge and their committee, and to give them all suitable assistance and encouragement, according to the acts of this and former Assemblies, and to use all

proper means in their power for extirpating idolatrous and superstitious practices, and to observe the instructions given by former Assemblies to their commissions concerning libraries, Irish Bibles, Psalm Books, and Catechisms, a school in every parish, according to the fifth act of the General Assembly 1707; also to hold hand to the execution of the eighth act of that Assembly, for suppressing Popery and preventing the growth thereof; and likewise the fifteenth act of that Assembly, against innovations in the worship of God.

9. The commission are empowered to send ministers and probationers, as need requires, to the North, the Highlands, and Islands, and to remove them from one place to another there, as they shall see cause.

10. The commission are empowered to cognosce and finally determine in all references and appeals about planting vacant churches in the North, the Highlands, and Islands, which shall be brought before them, and that in the most expedite manner, providing that the commission do not meddle with sentences of synods in such cases, excepting causes particularly referred to them; but this restriction is not to be extended to ministers or probationers having Irish.

11. The said commission are empowered to receive any representations or references that shall be made to them by presbyteries and others concerned about large and spacious parishes, and to use all means proper for them for obtaining, and also rendering effectual and preserving new erections in such parishes, or stipends to collegiate ministers.

12. The said commission are empowered to give all due assistance to the several universities and colleges, when any minister is called to any office therein, and to receive appeals and references in these cases, and finally to determine in the same; and they are appointed to consider

the state of the said universities and colleges, and to observe the 14th act of the General Assembly, anno 1711, and as they see cause to apply for a visitation thereof; as likewise to inquire whether synods and presbyteries do maintain bursars, according to the acts of the General Assembly, and to take care to provide hopeful youths having the Irish tongue, and take the usual obligations of them, and when students having that language are found fit to be entered on trials, that they recommend them to presbyteries for that effect, and when they shall be licensed, to send them to the North, the Highlands, and Islands.

13. To inquire how the 10th act of the General Assembly, anno 1711, concerning probationers and settling ministers, with questions to be proposed to, and engagements to be taken of them, are observed, and to advert that masters in colleges, and all schoolmasters, do subscribe and engage according to the act of Parliament, anno 1707.

14. That the commission use their best endeavours for farther reformation of manners, and the more effectual curbing and suppressing of profaneness and vice, and promoting true religion and godliness, and think on some effectual way to excite to, and recommend family worship, in pursuance of the acts of the Assembly, particularly the 13th act of the General Assembly, anno 1694, and 7th and 11th acts of the General Assembly, anno 1697, and others; and to inquire if his Majesty's pious proclamation against immorality has been read from the pulpits according to former orders.

15. The commission are appointed to take the most effectual course to get the printing, vending, or importing of incorrect copies of the Holy Scriptures, and of our Confession of Faith and Catechisms, stopt and prevented."

Causes are conducted in the same way as before the

Assembly. Parties or their counsel are heard and removed, motions are made, discussed, and divided upon, and the parties recalled to hear the judgment.

The commission are specially prohibited from meddling in any matter not committed or referred to them, and from enforcing any of their sentences which the inferior judicatories refuse to carry into execution.

Overtures remaining unconsidered by the General Assembly cannot be taken up by the commission, and all reports of Assembly's committees must be made to the Assembly itself, unless it is expressly ordered that they be given in to the commission.

XI. CLOSING OF THE ASSEMBLY.

The form of closing the Assembly is the same as it has been for many years. "The minutes of the last sederunt are read before its close, that they may receive the sanction of the Assembly, in the same way as the minutes of former sederunts, which are always read at the opening of the meetings subsequent thereto. A committee is appointed to revise the minutes of the Assembly, and to select from its acts such as are of general concern, that they may be printed. A great improvement has been recently made by this committee, acting under the orders of the Assembly, in giving in the printed abridgment of the Assembly's proceedings a fuller detail of the cases which come before it, so as to convey a distinct idea of the grounds upon which the decisions of the supreme ecclesiastical judicatory were pronounced."

An account of the causes decided by the commission is also added.

"When the business is concluded, the moderator addresses first the Assembly and then his Grace the Commissioner, and in the name of the Lord Jesus Christ, the King and Head of His Church, appoints another Assembly to be held on a certain day in the month of May in the following year.

"The Lord High Commissioner then addresses the Assembly, and in the name of the Sovereign, appoints another Assembly to be held upon the day mentioned by the moderator.

"Intimation of this appointment is publicly given, and the Assembly is concluded with prayer, singing of psalms, and pronouncing the blessing."*

About fifty years ago, the Commissioner's opening and concluding addresses were recorded in the written minutes, but this is not now done. They never appeared in the printed acts.

* Dr Hill's Practice, p. 91, 92.

APPENDIX.

APPENDIX.

I.

ACT ESTABLISHING THE CHURCH OF SCOTLAND, AND SECURING THE PROTESTANT RELIGION AND PRESBYTERIAN CHURCH GOVERNMENT.

1. Act. 1592, c. 114.

Being the first Act of the 12*th Parliament of James VI., holden at Edinburgh, June* 1592.

Ratification of the Libertie of the Trew Kirk; of General and Synod Assemblies; of Presbyteries; of Discipline. All laws of Idolatrie ar abrogat. Of Presentation to Benefices.

"Our Soveraine Lord, and Estaites of this present parliament, following the loyabil and gude example of their predecessoures, hes ratified and appreeved, and, be the tenore of this present act, ratefies and apprevis all liberties, privileges, immunities, and freedomes quhatsumever, given and granted be his Hieness, his Regents in his name, or onie of his predecessours, to the trew and hailie kirk, presently established within this realme, and declared in the first acte of his Hieness parliament, October 20,

1579: And all and quhatsumever acts of parliament and statutes made of before be his Hieness and his Regentes, anent the libertie and freedome of the said kirk; and specially the first act of the parliament halden at Edinburgh, October 24, 1581, with the haill particular acts there mentioned, quhilk sall be als sufficient as gif the samin were here expressed, and all uther actes of parliament made sensyne in favour of the trew kirk: And sicklike, ratifies and apprevis the General Assemblies appoynted be the said kirk; and declares, that it shall be lauchful to the kirk and ministers, everie zeir at the least, and oftner, *pro re nata*, as occasion and necessitie sall require, to hald and keepe General Assemblies: Providing, that the King's Majestie, or his commissioners with them, to be appointed be his Hienesse, be present at ilk General Assemblie before the dissolving thereof, nominate and appoynt time and place quhen and quhair the next General Assemblie sall be halden; and in case naither his Majestie nor his said commissioners beis present for the time in that town quhair the said General Assemblie beis hadden, then and in that case it sall be lesum to the said General Assemblie, be themselves, to nominate and appoynt time and place quhair the next General Assemblie of the kirk sall be keiped and halden, as they have been in use to do thir times bypast. And als ratifies and appreives the synodal and provincial Assemblies, to be halden be the said kirk and ministers wise ilk zeir, as they have bene, and are presently in use to do, within every province of this realme: And ratifies and appreevis the presbyteries and particular sessions appoynted be the said kirk, with the haill jurisdiction and discipline of the same kirk, aggried upon be his Majestie, in conference had be his Hienesse, with certain of the ministers conveened to that effect; of the quhilks artickles the tenour followes.—Maters to be intreated in provincial Assemblies: Thir

Assemblies are constitute for weichtie matters, necessar to be intreated be mutual consent and assistance of brethren within the province, as need requiris. This Assembly hes power to handle, ordour, and redresse all things omited or done amiss in the particular Assemblies. It hes power to depose the office-bearers of that province, for gude and just cause, deserving deprivation. And generally, thir Assemblies hes the haill power of the particular elderships quhairof they ar collected.—Matters to be intreated in the presbyteries: The power of the presbyteries is to give diligent laboures in the boundes committed to their charge, that the kirks be keeped in gude ordour; to enquire diligentlie of naughtie and ungodlie persons; and to travel to bring them in the way againe, be admonition, or threatnings of God's judgements, or be correction. It appertains to the elderschippe to take heed that the Word of God be purelie preached within their boundes, the sacraments richtlie ministered, the discipline enterteined, and ecclesiastical guddes uncorruptlie distributed. It belongs to this kind of Assemblies to cause the ordinances maid be the Assemblies, provincialles, nationalles, and generalles, to be keeped and put in execution, to make constitutions quhilk concernis τὸ πρέπον in the kirk, for decent ordour in the particular kirk quhair they governe; providing, that they alter na rules maid be the provincial or General Assemblies, and that they make the provincial Assemblies foresaid privie of the rules that they sall make; and to abolish constitutiones tending to the hurt of the same. It hes power to excommunicate the obstinate, formal process being lede, and due interval of times observed.—Anent particular kirks, gif they be lachfully ruled be sufficient ministerie and session, they have power and jurisdiction in their own congregation in matters ecclesiastical. And decernis and declaris the saides Assemblies, presbyteries, and ses-

siounes, jurisdiction and discipline thereof foresaid, to be in all times cumming maist just, gude, and godlie in the selfe, notwithstanding of quhatsumever statutes, actes, canone, civill, or municipal lawes, made in the contrare. To the quhilks and everie ane of them, thir presentis sall make expresse derogation."—Follows a repeal of "divers actes of parliament maid in favour of the papisticall kirke, tending to the prejudice of the libertie of the trew kirk of God, presently professed within this realme, jurisdiction and discipline thereof.—"Item, the Kingis Majestie, and Estaites foresaids, declaris, that the 129th acte of the parliament halden at Edinburgh, May 22, 1584, sall na wise be prejudiciall nor derogate onie thing to the privilege that God has given to the spirituall office-bearers in the kirk, concerning heads of religion, maters of heresie, excommunication, collation, or deprivation of ministers, or ony sic-like essential censours, specially grounded and having warrand of the word of God. Item, Our Soveraine Lord, and Estaitis of parliament foresaidis, abrogatis, cassis, and annullis the act of the same parliament, halden at Edinburgh the said year 1584, granting commission to bischoppes, and utheris judges constitute in ecclesiastical causes, to receive his Hienesse presentations to benefices, to give collation thereupon, and to put ordour in all causes ecclesiastical, quhilk his Majestie and Estaites foresaidis declaris to be expired in the selfe, and to be null in time cumming, and of nane availl, force, nor effect. And therefore ordainis all presentations to benefices to be direct to the particular presbyteries in all time cumming, with full power to give collation thereupon, and to put ordour to all matters and causes ecclesiasticall within their boundes, according to the discipline of the kirk; providing the foresaid presbyteries be bound and astricted to receive and admitt quhatsumever qualified minister presented be his Majestie or laick patrones."

II.—ACT 1690, c. 5.

Being the fifth Act in the second Session of the first Parliament of William and Mary, holden at Edinburgh, April 25, 1690.

Act ratifying the Confession of Faith, and settling Presbyterian Church Government, June 7, 1690.

"Our Sovereign Lord and Lady, the King and Queen's Majesties, and three Estates of Parliament, conceiving it to be their bound duty, after the great deliverance that God hath lately wrought for this Church and kingdom, in the first place, to settle and secure therein the true Protestant religion, according to the truth of God's word, as it hath of a long time been professed within this land; as also the government of Christ's church within this nation, agreeable to the word of God, and most conducive to the advancement of true piety and godliness, and the establishing of peace and tranquillity within this realm; and that by an article of the Claim of Right, it is declared, that Prelacy, and the superiority of any office in the Church above presbyters, is and hath been a great and insupportable grievance and trouble to this nation, and contrary to the inclinations of the generality of the people ever since the Reformation, they having reformed from Popery by presbyters, and therefore ought to be abolished: Likeas, by an act of the last session of this Parliament, Prelacy is abolished; therefore, their Majesties, with advice and consent of the saids three Estates, do hereby revive, ratifie, and perpetually confirm all laws, statutes, and acts of Parliament, made against Popery and Papists, and for the maintenance and preservation of the true reformed Protestant religion, and for the true Church of

Christ within this kingdom, in so far as they confirm the same, or are made in favours thereof. Likeas they, by these presents, ratifie and establish the Confession of Faith, now read in their presence, and voted and approven by them, as the public and avowed confession of this Church, containing the sum and substance of the doctrine of the Reformed Churches; (which Confession of Faith is subjoined to this present act.) As also they do establish, ratifie, and confirm, the Presbyterian church government and discipline: That is to say, the government of the Church by kirk-sessions, presbyteries, provincial synods, and General Assemblies, ratified and established by the 114th act, Ja. VI. parl. 12, anno 1592, entitled, Ratification of the Liberty of the True Kirk, &c., and thereafter received by the general consent of this nation, to be the only government of Christ's Church within this kingdom; reviving, renewing, and confirming, the foresaid act of Parliament, in the whole heads thereof, except that part of it relating to patronages, which is hereafter to be taken into consideration; and rescinding, annulling, and making void the acts of Parliament following." Follow the titles and dates of divers acts of Parliament. "With all other acts, laws, statutes, ordinances, and proclamations, and that in so far allenarly as the said acts and others generally and particularly above mentioned are contrary or prejudicial to, inconsistent with, or derogatory from, the Protestant religion, and Presbyterian government now established; and allowing and declaring, that the church government be established in the hands of, and exercised by, these Presbyterian ministers who were outed since the 1st of January 1661, for non-conformity to Prelacy, or not complying with the courses of the times, and are now restored by the late act of Parliament, and such ministers and elders only as they have admitted or received, or shall hereafter admit or receive: And also, that all the said

Presbyterian ministers have, and shall have, right to the maintenance, rights, and other privileges by law provided to the ministers of Christ's Church within this kingdom, as they are, or shall be, legally admitted to particular churches. Likeas, in pursuance of the premises, their Majesties do hereby appoint the first meeting of the General Assembly of this Church, as above established, to be at Edinburgh, the third Thursday of October next to come, in this instant year 1690. And because many conform ministers either have deserted, or were removed from preaching in their churches preceding the 13th day of April 1689, and others were deprived for not giving obedience to the act of the Estates made in the said 13th of April 1689, entitled, "Proclamation against the owning of the late King James, and appointing public prayers for King William and Queen Mary:" Therefore their Majesties, with advice and consent foresaid, do hereby declare all the churches deserted, or from which the conform ministers were removed or deprived, as said is, to be vacant, and that the Presbyterian ministers exercising their ministry within any of these paroches, (or where the last incumbent is dead,) by the desire or consent of the paroch, shall continue their possession, and have right to the benefices and stipends, according to their entry in the year 1689, and in time coming, ay, and while the church as now established take further course therewith. And to the effect the disorders that have happened in this church may be redressed, their Majesties, with advice and consent foresaid, do hereby allow the general meeting, and representatives of the foresaid Presbyterian ministers and elders, in whose hands the exercise of the church government is established, either by themselves, or by such ministers and elders as shall be appointed and authorised visitors by them, according to the custom and practice of Presbyterian government throughout the whole kingdom,

and several parts thereof, to try and purge out all insufficient, negligent, scandalous, and erroneous ministers, by due course of ecclesiastical process and censures; and likewise for redressing all other church disorders. And further, it is hereby provided, that whatsoever minister, being convened before the said general meeting, and representatives of the Presbyterian ministers and elders, or the visitors appointed by them, shall either prove contumacious in not appearing, or be found guilty, and shall be therefore censured, whether by suspension or deposition, they shall *ipso facto* be suspended from, or deprived of, their stipends and benefices.

III.—Act 1707, c. 6.

Being the sixth Act in the fourth Session of the first Parliament of Queen Anne, holden at Edinburgh, October 3, 1706.

Act for Securing the Protestant Religion and Presbyterian Church Government, January 16, 1707.

"Our Sovereign Lady and the Estates of Parliament, considering, that by the late act of Parliament for a treaty with England, for an union of both kingdoms, it is provided, that the commissioners for that treaty should not treat of or concerning any alteration of the worship, discipline, and government of the Church of this kingdom, as now by law established; which treaty being now reported to the Parliament, and it being reasonable and necessary that the true Protestant religion, as presently professed within this kingdom, with the worship, discipline, and government of this church, should be effectually and unalterably secured: Therefore, her Majesty, with advice and consent of the said Estates of Parliament, doth here-

by establish and confirm the said true Protestant religion, and the worship, discipline, and government of this Church, to continue without any alteration to the people of this land in all succeeding generations: And more especially, her Majesty, with advice and consent foresaid, ratifies, approves, and for ever confirms the fifth act of the first parliament of King William and Queen Mary, intituled, Act ratifying the Confession of Faith, and settling Presbyterian church government, with the haill other acts of parliament relating thereto, in prosecution of the declaration of the Estates of this kingdom, containing the Claim of Right, bearing date August 11, 1689. And her Majesty, with advice and consent foresaid, expressly provides and declares, that the foresaid true Protestant reliligion, contained in the above-mentioned Confession of Faith, with the form and purity of worship presently in use within this church, and its Presbyterian church government and discipline; that is to say, the government of the church by kirk-sessions, presbyteries, provincial synods, and General Assemblies, all established by the foresaid acts of parliament, pursuant to the Claim of Right, shall remain and continue unalterable; and that the said Presbyterian government shall be the only government of the church within the kingdom of Scotland. And further, for the greater security of the foresaid Protestant religion, and of the worship, discipline, and government of this church, as above established, her Majesty, with advice and consent foresaid, statutes and ordains, that the Universities and Colleges of St Andrew's, Glasgow, Aberdeen, and Edinburgh, as now established by law, shall continue within this kingdom for ever; and that, in all time coming, no professors, principals, regents, masters, or others bearing office in any university, college, or school within this kingdom, be capable, or be admitted or allowed to continue in the exercise of their said functions, but such as shall own

and acknowledge the civil government in manner prescribed or to be prescribed by the acts of parliament: As also, that before or at their admissions, they do and shall acknowledge and profess, and shall subscribe to the foresaid Confession of Faith, as the confession of their faith, and that they will practise and conform themselves to the worship presently in use in this Church, and submit themselves to the government and discipline thereof, and never endeavour, directly or indirectly, the prejudice and subversion of the same; and that before the respective presbyteries of their bounds, by whatsoever gift, presentation, or provision they may be thereto provided. And further, her Majesty, with advice foresaid, expressly declares and statutes, that none of the subjects of this kingdom shall be liable to, but all and every one of them for ever free of any oath, test, or subscription within this kingdom, contrary to, or inconsistent with, the foresaid true Protestant religion, and Presbyterian church government, worship, and discipline, as above established; and that the same, within the bounds of this church and kingdom, shall never be imposed upon or required of them in any sort. And lastly, that, after the decease of her present Majesty, (whom God long preserve,) the Sovereign succeeding to her in the royal government of the kingdom of Great Britain shall, in all time coming, at his or her accession to the crown, swear and subscribe, that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion, with the government, worship, discipline, rights, and privileges of this church, as above established by the laws of this kingdom, in prosecution of the Claim of Right. And it is hereby statute and ordained, that this act of parliament, with the establishment therein contained, shall be held and observed in all time coming, as a fundamental and essential condition of any treaty or union, to be concluded betwixt the two kingdoms, without any

alteration thereof, or derogation thereto in any sort, for ever. As also, that this act of parliament, and settlement therein contained, shall be insert and repeated in any act of parliament that shall pass for agreeing and concluding the foresaid treaty or union betwixt the two kingdoms; and that the same shall be therein expressly declared to be a fundamental and essential condition of the said treaty or union, in all time coming."

II.

ACTS OF ASSEMBLY AND OF PARLIAMENT REFERRED TO IN THE BODY OF THE WORK UNDER THE HEAD "PRESBYTERY."

PROBATIONERS.

1.—Act xi., Ass. 1849, June 4, Sess. ult.

*Act Consolidating the several Acts of former Assemblies respecting the Study of Divinity and the Licensing of Probationers.**

The following is the preamble of the said act:—

The General Assembly, taking into consideration that the acts of former Assemblies relating to the Study of Divinity and the Licensing of probationers, are dispersed over a number of years, and that it will be convenient for the Presbyteries of the Church, as well as Professors and

* Page 34, Ass. 1849.

Students of Divinity, to have the whole of these acts now in force arranged under one head, did, and hereby do, declare, and of new enact, as follows:—

It has not been considered necessary to reprint the act in the Appendix, as the whole of it is given in the body of the work, under the head "Presbytery—Students of Divinity," &c., page 50 *et seq.*, with the exception of the following clause:—

Clause XI. "If a student have studied either in whole or in part in Protestant universities which are not within the bounds of this Court, he shall, when he is proposed to any presbytery for trials, be required to produce satisfying testimonials from the Professors of Divinity in said universities; and the time which these professors shall certify to have been employed by him in studying divinity under their tuition, shall be computed in the same manner as if he had prosecuted his studies in any of the universities within the bounds of this Church. But it is hereby provided, That no student in such circumstances shall be admitted even to those private trials which are appointed to be taken before the writing of the circular letters, sooner than six calendar months after his arrival in Scotland."

Clause X. "That at the request of the student it shall be competent to any presbytery to transfer the receiving of the public trials," &c., does not occur in the order in which it stands in the act, but will be found at p. 61.

II.—Act viii., Ass. 1759, May 30, sess. 5.

Act against Simoniacal Practices.

The General Assembly, taking into consideration a representation of the Synod of Angus and Mearns, relating to bargains betwixt patrons or heritors in parishes, and

candidates for the ministry, or the friends of such candidates, and the great danger which may thence arise to this Church, do hereby enjoin the several presbyteries in this Church, in order to prevent such practices for the future, to take all proper measures to discover if any such have happened in their bounds; and if, upon inquiry, it shall be found that any minister or probationer hath obliged himself, or that his friends, before his settlement, and in order to promote the same, have obliged themselves, upon the account of the candidate, that he shall not, during his incumbency, commence any process against the heritors for augmentation of stipend, reparation of manse, office-houses, or enlarging his glebe, or shall have become bound in any sum or sums of money, or any prestation, to the patron or person connected with the patron, in order to procure the presentation, or to the heritors or others concerned, in order to obtain a concurrence with the said presentation, or otherwise to procure a call to a vacant parish, or has entered into any simoniacal paction or practice for that effect: that such presbytery lay a representation of the said matter before the General Assembly, that the procurator for the Church may have orders to raise and carry on a process of reduction of such bargains or obligations before the Court of Session; and also the General Assembly do hereby declare it a just cause of deposition in ministers, and of taking away the licence of a probationer; and ordain presbyteries to proceed to such sentences against all such ministers and probationers, as shall be hereafter found to have either entered into such bargains themselves previous to their settlements, or who shall after their settlements homologate the deed of their friends. And it is hereby enacted, that if any such simoniacal practices as are mentioned and described in this act shall be carried on by any person or persons whatsoever, in order to the promoting or procuring any benefice or office in this church to any

minister or probationer, though without his consent or approbation; and if such minister or probationer shall, at any time, be told or informed that such practices have been or are carried on, or proposed to be carried on, for the purpose aforesaid, and shall not make discovery or intimation thereof to the presbytery of the bounds at their first meeting after he shall receive such information, then, and in that case, he shall, if a minister, be deposed, and, if a probationer, be deprived of his licence. And further, the Assembly appoint this act to be read by all presbyteries to every person before he be licensed to preach the gospel, and to every candidate for a settlement in their bounds, before they take any steps towards his settlement.

ADMISSION OF MINISTERS.

III.—Act 10 Q. Anne, c. 12, A.D. 1711.

An Act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that part of Great Britain called Scotland.

Whereas, by the antient laws and constitutions of that part of Great Britain called Scotland, the presenting of ministers to vacant churches did of right belong to the patrons, until, by the twenty-third act of the second session of the first parliament of the late King William and Queen Mary, held in the year one thousand six hundred and ninety, intituled, Act concerning Patronages, the presentation was taken from the patrons, and given to the heritors and elders of the respective parishes; and in place of the right of presentation, the heritors and liferenters of every parish were to pay to the respective patrons a small and inconsiderable sum of money, for which the patrons

were to renounce their right of presentation in all times thereafter: And whereas by the fifteenth act of the fifth session, and by the thirteenth act of the sixth session of the first parliament of the said King William, the one intituled, An act for encouraging of preachers at vacant churches be-north Forth, and the other intituled, Act in favour of preachers be-north Forth; there are several burthens imposed upon vacant stipends, to the prejudice of the patron's right of disposing thereof: And whereas that way of calling ministers has proved inconvenient, and has not only occasioned great heats and divisions among those who by the foresaid act were entitled and authorised to call ministers, but likewise has been a great hardship upon the patrons, whose predecessors had founded and endowed those churches, and who have not received payment or satisfaction for their right of patronage from the aforesaid heritors or liferenters of the respective parishes, nor have granted renunciations of their said rights on that account: Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the aforesaid act, made in the year one thousand six hundred and ninety, intituled, Act concerning Patronages, in so far as the same relates to the presentation of ministers by heritors and others therein mentioned, be, and is hereby repealed and made void; and that the aforesaid fifteenth act of the fifth session, and thirteenth act of the sixth session of the first parliament of King William, be, and are hereby likewise repealed and made void; and that in all time coming, the right of all and every patron or patrons to the presentation of ministers to churches and benefices, and the disposing of the vacant stipends for pious uses within the parish, be restored, settled, and confirmed to them, the

aforesaid acts, or any other acts, statute, or custom to the contrary in any wise notwithstanding; and that from and after the first day of May one thousand seven hundred and twelve, it shall and may be lawful for her Majesty, her heirs and successors, and for every other person or persons who have right to any patronage or patronages of any church or churches whatsoever in that part of Great Britain called Scotland, (and who have not made and subscribed a formal renunciation thereof under their hands,) to present a qualified minister or ministers to any church or churches whereof they are patrons, which shall, after the said first day of May, happen to be vacant; and the presbytery of the respective bounds shall, and is hereby obliged to receive and admit in the same manner such qualified person or persons, minister or ministers, as shall be presented by the respective patrons, as the persons or ministers presented before the making of this act ought to have been admitted.

II. Provided always, That in case any patron or patrons have accepted of and received any sum or sums of money from the heritors or liferenters of any parish, or from the magistrates or town-council of any borough, in satisfaction of their right of presentation, and have discharged or renounced the same, under their hand, that nothing herein shall be construed to restore such patron or patrons to their right of presentation; any thing in this present act to the contrary notwithstanding.

III. Provided also, and it is hereby enacted by the authority aforesaid, That in case the patron of any church aforesaid shall neglect or refuse to present any qualified minister to such church that shall be vacant the said first day of May, or shall happen to be vacant at any time thereafter for the space of six months after the said first day of May, or after such vacancy shall happen, that the right of presentation shall accrue and belong for that time

to the presbytery of the bounds where such church is, who are to present a qualified person for that vacancy, *tanquam jure devoluto.*

IV. And be it further enacted and declared, by the authority aforesaid, That the patronage and right of presentation of ministers to all churches which belonged to archbishops, bishops, or other dignified persons, in the year one thousand six hundred and eighty-nine, before Episcopacy was abolished, as well as those which formerly belonged to the Crown, shall and do of right belong to her Majesty, her heirs and successors, who may present qualified ministers to such church or churches, and dispose of the vacant stipends thereof for pious uses, in the same way and manner as her Majesty, her heirs and successors, may do in the case of other patronages belonging to the Crown.

V. Declaring always, That nothing in this present act contained shall extend, or be construed to extend, to repeal and make void the aforesaid twenty-third act of the second session of the first parliament of the late King William and Queen Mary, excepting so far as relates to the calling and presenting of ministers, and to the disposing of vacant stipends in prejudice of the patrons only.

VI. And be it further enacted, by the authority aforesaid, That all and every patron and patrons, who have not taken or shall not take, at any time before his or their presenting a minister or ministers to any church or churches aforesaid the oath appointed to be taken by persons in publick trust, by an act made in the sixth year of her Majesty's reign, intituled, An act for the better security of her Majesty's person and government, shall, and are hereby obliged, at their signing such presentation, to take and subscribe the aforesaid oath before the sheriff of the shire, stewart of the stewartry, or before any two or more justices of the peace of the county or place where such

patron resides; and in case such patron or patrons, who have not formerly taken the aforesaid oath, refuse or neglect to take the same at the signing of such presentation, that the same shall be, and is hereby declared to be, void, and the right of presentation, and of the disposing the vacant stipends for that time, shall belong to her Majesty, her heirs and successors, who may present a qualified person to such church or benefice, at any time within the space of six months after such neglect or refusal; any thing in this present act or any other act to the contrary notwithstanding.

VII. And whereas the right of patronage of churches may belong to Papists; be it therefore enacted, by the authority aforesaid, That any person or persons, known or suspected to be Papists, and who have a right of presenting ministers, shall be obliged, at or before his or their signing any presentation, to purge himself of Popery, by taking and signing the Formula contained in the third act of the Parliament of Scotland, held in the year one thousand seven hundred, intituled, Act for preventing the growth of Popery; and in case such Popish patron or patrons shall refuse to take and subscribe the Formula aforesaid, the same being tendered to him or them by the sheriff of the shire, stewart of the stewartry, or any two or more justices of the peace within their respective jurisdiction, who are hereby empowered to administer the same, the presentation and the right of disposing the vacant stipends shall for that time belong to her Majesty, her heirs and successors, who may present any qualified person or persons within six months after such neglect or refusal; any thing in this present act or any other act to the contrary notwithstanding.

II.—Act 6 and 7, Vict. cap. 61.

An Act to remove Doubts respecting the Admission of Ministers to Benefices in that part of the United Kingdom called Scotland.

17*th August* 1843.

Whereas certain acts of the parliament of Scotland, and of the United Kingdom of Great Britain, have declared, that the right of collation in regard to the settlement of ministers in the parishes to which they may be presented, belongs to the church established by law in that part of the United Kingdom called Scotland: And whereas provision has been made by these statutes for securing to the church the exclusive right of examining and admitting any person who may be presented to a benefice having cure by the patron of such benefice; and in particular by an act passed in the parliament of Scotland in the year one thousand five hundred and sixty-seven, intituled Admission of Ministers; of Laick Patronages, it is statute and ordained, that the examination and admission of ministers within this realm be only in the power of the kirk now openly and publicly professed within the samin, the presentation of laick patronage alwaies reserved to the just and auncient patrones; and by an act passed in the parliament of Scotland in the year one thousand five hundred and ninety-two, intituled, Ratification of the Liberty of the trew Kirk, the government of the church by presbyteries, synods, and general assemblies was ratified and established, and it was ordained that all presentations to benefices be direct to the particular presbyteries in all time cumming, with full power to give collation thereupon, and to put ordour to all maters and causes ecclesiastical within their boundes according to the discipline of the kirk; providing the foresaids presbyteries

be bound and astricted to receive and admit whatsumever qualified minister presented be his Majesty or laick patrones; and by an act of the parliament of Great Britain passed in the tenth year of the reign of her Majesty Queen Anne, intituled, An act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that part of Great Britian called Scotland, the right of the church to receive and admit persons presented to benefices was again recognised and secured; and by an act of the parliament of Great Britain passed in the fifth year of the reign of his Majesty king George the first, intituled, An act for making more effectual the Laws appointing the Oaths for Security of the Government to be taken by Ministers and Preachers in Churches in Scotland, providing that certain oaths should be taken by ministers and preachers of the Church of Scotland, and for preventing delays in the supplying or filling up of vacant churches in Scotland, it is also declared and enacted that nothing herein contained shall prejudice or diminish the rights of the church, as the same now stands by law established, as to the trying of the qualities of any person presented to any church or benefice: And whereas it is expedient to remove any doubt which may exist as to the powers and jurisdiction of the church as by law established in Scotland in the matter of collation, and as to the right of the church to decide that no person be settled in any parish or benefice having cure, against whom or whose settlement in such parish or benefice there exists any just cause of exception: May it therefore please your Majesty that it may be declared and enacted, and be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That when a presentation to any benefice within that

part of the United Kingdom called Scotland by the undoubted patron has been laid before the presbytery of the bounds, it shall and may be lawful for the presbytery, as part and as the commencement of the proceedings in the examination and admission of the person so presented for the cure of that parish, and of the trial of his gifts and qualities, to appoint him to preach in the church of the said parish at such times as the presbytery may direct, or as may be directed by any regulations of the General Assembly to that effect; and after the presentee shall have preached in the parish church according to the directions of the presbytery, the presbytery, or a committee of their number, shall meet, after due notice, at the said church, and shall intimate that if any one or more parishioners, being members of the congregation, have any objection to the individual so presented, in respect to his ministerial gifts and qualities, either in general or with reference to that particular parish, or any reason to state against his settlement in that parish, and which objections or reasons do not infer matter of charge against the presentee to be prosecuted and followed out according to the forms and discipline of the church, the presbytery are ready, either then or at their next meeting, to receive the same in writing, or to write down the same in their minutes in the form and manner which such parishioners may desire.

II. And be it enacted, That the objections or reasons aforesaid shall be fully considered and disposed of by the presbytery by whom they are to be cognosced and determined on judicially, or shall be referred by the presbytery to the superior judicatory of the church for decision, as the presbytery may see cause, the presentee and all parties having interest being heard in either case on the same; and the presbytery or other judicatory of the church to whom the said objections or reasons shall be stated or referred as aforesaid, shall in cognoscing and determining on the

same judicially, have regard only to such objections and reasons so stated as are personal to the presentee in regard to his ministerial gifts and qualities, either in general or with respect to that particular parish, but shall be entitled to have regard to the whole circumstances and condition of the parish, to the spiritual welfare and edification of the people, and to the character and number of the persons by whom the said objections or reasons shall be preferred; and if the presbytery or other judicatory of the church shall come to the conclusion, as their judgment on the whole matter, that the said objections or reasons, or any of them, are well founded, and that in respect thereof the individual presented is not a qualified and suitable person for the functions of the ministry in that particular parish, and ought not to be settled in the same, they shall pronounce a deliverance to that effect, and shall set forth and specify in such deliverance the special ground or grounds on which it is founded, and in respect of which they find that the presentee is not qualified for that charge, in which event they shall intimate their deliverance respecting the presentee to the patron, who shall thereupon have power to issue another presentation within the period of six calendar months after the date of such deliverance, if no appeal shall be taken to a superior judicatory of the church, or in the event of an appeal being taken to a superior judicatory of the church, then within six months after the date of the judgment of the superior judicatory of the church affirming the deliverance of the inferior judicatory of the church or dismissing the appeal.

III. And be it enacted, That if the presbytery or other judicatory of the church, after considering all the objections aforesaid to the presentee, and all the reasons stated against his settlement in that particular parish, shall be satisfied, in the discharge of their functions and in the exercise of their authority and duty as ministers of

the gospel and as office-bearers in the church, that no good objections against the individual or no good reason against his settlement has been stated as aforesaid, or that the objections and reasons stated are not truly founded in any objection personal to the presentee in regard to his ministerial gifts and qualities, either in general or with reference to that particular parish, or arise from causeless prejudices, the said presbytery or other judicatory of the church shall repel the same, and, subject to the right of appeal as herein-after provided, shall complete the further trials and examination of the presentee, and if found by them to be qualified for the ministry in that parish, shall admit and receive him into the benefice as by law provided.

IV. And be it enacted, That it shall not be lawful for any presbytery or other judicatory of the church to reject any presentee upon the ground of any mere dissent or dislike expressed by any part of the congregation of the parish to which he is presented, and which dissent or dislike shall not be founded upon objections or reasons to be fully cognosced, judged of, and determined in the manner aforesaid by the said presbytery or other judicatory of the church.

V. And be it enacted, That it shall be in the power of the presentee, patron, or objectors to appeal from any deliverance pronounced as aforesaid by the said presbytery acting within its competency as a judicatory of the church, which appeal shall lie exclusively to the superior judicatories of the church according to the forms and government of the Church of Scotland as by law established.

VI. And whereas by an act of the General Assembly of the Church of Scotland, of date twenty-ninth May one thousand eight hundred and thirty-five, it was made an instruction to presbyteries that if at the moderating in a call to a vacant parish the major part of the male heads of families, members of the vacant congregation and in

full communnion with the church, shall disapprove of the person in whose favour the call is proposed to be moderated in, such disapproval shall be deemed sufficient ground for the presbytery rejecting such person, and that he shall be rejected accordingly, and certain regulations were passed for carrying the said instructions into effect: And whereas it has been found by final judgment of the Court of Session, affirmed by the House of Lords, that a presbytery, acting in pursuance of said act of Assembly and regulations, refusing to take trial of the qualifications of a presentee, and rejecting him on the sole ground that a majority of the male heads of families communicants in the said parish have dissented, without any reasons assigned, from his admission as minister, acted illegally and in violation of their duty, and contrary to the provisions of certain statutes of the realm, and particularly the statute of the tenth year of Queen Anne, chapter twelve, intituled, An act to restore Patrons to their ancient Rights of Presenting Ministers to the Churches vacant in that part of Great Britain called Scotland: And whereas in some instances a presentee has, in pursuance of the said act of Assembly and regulations relative thereto, been rejected by a presbytery because of the dissents of male heads of families communicants, and a presentation has thereafter been issued in favour of a second or subsequent presentee, who has been settled in the same benefice, and whose settlement therein and right thereto have not been questioned in any court of law: And whereas it is expedient that such settlement in and right to the benefice should be secured and protected from future challenge on the ground of the incompetency of the rejection of the first or prior presentee; be it enacted, That it shall not be competent to challenge the settlement or right to the benefice of any such second or subsequent presentee, or to maintain any proceedings at law against the presbytery or

ministers thereof, or other parties, on account of such rejection, unless such challenge or proceedings shall have been instituted by action raised in a court of law before the first day of May last.

III.—Act 8, Assembly 1849, June 4, sess. ult.

Overture and Interim Act respecting the Induction of Ministers.

Edinburgh, 4th June 1849. *Sess. ult.*

The General Assembly, having considered the report of their committee on the regulations for the induction of ministers, agreed to re-transmit the overture to presbyteries for their consideration, and, in the mean time, to convert the same into an interim act.

Preamble.—Whereas, for a considerable time past, and especially since the repeal of the act passed by the General Assembly in 1835, intituled, Act anent Calling of Ministers, a diversity in the form and order of proceeding to fill up vacant parishes and congregations appears to have prevailed in presbyteries; and whereas it is essential to the maintenance of good order, in the supplying of vacancies with able and sufficient ministers, that a uniform course of procedure be observed throughout the Church; it is overtured, that the General Assembly, with consent of a majority of the Presbyteries of the Church, do enact and ordain, that the following directions and regulations, in accordance with the word of God, and the constitution and practice of this Church, shall be observed in time coming:—

1. *Presentation to be lodged.*—Every presentation to a vacant charge shall be lodged in due time in the hands of the moderator or clerk for the time being, of the presbytery of the bounds; and if so lodged with the clerk, shall

be by him immediately delivered to the moderator, who shall lay the same before the presbytery at their next ordinary meeting, if such meeting have been previously fixed for a day distant not more than one calendar month from the time when said document has been put into his hands. But if no ordinary meeting shall have been fixed to take place within that period, the moderator shall, within three days after its coming into his hands, call a meeting of presbytery, to be held on a day not less than ten, nor more than fourteen, days after the date and dispatch of the intimation by which it is called, for the purpose of receiving, examining, and judging of such presentation.

2. *Documents to be examined.*—At the next ordinary meeting of presbytery, or on the day of meeting specially called for that purpose, as the case may be, the presbytery shall deliberately consider the said presentation, with relative documents, and shall see that these are accompanied by a letter of acceptance from the person so presented or nominated; that he has qualified by taking the usual oaths to Government; and that he is a minister or licentiate of the Church of Scotland; and, if satisfied on these points, shall pronounce a judgment sustaining the same, and resolving to proceed towards the settlement of the presentee.

3. *In doubtful case judgment to be deferred.*—If any of the documents so produced appear to the presbytery to be invalid or insufficient, the consideration of them may be adjourned to a future day, due intimation of such meeting being given to the presentee, and a reasonable time allowed to him to supply the defect, or obviate the difficulty; and if, at the said second meeting, the presbytery shall be satisfied with the documents, they shall pronounce a judgment, sustaining them, and resolving to proceed as before directed. But if, on the contrary,

they find that those deeds and documents are invalid or insufficient, they shall refuse and reject them, specifying in their judgment the grounds of rejection, and causing their judgment rejecting the presentation to be intimated, without delay, to the patron, unless he, having sisted himself as a party, personally, or by his agent or mandatory, has heard such judgment publicly intimated to him.

4. *Presentee to preach in the vacant church.*—When the presbytery have sustained the presentation and relative documents, they shall appoint the presentee to preach in the church of the vacant parish, on at least one Sabbath-day, and thereafter on a week-day, when a committee of at least two ministers of the presbytery, specially appointed thereunto, shall be present; it being optional to other members of presbytery to attend also; and this committee shall, on the conclusion of the public worship at that time, receive from the presentee the manuscripts of his sermons delivered that day, and on the other appointed occasion or occasions of his preaching, to be laid, if need be, before the presbytery. It being provided, that intimation of the days of such preaching shall be given to the congregation on the Lord's day immediately preceding the first of them, by edictal notice, under authority of the presbytery; it being also provided, that, in the case of a united parish having two churches, the presentee shall be appointed so to preach one Sabbath at least in each of these churches.

5. *Moderation of call to be intimated.*—After providing that the presentee shall preach, as in the preceding regulation, the presbytery shall, at the same time, appoint a meeting to be held in the church, or one of the churches of the vacant parish, for the purpose of moderating in a call in favour of the presentee, and of receiving objections to his settlement, if such shall be offered; such meeting to be at the distance of at least

ten free days from the said week-day appointed as above, for the presentee's preaching, and to be intimated by one of the members of presbytery then present, in the form hereunto appended (A.)

6. *Meeting for moderation of call, &c.*— On the day fixed for moderating in the call, the presbytery shall meet in the vacant church, and a sermon shall be preached by the moderator or other member especially appointed to perform that duty, who shall, after Divine service, intimate from the pulpit the object of the meeting. A call and concurrence, drawn up in the form hereinafter prescribed (B.), shall be publicly read, and the heritors, elders, and others, being members of the congregation, or parishioners, being Protestants, invited to subscribe and concur in the same. After the said call and concurrence has been subscribed by persons present, or by the representatives, duly authorised, of such as are absent, the presbytery may, if they deem it expedient so to do, leave it in the hands of the session-clerk, or other responsible person in the parish, to receive such additional signatures as may be tendered.

7. *Objections.*—After the call and concurrence has been subscribed by all persons who are entitled and willing to do so, or an opportunity for so doing afforded, intimation shall be made by the moderator, that if any one or more heritors, elders, or others, being members of the congregation, and parishioners, being personally present, have any objection to the individual so presented, in respect to his ministerial gifts and qualities, either in general, or with reference to that particular parish, or any reason to state against his settlement in that parish, and which objections or reasons do not infer matter of charge against the presentee, to be prosecuted and followed out according to the forms and discipline of the Church, the presbytery are ready, either then, or at their next meeting, to receive the same in

writing, or to write down the same in their minutes, in the form and manner which such parishioners may require. If any having interest, as parishioners, being members of the congregation, shall compear personally to object, they shall be at liberty to give in their objections in writing, to be kept *in retentis*, or, if necessary, engrossed in the record; or to state them *viva voce*, in which case they shall be taken down, and entered in the minutes by the clerk of presbytery; or it shall be optional to said parties intimating their intention to object, to crave an adjournment to a future day, for receiving their objections and reasons why the presentee shall not be settled in that church or parish; with which request, when made, the presbytery shall comply: such adjourned meeting to take place not more than fourteen days after that for moderating in the call. But if no specific objection has been made, and no intention to object intimated at said first meeting, no objections from the said parties shall be admitted at any subsequent meeting, except such as affect the life and doctrine of the presentee.

8. When objections have been offered and recorded, the presbytery shall proceed to consider and dispose of them; and in cognoscing and determining on the said objections and reasons judicially, they shall have regard only to such objections and reasons so stated as are personal to the presentee, in regard to his ministerial gifts and qualities, either in general, or with respect to that particular parish, but shall have regard to the circumstances and condition of the parish, to the spiritual welfare and edification of the people, and to the character and number of the persons by whom the said objections shall be preferred: and in so proceeding, the presbytery shall, in the first instance, dispose of the relevancy of the objections so made and recorded: Provided always, that it shall be in the power of the presbytery to adjourn

the consideration of the question of relevancy until a future day, if they shall see cause. If the presbytery shall be satisfied that the objections are not personal to the presentee, in respect of his ministerial gifts and qualities, either in general, or with reference to that particular parish; or that they arise from causeless prejudices, or from mere dissent or dislike, not founded on special reasons, they shall pronounce a judgment, finding the objections irrelevant, and sustaining the call; and shall proceed, as if no such objections had been made, to take the usual steps towards the trial and induction of the presentee, according to the rules of the Church.

9. The presbytery, after due consideration, shall pronounce upon the relevancy of each objection separately; and if, in the event of said objections, or any of them, being found relevant, the facts on which such objections bear to be founded, are denied, they shall admit the same to proof, allowing to parties a conjunct probation; such proof to be proceeded with notwithstanding of any appeal against their judgment on the relevancy, or on any matter connected with the proof; and they shall, in like manner, pronounce a judgment on each objection separately, as proven or not proven.

10. *Objections substantiated to be sustained.*—When the presbytery shall have ascertained that relevant objections to a presentee have been judicially admitted, or established by evidence, they shall pronounce a judgment, finding said objections proven, specifying the precise grounds on which such judgment is founded, and declaring that the said presentee is not fit and qualified, in respect of objections to his fitness, made and satisfactorily substantiated, to take the pastoral charge of the parish to which he has been presented, and shall pronounce a deliverance refusing to proceed with his settlement as minister of that parish; of which deliverance

an extract shall be immediately transmitted to the patron.

11. *Groundless Objections to be rejected.*—If the presbytery shall be of opinion, that no objection which was previously found relevant, has been judicially admitted, or substantiated by evidence, they shall pronounce a judgment dismissing the objections, sustaining the call, and resolving to proceed to the ordination or admission of the presentee; but it shall be competent to them, if they find difficulties in the case, to refer the questions which have been raised before them, as to either the relevancy or the proof of the objections, to the superior judicatories of the church for decision: Provided always, that the patron, the presentee, the objectors, and all others, who, having interest in the said questions, have been heard or admitted as parties before the presbytery, shall have a right to bring any judgment of that court, decided on the relevancy or proof, or referring the same, under review of the synod of the bounds, and ultimately of the General Assembly, by protest and appeal taken and prosecuted in due form, according to the law and practice of the church: Provided also, that in every case, whether of reference or of appeal, all the documents which were before the inferior court, including any sermons or discourses delivered, to which objections have been made, shall be laid before the courts of review.

12. *Process of Translation.*—In all cases where the person to be inducted is already an ordained minister, and a member of another presbytery, a process of translation shall be instituted before that presbytery, by presenting to them the call which has been sustained, and a full extract of the procedure with regard thereto, together with reasons setting forth the expediency of the translation; to which process the parishioners and congregation under his charge shall be made parties, by citation from

the pulpit, and their objections, if they compear and do object, heard and judged of, along with the reasons of translation, by the presbytery before whom the process is instituted. If they grant the translation, an extract of their judgment shall be laid before the presbytery into whose bounds he is to be translated, as their warrant for fixing the day of his admission; and during the dependence of said process, the vacant congregation shall continue to be supplied with worship and ordinances by said presbytery. When the translation is from one parish to another, in the same presbytery, the congregation and parish from which it is proposed to remove the minister shall be made parties, by citation, as in cases where the minister is a member of a different presbytery.

13. *Process towards Ordination.*—A probationer, whose appointment and call to a parish or congregation have been finally sustained by the ecclesiastical courts, shall have prescribed to him the several pieces of trial appointed by the laws of the church, and these shall be heard and judged of by the presbytery. Their judgment, if it amounts to a rejection of the presentee as unqualified, may be brought by him in form of appeal, or by a minority of the court in form of complaint, under review of the superior church courts, by whom the question as to his qualifications shall be finally decided. If he be found qualified either by the presbytery, in the first instance, or by the court of review, his trials shall be sustained, and the presbytery shall appoint a day for his admission; it being understood that he may be required to provide supply for the vacant charge from and after the day on which his call is sustained.

14. *Serving and Return of Edict.*—In every case of admission the presbytery shall appoint one of their number to preach in the vacant church on a Lord's-day, at least ten free days before the day fixed for such ad-

mission, and to intimate the same from the pulpit at the close of Divine service, and before pronouncing the blessing, by reading an edict in the form hereto subjoined (C.), and causing a copy thereof to be affixed on the most patent door of the church; which edict, bearing its being served before witnesses thereto subscribing, and indorsed under the hand of the minister serving the same, shall be laid before the presbytery met for admission; and the fact of its being so returned shall be recorded in their minutes as part of the proceedings of the day.

15. *Objections on Return of Edict.*—On the day appointed for admission, the presbytery shall meet at the vacant church, and call for the return of the edict; which being produced, and found to have been served regularly, they shall cause public proclamation to be made at the most patent door of the church three several times, that any of the congregation or parishioners having aught to object to the life or doctrine of the person to be admitted or ordained, may still state their objection to the presbytery then met, and verify the same *instanter.* If no such objection be made, or at once established by proof, the presbytery shall proceed immediately to the admission of the presentee.

16. *Form of Admission.*—At the admission of a minister already ordained, the member of presbytery appointed to preside, after delivering an appropriate discourse, shall narrate the cause of the vacancy, and the steps which have been taken towards filling it up. He shall then read over to the minister the questions appointed by the act of Assembly to be put to ministers at their ordination, and call on him to declare his adherence to and renewal of the answers formerly given. On his making such declaration, the minister presiding shall, in the name of the Lord Jesus Christ, the great

King and Head of the Church, and by authority of the presbytery, solemnly admit him to the pastoral charge of that parish or congregation, the brethren present shall give him the right hand of fellowship, and suitable exhortations shall be addressed from the pulpit to him and to the people.

17. *Form of Ordination.*—At the admission of a preacher of the Gospel to a vacant parish, the minister presiding, after having preached, shall narrate the cause of the vacancy, and the steps which have been taken towards filling it up, and shall then put the prescribed questions to the candidate; and on receiving satisfactory answers, shall descend from the pulpit, and shall, by solemn prayer and imposition of hands, in which all the ministers present are to join, ordain him and set him apart to the work of the holy ministry in that parish and congregation, and solemnly admit him to the pastoral charge thereof; after which the right hand of fellowship shall be given to him; and the remaining part of the service shall proceed and be concluded in all respects as in the case of admission of a minister previously ordained.

18. *Reception into the Presbytery.*—After the congregation is dismissed, the presbytery shall resume their sitting, at which the minister so admitted shall be required to subscribe anew the Confession of Faith and Formula of this church; and his name, if not already standing on the Roll of Presbytery, shall be added thereto.

NOTE.—The preceding regulations are to be applied in all cases of the admission and settlement of ministers of chapels of ease and other congregational charges, in so far as they may be found applicable in the circumstances of each such charge; it being especially required, that in every such case full opportunity for the tendering of objections shall be given, as in regulation 7th; as also, that in-

timation of the day of admission and settlement shall, in every case, be made by edict of at least ten free days.

APPENDIX OF FORMS.

(A.)—*Intimation of Meeting for Moderation of the Call.*

By appointment of the presbytery of I hereby intimate that said presbytery have resolved to meet in this place on the day of for the purpose of moderating in a call in favour of Mr to be minister of this church and parish; and also, that if any one or more of the parishioners, being members of this congregation, and personally present, have any objection to the said Mr , in respect to his ministerial gifts and qualities, either in general or with reference to this particular parish, or any reason to state against his settlement in this parish, the presbytery will be ready on that day, and in this place, or, if so required, at their next meeting, and in this place, to receive the same in writing, or to write down the same in their minutes, in the form and manner which such parishioners may require.

(B.)—*Form of Call.*

We, heritors—elders—members of the congregation of —and parishioners of the parish of , being Protestants,—desirous of promoting the glory of God and the good of His church, being destitute of a fixed pastor; and being satisfied, by good information, and our own experience, of the ministerial abilities, and of the suitableness to our capacities of the gifts of you, Mr , have agreed to invite, as we hereby do invite and call, you to undertake the office of pastor among us, promising you all dutiful respect, encouragement, and obedience in the Lord. In witness whereof, we have subscribed

this call, before the presbytery of on the day of years.

(C.)—*Edict for Admission.*

The presbytery of having completed all the necessary steps towards the of Mr to the pastoral charge of this parish, and resolved to proceed to his on the day of , I am instructed to make intimation of this resolution; and further, to give notice to all concerned, especially the members of the congregation, that if any of them have anything to object to the life and doctrine of the said Mr they may repair to the presbytery, which is to meet in this place, on the said day of at o'clock; with certification, that if no such objection be offered and verified, the presbytery will then forthwith proceed to the induction of the said Mr and admit him to the pastoral charge of this parish.

INDORSEMENT.

Church of this day of years. The within edict was this day duly served by me.

A. B., Minister.

C. D., Witness.
E. F., Witness.

The General Assembly expressly require that returns be made by presbyteries every year to the overtures transmitted by authority of the Assembly; and enact that no return shall be received from any presbytery to any overtures, unless the said return be written on a separate sheet.

CHAPELS OF EASE AND NEW CHURCHES.

I. *Bond to be granted by Managers of a Chapel of Ease to the Minister.*

We, A. B., Esq., of C., D. E., Esq., of F., &c., Trustees for the erection and endowment of the new church erected at H., in the parish of K., considering, that in virtue of the powers granted to us, as trustees foresaid, by the constitution of the chapel at H., lately erected by us, the Rev. G. H., preacher of the gospel, has been by us nominated and elected minister of the said chapel in and that before he can be ordained and admitted by the presbytery of A., it is necessary, in terms of the article of the constitution of the said church and parish, that sufficient security shall be provided for an annual stipend of pounds to the minister. Therefore we, the said A. B., C. D., Esqrs., &c., do hereby bind and oblige ourselves as trustees foresaid, and our successors in office, to make payment to the said Rev. G. H., of a stipend of not less than pounds sterling per annum, out of the free funds of the said chapel so long as he shall continue minister thereof, and that half-yearly at the terms of Whitsunday and Martinmas, by equal portions, beginning the first payment thereof at the term of Whitsunday next, eighteen hundred and for the half-year immediately preceding, and the next payment at the term of Martinmas thereafter, and so forth, at the said two terms of the year in all time coming thereafter, during his incumbency; together with one-fifth part more of each term's payment of liquidate penalty, in case of failure, and the legal interest of the said

termly payments from the said terms of payment during the non-payment thereof. And further, without prejudice to the foregoing obligation, and in order that the Reverend G. H. may be secured in payment of a stipend of not less than pounds sterling per annum, in case the free annual revenues of the said chapel should not be sufficient for payment therefor; at all events, to make payment to him of such a sum as shall, together with the said free revenues, amount to the said sum of pounds sterling, and that half-yearly, at the terms before mentioned, by equal portions, and with penalty and interest as before specified, so long as the said Rev. G. H. shall continue minister of the said chapel, or until a permanent endowment of not less than pounds sterling per annum shall be secured to him as minister of the said chapel if erected into a parish church in terms of act Vict. 7 and 8 c. 44, or (by means expected from some other source,) and the said Rev. G. H. becoming thereby entitled to (the said funds or a part thereof,) or otherwise; Declaring, as it is hereby expressly provided and declared, that so soon as such permanent endowment shall be secured to the said Rev. G. H., the personal and individual obligation undertaken by us as aforesaid shall *ipso facto* cease and determine: But declaring also, that these presents are granted without prejudice to the said Rev. G. H.'s claim to a stipend of such higher amount as shall be regulated by the means at the disposal of the kirk-session, in terms of the article of the said constitution. And we consent to the registration hereof in the books of Council and Session, or others competent for preservation, and that letters of horning on six days' charge, and all other legal execution necessary, may pass upon a decree to be interponed hereto, in form as effeirs, and thereto constitute our procurators. In witness whereof, these pre-

sents, written on this and the preceding pages of stamped paper by L., clerk to N., W.S., are subscribed by us at the day of 18 years, before these witnesses, K., also clerk to the said N., and the said L.

K., Witness. A. B.
L., Witness. C. D.

II.—Act 7 & 8 Vict. cap. 44.

An Act to facilitate the disjoining or dividing of extensive or populous Parishes, and the erecting of new Parishes in that part of the United Kingdom called Scotland.

19*th July* 1844.

Whereas by certain acts of the parliament of Scotland, provision is made for disjoining large parishes, and building and erecting new churches; and in particular by an act passed in the parliament of Scotland in the year one thousand seven hundred and seven, intituled, Act anent Plantation of Kirks and Valuation of Teinds, the Lords of Council and Session are empowered, authorised, and appointed to judge, cognosce, and determine in all affairs and causes whatsoever which by the laws and acts of parliament of the kingdom of Scotland were formerly referred to, and did pertain and belong to the jurisdiction and cognizance of the commissioners formerly appointed for the plantation of kirks and the valuation of teinds, as fully and freely in all respects as the said Lords do or may do in other civil causes; and particularly, *inter alia*, "to disjoin too large paroches, to erect and build new churches, to annex and dismember churches, as they shall think fit, conform to the rules laid down and powers granted by the

nineteenth act of the parliament one thousand six hundred and thirty-three, the twenty-third and thirtieth acts of the parliament one thousand six hundred and ninety, and the twenty-fourth act of the parliament one thousand six hundred and ninety-three, in so far as the same stand unrepealed; the transporting of kirks, disjoining of too large paroches, or erecting and building of new kirks, being always with the consent of the heritors of three parts of four at least of the valuation of the paroch whereof the kirk is craved to be transported, or the paroch to be disjoined and new kirks to be erected and built;" And whereas it is expedient to afford facilities and to make further provision for the disjoining or dividing of extensive or populous parishes: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act so much of the said recited act as requires the consent of the heritors of three parts of four at least of the valuation of the parish whereof the kirk is craved to be transported, or the parish to be disjoined and new kirks to be erected and built, shall be repealed; and that the consent of the heritors of a major part of the valuation of any parish shall be necessary and sufficient in all cases in which the consent of the heritors of three parts of four of the valuation of such parish was required by the said recited act, except where otherwise herein-after expressly provided.

II. And be it enacted and declared, That a parish may be deemed and held to be too large, and may, as such, be disjoined or divided under the provisions of the said recited act as altered and amended by this act, by reason of the largeness of the population of such parish, although the superficial measurement thereof may not be too large for one parish.

III. And be it enacted, That it shall not be a valid objection to the competency of any process which shall be brought for disjoining or dividing a parish or parishes and erecting a new kirk or kirks, under the provisions of the said recited act as altered and amended by this act, that the consent of the heritors of a major part of the valuation of the parish to be disjoined or divided had not been given previous to such process having been brought into court; and it shall be lawful for the Lords of Council and Session, before whom any such process shall have been brought to appoint special intimation thereof to be made, in such form and manner as the said Lords of Council and Session shall direct, to such of the heritors of the valuation of the parish as shall not have already either given their consent or judicially stated their dissent, and to sist proceedings in such process for a definite time for the purpose of allowing such heritors to state judicially their consent or their dissent; and such of them as shall not, within a time to be fixed by the said Lords of Council and Session, and to be specified in such intimation as aforesaid, judicially state their dissent, shall, in computing the statutory proportion of consents, be reckoned as consenting heritors.

IV. And be it enacted, That if, in any process for disjoining or dividing a parish, it shall be shown to the satisfaction of the Lords of Council and Session that there is already built or erected, and in good repair, a church or place of worship suitable for the church of the new parish proposed to be erected, and capable of being lawfully appropriated to that purpose, whereby the expense of erecting a new or additional church will not be incurred by the heritors, and that the titulars or others having right to the teinds out of which is to be paid not less than three-fourths of the additional stipend or stipends to be modified by reason of such disjunction or division have consented thereto, or have stated no objection thereto, after due in-

timation by direction of the Lords of Council and Session to them given, it shall be lawful and competent for the said Lords of Council and Session to allow such process to proceed, and to give judgment and decree therein, if, upon consideration of the whole case, it shall appear to them that there are good and sufficient reasons for so doing, although the heritors of a major part of the valuation of the parish to be disjoined or divided may not have consented.

V. And be it enacted, That when any parish or parishes shall have been disjoined or divided, and a new parish erected, under the provisions of the said recited act, as altered and amended by this act, the patronage of such new parish shall belong to the patron of the original parish from which the same has been disjoined or divided; or if the new parish has been disjoined or divided from more than one parish having different patrons, the patronage of such new parish shall belong to the patrons of the parishes from which the same has been disjoined or divided, and shall be exercised by them, either jointly or in a certain order of rotation as may have been agreed upon by them; or failing of such agreement, then their respective interests in the right of patronage, and the manner of exercising the same, shall be fixed by the Lords of Council and Session, and in either case shall be set forth in a judgment to be pronounced by the said Lords of Council and Session in the process for erecting such new parish: Provided always, that such patron or patrons of the original parish or parishes from which the new parish has been disjoined or divided shall undertake to bear the burden of not less than one-half of the stipend to be provided to the minister of such new parish: Provided also, that no patron of any of the original parishes, who shall not bear the burden of one-fourth part of the stipend of the minister of the new parish, shall have any right or interest

in the patronage of such new parish by virtue of his right of patronage in such original parish; and in every case in which the patron or patrons of the original parish or parishes shall not bear the burden of not less than one-half of the stipend to be provided to the minister of the new parish, the patronage of such new parish, and the right of presentation to the kirk thereof, shall belong to the person, if there be only one such person, or to the persons alternately, if there are more than one and not more than three such persons, who shall bear the burden of the whole stipend provided for the minister of such new parish at the erection thereof, and to the heirs of such person or persons; and if the persons who bear the burden of such stipend shall exceed three in number, then the patronage of such new parish, and the right of presentation to the kirk thereof, shall be vested in and be exercised by three trustees, or, in case of difference of opinion, by the majority of three trustees, who shall be chosen for their respective lives in manner following: (that is to say,) the three trustees first chosen shall be elected by a majority of votes at a meeting of the heritors of such new parish, and of the persons who are liable in payment of stipend to the minister thereof, or who have contributed the sum of five pounds towards the fund out of which any part of the stipend is provided, or towards the expense of providing the church for such new parish; and upon the death, disability, or resignation, of any of the trustees so chosen, another trustee in his place shall be elected for life by the heritors and kirk-session of the parish; and as often as any vacancy shall happen by the death, disability, or resignation, of any trustee, his place shall be supplied in like manner by another trustee, to be elected for life by the heritors and kirk-session of the parish: Provided always, that no person shall be qualified to hold the office of trustee who is

not a member of the Church of Scotland, in full communion therewith.

VI. And whereas in some large and populous parishes which it may be considered necessary or proper to divide into two or more parishes, there are a number of poor persons, the greater portion of whom reside in or near the same locality, such locality being sometimes the least wealthy, whereby the particular territorial division of such large and populous parish, which would be most expedient and advantageous in other respects, would operate injuriously or unjustly if each of the new parishes into which it may be divided was left to provide from its own resources for that portion of the poor of the original parish resident within the territory of such new parish; be it enacted, That it shall be lawful for the said Lords of Council and Session, if they see cause so to do in any judgment to be by them pronounced dividing or disjoining a parish, to declare and provide, that, notwithstanding such division or disjunction, the original parish, and the several new or separate parishes thereby erected within the bounds thereof shall, in so far as regards the support and management of the poor, and all matters and questions connected therewith, remain and be regarded as one parish; and in every such case there shall be one kirk-session, consisting of the members of the kirk-sessions of all the parishes within the bounds of the original parish, in all matters and questions relating to the support and management of the poor; and the session-clerk of the original parish shall, during his incumbency, act as clerk of the said kirk-session in all such matters and questions.

VII. And be it enacted, That no division of any parish shall affect the law and practice already existing in such parish as to the management of roads, or as to the levying or applying the statute labour or conversion of statute la-

bour within the bounds of the original parish so divided; but the same shall continue to be managed, levied, and applied, as if no such division had taken place, unless it shall be considered expedient by the county or district trustees for the conversion of the statute labour to make a new arrangement for allocating the management of the roads and statute labour, or conversion money, in reference to the alteration of circumstances consequent on such division of the parish as aforesaid.

VIII. And be it enacted, That if any person or persons shall, at his, her, or their expense, have built or shall have acquired, or shall have undertaken to build or acquire, a church, and shall have endowed or shall have undertaken to endow the same, it shall be competent for the Lords of Council and Session, acting in their capacity aforesaid of commissioners for the plantation of kirks and valuation of teinds, and they are hereby empowered and authorised, on the application of such person or of such persons, where they do not exceed five in number, or of two-thirds or any ten of such persons, where they do not exceed five in number, and without any concurrence of heritors, to inquire into the circumstances, and to erect such church into a parish church in connexion with the Church of Scotland, and to mark out and designate a district to be attached thereto *quoad sacra*, and to disjoin such district *quoad sacra* from the parish or parishes to which the same, or any part thereof, may have belonged or been attached, and to erect such district into a parish *quoad sacra* in connexion with the Church of Scotland; and it shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges, of a parish minister and elders of the Church of Scotland: Provided always, that nothing herein contained shall be construed so as to deprive any party who has a legal interest in the fabric of

any place of worship of any right which by law belongs to such party to prevent such place of worship from being used or appropriated for a place of worship in connexion with the Church of Scotland: Provided also that due intimation of every such application as aforesaid shall be made to all parties having interest, that they may have an opportunity of appearing and being heard; which intimation may be made by notice in the *Edinburgh Gazette*, or by advertisement in one or more Edinburgh newspapers of general circulation, or in any other form or manner that may be directed by the Lords of Council and Session in any act or acts of sederunt, or any order to be made by them for that purpose: And provided also, that the titles to the said church shall be taken and conceived so as that the said church shall be inalienably secured as the church of the said new parish in connexion with the Church of Scotland, and that due provision shall be made for the future maintenance of the fabric of the said church; and that the endowment for the minister of the said new parish shall be not less than a stipend of one hundred pounds per annum, or seven chalders of oatmeal, to be calculated at the highest fiars of the county, exclusive of the sum necessary for communion elements, with a suitable dwelling-house or manse, and offices and appurtenances, or a stipend of not less than one hundred and twenty pounds, or eight-and-a-quarter chalders of oatmeal, to be calculated at the highest fiars of the county per annum, where there shall be no such dwelling-house or manse; and that such stipend of not less than one hundred pounds, or not less than one hundred and twenty pounds, shall be permanently provided and secured in all time coming for the minister of the said parish; and that if there shall be a dwelling-house or manse, the title of such dwelling-house or manse, and offices and appurtenances, shall be taken and conceived so that such dwelling-house or manse, and

offices and appurtenances, shall be inalienably secured as the dwelling-house or manse, and offices and appurtenances, for the minister of the said parish; and that due provision shall be made for the future maintenance of the fabric of such dwelling-house or manse, and offices and appurtenances, all to the satisfaction of the said Lords of Council and Session; and the right of presbyteries to present to vacant parishes *jure devoluto*, according to the law of Scotland, shall have place in regard to all parishes erected *quoad sacra* as aforesaid, in the same manner as in regard to other parishes.

IX. And be it enacted, That in every such church as aforesaid, a portion of the sittings therein, to be determined by the sheriff of the county in which such church is situated, and not exceeding one-tenth of the whole sittings, shall be set apart as free seats for all persons frequenting the same; and another portion of the sittings therein, not exceeding one-fifth of the whole sittings, shall be let at rents not exceeding a rate to be fixed by the presbytery of the bounds; and the remaining portion of the sittings may be let in such manner as shall be agreed upon by the minister for the time being, and the person or persons liable for the repair of the church and for the stipend of the minister; or in case of not agreeing, then in such manner as shall be determined by the sheriff of the county as aforesaid: Provided always, that one pew shall be appropriated, rent free, for the accommodation of the family of the minister, and another pew for the officiating elders; and the pew or seat-rents of any such church as aforesaid may be expended and applied for the purpose of defraying the necessary expenses of a precentor, a beadle or kirk-officer, and other expenses necessarily incurred in dispensing the ordinances of religion therein, and not otherwise provided for, and for the purpose of upholding in due repair and improving the fabric of such church, or

of the dwelling-house and offices of the minister, or for the relief of any person or persons who may have undertaken or become liable to uphold the same, or who may be liable for the endowment or stipend provided and secured for the minister of such church; and it shall be lawful to make collections at the door of any such church for any of the purposes aforesaid: Provided also, that the sum received by any person liable to uphold the church or dwelling-house, or liable for the endowment or stipend as aforesaid, shall not in any year exceed the sum paid or expended by such person in the same year by reason of such liability.

X. And be it enacted, That it shall and may be lawful for any heritor or for any heir of entail in Scotland, trustee, tutor, and curator of minors, and every person lawfully empowered to act for persons under any legal disability or incapacity, to give and grant, heritably and irredeemably, such land or heritage belonging to them, or under their management, as may be necessary for the site of such church, dwelling-house, and offices, as aforesaid, and also a portion or portions of land near the same for a churchyard or for a glebe, and not exceeding, in the whole, four acres; which portion or portions of land shall, at the sight of the sheriff of the county wherein the same is situated, or of some person appointed by the sheriff for that purpose, be marked out and set apart as the churchyard and as the glebe, to belong to such new parish in all time coming, and, having been so given, granted, marked out, and set apart, shall not be liable to, or affected by any other rights, titles, trusts, interests, or incumbrances to, in, or upon the same whatsoever; and such heir of entail shall not thereby be subject to, nor incur any forfeiture or irritancy under any deed of entail, by virtue of which he or she may hold the said land or heritage; and such trustee, tutor, or curator, or other person as aforesaid, shall be indemnified for what he may do in the premises: Pro-

vided always, That the power hereby given to any heir of entail, trustee, tutor, and curator of minors, and every person lawfully empowered to act for persons under legal disability or incapacity, shall not, in any case, extend to, or be understood to comprehend a power of giving and granting any lands or heritages within half a mile of the manor place, in the natural possession of the proprietor, or of giving and granting any, or any part of any gardens, orchards, or inclosures, adjacent to the manor place, which have usually been in the natural possession of the proprietor, or have not been usually let for a longer term than seven years, when the heir in possession was of lawful age, and not under any legal disability or incapacity: Provided also, that no such grant as aforesaid, by any heir of entail in possession, or by any trustee, tutor, curator, or other person lawfully empowered to act as aforesaid, for any such heir of entail, shall be effectual, unless the heir of entail nearest in succession, of lawful age, and not under any legal disability or incapacity, shall have consented to such grant, which consent may be given by letter, or other writing, under the hand of such heir of entail nearest in succession, and shall be proved to the satisfaction of the said sheriff of the county: Provided also, that no trustee, tutor, or curator of minors, or person lawfully empowered to act for persons under legal disability or incapacity, shall make any such grant as aforesaid, without adequate consideration for the same, either in price or feu-duty, the adequacy of which consideration shall be proved to the satisfaction of the said sheriff of the county, before the portion or portions of land shall be marked out or set apart as aforesaid.

XI. And be it enacted, That it shall and may be lawful for any heir of entail in Scotland to burden the lands and estate of which he or she is in possession as heir of entail aforesaid, lying within any district to be marked out and

designated as aforesaid, or to give security over the same for the annual payment, out of the clear yearly rents and profits of the said lands and estate, of any sum not exceeding three pounds *per centum* of such clear yearly rents and profits, after deducting all prior burdens and provisions, as the same shall be ascertained by an average of the five years immediately preceding such burden or security, and in no case exceeding the yearly sum of one hundred and twenty pounds, for the purpose of endowing or contributing to the endowment of such new parish as aforesaid; and also to burden such lands and estate, or give security over the same, for upholding in due repair the fabric of the church of such new parish, and the dwelling-house and offices of the minister, or any of them; the sums to be expended in such repairs not exceeding, in any one year, one pound *per centum* on the amount of money originally expended in building or purchasing and completing such church, or upon the estimated value thereof, when received and recognised as the church of such new parish, and one pound *per centum* on the amount of money originally expended in building or purchasing and completing such dwelling-house and offices, or upon the estimated value thereof; and such heir of entail shall not, by reason of such acting as aforesaid, be subject to, nor incur any forfeiture or irritancy under any deed of entail, by virtue of which he or she may hold such lands or estate; and such burdens and securities shall be as valid and effectual against such lands and estates, as if the same had not been entailed: Provided always, that no such burden or security as aforesaid shall be effectual, unless the heir of entail nearest in succession, of lawful age, and not under legal disability or incapacity, shall have consented thereto, which consent may be given judicially, or by letter or other writing under the hand of such heir of entail nearest in succession: Provided also, that if such heir of entail near-

est in succession as aforesaid shall be an heir of the body of the heir of entail in possession, who intends to create such burden or security, then such heir of entail in possession shall, three months, at least, before creating the same, give notice of such, his intention, in writing, to the heir of entail next entitled to succeed to the said estate, after the heirs of his own body, if within Great Britain or Ireland; and if the heir next entitled to succeed is not within Great Britain or Ireland, to his nearest male relation by the father, of lawful age, or to his known factor or attorney; and before any such burden or security, as aforesaid, shall be created, evidence shall be produced, to the satisfaction of the said Lords of Council and Session, that such consent as aforesaid, and such notice as aforesaid, where required, have been given, and that the means of public worship for the inhabitants of such district are wanting, and cannot be adequately provided, unless the power hereby given of burdening the entailed estate, shall be exercised to the extent proposed.

XII. And whereas in some populous parishes and districts in the low country of Scotland, particularly in large towns, and in the neighbourhood of cities and royal burghs, there are a great number of persons, natives of the Highlands and Islands of Scotland, who do not understand the English language, so as to be capable of receiving the full benefit of religious instruction in English, or of having the ordinances of religion administered to them with advantage in that tongue; And whereas it is expedient that some provision should be made for enabling such persons to obtain religious instruction, and to have the ordinances of religion administered to them, in the Gaelic language; be it enacted, That in disjoining or dividing any large or populous parish or parishes in which there are a great number of such persons, it shall and may be lawful to make provision for the spiritual wants of such persons by ap-

pointing religious instruction to be communicated to them, and the ordinances of religion to be dispensed among them, in the Gaelic language.

XIII. And be it enacted, That where a separate church shall have been erected for any such Gaelic congregation, and a permanent endowment shall have been secured for the same, either from teinds or otherwise, to the satisfaction of the said Lords of Council and Session, it shall and may be lawful to erect such church and the congregation thereof into a separate parish, although the members of such congregation may be scattered, and no territorial district may be assigned to such parish exclusively; and it shall and may be lawful for the minister or ministers and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister or parish ministers and elders of the Church of Scotland: Provided always, that nothing herein contained shall be construed as giving to the minister or ministers and elders of any such Gaelic congregation right to exercise pastoral superintendence and discipline over persons who are not either members of such Gaelic congregation, or of the families of such members, or resident within the territorial district, if any, which may be assigned to such parish exclusively.

XIV. And whereas an act was passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled, "An act for building additional places of worship in the Highlands and Islands of Scotland;" and another act was passed in the fifth year of the reign of his said late Majesty King George the Fourth, intituled, "An act to amend an act for building additional places of worship in the Highlands and Islands of Scotland:" And whereas, under the authority and provisions of the said two last mentioned acts, several additional places of worship have been built or provided, and certain

districts have been defined or set apart for the benefit of which the said places of worship were built or provided, and ministers have been appointed to officiate at such places of worship and in such districts, and dwelling-houses and appurtenances have been built or provided for the ministers so officiating; and provision has been made for the payment to such ministers of stipends not exceeding the sum of one hundred and twenty pounds *per annum* in any one case; and provision is made by the said last-mentioned act for upholding in repair such places of worship and dwelling-houses and appurtenances; be it enacted, That upon application by the presbytery within which any such place of worship is situated, or by one or more heritors holding together one-fourth part of the valuation of the district defined and set apart as the district for the benefit of which such place of worship has been provided, or of her Majesty's advocate for Scotland, it shall and may be lawful for the said Lords of Council and Session, acting as aforesaid, to disjoin such district from the parish or parishes to which the same or any part thereof may have belonged or been attached, and to erect the same into a parish *quoad sacra;* and in every such case the place of worship built or provided as aforesaid may be held and appointed to be the church of such parish, and the dwelling-house and appurtenances provided for the minister may be held and appointed to be the dwelling-house of the minister of such parish; and the provisions contained in the said two last-mentioned acts may be held and taken to be sufficient provisions for upholding in repair such church and dwelling-house and appurtenances, and a stipend of one hundred and twenty pounds, payable under the provisions of the said acts, may be held to be sufficient stipend for the minister of the said parish; and it shall and may be lawful for the ministers and elders of such parish to have and enjoy the

status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland.

XV. And be it enacted, That if in any case in which a place of worship has been built, and a district has been defined and set apart, under the provisions of the said two last-recited acts, application shall be made to the said court to erect such district alone, or such district with additions thereto, into a new parish *quoad omnia*, with the requisite consent of heritors, and that the said court shall give effect to such application, it shall and may be competent for the said court to declare and appoint the place of worship already erected in such district to be the church of such new parish, and to appoint and declare the dwelling-house already erected for the minister to be the manse of such new parish; and the commissioners under the said last-recited acts shall thereupon cease to hold such place of worship and such dwelling-house for the purposes of the said last-recited acts; and the provisions contained in the said last-recited acts for upholding such place of worship and such dwelling-house in repair shall cease and determine, and the burden of upholding the same shall fall on the parties who by the law of Scotland would be bound to uphold the church and manse of the parish, if such church and manse had been appointed to be built for the newly-erected parish; and in fixing the stipend to be paid to the minister of such newly erected parish, the said court shall compute as stipends the sum paid by authority of the said last-recited acts to the minister in such district, which sum shall be continued to be paid to the minister of such newly erected parish: Provided always, that the right of her Majesty, her heirs and successors, to nominate and appoint the minister to such church and district shall remain entire, notwithstanding the erection thereof into a separate parish.

XVI. And be it enacted, that the provisions of the

act passed in the fiftieth year of the reign of his Majesty King George the Third, intituled, "An act for augmenting parochial stipends in certain cases in Scotland," and the provisions of the act passed in the fifth year of the reign of his Majesty King George the Fourth, intituled, "An act for amending and rendering more effectual an act for augmenting parochial stipends in certain cases in Scotland," shall not be extended to any new parishes erected under the provisions of this act, although the stipend or endowment modified or provided for the minister of any such new parish should be less than one hundred and fifty pounds sterling.

XVII. And be it enacted, That this act may be amended or repealed by any act to be passed during the present session of Parliament.

3. *Forms of Deeds approved of for Quoad Sacra Churches by General Assembly's Committee on the endowment of Chapels of Ease, by minute dated* 1848.

1. Form of Deed of Constitution for Quoad Sacra Churches.

At Edinburgh, the day of eighteen hundred and *Sess.*

Which day, the General Assembly of the Church of Scotland called for the report of the committee relative to the proposed new church and parish of , in the parish of and county of , and buildings connected therewith, consisting of a church or place of worship, and dwelling-house or manse,* and offices and appurtenances, and re-

* See Note, No. 1.

lative to the sites of the said church and other buildings, and having considered the said report, and the constitution thereby proposed to be granted to the said new church and parish of , approved thereof, and enacted, and hereby enact accordingly, as follows, viz.:—

First, The following lists shall be deemed correct lists of the persons who have subscribed for the purpose of acquiring or building the aforesaid church, and dwelling-house or manse, and offices and appurtenances, and of acquiring the sites thereof, and of the sum or sums respectively subscribed and paid by them for these purposes, and also of the persons who have agreed to contribute annually for the endowment of the said church and parish, and for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse and offices and appurtenances, and of the sum or sums in the annual payment of which for the said purposes they have respectively undertaken to bind themselves and their representatives, viz.—

In the first place, the persons who have subscribed for the purpose of acquiring the foresaid sites, and of acquiring or building the said church, and dwelling-house or manse, and offices and appurtenances, and the sum or sums respectively subscribed and paid by them as aforesaid, are as follows:—

In the second place, the persons who have undertaken to contribute annually for the endowment of the said church and parish, and the sum or sums in the annual payment of which they have respectively undertaken to bind themselves and their representatives are as follows:—

In the third place, the persons who have undertaken to contribute annually for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse and

offices and appurtenances, and the sum or sums in the annual payment of which they have respectively undertaken to bind themselves and their representatives are as follows:—

Second, The property of the foresaid sites, and of the said church and dwelling-house or manse and offices and appurtenances erected thereon shall be vested in nine persons as trustees, three of whom shall hold that office *ex officio*,* and five of the said trustees shall at all times be a quorum; and the titles to the said church shall be taken and conceived so as that the said church shall be inalienably secured as the church of the said new parish in connection with the Church of Scotland, and any right that may belong by law to any party having an interest in the fabric of the said church, to prevent the same from being used or appropriated for a place of worship in connection with the Church of Scotland, shall be extinguished; and the titles to the said dwelling-house or manse and offices and appurtenances shall be taken and conceived, so that such dwelling-house or manse and offices and appurtenances shall be inalienably secured as the dwelling-house or manse and offices and appurtenances for the minister of the said new church and parish; and it shall be specially provided in the said titles respectively, that the trustees after-named shall not have power to grant any heritable security over the said church, or dwelling-house or manse and offices and appurtenances, or to render the same liable for any debt; and the said provision shall be inserted in all the rights and investitures of the said subjects.

Third, The following persons shall be the trustees for the purposes before and after mentioned, viz.:—the Procurator for the Church of Scotland for the time being, the Principal Clerk of the General Assembly of the

* See Note No. 3.

Church of Scotland for the time being, and the Convener of the Committee of the General Assembly of the Church of Scotland for the endowment of Chapels of Ease for the time being, who shall be trustees *ex officio*, and

And in the event of the death or resignation of any one of the trustees above named, not being a trustee *ex officio*, a new trustee shall be elected to supply the place of the trustee so dying or resigning, on a day to be appointed for that purpose by the remanent trustees, such day not being later than six months from the date of such death or resignation as aforesaid, in manner following,—that is to say, in the event of the said death or resignation taking place before a congregation shall have been formed in the said new church and parish, the said trustees shall meet and elect a preses, and the trustee who shall have the greatest number of votes of trustees present shall be deemed duly elected preses, and the meeting shall thereafter appoint a day, hour, and place for the election of a new trustee, and shall, one week at least previous to the day so appointed, cause intimation thereof to be made publicly in the church or churches of the parish or parishes from which the lands forming the parish and church hereby, and by the authority of the Court of Teinds, to be erected shall be disjoined, and also cause a special intimation in writing to be sent to the whole parties named in article first hereof, or to all those whose addresses may be known, and such parties shall be the only parties entitled to vote in the event above-mentioned, and they shall vote as after provided. But it is expressly declared that it shall be no objection to the proceedings had in virtue of the enactments herein contained, that any of the parties above-mentioned have not received special intimation as aforesaid. And on the day, and at the hour and place so appointed, the said trustees shall again meet, and shall

proceed to elect a preses in manner above-mentioned, and the said preses shall thereafter proceed to collect the votes of the parties present entitled to vote; and the person who shall have the greatest number of such votes shall be declared to be and shall be a trustee in lieu of the trustee dying or resigning as aforesaid; and those persons who have subscribed for the purpose of acquiring the said sites, and of acquiring or building the said church, and dwelling-house or manse, and offices and appurtenances, shall be entitled to votes as follows, viz.: Those who have subscribed an amount under ten pounds, to one vote; ten pounds, but under twenty pounds, to two votes; twenty pounds, but under fifty pounds, to three votes; and fifty pounds and upwards, to four votes; and those persons who have undertaken to contribute annually for the endowment of the said church and parish, and for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse, and offices and appurtenances, shall be entitled to votes as follows, viz.: Those who have undertaken to contribute five pounds annually or under, to one vote; and those who have contributed more than five pounds annually to an additional vote for each entire sum of five pounds over and above the first five pounds. And in the event of the said death or resignation taking place after a congregation shall have been formed in the said new church and parish, the trustees shall meet, and, having elected a preses in manner above-mentioned, shall appoint a day, hour, and place for the election of a new trustee, and shall cause intimation of the said appointment to be made from the pulpit before the dismissal of the congregation on the forenoon and afternoon of the two Sabbaths immediately preceding the day so appointed. And on the day, and at the hour and place so appointed, the trustees shall again meet, and shall elect a preses in manner above-mentioned, and the said preses shall thereafter

proceed to collect the votes of the male heads of families present, and in full communion with the church of the said church and parish, whether resident within its bounds or not, who shall be the parties entitled to vote in the event last mentioned for a person to supply the vacancy foresaid; and the person who shall have the greatest number of such votes shall be declared to be and shall be a trustee in lieu of the trustee dying or resigning as aforesaid; no person being entitled to more than one vote except the preses in the case after-mentioned. And it is hereby declared, that if the votes shall be equal at any election, whether preceding before or after a congregation shall have been formed, the preses of the meeting, whether entitled to a deliberative vote or not, shall be entitled to a casting vote.

Fourth, The said church of the said new parish, to be designed as herein mentioned, shall be used only as a place of worship in connexion with the Church of Scotland, and this enactment shall be inserted as a condition in the feudal investitures of the said church and ground on which the same is built. And it shall not be competent to elect any preacher or minister to officiate either temporarily or permanently therein, except a licentiate of the Church of Scotland, or a person who is an ordained minister thereof, according to the laws of the Church, and who before his ordination and admission shall produce a certificate of his having taken the oaths to government according to law.

Fifth, The endowment or stipend for the minister of the said church and parish shall be one hundred pounds sterling per annum, exclusive of the sum necessary for communion elements, and the said endowment or stipend shall be permanently provided and secured in all time coming, and due provision shall also be made for the future maintenance of the fabrics of the said church, and of the said dwelling-house or manse and offices and appurte-

nances in manner following, that is to say,—the parties, before-mentioned who have agreed to contribute annually for the endowment of the said church and parish, and for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse, and offices and appurtenances, and who are named in article first hereof, shall respectively grant a bond or bonds to the trustees for the time being, binding and obliging themselves and their representatives to make payment to the said trustees and the survivors or survivor of them and their successors in office, yearly, at two terms in the year, Whitsunday and Martinmas, by equal portions, of the sums which they have respectively agreed to contribute annually for the purposes above specified, and which are mentioned in article first hereof; and, in security of the said annual payments, the said parties respectively shall further,—*either* grant in favour of the said trustees and their foresaids heritable bonds and dispositions in security, one or more conveying such amount of heritable property as shall be sufficient to yield the yearly sums covenanted to be paid as aforesaid,—*or* invest in the public funds, in the names of any three of the trustees foresaid, such principal sum as shall be sufficient to yield the annual amount of the payments to be made by the said parties respectively, as above-mentioned, under the declaration, that, in the event of the death of any of the trustees in whose name the said stock shall be vested as aforesaid, the surviving trustees shall immediately appoint from among the trustees hereby nominated a new trustee to hold the said stock along with them in the foresaid trust; and the said parties, in conjunction with the trustees so to be appointed to hold the principal sums to be invested as aforesaid, shall respectively grant, to and in favour of the trustees hereby nominated, and their foresaids, assignations to the dividends arising from the principal sums of money so in-

vested, and shall authorise them to draw the said dividends and apply the same in liquidation of the annual payments covenanted to be made by the said parties respectively, as aforesaid, the trustees hereby nominated and their foresaids being always bound to account to the said respective parties for any surplus that may remain after paying their proportion of the said endowment or stipend, and after paying for the maintenance of the fabrics of the said church, and dwelling-house or manse, and offices and appurtenances. And it is hereby expressly provided and declared, that the trustees hereby nominated and their foresaids shall exhibit annually to the presbytery of the bounds, on a day to be fixed by them, an account of all sums received and payments made under the trusts herein created, along with the vouchers thereof, and such account shall be considered by the said presbytery at such meeting, special care being taken that no expenditure be sanctioned which is not strictly in terms of this constitution, and, after such audit, the said accounts shall be attested by the moderator or clerk of the presbytery, and such attestation shall be held as sufficient evidence of the accuracy of such account, and shall fix the balance due thereon. But, as the enactments contained in this article must necessarily come under the consideration of the Court of Session, in the proceedings to follow on the application to the said court for disjunction and erection of the said church and parish directed and enacted to be made in article seventh hereof, it is expressly hereby enacted, that, in the event of the said court being of opinion that the enactments herein contained will not have the effect of permanently providing and securing the said endowment or stipend in all time coming for the minister of the said parish, and of making due provision for the future maintenance of the fabrics of the said church, and of the said dwelling-house or manse, and offices and appurte-

nances, such additional or other steps shall be taken as the said court may direct or think expedient for carrying the above intentions into effect; and it shall be the duty of the trustees hereby nominated and their foresaids, to see the steps or course of procedure pointed out by the said court carried into execution with as little delay as may be.*

Sixth, A portion of the sittings of the said church, not exceeding one-tenth of the whole sittings, shall be set apart as free seats for all persons frequenting the same; and the portion so to be set apart shall be determined by the sheriff of the county in which the said church is situated. Another portion of the sittings of the said church, not exceeding two-tenths of the whole sittings thereof, shall be let at rents not exceeding a rate to be fixed by the presbytery of the bounds: One pew shall be appropriated rent free for the accommodation of the family of the minister, and another pew for the officiating elders; and the remaining sittings shall be let in such manner as shall be agreed upon by the minister for the time being, and those persons named in article first, who have bound themselves to contribute for the endowment of the said church and parish, and to provide for the future maintenance of the fabric of the said church, or their respective representatives; and in the event of the said parties not agreeing, then in such manner as shall be determined by the sheriff of the county as aforesaid. And the proceeds arising from the seat-rents shall be under the management of the trustees nominated and appointed in terms of article third hereof, and shall be applied by them, *in the first place*, in defraying the expenses necessarily incurred in providing communion elements for the said church: *in the second place*, in paying any feu-duty that may be exigible for the

* See Notes 4, 5, 6, 7, and 8.

site of any of the foresaid buildings, and in defraying the necessary expenses of insuring the said church, and dwelling-house or manse, and offices and appurtenances, against fire, and of lighting and heating the said church, and the necessary expenses of a precentor and beadle or church-officer, and any other expenses necessarily incurred in dispensing the ordinances of religion in the said church, not otherwise provided for; and it shall be incumbent on the said trustees to effect the said insurance with the least possible delay, and at all times to keep the same in force: *in the third place*, in improving the fabrics of the said church, and dwelling-house or manse, and offices and appurtenances, if the said trustees shall consider it expedient so to do: and *in the fourth place*, for the relief of those parties respectively who may be liable for the endowment or stipend, and for the maintenance of the fabrics of the said church, and dwelling-house or manse, and offices and appurtenances. Provided always, that the sum received by any party liable to uphold the church or dwelling-house, or liable for the endowment or stipend as aforesaid, shall not in any year exceed the sum paid or expended by such person in the same year by reason of such liability. And it shall be lawful for the said trustees to make collections at the doors of the said church for any of the purposes aforesaid, in such manner and at such times as they may deem proper. And the trustees for the time being, and the kirk-session jointly, shall have right to appoint the precentor and beadle, and to fix the salaries to be paid to those officers.

Seventh, Before the nomination of any minister to the said church, the trustees, in conjunction with such other person or persons as may be deemed requisite and expedient, shall, after due intimation, present an application to the Court of Session, acting in their capacity of Commissioners for the plantation of kirks and valuation of

teinds, setting forth such facts in regard to the said parish and church as are necessary to be related, and craving the court to inquire into the circumstances, and to erect the said church into a parish church in connexion with the Church of Scotland, and to mark out, and designate a district to be attached thereto *quoad sacra*, and to disjoin such district *quoad sacra* from the parish or parishes to which the same or any part thereof may have belonged or been attached, and to erect such district into a parish *quoad sacra* in connection with the Church of Scotland; and shall take all steps necessary for obtaining decree in terms of the said application.

Eighth, The patronage of the said church and parish shall be vested in and belong to , the said having undertaken to be at the burden of more than one-half of the stipend to be provided to the minister of the proposed new church and parish, and the said and his heirs and assignees shall exercise the said right of patronage whenever there shall be a vacancy in the said church and parish, according to the laws of the Church, and in the way and manner at present competent to lay patrons in ordinary cases. [*Or,** *if preferred, this article may run thus*—The patronage of the said church and parish shall be exercised as follows, viz., In every case in which a vacancy may exist, a meeting of the trustees shall be called by a circular, specifying the business to be transacted, and addressed to each trustee, put into the post-office nearest to the said church, at least ten days before the day appointed for such meeting, and the trustee who shall have the greatest number of votes of trustees present shall be the preses; and upon the appointment of the preses, the meeting shall proceed to elect five persons qualified in terms of article fourth hereof, so as to form

* See Note 2.

a leet, and in such election a separate vote shall be taken for each candidate proposed to be placed on such leet, and the candidates who shall have the greatest number of votes of trustees present shall be the legal nominees on the said leet; the preses, in the event of there being an equality of votes, besides his deliberative, having a casting vote; and when such leet shall have been made up, the trustees shall, in the event of no congregation having been formed in the said new church and parish, submit the said leet within one month to a meeting, at which one of their number shall preside, of the parties named in article first hereof or their representatives, to be called by public intimation in the church or churches of the parish or parishes from which the lands forming the parish and church hereby, and by the authority of the Court of Teinds, to be erected shall be disjoined, and such meeting shall receive the said leet, and shall proceed to vote for (in manner aftermentioned,) and elect one person from said leet, to be minister of the said new church and parish, the preses collecting the votes, and the person on such leet who shall have the greatest number of votes of those present (qualified to vote as aftermentioned,) shall be, and shall be declared by the preses to be, the legal presentee to the said church and parish, and the parties named in article first hereof or their representatives, being the parties qualified to vote as above mentioned, shall be entitled to vote as follows, viz., Those who have subscribed for the purpose of acquiring the foresaid sites, and of acquiring or building the said church and dwelling-house or manse, and offices and appurtenances, the sum of ten pounds, to one vote; ten pounds, but under twenty pounds, to two votes; twenty pounds, but under fifty pounds, to three votes; fifty pounds and upwards, to four votes; and those who have undertaken to contribute annually for the endowment of

the said church and parish, and for the maintenance of the fabrics of the said church and dwelling-house or manse, and offices and appurtenances, to one vote for every entire sum of five pounds, which they shall have so undertaken to contribute; and, in the event of a congregation being formed, the trustees shall, within one month after completion of said leet, submit the same to a meeting, at which one of the said trustees shall preside, of the male heads of families in full communion with the said church, whether resident within the bounds of the said parish or not, called by intimation made from the pulpit on the forenoon and afternoon of the two Sabbaths immediately preceding the day fixed for such meeting, and the said leet shall be submitted to such meeting, and they shall forthwith elect one person therefrom to be the minister of the said new church and parish, the preses collecting the votes; and the person on such leet who shall have the greatest number of votes of those present qualified to vote shall be, and shall be declared by the preses to be the legal presentee to the said church and parish. *Or thus*,—The patronage of the said church and parish shall be vested in and belong to the trustees, and shall be exercised as follows:—In every case in which a vacancy may exist, a meeting of the trustees shall be called for the purpose of making a presentation to supply such vacancy, by a circular, specifying the business to be transacted, and addressed to each trustee, being put into the post-office nearest to the said church, at least ten days before the day appointed for such meeting. The meeting for the purpose of making the first presentation to the said parish shall be held within months of the date of the decree of disjunction and erection to be obtained in manner mentioned in article seventh hereof, and every other meeting shall be held within month of the occurrence of the vacancy, to supply which

such meeting is called. And the trustee who shall have the greatest number of votes of trustees present shall be the preses of such meeting, and upon the appointment of the preses such meeting shall proceed to make the necessary nomination or presentation; and the person, if qualified in terms of article fourth hereof, who shall have the greatest number of votes of trustees present, shall be regarded as the legal presentee to such church and parish, —the preses, in the event of there being an equality of votes, besides his deliberative, having a casting vote.] And such presentation shall be immediately laid before the presbytery of the bounds, who shall proceed thereon in common form. And in the event of the said or his foresaids, (or the parties named in article first hereof, the male heads of families, or the trustees, as the case may be,) not making such presentation, in the case of the first vacancy, within two months from the date of the decree foresaid, and in the case of every other vacancy within two months of the date of the occurrence of such vacancy, the right to make such presentation shall devolve on the presbytery, *tanquam jure devoluto*, and shall be exercised by them in common form.

Ninth, On a vacancy occurring, intimation thereof shall be immediately given by the kirk-session to the presbytery, who shall supply the pulpit during the vacancy; but if it shall be thought more expedient to employ a person to supply such temporary vacancy, it shall be in the power of the trustees and kirk-session, with consent of the presbytery, to do so,—such person being always a licentiate or ordained minister of the Church of Scotland qualified to hold such appointment in terms of article fourth hereof.

Tenth, The usual forenoon and afternoon services, and occasional evening services, shall take place in the church, and the sacrament of the Lord's Supper shall be dispensed

therein—not less frequently than twice in the year—at such times as the kirk-session may appoint; and for the sacramental expenses, including communion elements, ten pounds sterling shall be annually allowed from the funds at the disposal of the trustees.

NOTES.

(1.) The foregoing deed is framed on the supposition that the buildings include a manse and offices; but there may be many cases in which it is not the intention of the parties to provide a manse and offices; in these it will be necessary to alter the phraseology of many of the articles, and also to enact that the stipend shall be L.120 per annum, as required by the act of Parliament.

(2.) The regulation of the patronage, not being dependent on the act of Parliament, may be arranged in each case according to the wishes of the parties interested, so far as consistent with the rules of the Church of Scotland and the constitution.

(3.) In order to prevent the possibility of the trust lapsing, it has been arranged that three *ex officio* trustees shall be nominated in all cases.

(4.) As the deeds by which the stipend and the maintenance of the fabrics are provided for are necessarily cumbrous and expensive, particularly in the case of persons not granting heritable security for the annual payments undertaken by them, it will be convenient and desirable to get as many persons as possible to pay the sums which they are willing to subscribe into the general fund raised by the committee for the endowment of *quoad sacra* churches; and to leave the committee to deal with the funds in the manner which shall appear to them most expedient and beneficial. By this arrangement the committee, or any of their number who may be named as trustees for the committee, will be the only parties who will be required to grant the necessary bonds for the annual payments, and they will probably be more prompt than private parties in calling the trustees of the church to account with the view of receiving back, under article sixth of the deed of constitution, any surplus fund that may exist after satisfying the prior purposes therein specified. This surplus will, of course, be applied by the committee in promoting the erection and endowment of other churches.

(5.) In the proceedings for disjunction and erection, besides taking care that any right to prevent the church being used as a place of worship shall be extinguished, as provided by the second article of the deed of constitu-

tion, it will be necessary, in order to preserve evidence of the fact, to take care that the interlocutors of Court bear that due intimation of the application was made to all parties having interest, either by notice in the *Edinburgh Gazette*, or by advertisement in one or more Edinburgh newspapers of general circulation, or in the form and manner that may be directed by the Court.

(6.) In the case of any grant for the site of a church and other buildings, or for a church-yard and glebe, by an heir of entail, or a trustee, tutor, or curator for minors, it will be necessary carefully to observe the requisites of the 10th section of the act of Parliament; and it will be advisable to preserve legal evidence that these requisites have been complied with, either in the process of disjunction and erection, or in the grant itself; but, as it is desirable to avoid complicating the feu-disposition, this evidence should, if possible, be in the process, which should be extracted.

It will also be observed, that no grant can be made by any of the parties here mentioned, excepting heirs of entail, without adequate consideration either in price or feu-duty. In all other cases the grant may be made for any consideration, however small; and in the event of the feu-duty being nominal, it will be necessary to alter the form of the feu-charter to meet the case.

It has not been thought necessary to give the form of an absolute disposition, for a full price. The trustees, as in the case of the feu-charter, must be the disponees, and the property must be held by them under the limitations specified in the constitution, which limitation should be engrossed in the precept of sasine.

(7.) With regard to the bond and disposition in security by an heir of entail, it is also proper to remark, that there are some statutory prerequisites, contained in the 11th section of the act of Parliament, which must be attended to. The evidence of this having been done, ought to be preserved in process. The only requisite which it has been thought necessary to notice in the deed itself, is, that the lands lie within the district to be marked out and designated, because this might be lost sight of, and would invalidate the bond if not attended to.

(8.) It has not been considered necessary to give a form of a bond and disposition in security by a fee-simple proprietor, as it will be in the ordinary form of an heritable security.

2. Form of Bond and Assignation in Security for Stipend, &c.

I, (here name the granter of the bond), and we, trustees after-mentioned, considering that, by an act passed in the 7th and 8th Victoria, c. 44, section 8th, it is enacted, "that if any person or persons shall, at his, her, or their expense, have built, or shall have acquired, or shall have undertaken to build or acquire a church, and shall have endowed or shall have undertaken to endow the same, it shall be competent for the Lords of Council and Session, acting in their capacity aforesaid of Commissioners for the plantation of kirks and valuation of teinds, and they are hereby empowered and authorised on the application of such person or of such persons where they do not exceed five in number, or of two-thirds or any ten of such persons where they do exceed five in number, and without any concurrence of heritors, to inquire into the circumstances, and to erect such church into a parish church in connexion with the Church of Scotland, and to mark out and designate a district to be attached thereto *quoad sacra*, and to disjoin such district *quoad sacra* from the parish or parishes to which the same or any part thereof may have belonged or been attached, and to erect such district into a parish *quoad sacra* in connexion with the Church of Scotland," &c., provided, *inter alia*, "that the titles to the said church shall be taken and conceived so as that the said church shall be inalienably secured as the church of the said new parish in connexion with the Church of Scotland, and that due provision shall be made for the future maintenance of the fabric of the said church, and that the endowment for the minister of the said new parish shall be not less than a stipend of one hundred pounds per annum, or seven chalders of oat meal, to be calculated at the highest fiars of the county, exclusive of

the sum necessary for communion elements, with a suitable dwelling-house or manse, and offices and appurtenances, or a stipend of not less than one hundred and twenty pounds, or eight and a quarter chalders of oat meal, to be calculated at the highest fiars of the county, per annum, where there shall be no such dwelling-house or manse, and that such stipend of not less than one hundred pounds, or not less than one hundred and twenty pounds, shall be permanently provided and secured in all time coming for the minister of the said parish, and that if there shall be a dwelling-house or manse, the title to such dwelling-house or manse and offices and appurtenances, shall be taken and conceived so that such dwelling-house or manse and offices and appurtenances shall be inalienably secured as the dwelling-house or manse and offices and appurtenances for the minister of the said parish; and that due provision shall be made for the future maintenance of the fabric of such dwelling-house or manse and offices and appurtenances, all to the satisfaction of the said Lords of Council and Session:" And further, considering that, with the view of making application to the Court of Session for disjunction and erection *quoad sacra*, in terms of the foresaid act, a church, and dwelling-house or manse, and offices and appurtenances, have been built on a piece of ground lying in the parish of and county of that the parties in right of the said church, and dwelling-house or manse, and offices and appurtenances, have consented that the said church shall be inalienably secured as the church of the proposed new parish in connexion with the Church of Scotland, and the said dwelling-house or manse and offices and appurtenances, as the dwelling-house or manse and offices and appurtenances for the minister of the said new parish; and that, along with me, the said certain other parties have agreed to contribute a sum of money for the purpose of providing

and securing a stipend of one hundred pounds for the minister, and making due provision for the future maintenance of the fabrics of the said church, and dwelling-house or manse, and offices and appurtenances: And further, considering that, preparatory to making the said application to the Court of Session, and with the view of more efficiently carrying out *inter alia* the foresaid purposes, the whole parties before mentioned have applied for and obtained from the General Assembly of the Church of Scotland, a deed of constitution, bearing date the day of by article third of which it is enacted, that certain parties therein nominated and appointed should be trustees for the purposes specified in the said deed of constitution, and by article fifth, that the parties mentioned in the said deed of constitution, who had agreed to contribute annually for the endowment annually of the said church and parish, and for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse and offices and appurtenances, should respectively grant a bond or bonds in favour of the trustees last mentioned, binding and obliging themselves and their representatives to make payment to the said last mentioned trustees, and the survivors and survivor of them, and their successors in office yearly, at two terms in the year Whitsunday and Martinmas, by equal portions, of the sums of money which the said parties had respectively agreed to contribute for the purposes therein specified: And that, in security of the annual payments therein and partly hereinafter mentioned, they, the said parties respectively, should further, either grant in favour of the said last-mentioned trustees and their foresaids, heritable bonds and dispositions in security, one or more conveying such amount of heritable property as should be sufficient to yield the yearly sums covenanted to be paid as therein aforesaid, or invest in the public funds, in the names of any three of the said last-

mentioned trustees such principal sum as should be sufficient to yield the annual amount of the payments to be made by the said parties respectively as therein mentioned, under the declaration that, in the event of the death of any one of the three trustees so named, a new trustee should be substituted without delay in the manner provided by the foresaid deed of constitution, and that the said parties contributing as aforesaid, in conjunction with the trustees appointed to hold the principal sums to be invested as therein mentioned, should respectively further grant to and in favour of the trustees nominated and appointed by or in virtue of the said deed of constitution and their foresaids, assignations to the dividends arising from the principal sums of money so invested, and should authorise them to draw the said dividends, and apply the same in liquidation of the said annual payments covenanted to be made by the said parties respectively, as therein mentioned. And now seeing that we are ready and willing to implement the obligations undertaken by us, and expressed in the deed of constitution before mentioned, therefore, I, the said do hereby bind and oblige myself, and my heirs, executors, and successors whomsoever, to make payment to and to the survivors or survivor of them, and their successors in office, being the trustees nominated and appointed by or in virtue of the said deed of constitution, or to their quorum, at two terms in the year, Whitsunday and Martinmas, by equal portions in all time coming, of the sum of L. sterling, in trust for payment of the amount agreed to be contributed by me as aforesaid, for providing and securing the foresaid stipend or endowment for the minister for the time being of the foresaid *quoad sacra* church and parish; and also by equal portions at the terms before specified, in all time coming, of the sum of L. yearly, or such a part of the said sum of L.

as the said last-mentioned trustees shall certify, by writing under their hand, to be necessary for the purpose of maintaining and repairing the fabrics of the said church and dwelling-house or manse, and offices and appurtenances, all as more particularly mentioned in the said deed of constitution; but always under the express provision and declaration that the said last-mentioned trustees and their foresaids shall be bound to repay to me and my foresaids, in the manner provided in the sixth article of the deed of constitution before mentioned, and under the limitations and conditions therein expressed, the sums of money annually paid by me and my foresaids, by reason of the personal obligations herein contained; and in respect that I have already invested a sum of money in the purchase of L. 3 per cent. consols, that the said stock at present stands vested in the names of upon the trusts, and for the purposes mentioned in the foresaid deed of constitution. THEREFORE, in further implement of the obligations undertaken by us as above mentioned, and for further security to the trustees nominated in the said deed of constitution and their foresaids of the payment of the foresaid annual sums of money, I, the said for all right I have thereto, and we, the said do hereby ASSIGN, CONVEY, and MAKE OVER from us and our foresaids, to and in favour of the said and to the survivors or survivor of them and their successors in office, as trustees foresaid, or to their quorum, the annual dividends arising, or which may hereafter arise, from the said stock, with any interest that may have accrued thereon, turning and transferring the whole right of the premises from us and our foresaids, to and in favour of the said last-mentioned trustees and their foresaids, whom we hereby surrogate and substitute in our full right and place of the premises for ever,

with full power to them to ask, uplift, sue for, and recover the same, with any interest that may have accrued thereon; but in trust always for the liquidation of the foresaid annual payments, or such part thereof as may remain unpaid, in the manner mentioned in the fifth article of the foresaid deed of constitution; the said last-mentioned trustees being always bound to account to me, the said and my foresaids for any surplus which may remain of the foresaid dividends, after applying the same for the purposes above mentioned: Which assignation we bind and oblige ourselves and our foresaids to warrant to the said last-mentioned trustees and their foresaids from all facts done, or to be done, by us or our foresaids in prejudice hereof; and we consent to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation, and that all execution necessary may pass upon a decree to be interponed hereto in common form as effeirs; and to that effect we constitute our procurators. In witness whereof, &c.

3. Form of Bond and Disposition in Security by an Heir of Entail.

I, heir of entail in possession of the lands and estate of considering that by an act passed in the 7th and 8th Victoria, chap. 44, entitled, "An act to facilitate the disjoining or dividing of extensive or populous parishes, and the erecting of new parishes in that part of the United Kingdom called Scotland," it is by section 8th enacted, that, "If any person or persons shall at his, her, or their expense have built, or shall have acquired, or shall have undertaken to build or acquire, a church, and shall have endowed, or shall have undertaken to endow the same, it

shall be competent for the Lords of Council and Session, acting in their capacity aforesaid of commissioners for the plantation of kirks and valuation of teinds, and they are hereby empowered and authorised, on the application of such person or of such persons where they do not exceed five in number, or of two-thirds or any ten of such persons where they do exceed five in number, and without any concurrence of heritors, to inquire into the circumstances, and to erect such church into a parish church in connection with the Church of Scotland, and to mark out and designate a district to be attached thereto *quoad sacra*, and to disjoin such district *quoad sacra* from the parish or parishes to which the same or any part thereof may have belonged or been attached, and to erect such district into a parish *quoad sacra* in connection with the Church of Scotland," &c., provided, *inter alia*, that "the titles to the said church shall be taken and conceived, so as that the said church shall be inalienably secured as the church of the said new parish in connection with the Church of Scotland, and that due provision shall be made for the future maintenance of the fabric of the said church, and that the endowment for the minister of the said new parish shall be not less than a stipend of one hundred pounds per annum, or seven chalders of oatmeal, to be calculated at the highest fiars of the county, exclusive of the sum necessary for communion elements, with a suitable dwelling-house or manse, and offices and appurtenances, or a stipend of not less than one hundred and twenty pounds, or eight and a quarter chalders of oatmeal, to be calculated at the highest fiars of the county, per annum, where there shall be no such dwelling-house or manse, and that such stipend of not less than one hundred pounds, or not less than one hundred and twenty pounds, shall be permanently provided and secured in all time coming for the minister of the said parish, and that if

there shall be a dwelling-house or manse, the title to such dwelling-house or manse, and offices and appurtenances, shall be taken and conceived, so that such dwelling-house or manse and offices and appurtenances shall be inalienably secured as the dwelling-house or manse and offices and appurtenances for the minister of the said parish, and that due provision shall be made for the future maintenance of the fabric of such dwelling-house or manse and offices and appurtenances, all to the satisfaction of the said Lords of Council and Session:" And further, considering that by section 11th it is enacted, that "it shall and may be lawful for any heir of entail in Scotland to burden the lands and estate of which he or she is in possession as heir of entail aforesaid lying within any district to be marked out and designated as aforesaid, or to give security over the same for the annual payment out of the clear yearly rents and profits of the said lands and estate of any sum not exceeding three pounds per centum of such clear yearly rents and profits, after deducting all prior burdens and provisions, as the same shall be ascertained by an average of the five years preceding such burden or security, and in no case exceeding the yearly sum of one hundred and twenty pounds, for the purpose of endowing or contributing to the endowment of such new parish as aforesaid: And also to burden such lands and estate, or give security over the same for upholding in due repair the fabric of the church of such new parish, and the dwelling-house and offices of the minister, or any of them, the sums to be expended in such repairs not exceeding in any one year one pound per centum on the amount of money originally expended in building or purchasing and completing such church, or upon the estimated value thereof, when received and recognised as the church of such new parish, and one pound per centum on the amount of money originally expended in building or purchasing and completing

such dwelling-house and offices, or upon the estimated value thereof," under certain conditions therein mentioned: And further, considering that, with the view of making application to the Court of Session for disjunction and erection *quoad sacra* in terms of the foresaid act, a church, and dwelling-house or manse, and offices and appurtenances have been built on a piece of ground lying in the parish of and county of that the parties in right of the said church, and dwelling-house or manse, and offices and appurtenances have consented that the said church shall be inalienably secured as the church of the proposed new parish in connection with the Church of Scotland, and the said dwelling-house or manse and offices and appurtenances as the dwelling-house or manse and offices and appurtenances for the minister of the said new parish, and that along with me certain other parties have agreed to contribute a sum of money for the purpose of providing and securing a stipend of one hundred pounds for the minister, and making due provision for the future maintenance of the fabrics of the said church, and dwelling-house or manse, and offices and appurtenances: And further considering that preparatory to making the said application to the Court of Session, and with the view of more efficiently carrying out *inter alia* the foresaid purposes, the parties before mentioned, who have right to the said church and others, and have contributed the endowment and provisions above mentioned, have applied for and obtained from the General Assembly of the Church of Scotland a deed of constitution bearing date the day of by article third of which it is enacted, that certain parties therein nominated and appointed should be trustees for the purposes in the said deed of constitution, and partly herein narrated; and by article fifth, that the parties therein mentioned, who had agreed to contribute annually for the endowment of the said

church and parish, and for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse, and offices and appurtenances, and who are named in article first thereof, should respectively grant a bond or bonds in favour of the trustees before mentioned, and therein specified, binding and obliging themselves and their representatives to make payment to the said trustees and the survivors or survivor of them, and their successors in office, yearly, at two terms in the year, Whitsunday and Martinmas, by equal portions, of the sums of money which the said parties had respectively agreed to contribute annually for the purposes mentioned in article first thereof; and that, in security of the annual payments therein mentioned, they, the said parties, respectively, should farther, —*either* grant in favour of the said trustees and their foresaids heritable bonds and dispositions in security, one or more, conveying such amount of heritable property as should be sufficient to yield the yearly sums covenanted to be paid as therein mentioned,—*or* invest in the public funds, in the names of any three of the trustees appointed by or in virtue of the foresaid deed of constitution, such principal sum as should be sufficient to yield the annual amount of the payments to be made by the said parties respectively under the conditions therein mentioned: And now seeing that I am ready and willing to implement the obligations undertaken by me and expressed in the deed of constitution before mentioned, Therefore, in virtue of the powers conferred upon me as heir of entail foresaid by the before recited act, I do hereby bind and oblige myself and the heirs succeeding to me in the said entailed estate of to make payment to and to the survivors or survivor of them, and to their successors in office as trustees foresaid, or to their quorum, at two terms in the year, Whitsunday and Martinmas, by equal portions, in all time coming, of the sum of

sterling yearly,* in trust for payment of the amount agreed to be contributed by me as aforesaid, towards providing and securing the foresaid stipend or endowment for the minister, for the time being, of the foresaid *quoad sacra* church and parish, and also by equal portions at the terms before specified, in all time coming, of the sum of sterling† yearly, or such part of the said sum of sterling, as the said trustees shall certify by a writing under their hand to be necessary for the purpose of maintaining and repairing the fabrics of the said church and dwelling-house or manse and offices and appurtenances, all as more particularly mentioned in the said deed of constitution, but always under the express provision and declaration, that the said trustees and their foresaids shall be bound to repay to me and my foresaids, in the manner provided in the sixth article of the deed of constitution before mentioned, and under the limitations and conditions therein contained, the sums of money annually paid by me and my foresaids by reason of the personal obligation herein contained: And in security of the foresaid personal obligation, and for the relief of my heirs and representatives other than the heirs succeeding to me in my said entailed lands and estate, I dispone to and in favour of the said and their foresaids, as trustees foresaid, heritably and irredeemably, but with and under the whole conditions, reservations, restrictions, and provisions specified and contained in an instrument of sasine of the foresaid lands and estate in my favour, dated the day of and recorded

All and whole the lands

lying within the parish of and county of

* See Note 1. † See Note 2.

and also lying within the district to be marked out and designated as aforesaid, and that in real security to the said trustees and their foresaids, as trustees foresaid, of the yearly payments before mentioned. And I assign the rents, and I assign the writs, and I grant warrandice, and I consent to registration for preservation and execution, and also to registration in the General or Particular Register of Sasines.—In witness whereof, &c.

NOTES.

(1.) The stipend granted by an heir of entail can, in no case, be more than L.120, or exceed three per cent. of the clear rental of the land conveyed in security.

(2.) The sum granted for repairs can, in no case, exceed one per cent. of the original cost of the particular building on which it is proposed to expend it.

4. Form of Feu-Charter.

Know all men by these presents, that I

heritable proprietor of the piece of ground and others hereby disponed, in consideration of the feu-duty hereby stipulated to be paid, do sell, alienate, and in feu farm dispone, from me, my heirs and successors, to

trustees nominated and appointed by a deed of constitution of the church of in the parish of granted by the General Assembly of the Church of Scotland in their favour, bearing date the day of and to the survivors and survivor of them, and to their successors in office heritably and irredeemably, but in trust always for the purposes herein and in the foresaid deed of constitution mentioned, all and whole that piece of ground, with the buildings erected thereon, consisting of together with the teinds, parsonage, and vicarage, and the pertinents thereto belonging, with entry

at the term of 18 , but always with and under the provisions and restrictions contained in the precept of sasine hereinafter contained. To be holden the said piece of ground and others by the said trustees and their foresaids, of and under me and my foresaids as superiors of the same in feu farm, fee, and heritage for ever, giving therefor yearly the said trustees and their aforesaids, to me and my foresaids, the sum of sterling, in name of feu-duty, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first payment thereof at the term of next for the half-year preceding, and so forth at the said two terms in all time thereafter, and doubling the said feu-duty every twenty-fifth year from the date of entry to the said piece of ground and others, and that for all that can be exacted for the said piece of ground and others, in all time coming; and I assign the writs, to the effect of maintaining and defending the said trustees and their foresaids in the right of the piece of ground and others hereby conveyed; and for that purpose I oblige myself and my foresaids to make the said writs forthcoming to the said trustees and their foresaids, at their expense, on every proper occasion, upon a receipt and obligation to re-deliver the same within a reasonable time under a suitable penalty; and I assign the rents, and I bind myself to free and relieve the said trustees and their foresaids of all feu-duties, casualties, and public burdens, and I grant warrandice, and I consent to registration hereof for preservation. Moreover, I desire any notary public to whom these presents may be presented, to give to the said trustees and their foresaids sasine of the piece of ground and others above disponed, but always with and under the burden before specified, and also under those express provisions and restrictions, viz. That it shall not be in the power of the said trustees or their foresaids to sell, alienate, or dispone the said

piece of ground and others, or any part thereof, or to burden the same in any manner of way, or to hold, or use, or allow the same to be used otherwise than in connexion with the Church of Scotland, and for the purposes or trusts specified in the foresaid deed of constitution. And it is hereby further provided and declared, that the conditions above specified shall be inserted in the instrument of sasine to follow hereon, and in all the subsequent rights and investitures of the foresaid subjects. In witness whereof, &c.

5. Form of Feu Charter by an Heir of Entail.

Know all men by these presents, that I, heir of entail in possession of the lands and estate of , in virtue of the powers conferred on me by an act of the 7th and 8th Victoria, chap. 44, and with consent of heir of entail next in succession to me in the said lands and estate (*if the next substitute does not sign the feu-charter as a consenter, it may be proper to add*, conform to letter of consent, bearing date, attested by the sheriff of the county of and signed by me, as relative hereto), in consideration of the feu-duty hereby stipulated to be paid,* do sell, alienate, and in feu-farm dispone from me and the heirs of entail succeeding to me in the said lands and estate of to trustees

* In fixing the amount of feu-duty, it must be kept in view that the Act of Parliament requires that the adequacy thereof be proved to the satisfaction of the sheriff of the county in all those cases in which a charter may be granted by a trustee, tutor, or curator of minors, or person lawfully empowered to act for persons under legal disability or incapacity. But in all cases it is desirable that the feu-duty should be as small as possible, so as to obviate any objection founded on the circumstance that the sites might be "irritated" for arrears of feu-duty.

nominated and appointed by a deed of constitution of the church and parish of in the said county of granted by the General Assembly of the Church of Scotland in their favour, bearing date the day of and to the survivors and survivor of them, and to their successors in office, heritably and irredeemably, but in trust always for the purposes herein and in the foresaid deed of constitution mentioned, all and whole that piece of ground,* part of the said entailed lands and estate, extending to marked out and set apart by the said sheriff (or by appointed by the said sheriff, for that purpose, *as the case may be*,) in conformity with a plan thereof, attested by the said sheriff (or the said *as the case may be*,) and signed by me as relative hereto, with the buildings erected thereon, consisting of together with the teinds, parsonage, and vicarage, and the pertinents thereto belonging, with entry at the term of but always with and under the provisions and restrictions contained in the precept of sasine hereinafter contained, to be holden the said piece of ground and others by the said trustees and their foresaids, of and under me and my foresaids, as superiors of the same, in feu-farm, fee, and heritage for ever; giving therefor yearly the said trustees and their foresaids to me and my foresaids the sum of sterling, in name of feu-duty, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first payment thereof at the term of next for the half-year preceding, and so forth at the said two terms in all time thereafter, and doubling the said feu-duty every twenty-fifth year from the date of

* Care must be taken, in terms of the provisions of the Act, that the quantity of land feued does not exceed four acres, and that it does not lie within half a mile of the manor place, and is not a part of any garden, orchard, or enclosure adjacent thereto.

entry to the said piece of ground and others, and that for all that can be exacted for the said piece of ground and others in all time coming; and I assign the writs to the effect of maintaining and defending the said trustees and their foresaids in the right of the piece of ground and others hereby conveyed, and for that purpose I oblige myself and my foresaids to make the said writs forthcoming to the said trustees and their foresaids, at their expense, upon every proper occasion, upon a receipt and obligation to re-deliver the same within a reasonable time, under a suitable penalty, and I assign the rents, and I bind myself to free and relieve the said trustees and their foresaids of all feu-duties, casualties, and public burdens; and I grant warrandice, and I consent to registration hereof for preservation: Moreover, I desire any notary public to whom these presents may be presented to give to the said trustees and their foresaids sasine of the piece of ground and others above disponed, but always with and under the burden before specified, and also under these express provisions and restrictions, viz. That it shall not be in the power of the said trustees or their foresaids to sell, alienate, or dispone the said piece of ground and others or any part thereof, or to burden the same in any manner of way, or to hold, or use, or allow the same to be used otherwise than in connection with the Church of Scotland, and for the purposes or trusts specified in the foresaid deed of constitution: And it is hereby further provided and declared, that the conditions above specified shall be inserted in the instrument of sasine to follow hereon, and in all the subsequent rights and investitures of the foresaid subjects. In witness whereof,

SCHOOLMASTERS AND SCHOOLS.

I.—43 Geo. III. c. 54.

An Act for making better Provision for the Parochial Schoolmasters, and for making further Regulations for the better Government of the Schools in Scotland.

11th June 1803.

Whereas the parish schoolmasters in Scotland are a most useful body of men, and their labours have been of essential importance to the public welfare; and whereas, by an act passed in the Parliament of Scotland, in the reign of King William the Third, in the year one thousand six hundred and ninety-six, intituled, *Act for Settling of Schools*, it is, *inter alia*, statuted and ordained, that there be a school settled and established, and a schoolmaster appointed, in every parish not already provided, by advice of the heritors and minister of the parish, and for that effect, that the heritors in every parish meet, and provide a commodious house for a school, and settle and modify a salary to a schoolmaster, which shall not be under one hundred merks, nor above two hundred merks Scots, to be paid yearly, at two terms, Whitsunday and Martinmas, by equal portions; and certain rules and regulations were laid down by the said act relative to the portioning and payment of the said salary by the heritors of the parish; and whereas the highest salary by the said act granted, amounting only to eleven pounds two shillings and twopence two-thirds of a penny sterling, which, by difference in the value of money and change in the circumstances of the country, has become a provision altogether inadequate for a body of men whose labours are of so great public utility: May it therefore please your Ma-

jesty, that it may be enacted, and be it enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the term of Martinmas next, the salary of each parochial schoolmaster in every parish in Scotland shall not be under the sum of three hundred merks Scots *per annum*, nor above the sum of four hundred merks Scots *per annum*, except in the cases herein-after mentioned.

II. And be it further enacted, That within three months after the passing of this act, the heritors possessed of the qualification required by this act, and the minister of every parish, shall hold a meeting, of which intimation shall be given from the pulpit immediately after Divine service in the forenoon, and by circular letters, to be written by the minister of the parish, to such heritors having the qualification prescribed by this act, who are non-resident, and also by leaving a written notice at the mansion-house of every heritor, whether resident or not, at least thirty free days before such meeting shall take place; and on due consideration of the circumstances of the particular parish in respect of extent, population, and valued rent, and the probable amount of the other emoluments of the schoolmaster's office, such meeting shall judge and determine whether the schoolmaster's salary shall be three hundred merks Scots *per annum*, or four hundred merks Scots *per annum*, or such sum between these two sums as to such meeting shall seem most suitable to the circumstances of the parish, and shall fix and determine the amount of the schoolmaster's salary, to be paid to the schoolmaster, by a resolution to be made at such meeting; a copy of which resolution, signed by the preses of the meeting, shall be delivered to the schoolmaster of the parish as his authority for collecting and

receiving the salary thereby fixed and determined, which shall be paid by the several heritors, at the same terms, apportioned among them, in the same manner, and with the same relief against their tenants, as is provided by the aforesaid act of the Parliament of Scotland, passed in the year one thousand six hundred and ninety-six: Provided always, that no salary at present payable to any schoolmaster shall be diminished; and in all cases where any such salary or any part thereof, is payable in grain or meal, such salary in grain or meal shall continue to be paid and payable in the same manner as heretofore, with such additions thereto in money as to such meeting shall seem proper; and in fixing and determining the amount of the salary to be paid, pursuant to this act, such grain or meal making part of such salary, shall be estimated at the rate of two hundred merks per chalder.

III. And be it enacted, That the salaries so fixed and determined, in manner above directed, shall continue to be the salaries payable to the schoolmaster of every parish, for and during the period of twenty-five years from and after the passing of this act, and within three years after the expiration of twenty-five years from the passing of this act, the sheriff or stewart of every county or stewartry shall fix and determine, according to the average amount of the fiars of the county or stewartry for the twenty-five years preceding, what is the value or average price of a chalder of oatmeal, and he shall make a return of such average to the office of King's Remembrancer in Exchequer in Scotland, and the Lord Chief Baron and Barons of Exchequer are hereby empowered and required, from such returns by the sheriffs and stewarts of Scotland, to strike the average price of a chalder of oatmeal for all Scotland, and an order of the said Court of Exchequer, fixing such average, shall, within three months from the date of the last return by the sheriffs

and stewarts, be published by the King's Remembrancer in the *Edinburgh Gazette*, and such other Scots newspapers as he shall deem sufficient, for three successive weeks, and a copy thereof shall also be transmitted by the said Remembrancer to the sheriff or stewart-clerk of every shire or stewartry in Scotland, which average, so ascertained, shall be the rate according to which the schoolmaster's salary shall be fixed, in the manner herein after directed, and the sheriff or stewart clerk shall transmit a certificate thereof, signed by him, to the minister of each parish within the county or stewartry, to be by him submitted to the meeting directed to be called in manner immediately after mentioned.

IV. And be it enacted, That within three months after the date of such certificate, the heritor possessed of the qualification required by this act, and the minister of every parish in Scotland, shall hold a meeting, of which intimation shall be given from the pulpit immediately after Divine service in the forenoon, and by circular letters, to be written by the minister of the parish, to such heritors having the qualification prescribed by this act, who are non-resident, and also by leaving a written notice at the mansion-house of every heritor, whether resident or not, at least thirty free days before such meeting shall take place; and on due consideration of the circumstances of the particular parish, in respect of extent, population, and valued rent, such meeting shall judge and determine whether the schoolmaster's salary of the same shall be equal to the average price of one chalder and a half, or of two chalders of oatmeal, according to the amount thereof, ascertained by the aforesaid certificate, or to such proportion between them as to such meeting shall seem most suitable to the circumstances of the parish, and shall fix and determine the amount of the schoolmaster's salary to be paid pursuant to such average, and their resolution

thereupon; a copy of which resolution, signed by the preses of the meeting, shall be delivered to the schoolmaster of the parish, as his authority for collecting and receiving the salary thereby fixed and determined, which shall be paid to him by the several heritors at the same terms, apportioned among them, in the same manner, and with the same relief against their tenants, as is provided by the aforesaid act of the Parliament of Scotland, in the year one thousand six hundred and ninety-six.

V. Provided always, and be it enacted, That in case the heritors and minister shall neglect or refuse to determine the amount of the salary to be paid to the schoolmaster according to the provisions of the act, or in case any heritor or schoolmaster shall be dissatisfied with the determination made, it shall be competent, within three months after such meeting ought to have been held, or such determination shall have been made, for the schoolmaster to apply, or for such person so dissatisfied to appeal, to the next Quarter-sessions, held for the shire or stewartry within the bounds of which the parish or parish kirk lies, whose judgment shall be final, and no appeal by advocation, suspension, or otherwise, shall be admitted against the judgment given at such Quarter-sessions: Provided always, that no heritor of the parish from whence such appeal comes shall vote upon such appeal at such Quarter-sessions.

VI. Provided always, and be it enacted, That after twenty-five years shall have elapsed from the time the amount of a schoolmaster's salary shall have been so fixed, the sheriff of a shire, or stewart of a stewartry, shall within three months again determine the average price of a chalder of oatmeal, in the manner directed by this act; and shall, as above directed, return the same to the office of King's Remembrancer in Exchequer, and the Lord Chief Baron and Barons of Exchequer shall again, by an

order of Court, fix the average price for all Scotland; and the King's Remembrancer shall again transmit a copy of said order of Court to the sheriff or stewart clerk of each shire or stewartry, and the said sheriff or stewart clerk shall again publish the same in the *Edinburgh Gazette* and Scots newspapers, and transmit a certificate of the said average, and order of Court, to the minister of each parish within his shire and stewartry; and the heritors and minister shall again fix and determine the schoolmaster's salary according to such average; such salary never being less than the value of one chalder and a half, nor more than two chalders, for the next twenty-five years, and so, *toties quoties*, at the end of every twenty-five years for ever, unless altered by parliament; and every such determination of salary shall be liable to appeal to the Quarter-sessions in manner and to the effect above directed.

VII. Provided always, and be it enacted, That in every parish where there is only one heritor qualified as herein after prescribed, such heritor shall have two votes at every meeting directed to be held pursuant to this act; and in all meetings where no preses has been chosen, the heritor present possessed of the highest valuation shall have the casting vote.

VIII. And be it further enacted, That in every parish where a commodious house for a school has not already been provided, pursuant to the directions in the above recited act, and in every parish where a dwelling-house for the residence of the schoolmaster has not already been provided, together with a portion of ground for a garden, to the extent hereafter mentioned, the heritors of every such parish shall provide a commodious house for a school, and also a house for the residence of the schoolmaster, such house not consisting of more than two apartments including the kitchen, together with a portion of ground for a garden to such dwelling-house, from fields used for

the ordinary purposes of agriculture as pasturages, as near and convenient to the schoolmaster's dwelling-house as reasonably may be; which garden shall contain at least one-fourth part of a Scots acre, and shall be enclosed with such fence as is generally used for such purposes in the district of the county where it is situated; and the expense of providing such school-house, dwelling-house, and garden, and supporting the same, shall be defrayed and paid in the same and like manner as is prescribed for providing a house for a school by the aforesaid act of the Parliament of Scotland: Providing always, that where the heritors shall determine that such garden cannot be allotted to the schoolmaster without great loss and inconvenience, it shall be optional to them, with the authority of the Quarter-sessions of the county or stewartry, to assign to the schoolmaster, in lieu of such garden, an addition to his salary, at the rate of eight bolls of oatmeal per acre, to be computed according to the average ascertained in manner herein before directed.

IX. And be it further enacted, That in case the heritors shall neglect or refuse to provide the accommodation of house, school-house, and garden, or additional salary in lieu thereof, to schoolmasters, according to the provisions of this act, or in case the schoolmaster shall not be satisfied with the accommodations afforded him, it shall be competent for him to bring the same, by representation or petition, before the Quarter-sessions held for the shire or stewartry, to which the parish of which he is schoolmaster belongs, or in which the parish kirk is situated; and in all such cases the judgment of the Quarter-sessions shall be final, without any further appeal by advocation, suspension, or otherwise. Provided always, that no justice of the peace, who shall be an heritor in the parish of such schoolmaster, shall vote upon such representation or petition.

X. Provided always, and be it enacted, That the heritor or heritors from whose estates any ground shall be taken for the purpose of such school-house, dwelling-house, and garden, shall have his, her, or their relief against the other heritors of the parish, for the value of the ground so to be taken, in proportion to the valued rent of the lands belonging to the whole heritors in the parish; such relief to be settled only by the sheriff or stewart of the county or stewartry, without appeal by advocation, suspension, or otherwise.

XI. And be it enacted, That in case of those parishes which consist of districts detached from each other by the sea, or arms of the sea, or otherwise, as where a parish consists of two or more islands, of which there are several instances in the Highlands, North Isles, and Hebrides, or where it is otherwise of great extent or population, so that one parochial school cannot be of any effectual benefit to the whole inhabitants of such parishes, it shall be competent to the heritors and minister, if they shall see cause, on fixing a salary of six hundred merks, or the value of three chalders of oatmeal, to be computed according to the provisions of this act, to divide the same among two or more teachers, according to the extent and population of the parish; and these proportions, so divided, shall be paid to teachers of schools in the same way and manner, and under the same conditions, as hereafter are specified by this act, for supplying vacant parochial schools with masters; but in respect that the heritors of such parishes are to pay any higher salary, they are hereby exempted from the obligation providing school-houses, dwelling-houses, and gardens, for the teachers among whom the salary is to be divided, in the manner aforesaid; and in case a difference of opinion shall arise among the heritors respecting the propriety and usefulness of such division of the salary, the same shall be submitted by petition or

representation to the Quarter-sessions of the shire or stewartry within the bounds of which the parish or parish kirk is situated; and the judgment thus obtained shall be final, without appeal by advocation, suspension, or otherwise.

XII. Provided always, and be it enacted, That none of the provisions of this act shall apply to the case of a parish which consists only of a royal burgh, or a part of a royal burgh.

XIII. And be it further declared, That where a parish consists of a royal burgh, or part of a royal burgh, and a landward heritor or heritors, the schoolmaster shall be appointed and maintained by the burgh, or by the landward heritor or heritors, or by the burgh and landward heritors, in the same way and manner, and according to the same proportions, that have hitherto been observed in such parish; the salary and accommodations being always equal in value to those provided by this act, and the same remedy being allowed in case they are otherwise, and to be applied for in the manner already specially pointed out; and provided any additions shall be granted, the same shall be paid in the same proportions by the parties from whom the present salary is received.

XIV. And be it enacted, That from and after the passing of this act, in case of vacancy in the office of schoolmaster, by death or otherwise, the minister of the parish shall, within fifteen days, intimate, or cause to be intimated, from the pulpit, immediately after divine service in the forenoon, the vacancy which has taken place, and communicate the knowledge of the same by letter to such heritor or heritors as may be non-resident; and the heritors possessed of the qualification required by this act, with the minister of the parish, are hereby appointed to hold a meeting, of which intimation shall be given by the minister, by edictal citation and circular letters to such as

are non-resident, at least thirty free days before it takes place; and such meeting, or adjourned meeting, shall elect a person to the vacant office of schoolmaster; and in the event of the parish being vacant, the presbytery shall appoint some one of their number to make the intimations and give the notices which, according to the provisions of this act, the minister is required to do.

XV. Provided always, and be it enacted, That if the heritors qualified as is hereby required, and minister, shall fail to elect a schoolmaster within four calendar months from the time the vacancy shall have taken place; then the presbytery within the bounds of which the parish is situated shall apply to the convener of the Commissioners of Supply of the county or stewartry, who, or any five of them, at a meeting to be called by the convener upon thirty days' notice, shall have power *jure devoluto*, and are hereby directed to elect a person to supply the vacancy.

XVI. And be it further enacted, That every schoolmaster elected under the provisions of this act shall carry the minutes, or an extract or certified copy of the minutes of his election, to the presbytery, accompanied with attestations of his having taken the oath to his Majesty before any one of his Majesty's justices of the peace; and the presbytery shall thereupon take trial of his sufficiency for the office, in respect of morality and religion, and of such branches of literature as by the majority of heritors and minister shall be deemed most necessary and important for the parish, by examination of the presentee, by certificates and recommendations in his favour, by their own personal inquiry or otherwise, and shall see him sign the Confession of Faith and Formula of the Church of Scotland; and their judgment or determination as to the qualifications of such presentee for the office of schoolmaster shall not be reviewed or suspended by any court, civil or

ecclesiastical; and provided they are satisfied with the same, he shall be furnished with an extract from their minutes, bearing that he had appeared, produced the attestations required, and had been found on trial duly qualified for discharging the duties of the office to which he had been elected, which extract shall complete his right to the emoluments provided by this act.

XVII. Provided always, and be it enacted, That in case the person elected is not found duly qualified, the heritors and minister shall only be allowed what remained of the four months, at the time of his election, with so many days more as required by this act.

XVIII. And be it further enacted, That the heritors qualified, as is hereby required, and minister, in a meeting called on thirty days' notification from the pulpit, and by letter from the minister to the non-resident heritors, and by notice to be left at the mansion-house of each heritor, whether resident or not, shall have the power of fixing the school-fees from time to time as they shall judge expedient; and a table of such fees, signed by the preses of the meeting, shall be hung up in the school-room: Provided always, that the schoolmaster shall be obliged to teach such poor children of the parish as shall be recommended by the heritors and minister at any parochial meeting.

XIX. And be it enacted, That the superintendence of schools shall continue with the ministers of the established church, as heretofore, according to the several acts of Parliament respecting the same, except in so far as altered by this present act.

XX. And be it enacted, That as often as presbyteries, in the course of their visitation, shall find any thing wrong with respect to the hours of teaching, or the length of the vacation annually given, or when any complaint shall be made to them upon those subjects by parties concerned,

they shall have the power of regulating the same in the manner they may judge most consistent with the particular circumstances and general good of the parish; and the schoolmaster is hereby required to conform to and obey all regulations so made by the presbytery, under pain of censure or suspension from or deprivation of his office, as to the presbytery shall seem proper.

XXI. And be it enacted, That when any complaint from the heritors, minister, or elders, against the schoolmaster, charging him with neglect of duty, either from engaging in other occupations, or from any other cause, or with immoral conduct, or cruel and improper treatment of the scholars under his charge, shall be presented to the presbytery, they shall forthwith take cognizance of the same, serve him with a libel if the articles alleged appear to them to be of a nature which requires it; and having taken the necessary proof, they shall acquit or pass sentence of censure, suspension, or deprivation, as shall appear to them proper upon the result of such investigation; which judgment shall be final, without appeal to, or review by, any court, civil or ecclesiastical; and in case they shall depose the incumbent from the office of schoolmaster, his right to the emoluments and accommodations of the same shall cease from the time of his deposition; and in case he shall fail or refuse to remove from the school, school-house, and garden, within the space of three months from the date of such sentence or deposition, the sheriff of the shire, or stewart of the stewartry, upon having an extract or certified copy of the sentence of deposition by the presbytery laid before him, shall forthwith grant letters of ejection against such schoolmaster, of which no bill of suspension, or advocation, nor action of reduction, shall be competent; and in case of such deposition, the school shall immediately be declared vacant, and the election of another schoolmaster shall take place.

XXII. Provided always, and be it enacted, That it shall not be lawful for any heritor who is not a proprietor of lands within the parish, to the extent of at least one hundred pounds Scots of valued rent, appearing in the land-tax books of the county within which such parish is situated, to attend or vote at any meeting held pursuant to this act; but every heritor, qualified as above, may vote by proxy, or by letter under his hand.

XXIII. Provided also, and be it enacted, That all former acts and statutes, with regard to parish schools or schoolmasters, are hereby ratified and confirmed, in so far as they are not altered by the express provisions of this act.

II.—Vic. 8, 9, c. 44.

An Act for amending an Act for making Provision for Parish Schoolmasters in Scotland.—[21st July 1845.]

Whereas an act was passed in the forty-third year of the reign of his Majesty King George the Third, intituled *An Act for making better provision for the parochial schoolmasters, and for making further regulations for the better government of the parish schools in Scotland:* And whereas by the said act it is provided, that if the heritors, qualified as thereby required, and minister, shall fail to elect a schoolmaster within four calendar months from the time the vacancy shall have taken place, then the presbytery within the bounds of which the parish is situated shall apply to the convener of the commissioners of supply of the county or stewartry, who, or any five of them, at a meeting to be called by the convener upon thirty days' notice, shall have power, *jure devoluto*, and are hereby directed, to elect a person to supply the vacancy: And

whereas in various cases of vacancies the presbyteries have failed to apply to the convener of the commissioners of supply, so as to enable him to call such meeting for the exercise by the commissioners of supply of the *jus devolutum* so conferred upon them, and great inconvenience and injury have been experienced by parishes in consequence of schoolmasters not having been elected to supply such vacancies: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that failing such election as aforesaid, and such application by the presbytery to the convener of the commissioners of supply, then, within twenty-one days after the expiration of the four months after which the presbytery is so required to apply to the convener of the commissioners of supply, it shall be lawful for any heritor of the parish to make intimation o the vacancy, whether now existing or that may hereafter occur, by letter to the convener of the commissioners of supply of the county or stewartry within which the parish is situated, requiring him to call a meeting of such commissioners upon thirty days' notice; and the commissioners of supply, or any five of them, assembled at such meeting or any adjourned meeting, shall have power, *jure devoluto*, to take the matter of such vacancy into consideration, and, unless good cause be shown to the contrary, to proceed forthwith to the election of a schoolmaster, according to the intent and meaning of the said recited act, and such election shall be good and valid to all intents and purposes.

AUGMENTATION OF STIPENDS.

I.—Act 1707, c. 9.

Being the ninth Act in the fourth Session of the Parliament of Queen Anne, holden at Edinburgh, October 3, 1706.

Act anent Plantation of Kirks and Valuation of Teinds, February 21, 1707.

Our Sovereign Lady, and the Estates of Parliament, considering the great prejudice that does redound to this nation, through the want of an established and fixed judicature which may cognosce and determine in such causes and things, as by former parliaments were referred to their commission for plantation of kirks and valuation of teinds, and through the loss of the registers of that court, which were burnt in the fire that happened in this place: Therefore, her Majesty, and the said Estates, do hereby empower, authorise, and appoint the Lords of Council and Session to judge, cognosce, and determine in all affairs and causes whatsoever, which, by the laws and acts of parliament of this kingdom, were formerly referred to, and did pertain to the jurisdiction and cognizance of the commissioners formerly appointed for that effect, as fully and freely in all respects as the said Lords do or may do in other civil causes; and particularly, but prejudice to the generality foresaid, to determine in all valuations and sales of teinds, to grant augmentations of ministers' stipends, prorogations of tacks of teinds, to disjoin too large paroches, to erect and build new churches, to annex and dismember churches as they shall think fit, conform to the rules laid down, and powers granted by act 19th of the parliament 1633, 23d and 30th acts of the parliament 1690, and the 24th act of the parliament 1693, in so far

as the same stand unrepealed; the transporting of kirks, disjoining of too large paroches, or erecting and building of new kirks, being always with the consent of the heritors of three parts of four at least of the valuation of the paroch whereof the kirk is craved to be transported, or the paroch to be disjoined, and new kirks to be erected and built, the minister in the mean time to serve the cure in the present kirk of the paroch: And for that effect appoints the said Lords to meet and sit each Wednesday in the afternoon during the time of session, and to call and discuss the said causes summarily, conform to a roll to be made up and kept of the same.

II.—Act 1808, c. 138.

Act for defining and regulating the Powers of the Commission of Teinds, in augmenting and modifying the Stipends of the Clergy of Scotland.

Whereas by an act of the Parliament of Scotland, in the year one thousand seven hundred and seven, intituled, *Act anent Plantation of Kirks and Valuation of Teinds*, her Majesty Queen Anne and the Estates of Parliament empowered, authorised, and appointed the Lords of Council and Session to judge, cognosce, and determine in all affairs and causes which, by the laws and acts of the Parliament of Scotland, had been referred, and did pertain and belong to the jurisdiction and cognizance of Commissioners formerly appointed for that effect, as fully and freely in all respects as the said Lords did or might do in other civil causes; and certain powers therein mentioned were particularly granted by the said act; and it was thereby declared, that the said act and commission should be subject nevertheless to such regulations and alterations as should be made by the Parliament of Great Britain: And where-

as it is expedient, that the powers of the said Lords of Council and Session, as Commissioners aforesaid, should, in some respects, be defined and regulated; may it therefore please your Majesty that it may be enacted, and be it enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this act, it shall not be competent to the said Lords of Council and Session, as Commissioners aforesaid, except as after specified, to augment or modify any stipend which shall have been augmented or modified prior to the passing of this act, until the expiration of fifteen years from and after the date of the last final decreet of modification of such stipend.

II. And be it enacted, That no stipend which shall be augmented or modified by a decree after the passing of this act, shall be again augmented or modified until the expiration of twenty years from and after the date of such decree or modification thereof; nor shall any such stipend be augmented or modified at any future period until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

III. Provided always and be it enacted, That in all processes of augmentation or modification, in which the days of compearance had elapsed, and which shall have been called in court prior to the twelfth day of March one thousand eight hundred and eight, and which shall continue to depend before the said Lords of Council and Session, as commissioners aforesaid, at or after the passing of this act, it shall be competent to the pursuer either to suspend the same until fifteen years shall have elapsed from the date of the last preceding decree of modification, or to prosecute the same to a conclusion forthwith: and that it shall be competent to the said Lords of Council

and Session, as commissioners aforesaid, either to grant or to refuse to grant an augmentation in any such cases, or to pronounce or to refuse to pronounce a decreet of modification therein: Provided always, that if the stipend in any such depending case shall be augmented or modified by decreet after the passing of this act, the same shall not be again augmented or modified until the expiration of twenty years from and after the date of such decree of modification thereof; nor shall any such stipend be augmented or modified at any future period, until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

IV. Provided further, and be it enacted, That this act shall not be deemed or taken to extend to any case where a decreet of modification having been pronounced by the said Lords of Council and Session, as commissioners aforesaid, prior to the passing of this act, the subject matter whereof shall be depending, either upon petition to the said commissioners, or upon appeal to the House of Lords, at the time of the passing thereof, or where it may be competent to present such petition or such appeal against any such decreet of modification, but every such case may be proceeded in and brought to a conclusion; and a petition or petitions may be presented to the said commissioners therein, or an appeal may be taken to the House of Lords as heretofore, and the same may be prosecuted with regard to the said petition or appeal in the same manner as if this act had not been made.

V. Provided always, and be it enacted, That in such cases aforesaid, where there shall be a final decreet of modification, no such stipend shall be again augmented or modified until the expiration of fifteen years from and after the date of the final decreet of modification thereof, pronounced by the said Lords of Council and Session, as commissioners aforesaid.

VI. Provided likewise, and be it enacted, that where such stipend shall, at or after the expiration of the said fifteen years, be again augmented or modified by a decree after the passing of this act, it shall not be again augmented or modified until the expiration of twenty years from and after the date of such decree of modification thereof, nor shall any such stipend be augmented or modified at any future period, until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

VII. Provided further, and be it enacted, That in all cases whatsoever where an augmentation or modification of stipend shall have been or shall be applied for, and which shall be judged of, or a decision pronounced therein after passing of this act, by the said Lords of Council and Session, as commissioners aforesaid, it shall and may be competent to them to refuse to augment or modify any stipend in any such case, either on account of there being no legal fund of augmentation, or on account of the circumstances of the case; and it shall and may be competent for any party or parties to propone all relevant objections in every case whatsoever where an augmentation or modification shall be applied for, and which objections shall be determined by the said Lords of Council and Session, as commissioners aforesaid, as heretofore.

VIII. And be it further enacted, That every stipend which shall be augmented after the passing of this act shall be wholly modified in grain or victual, even although part of the whole thereof shall have been previously modified in money, or although part of the whole of the teinds shall be money teind, unless where it shall appear necessary, on account of the state of the teinds, or on account of the interest of the benefice, or on account of the nature of the articles other than grain or victual which have been in use to be delivered in kind as stipend, that a part of the

said stipend should be modified not in grain or victual, but in money, or should be modified in such other articles as have been in use to be delivered in kind, as stipend.

IX. And be it further enacted, That in the case of every decree of modification which shall be pronounced after the passing of this act as aforesaid, it shall and may be competent to the said Lords of Council and Session, as commissioners aforesaid, and they are hereby authorised and required to convert the said money stipend or money teind into grain or victual, save and except as aforesaid; and to make such conversion into grain or victual according to the fiar prices of the kind or description of grain or victual into which the same shall be converted, as appearing from the fiars of the county or stewartry struck for each year, in virtue of authority from the sheriff or stewart in which the parish shall be situated, upon an average of such fiar prices for seven years preceding the date of the decreet of modification, and exclusive of that year in which such decreet of modification shall bear date.

X. Provided always, and be it enacted, That where such parish shall not be altogether situated in the same county or stewartry, or where no fiars applicable to the kind or description of grain modified shall be struck in the county or stewartry wherein such parish is situated, it shall be competent for the said Lords of Council and Session, as commissioners aforesaid, to convert the said money into grain or victual, according to the average of the foresaid seven years of the fiar prices of two or more of the adjoining counties, or of such stewartry, county, or counties, as they shall deem most suitable in the circumstances of the case.

XI. And be it further enacted, That it shall not be competent for the Lords of Council and Session, as commissioners aforesaid, where a stipend shall, after the passing of this act, be modified in grain or victual, in whole or in

part, to authorise the minister to receive the same or any part thereof in kind, but that it shall only be competent for them to decree the value thereof to be paid, or for him to receive the same in money, according to the fiar prices of the kind or description of grain or victual into which the same shall have been modified, as appearing from the annual fiars of the county or stewartry in which the parish, the stipend of which shall have been so modified, shall be situated, struck in virtue of authority from the sheriff or stewart, for that crop or year for which such stipend, modified in grain or victual, shall be payable.

XII. Provided always, and be it enacted, That where any such parish shall not be altogether situated in one and the same county or stewartry, or where no annual fiars applicable to the kind or description of grain or victual modified shall be struck in the county or stewartry wherein such parish is situated, it shall be competent for the said Lords of Council and Session, as commissioners aforesaid, to fix upon and specify two or more of the adjoining counties, or such stewartry, county, or counties, as they shall deem most suitable in the circumstances of the case, according to the annual fiar prices of which stewartry, county, or counties, they shall decree the value thereof to be paid in money.

XIII. Provided always, and be it enacted, That where there shall have been or shall be different rates of annual fiar prices for any county or stewartry, district or place, struck in virtue of authority from the sheriff or stewart, the said conversion from money into grain or victual, and from grain or victual into money, in all of the cases aforesaid, shall be made according to the highest annual fiar prices struck in virtue of authority from the sheriff or stewart for the said county, stewartry, district or place.

XIV. Provided always, and be it enacted, That the right of any heritor to surrender his valued teind in place

of subjecting his lands to the amount of the stipend localled upon them, shall not be taken away by what is herein enacted.

XV. And be it further enacted, That from and after the passing of this act, the said Lords of Council and Session, as commissioners aforesaid, nine being a quorum, instead of meeting in the afternoon of each Wednesday as heretofore, shall meet at ten of the clock in the forenoon, upon the second Wednesday which shall happen after the Court of Session shall have met for the dispatch of business in the months of November and May in every year respectively; and at the same hour, once a fortnight, on Wednesday, during the sitting of the Court of Session, and at such other times and on such other days, in the months of December, January, and March, not being any of the days upon which the Court of Session meet for the dispatch of the business of the said Court, as the said Lords of Council and Session, as commissioners aforesaid, shall find necessary or proper for executing the powers committed to them by this and the said in part recited act.

XVI. And be it enacted, That it shall be lawful for the said Lords of Council and Session, as commissioners aforesaid, and they are hereby empowered and required to establish rules and regulations for abridging the forms and expense of citation of heritors and others, and for ascertaining the facts and circumstances of the case, and to establish regulations for executing the business committed to them by the said in part recited act of the Parliament of Scotland, and by the present act, with as much expedition and as little expense as possible.

XVII. And, in order to guard against collusion, and also in order that no processes of augmentation or for modification of stipends shall be raised on the ground of alleged collusion, be it further enacted, That every minis-

ter insisting in the process of augmentation shall, after the passing of this act, besides citing the heritors, also cite the moderator and clerk of the presbytery of the bounds, and furnish them with a statement of the amount of his present stipend, and the addition to the stipend which he means to crave, in order that the presbytery, if they shall judge it proper, may appear as parties to the process; and, in the event of the presbytery entering no appearance, the minister shall forthwith transmit to the moderator or clerk of the presbytery a certified copy of the interlocutor pronounced by the Court; and it shall be competent to the presbytery, within five months after such interlocutor is pronounced, to enter an appearance, and to show, if they shall see cause, that the decree of modification pronounced is collusive and prejudicial to the benefice: Provided, That if the presbytery shall enter an appearance in such process, it shall be competent to the Court to subject the minister insisting in such process in the whole or any part of the expenses of process incurred by the presbytery.

XVIII. And be it further enacted, That all the powers given and granted by the said in part recited act to the commissioners thereby appointed, shall remain and continue in force, and receive such and the like effect as they do at present, excepting in so far as they are altered or repealed by this act.

COMMISSIONERS TO GENERAL ASSEMBLY.

I. *Overture of an Act, and Rules concerning the Election and Qualifications of Members of Assembly.*

June 8, Ass. 1759.

The General Assembly did, and hereby do, transmit the

following overture respecting the election and qualifications of members of Assembly to the several presbyteries of this church, to be considered by them, that they may send up their opinions concerning it to the next General Assembly, whether or not it shall be passed into an act. Of which overture the tenor follows, viz., The General Assembly, considering that the acts respecting the election and qualifications of members of Assembly are very much scattered, having been made on different occasions, and therefore are not sufficiently attended to, and that difficulties and disputes have often arisen in the application of them, do therefore, in place of all former acts concerning the election and qualifications of members, and forms of commissions to them, and attestations thereof, which are hereby declared to be repealed, enact and ordain as follows:—

That the representation of the several presbyteries of this national church in its General Assemblies shall hold proportion to the number of parishes within each presbytery in manner following; that is to say, presbyteries consisting of 12 parishes, or under that number, shall send two ministers and one ruling elder; presbyteries of above 12, and not exceeding 18, shall send three ministers and one ruling elder; presbyteries of above 18, and not exceeding 24, shall send four ministers and two ruling elders; presbyteries of above 24, and not exceeding 30, shall send five ministers and two ruling elders; and presbyteries of above 30 shall send six ministers and three ruling elders. And it is hereby declared, That collegiate churches, where there are in use to be two or more ministers, are, so far as concerns the design of this act, understood to be so many distinct parishes: That it shall not be lawful for any presbytery, university, or burgh, the presbyteries in the Western and Northern Isles excepted, to choose their commissioners sooner than 70 days preceding the first day

of the meeting of the Assembly: And all the presbyteries, universities, and burghs, without exception, shall make their election at least 40 days before the first day of the meeting of the Assembly, and shall appoint the day of election by an order to be entered into their minutes, at a lawful meeting, at least ten free days before such election; and shall make their respective elections betwixt the hours of twelve and four afternoon.

That presbyteries shall elect no missionary ministers, nor any minister who is not a constituent member of the presbytery; and no elder shall be chosen by any presbytery but one who either does usually reside, or is an heritor on the cess roll, or has formerly resided and officiated as an elder within their bounds: That universities shall choose such only to be their representatives as are members of that university by whom they are chosen: That no minister or elder shall be chosen by any burgh, but one who either at present officiates, or hath formerly officiated, as a minister or elder in that burgh, or in the bounds of the presbytery where the burgh lies, or is a residenter or heritor in that burgh, or an heritor on the cess roll in the bounds of that presbytery.

That all commissions from presbyteries, universities, and burghs, shall bear that the elders have signed the Formula prescribed by the 11th act of Assembly 1694, and, instead of a general clause, that they are every way qualified according to the acts of Assembly, the commission shall contain the particular qualifications of elders as follows: "That they are mindful of the duties of their office, are circumspect in their walk, religiously observe the Lord's day, regularly attend on Divine ordinances, and duly regard the publick and private worship of God." Provided always, That, in case the commission does not mention that the elders have subscribed the Formula, act, xi. Assembly 1694, they shall be allowed to supply this

defect by subscribing it in presence of the Assembly, or of a committee appointed by them, or by instructing to the Assembly that they have already subscribed it.

That all commissions from presbyteries, after they are written out and extracted, and before they are put into the hands of the commissioners, shall be read in presence of the presbytery, and revised by them, and it shall be attested by the moderator or clerk that this was done.

That no commissions from royal burghs to their representatives in the Assembly shall be sustained, but such as shall be attested by the ministry and kirk-sessions of the burgh, and also by the presbytery of the bounds within which the burgh lies: And every commission from an university, in order to its being sustained, shall carry along with it an attestation from the presbytery of the bounds within which the university lies, which attestations of commissions from burghs and universities shall be in the form after mentioned. But it is hereby provided, That, if a kirk-session or presbytery shall refuse their attestation to a commission from a burgh or university, they shall assign the reasons of their refusal, to be laid before the Assembly, and judged of by them, and, if they either assign no reasons, or these be judged insufficient by the Assembly, the commission shall be sustained as if it had been duly attested.

Agreeably to the foregoing rules, the General Assembly do hereby appoint and ordain the following forms of commissions and attestations to be punctually observed by presbyteries, kirk-sessions, universities, and burghs respectively, in all time coming, with certification, that every commission not agreeable to the above rules, and attested exactly, and in express words, according to these forms, shall be rejected, and the persons therein named shall not be admitted members of the Assembly.

(The forms are then given.)

2. *Act X. of Assembly* 1783, *anent the Forms of Commissions, being a reprint of Act* 4, *Ass.* 1768.

Act x. Ass. 1783.

The General Assembly 1766, having prescribed certain forms of commissions to members of Assembly, and attestations thereof, and the Assembly 1767 having, in respect of some defects observed in these forms, made a supplement thereto; the General Assembly, now considering the disadvantage of having what belongs to the necessary forms of commissions and attestations lying in separate acts, by which the electors or their clerks may be more liable to mistakes or omissions, than if the whole was laid before them in one view, did appoint both to be brought together into one act as follows; and the agent for the church to cause print the same, and transmit copies thereof to the several presbyteries, universities, and burghs.

The General Assembly, considering that it is of the greatest importance for the honour and interest of religion, that the office-bearers of the church should behave and conduct themselves in all respects becoming their character, do, in terms of the act of Assembly, 22d May 1722, earnestly beseech, exhort, and require all ministers to take heed to themselves and to their doctrine, and to be exemplary to their people in sobriety, righteousness, and holiness, abstaining from all appearance of evil: And in like manner, the General Assembly do earnestly beseech, exhort, and require the elders and deacons to be faithful in the discharge of their respective offices, tender and circumspect in their walk, punctual in their attending upon ordinances, strict in their observation of the Lord's day, and regular in keeping up the worship of God in

their families. The Assembly do further enjoin and require, for the more regular election of members to the Assembly in time coming, presbyteries, burghs, and universities, strictly to observe the acts of former Assemblies, appointing that the election shall be made at least forty days before the meeting of Assembly, and within a month preceding the first of the said forty days, except those lying in the Northern and Western Isles, and shall appoint the day of election at a meeting to be entered in their minutes, at least ten free days before such election; and that on the day of election they shall make their elections betwixt the hours of one and eight o'clock in the evening.

The General Assembly considering also, that some acts regulating the manner and time of electing members to the Assembly are posterior to the act 17th May 1725, establishing forms of their commissions; and that these forms refer in general to acts of Assembly that contain some particulars, of which presbyteries, universities, and burghs cannot have any certain evidence, and are thereby reduced to the necessity, either of attesting what does not come properly under their own knowledge, or of omitting clauses in the established form, whereby their commissions have been rendered void and null; the Assembly did, on all these accounts, and hereby do, appoint and ordain the forms of commissions and attestations, hereunto subjoined, to be observed by presbyteries, sessions, universities, and burghs; and enact and ordain, That all such commissions and attestations as are not conceived and attested in these very words of the form now prescribed shall be rejected.

The General Assembly do further declare and enact, That when a kirk-session or presbytery refuse their concurrence or attestation to a commission by a burgh or university, without assigning the reasons of their refusal, that commission shall be sustained as if duly attested, in

case the matter shall be brought before the Assembly by protest or appeal.

(The forms are then given.)

3. *Forms of Commissions as appointed by the above acts.*

I. PRESBYTERIES.

It is desirable that the printed forms of commissions should be always used.

Ministers must be designated by the parishes in which they are settled; and this must be attended to in an after-election as well as in the original one.

It is to be carefully noticed, that ten free days must intervene between the resolution to elect and the election; and that, with the exception of the Northern and Western Islands, the election must not take place less than forty, and not more than seventy,* days before the meeting of the Assembly. An after-election may take place at any time before the meeting of the Assembly, upon the resignation of the person originally elected. In case of an after-election taking place posterior to the attestation of the commission, that after-election must also be separately attested.

It must be kept in view by presbyteries and their representatives, that if these directions are not carefully observed, and the commission be not in all respects agreeable to the form here given, it must be rejected by the General Assembly.

(For Forms of Commissions from Presbyteries and the Attestations thereof, see pp. 257–259.)

* See Foot Note, p. 256.

II. UNIVERSITIES.

1. Commission from a University.

At , the day of years.—The which day the Principal, Professors, Masters, and other members of the university of , having a right to elect, being convened betwixt the hours of one and eight o'clock in the evening, in order to elect their representative to the ensuing Assembly, pursuant to a resolution entered into their minutes on the day of , did, and hereby do, nominate and appoint their commissioner to the next General Assembly of this church, indicted to meet at , the day of next to come, or when and where it shall happen to sit; willing him to repair thereto, and to attend all the diets of the same; and there to consult, vote, and determine in all matters that come before them, to the glory of God and the good of his church, according to the word of God, the Confession of Faith, and agreeable to the constitution of this church, as he will be answerable; and that he report his diligence therein at his return therefrom. And it is hereby testified and declared, that the said is a minister (or an elder) of this church, lawfully ordained, and (if a minister) hath signed the *Formula* enjoined by the 10th act of the Assembly anno 1711; (or if an elder) hath signed the *Formula* prescribed by the 11th act of the Assembly 1694. And further, that the said commissioner is every other way qualified to be a member of the Assembly, according to the acts of the Assembly; and (if an elder it must be said) in particular, he is of an unblemished character, circumspect in his walk, regular in giving attendance on the ordinances of Divine institution, and

behaves in other respects agreeable to his office. All which the university have hereby attested, on proper information.

Extracted by

C. D., Clerk.

2. In the case of an after-election of a Commissioner from a University, in the place of one formerly chosen.

At the day of years.—The which day the Principal, Professors, Masters, and other members of the university of , being convened betwixt the hours of one and eight in the evening, and (here the occasion of the new election to be narrated) did, and hereby do, nominate and appoint in his place their commissioner to the General Assembly; and it is hereby testified and declared, that he is in all respects qualified in the same manner as their former commissioner, in whose room he is chosen; which the university attest on proper information.

Extracted by

C. D., Clerk.

N.B.—This form for universities is prescribed, on the supposition that the former commissioner, and the person chosen in his place, are either both of them ministers, or both of them elders. But if an elder is chosen in the place of a minister, or a minister in the place of an elder, then the attestation must contain the words at length of the form prescribed for the first election.

For "Attestation by the Presbytery," see page 259.

III. BURGHS.

It is desirable that the printed forms of commissions should be always used.

In commissions from burghs, the elder must be designated as a residenter in the burgh, or as an heritor in the burgh, or as an heritor in the bounds of the presbytery within which the burgh lies, or that he has formerly resided and officiated as an elder in the said burgh, or presbytery within which the said burgh lies. It must be carefully noticed, that whichever of the designations is used in the commission itself, must be repeated in the attestations by the kirk-session and the presbytery.

It is also to be carefully noticed, that ten free days must intervene between the resolution to elect and the election; and that the election must take place not less than forty and not more than seventy* days before the meeting of the Assembly.

Both the session of the burgh and the presbytery within which it lies are required to attest the commission; but should they refuse to do so, an appeal must be taken to the General Assembly.

It must be kept in view, that, if these directions are not carefully observed, and if the commission be not, in all respects, agreeable to the form here given, it must be rejected by the General Assembly.

1. Commission from a Burgh.

At , the day of years.—The which day, the Magistrates and Town-council of being convened in council, betwixt the hours of one and eight

* See Foot Note, p. 256.

o'clock in the evening, in order to elect their representative to the ensuing Assembly, pursuant to a resolution entered into their minutes on the day of , did and hereby do, nominate and appoint , Ruling Elder, their commissioner to the next General Assembly of this church, indicted to meet at Edinburgh the day of May next to come, or when and where it shall happen to sit; willing him to repair thereto, and to attend all the diets of the same; and there to consult, vote, and determine, in all matters that come before them, to the glory of God and the good of his church, according to the word of God, the Confession of Faith, and agreeable to the constitution of this church, as he will be answerable; and that he report his diligence therein at his return therefrom. And it is hereby testified and declared, that the said is an Elder of this Church, lawfully ordained, and hath signed the Formula enjoined by the 11th act of Assembly 1694, and is every other way qualified to be a member of Assembly, and likewise that he is (a residenter in the said burgh,) or (an heritor in the said burgh,) or (an heritor within the bounds of the presbytery of , within which the said burgh lies,) or (has formerly resided and officiated as an Elder in the said burgh,) or (presbytery of , within which said burgh doth lie,) according to the acts of Assembly; and, in particular, that he is of an unblemished character, circumspect in his walk, regular in giving attendance on the ordinances of Divine institution, and behaves in other respects agreeable to his office. All which the Magistrates and Town-council have attested, on proper information.

Attested by

C. D., Cls.

2. After Election.

At , the day of years.—The which day the Magistrates and Town-council of being convened, betwixt the hours of one and eight o'clock in the evening, and (here narrate the occasion of the new election,) did, and hereby do, nominate and appoint in his place, , Ruling Elder, their commissioner to the next General Assembly; and it is hereby testified and declared, that the said is, (&c., as in No. 1.) and that he is in all other respects qualified in the same manner as their former commissioner in whose room he is chosen; which the Magistrates and Town-council do attest, on proper information.

Extracted by

C. D., Cls.

For "Attestation by the Kirk-session," see page 36; and for "Attestation by the Presbytery," see page 260.

III.

SYNOD.

ACTS REFERRED TO IN THE INSTRUCTIONS TO VISITORS OF SYNOD BOOKS.

1. *Acts anent Lecturing.*

Act. ix. Ass. 1694.

The General Assembly of this National Church, considering how necessary and edifying it is, that the people be well acquaint with the Holy Scriptures; doth therefore

recommend to the several presbyteries, that they endeavour that the ministers within their respective bounds shall, in their exercise of lecturing, read and open up to the people some large and considerable portion of the word of God: And this to the effect the old custom introduced and established by the Directory may by degrees be recovered.

Act. v. Ass. 1704.

The General Assembly do hereby appoint and ordain the several ministers of this Church to observe the 9th act of the General Assembly, anno 1694, anent reading and expounding of the Scriptures in their congregations, and recommend it to presbyteries, at their privy censures, to inquire how the said act has been observed by the several brethren within their bounds. And ordain an account of their diligence thereanent to be insert in their presbytery books, and likeways recommend to synods, at their privy censures, to inquire how presbyteries have observed the said recommendation.

Act. x. Ass. 1706.

The General Assembly considering, that the acts of former Assemblies, concerning lecturing and expounding of the Holy Scriptures, are much neglected in many places, do therefore enjoin and appoint the several presbyteries, at their privy censures and parochial visitations, diligently to inquire how ministers observe the said acts.

2. *Act recommending to Ministers to preach Catechetical Doctrine.*

Act. xviii. Ass. 1695.

The General Assembly of this National Church, considering how necessary and edifying it is, that the people be

well acquainted with the fundamental principles of the Christian religion, do therefore recommend to the care of ministers, that beside their ordinary work of catechising, they also preach catechetical doctrine, at such times, and in such manner, as they shall find most conducive for the edification of their flocks.

3. *Act appointing the more frequent Celebration of the Sacrament of the Lord's Supper.*

Act xi. Ass. 1712.

The General Assembly, considering that the Assemblies of this National Church have, by several acts, appointed the frequent celebration of the holy sacrament of the Lord's Supper in all the congregations of this Church, and judging that the due observation of these acts will greatly tend to the glory of God and the edification of souls; therefore, they do hereby enjoin all presbyteries to inquire if the said acts be duly observed by all the brethren; and in case any minister shall neglect to celebrate the sacrament of the Lord's Supper in his parish for a whole year, the Assembly appoints the presbytery in which the said parish lies to call for an account of the reasons of his omission of that great and solemn duty and ordinance, and to approve or disapprove the same as they shall see cause, and to record their diligence in this matter. And for making this and other acts and recommendations of Assemblies effectual, the General Assembly enjoins the synods, at their several meetings, to inquire at the presbyteries within their bounds, what care they have taken to execute the said act, and other recommendations foresaid; and ordains that their books shall bear an account of their diligence therein; and in order thereto, the Assembly appoints the several synods to make up a roll of all matters that have

been or shall be recommended by the Assemblies of this church, to be inquired at presbyteries, and ordains the said roll to be inserted in their register, and given to the visitors of the presbytery books, that they may take notice of, and report the diligence of presbyteries in executing the said acts and recommendations. And in like manner, it is agreed that the Assembly shall make up a roll of all matters appointed to be inquired at synods, and ordains every new act and recommendation, so soon as they are made, to be added to the said rolls, that thereby the General Assemblies may know how their acts and recommendations are observed by the several synods and presbyteries of this Church.

4. *Act and Recommendation concerning Visitation of Parishes, and also Ministerial Visitation of Families.*

Act xvi. Ass. 1706.

The General Assembly, considering that frequent presbyterial visitation of parishes would be of great advantage to the Church, and might tend to promote piety and holiness, and suppress sin; do therefore seriously recommend to and enjoin presbyteries to be more frequent and con scientious in visiting parishes, conform to the acts of former General Assemblies thereanent; and appoints the commission to draw up and prepare a directory for ministerial visitation of families, and present the same to the next General Assembly.

5. *Act anent the Reading of the Overtures and Acts of the General Assembly.*

Act xvi. Ass. 1700.

The General Assembly took to their consideration the

overtures transmitted to presbyteries by the late Assembly, concerning the method of passing overtures, and acts of Assembly; and having heard the said overtures read in their own presence, as also, the report of the committee for overtures thereanent, and concerning the opinion of presbyteries thereupon; the General Assembly did, by their vote, and hereby do enact and appoint, that when anything of public concern, and great weight, is proposed to the General Assembly, to be past as overtures or acts, for a standing rule to the church, after the first reading, it be delayed till the next day of the Assembly's sitting, and lie on the table, to be seen and considered by all the members; and likeways, when anything is past as overtures, by the General Assembly, it is ordained, that all and every presbytery read them publicly, in their presbyterial meeting, once before the first meeting of the synod next after the General Assembly, and consider of them, and that this be recorded in their presbytery book, and inquired into by their synods in visiting presbytery books; as also, it is hereby recommended to all presbyteries, to send in an account of their judgment and opinion thereanent, with their commissioners to the General Assembly, in writing, but as briefly as may be, and the overtures to be printed after the acts: And lastly, it is hereby enacted and appointed, that each minister and kirk-session have a copy of all the printed acts of the General Assembly, and that inquiry be made into this, at presbyterial and synodical censures, and their diligence recorded.

6. *Act against Profanity.*

Act vii. Ass. 1699.

The General Assembly, taking to their consideration the overtures against prophaneness, past by the last Assem-

bly, January 24, 1698, Sess. 15; and having heard the report of commissioners present from the several presbyteries of this National Church, to whom the consideration of the said overtures was recommended; and the General Assembly being well and ripely advised thereanent, did, by their vote, and hereby do, approve of these overtures after mentioned, whereof the tenor follows.

1. The General Assembly, considering the lamentable growth of prophanity, ignorance, and irreligion, that is too manifest in this land, and the woful decay of the life and power of godliness, with the small success of the gospel, that's to be observed every where, at this time; the General Assembly, in a deep sense of these things, and for the remedying of them, do, in the first place, in the awe and dread of God, beseech, exhort, and require all ministers, by the coming of our Lord Jesus Christ, and our gathering together unto Him, that they take heed to themselves, and to their doctrine, and endeavour to be ensamples to the people, in all piety, purity, and holiness, in all manner of conversation.

2. That they be frequent and fervent in secret prayer, for themselves, and the people committed to them, joining sometime fasting with prayer. And the General Assembly recommends to ministers and elders in their several parishes, and ministers in their several presbyteries, to meet sometimes together in their parishes and presbyteries respectively for private fasting and prayer, and conference anent the state of the church, and that part of it in which they have special interest, with respect to the growth or decay of godliness, and success of the gospel therein.

3. That presbyteries be more accurate in managing their privy censures, and that a day be set apart to that purpose only, and spent in fasting and prayer together.

4. That presbyteries be very cautious in admitting intrants to the ministry, and be accurate and exact in the

trial, not only of their literature, but of their piety, prudence, and former godly conversation and walk.

5. That ministers be painful in catechising, frequent in visiting of families, and in private personal conference with these of their charge, about the state of their souls; and that ministers be more frequent in administration of the Lord's Supper, and alwise edifying in their converse and discourse; and that they deal with heads of families to engage them to piety, and a care to reform their families, and to set up, and to keep up, the worship of God therein: And, in particular, that ministers endeavour, by all prudent and gaining Gospel methods, to engage persons of honour and power to fall in love with holiness, and reckon it, as in deed it is, their greatest honour; and that in dealing with such of them as are vicious, an humble and yet holy boldness and zeal be used in admonishing them, in order to their recovery: And that herein presbyteries appoint some others of their number to concur with the minister of the place, as may be most for edification.

6. The General Assembly recommends to the kirk-sessions and presbyteries the vigorous, impartial, and yet prudent exercise of church discipline against all immorality, especially drunkenness and filthiness, cursing, and swearing, and prophaneing the Lord's day, which too much abound; And that they apply to the magistrate for the execution of the good laws made against immorality and prophaneness.

7. That seeing it is observed, that in burghs, especially these of greatest resort, as Edinburgh, many sit too late in taverns, especially on the Saturday's night, and men of business pretend that they do it for relaxation of their minds; through which some neglect the publick worship on the Lord's day in the forenoon, and others attend the worship drowsily: Therefore the General Assembly recommends to all ministers, where such sinful customs are, to

represent to the people, both publickly and privately, the sin and evil thereof, and to call them to redeem that time which they have free from business, and to employ it for converse with God about their souls' state, and in preparation for the Sabbath, which will yield more delight than all sensual pleasures can do.

And the General Assembly beseecheth and exhorteth all magistrates of burghs to be assistant to ministers in enquiring into and reforming such abuses.

* * * * * *

7. *Act and Recommendation anent Mortifications, and Visitations of Parishes.*

Act xxii., Ass. 1700.

The General Assembly recommends to all presbyteries to be diligent and careful in the visiting the parishes within their bounds, and take particular notice how all sums of money mortified, or otherwise belonging to the poor of the parish, have been managed and applied from time to time; and if they shall find any dilapidations of any such sums, that these guilty thereof may be pursued according to law; and that the several synods take account of the presbyteries within their bounds their diligence therein.

8. *Act concerning Schools and Bursaries, and for instructing Youth in the Principles of Religion.*

Act v. Ass. 1705.

The General Assembly, considering how much it will tend to the increase of Christian knowledge and learning, and the advantage of true piety and religion, that schools and colleges be duly regulated, and bursaries rightly be-

stowed; do therefore appoint and ordain, That ministers take care to have schools erected in every parish, conform to the acts of Parliament, for teaching of youth to read English: That the poor be taught upon charity, and none be suffered to neglect the teaching of their children to read: And sicklike, that in no parish the minister recommend youth to be taught Latin upon charity in any grammar-school, but after examining the said child or children, in presence of three or four members of the session, as to their promptitude and dexterity in reading, and competent skill in writing, as to their virtuous inclinations, and as to the hopefulness of their proficiency; and that none be received in grammar-schools to be taught Latin upon charity, but upon such recommendations: And also, that each presbytery appoint a committee of their number yearly, to examine the poor scholars in the grammar-schools, and such within their bounds as go to colleges with an eye to bursaries, and suffer none to proceed but such as are very forward and good proficients, and of good behaviour; and that ministers recommend none to bursaries but such as are so qualified. And the General Assembly does hereby recommend to Regents and Masters of colleges, that no person, especially bursars, be laureat, but upon a clear evidence of sufficiency of their learning, and good behaviour, after strict examination. And sicklike, recommends it to Masters in universities, and all other instructors of youth, that they be careful to instruct their scholars in the principles of the Christian reformed religion, according to the Holy Scriptures, our Confession of Faith, or such books only as are entirely agreeable thereto. As also, recommends it to Professors of Theology, that they take very particular notice of the piety and Christian carriage of their students; and that their testimonials to presbyteries, for entering men on trials for the ministry, bear their know-

ledge of the persons recommended, as to their moral and pious carriage, as to their progress in their studies, and their promising parts, and of their good affection to the government of Church and State; and that the professor does truly judge the person fit for the service of the church; and presbyteries are enjoined to receive none upon testimonials from Professors but who are so attested.

9. *Recommendation and Act concerning Schoolmasters, and Schools, and Bursaries.*

Act. xiii. Ass. 1706.

The General Assembly recommends it to such as have power of settling schoolmasters in parishes, to prefer thereto men who have past their course at colleges or universities, and taken their degrees, before others who have not, *cæteris paribus*. And the General Assembly recommends it to presbyteries to take special care, that all the schoolmasters within their bounds be such as have subscribed the Confession of Faith; and that presbyteries do visit all the publick grammar-schools within their bounds, by some of their number appointed for that effect, at least twice every year; and also appoints synods, at their privy censures, to inquire at presbyteries how they have obeyed this recommendation. The General Assembly recommend it to the respective presbyteries in the Lowlands, who are appointed to contribute for bursaries, to be bestowed on students having the Irish language, that they pay the same punctually, conform to the acts of Assembly thereanent.

10. *Act for Suppressing of Popery, and preventing the Growth thereof.*

Act viii. Ass. 1707.

The General Assembly, taking to their serious consideration the lamentable increase of Popery in diverse places of this nation, which they look upon as a sad judgment from the Lord, and matter of humiliation to all that love the truth; and though it were uncharitable to conclude that God is most displeased with those ministers and congregations which are most assaulted and shaken by these temptations, yet it is surely matter of humiliation to them: And, therefore, the General Assembly recommends to them to be frequent and serious in fasting and prayer to God, for restraining these winds of seduction. And besides what was recommended on this account in the eighth act of the General Assembly 1699, which is hereby renewed; it is moreover recommended, *First*, That, if there be any vacant churches in these parts that are infested with Popery, all due care and diligence may be used to plant them with able, pious, prudent, and learned ministers. 2*do*, That where there are ministers already, they do frequently commune with, and enquire at their elders of the case of the people, and of the danger they may be in, and of the trafficking of seducers amongst them, that they may the more timely counterwork them: And sessions are ordained to report their diligence in this matter to their respective presbyteries. 3*tio*, That presbyteries, where Popery increaseth, do at each meeting confer anent their danger thereby, and what their duty is, and what endeavours may be used against this seduction, and record their success, or if the defection

be growing. *4to*, That the synod in which these presbyteries are, do at every synodical meeting enquire concerning the state of these parts as to the growth of Popery, and give what assistance they can against these abominations. And for this end, *5to*, That they sometimes send ministers, one or more, that are well acquainted with these controversies, to assist the ministers of the bounds, not only to confer with the seduced, but also for establishing others, especially persons of more influence and authority in the bounds. *6to*, Where the parish is great, that there be probationers sent to assist the ministers in preaching, that they may have the more time for travelling up and down among the people; but presbyteries are to take special care that this be not improven for ease and sloth. *7mo*, For making this anent probationers practicable and useful, the General Assembly approves of the overtures of the commission of the late General Assembly, dated the 11th of November last bypast, transmitted by the said commission to the several presbyteries; and, in prosecution thereof, appoints and ordains, that some probationers known in the popish controversies be sent to these parts of the nation where Popery does most abound, to travel among the people, under the inspection and at the direction of the presbyteries of the bounds, and show them the errors of the Church of Rome, and danger of the same; and to instruct them in the principles of the true reformed Protestant Religion, and more especially in wide and spacious parishes, where ministers cannot be so frequently with their people; and that there be a contribution made amongst ministers, according to their stipends, for encouragement of these probationers in that work; and that ministers deal with persons who are charitably and piously inclined, to contribute also for so good a work. And it is hereby recommended to all presbyteries, that they be more careful of transmitting lists of Papists to the clerks of

Privy Council termly, with particular informations, according to the acts of the General Assembly, Parliament, and Council thereanent.

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THE END.

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