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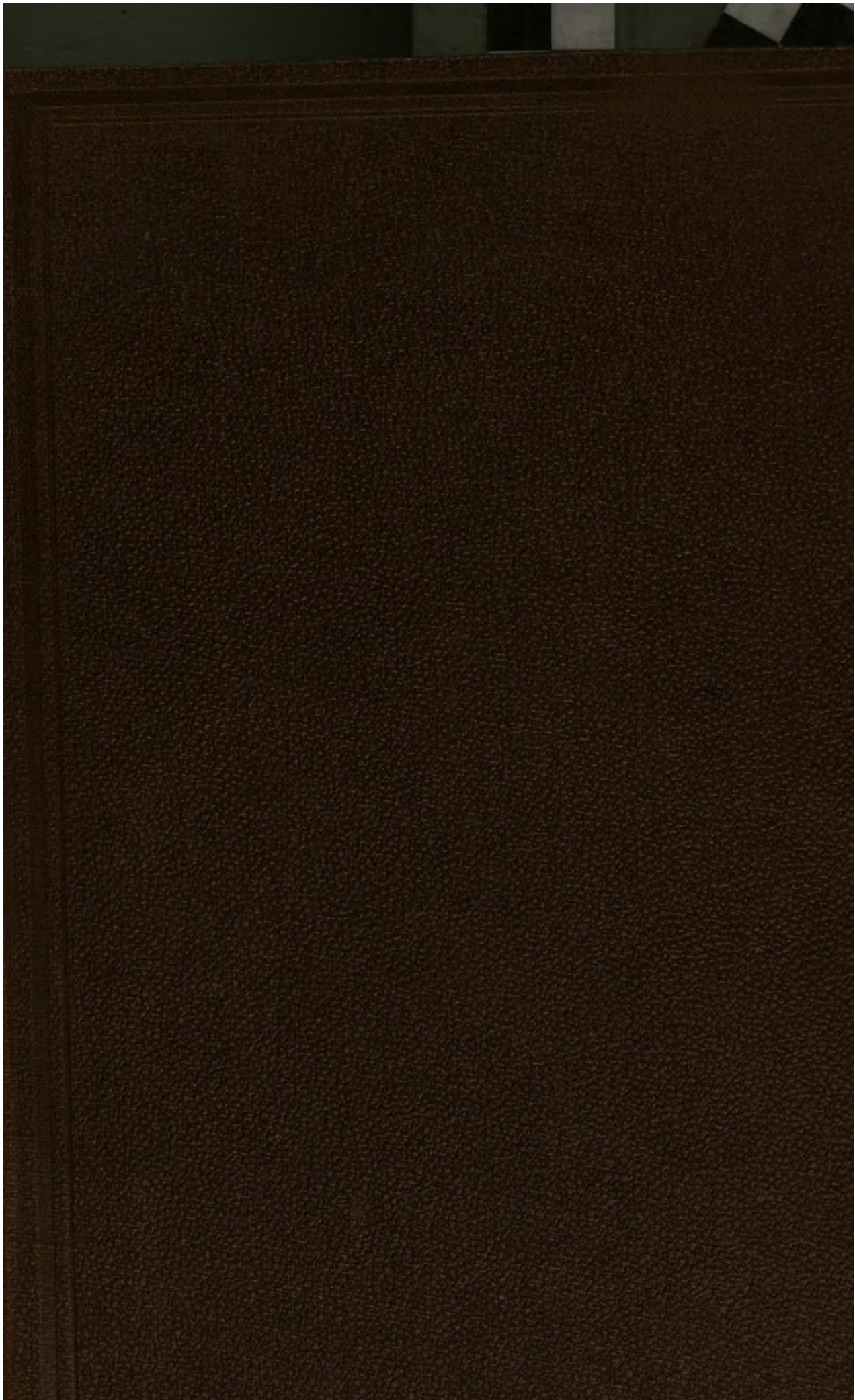
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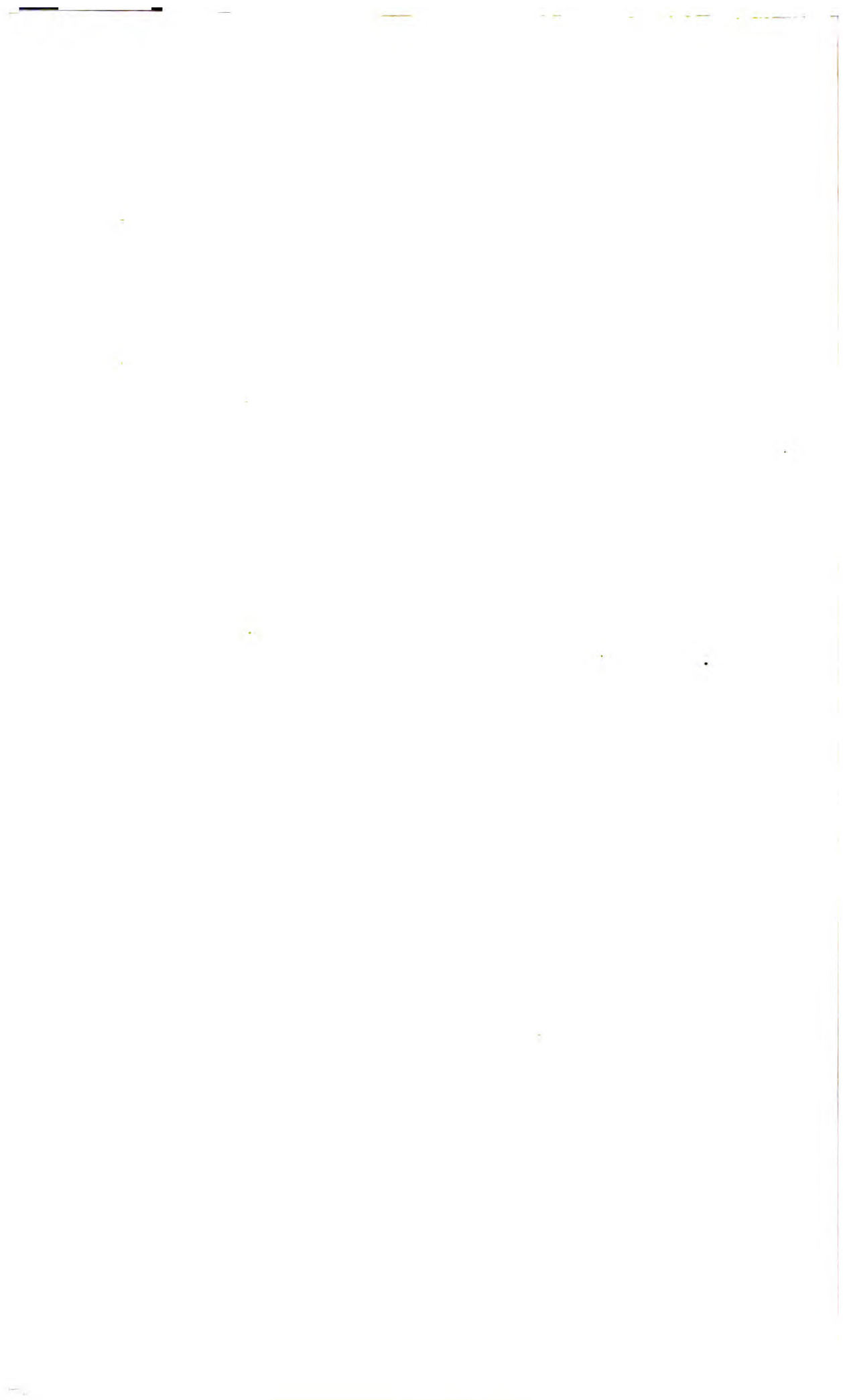
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PRACTICE

OF THE

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STYLES OF WRITS,
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OF THE
CHURCH COURTS OF SCOTLAND.

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

BY

REV. J. COOK, D.D.,

MINISTER OF HADDINGTON,

PRINCIPAL CLERK OF THE GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND.

FOURTH EDITION.



EDINBURGH:
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MDCCCLXX.



PREFACE TO FOURTH EDITION.

THE last edition of the Book of Styles was published in April 1856. Since that period legislative measures of great importance have been passed, in different ways gravely affecting the position and powers of the Church. Of these the most important are, the Act 24 and 25 Vict. c. 107, 'Act to alter and amend the Law relating to Parochial and Burgh Schools, and to the Test required to be taken by Schoolmasters in Scotland;' the Act 26 and 27 Vict. c. 47, 'For removing Doubts as to the Powers of the Courts of the Church of Scotland, and extending the Powers of the said Courts;' the Act 29 and 30 Vict. c. 71, 'Act to facilitate the Letting on Lease, Feuing, or Selling Glebe Lands in Scotland;' and the Act 31 and 32 Vict. c. 96, 'Act to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland.'

The analysis of these Acts, and the forms of procedure under them, have called for much care and consideration, and occupy considerable space in this new edition of the work. Other Acts of less importance are referred to in the body of the work; and in addition to the Acts of Parliament contained in the former edition, I have given in the Appendix all the recent enactments *in extenso*, so that they might be at hand for consultation, in the event of any doubt arising as to the soundness of the interpretation put on them.

The legislation of the Church itself has been chiefly confined to alterations in the curriculum of students of theology; but these alterations involve also considerable changes on

that portion of the work which refers to it. I have anxiously endeavoured to render the work as accurate and useful as I could, both as an expression of thanks to my brethren in the Church for the kindness I have experienced at their hands, in conferring on me the position which naturally connects me with the procedure and legislation of the Church, and because—judging from the past—in the natural course of events, the work of future revision will, in all likelihood, be discharged by other hands.

JOHN COOK.

MANSE OF HADDINGTON,
December 1, 1869.

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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.¹

¹ '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. sect. 4.

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

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

'Unto the pastors onlie apperteinis the administration of the sacramentis, in

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 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

lyke manner as the administration of the word; for baith are appointit be God as meanes to teach us, the ane be the ear, and the uther be the eyes and uther senses, that be baith knowledge 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 proceeding be the elderchip, to pronounce the sentence of binding and lousing upon any person, according unto the power of the keyes grantit unto the kirk.

'It belongs to him lykewyse, eftir lawfull proceeding in the matter be the elderchip, to solemnizate marriage betwixt them that are to be joynit therein; and to pronounce the blessing of the Lord upon them that enter into 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 sect. 6 to the end.—Peterkin's *Compendium*, part i. pp. 116, 117.

'Their office (that of elders) is, als weill severallie as conjunctlie, to watch diligently upon the flock committit to their charge, baith publicly 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.

record of its proceedings is kept; and its officer, who carries out its orders, and executes its summonses. When there is a collegiate charge, either minister may preside—the duty in such cases is discharged either alternately by them, or according to some understood arrangement. Both are constituent members of session.

It was decided by the Assembly, in the case of Cambuslang, 1806, that an assistant and successor was not a constituent member of session. The minister, so long as he is not incapacitated for acting, continues to discharge the duty of moderator, the assistant and successor only presiding in his room.

Two elders and the minister constitute a quorum of the kirk-session. In the absence of the clergyman, an ordained minister officiating for him in the pulpit may, at his request,

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

‘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 assemblee of the elderschip.

‘Their principall office is to hald assemblies with the pastors and doctors who are also of their 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. pp. 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 everything 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.

take his place and officiate as moderator of the kirk-session. When there are not two elders, so that the kirk-session cannot be constituted, the presbytery appoints, at the request of the minister, one or more of the neighbouring ministers to act as assessor along with him in cases of discipline. During the vacancy of the parish, the clergyman appointed to supply by the presbytery is understood to be authorized to act as moderator, or to discharge any other necessary parts of ministerial duty, on the day when he fulfils his appointment. 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 and synod of the bounds by one of the elders, who is elected for six months, or until the next meeting of synod following his election; and his election must take place within two months of the last previous meeting of the synod within whose bounds the parish is.—See *infra*, p. 33.

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 faithful 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 requisites 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 1722, 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.

In 1863 the General Assembly passed an Act (Act xvi.) declaratory of and consolidating the Acts of Assembly relating to the eldership. That Act, sect. 3, referring to the above Act of 1722, bears: 'That no person shall be chosen or nominated for in eldership, unless he is a man of good life and godly conversation, tender and circumspect in his walk, punctual in attendance on ordinances, strict in his observation of the Lord's day, and in regularly keeping up the worship of God in his family.' And then, omitting the remainder of Act 1722 quoted above, it bears further: 'One who will be careful of his flock, and an example unto them in sobriety, meekness, and holiness; abstaining from all appearance of evil.'

The Act x. Ass. 1816, sess. ult., bears reference to another most important requisite in addition to the character of an elder, and the age when he is to be admitted to his office,—namely, his connection with the parish in which he is ordained. This Act, formerly quoted in the previous edition of this work, is referred to, and the substance of it, with some change of phraseology, and some omissions, is given in the Consolidated Act, sections 4, 5, 6, 7, as follows:—

'Sect. 4. That no person shall be chosen or nominated for the office of the eldership, unless he hath attained the age of twenty-one years complete, and is a member in full communion with

the congregation in which it is proposed that he shall hold office.

‘Sect. 5. That no person shall be chosen or nominated for the eldership 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.

‘Sect. 6. That when a person who does not generally reside in the parish, 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 in which he generally resides, that he is of unblemished character, and qualified in all respects as above specified in sect. 3.

‘Sect. 7. That any city or town, where there are more congregations than one, shall be held as one parish in so far as this Act is concerned.’

Consistently with the position of the Church as by law established, which gives its church courts not a congregational but territorial or parochial jurisdiction, and under which all the members of the Church are bound to attend ordinances in their parish church, and submit to the jurisdiction of the kirk-session of the parish in which they reside, the law of the Church has uniformly made connection with, or residence in, a parish an essential qualification for the eldership.

In 1866 the Assembly, however, passed the following Act:—

Act xii., anent Qualification of Elders.

‘Whereas it is the law of the Church that an elder must be an inhabitant of the parish to the kirk-session of which he belongs, if he does not possess one or other of the qualifications specified in sect. 5 of the Declaratory Act of Assembly 1863: And whereas a strict application of the law would disqualify not a few of the most efficient elders of this Church, both in landward parishes and in the neighbourhood of large towns,—

‘The General Assembly, with consent of the presbyteries of the Church, enact and ordain, That in addition to the qualifications specified in sect. 5 of the Declaratory Act of Assembly

1863, relating to the eldership, this alternative qualification be added:—"Or who is not a member of the congregation, and a communicant of at least twelve months' standing, provided always, if he resides in another parish, that the consent of the kirk-session of that parish shall have been first obtained."¹

The clause thus enacted is to be considered as appended to sect. 5, Consolidated Act, after the concluding words, 'Apparent heir of an heritor,' etc.

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 than 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:²—'Of the

¹ The object of the Act above printed is to authorize the appointment of a person as elder of the kirk-session of a parish in which he is not resident, and with which he has no local connection. Cases may occur in extensive parishes where parishioners may be in the habit of attending a place of worship much nearer than the parish church, where it may seem desirable that the law making residence essential should be modified; but it is always to be doubted whether to such occasional and exceptional cases it is expedient to legislate in opposition to the constitutional principles on which the Church is founded. Certainly the consent of the kirk-session of the parish in which a person resides to his appointment as elder in another parish where he attends and communicates, should not be given unless his absenting himself from ordinances in his own parish, and betaking himself elsewhere, could be justified by sufficient and satisfactory reasons addressed to them as a court.

² Dunlop's *Confessions*, vol. ii. p. 637.

principals of such as war known to be men of good conversation and honest fame in the privie church, war chosen eldars 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 the publick charge, they desired that they might be releaved, and utheris might be burdened in their 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 their 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 publictlye 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 shuld 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 their 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 are 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, sess. 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 which¹ 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, 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.

¹ Baillie's *Letters*, vol. i. p. 345.

In the Assembly 1842, sess. 5, Act x., a very important change was made in the manner of electing elders. It was provided that when a kirk-session shall have resolved to add to their number, that intimation of that intention, and of the number required, shall 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, sess. 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 is the course prescribed in the Consolidating Act—*1st*, In a case where no session exists; *2d*, When an addition is to be made to an existing session:—

Sect. 1. That when a parish is without a kirk-session, the presbytery of the bounds shall use their best and most prudent endeavours to have the parish suitably supplied with elders.

The course ordinarily followed is to appoint two or three of the neighbouring ministers to act as assessors with the minister in taking those steps which would be taken by a kirk-session in adding to their number, as these are indicated in *sect. 2*; viz., That in parishes which have a kirk-session, when an additional number of elders is considered necessary, the existing Session, having resolved and recorded the resolution to add to their number, shall proceed to look out for such men as they deem

fittest and best qualified for the office of the Eldership, and shall deal with them in private to accept of said office.

When the kirk-session shall have selected such individuals as they consider best qualified for the office of the eldership, and have obtained their consent, they then fix a day for their ordination; and on a Lord's day, at least ten free days before the day so fixed, their names are read from the pulpit in a paper called an Edict, intimating that, at a previous meeting of session, on or before the day of ordination, 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., etc. (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., etc., to be members of this kirk-session [and appoint their ordination to take place in presence of the congregation, on Sabbath the day of ¹].

¹ Should any valid objections, however, be lodged, the day of ordination must of course be postponed.

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 worship¹]. 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 day of , and² 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., etc., to be elders in this parish, and having appointed their ordination to take place on Sabbath the day of , it is

¹ 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 the day of meeting.

² 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.

hereby intimated that if any of the parishioners have objections to state against the ordination of the said Messrs. A. B., etc., 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, etc. (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 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, etc. The session having convened for the purpose of hearing any objections against the ordination of Messrs. A. B., etc., 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., etc., 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, approved 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. 1694.

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 Confession of Faith, according to Act vii. Ass. 1690, and the following formula, prescribed in Act xi. Ass. 1694, must also be signed.

7. *Formula to be signed.*

I, A. B., do sincerely own and declare the above Confession of Faith, approved 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 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 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., etc., 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., etc., to the office of the eldership; after which they and the people were severally addressed on their respective duties.

Messrs. A. B., etc., 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.¹ Closed, etc.

¹ It is desirable, though not absolutely necessary, that the formula be signed immediately after the ordination.

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, etc., admit Mr. A. to the office of the eldership in this parish; after which, etc.

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).

An elder is bound to attend gospel ordinances in his parish church, to keep session with his minister, and generally to submit himself to his ministry; and if he refuse to do so, he may be summarily deposed, on a complaint by the kirk-session or minister to the presbytery of the bounds.—Matthie, 1747. Index, sess. 3 and 4.

There seems no reason to doubt that a kirk-session may inquire into any scandal affecting the conduct of an elder, in the same manner and by the same form of process as in the case of a scandal affecting any other member of the congregation. Where, however, the scandal is such as may lead to deposition from the eldership, it may be proper that the kirk-session, after dealing with the party with a view to confession, should report the matter to the presbytery for their advice and direction, in the manner pointed out in the *Form of Process*, chap. vi.

It does not appear that the formality of a libel is necessary in this, any more than in other cases originating in the kirk-session.

The law, as laid down in the two first paragraphs above, cannot apply to an elder elected under Act xii. Ass. 1866; but with regard to the case of any scandal affecting such an elder, it would seem that the kirk-session of the parish within which he resides is the court to proceed against him, on the ground that it has jurisdiction over all parties resident in the parish. No case has yet arisen by which this point might be decided.

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. For full and clear directions as to the subjects of discipline, and the course to be followed towards them, see *Form of Process*, from ch. ii. to vii.; Act of Assembly 1707, sess. 11.

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.¹ 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 :—

¹ *Form of Process*, ch. 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.

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, etc. Given at 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.¹ Thus:—

¹ 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, how-

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. In scandals of uncleanness, when the parties live in different parishes, the process against them is to be before the kirk-session where the woman resides, or where the scandal is most notour. If the person accused lives within the bounds of another parish, the kirk-session of that parish should be applied to for their concurrence in the citation of the party, to answer to the session before which the process depends. In such a

ever, 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.

case the original warrant of citation, with the concurrence of the kirk-session so applied to endorsed thereon, would form a good warrant for citation of the party.

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, c. 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;¹ 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 attendance.—Act xi. Ass. 1707, c. ii. sect. 9, and Pardovan, B. iv. tit. 3, sect. 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* :—

¹ 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.

13. *Warrant to cite Witnesses.*

Mr. A. B., moderator, etc. 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 appear 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, etc., by warrant, etc.

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 Witness.*

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 Assembly, xi. 1707, c. ii. sect. 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 anything 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, c. ii. sect.

11, 12.

It is perhaps not now necessary to observe this form (3 and 4 Vict. c. 59, sect. 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. See *Form of Process*, ch. iv. par. 7 and 8. 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. 28.

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, etc. 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, etc., *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-session 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.¹ 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 :—

¹ 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, etc.

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, etc.

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,¹ the minute may run as follows :—

C. D. still persisting in his declaration of innocence, expressed

¹ See No. 16, p. 22.

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 respects 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.

Compared 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, etc.

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, etc., 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 belong 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.¹ The dissent must be intimated when the judgment of the court is pronounced, and is not to be received from a member of the court who has then been absent, or at a subsequent meeting of the court.

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 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

¹ *Vide* Act June 4, 1644, sess. 7. This Act only speaks of members of presbyteries and not synods, it may be understood as applying to kirk-sessions also.

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 should be a minute recording their election, and appointing their edict to be served. There should 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 should 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, etc., be stated in the minute.

III.—ROLL OF COMMUNICANTS.

The General Assembly of 1868 passed the following Act, instructing each kirk-session to keep a communion roll:—

‘The General Assembly, with the consent of a majority of the presbyteries of the Church, do enact and ordain, That there shall be a communion roll made up and kept by the kirk-session of every congregation within the bounds of the Church, containing the names and residences of all the communicants in the same, and the date when they last communicated; that this roll shall be carefully adjusted and attested by the kirk-session at least once a year, which attestation shall annually be reported to the presbytery.’

It is of much importance that the provisions of this Act

should be attended to. 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.

The Act does not prescribe any particular form; but the following appears to meet the necessary requirements of such a roll as the Act contemplates:—

20. *Roll of Communicants.*

Name.	Occupation.	Residence.	When received, whether as young communicants or on line from other parish.	Date of last communion.	Date of removal, and cause.

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.¹ 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 proper evidence of *bona fide* eldership, in the election of an elder to represent the presbytery in the General Assembly, is a certificate to that effect by the kirk-session to which the elder is said to belong; and where this certificate has been

¹ The word demission probably means demission of the office of eldership; but the same course may be followed in the case of a resignation of the appointment.

refused, and no appeal or complaint taken against the refusal, the want of the certificate cannot be supplied by the presbytery, in electing the elder as their representative.—Trinity Gask, Hepburn, 1854, sess. 3. The form of this certificate is given under the head 'Presbytery,' page 247.

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

22. *Minute electing Elder to represent the Kirk-Session in the Presbytery and Synod.*

At the day of . Which day the kirk-session of being met and constituted,—*Sederunt*—the Rev. , moderator, and Messrs. , elders,—did, and hereby do nominate and appoint one of their number, and *bona fide* an acting elder in their congregation, to be their commissioner to the presbytery of and synod of the bounds during the current half-year; willing him to attend all the diets of said presbytery and synod, and there to consult, vote, and determine in all matters which 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.

The elder will receive an extract of this minute, to produce as his commission to the presbytery and synod, by the session-clerk.

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 approved 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: ¹—

¹ By an overture transmitted on 1st June 1759, the General Assembly, 'considering that the Acts respecting the election and qualification of members of

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.

MARRIAGE, BAPTISM, BURIAL.

I.—PROCLAMATION OF BANNES, REGISTRATION OF MARRIAGES, ETC.

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 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, etc., which were enacted by the following Acts, vii. 1766, iv. 1768, and, lastly, the Act x. 1783, which now regulates these forms.

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, etc.

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 resider (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 resider (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. Ass. 1784, session-clerks are prohibited from proclaiming parties until the leave of the minis-

ter 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.

Along with the certificate of proclamation, it is required, by Act 17 and 18 Vict. c. 80, that there shall be given a copy of schedule C. of said Act; and, upon the solemnization of the marriage, such schedule, having all the information thereby

required inserted therein, shall be produced to the minister solemnizing the marriage, etc., or shall be filled up in the presence of such minister, and shall be signed by the parties contracting the marriage, and by the witnesses, male or female, present thereat, not being less than two, and also by the minister officiating, and shall be delivered to the parties contracting the marriage, who shall, within three days thereafter, either deliver or send by post such schedule to the registrar of the parish wherein the marriage was solemnized, etc.

II.—BIRTHS AND BAPTISMS.

By the same Act, 17 and 18 Vict. c. 80, it is provided, sect. 27, That 'the parents or parent, or, in case of death or inability of the parents, the person in charge of any child born, and the occupier of any house or tenement in which, to his or her knowledge, any birth shall take place, and the nurse present at such birth, and, in the case of an illegitimate child, the mother of such child, etc., shall, within twenty-one days next after the day of such birth, and under a penalty not exceeding twenty shillings in case of failure, attend personally and give information to the registrar of the parish or district in which the birth occurred, to the best of his or her knowledge and belief of the several particulars required by schedule A. hereunto annexed,' etc.

Further, by sect. 34, it is enacted, 'That there shall be produced to the minister, or other person officiating in the administration of the sacrament of baptism of any child, a certificate of the registration of the birth of said child; and, failing such production, such minister or other person shall forthwith intimate the baptism of such child, with all the information which he may have regarding the birth and parentage of such child, to the registrar of the parish in which the parents of such child reside.'

Further, by sect. 32 it is enacted, 'That if any child whose birth shall have been registered as aforesaid, shall have any name given to it in baptism, or shall have the name by which it may have been registered altered in baptism, the parents or guardians, etc., of such child may, if such name has been given

within six months after registration, or, if beyond six months, then only with the written authority of the sheriff, produce and deliver to the registrar a certificate according to the form of schedule D., signed by the minister; which certificate the minister is hereby required to deliver as soon as may be after the baptism, or whenever the same shall be demanded within six months; or if after six months, then with the authority of the sheriff as aforesaid.'

III.—BURIALS.

The same Act makes provision for the registration of deaths.

From the above it will be seen that the old forms of registration are now superseded; but it does not appear that there is any reason why, as a matter of ecclesiastical arrangement, a record of baptism may not still be kept by the kirk-session.

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. c. 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 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:—

‘Sects. 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.'

'Sect. 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 despatch 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, etc.*

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 law-suit 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 nature 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 is their duty 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. The presbytery from the earliest period have also exercised superintendence and jurisdiction over schoolmasters and schools recognised and defined by the Act 43 Geo. III. c. 54, but subsequently considerably modified by the Act 24 and 25 Vict. c. 107.

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 clear and precise directory for their procedure was given, under the following title: ‘Act consolidating the several Acts of former Assemblies respecting the Study of Divinity and the Licensing of Probationers.’ The provisions of that Act having been to some extent altered by subsequent legislation, the General Assembly of 1863 passed another Act under a similar title: ‘Act declaratory of, and consolidating the Acts of Assembly presently in force in regard to the study of Divinity, to the Licensing of Students, and to Probationers.’ That Act, with exceptions consequent on subsequent legislation, which are noted, continues to regulate in these matters the procedure of presbyteries.

The following are the provisions of the Act with reference to the examination of students previous to enrolment at the Divinity Hall:—

CHAP. I.

‘Sect. 1. 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, in the

absence of a diploma of Master of Arts, the student shall produce certificates of having attended the following classes, viz.:— Latin, Greek, Logic, Mathematics, Moral Philosophy, and Natural Philosophy, in such order as is prescribed in the university at which he has studied.

‘Sect. 2. That, previously to the enrolment of any student as a student of divinity, he shall lay before the presbytery within the bounds of which he chiefly resides all the certificates mentioned in Article I., and shall be examined by the presbytery 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.

‘Sect. 3. That, except in the case of students not resident within the bounds of the Church of Scotland, and especially provided for by Act xv. Ass. 1835, a presbytery shall not be entitled to examine any student as a candidate for enrolment as a student of divinity, unless he be known to some members thereof as having had his chief residence within their bounds for the previous six months, or produce a satisfactory certificate to them from that presbytery within whose bounds he has chiefly resided for a like period immediately preceding the date thereof.’

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 the Act xiv. Ass. 1863; and that he passed such examination in a satisfactory manner, is attested by

C. D., Presbytery-Clerk.

Sect. 4 prescribes, ‘That professors of divinity shall keep a

watchful eye on the principles and conduct of all students under their care ; and at the close of each session of his course, every student shall take with him to the presbytery a certificate from the professors under whom he has studied of his good conduct and proficiency.'

The Act further provides, sect. 5, 'That every student of divinity, after producing the certificate referred to in the preceding article, and also a certificate of good moral character from his parish minister, or, during a vacancy in the parish, from some neighbouring minister, shall 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.'

The Act then lays down the following regulations for conducting examinations:—

'I. That, if presbyteries see cause, an examining committee, or examining committees, shall be appointed annually in each presbytery, on the day when members of Assembly are elected ; the examining committee or committees to be open to all the members of presbytery.

'II. That the committee or committees shall meet for examination of students on a different day from that on which the presbytery meets ; or if circumstances render that inexpedient, the committee or committees shall meet not less than two hours before the presbytery meets, in order that the examination may not be hurriedly conducted.

'III. That a minute of the committee's proceedings shall be kept, in which every particular respecting the examination shall be stated,—*e.g.*, What were the subjects of examination ? What length of time was employed in the examination ? What were the relative number of questions answered correctly, and otherwise ? etc. etc.

'IV. That the above minute shall be given in to the presby-

tery, along with a written report from the committee, on the whole examination.

'V. That, when presbyteries examine students *coram*, they also shall keep a separate minute of their examination. And when their examination is posterior to that of their committees, it shall be chiefly upon the same subjects which formed the ground of examination by their committees; students being also prepared, when examined by the presbytery *coram*, to be examined, agreeably to the Acts of Assembly, on the catechetical standards of the Church.

'VI. That written questions shall be given to the students, and written answers shall be required from them, in some part of each examination, whether by presbyteries, or by their committees; and that the committees shall give in to the presbyteries both the questions and the answers, along with their minute and their report.

'VII. That the report, and its accompanying documents, shall not be recorded, but kept *in retentis* at the pleasure of the presbytery.

'VIII. That, as soon as possible after the appointment of an examining committee, or examining committees, a list of topics for examination, and of books on which examinations shall be based, shall be annually drawn up by the different presbyteries, or their examining committees, who shall make known to the students who are about to come before them what topics and books, or portions of books, are to be the subjects of examination for the year, and shall farther report annually to the synod what selection of books and topics has been made.

'IX. That the above regulations shall apply, in so far as they can be applied, to all examinations of students.'

In reference to the above it may be remarked, that while in some of the presbyteries the number of students to be examined, and the amount of general business, render the appointment of examining committees necessary, for obvious reasons, it is expedient that, if possible, a duty so important should be discharged by the presbytery as a body, and that when committees are appointed the members of them should be occasionally changed.

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 14th Act of Assembly 1863, 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 7th 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, shall, 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.

The first part of section 8th, chap. i. of the Consolidated Act of 1863, relating to the length of attendance at the Divinity Hall, has now been set aside by the Act ix. Ass. 1866, sess. 14, which enacts and ordains, 'That henceforth all candidates for the ministry be required to attend at the Divinity Hall either three full and regular sessions, without the fourth partial session, or two full and regular sessions and three partial sessions; and further, that no student, whose last session is a regular one, shall be proposed for trials to any presbytery, until that last regular session shall have been duly completed.'

The remainder of the 8th section of the Consolidated Act is still in force, viz.: 'It being understood that all students shall be required to give at least two sessions of regular attendance

on the classes of Divinity, Church History, Hebrew, and Biblical Criticism, if there be a class of Biblical Criticism, in the University or Universities at which they have prosecuted their theological course.

Section 9th prescribes the discourses to be delivered, viz. : '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 hereinafterwards 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, and such other exercises as the professors shall think proper to prescribe. Professors of divinity are required, 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 10th section of the 1st chapter of the Act reads : 'That ministers of this Church are expressly discharged and prohibited from giving countenance or permission to students of divinity to engage in the public ministry of the word before being regularly licensed to preach the gospel.'¹

The 2d chapter of the Act regulates the procedure anent the trials and licensing of students.

¹ The reference in this section is to Act xiii. Ass. 1856, which is not, however, literally quoted. The circumstances which led to the passing of that Act were these : It having been represented in an overture to the General Assembly 1854, that there was a prevailing impression that students of divinity have for several years been occasionally employed in preaching and conducting other parts of divine service in churches and chapels of this Church, at the ordinary diets of public worship, before the termination of their regular course of theological study, the Assembly passed the following Declaratory Act :—After preamble,—the General Assembly did, and hereby do, declare, That such a practice is altogether at variance with the principles and usages of this National Church ; and therefore the General Assembly expressly discharge and prohibit all the ministers of this Church from giving countenance or permission to any person or persons to engage in the public ministry of the word, or lead the devotions of

CHAP. II.

Sect. 1 of this chapter, which provides that a student shall be entitled to apply to the professors for his certificates, that he may be proposed for trials for licence, and that the preliminary steps may be taken by the presbytery during the currency of the last session of his course, is now set aside by that part of Act ix. Ass. 1866, already quoted, which provides that no student whose last session is a regular one shall be proposed for trials to any presbytery until that last regular session shall have been duly completed; but a student whose last session is irregular may still, it would appear, apply for his certificates during the currency of that session.

Sect. 2 provides, 'That 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 meantime, 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.'

Sect. 3, 'That when the time appointed for considering the motion is arrived, the presbytery shall strictly observe the following regulations:—

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

'2d, They shall require satisfying evidence that every stu-

the congregations of the Church of Scotland, except to such as have been ordained or admitted as ministers of this Church, or to probationers who have been regularly licensed by any of the presbyteries of this Church to preach the gospel. This prohibition must be held to be modified by subsequent legislation, viz. the repeal, by Declaratory Act xiii. Ass. 1864, of the Declaratory Act of 1799, prohibiting the employing to preach or to dispense any other ordinances of the gospel, or holding ministerial communion with persons not qualified to accept a presentation, but is unquestionably still applicable to students of divinity.

dent who is proposed for that purpose has completed the twenty-first year of his age.

' *3d*, 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 the same have been sustained, 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.

' *4th*, No presbytery shall receive any student upon trials without being 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 of 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 character 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*, That before any presbytery shall agree to take a blind student upon trials, they shall first consult the General Assembly.

' *6th*, 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.

'7th, 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 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 entitled to have these circular letters written half a year sooner than would be otherwise competent.'¹

¹ 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,	Campbeltown, first Wednesday in September.
Dumfries,	Dumfries, third Tuesdays of April and October.
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, first Tuesday of May.
Lothian and Tweeddale,	Edinburgh, first Tuesdays of May and November.
Merse and Teviotdale,	Kelso, Jedburgh, or Dunse, second Tuesday of April; and Kelso, second Tuesday of October.
Moray,	Alternately at Elgin and Forres, fourth Tuesday of April; and last Tuesday of September at Nairn.
Orkney,	Third Wednesday of August, at Kirkwall.
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,	Last Wednesday of August, at Thurso and Dornoch alternately.

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 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, etc. C. D., Presbytery-Clerk.

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

The 5th section of chap. ii. relates to students who have studied in whole or in part in Protestant universities not within the bounds of this Church; but the provisions of that section are set aside by Act ix. Ass. 1868, which is as follows:—

‘Whereas by the existing laws of this Church a student is allowed to prosecute, *not a part only, but the whole* of his theological curriculum at Protestant universities not within the bounds of this Church; and whereas, in the event of his doing so, there is no sufficiently clear and express provision for his undergoing any entrance examination before the commencement of each session, or delivering any of the six trial discourses required of all students at the divinity halls in Scotland: The General Assembly, with the consent of a majority of presbyteries, enact and ordain that the said existing laws shall be so modified as to secure, (1.) That all candidates for the ministry shall attend *during at least two sessions* the theological classes at one or more of the universities of Scotland, and shall deliver with approbation the six trial discourses required by the Acts of the General Assembly; and (2.) That any student who wishes to prosecute the remainder of his theological curriculum at any Protestant university or universities not within the bounds of this Church, shall, before repairing thither, undergo satisfactory examination by the presbytery with which he is connected, and shall, moreover, satisfy the same presbytery in regard both to the classes which he proposes to attend, and to the proficiency he has acquired in the language used in the foreign university in which he intends to study.’

The circular letters having been sent to presbyteries, the 6th section of the Act proceeds to regulate the procedure of the synod.

Sect. 6. ‘That if a presbytery propose to take a student upon public trials, and have, with that view, written the circular letters as required by this Act, 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 extracts 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 extracts above mentioned, the student shall produce to the synod, by himself or by any member of the court, the said extracts which by this Act he is entitled to obtain.'

The 7th and 8th sections of the Act then detail the various steps to be taken by the presbytery after having received authority from the synod to take the student on trials, as follows:—

Sect. 7. 'That 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:—*1st*, Catechetical trials on Divinity, Chronology, and Church History; *2d*, A trial in the Hebrew and Greek languages; *3d*, An Exegesis in Latin on some controverted head in Divinity; *4th*, A Homily in English; *5th*, An Exercise and Addition; *6th*, 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.'

Sect. 8. 'That 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, The presbytery shall then propose to the student the questions that are appointed to be put to all who pass trials, by the Act x. Ass. 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; and also prohibit them from using any other questions or formula than those prescribed by the Act.

' 4th, The presbytery shall order the Act viii. Ass. 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 (see sect. 4), 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, and that such parts of the public and private trials as have been already gone through, have been received with approbation. Failing such certificate, it shall not be competent to make the transference.

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. 61). The following are the questions appointed by Ass. 1711, Act x., to be put to all who shall pass trials, which are then proposed to the student through the moderator:—

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, approved 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 authorized 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 formula, which is prescribed by the same Act of Assembly 1711, c. x., which is as follows:—

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

The 8th Act of Assembly 1759,¹ against simoniacal prac-

¹ This Act will be found in the Appendix.

tices, is then read to the student in their presence, and the presbytery 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. sect. 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 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 fore-mentioned 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 Act 55 Geo. III. c. 184, sched. part 1st, enacts, that a licence granted by any presbytery or other ecclesiastical power in Scotland must be on a £2 stamp; but 30 and 31 Vict. c. 90, sect. 24, enacts, 'That no stamp duty after the 12th August 1867 shall be chargeable for or upon any licence to be granted by any presbytery or other ecclesiastical power in Scotland, for the purpose of authorizing and enabling any person to preach or exercise any other spiritual function, there being no salary or emolument for or attached to the exercise of the function for which such licence shall be granted.'

In the third chapter of the Act, under the head 'Anent Probationers,' it is enacted:—

'Sect. 1. That every probationer, on leaving the bounds of the presbytery by which he was licensed, or in which he has been residing as a probationer, and going to reside within the bounds of another presbytery, shall, within two months, report himself, through the moderator or clerk, to the presbytery into which he has come, and lay before them an extract of his

licence, together with a presbyterial certificate of his being a probationer, and that his conduct is in every respect becoming his profession; and the said presbytery shall mark in their register the probationer's name, and the name of the presbytery which licensed him, as well as the name of the presbytery from which he received such certificate; but in the event of probationers failing so to report themselves, and to produce such certificate, this shall not exempt them from the jurisdiction of the presbytery within whose bounds they reside or officiate. And presbyteries are enjoined to keep a watchful eye upon all probationers residing within their bounds, and to require from them the same subjection and orderly carriage to which they were engaged to the presbytery by which they were licensed, and the Assembly enjoin presbyteries, when licensing probationers, to read over and call their particular attention to this section of the Act.¹

'Sect. 2. That presbyteries shall annually, at their meeting for the election of commissioners to the General Assembly, extract from their records, and transmit to the Assembly, a complete list of all the probationers then residing, or who shall have resided within their bounds for the space of two months immediately preceding the date of said list; mentioning first the names of all the probationers licensed by themselves, and then the names of all other probationers residing as above, with the names of the presbyteries from which they have brought certificates as probationers, as well as of the presbyteries that licensed them; and also the names of all students who have been proposed to be taken upon trials, or are then under trials for licence.

'Sect. 3. That presbyteries, when transmitting the foresaid

¹ It is important that probationers should attend to the provision of the first section. The Assembly 1849, sess. 8, having found, in the case of the Rev. Hugh Niven, that a presbytery must not sustain a presentation till a presbyterial certificate has been produced, members of presbytery ought to give notice to any probationer residing within their bounds by whom this may have been neglected, that he may remedy this neglect by presenting his licence at the earliest opportunity. A presbytery are not entitled, however, on the simple ground of this neglect, to refuse a certificate to a preacher who is regularly officiating in one of the pulpits within their bounds, that fact being held as placing him under the superintendence of the presbytery.—*Case of Hugh Niven*, Ass. 1850, sess. 13.

lists, shall at the same time transmit to the clerk of the General Assembly an account of all probationers who shall have been silenced by them during the course of the year preceding the date of said account; and also an account of all ministers who shall have been deposed by them from the office of the holy ministry.

‘Sect. 4. That in all cases of prosecution, by libel, or otherwise, against probationers, the rules of the form of process shall be observed in the same way as in the prosecution of ministers.

‘Sect. 5. That all Acts of the General Assembly in regard to the course of theological study, the examination of students previous to entering, and during their course through the Divinity Hall, and also in regard to trials for licence, and to probationers, inconsistent with the provisions of this Act, shall be held to be, and hereby are, repealed.’

In order to facilitate the observance of the provisions quoted above, 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 licence; *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 authorizing a presbytery to proceed with trials. It has been ruled, as above stated, 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 has also been provided in the case of dissenting probationers and ministers.

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

By a standing order, of date 1st June 1846, the General Assembly instruct that, in future years, applications from ministers and licentiates of dissenting bodies for admission into the Church, with all the necessary documents, shall be lodged in the hands of the agents for the Church, on or before the first Saturday of the Assembly, and that none shall be received after that day.

The mode of admission is regulated by Act xiii. Ass. 1856, entitled, 'Act anent the admission of Ministers and Licentiates of Dissenting Bodies.'

It gives instructions—1st, As to the admission of dissenting probationers; 2d, In clauses vii. and viii., as to the admission of dissenting ministers; and, 3d, As to applications from a dissenting minister and his congregation, jointly, in clause ix.

The following is its tenor:—

EDINBURGH, *June 2, 1856. Sess. ult.*

'The General Assembly, having taken into consideration the admission into the Church of ministers and licentiates belonging to dissenting bodies in Scotland, while desirous that there should be no undue obstruction to the admission of such persons, when truly and rightly prepared for it, yet, judging it necessary that great care be taken, in all cases, that their admission be not agreed to, until full inquiry has been made, and entire satisfaction obtained, with regard to their education, qualifications, and character, do enact and ordain, with the consent of a majority of the presbyteries of the Church, that in every case of application for admission, the following regulations shall be strictly observed:—

'I. That, when a dissenting probationer is proposed for admission, the application shall be made to the presbytery within the bounds of which he has chiefly resided for a year; or otherwise, that a certificate shall be produced from that presbytery, in his favour, to the presbytery to which the application is made.

' II. That the presbytery shall allow such application to lie on their table till next ordinary meeting, at which the consideration thereof shall be taken up; and shall instruct the minister proposing him then to produce certificates of his character, and to state the grounds on which, so far as is consistent with his knowledge, the application has been made.

' III. That, if the presbytery are satisfied, at that meeting, with such certificate and statement, they shall instruct the applicant to appear before them at their next ordinary meeting, notifying that he must produce to them the certificates of his attendance on a full course of literature and philosophy, during four sessions, in one or other of the Universities of Scotland.

' IV. That certificates must also then be produced of his having given attendance at a course of theology, during a period of years not less than that which the Church requires of students belonging to her own communion, and, in addition, for one full session on all the theological classes in one of the Universities of Scotland.

' V. That, if the presbytery are satisfied with the certificates of character and attendance at the classes of literature and philosophy, and if a course of theology of the prescribed length has been completed, and if it shall appear to them that there is a reasonable presumption of the soundness of the theological instruction which the applicant has received, from his having been under the tuition of teachers or professors connected with some one or other of those Presbyterian bodies dissenting from the Church of Scotland, but presently holding the same essential and fundamental doctrines of the Christian religion which are maintained in the Confession of Faith, they shall then take him on preliminary trials, and, if satisfied with these, shall report the whole case to the General Assembly, and transmit all the documents laid before them in the case.

' VI. That, if the assent of the General Assembly to his being taken on trials shall be obtained, the presbytery shall proceed in them in the same manner as students are taken on trials after leave from the synod; and that, if then found qualified, he shall be admitted as a licentiate of the Church, it being provided that in no case shall he be licensed until the expiry of a year from the date of his application.

‘ VII. That, in the case of a dissenting minister making application for admission, the presbytery shall require him at a subsequent meeting to lay before them a certificate of character, and also certificates of the course of education he has followed, in literature, philosophy, and theology, prior to his ordination, and shall transmit these to the General Assembly, along with a deliverance bearing explicitly whether the full course of attendance has been gone through, and which shall also express the judgment of the presbytery as to the expediency of granting the application. The application must be made to the presbytery within whose bounds he has last occupied his charge.

‘ VIII. That, if the Assembly give consent to entertain the application, the presbytery shall proceed to take trial of the qualifications of the applicant in the same manner as is prescribed for probationers; and, if found qualified, shall enrol him in the list of licentiates. That, unless specially authorized by the presbytery within whose bounds he is resident to discharge, under the usual limitations, the functions of the ministry, he shall continue to occupy the status of a licentiate until placed in those circumstances in which the Church grants ordination to her probationers; but that then he shall be inducted into the benefice or cure of souls to which he has been appointed in the same manner as an ordained minister of this Church.

‘ IX. That, in cases for application for admission from a minister and his congregation jointly, the presbytery shall transmit all the documents laid before them in reference to such application to the General Assembly, but shall take no step subsequent to the reception of said application and accompanying documents until they have received authority and directions from the Assembly thereanent.’

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, authorizing the presbytery to proceed, 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.

I.—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 _____¹ 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 *pro tem.*, the meeting was constituted by prayer. Mr. L. M. was appointed 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, etc.

¹ Some presbyteries are in the habit of here recording an expression of their esteem.

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, etc.

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.

II.—OATHS.

By an Act of last session of Parliament, 31 and 32 Vict. c. 72, called 'The Promissory Oaths Act, 1868,' it was provided, sect. 9, 'That no person shall be required or authorized to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oaths substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by this Act, and the Clerical Subscription Act, 1865, and the Parliamentary Oaths Act, 1866, or one of such Acts, any Act of Parliament, charter, or custom to the contrary notwithstanding, and no person shall be required, or authorized to take the oath of assurance in Scotland.'

By the same Act a form of oath is substituted for the oaths above mentioned, and the parties who are to subscribe that oath are mentioned in a schedule annexed to the Act. The names of patrons and of presentees to churches in Scotland do not, however, occur in this schedule, and the Clerical Subscription Act, 1865, has no reference to Scotland.

Some doubt having arisen, in consequence of the terms of a subsequent section of the Act, whether its application was so

universal as its terms seemed to indicate, it was thought advisable to obtain a decision of the Court of Session upon the subject. Advantage was accordingly taken of the presentation of the Rev. Herbert Bell to the parish of Persie, in the presbytery of Meigle, to present to the Court of Session a Special Case, in order to have the matter settled. The following are accordingly the questions put to the Court, and the Answers given by them :—

QUESTIONS.

1. Whether, under the said statutes, or any of them, the said Herbert Bell is, in the circumstances stated, required to take and subscribe any, and if any what, oaths or oath, or any declaration substituted for such oaths or oath ?
2. Whether, under the said statutes, or any of them, the said Herbert Bell is, in the circumstances stated, required to subscribe the assurance ?
3. Whether the said presbytery can legally admit and ordain the said Herbert Bell as a minister of the Church of Scotland, without his taking or subscribing any oath or declaration, and without his subscribing the assurance ?

INTERLOCUTOR.

Edinburgh, 20th July 1869.—The Lords having heard counsel on the Special Case for the Rev. Herbert Bell and the presbytery of Meigle, Find and declare, in answer to the first question of law, that Mr. Herbert Bell, in the circumstances stated, is not required to take any oaths or oath, or to make any declarations or declaration in lieu of such oaths or oath ; in answer to the second question, That Mr. Bell is not required to subscribe the assurance ; and, in answer to the third question, That the presbytery may legally admit and ordain Mr. Bell as a minister of the Church of Scotland, without his taking or subscribing any oath or declaration, and without his subscribing the assurance.

(Signed) JOHN INGLIS, *I.P.D.*

The interlocutor may be held as ruling that the patron is not required, any more than the presentee, to take the oaths formerly administered to him, the cases being precisely similar.

III.—PRESENTATION.

45. *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 disposing 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, etc. 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.

46. *Form of Appointment when the Presentee is already an Ordained Minister of the Church.*

In this case the presentee has not to undergo the trials in literature and theology appointed to a probationer, and referred to above; the reference to these, therefore, will be omitted, and the presentation, after designating him as D., minister of the Gospel at E., after the giving, granting, and dispensing clause, will run thus:—‘Requiring hereby the Rev. the moderator and presbytery of M., having found him fit and qualified in the manner required by law for the function of the ministry at the said church of N., to admit and receive him thereto, and to give him his act of admission in due and competent form;’ and then as in the other form.

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:—

47. *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.

48. *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 ministers 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, etc. In witness whereof (as on page 73).¹

A presentation to a church of which the Crown is patron

¹ A Popish patron cannot present; but the General Assembly has decided that a commissioner appointed by him to exercise his patronage may do so. Mr. Dunlop states an unfavourable opinion to this power of delegation (see page 226, ed. 1835, of his *Parochial Law*). The point has not, so far as I am aware, been decided in a court of law, and is a curious one.

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 expediting 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 £6.

By the law of Scotland, six months have been allowed to patrons to present to vacant benefices.¹ 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, s. 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; 2^d, Of a minister of another parish; and, 3^d, Of one who shall not accept the presentation. If, however, the presentee be qualified in terms of the statute, the currency of

¹ *Vide* Ersk. i. 5, 17; and Dunlop on the *Law of Patronage*, ch. iv.; and Connell on *Parishes*, ch. iv.

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 enough that the patron have 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*.

49. *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 nomi-

nate, 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, etc. (as in No. 45.)

In witness whereof, we, the Rev. E. F., moderator, and G. H., clerk of the said presbytery of A., and as authorized 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. An extract of his licence as a preacher of the gospel.
4. 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 3 and 4 will not be required.

The presentee produces his licence along with his presenta-

tion to the presbytery, as the proof that he has the qualification necessary for a presentee, that of a licentiate of the Church. The presbyterial certificate completes the proof of qualification by certifying that he retains the status which he had thus acquired. A simple attestation that A. B., a licentiate of the Church of Scotland, has resided within the bounds of the presbytery of D. for months, is therefore sufficient to warrant a presbytery, in the absence of any charge against the presentee, to sustain his presentation. A presbytery must, as the law now stands, be held to be bound to grant this, if certified of the fact; any further statements must be left to themselves.

50. *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, etc.

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 :—

51. *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 everything requisite thereanent that I might have done therein myself; all which I hereby promise to ratify and approve.—In witness whereof, etc.

IV.—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 souveraine 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, etc., 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 haille 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 quhatsumever 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, 5 Geo. I. c. 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 first 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, first transmitted as an overture to presbyteries, and passed into an interim Act in Assembly 1844, sess. ult., and re-transmitted and renewed every subsequent year, that the procedure of the Church in the settlement of a minister is at present regulated.

The Act of last Assembly, Act ix. Ass. 1869, 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, he shall immediately give notice thereof to the moderator; and the presentation shall be laid before the presbytery by the moderator or clerk, as the case may be, 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 lodged.

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:—

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

The Rev. A. B., moderator, or C. D., clerk of the presbytery, laid on the table of the presbytery the following papers:—
1st, 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, or C. D.,

clerk, had received on the of , being within one calendar month from this date.

2*d*, Letter of acceptance by the said F. G.

3*d*, Extract of F. G.'s licence as a preacher of the gospel.

4*th*, 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,¹ 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 of its coming into his hands (or of receiving a notice that it is in the hands of the clerk), call a meeting of presbytery, to be held on a day not less than ten nor more than fourteen days after the date and despatch 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. to be minister of the church and parish of , having been lodged with me the day of (or this day), [or having been lodged with the Rev. C. D., clerk of the presbytery, on the day of , of which I have this day (or on the day of) received notice], 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 .

¹ 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.

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

53. *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, etc.

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

Then the minute may proceed as in Style No. 52.

If, however, 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 these deeds and documents are invalid and 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.

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 1869 accordingly provide: 'That when the presbytery shall have sustained the presentation,' etc., 'they shall appoint the presentee to conduct

public worship in the usual manner in the church of the vacant parish on at least two Sabbath-days, and on one week-day; and that the presentee, on each occasion immediately after the service, shall lodge the manuscripts of the discourses in a sealed envelope with the session-clerk, or, in his absence, with one of the members of session, and failing these parties, with some individual appointed by the presbytery to receive the same, to be transmitted in the course of post to the presbytery-clerk, that they may be laid by him on the table of the presbytery. It being provided that in all cases 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, and where two languages are used, in each language, in the usual manner, and that the manuscripts of the discourses shall be disposed of as before mentioned; and it being provided, that at least on one occasion of the presentee conducting public worship as aforesaid, the presbytery shall be present.

'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 not less than ten nor more than fourteen free days from the Sabbath on which the presentee preaches, and to be intimated under authority of the presbytery at the same time that the diets of the presentee's preaching are intimated in the form hereunto appended.'—For form, see Style 55, page 86 (A.)

The minute may then proceed as follows:—

54. *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:—

55. 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 Sabbath the _____ day of _____, and on [such a day of the week] 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 par-

particular parish, or any reason to state against his settlement in this 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 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 desire, with certification that objections cannot be received from any person at the second meeting of presbytery, who has not intimated his intention to object on the day of the moderation in the call.

When the day for moderating in the call has come, the presbytery meet at the vacant church, and, being constituted, a sermon is preached by the moderator or other minister specially appointed to perform that duty, who shall, after divine service, intimate from the pulpit the object of the meeting.

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

56. *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 desire; provided always that objections shall not be received from any individuals who do not either personally appear before the presbytery to give in the same, or satisfy the presbytery that they are prevented by sufficient cause from being present. The regulations then provide that in every case a second meeting shall be held, at which objections may be stated, at an interval of not less than six or more than ten free days after that for moderating the call. At this adjourned meeting the presbytery are to cognosce and determine on such objections or reasons as may have previously been given in, and also on such objections or reasons, if any, as may then be offered. If, neither at this second meeting nor at the previous meeting, any 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 meeting, 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:—

57. *Minute of Presbytery first day of Meeting.*

(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., etc. The edict intimating Mr. F. G.'s appointment to preach in the parish church of _____ was returned, duly executed. 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, and 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, in terms of the regulations, adjourned to meet again in this place, on _____ day of _____, to sustain the call and proceed to take the usual steps for the ordination of the presentee, if no objections shall then be offered.

The minute at the second meeting will simply bear, that the presbytery met, etc., pursuant to the regulations, and that no objections having then been offered, they 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 questionnaire trials in theology, etc., 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 days appointed for receiving such objections, or assign sufficient reasons for absence; and they may then give in their objections in writing, to be kept '*in retentis*,' or, if necessary, engrossed in the record; or they may state them '*viva voce*,' to be taken down and entered in the minutes of the clerk of presbytery; or they may intimate their intention to object on the first day, the objections to be stated at the second meeting. The said adjourned meeting, if an adjournment is required, must be held within fourteen days after that for the moderation of the call; but the presbytery will observe, that it is not those parties only who appeared at the former meeting, and intimated their intention to object, who are entitled to object at the adjourned meeting. Parties who have not given in objections at the first meeting for moderating in the call, are entitled to come forward with 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 licence, 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,' etc., 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 the 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 objectors, they may not see cause for delaying to adjudicate on them; but, on the whole, it will

perhaps generally be most advisable to take them up at the second meeting, 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 the 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.¹

¹ 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 parties 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, etc.

(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.

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 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 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 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.

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

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

58. *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

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 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.*

presentee, whereupon A., B., C., being members of the congregation, compeared, and gave 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 further 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 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, etc., for the patron and presentee acquiesced in, the same took instruments, and craved extracts, and the agents for the objectors protested, etc.

59. 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, etc.

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

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

Whereupon the presbytery unanimously resolve, that as Objections 1 and 2, etc., 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:—

60. *Minute when Objections found proven.*

After minuting sederunt, etc.

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, etc., 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 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 intimated to 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:—

61. *Minute sustaining Trials, etc.*

(Place and date.)

Sederunt, etc. 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 :—

62. *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.

ENDORSEMENT.

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 *instantly*. 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:—

63. *Minute of Ordination.*

(Place and date.)

Which day the presbytery being met and constituted. Se-
derunt—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 objections¹ 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

¹ Should any charges be made against the presentee, they must be proved on the spot.

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 the sermon the minister who presides says—

64. *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, 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. Assembly 1711.

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

65. *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, approved 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 interests ?

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 ?

66. *Formula to be subscribed by the person ordained.*¹

I, . . . , do hereby declare, that I do sincerely own and believe the whole doctrine contained in the Confession of Faith, approved 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 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 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.

¹ In some presbyteries the formula is subscribed before ordination.

By the 21st section of the Regulations, page 28, Acts of Ass. 1868, it is provided that the preceding regulations shall be observed in 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 8th. Intimation of the day of admission and settlement shall also, in every case, be made by edict of at least ten free days. In the event of the minister of a chapel of ease in one presbytery receiving a presentation to any charge within the bounds of another, notification thereof shall be given by the said minister to the presbytery within the bounds of which his chapel lies, at their first meeting after he has received the same ; and the presbytery to which his presentation is addressed shall, when his presentation is laid upon their table, direct notification thereof to be made to the presbytery within whose bounds the said chapel lies, which communication must be duly acknowledged.

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 :—

67. *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.¹

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.

68. *Form of Mandate.*

We, the Rev. A., minister of C., etc., 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 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:—

¹ The number of members appointed is at the option of the presbytery.

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

(Place and date.)

Which day the presbytery of F. having met and been duly constituted, etc., Compeared as commissioners 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. Reasons of translation.
4. Extract minutes¹ 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 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 summon² 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,³ 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, etc.

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

¹ This extract contains the whole procedure adopted prior to the sustaining of the call.

² The edict, in this case, is not only served by intimation from the pulpit, but it is also generally put upon the church doors.

³ Ten free days must intervene from the day of intimation to the day of meeting of presbytery.

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:—

70. *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, 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, etc., were then delivered over to Messrs. A., minister of C., etc., 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, etc.

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

An extract of these minutes is then laid before the presby-

tery 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:—

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

(Place and date.)

Sederunt, etc. 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.

72. *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., etc.

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.

73. 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, etc.

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.

74. 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, etc.

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 :—

75. *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 ecclesie* that it should take place.—(Decl. 1720, sess. 9 ; Molyson, 1794, sess. 5 ; M'Naughton, 1838, sess. 5, and other cases might be quoted.)

ASSISTANT AND SUCCESSOR.

The practice of appointing assistants and successors to incumbents, who, by reason of old age or permanent ill-health, have become incapable of duly performing all the functions of the ministry, commenced, as stated by Mr. Dunlop (*Poor Law*, 2d edit., p. 214), at an early period in the reformed Church. In the present day it is quite universal in the circumstances, in which alone it is warranted, and has obtained, though indirectly, the sanction of the Legislature. It must be remembered, however, that it is not left to the patron to exercise this right of appointment, anticipating, as it might do, his successor's right of patronage on the living becoming vacant, according to his own discretion. There must be—1st, The consent of the incumbent to the appointment of such assistant and successor; and, 2d, The consent of the presbytery to such appointment. As the death of the incumbent constitutes the patron's title to present to the benefice in the case of a vacancy, so the consent of the presbytery constitutes his title to appoint an assistant and successor. This is distinctly stated in a very able opinion given by Lord Moncreiff, then Lord Ordinary, in the case of *Luke v. Brown*—the case of the Tron Church (see Dunlop, *Poor Law*, 2d edit., p. 216). 'The consent of the existing minister, at least if he is capable of giving a consent, is indispensable. The patron, of course, must consent; but when these two are agreed, the consent of the presbytery, and, if called for, of the synod and General Assembly, must be obtained. The whole question of reasonable necessity, expedience, and propriety undoubtedly belongs to these courts.'

The above extract not only shows that the consent of the Church courts is essential, but also points out the grounds on which this consent is to be given—that of reasonable necessity, expedience, and propriety. That is, the right of appointment to a future vacancy is not to be anticipated by the present patron, unless, in the judgment of the Church courts, it is necessary and expedient, on account of the inability of the incumbent fully to discharge the duty, from age or continued infirmity, that such an appointment should be made. The presbytery must also see, before giving consent, that adequate provision is

made by the incumbent for the person to be appointed as his assistant and successor.

It has occasionally been found that such an appointment has been made by a patron, on the application of the minister, before the consent of the presbytery has been obtained. Such appointment may be sanctioned by the presbytery thereafter; but such a course is evidently irregular, and the presbytery are fully entitled to refuse to sustain any such appointment which has been made before they have had opportunity of expressing a judgment on its reasonableness and expediency, simply on the ground of the irregularity of the course that has been followed, in not previously obtaining their consent to it.

It has further to be observed, that the application of the minister to the patron to appoint, and the concurrence therewith of the presbytery, must not be conditional on a certain person's being appointed. The patron must be left to the unfettered exercise of his right.

An application for the concurrence of a presbytery in a minister's application for the appointment of an assistant and successor, will lie on the table till next meeting of the presbytery.

Their minute then may run thus:—

76. *Minute of Presbytery on Application for the Appointment of an Assistant and Successor.*

(Place and date.)

Sederunt. The presbytery proceeded to the consideration of the application of the Rev. A. B., minister of C., for the concurrence of the presbytery in an application to _____, patron of the said parish of C.; and Mr. A. B. was heard on the grounds of said application [or Mr. D. E., agent for Mr. A. B., was heard, etc.]. The annual allowance which Mr. A. B. proposed to make was also stated to the presbytery. The presbytery having taken the whole premises into consideration, and being satisfied, on account of the age or infirmity of the said Rev. A. B., that he is unable for the full discharge of all the duties of the ministry in the parish of C.; and being further satisfied that the allowance proposed to be made to the assistant is fair and adequate, having respect to the whole value of the benefice, resolved to concur in the application of the said

A. B. to the said patron ; and instruct the clerk accordingly to grant extract of this minute, that it may be transmitted along with the application of the Rev. A. B.

77. Form of Appointment of Assistant and Successor by an Ordinary Patron.

I, A. B., undoubted patron of the parish and church of F., lying within the presbytery of _____, and county of _____, Considering that in consequence of the state of health of the Rev. C. D., the present minister of that parish, he has found it necessary, in order to the right performing of the duties of the charge, to have an assistant, and has asked me to appoint an assistant and successor, and which I consider to be proper and expedient, and that the presbytery of said parish, by minute of 5th April last, has approved of this request [quotation from presbytery's minute]: And I, being informed that Mr. _____ is a person well qualified for that office, and the said _____ having signified to me his full concurrence in his appointment; Therefore I do hereby nominate, present, and appoint the said _____ to be assistant to the said _____, as minister of the said church and parish of _____; and in the event of the death or resignation of the said _____, to be thereafter the minister of the said church and parish: Giving, granting, and disposing to the said _____, thereafter during his lifetime, and his serving the cure of said church, the constant, localled, and modified stipend of the said parish, together with the manse, glebe, and all profits, and duties, and emoluments whatsoever belonging to the minister of the said parish, requiring hereby the reverend moderator and presbytery of _____ to admit and receive the said _____ as assistant and successor to the said _____ in the said parish, in such manner as is directed by law. And I consent to registration hereof, etc.

In witness whereof.

78. Form of Appointment of Assistant and Successor by the Crown.

Appointment by the Crown in favour of _____, as assistant and successor to _____, minister of the church and parish of _____.

VICTORIA R.

Whereas, by an humble representation made to us, we are informed that, on account of the age and infirmities of Mr. _____, the present minister of the church and parish of _____, in the presbytery of _____, and county of _____, it would (if our consent was thereto obtained) be for the advancement of the gospel and good of the said church that Mr. _____, preacher of the gospel, should be ordained assistant to him, the said Mr. _____, during his life, and his successor in office, as minister of the said church and parish of _____ after his death : And the heritors of the said church and parish having applied for this arrangement, We therefore, from a due regard to the said representation, and to the advancement of the gospel in the said church and parish of _____, are graciously pleased to give, and do hereby give, our royal assent to the said settlement, and will and consent that, upon the death of the said Mr. _____, Mr. _____ be entitled to the stipend, benefits, and profits now belonging to the said Mr. _____, in the same manner as if he had been presented upon the vacancy of the said church and parish.

Given at our court at Saint James's, the _____ in the
year of our reign.

By Her Majesty's command.

(Signature of Home Secretary.)

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, p. 4; Macpherson, 1820, sess. 5; Wood, 1848, sess. 7.)

PROVISION FOR DISCHARGE OF PAROCHIAL DUTY WHEN A
MINISTER HAS BECOME INSANE.

Previous to the Act 26 and 27 Vict. c. 47,¹ it was doubtful whether a presbytery possessed any compulsory power of providing for the discharge of ministerial duty, the minister of which had become insane. In the event of no provision, satisfactory to the presbytery, being made for that purpose by the relatives of a minister thus incapacitated, provision is made for the regular supply of ordinances by the appointment of a qualified assistant, who shall receive an allowance out of the stipend not exceeding one-half of the whole proceeds of the benefice. The following is the section of the Act referring to this:—

‘Sect. 2. When, in the course of any judicial process affecting the status of a minister, or on the representation of any party having interest, it has been established to the satisfaction of a presbytery or other superior court of the Church, on a certificate by the sheriff of the county, which he is hereby authorized to grant after due investigation, that the minister of any parish is insane, and thereby disabled from discharging the duties of his office, it is hereby further declared and enacted, that it is and shall be the right of the presbytery, unless an arrangement for the purposes after mentioned shall have been made on behalf of the said minister to the satisfaction of the presbytery, to appoint a qualified assistant to perform the duties of the charge until the said minister shall be enabled to resume the same, or until the parish shall be declared vacant, and at the same time to apportion and fix, by their deliverance appointing such assistant, an allowance out of the stipend not

¹ Act for removing Doubts as to the Powers of the Courts of the Church of Scotland, and extending the Powers of the said Courts.

exceeding one-half of the whole proceeds of the benefice, and which shall be payable so long as such assistant shall hold and continue to act on his appointment by the presbytery; and such deliverance, when duly intimated to the heritors or others liable in payment of the stipend, shall be equivalent to a legal and completed assignation by the minister to such assistant of the portion of the stipend specified in the deliverance so long as the said deliverance shall subsist: Provided, that it shall at all times be competent to such minister to apply to the presbytery to be restored to the duties of his office on the ground of his recovery; and the presbytery, on being satisfied that such minister has recovered, shall recall the deliverance, and from the date of such recall all right and interest under the deliverance shall cease and determine.'

As the Act grants this power to the presbytery as an alternative, in the event of no arrangement having been made on behalf of the said minister satisfactory to the presbytery, the most proper course to follow, when the sheriff's certificate of insanity is laid before them, would be to appoint a committee to communicate with the curators of the insane minister, or with relations legally entitled to act for him, with a view to such arrangement, with certification that the presbytery will take up the matter at their next meeting, and that they will then proceed, if no such arrangement is made, or none satisfactory, to exercise the powers conferred by the Act. A short minute should be drawn up intimating the reception of the sheriff's certificate, containing the appointment of said committee, and the instructions to them to confer with the parties above specified, and to report to next meeting of presbytery.

If at such meeting the committee report that an arrangement acceptable to the presbytery has been come to, the minute will bear that the presbytery approve of the arrangement come to between their committee and the curators or relatives of the said minister, and authorize the same to be carried into effect.

In the event of there being no parties authorized to act for the lunatic, or that the proposed arrangement is not satisfactory, the presbytery will, at their next meeting, proceed to exercise their power under the Act.

The following may be the tenor of the minute:—

79. *Minute anent Certificate of Insanity of the Rev. A. B.,
Minister of C.*

(Place and date.)

Sederunt. The presbytery then proceeded to the consideration of the certificate of C. D., Esq., sheriff of the county of _____, that the Rev. A. B., minister of the parish of _____, is insane, and thereby disabled from discharging the duties of the office; and no arrangement having been made by any parties qualified and entitled to act for the said A. B. [or the arrangement proposed by the parties qualified to act for the said A. B., as reported by the committee appointed last meeting of presbytery, not being satisfactory to the presbytery], the presbytery, in terms of the Act 26 and 27 Vict. c. 47, sect. 2, did, and hereby do, resolve to appoint a qualified assistant to perform the duties of the charge until the said A. B. shall be enabled to resume the same, or until the parish shall be declared vacant: And the presbytery further resolved to assign an allowance out of the said stipend to the said assistant of (money or grain, as the case may be), it being understood that such allowance shall in no case exceed one-half of the whole proceeds of the benefice for the year; and the presbytery further resolved to give notice to the heritors liable in payment of stipend, of the respective proportions of the stipend payable by each of them to the said A. B., and to the assistant appointed for him by the said presbytery under the said deliverance, and during the subsistence thereof.

The presbytery may either then, or at a subsequent meeting, appoint such assistant.

JUDICIAL PROCEDURE.

[In this department accuracy is so essentially necessary, and so difficult of attainment by those not familiar with the minutiae 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.¹

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 communion with the Church, was repelled (Ass. 1844, 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

¹ The forms of the minutes of presbytery will be found at p. 122 *et seq.*

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,' etc.

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, etc., 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,' etc. Where there are alternative charges in the major, the minor should be expressed alter-

natively. '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,' etc.

The CONCLUSION should follow logically from the major and minor propositions. It commences with the words, 'ALL WHICH, or part thereof, being proven,' etc. 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.

80. *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 the said presbytery,¹ and of A., moderator, and A., B., C., D., and E., members of the same (or if the libel is raised at the instance of the parishioners, of A. B., C. D., etc., 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 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 ,² 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 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., Moderator.
N. O., Clerk.

¹ The instance may be that of the presbytery simply, or of the presbytery and individual members, as in the above form. It is not necessary that every member should concur in the libel; and elders, in particular, seldom do so.

² It is convenient to print the date thus.

81. *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 the said presbytery, and of A., moderator, and E., F., and G., members of the same, 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 18 , or on one or other of the days of that month, or on one or other of the days of the three months immediately 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, etc.

82. *Form of Libel.*—No. III.*Cumulative Charge.*

Mr. A. B., etc. 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 Assembly 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 18 , or of one or other, etc., you, the said A. B., did, within the manse of C., or elsewhere, to the prosecutor unknown (narrate circumstances of simony or bribery). All which, or part thereof, etc.

83. *Form of Libel.*—No. IV.

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

Mr. A. B., etc., You are indicted and accused, etc. 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 18 , or on one or other, etc., 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 1st day of January 18 , and the 1st day of February 18 , 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, etc.

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. :—

84. *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 further 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.

85. *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.

A. B., Moderator.

N. O., Presbytery-Clerk.

The warrant is endorsed upon, or appended to the principal libel, and the officer should have the libel and warrant, or duly authenticated extracts thereof, in his possession, when he cites the party.

86. *Citation thereon.*

I, P., presbytery-officer, by virtue of a 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.

87. *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, it is dismissed, and the whole proceedings under it fall to the ground.

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

An appeal on the relevancy formerly sisted the presbytery from proceeding to probation; but it was enacted, by General Assembly 1851, 2d June, sess. 15, with consent of presbyteries, 'That in all cases originating with presbyteries as prosecutors, excepting those which involve error in doctrine, presbyteries shall, before serving the libel, lay it before the procurator for revision; and in cases however originating (with the above exception as to error in doctrine), the presbytery, after the relevancy has been found by them, shall proceed, notwithstanding all appeals, to prepare the case for final judgment.'

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 declaration ought always to be received in corroboration, and is generally found accurate.

A great many grounds of disqualification formerly existed which are now abolished by recent Acts of the Legislature.

Thus by the 3 and 4 Vict. c. 59, all disqualifications founded on relationship to one or other of the parties in the cause are abolished.

By the 15 and 16 Vict. c. 27, *disqualifications* in respect of the character of a witness, including even those founded on

conviction for crime, of interest, of agency, partial counsel and ultroneous offer to give evidence, are abolished, reserving all objections to the credibility of the witness on any of these grounds; and by the 16th of the Queen, c. 20, it is made competent to examine as witnesses even the parties in any cause, or the husband or wife of either of the parties, or the agent of either of the parties, although in the cause in which he is called as a witness, with only this exception, that nothing contained in the Act 'shall render any person, or the husband or wife of any person, who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, his wife or her husband, excepting in so far as the same may be at present competent by the law or practice of Scotland,' etc.

Notwithstanding these Acts, therefore, it would still appear to be incompetent to examine a minister under libel as a witness either for or against himself, and he is undoubtedly not compelled to answer any question tending to criminate himself.

Malice or enmity against the accused is still a legal ground of disqualification; but the most precise averment of acts evincing malice would be required to found an absolute disqualification on this ground, and casual or loose expressions of ill-will ought to be disregarded, where the witness on his initial examination repudiates all feeling of malice or ill-will to the accused.

There is a peculiar delicacy in the position of a member of presbytery on his 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, Ass. 1747, sess. 7 *et ult.*). Where, on the other hand, the libel is at the instance of a private party, the

members of presbytery ought to confine themselves strictly to the judicial character.

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 (3 and 4 Vict. c. 59, sect. 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, etc., 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, ETC.

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.

88. *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, etc.

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:—

89. *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 the 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.¹

It may so happen that proceedings against a minister may

¹ Ten free days must elapse between the intimation and the meeting of presbytery.

be instituted in consequence of a petition being presented to the presbytery by certain of his parishioners.

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

The presbytery being met, etc. 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 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:—

91. *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.

In this case, however, as well as when the libel is at the instance of the presbytery, the warrant of citation should be written upon the principal libel, and an extract of the libel and warrant given to the officer, as his authority to cite the party.

When the libel is at the instance of a private prosecutor, he is, of course, bound to take care that he obtains a proper warrant of citation, and that the party is duly cited.

The warrant endorsed upon the libel may run: The presbytery having considered the *foregoing* libel, etc.

92. *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.

By the Act 26 and 27 Vict. c. 47, entitled, 'An Act for removing doubts as to the powers of the Church of Scotland, and extending the powers of the said courts,' it is provided, sect. 1, that 'Whenever any presbytery or other court of the Church of Scotland shall have found a libel relevant, charging the minister of any parish with immoral conduct, or with error in doctrine, and shall have resolved to proceed to a proof of the said libel, it is hereby declared and enacted, That it is and shall be held to be the right of the said presbytery to pronounce a deliverance, requiring and enjoining such minister to abstain from the exercise and discharge of all ministerial functions of his office as minister of the parish, until the libel shall have been fully investigated and finally disposed of; and in the event of an appeal against such deliverance, the same shall continue in force until the same shall have been recalled by the court of appeal. And the ordinances of religion in the said parish shall, so long as such deliverance is unrecalled, be administered in the same way as if the parish were vacant by the decease of the minister thereof. Provided always, that nothing herein contained shall affect the right of such minister to his stipend.' Should the presbytery therefore, after having, as in the above Style, found the libel relevant, resolve to proceed to probation, they may proceed at the end of the above Style in the following terms:—'And further, the presbytery require and enjoin the said Mr. A. B. to abstain from the discharge of all ministerial functions of his office until the libel now found relevant be fully investigated and finally disposed of.' They will then appoint supplies, as in the case of a vacant parish.¹

Should the presbytery be unsuccessful in bringing the

¹ The above Act introduces a new principle in judicial procedure not contemplated in the *Forms of Process*. Suspension has hitherto been inflicted as a punishment on proof of guilt, and not then till confirmed by the court of last resort. Under the Act the presbytery have the power of inflicting it on presumption of guilt. The Act recognises the right of appeal; but as the injunction takes effect in the face of the appeal, and continues till the libel be finally disposed of, it is to be presumed, by the sentence of the court of last resort, there can

accused party to an acknowledgment of guilt, they then resolve to proceed to probation.

93. *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-Session, pp. 20, 21).

By the above Act, 26 and 27 Vict. c. 47, sect. 4, it is provided that, 'Where in any cause depending before a presbytery or other superior court of the Church, a proof shall have been allowed, it shall be lawful and competent for such court to appoint a qualified person, being an Advocate, Writer to the Signet, Solicitor before the Supreme Courts, or a procurator duly entered as a practitioner in any sheriff court in *Scotland*, of not less than three years' standing, to sit with them for the purpose of dictating to the clerk of court the evidence given by the witnesses examined in the course of the proof, and the oath *de fidei administratione officii* shall be administered by the moderator to any person so appointed; and it shall be lawful and competent for such court, if it see fit, to appoint the evidence of the witnesses examined in the course of such proof to be taken down by a writer skilled in shorthand writing, to whom

be no practical end served by taking an appeal; the suspension will have been undergone before it can be decided by the judgment of the court of last resort on the libel whether it should have been inflicted or not. The matter practically, therefore, is in the hands of the presbytery; and in these circumstances it should be matter of grave consideration whether, except under the strongest presumption of guilt, a power so formidable and so irresponsible should be exercised.—J. C.

the oath *de fidei administratione officii* shall be administered; and the said shorthand writer shall afterwards, and within such time as may be fixed by the court, write out in full the evidence so taken down by him in shorthand; and the extended notes, so written out, certified by the moderator and clerk of court to be correct, shall be the record of the oral evidence in the cause: Provided always, that nothing herein contained shall prevent any church court, if it see fit, from taking down and recording the evidence adduced in any cause, according to the form hitherto in use.'

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.

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

(Place and date.)

Which day the presbytery of D. being met, and duly constituted, etc. Sederunt, etc. 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, etc., 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.

95. *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.

96. *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.¹

In cases where a presbytery may see fit, after proof of a libel, to inflict the lesser sentence of suspension as a minister, provision has been made for the supply of his duties by the above cited Act, 26 and 27 Vict. c. 47, viz. section 3, 'When, by their final sentence upon a libel, a presbytery or other church court shall suspend a minister from the discharge of the duties of his office for a term specified in the said sentence, it is hereby further declared and enacted, that it is and shall be held to be the right of the presbytery to appoint a qualified assistant to discharge the said duties, and to apportion and fix an allowance to such assistant out of the stipend, not exceeding one-half of the whole proceeds of the benefice, and which shall be payable so long as such assistant shall hold and continue to act on his appointment by the presbytery; and such sentence, when duly intimated to the heritors or others liable in payment of the stipend, shall be equivalent to a legal and completed assignation by the minister to such assistant of the proportion of the stipend specified in the sentence.'

VI.—GREATER EXCOMMUNICATION.²

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.

In cases of obstinate contumacy, or continuance in scandalous practices, where the communicant hath lain under the sentence of lesser excommunication³ for some considerable time, and yet is found frequently relapsing into the same vices for which he

¹ Pardovan says, b. iv. tit. 4, sect. 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.'

² Pardovan, b. iv. tit. 6.

³ See page 23.

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 hereinafter 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 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.

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

(Place and date.)

Which day the presbytery having met, and been duly constituted. Sederunt, etc. The presbytery resumed con-

sideration 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.—(Pardovan, b. iv. tit. 6, sect. 9.)

98. *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 Satan¹ for the destruction of

¹ 1 Cor. v. 5.

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 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, b. iv. tit. 6, sect. 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 authorizing the absolution may be as follows:—

99. *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, etc., 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 congrega-

tion 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.

100. *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* PARISHES.

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, unanimously 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 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 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 :—

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

Unto the reverend 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, etc.)

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.

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

(Place and date.)

The presbytery having met, etc.

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, etc.

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.

103. *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.

104. *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 connection 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.

105. *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:—

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

(Place and date.)

The presbytery having met and been duly constituted. Sederunt, etc. 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, etc., 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, etc.

The committee will accordingly meet, and obtain all infor-

mation 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 ease, and prepare a form, etc., 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.'

After all the facts and circumstances mentioned in the petition have been fully inquired into, the report to the presbytery may be:—

107. *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 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 recommend that the presbytery report to that effect 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:—

108. *Minute of Presbytery when a Report considered.*

(Place and date.)

The presbytery having met and been duly constituted. Sederunt, etc. 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.

The draft constitution and other papers are then laid before the General Assembly by petition, through their committee of bills, in the usual form.¹ When approved of, it is recorded in the books of Assembly, and an extract is afterwards furnished

¹ 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. 1869, c. 44, under the head 'Miscellaneous Business.'

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.¹

The ministers of chapels of ease are not members of the courts of the Church.

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.'² 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

¹ For bond, see Appendix.

² Constitution of Gaelic Chapel—Assembly 1798.

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:—

‘EDINBURGH, 24th 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 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 considera-

tion, viz.—the Moderator, Dr. Cook, Principal Lee, Mr. Proudfoot, Mr. Robertson (Ellon), Dr. Hill, Mr. John Cook, Dr. Mearns, Dr. Haldane, Mr. Macleod (London), 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—7 and 8 Vict. c. 44, 19th July 1844—entitled, ‘An act to facilitate the disjoining or dividing of extensive or populous parishes,’ etc.¹

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, c. 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

¹ For the Act in full, see Appendix.

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 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 stipend ; 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 re-

spective 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* :—

Sect. 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 to 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 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 allocation of sittings, the granting of sites by heirs of entail and others, the burdening of entailed lands for endowments, the erecting of Gaelic 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, issued immediately after the passing of the Act, forms of deeds and instructions to presbyteries as to their procedure, such as seemed best calculated to secure the sanction of the

court to such disjunctions and erections. These forms have not, however, in practice been adhered to by the committee, probably from the feeling that they often entailed unnecessary delay and expense. It must, however, be borne in mind, in following out such cases, that the Act of 1633, giving powers to certain commissioners to disjoin too large and spacious kirks and plant them severally, etc., contains the following provision:—‘Providing that the dividing of large parochs, the dismembering of ane part of the said parochins in case foresaid, and the uniting of kirks and parochins of the qualitie above specified, be done upon the special recommendation of the presbytery, synod, or General Assembly, givin in writ, and after the commissioners have cited and heard the parochiners of both kirks thereanent and no otherwise;’ and this recognition of the necessity of obtaining the sanction of the Church remains unrepealed by, although not formally renewed in, the subsequent Acts on this subject. It is of importance that the right of the Church in this matter should not be allowed to fall into abeyance, that a mere *pro forma* reference should not be made to the presbytery, but that its sanction should be given after such due and deliberate consideration as might entitle its decision to have, in the eye of the court, the weight and influence it ought to possess. It appears desirable, therefore, that before making application to the Court of Teinds, the parties interested should apply by petition to the presbytery, setting forth the reasons for the proposed new erection, the provision to be made for the minister and maintenance of the church, the bounds proposed to be assigned to the new parish, and other particulars. That the presbytery should, on receipt of the petition, instruct a copy of it to be transmitted to the minister and kirk-session of the parish or parishes from which it is proposed to disjoin the new parish, and should at the same time summon the parties interested in the matter, especially said minister and kirk-session,¹ to appear before them at their next meeting, or at a meeting to be held on an early day; and that having

¹ The previous forms direct that all parties, viz. titular or titulars, patron or patrons, and heritors, including magistrates of burghs, should be cited. Of course this would be essential if the presbytery was the court, to decide whether the parish was to be erected or not; but it is to be borne in mind, that all

heard such parties, and having duly considered all the points brought before them, they should then come to a deliverance approving or disapproving of the same. The following may be the form of petition submitted to the presbytery:—

109. *Petition to Presbytery.*

Unto the reverend the presbytery of _____, the petition of _____, for themselves and for the other parties¹ promoting the disjunction and erection of a new church and parish *quoad sacra*, under the Act 7 and 8 Vict. 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 7 and 8 Vict. c. 44, would be highly conducive to the moral and religious interests of the inhabitants residing in the aforesaid 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 presby-

these parties have, in terms of the Act, notice given them of the application made to the Court of Teinds, and that it is before that court that their opposition, if they oppose, must be carried out. The points more properly coming under the notice of the presbytery are—Whether, with a view to meet the spiritual wants of the district, such new parish is necessary; and, whether the boundaries proposed appear the most suitable. With a view to a decision as to this, it is proper that the minister and kirk-session of the original parish should be cited; but having heard them and the petitioners, it does not appear requisite for the presbyteries to call other parties, to enable them to come to a judgment. It is, however, competent for the presbytery to act as to this as they see cause.

¹ 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.

tery 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 _____, shall be taken 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,¹ 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 approve of the same; 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 recommended to the Court of Teinds as the district to be attached *quoad sacra* to the church proposed to be erected as aforesaid; or to take such further 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)

¹ The map or outline of the boundaries of the new parish should be produced along with the petition, if the petitioners desire that the presbytery should proceed without delay to consider their petition.

The provision for endowment of the minister and maintenance of the church is referred to in the above petition, but the sufficiency of that provision to meet the requirements of the Act is carefully attended to by the Court of Teinds, and therefore does not require to be entered on minutely by the presbytery. It must not be forgotten, however, that in the case of chapels of ease the presbytery is still the court that must see to the security for the payment of the salary of the minister. If the church is endowed by a landed proprietor, he grants a bond of annual rent; if by individual subscribers, the sum raised is usually laid out in feu-duties and ground-annuals, the title to which is taken to the trustees named in the deed of constitution—1. For the endowment of the minister; 2. For the other necessary charges.

The Act provides that the stipend granted by an heir of entail can, in no case, be more than £120, or exceed three per cent. of the clear rental of the land conveyed in security; and that 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.

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 a petition at the instance of , for their consent to an application to the Court of Teinds, for the erection of a church and parish *quoad sacra*, at , and out of a portion of the parish of [or portions of the parishes of and], resolve that a copy of said petition be transmitted to the minister and kirk-session of the said parish of [or parishes of], and that the said minister and kirk-session be summoned to appear at a meeting of said presbytery, to be held at on the day of

, and then to make any answer, or state any objection they may have to the granting of the prayer of said petition. And in the meantime 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 may be the form of citation to the minister and kirk-session of the original parish or parishes:—

111. *Edictal Citation*.¹

In accordance with an appointment and deliverance of the presbytery of , made at their meeting on the day of ; after considering a petition by , setting forth, *inter alia*, that application was about to be made to the Court of Teinds, in virtue of the Act 7 and 8 Vict. 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 church at , or a church to be built at , 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 minister and kirk-session 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 fore-said disjunction and erection *quoad sacra* of the proposed new church and parish.

¹The 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.

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.

At their next meeting, the presbytery shall then proceed to consider the prayer of the said petition ; to hear the petitioners and the minister and kirk-session (or ministers and kirk-sessions) of _____ thereupon ; and if, after doing so, they shall be of opinion that the said disjunction and erection is expedient and proper, they shall come to a deliverance to that effect. The following may be the form of deliverance :—

113. *Deliverance of the Presbytery.*

At _____, on the _____ day of _____. Which day the presbytery of _____ having met and been constituted. *Inter alia*, the presbytery proceeded to the consideration of the petition of [here state names of petitioners and subject of the petition], and having heard the petitioners, and also the Rev. A. B., minister of the parish of C. for himself and as representing the kirk-session, and having examined the map lodged by the petitioners, approved 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 7 and 8 Vict. c. 44, and the enactments of the General Assembly thereanent. The presbytery further marked off and designated the district which appeared to them to be suitable, and which they accordingly recommended should 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 of the boundaries of which district so delineated the following is a descriptive schedule (*here follows description of the boundaries*); 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, to be produced along with the petition about to be presented by the trustees named in the deed of constitution to the Court of Teinds, for the disjunction and erection of said church and district, in testimony of the presbytery's approval thereof and concurrence therein.

(Signed)

, Moderator.

, Presbytery-Clerk.

With reference to the approval of the constitutions of new churches by the General Assembly, the following are the instructions of the Assembly, Act anent the Standing Orders, sess. *ult.*, May 30, 1859 :—

'All applications for the erection of new churches, and the relative documents, after passing through the respective presbyteries, shall, along with the feudal titles of the church and ground, be transmitted, one month before the meeting of each Assembly, to the Home Mission Committee, or such other committee as the Assembly may have specially appointed for receiving the same, along with extracts of the approval of the proposed constitutions by the presbyteries of the respective bounds, or of their deliverances upon the proposal; 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;

and all parties who have made compearance in the presbytery shall be entitled, as at present, to be heard before the Assembly to which the applications are 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 committee specially appointed, as aforesaid.'

It having been stated, however, by the convener of the Endowment Committee, with reference to the constitutions of certain churches, Ass. 1852, May 31, sess. *ult.*, that it might be necessary to prepare, alter, or remodel the constitutions of these churches before the meeting of next General Assembly, with a view to providing for having them erected by the Court of Teinds into churches '*quoad sacra*,' the General Assembly gave the following deliverance:—'The General Assembly remit to the Committee on the Endowment of Chapels of Ease, in conjunction with the procurator and principal clerk, to prepare, alter, or remodel, adjust, and approve of the constitutions of these churches, in conformity with the model deeds,¹ which have been already approved of by the committee and the General Assembly, and in conformity with the requirements of the Act of Parliament 7 and 8 Vict. c. 44; and on such constitutions being so prepared and adjusted, authorize the clerk of Assembly to give certified copies thereof of the dates of which they are approved; provided always that such constitutions have been previously sanctioned and approved of by the presbytery of the respective bounds; and that these constitutions shall be specially reported to the next General Assembly, so that they may be inserted in the records of the Church, and regular extracts thereof given out in common form.'

This deliverance has since been annually repeated.

In 1866 an Act was passed, entitled 'Act to amend the Act of 7 and 8 Vict. c. 44, relating to the erection of new parishes *quoad sacra* in Scotland,' the object of which was to give to heritors of united parishes, where there might be two or more parish churches, power to carry over one of these churches to be the church of any *quoad sacra* parish erected within such parish.

This Act was repealed by an Act passed 24th May 1868, 31

¹ For model constitution, see Appendix.

Vict. c. 30, entitled 'An Act to amend the Act of 7 and 8 Vict. c. 44, relating to the formation of *quoad sacra* parishes in Scotland, and to repeal the Act of the 29th and 30th years of the reign of Victoria, c. 77.' By this Act it is provided, 'That in a united parish containing several parish churches, persons undertaking to endow one of them, may apply for the disjunction and erection of a parish *quoad sacra* without erecting a church; and that the court, in pronouncing decree of disjunction and erection, may declare one of several churches of a united parish to be the church of the new parish *quoad sacra*, such church not to be subject to the provisions of any trust constituted in terms of the first recited Act, or to any trust applicable to a church erected by voluntary contributions as the church of a parish *quoad sacra*; and further, that nothing in this Act shall increase or affect the existing liabilities of the heritors in any parish.'

The Act *in extenso* is given in the 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.

Until recently the form of bringing the decisions of presbyteries under the review of the Court of Session was by advocacy or suspension; 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.

An important change, however, has been effected by the Act

31 and 32 Vict. c. 96, entitled 'An Act to amend the procedure in regard to ecclesiastical buildings and glebes in Scotland.' By the 3d section of this Act it is provided, 'That if, in the course of any proceedings before a presbytery relating to the building, rebuilding, etc., of churches and manses, etc., any heritor, or the minister of the parish, shall be dissatisfied with any order, finding, judgment, interlocutor, or decree pronounced by such presbytery, it shall be competent for such heritor or minister, within twenty days of the date of such order, etc., to stay such proceedings by appealing the whole cause as hereinafter provided; and such appeal, on being duly intimated to the clerk of the said presbytery, shall have the effect of staying the presbytery from taking any further steps in connection with said proceedings: Provided always, that if no such appeal is taken and duly intimated within the period foresaid, every such order, finding, judgment, interlocutor, or decree not appealed from as aforesaid shall be final, and not subject to review.'

The effect of such appeal of the whole cause to the sheriff appears to be to transfer the proceedings to his court, subject to a certain right of appeal to the Lord Ordinary; and, in consequence, the Act goes on to confer powers, and to define the same, with the manner of procedure to be adopted before the sheriff and Lord Ordinary; but as the case must originate in the presbytery, and as their jurisdiction when not thus transferred remains unimpaired, the directions and Styles for the regulation of the proceedings formerly given in this work are retained in this edition.

It does not fall within the scope of this work to give directions for the conduct of proceedings when transferred to the sheriff; but some notice of the powers he possesses, and of certain qualifications of them not applicable to the powers of the presbytery, will be given after the conclusion of the directions for the proceedings of the presbytery.

I.—PROCEEDINGS CONNECTED WITH THE REBUILDING AND REPAIRING OF CHURCHES.

The only legislative enactments on this subject are the Act 1563, c. 72, Proclamation of the Privy Council, 13th September 1563, and Act 1572, c. 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. By the Act 31 and 32 Vict. c. 96, sec. 22, the mode of calling meetings of heritors is provided for as follows:—‘Notwithstanding any law, statute, or usage to the contrary, meetings of heritors for any purpose whatsoever may be called in the following manner; that is to say, on the requisition of the clerk of the heritors, or of any heritor or heritors possessed of lands yielding one fourth part of the total real rental of the parish as the same shall appear on the valuation roll or rolls then in force, or valued at one fourth part of the total valued rent of such parish, as the case may be, or, when he shall himself think such meeting expedient or necessary, the minister of the parish shall cause an intimation of the meeting to be given immediately after divine service in the forenoon, and circular letters containing a similar intimation to be sent to all heritors of the parish at least twenty-one free days before such meeting shall take place; provided that where in any parish the number of heritors exceeds forty, it shall not be necessary to send circular letters as before provided, but in lieu thereof intimation of the meeting shall be given by the minister by advertisement in a newspaper circulating in the county once during each of two successive weeks between the intimation from the pulpit before mentioned and the day for which the meeting has been called.’

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, 6 Shaw and Dunlop, 791; Earl of Glasgow, etc. *v.* Miller (Neilston), 1st Feb. 1831, 9 Shaw and Dunlop, 370, affirmed on appeal, 7th April 1834.) A similar rule has been applied to the case of manses (Elliott *v.* Hunter, 12th July 1867, 5 M.P. 1028).

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. In the recent case of Bertram *v.* The Presbytery of Lanark, it was stated by Lord Neaves in giving the judgment of the Court, that 'it may be considered to be settled that, while no arithmetical rule can be laid down, if the expense of repairing a church will only be about one half of the cost of building a new church, in that case a new church, generally speaking, cannot be asked. On the other hand, if the repairs will cost three fourths of a new church, that is a case for ordering a new church.'—(Bertram *v.* Presbytery of Lanark, 20th July 1864, 2 M.P. 1406. See also, as to manses, the cases of Heritors of Balfron *v.* Niven, 4th Feb. 1858, 1 M.P. 324, and Heritors of Kingoldrum *v.* Haldane, 24th Jan. 1863, 1 M.P. 325.)

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 word 'heritor' is defined in the Act 31 and 32 Vict. c. 96, to mean, any proprietor of lands and heritages at present liable in the assessments which may be imposed according to the real or valued rents thereof, as the

case may be, for the purposes set forth in the third section of the Act.

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, or where there is a considerable number of feuars, the expense is apportioned over the whole lands and houses, according to the real rent.—(Peterhead case, 19th Jan. 1802, 4 Paton's App. 356; *Boswell v. Hamilton* (Mauchline case), 15th June 1837, 15 S. and D. 1148; *Macfarlane v. Monklands Railway Company* (Kirkintilloch case), 29th Jan. 1869, 2 M'P. p. 519.)

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. In like manner the heritors in a district which has been disjoined *quoad sacra*, and united to another parish, have been held not to be assessable for building a church in the parish to which their lands belong *quoad civilia* (Scottish North-Eastern Railway Co. *v. Gardiner*, 29th Jan. 1864, 2 M'P. 537).

The heritors are entitled to take the charge of procuring plans, contracts, etc., 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.

114. *Petition to Presbytery for rebuilding a Church which has become ruinous.*¹

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 each

¹ 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

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)¹ 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 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

it is used in the Dean of Guild courts when describing any property requiring to be repaired or rebuilt.

¹ The letters (a) (b) (c) etc., are referred to in the subsequent Styles under this section.

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, 1st, 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 rebuild 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 authorize a contract to be entered into conform to such plans, specification, and estimates, as may be approved off: 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, etc.

(Signed by the petitioner or his agent.)

The presbytery will order the petition to be intimated.

115. *Minute of Presbytery when Petition is laid on the Table.*

The presbytery having considered the foregoing petition, appoint the Rev. 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.

116. *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 authorized 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.

117. *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 agent of K. and L., the only absent heritors.

(Signed) B., Minister of C.

118. *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., Inspector.
N., Inspector.

119. *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

120. *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.

121. *Deliverance of the Presbytery condemning the Church, and ordering Plans, Specifications, etc., 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 discern 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 rebuilding 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.

122. *Decree of Presbytery approving of Plans and Estimates, and authorizing 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 rebuilt, 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 authorize the heritors of the parish, whom failing, the petitioner, to enter into a contract with the said R., for taking down and rebuilding 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: Further, 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.¹

123. *Decree of Presbytery assessing the Heritors for the amount of sums in Estimates, etc.*

The presbytery having considered the scheme of division prepared by the clerk, allocating the sum of £ , being the expense of rebuilding 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.

124. *Petition for Alteration in the Site of the Church.*

When a petition is presented to the presbytery for alteration of the site and rebuilding of a church, the form of the petition will be similar in style to the preceding petition, Style No. 114, 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

¹ 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*.

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 further, 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,' etc., (*and so forth, as in the preceding Style, No. 114, 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 churchyard'*).

The proceedings following upon the petition will, of course, be liable to corresponding alterations and additions.

125. *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. 114. 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.

126. *Petition when Rebuilding 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 rebuilt: 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 authorized a contract, in terms thereof, to be entered into by the heritors, or minister of the parish, for rebuilding 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 rebuilding of the church, corresponding to the valued rent of their respective properties, and authorized 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 rebuilding 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 rebuilding 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 rebuilt 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 authorize 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 authorize the clerk of court to deliver up to him his bond of caution. Or otherwise, etc. (*as at letter (h) of petition, Style No. 114.*)

(*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 committee, 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:—

127. *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.

128. *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.

129. *Report of Committee of Presbytery.*

We, the committee of presbytery appointed to inspect the church, etc., 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 further 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 £

(Signed) A.
B.
C.

130. *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; authorize 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 £ , 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 £ 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 churchyards are strictly analogous to those relative to churches.

The statute 1597, c. 232, directs all parishioners of every parish church to build and repair the churchyard 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 churchyard; and ordains the Lords of Session to direct and give letters and charges thereupon in form as effairs.

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.

131. *Petition for Repair of Churchyard 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 churchyard 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 churchyard 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 churchyard, 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. 114, then proceed as follows*): Thereafter to visit and inspect the

wall of the said churchyard, 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 churchyard, and must be taken down and rebuilt; to appoint the necessary estimates to be procured for rebuilding the said wall, and to authorize a contract (*a*) to be entered into in terms of such estimates as may be approved of; thereafter, etc. (*as in petition, Style No. 114, 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, c. 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.

132. *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, c. 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. 114*): 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. 114, adding at the letter (g) 'the value of the piece of ground designed as aforesaid,' and omitting the words within parentheses*).

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. 114, and decree in terms similar to the following will then be pronounced:—

133. *Decree of Presbytery, approving of Plan and Estimates, etc.*

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 burghal'), 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 £ ; 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. 122, and then proceed as follows*): Find that the value of the said piece of ground, being £ , and the contract price for building the manse, offices, and garden wall being £ , together

with £ , being the expenses already incurred, and to be incurred, in collecting the assessment and otherwise, amounting in all the said sums to £ sterling, are a burden (*and so forth, as after letter (c) of Style No. 122*).

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.

134. *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, etc. (*and so forth, to letter (e) of petition, No. 114*): 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 render them 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 Style No. 132, (f) in Style No. 114*).

135. *Deliverance of Presbytery ordaining new Manse, etc.*

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 : Further, 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. 133, 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 Rosebery (Dalmeny), July 28, 1788, M. 8515 ; Heritors of Strathblane, July 10, 1827, 5 S. and D. 913.)

136. *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 further 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 bedroom, 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, etc. (*and so forth, to letter (e) of petition, Style No. 114*): 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. 131, after letter (a)*).

The presbytery, after visiting and procuring reports, as above exemplified, will give the following deliverance:—

137. *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*): Further, 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. 122, and subsequent examples, mutatis mutandis*).

138. *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. 114*): 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 authorize 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. 134 (f)*).

The proceedings upon this petition will be similar to those following upon No. 134:—

139. *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, c. 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, etc. (*as at letter (h) petition, No. 114*).

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:—

140. *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).—(Hamilton v. Clason, 9th March 1826, 4 Shaw and Dunlop, 543.)

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; *Niven v. Heritors of Balfroun*, 4th Feb. 1858, 1 M.P. 324; *Heritors of Kingoldrum v. Haldane*, 24th Jan. 1863, 1 M.P. 325); 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, c. 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, c. 68, and 1649, c. 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 conferred 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, 4 Shaw and Dunlop, p. 99; Reversed in House of Lords, 2 Wilson and Shaw, 600.) In the case of a double charge the right does not generally extend to the second minister (Adamson *v.* Paston, 14th Feb. 1816). But the first minister's claim will not be excluded by the second minister's having got decree against the heritors for a manse (Carnegie and Heritors of Brechin *v.* Speid and Will, 5th July 1849).

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 £1000 Scots, or £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 £1000 Scots. The usual sum now allowed by the court is about £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.

When a manse has been accepted and occupied as a competent manse, and is capable by slight repair of being made sound and sufficient, there is no claim maintainable for additions (Elliot, etc., Heritors of Kirkton, *v.* Hunter and Others, 12th July 1867).

GLEBES.

Every minister who is entitled to a manse has also a right to a glebe of arable land; and that right cannot be surrendered by an individual incumbent to the prejudice of the benefice, even where the surrender may have led to a glebe being designed to a second minister (Lord Panmure *v.* Presbytery of Brechin, 12th Dec. 1855).

The statutes by which the right of ministers to ARABLE GLEBES is conferred and regulated are, 1563, c. 72; 1572, c. 48; 1502, c. 118; 1593, c. 165; 1594, c. 202; 1606, c. 7; and 1663, c. 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 souns of grass in lieu of each acre of arable land was introduced by 1606, c. 7. This alternative can be claimed by the minister only when a proper arable glebe cannot be provided to him. A soun of grass consists of as much land as will pasture one cow or ten sheep.

The minister is entitled to the uncontrolled management of the surface of his glebe from the period of his induction to that of his death, translation, or deprivation, when all right ceases except that of him or his representatives to reap what has been previously sown. But he cannot use his glebe so as to injure or diminish the subject.

It was disputed whether this right of management extended to cutting down trees; but it was decided that he had power to do so by the court.—(Logan *v.* Reid, *Fac. Col.*, 16th May 1799; and *M. Glebe*, App. i.) But he has not the same power over earths or minerals found under the glebe. With regard to marl, it was decided in the case of Maderty, 13th November

1794, M. 5153, that the minister might work the marl, but that the produce must be secured for the service of the benefice, and the glebe's surface put in proper shape. See also the case of Lethendy in *Logan v. Reid*.

With regard to coal, it was decided in the case of Newton, that it was to be worked at sight of the heritors and presbytery, and the proceeds to be placed under their management for behoof of the incumbent for the time.—(Minister of Newton *v.* Heritors, *Fac. Col.*, 3d June 1807 ; M. Glebe, App. vi.)

141. *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 souns 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, etc. (*to letter (d) of petition, No. 114.*) 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 souns 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, etc. (*and so forth, as in petition, No. 139.*)

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, c. 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 £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 £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.

142. *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 £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 £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, etc. (*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 £20 Scots yearly in lieu thereof; to allocate the value of the said ground and contingent expenses, or the foresaid sum of £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, etc. (*as in the preceding example*).

See remark subsequent to the preceding Style.

143. *Petition to Presbytery to authorize 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, etc. (*and so forth, to letter (d) of petition, No. 114*). 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 excambied therefor; to find that the proposed excambion would be highly beneficial to the parish, and to the petitioner and his successors in office; to authorize 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 interpose the authority of the presbytery thereto, or otherwise (*as at letter (h) of petition, No. 114*).

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.

PROCEDURE REGARDING CHURCHES, MANSES, AND GLEBES BEFORE THE SHERIFF.

It has already been stated that a material alteration has been made in the mode of procedure, by which the judgments of presbyteries regarding churches, manses, and glebes are brought under review by the Act 31 and 32 Vict. c. 96, entitled 'An Act to amend the procedure in regard to ecclesiastical buildings and glebes in Scotland.' That Act does not deprive the presbyteries of the Church of the jurisdiction they have hitherto possessed in questions relating to churches, manses,

and glebes, and cases involving these questions must still originate in the presbytery of the bounds. But in place of the former mode of review of the judgments of the presbytery by advocacy or suspension in the Court of Session, the statute provides an appeal to the sheriff of the county in which the parish is situated, against any judgments of the presbytery, and an appeal from the sheriff to the Lord Ordinary in Teind Causes in the Court of Session. Section 3 of the statute provides, 'From and after the passing of this Act, if, in the course of any proceedings before any presbytery of the Church of Scotland relating to the building, rebuilding, repairing, adding to, or other alteration of churches or manses, or to the designing or excambing of sites therefor, or to the designing or excambing of glebes or additions to glebes, or to the designing or excambing of sites for or additions to churchyards, and the suitable maintenance thereof (including the building or repairing of churchyard walls), any heritor or the minister of the parish shall be dissatisfied with any order, finding, judgment, interlocutor, or decree pronounced by such presbytery, it shall be competent for such heritor or minister, within twenty days of the date of such order, finding, judgment, interlocutor, or decree, to stay such proceedings by appealing the whole cause as hereinafter provided; and such appeal, on being duly intimated to the clerk of the said presbytery, shall have the effect of staying the presbytery from taking any further steps in connection with said proceedings.' The next section (4) provides, 'That the appeal shall be taken by the appellant or his agent presenting a summary petition to the sheriff of the county in which the parish concerned is situated, praying him to stay the proceedings before the presbytery, and dispose of the same himself.' The section further provides, 'That when a parish is situated within more than one county, the petition may be presented to the sheriff of either county, and the sheriff to whom the first application is made shall have the same power, authority, and jurisdiction, as if the whole parish were situated in his county.' Such a petition must be presented to the sheriff (*i.e.* lodged with the sheriff-clerk) within twenty days after the date of the order or judgment appealed against.

144. *Form of Petition.*

Unto the honourable the Sheriff of A., or his substitute, the petition (of B. C. of D., an heritor in the parish of E., or of the Reverend F. G., minister of the parish of E. [as the case may be]).

Humbly sheweth,—

That upon the day of 18 , a petition was presented to the reverend the presbytery of H., at the instance of J. K. and L., praying the presbytery to (*here state the objects of the petition*). That on said petition, after various steps of procedure (or on considering said petition), the said presbytery was pleased, on the day of 18 , to pronounce the following order (or finding, or judgment, as the case may be).

That the petitioner is advised that the said order (or finding, etc.), is erroneous and contrary to law, in respect, 1st (here shortly state objections, as, that the edifice complained of is in good repair; or, that it may be rebuilt for less cost than repaired; or, that the population requires greater or less accommodation than a proposed new church will contain; or, that the manse is too small; or, that it is expedient, in all the circumstances, that the matter should be brought under the jurisdiction of the sheriff, and further proceedings by the presbytery stayed): And that the petitioner, for these reasons, desires to appeal the said order (or finding, etc.) to your Lordship under the provisions of the statute 31 and 32 Vict. c. 96.

May it therefore please your Lordship to stay the proceedings before the said reverend presbytery of H. in the petition above mentioned, and to dispose of the same.

According to Justice, etc.

The 5th section of the statute requires the intimation of such appeals, and sections 6 to 13 regulate the procedure before the sheriff. [See Act in the Appendix.]

The latter part of the 3d section provides a means of preventing any party from delaying proceedings by taking an

appeal and neglecting to follow it up, by making it competent for any other heritor, or for the minister, or the presbytery-clerk, by authority of the presbytery, or for the heritors' clerk, by authority of the heritors, to sist himself as a party, and follow forth the appeal as the original appellant could have done, in the event of the original appellant unduly delaying to follow forth the appeal. It seems to be the sheriff who is to be the judge of what is to constitute such undue delay as will entitle another party than the original appellant to take up an appeal, seeing that the petition is in dependence before him.

After it has been specified in section 3d of the Act, as above quoted, that the appeal must be taken within twenty days, the section proceeds in these terms: 'Provided always, that if no such appeal is taken, and duly intimated within the period foresaid, every such order, finding, judgment, interlocutor, or decree, not appealed from as aforesaid, shall be final, and not subject to review.' It would thus appear that on the case being appealed to the sheriff at any stage of the proceedings of the presbytery subsequent to its having been opened up and adjudicated on by them, the sheriff does not go back upon any previous findings or deliverances not appealed from, but that if he does not dismiss the petition he must take up the case at the point where, by the appeal, the procedure of the presbytery has been stayed; and this conclusion appears to be borne out by the opening words of the 7th section: 'In any proceedings for the rebuilding of a church or manse, the sheriff shall, —*unless the matter has been decided by the presbytery by a judgment or finding final under the third section hereof,—primo loco*, consider whether,' etc. It would further appear, however, that at whatever stage of the case it was brought before him—that once entered in his court—he proceeds to the final settlement of the question, the appeal taking it out of the hands of the presbytery, not merely as to that judgment which was appealed from, but as to all subsequent proceedings.

In sections 7, 8, 9, the course of procedure to be followed by the sheriff is distinctly marked out; and powers are conferred on him precisely similar to those exercised by the presbytery in the building and repairing of manses and glebes.

Section 10 directs the procedure as to building or repairing

churchyard walls in the same manner; and section 11, for designing a glebe or churchyard, or the site of a church or manse; but while the same power now exercised by the presbytery is conferred also on the sheriff, there is one qualification as respects a decree of excambion, contained in the concluding paragraph of section 11, viz.: 'Provided also, that it shall not be competent for the sheriff to pronounce any decree of excambion unless it shall appear under the hand of the clerk of the presbytery of the bounds that the presbytery have given their consent to such excambion.'

After the completion of the works ordered for building, rebuilding, or repairing of any manse,—that is to say, works ordered by the sheriff, acting in consequence of the matter having been taken out of the hands of the presbytery,—section 12 provides that it shall be competent for any heritor of the parish to move the sheriff to declare it a 'free manse;' and it provides 'that if the sheriff shall be satisfied that the manse is in a state of thorough repair, he shall find and declare accordingly;' and the Act goes on to declare that this decree shall have the same force and effect as a decree in similar terms, pronounced by a presbytery before the passing of this Act, would have had; but a limitation is added as to time, not applicable to such a decree by a presbytery, viz.: 'Provided always, that such decree shall have effect only till the expiration of fifteen years from its date, or until the appointment of a new minister to the parish, whichever event shall first happen.'

After providing (section 13) that the sheriff may be required to make a personal inspection of the premises or locality in any of the cases which may be brought before him, and (section 14) that all orders, findings, etc., shall be final and conclusive, and not subject to review of any court whatsoever, unless an appeal shall be taken to the Lord Ordinary, the Act proceeds to regulate the procedure under such appeal, to which it does not fall within the scope of this work to advert. By section 15, the Lord Ordinary or the sheriff, as the case may be, is empowered to dispose of the question of expenses, and to grant decree therefor. Provision is made for the calling of meetings of heritors for any purpose whatsoever, section 22. [See page 169 for this section.]

Forms of petition to the sheriff after he has been called on to adjudicate in the above specified cases are not given; they may be substantially in the same form with the petitions, given above, addressed to the presbytery.

LETTING ON LEASE AND FEUING GLEBE LANDS.

Previous to 1866, it was not in the power of a minister to let any portion of the glebe on lease, except for the period of his own incumbency; nor to grant a feu of any portion thereof, even with the consent of the presbytery. There is a provision to this effect in the statute 1572, c. 48. 'It shall not be leasome to the ministers or heritors, present or to cum, to sell, annalie, set in feu on takkes, or put any in possession of the samin, in prejudice of their successours; bot the samin always to remain free to the use and easement of sik as sall be admitted to serve and minister at the said kirk.'

In the case of *Robertson v. the Duke of Athole and others* (18th May 1791, Bell's *Octavo Cases*, 235), the court found that a minister has no power to feu out his glebe; and in the case of *M'Callum v. Grant* (4th March 1826, 4 Shaw 527), it was decided that a minister was entitled, on his induction, to remove a tenant of part of the glebe, under a lease granted by a preceding incumbent, without a regular warning. By an Act passed, however, in that year, 29 and 30 Vict. c. 71, entitled 'An Act to facilitate the letting on lease, feuing, or selling glebe lands in Scotland,' power was granted, under certain reservations, to let on lease a portion of the glebe, and to feu the whole or any part thereof, or grant building leases thereon.

The 3d section of the Act provides that 'a minister may, with consent and approval of the heritors and the presbytery, grant a lease or leases of his glebe, or any part or parts thereof, reserving for the use of the minister not less than five imperial acres nearest and most convenient to the manse, which shall be marked out by the heritors and presbytery, for any term not exceeding eleven years, for such yearly rent or rents as shall be approved of by the heritors and the presbytery.'

The Act does not prescribe any form for obtaining this con-

sent of the presbytery; but the regular course would be for the minister, by petition, to notify his intention of leasing his glebe, with the above exception, and the sum to be paid as rent, and to request their consent and approval thereof. Having received such petition, the presbytery, if not certified of the consent of the heritors, and of the boundaries of the five acres as suggested by them, by documents accompanying the petition, intimating such consent, and describing such boundaries, should resolve, as a presbytery, or by a committee, to meet on a certain day, to be mutually determined, with the heritors of the parish, for the purpose of communicating with the heritors on the subject of said petition, determining on the bounds of the reserved five acres, and deciding whether the rent was a fair and adequate rent for the land to be leased. By thus meeting with the heritors, any difference of opinion on any of these points, which might cause delay if the two bodies acted separately, would be avoided.

The following might be the minute :—

145. *Minute of Presbytery on application of the Rev. A. B., to grant a Lease of a portion of his Glebe.*

(Place and date.)

The which day the presbytery of _____ being met and constituted. *Inter alia*, the presbytery had laid before them the petition of the Rev. A. B., for their consent and approval to his granting a lease to C. D., of the glebe possessed by him, as minister of the parish of E., at the yearly rent of £ _____ per acre, for the term of eleven years, reserving five imperial acres from said lease, adjacent to the manse (as per accompanying plan). The presbytery, considering that the consent of the heritors is also required, appoint the following committee to meet with them, or a committee of their body, on a convenient day, to inspect the said glebe, to report whether they are satisfied that the five acres reserved are nearest and most convenient to the manse, and whether the rent to be paid for the said land is, in their opinion, or in the opinion of competent persons submitted to them, a fair and adequate rent for the same.

Upon the report of this committee, the presbytery, at their next meeting, if satisfied, would simply record their approval of said report, and their consent and approval of said lease, and designation of reserved acres, and instruct said consent to be minuted in the lease, and certified by the signature of the moderator and clerk.

The 4th section of the Act enables the minister, with the consent as above of the presbytery and heritors, to sell or dispose of any servitude or right of pasturage possessed by him as minister of the parish, for such fixed annual payment in grain or money as may be agreed on. And further provides, that if the proprietor of the land over which such servitude exists, elects to purchase absolutely, the purchase money shall be invested at the sight of the heritors and presbytery, in such manner as the Court of Teinds shall desire, and the interest and proceeds only to be paid to the minister.

Detailed directions as to the manner of procedure in the case of a minister being desirous to feu his glebe are given in the Act.

‘Subject to the provisions of this Act, the minister,’ sect. 5, ‘may from time to time, with consent of the presbytery and of the heritors as hereinafter provided, make application to the court by summary petition for authority to feu his glebe, or any part thereof, or to grant building leases thereon for any term not exceeding ninety-nine years.’

‘Every such petition,’ sect. 9, ‘shall state the date of the petitioner’s induction to the parish, the amount of the stipend and other sources of emolument attached to the living, the extent of the parish, the population according to the immediately preceding census, the nature and extent of the glebe, the purpose of the proposed feuing or granting building leases, the expected rate of feu-duty or rent, and the grounds on which the petitioner submits that benefit will arise to the minister and his successors in office by authority to feu or lease being granted; and there shall be produced therewith the certificate of the presbytery and heritors, and the form of feu charter or building lease proposed to be adopted.’

‘Previous, however, to making such application,’ sect. 6, ‘the minister shall intimate his intention so to do to the presbytery,

by a letter addressed to the moderator, and shall transmit therewith a copy of the proposed application, which intimation and application shall be laid by the moderator before the presbytery at their first meeting after receiving the same; and if the presbytery are of opinion that it would be for the interests of the benefice that the glebe should be feued or let on building leases, they shall signify their consent to such application, subject to such conditions, if any, as they think necessary or advisable, by a certificate to that effect written on a copy of the proposed application, and signed by the moderator and clerk.'

The following may be the form of minute:—

(Place and date.)

The which day the presbytery of _____ being met and constituted. *Inter alia*, the moderator laid before them a letter from the Rev. A. B., minister of C., intimating that he desired to make application to the Court of Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, for authority to feu his glebe, or to grant building leases thereon for any term not exceeding ninety-nine years, along with a copy of the proposed application. The presbytery resolved to delay consideration of the said petition and application till their next ordinary meeting, and, in the meantime, appoint a committee to inquire into the statements in the said application, and to report thereon.

At the next meeting, if the committee shall report satisfactorily, the presbytery will resolve, 'that having had under their consideration letter of A. B., anent feuing his glebe, and copy of proposed application, and report of committee thereon as to the accuracy of the facts stated in said application, the presbytery are of opinion that it would be for the interest of the benefice that the glebe should be feued (or let on building leases) as proposed, and therefore resolve to give consent to said application, and instruct a certificate to that effect to be written on a copy of the proposed application, and signed by their moderator and clerk.'¹

The Act then provides, sections 7, 8, for the manner in which

¹ By the Act the power of the presbytery to consent depends on their being of opinion as above, and their opinion should therefore appear in the minute.

a meeting of heritors shall be called, with a view to their consent ; it being requisite for such consent that it be concurred in by two-thirds in value of the heritors of said parish.

The remaining sections relate mainly to the proceedings to be taken in court after the application shall have been lodged, along with the certificate of the presbytery and heritors, for which reference may be made to the Act itself, which is printed in the Appendix.

PROVISION FOR RAISING MONEY FOR ERECTING AND IMPROVING ECCLESIASTICAL BUILDINGS.

By an Act passed in 1862, 25 and 26 Vict. c. 58, entitled 'An Act to make further provision with respect to the raising of money for erecting and improving parochial buildings in Scotland,' it was provided that the money requisite for these purposes might be raised by annual assessments, extending over a limited period not exceeding ten years ; such annual assessments, for the period specified therein, to be imposed, levied, and recovered, on and from the heritors of the parish, in the same manner, and with the same liabilities and rights of relief, as assessments under the then existing Acts might be levied.

On the adoption of such resolution, it was declared lawful for the heritors to borrow the money required to defray the expenses incurred ; and, in security of the money so borrowed, and the interest thereof, to charge and assign the said annual assessments by a bond and assignation, signed by any two heritors, authorized to sign the same at the meeting at which it was resolved to borrow such money. In case of non-payment, the creditors to have the same rights and remedies for the recovery of the sums, principal and interest, due under such bond and assignation, as are competent to heritors under existing Acts, or any law for levying and recovering assessments for such purposes.

When there is only one heritor in a parish, the sheriff, on summary petition from said heritor, after ordering intimation of such petition to be given by advertisement, inserted once in each of two successive weeks in a county newspaper, or news-

paper generally circulated in the county, is authorized to grant warrant and authority to such heritor to raise the money so required by annual assessment as aforesaid, provision being made as above for the security of the creditors and repayment of the same. The money borrowed to be repaid by annual instalments of not less in any one year than one-tenth part of the principal sum borrowed, exclusive of interest.

In 1866, an Act was passed—29 and 30 Vict. c. 75—entitled ‘An Act to amend and explain the above Act,’ bearing that, ‘whereas doubts had arisen as to whether the power to borrow money under said recited Act applied to the purchase or acquisition of parochial buildings as defined in the Act: Be it therefore enacted, that the expressions “erection,” “improvement,” and “enlargement,” contained in the said recited Act, shall extend and apply to the purchase or acquisition of parochial buildings for the purposes of the said Act, and the improvement and enlargement thereof. . . . And the power to charge and assign the said annual assessments shall extend to, and include the price of, parochial buildings already erected, purchased, or to be purchased, for the purposes of the Act, and the ground attached thereto.’

For these Acts, see Appendix.

SCHOOLMASTERS AND SCHOOLS.

The system of parochial instruction in Scotland from the earliest period was connected with the National Church, and the schoolmasters were, in the words of the Act 1693, c. 22, ‘liable to the trial, judgment, and censure of the presbytery of the bounds for their sufficiency, qualifications, and deportment in the said office,’ on which Lord President Campbell remarked, in the case of *M’Culloch v. Allan*, that the jurisdiction of presbyteries over schools was fixed by the Act 1693, upon the foundation of a right existing long before, and added, the Act does not confer this right *ab initio*, but means to declare and regulate it. The minister of the parish was also associated, from a remote period, with the heritors in the local administration of the schools. The Act 1696, passed for establishing a school in every parish, provides, ‘That there be a school settled and

established in every parish not already provided, by advice of the heritors and minister of the parish.' It was at one time a subject of dispute whether the presbytery, in the jurisdiction thus conferred upon them, 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 in the case of manse, churches, and glebes. The question was settled by the Act 43 Geo. III. c. 54, which declared—1st, That the superintendence of schools shall continue with the ministers of the Established Church as heretofore; and, 2d, That in all matters regarding the qualifications, censure, suspension, and deprivation of schoolmasters the judgment of the presbytery shall be final, and shall not be reviewed or suspended by any court, civil or ecclesiastical.

In 1861, however, an Act was passed—24 and 25 Vict. c. 107—which, while making very grave and important changes in other respects, limited, and to a considerable extent abrogated, the jurisdiction of presbyteries. But that Act was supplementary. It does not repeal some of the essential provisions of the Act Geo. III. as to the appointment of schoolmasters; and the 23d section of it bears that nothing herein contained shall repeal, alter, or affect the provisions of the recited Act, viz. Act Geo. III., or of any other Act relating to parochial schools and schoolmasters in Scotland, excepting in so far only as shall be necessary to give effect to the provisions of this Act. In endeavouring to explain the existing state of the law regarding the appointment and examination of teachers, the requisite qualifications, the censure and deposition of schoolmasters, the duty of the minister, and the extent of the authority yet possessed by the presbyteries of the Church, it is necessary to bear in mind this supplemental character of the Act 24 and 25 Vict.

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. c. 54, sect. 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 lands within the parish, to the extent of at least £100 Scots of valued rent, appearing in the land-tax books of the county.' These parties must elect within six months (24 and 25 Vict. c. 107, sect. 16) 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.¹

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:—

¹ 43 Geo. III. c. 54, sects. 14 and 15.

146. *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, etc.), 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 proprietors of lands within the parish, of at least £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 Rev. 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 Rev. 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 Rev. 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 University Examining Board of the district.

This minute may either be signed by the preses in name of the meeting, or preferably by the whole persons present. Al-

though 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 examiners 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 a period extended from four to six months by the 16th section, Act 24 and 25 Vict., from the occurrence of the vacancy, the case must be taken up by the presbytery, who are authorized 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.

147. *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. c. 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 the said Act has been no further modified in this respect by the subsequent Act of 24 and 25 Vict. than that the right of the commissioners of supply to elect does not arise or accrue to them till six months after the vacancy.

That upwards of six 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 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, etc.

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 examiners, insert at (a), 'The person chosen by them at their meeting having been found unqualified by the examiners when they proceeded to examine him, conform to the intimation 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 six 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 8 and 9 Vict. c. 40, 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 months¹ 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.

By the 9th section of the Act 24 and 25 Vict. c. 107, the 16th section of the Act of Geo. III., which provides that the schoolmaster elected shall be examined and approved of by the presbytery, is repealed, and an examination by examiners appointed by the Universities comes in its place. The following is the provision of the Act as to the appointment of these examiners:—'(1.) It shall be the duty of the University Court of each University in Scotland, as soon as conveniently may be, and in no case later than two months after the passing of this

¹ The period of six months must here be understood as substituted for four months, in terms of the Act 24 and 25 Vict. already referred to.

Act, and thereafter from time to time, to appoint six persons to be examiners of parochial schoolmasters, three of such persons being professors in the Faculty of Arts, and three of such persons being professors in the Faculty of Divinity of the University. (2.) The persons so appointed shall continue to be examiners during two years from and after the date of their respective appointments, and until other persons shall have been in like manner appointed in their room; provided that it shall be lawful to the University Court to re-appoint all or any of the same persons to be such examiners, and to fill up from time to time any vacancy which may occur by the death, resignation, or disqualification of any of the examiners; and it shall be lawful to each of the persons so appointed to nominate as his deputy, with power to act as his substitute in case of his absence at any meeting of the examiners, any person who may have become a graduate in arts of the University not later than three years prior to such nomination; provided that such nomination shall be approved by the University Court, and also provided that the persons nominated by such examiners as are professors in the Faculty of Divinity shall be ministers or licentiates of the Church of Scotland.' Paragraph (3) refers to the regulations which the examiners are empowered to make, and to the publication of them. Paragraph (4) provides for the distribution of Scotland into four districts, each in connection with one of the Universities.

Following these regulations, the Act goes on to point out the course to be followed by the person elected in the following terms:—'(5.) Every person elected to be a parochial schoolmaster under the provisions of this and the said recited Act, and every person elected to be a schoolmaster under the provisions of the Act of the first and second years of the reign of Her Majesty, c. 87, shall, before his admission to the said office, and as a condition thereof, submit himself to the trial and examination of the examiners for the district to which the parish for which he has been elected appertains, as to his fitness and qualifications for the duties of the said office; and being found qualified, the said examiners shall furnish to him a certificate to that effect subscribed by them or by a majority of their number, which certificate shall be conclusive evidence

that he has passed the requisite examination, and been found qualified for the said office ; and the examiners shall have power, with consent of the Committee of the Privy Council on Education, to require the attendance at any such examination, for the purpose of assisting therein, of one of Her Majesty's Inspectors of Schools.'

It is provided by section 12 of the Act, 'That, from and after the passing of this Act, it shall not be necessary for a schoolmaster, or for any person elected a schoolmaster of any parochial school, or of any school under the provisions of the Act of the first and second years of the reign of Her Majesty, c. 87, to profess or subscribe the Confession of Faith or the formula of the Church of Scotland, or to profess that he will submit himself to the government and discipline thereof.'

In lieu of such signature and profession, the Act [sect. 12] requires, 'That every person elected a schoolmaster of any such school shall, as a condition of the office and before admission thereto, produce before the Principal of the University in which he has been examined, or, in case of his absence or inability to act, before one or other of the professors in the Faculty of Divinity of the said University, an extract or certified copy of his minutes of election, together with his certificate of qualification by the examiners, and shall, in the presence of the Principal or of such professor, emit and subscribe the following declaration :—

' I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, that as schoolmaster of the parochial school at in the parish of , and in the discharge of the said office, I will never endeavour, directly or indirectly, to teach or inculcate any opinions opposed to the divine authority of the Holy Scriptures, or to the doctrines contained in the Shorter Catechism agreed upon by the Assembly of Divines at Westminster, and approved by the General Assembly of the Church of Scotland, in the year one thousand six hundred and forty-eight ; and that I will faithfully conform thereto in my teaching of the said school, and that I will not exercise the functions of the said office to the prejudice or subversion of the Church of Scotland as by law established, or the doctrines and privileges thereof.'

The person elected to be schoolmaster having made such productions and declarations, shall be furnished with an attestation to that effect, subscribed by the said Principal or professor, which attestation shall complete his right to the emoluments. In the event of the person so elected not being found qualified by the examiners, intimation to that effect must be made by them to the electing body. By Act Geo. III. it is provided, that if the schoolmaster is rejected by the presbytery, or their examining body, 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 then remained unexpired of the four months and thirty days at the time of their former election. The inference is, though it is not stated in the new Act, that the procedure is to be the same in case of a rejection by the new examiners, substituting only six months for the former period of four months.

A new provision in reference to the election of a schoolmaster is made by this Act (24 and 25 Vict. c. 107)—viz. that the electors, instead of electing some one person to the vacant office, may choose two or three persons to be tried by the examiners, who shall make trial of their comparative fitness and qualifications, and determine which of them is the best qualified and most fit for the school, with reference to which they have been chosen. The person so selected by the examiners then goes through the steps above noted, and having produced the required evidence of having done so, becomes entitled to the office.

II.—CENSURE AND DEPOSITION OF SCHOOLMASTER.

By the Act 43 Geo. III. c. 54, it is provided that on a complaint from the heritors, ministers, 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, being 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. It will be observed that there are three grounds for sentence of censure, of suspension, or of deprivation stated above, to be cognosed on by the presbytery :

1st, Neglect of duty from engaging in other occupations, or from any other cause.

2d, Immoral conduct.

3d, Cruel and improper treatment of the scholars under his charge.

The Act 24 and 25 Vict. c. 107, repeals the above enactment so far as regards the two last particulars—viz. immoral conduct, or cruel and improper treatment of the scholars under his charge, and in lieu thereof enacts as follows:—‘ It is hereby enacted, that it shall be lawful to the heritors and ministers, or the clerk of the presbytery of the bounds by the authority of the said presbytery given on the application of the heritors and minister, or of any six heads of families in the parish whose children are attending the school, to make a complaint in writing to the sheriff of the county in which the school is situate, charging the schoolmaster with immoral conduct, or cruel and improper treatment of the scholars under his charge, and specifying in such complaint the particular acts in respect of which the complaint is made ; and a copy of such complaint shall be served upon the schoolmaster, who shall be required, on an induciæ of fourteen days, to appear before the sheriff, by himself or his agent, to answer to the said complaint ; and the schoolmaster accused shall, if he deny the charge, if he think fit, answer the particulars of the complaint, such answer to be in writing, and to be lodged within the said fourteen days, or may, when the cause comes to be tried, state his plea to be not guilty ; and the sheriff shall thereafter proceed to the trial of the complaint, and take the evidence in the same way as, and under the same rules as, those which are in force in the sheriff court in regard to process in civil causes ; and in the event that he shall find such complaint or any material and relevant part thereof to be proved, the sheriff shall give judgment accordingly, and shall pass such sentence of censure, suspension, or deprivation, as in his opinion the case requires, which sentence shall be final and not subject to

review, and shall have all the effects consequent before the passing of this Act on any similar sentence of any presbytery under the provisions of the last recited section of the said Act, and no sentence of censure, suspension, or deprivation otherwise pronounced on such charges shall be valid or effectual: Provided always, that where sentence of suspension shall be pronounced, the salary of the schoolmaster in respect of his office shall cease and determine from the date of such sentence until the next term of Whitsunday or Martinmas following the expiration of the term of suspension specified in such sentence, and the salary accruing during the said period shall be applied by the heritors and minister towards providing a substitute for such schoolmaster during the period of the suspension.'

So far as the above section is concerned, the provision would remain in force that the presbytery is the court to decide upon a complaint for neglect of duty; but their jurisdiction in such a case may appear to be superseded by the 19th sect. of 24 and 25 Vict. In that section it is provided that when the schoolmaster of any parish is disqualified because of infirmity or old age for the due performance of the duties of his office, or that, from negligence or inattention,—which may be considered as equivalent expressions for neglect of duty,—or from engaging in other occupations, he has failed efficiently to discharge such duties, it shall be lawful to the heritors and minister, at any meeting called and held as aforesaid, to permit or require such schoolmaster to resign his said office, and in case of his refusal so to do, to dismiss or suspend such schoolmaster, and, when necessary, to declare the school vacant. But while the act of dismissing or suspending is thus transferred to the minister and heritors, they must be certified of the disqualification on which it proceeds, by a report of one of Her Majesty's Inspectors of Schools, made on the application of the heritors of the parish, and concurred in by the presbytery of the bounds.

With regard to the two other charges,—immoral conduct, and cruel and improper treatment,—the parties by whom the complaint to the sheriff is to be made are either the heritors and minister, or the clerk of the presbytery of the bounds, by authority of the said presbytery; such authority being given by them on an application to them by the heritors and

minister, or by any six heads of families in the parish whose children are attending school ; that is, the heritors and minister may either make a complaint directly to the sheriff, or may apply to the presbytery to make such complaint. Heads of families must make their application to the presbytery.

It would appear from the wording of the statute, that in the event of such application being made to them, the presbytery act merely *ministerially*, and are not called on to consider judicially whether, in their opinion, there is sufficient ground for making the complaint. Their minute will therefore run as follows:—

148. *Minute of Presbytery respecting complaint against a Schoolmaster for Immoral Conduct or Improper Treatment of Children.*

(Place and date.)

The which day the presbytery being met and constituted, compeared the Rev. A. B., minister of the parish of C., and stated that he had been instructed by the heritors of the said parish to bring under the notice of the presbytery the conduct of E. F., schoolmaster of the said parish : That it had been represented to the said minister and heritors that the said E. F. had been guilty of immoral conduct, or cruel treatment of scholars (as the case may be), in respect that [here specify the offence, if the charge is immoral conduct, and then, in either case, the particular acts] : That the said heritors therefore prayed that the presbytery would bring the said charges under the notice of the sheriff, as the Act directs, with a view to the investigation of the same. The presbytery having heard the said statement, instruct the clerk to make a complaint to the sheriff in writing, intimating the charge now made against the said A. B., schoolmaster of C., and specifying the particular acts in respect of which the complaint is made.

If the application is made by six heads of families, the minute will bear their names instead of that of the minister.

After pointing out the course to be followed by the sheriff on hearing such complaint, and enacting that his sentence shall be final, and not subject to revision, and shall have all the effects consequent, before the passing of this Act, on any similar sentence of any presbytery, the Act proceeds: 'And no sentence of censure, suspension, or deprivation, otherwise pronounced on such charges, shall be valid or effectual;'—the qualification here must be observed—the Act does not confer on the sheriff exclusively the right of pronouncing such sentences, but only the exclusive right of pronouncing them on charges of immorality or cruelty.

A schoolmaster, by the 13th section of the Act, is liable to censure, suspension, or deprivation, for contravention of the declaration to be taken in lieu of the signature to the Confession of Faith. The section declares that it shall be competent for the presbytery of the bounds, or for the heritors, when they shall see cause for instituting proceedings on this ground, to present a complaint to one of Her Majesty's Secretaries of State against such schoolmaster. It shall be lawful, thereupon, to appoint a commission to inquire into the said charge, and to censure, suspend, or deprive such schoolmaster, as they shall find to be just; it being provided that no such sentence shall take effect until it has been confirmed and approved of by such Secretary of State.

By the 20th section of the Act 43 Geo. III. c. 54, it is enacted, 'That as often as presbyteries, in the course of their visitation, shall find anything 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.' This section has not been repealed by 24 and 25 Vict. c. 107; and although a presbytery would certainly not be warranted in interfering, unless there was something exceptionally objectionable in the arrangement of the hours of teaching, or of the length of the vacation, their power

to do so appears to be indisputable, and the right to visit contempt of their authority by censure, suspension, or deprivation, still remains to them.

III.—REGULATION OF SCHOOLS.

It rests with the heritors¹ 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, sect. 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 schoolroom: 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 superintendence of the ministers of the Church over all schools, which has existed since the establishment of Presbytery in Scotland, is expressly recognised in the Act 43 Geo. III. c. 54, sect. 19, and is continued to them: '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.' And the next section adverts to the manner in which this superintendence is to be exercised—viz., by visitation of the presbytery—in the words, sect. 20: 'And be it enacted, that as often as presbyteries, in the course of their visitation, shall find anything wrong with respect to the hours of teaching,' etc.

These clauses are not repealed in the Act 24 and 25 Vict. c. 107; and different provisions of that Act evidently imply the

¹ At all meetings of those parties, the heritors may vote by proxy.

continued right of supervision, and the exercise of it by visitation of the schools. Thus (1.) The clerk of the presbytery of the bounds, by the authority of the presbytery, is entitled, on application of the heritors or ministers or of any six heads of families, to make complaint in writing to the sheriff of the county, as to the immoral conduct, or cruel and improper treatment of the children by schoolmaster, implying the right of superintendence. (2.) It is declared to be competent for the presbytery of the bounds, whensoever they shall see cause for instituting proceedings against the schoolmaster of any parish for contravention of the Declaration, to present a complaint, etc.—the expression when they see cause, implying inspection and stated examination of the school. (3.) In a case of alleged disqualification, the report of one of Her Majesty's Inspectors to that effect must be concurred in by the presbytery of the bounds, this provision equally implying their subsisting right of admission to and examination of the school. The annual visitations of parish schools by presbyteries have accordingly not been discontinued under this Act, but are stately and regularly carried out through the Church.

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 are given in the form of answers to a schedule of queries, which is transmitted to presbyteries by the General Assembly's Education Committee, and of which the following is a specimen:—

ANNUAL REPORT BY THE PRESBYTERY OF _____, ON THE STATE OF SCHOOLS WITHIN ITS BOUNDS, EXAMINED BY PRESBYTERY, OR COMMITTEE OF PRESBYTERY, IN THE YEAR 1869.

The Presbytery Clerk is particularly requested to transmit this Schedule, filled up, to the Secretary of the Education Committee, on or before the FIRST OF MAY.

Parochial.	Assem- bly.	Subscription.		G. K. Society.	Endowed. ¹			Denominational (Dissenting).	Adven- ture Schoo- ls. ²	Others.	TOTAL.
		Supported by Kirk-Session, or Seasonal.	Supported by Sub- scription in connec- tion with church of Scotland.		By Heritors during their lifetime.	By Mortified funds, or from other sources.	In connec- tion with Public Works.				
Mixed.											
Female.											

Total Number of Schools of all kinds within the Presbytery Bounds. . . .
N.B.—Total No., whether examined or not, and whatever their ecclesiastical connection may be.

¹ This excludes Schools which are Burgh, Parochial, Assembly, Christian Knowledge Society, or Subscription
² In which nothing is taught but Sewing and Cutting-out.

SCHOOLS EXAMINED.

	INSTRUCTION—NUMBER ON THE ROLL AT THE TIME OF EXAMINATION, LEARNING BRANCHES.													Number of Scholars on the Roll at the time of Examination.	Number of Scholars present on the day of Examination.	Number of Scholars attending Schools examined, for what ever length of time, in course of the year, ending at the time of the Examination.	Number of Schools.			
	Reading.	Writing.	Arithmetic.	English Grammar.	Geography.	Latin.	Greek.	French.	German.	Geometry.	Practical Mathematics.	Algebra.	Singing from notation.					Drawing.	Sewing and Shaping.	
I. PAROCHIAL SCHOOLS—																				
(a) Male,																				
(b) Female (i.e., taught by Mistresses in a separate room or building, and supported by Assess- ment of the Heritors), .																				
Total Parochial,																				

II. NON-PAROCHIAL—	
1. Burgh,	
2. Assembly,	
3. Subscription,	
4. Sessional,	
5. Christian Knowledge Society,	
6. Endowed,	
7. Public Works,	
8. Denominational (Dis-senting),	
9. Adventure,	
10. Others,	
TOTAL, Non-Parochial only,	

LENGTH OF ATTENDANCE.

I. PAROCHIAL—

1. Number who have attended for *more* than 100 and less than 180 days,
2. Number who have attended for 180 days and more,

II. NON-PAROCHIAL—

1. Number who have attended for *more* than 100 and less than 180 days,
 2. Number who have attended for 180 days and more,
-

Number of Schools within the Presbytery bounds not examined—

1. Parochial schools *not* examined,
 2. Non-parochial schools *not* examined,
-

Total,

3. Probable average attendance at the schools *not* examined,

GENERAL QUERIES.—PAROCHIAL SCHOOLS.

1. Are the Scriptures daily read in all the parish schools?—are the schools opened and closed with prayer, and other means of religious instruction employed?
 2. Specify the parochial teachers appointed during the year.
 3. Do any of the parochial teachers hold Government certificates of merit, and do the schools receive grants from the Committee of Council? If any, name the schools which they teach.
 4. Are assistants or substitutes employed by any of the parochial teachers;—if so, on what account—how remunerated—by whom appointed—and how have their qualifications been tried?
 5. How many pupil-teachers are employed in the parochial schools within the presbytery bounds?
-

6. Have any of the parochial schools been vacant during the year beyond the usual term of vacation—and from what cause ?
7. Are accommodations of the extent required by law provided for the parish schools and masters ? Specify in what respects the provision may happen to be deficient. What is the state of the school furniture generally ?
8. How many female *parochial* schools are there within the presbytery bounds held in rooms or buildings separate from the male schools, and in which other than purely industrial subjects are taught ? (*That is to say, female schools for which the heritors assess themselves under the Parochial Schools Act. See Question I. (b.)*)
9. If there be no female schools of the class described in query 8, how many *sewing departments* are there (in connection with the *male* parochial school) for which the heritors assess themselves under the Act ?

NON-PAROCHIAL SCHOOLS.

10. What, in general, is the state or description of the accommodation provided for the non-parochial schools ? What is the state of the school furniture ?
11. Are there any of these schools in which due attention is not paid to religious instruction ?
12. How many pupil-teachers are there in the non-parochial schools ?
13. How many *separate*¹ female schools (*non-parochial*) are there within the presbytery bounds ? Please to state the *number* of these, and the industrial subjects taught in them.
14. How many sewing departments or sewing schools are there (*non-parochial*) ?
15. How many of the teachers whose schools were examined do *not* belong to the Established Church ?
16. How many of the schools *not* examined are taught by teachers belonging to the Church of Scotland ?

¹ That is, held in separate buildings from the mixed schools.

PROCEEDINGS CONNECTED WITH PROCESSES OF
ADHERENCE.

These proceedings are now superseded by the Act 24 and 25 Vict. c. 86, to amend the law respecting conjugal rights in Scotland, by which, sect. 11, it is enacted, 'That it shall not be necessary, prior to any action for divorce, to institute against the defender any action of adherence, nor to charge the defender to adhere to the pursuer, nor to denounce the defender, nor to apply to the presbytery of the bounds, or any other judicatory, to admonish the defender to adhere.'

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. c. 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:—

149. *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.

150. *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:—

151. *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:—

152. *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, etc. (*as in the first example, with the following addition*); and also intimating that his present stipend amounted to £ , and that he intended to crave under the said action an augmentation to the extent of £ .

A., Clerk of the Presbytery of L.

It is further 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 *induciae* 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 Parliament 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.¹

¹ Erskine, b. ii. tit. 10, § 54.

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 :—

153. *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 :—

154. *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 Jus- }
tices 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,¹ then the ministers in the order of their ordination; and, last, the ruling elders. After this, the proceedings in the order in which they took place, the day to which they adjourn,² and conclusion with prayer. Signed by the moderator and clerk.

The commencement of the minute will run as follows :—

155. *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.

¹ 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, or, in his absence, by the oldest minister present; 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.

² The day to which the presbytery adjourns for their next meeting should always be mentioned in the minutes. Considerable difference of opinion formerly existed as to the manner of appointing a meeting of presbytery when this had been neglected; but this is now set at rest by Act x. Ass. 1863. It is there enacted: 'That when, from any cause, it shall happen that there is no day fixed on which the next meeting of presbytery is to be held, it shall be competent for any three or more of its members to address a requisition to the moderator, to call a meeting of the whole members of presbytery, on a day not less than ten or more than fifteen days from the date of such requisition, by circular letters addressed to every member on the roll of the presbytery at its last meeting, for the purpose of naming a day on which the presbytery shall meet and proceed with ordinary business; with which requisition he shall comply; and that if a quorum shall assemble on such day, it shall be competent for them then to fix a day for the next ordinary meeting.'

The minutes of last meeting were read, etc.

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. 83). 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 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.

156. *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, etc.

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, 1st, 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, to give due notice to the members;¹ 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, etc., 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 by the clerk.

¹ Not necessarily ten free days. To require this might in some cases defeat the very object for which the meeting is called.

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 least¹ forty

¹ In the printed forms of commissions it is stated, 'that the election 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

days before the meeting of Assembly, 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. It has, however, been decided by the General Assembly with respect to the ten free days, that a commission is good although the election fell on the tenth day after the resolution.—(Resolution, 24th March, Election, 3d of April, Assembly 1818, sess. 3.)

With respect to the presbyteries of the Northern and Western Isles, it is enacted by Ass. 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. If, however, a presbytery or kirk-session refuse attestation to a commission from a burgh or university without assigning reasons, the commission shall be sustained as if duly attested, in case the matter shall be brought before the Assembly by protest or appeal. The forms enjoined by the said Act are as follows: ¹—

157. *Form of Commission by Presbyteries.*

At A., the day of one thousand eight hundred
and years. The which day, the presbytery of A. being

showing that 'a month,' as stated in the Act, and not *thirty* days, as implied in the printed form, is the *legal* time.

¹ 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.

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 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.

158. *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.

159. *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.

160. *Attestation of Commission from Universities.*¹

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; (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.

161. *Attestation of Commission from Burghs.*²

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

¹ For Form of a Commission from a University, see Appendix.

² For Form of a Commission from a Burgh, see do.

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, 4th Act of Assembly 1720, and 4th Act 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.

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 amongst 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.'—(See *supra*, p. 33.)

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.

162. *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 :—

163. *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*¹ elder
in the congregation of .

, Moderator.

, Clerk.

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. Ass. 1848, presbyteries are instructed to transmit to the ministers within their bounds; but it is believed that this instruction is rarely acted on, the information it contemplates being easily accessible or otherwise obtained, by returns to presbyteries and synods respecting Sabbath schools and collections for the schemes.

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

¹ 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.

its registers be exact and well kept, do require all provincial synods and presbyteries to be careful in revising 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:—

164. *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 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:—

165. *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 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 ; 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.

It is not necessary to give a form of entry when a licentiate

is inducted and ordained, the omissions to be made in that case in the above form being obvious.

166. *Attestation by Presbytery of Minister's Marriage, etc.*

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, etc., *ut supra*.

That A. B., daughter (or M. N., wife) of the above-mentioned F. G., died on the day of , as attested, etc.

167. *Attestation by Presbytery of Minister's Death, etc.*

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:—

168. *Presbytery of Report to the Trustees of the Ministers', etc., 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,

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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.	2.	3.	4.	5.
Names of the Ministers.	Former Presbyteries.	Former Parishes.	Present Parishes.	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.	2.	3.	4.	5.	6.
Names of the Ministers.	Parishes.	Dates of their Admission.	Age, viz., Forty years, or under.	Bachelors, or Married.	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.	2.	3.	4.	5.	6.	7.	8.
Names of the last incumbents.	Names of the ordained Assistants.	Parishes.	Causes of their coming to the full Benefice.	Time when.	Age at said time, Forty years or under.	Bachelors or Married.	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.	2.	3.		4.
		Parishes.	Presbyteries.	
Names of the Ministers.	Late Parishes.	Places to which they were translated, viz.		Time of their admission to New Parishes.

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.	2.	3.	4.	5.
Names of the Ministers.	Present or late Parishes.	Presbyteries of which they are or were members.	Dates of their respective Marriages.	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.	2.	3.	4.	5.	6.	7.
Names of the Ministers.	Late Parishes.	Late Presbyteries.	Time of their death.	Names of their Widow.	Names and ages of their children.	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.	2.	3.	4.	5.	6.
Names of the Parishes.	Names of last Incumbents.	Dates of the Vacancies.	Time when the Vacancy was intimated to the Collector and Heritors.	Causes of the Vacancies.	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.	2.	3.	4.
Names of the Ministers.	Present or late Parishes.	Present or late Presbyteries.	Bachelors, Married, or Widowers.

II. CONTRIBUTORS RESIDING WITHIN, BUT NOT MEMBERS OF, THE PRESBYTERY.

It is requested that the names of 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.

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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.	2.	3.	4.	5.	6.
Names of the Widows.	Relicts of	Late Ministers or Professors of	In the Presbyteries or Universities of	Time when the Widows died.	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 Husband's 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 Vict., 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 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 connection 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.]

169. (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 _____, do hereby, in terms of the statutes regulating the Fund for a provision for the Widows and Children of the Ministers of the Church, and Professors in the Universities, of Scotland, give notice to the trustees under the said Acts, that I make choice of the yearly rate of _____.¹ In witness thereof, I have written and subscribed these presents, at _____, the _____ day of _____, one thousand eight hundred and _____ years.

To be signed by Minister or Professor.

When the contributor has been an ordained assistant and successor, the notification should run thus:—

170. (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 terms of (as in preceding Form.)

¹ 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. The widows' annuities corresponding to the above rates are £22, £30, £38, and £46.

The provisions to families when no widow is left, are £100, £150, £200, £250. These provisions to families (which can never be increased or diminished, and which are payable out of the old or original fund) are in exact proportion to the annual rates. The annuities to the widows were originally in the same proportion, but are not so now, having been increased, as they may be again, out of the new or supplementary fund. The augmentations from that fund are the same to all classes of annuitants, because all classes of contributors have an equal interest in the sources of it, and contribute the same amount to it at their entry.

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 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 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.

171. (3.) *Form of a Certificate to be granted in favour of an Annuitant to enable her to obtain her Annuity.*

At _____, the _____ day of _____, one thousand eight hundred and _____ years, after twelve o'clock noon.¹ Which day, _____ widow of _____, late minister² of _____, within the presbytery of _____, presently residing in the parish of _____, in the presbytery of _____, did compear before me,³ and declared, that she has continued a widow since the death of her said husband. I therefore hereby certify that the said _____ is alive, and, to the best of my knowledge, has remained unmarried since the death of her said husband. In testimony whereof, I have subscribed this certificate, place and date foresaid.

4

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 con-

¹ The annuities are not due till 26th May, and the certificate must be dated on or after that day. If *on* that day, the certificate must not be granted till after twelve o'clock noon. If on a subsequent day, the words 'after twelve o'clock noon' may be deleted.

² In the event of the annuitant being the widow of a professor, the word 'professor' to be substituted for 'minister,' and in the next line 'university' for 'presbytery.'

³ The certificate may be granted either by a clergyman of the Established Church of Scotland, or of England, or by a Justice of the Peace. If granted by a clergyman, he should be the clergyman of the parish in which the annuitant resides, and this blank will be filled up thus:—'the minister of the parish of _____.' In the event, however, of that parish being vacant, or the minister of it absent, the certificate may be signed by a neighbouring parish minister, who will insert the name of his own parish, adding, 'the parish of _____ being vacant,' or 'the minister of the parish of _____ being absent,' as the case may be. Should the certificate be granted by a Justice of the Peace, the blank will be filled up thus:—'one of Her Majesty's Justices of the Peace for the county (or *city*, as the case may be) of _____.'

⁴ The clergyman, or Justice of the Peace, will sign here.

tributors 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.

172. (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:—

173. *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 .

174. *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, etc.

Inter alia,

(Here take in the proceedings of the second meeting, Style No. 174.)

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*, ch. vi., and already noticed at p. 23 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 follow-

ing is given as the form of a minute of presbytery in regard to those matters:—

175. *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 further 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. 29, 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.

176. *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. 29, 30.

XI.—OVERTURES TRANSMITTED BY THE ASSEMBLY.

In terms of the Barrier Act,¹ no new law can be enacted by the General Assembly, nor can any 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 approved by a majority of the supreme court, the Assembly transmit an overture on the subject to the several presbyteries, who are instructed to consider the same, and send up their opinions thereon to the next General Assembly.

It is the duty of presbyteries to attend to this instruction of

¹ See page 290.

the Assembly ; and the object of the Assembly will be most surely accomplished 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. Nothing ought to be more carefully avoided than a hasty expression of opinion on any overture transmitted. When doubt exists as to the expediency of new legislation, it is better that a presbytery should express no opinion at all than rashly commit itself ; the great object of the Barrier Act is to prevent hasty legislation, to which, at times, all popular assemblies are prone, by affording, through this appeal to the presbyteries of the Church, time for deliberate consideration ; and when, notwithstanding the instruction of the Assembly, a large number of presbyteries give no return to an overture transmitted to them, unquestionably that ought to be considered by the Assembly a significant indication that it was not a general feeling that legislation was called for on the subject to which such overture referred.

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.

S Y N O D.

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.¹ 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. But it has been decided that the synod cannot move a question respecting a private party, the decision on which not being appealed from, or complained against in the presbytery, has become final. (*Case of Littlejohn*, Ass. 1811, sess. 4.) The synod has no legislative power, and any instructions issued to presbyteries implying such power, not warranted by the definition of the synod's duty with respect to presbyteries, contained in Act iv. Ass. 1713 (see under head of General Assembly—Synod and Com. Records, p. 284), are *ultra vires*. As it is competent for a presbytery, so also is it for a synod, to transmit an overture on any subject to the supreme court.

I.—COMMISSIONS, ETC.

177. *Form of a Commission to Corresponding Members.*

At _____, the _____ day of _____ one thousand eight hundred
and _____. Which day and place the synod of _____

¹ The times and places of meeting of the various synods will be found at page 54.

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 :—

178. *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 appointed, 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 :—

179. *Petition to Committee for the Transmission of an Overture.*¹

Unto the Committee on Overtures, etc., appointed by the synod
of the petition of A. B., minister of C.

Humbly sheweth,—

That your petitioner herewith presents an overture regard-
ing (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, etc.,

A. B.

180. *Petition to Committee for Transmission of an Appeal.*

Unto the Committee appointed by the Reverend the Synod
of , for Bills, References, Appeals, etc., 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 pro-
ceedings to which they refer, in 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, etc.,

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.

181. *Report of the Committee on Bills, Overtures, etc.*

The committee having met, and been duly constituted with
prayer, by the Reverend in the chair; the following

¹ It is believed that the general practice of this committee is to receive over-
tures without any accompanying petition.

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 records¹ 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 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 :—

182. *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 :—

183. *Minute appointing Errors to be Corrected.*

Having heard the report of the committee, bearing that (here

¹ The records which ought to be brought up to the synod are the Minute-Book of Presbytery, and the Separate Register.

JUDGMENT ON REPORT REGARDING STUDENTS. 273

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 xiv. Ass. 1863, declaratory of, and consolidating the Acts in regard to, licensing of students, it is provided, ch. ii. sec. iii. par. 7, 'That, if after these preliminary steps have been taken [*i.e.* 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, ch. ii. sec. vi., '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 :—

184. *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 14th Act of Assembly, 1863, 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 _____ authorize 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 at its second meeting proceeds to consider the different overtures, etc., 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, etc.), 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 judg-

ment 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. 29, 30 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:—

185. *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, etc.

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.

186. *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, etc., etc.¹

The following members were appointed a committee to revise

¹ It is not to be understood that the appointment of correspondents, etc., is *necessarily* the last business transacted by synods before the close of their sederunts.

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.

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'night. It is composed of representatives from presbyteries, royal burghs, universities, the Scottish Church in India and at Campvere. There are sixteen synods, eighty-four presbyteries, and eleven hundred and one ministers¹ of parishes, besides ministers of chapels of ease, etc., connected with the Church of Scotland.

At 1st May 1869 the Church was thus constituted—

Original Parishes,	924
Parliamentary Churches erected into Parishes,	37
New Endowed Parishes,	140
Chapels,	145
Preaching Stations,	33
Mission Stations,	17
	<hr/>
Total,	1296

¹ 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 eldership is a spiritual function as is the ministrie.' James Melville writes: 'He (Adanson) 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 vainglory, 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 in the points of Ruling Elders, and of the authority of Presbyteries and Synods*, by G. Gillespie. Edinburgh, 1641.

The Court, in 1869, was composed of—

Ministers,	233
Presbytery Elders,	101
Burgh Elders,	60
Representatives of Universities,	4
Church in India,	2
Campvere,	0
	<hr/>
	400

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, if transmitted in time to admit of it, are, before the meeting of Assembly, submitted by the agent to a committee, composed of the procurator, clerks, and agent, who are to consider the same in so far as relates to their regularity in point of form, and report thereon to the Assembly at their first diet. Commissions reported by this committee as defective, or which are objected to by any parties having interest, are remitted to a committee of nine members nominated by the Assembly—three to be a quorum—to which committee parties concerned in the objected or disputed commissions, shall be entitled, if they please, each to add one member, as nominee for their own particular case, the committee to report to next diet of Assembly. Commissions produced on subsequent occasions are read to the Assembly on the morning following their production, and either disposed of at once, or remitted to the same committee, as the case may seem to require. It is competent to produce commissions at any period during the sitting of the Assembly.

‘On the day appointed for the meeting of the 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.'¹ The Lord High Commissioner, appointed to represent the Royal Person in the General Assembly, then presents his commission and the letter from the Sovereign, which, after permission is obtained, are read by the clerk of the 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 members 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

¹ Dr. Hill's *Practice in Church Courts*.

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, etc., 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.

187. *Petition to the 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., relative 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.

188. *Petition to the Committee of Bills by a Respondent.*

Unto the Reverend the Committee of Bills of the Venerable
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 As-
sembly, 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. 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 'Trans-
mit' 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 proceed-
ings 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 encroach-
ing, 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, aye and whiles some meanes be provided, whereby the clerks' charges may be sustained for coming with the said books themselves, and that under 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 send up synod books is likewise strictly enjoined by Ass. 1802, 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 examiners, called 'visitors' of the synod books. These examiners 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 into 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 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 in 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 in to an account, and if their excuses be either approven or disapproven, as is enjoined by the 11th Act of General Assembly 1712.

6. ' If synods inquire concerning presbyteries holding parochial visitations, and ministers visiting of families, according to Act xvi. General Assembly 1766. 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 8th Act General Assembly 1707, etc.

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 1719, etc.

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.'¹

A few additional directions are also given by Act v. Ass. 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 everything 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.

¹ The most of these Acts will be found in the Appendix.

189. *Attestation of Synod Books.*

The General Assembly having heard the report from the Rev. A. B., and C. D., and 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 for making a new general law, or of repealing 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.¹

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:—

190. (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:—

¹ Hill's *View of the Constitution*, p. 66.

‘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 exclusively to 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 overtured 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) WILLIAM LILLIE, Pres.-Clerk.

191. (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.

192. (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 cumbersome 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. 25th, 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. 8th, 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 presby-

teries 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 forty-three 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;¹ 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 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.'²

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

¹ Assemblies 1711, 1719, 1731, 1737, 1739, 1742, etc.

² Hill's *View*, pp. 110, 111, 112, etc., for much interesting information on this subject.

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 to hear only one member of the judicatory; but this is discretionary, as an appeal against the judgment of an inferior court sists every member of it as a party or respondent at the bar of the superior courts. In one case it was decided by the Assembly, that when a committee of presbytery appeared at the bar of the synod in support of their judgment, against which a complaint had been taken, an individual member of presbytery was also entitled, in respect of his special connection with the subject of the judgment, to be heard in support of it, although he was not a party in the presbytery.—(*Whitsome Case*, 1852, sess. 5.)

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, 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, *May 30, 1859. Sess. ult.*

THE General Assembly called for the report of the Committee on Standing Orders, and approved of the same; and declare and enact that in future the following shall be observed as the Standing Orders for regulating the business of the house:—

1. *As to the Commissions of Parties elected as Members of Assembly.*

1. All commissions to members of an ensuing Assembly shall be transmitted, by the parties elected, to the agent for the Church, as soon as conveniently may be after the date of election, and not later than the second Thursday in the month of May in which such Assembly is to meet; and the agent shall, on a day not later than three days previous to the first day on which the Assembly meets, submit all commissions so transmitted to him, to the procurator and clerks of the Assembly, who, along with the agent, shall constitute a Standing Committee,—of which the agent shall be convener,—for examination of commissions transmitted to the agent as aforesaid; and the said committee shall, by their convener, report to the Assembly, at its first diet, how far the said commissions appear to be regular and according to law and practice, and whether any of the same be, in these respects, defective.

2. Along with commissions in favour of ruling elders, there shall be transmitted to the agent the certificate required by the Act of Assembly 1839, c. 12, anent the qualification of representative elders.

3. All commissions reported by the agent's committee to be defective, or which, on the report of the said committee, shall be objected to by any party having interest, or by any member of Assembly, shall be remitted by the Assembly to a committee of nine of its members, of whom three shall be a quorum; and the committee of Assembly shall report upon the said commis-

sions, to the diet of Assembly held next after the date of the appointment of the said committee.

4. It shall be competent to lodge with the agent for the Church, commissions which have not been previously transmitted to him, in terms of section 1, *supra*, at any period during the sitting of the Assembly; and such commissions shall be submitted by the agent to the Assembly at their meeting on the day next after the day on which the commissions shall have been so lodged, and shall either be disposed of by the Assembly at once, or be remitted to their Committee on Disputed Commissions, as to the Assembly shall seem proper.

5. The Committee on Disputed Commissions shall, if called upon, or if it shall appear to the committee necessary or expedient so to do, hear the party whose commission is objected to, by himself or by his counsel or agent, in support of his commission; and also any party or parties who may object to such commission.

2. As to constituting the Assembly, and the appointment of, and procedure before, the Committees for Despatch of Business.

6. The commissioners elected to serve in the Assembly shall convene in the Assembly Hall on the day fixed for the meeting of Assembly, at the usual hour, and after sermon, according to the present practice,—when, after prayer by the moderator of the last preceding General Assembly, the names of all parties whose commissions have been lodged with the agent previous to the meeting of Assembly shall be read by him to the house.

7. The election of a moderator shall then be made.

8. Her Majesty's Commission to the Lord High Commissioner shall then be read and recorded.

9. Her Majesty's letter to the Assembly shall then be read, and a committee shall be appointed to frame an address in answer thereto.

10. The report of the agent's committee upon commissions transmitted to, or otherwise lodged with the agent, shall then be called for and read, and shall be disposed of in manner prescribed in section 3, *supra*.

11. The following committees shall then be nominated, viz. :—

Committee on Disputed Commissions.

Committee on Overtures.

Committee on Bills.

Committee for Arranging the Order of Business.

Committee for Classing Returns to Overtures.

Committee for Revising the Record of the Commission.

12. When there is a vacancy in any of the offices of the ordinary office-bearers of the Assembly, such steps as to the Assembly may appear proper shall then be taken for supplying the vacancy.

13. The committees appointed in terms of section 11, *supra*, shall meet, respectively, at the times and places specified in the minute of their appointment; and the Committees on Bills and Overtures shall respectively make a report to the Assembly, at its diet next following the diet when the said committees were appointed, and at such times thereafter as the state of the business brought before them may render expedient, or as the Assembly shall direct.

14. The Committee for Arranging the Business of the Assembly shall report to the Assembly from time to time as the state of the business may render expedient; and the Committee for Revising the Record of the Commission shall report to the Assembly, before its close, and as soon as may be after the appointment of the said committee.

15. Overtures from synods, or presbyteries, shall be presented to the Committee on Overtures by the commissioners from the presbytery, or by the commissioners from some presbytery within the bounds of the synod promoting the overture; and no overture from a synod or presbytery shall be transmitted to the Assembly by the Committee on Overtures, if not so presented to them.

16. Overtures by individual members of the Assembly shall be presented to the Committee on Overtures by the parties promoting such overtures; and no such overture shall be transmitted to the Assembly by the Committee on Overtures, unless it shall be so presented to the committee.

17. Applications to the Committee on Bills shall be made by petition, subscribed by a party having an interest in the cause, or other matter referred to in the said petition, or by his counsel or duly authorized agent; and in the said petition there shall be specified the cause, or other matter sought to be transmitted to the Assembly, and all documents connected therewith, also sought to be transmitted.

18. Along with applications for transmission to the Assembly, of appeals, or of dissents and complaints against the judgments of inferior courts, there shall be produced to the committee an extract of the judgment complained of, and an extract or certified copy of the relative reasons of appeal, or of dissent and complaint, with all documents, or copies certified by the clerk of the court whose judgment is appealed against, to be correct copies of all documents, forming part of the record in the inferior court.

19. In all causes brought up to the Assembly by appeal or otherwise, the record shall be held to consist of the entire minutes of the inferior courts in relation to the cause, and of the evidence, whether parole or documentary, adduced in the same, whether engrossed in the minutes, or lodged in the inferior court and kept *in retentis*; and no documents, not forming part of the record, shall be transmitted by the Committee on Bills to the Assembly, in connection with any cause, with the exception of reasons of appeal, or of dissent and complaint, which shall, in all cases where tendered, be transmitted along with the record.

20. When there shall be more than one appeal in the same cause, or more than one dissent and complaint, or one or more appeals, as well as one or more dissents and complaints, it shall not be necessary to produce, along with the petition to the committee in each appeal, or dissent and complaint, the record in the cause, or a certified copy of the same; but it shall be sufficient to refer to the record, as produced along with the petition relative to any other appeal or dissent and complaint; provided always, that along with every petition to transmit an appeal, or dissent and complaint, there shall be produced an extract of the judgment complained of.

21. Where any cause shall be referred by an inferior court

to the General Assembly, the clerk of such inferior court shall, as soon as may be after the reference has been made, transmit to the agent for the Church the record in such cause, or a duly certified extract or copy of the same; and along with every application to the committee to transmit such reference to the Assembly, there shall be produced an extract of the minute of the inferior court containing the reference, and the petition shall refer to the record, or to the extract of the same, as having been transmitted to, and as being in the hands of, the agent for the Church.

22. That in the cases specified in the last preceding section, the agent for the Church shall produce to the committee the record in any cause transmitted to him as aforesaid, and referred to in any application to the committee; and the committee, if they shall agree to transmit the reference to the Assembly, shall transmit, along therewith, the record in the cause.

23. That along with all applications to the committee to transmit to the Assembly original petitions, or other applications to the Assembly in the first instance, there shall be produced to the committee a written copy of such petition or other application, subscribed by the party promoting the same, or by his counsel or agent, and all documents referred to in the said petition, or upon which the petitioner intends to found in support of his application, and which are not already before the house.

3. *Regulations as to Printing.*

24. In causes brought before the Assembly by appeal, involving the merits of the cause, the appellants shall print in the form at present in use, and shall lodge with the agent for the Church, not less than 450 copies of the judgment or deliverance complained of, and relative record, not later than the Monday preceding the day fixed for the meeting of the Assembly; and no such cause shall be entertained by the Assembly, where it shall appear, when the cause is called for discussion, that such prints have not, when the cause is so called, been lodged with the agent for the Church.

25. In causes brought before the Assembly by dissent and

complaint, involving the merits of the clause, it shall be optional to the complainers either to comply with the regulations as to printing prescribed by the last preceding section in the case of appeals, or to lodge with the agent for the Church, at the time and in the manner provided with regard to prints in appeals, a complete written copy of the judgment complained of, and relative record.

26. In appeals, or dissents and complaints, upon incidental points not involving the merits of the cause, the appellant or complainer shall print, or furnish written copies, and shall lodge with the agent for the Church, in manner above provided with regard to appeals, and dissents and complaints upon the merits, and under a similar sanction, the judgment complained of, and such parts of the relative record as may have a bearing upon the said judgment; provided always, that in the case of such appeals and complaints upon incidental matters, the appellant or complainer shall serve upon the respondent, or his known agent, on the same day on which he shall lodge his print, or written copy of the proceedings, with the agent for the Church, a similar print, or written copy of such proceedings; and it shall be competent for the respondents, at any time before the hearing of the cause, to print, or furnish a written copy, as the case may be, of such additional portions of the proceedings as they may think fit. In all cases where prints are lodged with the agent for the Church, by either of the parties in a cause, in terms of these regulations, the agent shall be entitled, on application made to him for that purpose, to supply six copies of such prints to the opposite party or parties in the cause, or to his or their duly authorized agents.

27. When an inferior court shall refer a cause to the Assembly, the parties to the said cause shall, at their joint expense, print and lodge with the agent for the Church the minute containing the reference and relative record, at the same time as is provided with regard to the print in the case of appeals; under certification that if any of the parties shall refuse to contribute his share of the expense of such print, before the time when the cause is called for discussion, he shall be considered as having deserted the cause, and shall not be entitled to be heard.

28. Parties promoting original petitions or other applications to the Assembly, in the first instance, shall print and lodge with the agent for the Church, on or before the Monday preceding the day on which the Assembly meets, not less than 450 copies of such petition or other application, and of all documents transmitted along therewith to the Assembly by the Committee on Bills; provided always, that in causes arising out of trials for licence or ordination, or out of matters relating to Church ordinances, or any matter not involving the interests of private parties, brought before the Assembly by reference, or by petition presented to the Assembly, by any minister or member of a church court in the discharge of his public duty as such, it shall be optional to the court making the reference, or to the party or parties insisting in such cause, either to print and lodge with the agent printed copies of the proceedings in the same, in manner already provided with regard to appeals, or to lodge with the agent a written copy of the said proceedings, in manner provided with regard to dissents and complaints.

29. The parties promoting any overtures to the General Assembly shall print and lodge with the agent for the Church, on or before the Monday of the week in which the Assembly meets, not less than 450 copies of such overture; provided always, that in the case of any overtures relating to matters emerging after the meeting of the Assembly, such overtures shall be printed and lodged with the agent at least two days before discussion of the same by the Assembly.

30. The clerk of the Assembly shall preserve two copies of every print lodged with the agent for the Church in manner above provided, one copy of which print, having a copy of the judgment of the Assembly in the cause to which it relates prefixed or annexed thereto, shall be bound up and kept in the records, and the other copy, also having the judgment written thereupon, shall be lodged in the library.

4. *Order of Pleading in Causes.*

31. In causes brought before the Assembly by appeal, or by dissent and complaint, when there is only one appellant or

complainer, or one set of appellants or complainers, concurring in the same reasons of appeal, or of dissent and complaint, and one respondent, or one set of respondents, concurring in the same answers to the reasons of appeal, or of dissent and complaint, the case for the appellant or complainer shall be stated by himself or by his counsel, who at the same time shall submit such argument upon the case as he shall think fit; and the party or counsel so stating the appeal or complaint, shall be followed by the respondent or his counsel; and at the close of the answer to the opening statement for the appellant, he shall be entitled to be again heard, and the respondent shall also be entitled to be heard in answer to the second speech for the appellant or complainer; and if, in his final answer, the respondent or his counsel shall state any fact or submit any argument not adverted to in his answer to the opening statement for the appellant, the appellant or complainer shall be entitled to a reply upon the new matter introduced in the final answer for the respondent; but with the exception of this right of reply so limited, in no case shall more than two speeches be allowed to each party at the bar.

32. In such causes as those referred to in the last preceding article, and in which there are more than one appellant or set of appellants and respondents, insisting on the appeal, or dissent and complaint, or supporting the judgment complained of, on different grounds, and in separate reasons or answers, each appellant or complainer shall be entitled to open and state his separate case, and each respondent shall be entitled to make his separate answer, and the debate shall be closed with a reply for the several appellants; provided always, that it shall be competent to the parties, with consent of the house, to make any arrangement for conducting the debate other than that herein prescribed, which shall have the effect of limiting, farther than is herein done, the number of speeches to be made from the bar.

33. In causes brought before the Assembly by reference from an inferior court, the reference shall be stated to the house by one of the commissioners of the presbytery, or by a commissioner from a presbytery within the bounds of the synod making the reference, in his place as a member of the house, or by

some member of such presbytery or synod specially appointed for that purpose ; and the Assembly shall thereafter hear the parties in the cause referred, in such order as the shape of the case may seem to require, keeping in view the regulations in the last two preceding articles.

34. It shall be competent for any member of an inferior court, whose judgment is brought under review of the Assembly, to appear at the bar in support of the judgment ; but where commissioners have been specially appointed by the inferior courts to support their judgment, the Assembly shall not hear any member of such court, other than one of the members so appointed, unless any member not so appointed, and who wishes to be heard, can show a separate and peculiar interest to support the judgment ; and it shall, in all such cases, be competent to the Assembly to limit the number of members of an inferior court who shall be heard in support of the judgment under review.

35. Where a judgment of a synod, affirming a judgment of a presbytery, is brought under review of the Assembly, the members of presbytery shall have no *status* as parties at the bar, except in the character of members of the synod ; but where a reversal by a synod, of a judgment of a presbytery, is under review, the presbytery may appear and be heard at the bar of the Assembly, as appellants against the judgment, provided always that they comply with the regulations herein contained, regarding causes brought under review of the Assembly by appeal.

36. Where a synod reverses a judgment of a presbytery on a dissent and complaint, and the presbytery appeal against the reversal, the complainers in the dissent and complaint to the synod may appear, and be heard at the bar of the Assembly, as respondents to the appeal for the presbytery.

37. In causes brought before the Assembly by petition, or other application to the Assembly in the first instance, the party promoting the said application shall be entitled to be heard in support of the same ; and the Assembly, if required so to do, shall also hear an answer from any party upon whom they may have directed such application to be served, or whom they shall consider to be a proper respondent ; and the debate

at the bar shall be closed with a reply from the party promoting the application.

5. *Order of Debate in the House, and as to putting the Question, and taking the Vote.*

38. It shall be competent to any member of Assembly to make such motion as he shall think fit, upon any matter regularly brought under the consideration of the Assembly; and any member, so moving, shall state the terms of his motion in writing, to be laid upon the table of the house. It shall not be competent for any member to withdraw a motion which he has once made, or so to vary the terms of his motion as to render the same in substance another motion, without the leave of the Assembly.

39. When a motion so made is seconded, it shall be competent for any member to move an amendment upon the same, of which he shall also state the terms in writing; and when the motion and amendment have been duly made, seconded, and laid upon the table, it shall be competent for any member to be heard in support of one or other of the propositions before the house; and the debate shall be closed with a reply, if he think fit to claim a reply, from the mover of the motion.

40. When there is only one amendment to the motion proposed to the house, the vote shall be taken at the close of the debate, upon the motion and amendment.

41. Where there is more than one amendment, the vote shall be first taken upon the question, which of the amendments shall be put against the motion; and this question shall be decided by one or more votes, according as there are two or more amendments submitted to the house.

42. All motions after the first shall be dealt with as amendments on the first motion, to the effect of being disposed of in manner above provided in article 41.

43. It shall be competent to any member of the house present at the vote, to enter upon the minutes a dissent from the judgment or resolution of the house, immediately after the vote; and to lodge thereafter his reasons of dissent, to which any member present at the vote may adhere, either when such dissent is taken, or at the next diet of the Assembly there-

after. But it shall not be competent to enter a dissent at any diet after that at which the resolution dissented from was passed.

6. *As to Miscellaneous Business.*

44. All applications for constitutions for new churches, and the relative documents, shall, along with the feudal titles of the churches and grounds, be transmitted, one month before the meeting of each Assembly, to the Home Mission Committee, or such other committee as the Assembly may have specially appointed for receiving the same, along with extracts of the approval of the proposed constitutions by the presbyteries of the respective bounds, or of their deliverances upon the proposals; and such committee shall revise the proposed constitutions and examine the titles, and report to the Assembly their opinion as to any alterations that should be made on the proposed constitutions, 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 constitutions for new churches, that if they fail so to transmit for revisal and examination 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; and all parties who have made compearance in the presbyteries shall be entitled, as at present, to be heard before the Assembly to which the applications are so passed, or any committee to be appointed by them, on their objections to the constitutions for the proposed churches, or to the report of the Home Mission or other committee specially appointed as aforesaid.

45. Manuscript reports to the Assembly shall be written upon foolscap paper, and so as to admit of being bound up into volumes, and it shall not then be necessary to engross them in the record.

46. Where several overtures have been transmitted to presbyteries by the Assembly, the return by the presbytery to

each overture shall be written upon a separate sheet of foolscap paper.

47. The standing orders shall be read over by one of the clerks on the first day of the meeting of every Assembly, if any member shall require that they shall be so read; and any motion for repeal or amendment of any of the orders shall be brought before the Assembly in like manner with overtures in regard to other matters; provided always, that it shall be competent to the Assembly, on the motion of any member to that effect, and on cause shown, summarily to dispense with the observance of the standing orders, or of any of them, in any particular case.

7. Closing of the Assembly.

48. When the business set down for the last Monday of the sitting of the Assembly shall have been disposed of, the Assembly shall be closed by addresses from the moderator to the Assembly and to his Grace the Commissioner, and by the Commissioner to the Assembly; and with devotional exercises, according to the practice of the Assembly.

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.¹

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:—

193. *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.

¹ Dr. Hill's *Practice in Church Courts*, p. 30.

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.¹

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 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.² 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

¹ See case of Parishioners of Eskdalemuir *v.* the Presbytery of Langholm and Synod of Dumfries, 21st and 27th May 1836.

² Dr. Hill's *View*.

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 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, etc.

The instructions in Act vi. Ass. 1717 are always understood to be renewed, and are as follow:—

'1. The Commission are empowered and appointed to take care that what 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 en-

couragement, 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 5th Act of the General Assembly 1707; also to hold hand to the execution of the 8th Act of that Assembly, for suppressing Popery, and preventing the growth thereof; and likewise the 15th 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 was made, now many years ago, 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.'¹

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.

ROYAL BOUNTY COMMITTEE.

The General Assembly annually grants a commission to some ministers and ruling elders for the reformation of the Highlands

¹ Dr. Hill's *Practice*, p. 91.

and Islands, and for managing Her Majesty's royal bounty—viz. the annual sum of £2000 granted by the Crown for that object. The committee are instructed in the commission, that for the prosecution of these purposes, they are to appoint preachers and catechists to go to such places as they shall find, upon due representation, to be most proper, according to her Majesty's design expressed in her warrant, and to have particular regard, in so doing, to such parishes in South Uist, Small Isles, Glencoe, Harris, the countries of Moidart, Glengarry, and Lochaber, and to other parishes of the synods of Glengarry and Argyll, which the committee shall find, by reason of their vast extent, by the prevalence of Popery and ignorance, and other unhappy circumstances, to be in the greatest distress. They are to take care that the said preachers and catechists be certified and found upon trial to be properly qualified for their respective offices, of good abilities for the same, of a pious life and conversation, prudent, of undoubted loyalty to her Majesty, and of competent skill in the principles of divinity, and particularly in Popish controversies. Such preachers and catechists being hereby appointed to be subject to and under the inspection of the presbyteries of the bounds to which they are sent, who are to take care that the orders of the committee be duly observed by them.

By a minute of the committee, 19th Nov. 1807, it is provided that the whole of the missions of the schemes are continued on the following conditions—viz. : A house (consisting of at least two apartments and a kitchen), a garden, a cow-house, a cow's grass in summer, and ground sufficient to furnish provender for her in the winter ; and that peats for fuel shall be cast and driven to the missionary's house free of expense ; or that a pecuniary equivalent for the whole shall be paid him, of not less than £20 per annum. Any change upon, or modification of these conditions, can only be allowed upon application to, and obtaining the express sanction for the same of the Royal Bounty Committee. Presbyteries will be required, before a mission is established, or in case of a vacancy filled up again, particularly to inquire into and certify to the Royal Bounty Committee, that the accommodations prescribed, or the equivalent, are ready to be granted, and that the requisite buildings

are in good repair, and the garden, cow's grass, etc., sufficient; and presbyteries are particularly requested to attend that the missionary continues to enjoy the accommodations referred to, or the equivalent, and to report from time to time to the Royal Bounty Committee when they are dissatisfied.

Persons wishing to be put on the list of candidates for missionary appointments, must send to the clerk of the committee an application to this effect, accompanied by such certificates, testimonials, etc., as they may deem of importance; and in the event of the above documents being by him found satisfactory, the party will be required to come to Edinburgh for the purpose of an interview with the sub-committee of the examiners; and he must bring with him an official certificate from the presbytery within the bounds of which he has been last resident, and a lecture or sermon of his own composition, to be delivered before them; and the sub-committee, if they see cause, may, by an order in writing upon the clerk of the Finance Committee, allow such applicant a reasonable sum for travelling expenses.

The meetings of the examining sub-committee are appointed to take place only at the following times—viz.: on the Friday preceding the meeting of the General Assembly, and on the Friday preceding each of the statutory meetings of the Commission in August, November, and March; on all of which days the sub-committee meet in the office of the Schemes of the Church, 22, Queen Street, at 12 o'clock noon, for the purpose of examining candidates.

The following are the instructions of the committee with regard to the duties of those employed by them:—

1. That every missionary preach regularly at every station fixed in his appointment, or assign a satisfactory reason for his not doing so. That, besides preaching, he shall travel from house to house, and visit and catechise the families in his district. It is particularly required that every missionary devote himself entirely to the duties of his office, and that he abstain from any secular employment inconsistent therewith. Every missionary is also required to keep a journal of his labours both in preaching and catechising.

2. That every student of divinity employed as a Scripture-

reader, and every catechist, shall strictly confine themselves to visiting, catechising, reading the Scriptures, and devotional exercises; and more especially, shall strictly abstain from preaching or exercising any function competent exclusively to licentiates of the Church, on pain of drawing down on themselves the censures of the Church.

The missionaries and catechists will also attend to the following requirements of the committee previous to the payment of their salaries:—

That every missionary, before he can receive his half-year's salary, must produce to the Finance Committee of the royal bounty—

1. A certificate from the moderator of the presbytery, or moderators of the presbyteries, or, in special cases, from the parish minister or ministers, within whose bounds his mission is situate, that he has performed the duties required of him, and that he has strictly adhered to the above instructions.

2. Also, where the parishioners or gentlemen of the district are bound to supplement the salary from the royal bounty, a certificate or declaration by the missionary himself, stating whether he has received the stipulated sums from such parishioners or gentlemen for the half-year in question; and if he has not, to what extent such payment is in arrear, and by whom; and also, whether he has enjoyed the accommodations which by his appointment he is entitled to, or the equivalent for the same, or to what extent these are withheld or defective.

3. And where an allowance is granted for the expense of communion elements, the missionary must produce, before receiving such allowance, from the minister of the parish within whose bounds the mission chapel is situate, or from some one of the ministers who may have assisted at the dispensation of the sacrament for which the allowance is claimed, a certificate of the fact that the sacrament was actually dispensed, before receiving such allowance.

4. The missionary must also produce a copy of his journal [*i. e.* the journal of his labours in the ministry of the mission which the committee require him to keep], certified by the minister of the parish, or ministers of the parishes, in which the mission station is situate.

And upon the Finance Committee being satisfied with these documents, they shall order the missionary's salary to be paid.

Every catechist or Scripture-reader, before he can receive his half-yearly salary, must in like manner produce a certificate from the parish minister or ministers, or from the moderator of the presbytery, or moderators of the presbyteries, within whose bounds the catechist or Scripture-reader officiates, that he has performed the duties required of him, and that he has strictly adhered to the above instructions.

And the Finance Committee, upon being satisfied with such certificate, shall order the salary to be paid.

The certificates and journals of the missionaries, Scripture-readers, and catechists, are to be forwarded to the convener of the Finance Committee; and all communications connected with the salaries are to be addressed to the clerk of the Finance Committee.

The Commission meets on the day after the rising of the General Assembly, and on the second Wednesday of August, the third Wednesday of November, and the first Wednesday of March.

The stated meetings of the Royal Bounty Committee are on the day after the meeting of the Commission held after the rising of the Assembly, and on the day after the meeting of the Commission in August, November, and March respectively; but if there shall be no meeting of the Commission in August, November, or March, the committee meet at one o'clock of the days on which the Commission was so appointed to meet.

Of the persons named as members of the committee, five are declared to be a quorum, whereof three are to be ministers; but at the quarterly meeting of the committee in which the scheme or establishment of missionaries for the ensuing year is to be approved or determined, not less than 14 shall be a quorum, whereof 9 to be ministers.

The committee are empowered to apply, for the purposes of their appointment, what may remain of the last year's royal bounty undisposed of by reason of any of the missionaries not fulfilling the appointments laid on them, keeping a register of their proceedings, and distinct books of accounts patent to all concerned. The General Assembly grant full power to the

said committee to make such regulations as to the administration of the foresaid royal bounty as to them may seem most beneficial. And the said committee are appointed to examine the accounts of the distribution of the royal bounty, and to lay the same before the Lords Commissioners of Her Majesty's Treasury, and to report their diligence to the General Assembly, to whom they are to be accountable. And it is agreed that no person, once employed, and inserted in the scheme, shall be struck out thereof for that year, but by a quorum of at least 14, whereof 9 to be ministers; and in case any complaint shall be made against any of those on the scheme, it shall not be determined the first ordinary meeting that the same is offered, but it shall lie on the table till another meeting; and, in the meantime, the person complained of, and the presbytery of the bounds wherein he officiates, shall be acquainted with such complaint, and those concerned be required to send to the said committee a just account of the matter against the next meeting. And it is further appointed, that after the yearly scheme of missionaries on the royal bounty is settled, in the manner above directed, and notice thereof given by letters to the presbyteries concerned, such presbyteries shall send up to the said committee their answers to these letters, at farthest, with their commissioners to the General Assembly, if the same be not done sooner; and that the committee, at their first meeting after the General Assembly, shall endeavour to complete the next year's scheme themselves; and if they cannot complete it, they shall name a sub-committee of their number for that purpose, who are to lay their draft thereof before a subsequent meeting, which is appointed to meet as soon after the rising of the Assembly as possible; and empower the committee, at their first meeting, to reject any petition for a new station, in case they shall find sufficient objections against it; and that the said committee, in making up the scheme of missionaries, etc., do not exceed the sum in the grant.

NATURE AND AMOUNT OF AID GIVEN TO SCHOOLS BY THE
COMMITTEE OF PRIVY COUNCIL ON EDUCATION.

As large grants are now commonly made for educational purposes from funds placed by Parliament at the disposal of the Committee of Council on Education, it has been considered likely to be useful to those desiring to avail themselves of these grants, to give a brief statement of their nature, and the conditions on which they are given.

I.—GENERAL CONDITION OF AID.

‘The right of inspection will be required by the committee in all cases ; inspectors authorized by Her Majesty in council will be appointed from time to time to visit schools, to be henceforth aided by public money. The inspectors will not interfere with the religious instruction, or the discipline or management of the schools ; it being their object to collect facts and information, and to report the results of their inspection to the Committee of Council.’

Aid is given to schools in connection with some religious denomination, or with some society already recognised by the Committee of Council. Their Lordships have always required that religious as well as secular instruction shall be given in the schools receiving aid from the Parliamentary fund. Their Lordships are of opinion that this principle is in accordance with the will of the country, etc. Their Lordships, under these circumstances, refuse to grant aid to schools in which secular instruction is given exclusively. Grants will be made, however, to schools, though the managers object, on religious grounds, to make a report concerning the religious state of such schools. No certificate of the religious knowledge of pupil-teachers or monitors will be required from the managers of such schools.

We may classify the aid given by the Committee of Council as follows :—1. Aid given towards the erection of school buildings. 2. Aid given towards the maintenance of schools.

II.—AID GIVEN TOWARDS THE ERECTION OF SCHOOL BUILDINGS.

Every application for a grant, or for assistance in any other form, is to be made by letter, addressed to the 'Secretary, Committee of Council on Education, Downing Street, London.'

The approval of their Lordships must be obtained with reference to—

- (a) The title to the site.
- (b) The conveyance in trust for purposes of education.
- (c) The plans of the buildings.

Conditions and Amount of Aid Granted.

Aid is not granted to build new elementary schools unless their Lordships are satisfied—

(a) That there is a sufficient population of the labouring class which requires a school in the vicinity.

(b) That the religious denomination of the new school is suitable to the families relied upon for supplying scholars.

(c) That the school is likely to be maintained in efficiency.

(d) That the buildings, at the time of application, have not been begun nor contracted for, and that no trust deed has been executed.

The grants made by the Committee of Council for building, enlarging, improving, or fitting up elementary schools, are not to exceed *any one* of the following limits, viz. :—

1st Limit.—The total amount voluntarily contributed by proprietors, residents, or employers of labour in the parish where the school is situated, or *within* a radius of four miles from the school. Such contributions may be in the form of

- (a) Individual subscriptions ;
- (b) Collections in churches or chapels in the same parish, or within the distance of four miles from the school ;
- (c) Materials, at the price allowed for them by the contractor, or at which sold off ;
- (d) Sites given without valuable consideration (the value to be certified by two professional surveyors) ;
- (e) Cartage (the value to be certified by the parochial surveyor of roads).

2d Limit.—2s. 6d. per square foot of internal area in new schoolrooms and classrooms.

3d Limit.—£65 for each teacher's residence.

III.—AID TO SCHOOLS ERECTED AND IN OPERATION.

All correspondence with the Committee of Council must be conducted by the managers of the school, through one of their number, even in matters directly affecting the teacher.¹

In England the amount and conditions of aid are now determined by the Revised Code. This code has been from time to time suspended in Scotland, in consequence of the general legislation which has been contemplated. The code of 1860, consequently, is still operative in most of its provisions, although all examinations are conducted under the standards of the Revised Code.²

1. *Augmentation of Teacher's Salary.*

Towards the augmentation of teacher's salary, the conditions are—

(1.) That the schoolroom be of sufficient size and height, well ventilated, etc., and supplied with school furniture, apparatus, and books.

(2.) That the schoolroom be not liable to any uses disturbing its occupation during school hours. And,

(3.) That, in addition to a dwelling-house, or sufficient lodging, a salary be secured to the teacher equal to at least twice the sum of their Lordships' grant; but their Lordships allow the school pence to be taken into account to the extent of one-

¹ Proper forms, together with such other documents as are necessary for a thorough comprehension of the benefits to which schools may become entitled under their Lordships' minutes, and of the terms on which such benefits are granted, will be furnished to trustees or managers of schools who address a letter to 'The Secretary, Committee of Council on Education, Privy Council Office, Downing Street, London.'

² See Revised Code, which may be obtained for 3d. through any bookseller. As certain parts of the Revised Code, however, are virtually operative in Scotland, it is difficult to enter into any great detail as to the Privy Council rules without falling into error. The following general statement will be found substantially correct, so far as it goes.

half the salary. Thus, as a condition of the payment by the Council of £15, the managers must provide a salary of £30; but £15 of this may arise from school pence. Sums paid by the parochial board for education of poor children will be held as voluntary contributions. No augmentation can be granted except to the holder of a certificate of merit.¹

The minimum grant to males is £15, and to females £10.

2. *Assistant Teachers.*

The Committee of Council will allow a salary of £25 to an assistant under a master holding a certificate of merit and in receipt of augmentation, if the assistant has previously passed through a pupil-teacher's apprenticeship.

One assistant in addition to one pupil-teacher will be allowed for every hundred children.

Assistants may be examined for certificates of merit after three years' service.

Female assistants will be allowed a salary of £20.

3. *Pupil-Teachers.*²

1. The more proficient scholars in any elementary schools may be apprenticed to the master or mistress as pupil-teachers under the following regulations :—

(1.) Candidates must be furnished with the usual certificates of moral character.

¹ Examinations for these certificates are confined to teachers on whose behalf the school managers have applied for a grant in augmentation of their salaries; and the schools must fulfil the conditions on which grants are made. There are three degrees of merit—Upper, Middle, and Lower—and these again are subdivided into classes. Teachers under thirty-five can pass on the first occasion only in the first year's subjects, and therefore cannot be classed higher than the lower degree; teachers above thirty-five may pass on the second year's subjects on the first occasion, and be classed in the higher degrees.

A detailed syllabus of the subjects of examination will be forwarded to any person for 7d., on application to the Messrs. Longman, publishers, London.

² The objects of the pupil-teacher system are threefold :—1. To raise up a superior class of elementary teachers. 2. To render existing schools more efficient by providing the master with assistants in the form of apprentices. 3. To stimulate the master himself to study, by compelling him to carry his apprentices through a five years' course of study, after they have completed the usual period of attendance.

(2.) They must be *at least* thirteen years of age, and must not be subject to any bodily infirmity likely to impair their usefulness as teachers.

Candidates not less than sixteen years of age may be admitted with the standing of the *fourth* year.

(3.) The subjects of examination for election, and throughout the apprenticeship, will be found in the Revised Code.

(4.) Pupil-teachers must give daily attendance in school, and act as the master's assistants in such manner as he shall direct.

(5.) They will be required to pass annual examinations, and to present annual certificates of punctuality, steadiness, and good conduct.

(6.) The apprenticeship extends over a period of five years, but where there is marked proficiency, the term may be shortened, or the salaries of the later years paid.

(7.) The rate of allowances is :—

For First year,	£10 0 0
„ Second year,	12 10 0
„ Third year,	15 0 0
„ Fourth year,	17 10 0
„ Fifth year,	20 0 0

Girls cannot be apprenticed to a master, or boys to a mistress.

(8.) At the close of the apprenticeship, a pupil-teacher may compete for a bursary at the Training College, where he will receive a two years' course of instruction, fitting him for a certificate of merit.

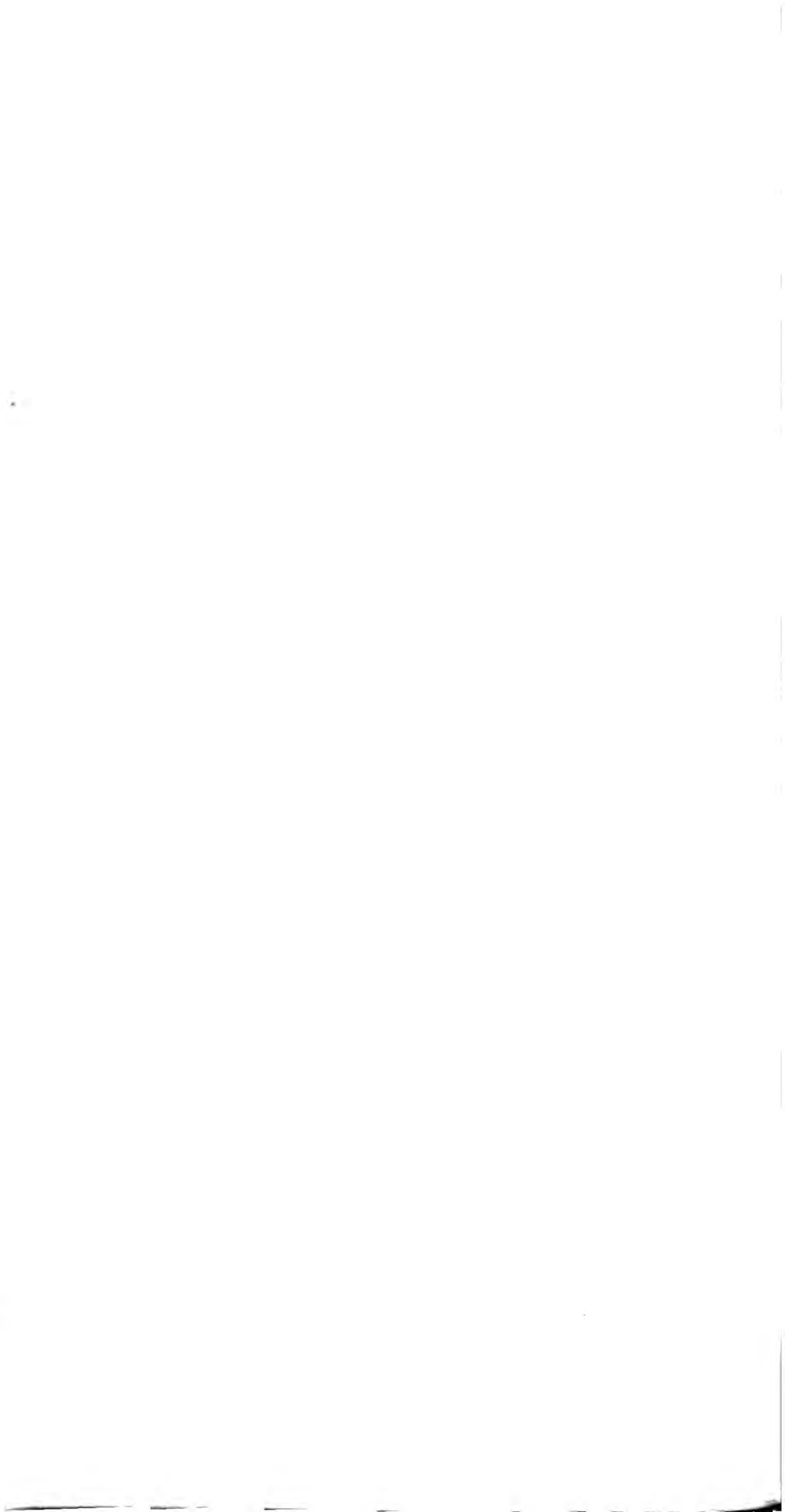
2. In return for the above gratuities, and the assistance he receives in school-keeping, the master must give the pupil-teachers instruction in the prescribed subjects for at least one hour and a half during five days of the week.

IV.—TRAINING COLLEGES.

Training Colleges are now aided by grants given to the authorities on account of all students *successfully* trained in them, after they have taught for two successive years in an elementary school.



APPENDIX.



APPENDIX.



I.

ACT ESTABLISHING THE CHURCH OF SCOTLAND, AND
SECURING THE PROTESTANT RELIGION AND PRESBY-
TERIAN CHURCH GOVERNMENT.

I.—ACT 1592, c. 114.

Being the first Act of the twelfth 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 of Benefices.*

‘ Our Soveraine Lord, and Estaites of this present Parlia-
ment, following the loyabil and gude example of their prede-
cessoures, hes ratified and appreeved, and, be the tenore of this
present Act, ratefies and appreis all liberties, privileges, im-
munities, and freedomes quhatsumever, given and granted be
his Hieness, his Regents in his name, or onie of his predeces-
sours, to the trew and hailie kirk, presentlie established within
this realme, and declared in the first Acte of his Hieness’ Parlia-
ment, 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 hail particular Acts there men-

tioned, 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 oftener, *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 neither his Majestie nor his said commissioners beis present for the time in that town quhair the said General Assemblie beis halden, then in that case it shall 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 apprevis 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 hail 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 follows.—Matters 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 omitted 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 has the hail power of the particular elderships quhair of 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 kept in gude ordour; to enquire diligentlie of

naughtie and ungodlie persons ; and to travel to bring them in the way again, be admonition, or threatenings of God's judgments, or be correction. It appertains to the elderschippe to take heed that the word of God be purlie preached within their boundes, the sacraments richtlie ministered, the discipline entertained, and ecclesiastical guddes uncorruptlie distributed. It belongs to this kind of Assemblies to cause the ordinances maid be the Assemblies provinciales, nationales, and generales, to be kepted and put in execution, to make constitutions quhilk concernis το πρεπον 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 ministrie and session, they have power and jurisdiction in their own congregation in matters ecclesiastical. And decernis and declaris the saides Assemblies, presbyteries, and sessiounes, 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 kirke of God, presently professed within this realme, jurisdiction and discipline thereof.—Item, the Kingis Majestie, and Estaites foresaid, declairs, 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, matters 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 Sovereine Lord, and Estaitis of Parliament forsaidis, 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 avail, 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 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 Soveraine 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, etc., 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 allenary 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 nonconformity 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, aye, 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 authorized 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 fur-

ther, 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, does hereby 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 hail 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 religion, 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.'

IV.—ACT 16 AND 17 VICT. C. 89.

*Act to Regulate the Admission of Professors to the Lay Chairs
in the Universities of Scotland.*

20th August 1853.

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, as follows:—

I. From and after the passing of this Act it shall not be

necessary for any person who shall have been or shall be elected, presented, or provided to the office of professor, regent, master, or other office in any of the universities or colleges in Scotland, such office not being that of principal or a chair of Theology, to make and subscribe the acknowledgment or declaration mentioned in an Act passed in the fourth session of the first Parliament held in Scotland by her Majesty Queen Anne, intituled, 'Act for securing the Protestant religion and Presbyterian church government.'

II. Every person hereafter to be elected, presented, or provided to any such office shall make and subscribe, in presence of the Senatus Academicus of such university or college, the declaration following:—

'I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, That as professor of _____, and in the discharge of the said office, I will never endeavour, directly or indirectly, to teach or inculcate any opinions opposed to the divine authority of the Holy Scriptures, or to the Westminster Confession of Faith, as ratified by law in the year one thousand six hundred and ninety, and that I will not exercise the functions of the said office to the prejudice or subversion of the Church of Scotland as by law established, or the doctrines and privileges thereof.'

And such declaration shall be recorded by the Senatus Academicus of the university or college in which the office is held, before any such person shall enter on the functions of such office.

III. If any action or proceeding at law shall be raised against any professor who, at the date of the passing of this Act, shall be in the exercise of the functions of, or has been elected, presented, or provided to any such office, on the ground that such professor had not complied with the provisions of the said Act, it shall be a sufficient and conclusive defence or answer to such action or proceeding that such professor is prepared to make and subscribe the declaration above provided.

IV. In case any person shall enter on the functions of any such office without having made such declaration, or in case any person shall enter on or continue to exercise the functions of any chair of Theology without having complied with the pro-

visions of the said Act, it shall be competent to the Lord Advocate, upon information to that effect lodged with him, to present a petition and complaint to the Court of Session, in either of the divisions thereof; whereupon the said court, after such notice to the party complained against as the court shall deem adequate, shall inquire into the matter of such complaint in such manner as they shall think fit; and if it shall be found that such complaint is well founded, the said court shall interdict such professor or other officer from exercising the functions of such office unless the provisions of this Act or the said Act (as the case may be) shall be forthwith complied with, and do otherwise therein as to the said court shall seem just; and if such person fails to comply with such provisions within two months after such interdict shall be granted, he shall *ipso facto* lose and amit all right to such office or chair (as the case may be) without any legal proceeding.

V. It shall be competent to the Lord Advocate, in the event of information being laid before him charging any professor with having wilfully violated the declaration provided by this Act, and after due inquiry, to present a complaint against any such professor to her Majesty, and it shall be lawful to her Majesty in council thereupon to issue a commission to inquire into the said charge, and, on the report of such commission, to censure, suspend, or deprive such professor, as may seem just.

VI. The words 'chair of Theology' shall for the purposes of this Act mean the chairs of Divinity, Church History, Biblical Criticism, and Hebrew, in any of the said universities or colleges, and the office of principal in the same, excepting that of Marischal College, Aberdeen, or the United College of Saint Leonard's and Saint Salvator's, Saint Andrew's.

VII. The said Act, and all other laws, statutes, and usages now in force, respecting admission to the lay or secular chairs and offices in such universities and colleges, shall be, and the same are hereby repealed in so far as inconsistent with this Act, but the same shall remain in full force and effect in all other respects whatsoever: Provided always, that nothing in this Act contained shall alter or affect the relative rights of any patron or patrons, or any Senatus Academicus in such universities or colleges, excepting as hereinbefore provided.

V.—ACT 21 AND 22 VICT. C. 89, SEC. III.

The 6th section of the Act 16 and 17 Vict. c. 89, it will be observed, provides that the words, chair of Theology, shall mean, for the purposes of this Act, the chairs of Divinity, etc., in any of the said universities or colleges, and the office of principal in the same, excepting that of Marischal College, Aberdeen, or the United College of Saint Leonard's and Saint Salvator's, Saint Andrew's. By those within and without the Church who desired to overcome the opposition of the Church to the severance from it of the universities which was effected by the Act, this provision was frequently referred to as still securing to the Church an important influence in these universities, in respect that the principals of the Universities of Edinburgh, Glasgow, and Aberdeen King's College were still necessarily ordained ministers of the Church.

The provision was, however, repealed in the course of five years, by the 3d sect. of the Act 21 and 22 Vict. c. 83, entitled, Act to make provision for the better government and discipline of the Universities of Scotland, of which the following are the terms:—'The principals in the Universities of Glasgow, Aberdeen, and Edinburgh, in time to come, shall not as such be, or be deemed professors of Divinity, nor shall it be a valid objection to any person appointed to the office of principal in any of the said universities that he is a layman; and no such office of principal therein shall fall under, or be included in the term, "chair of Theology," as used in an Act passed in the 16th and 17th years of the reign of her Majesty Queen Victoria (c. 84), entitled, "An Act to regulate admission to lay chairs in the universities of Scotland."'

II.

ACTS OF ASSEMBLY AND OF PARLIAMENT REFERRED TO IN
THE BODY OF THE WORK UNDER THE HEAD 'PRESBY-
TERY.'

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 proba-

tioner; 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.

I.—ACT 10 QUEEN 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 ancient 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 authorized 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 the 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 be, 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; anything 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, entitled '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, steward 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; anything 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, steward 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; anything 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.

17th 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 patronages 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 Britain 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 presentee 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 hereinafter 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 cognosed, 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 communion 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 be-

cause 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 VI. ASS. 1869, MAY 27, SESS. 10.

Overture and Interim Act or Regulations to be observed in the Induction of Ministers.

As this still remains an interim Act, and is thus liable to be changed from year to year, it has not been considered necessary to print it. Whatever is material in it will be found in the text, in the directions for the admission of ministers.

JUDICIAL PROCEDURE.

ACT 26 AND 27 VICT. C. 47.

An Act for removing Doubts as to the Powers of the Courts of the Church of Scotland, and extending the Powers of the said Courts.

13th July 1863.

Whereas, it would much conduce to the interests of religion were ministers of parishes against whom a libel has been found

relevant for alleged immoral conduct, or for alleged error in doctrine, to abstain from exercising ministerial functions until the said libel has been disposed of by final sentence ; but doubts exist whether the right of the courts of the Church of Scotland to require and enjoin ministers of parishes so to abstain from ministerial functions in such circumstances may not be liable to legal impediment, and it is desirable to remove such doubts : And whereas it is expedient to declare the said right, and further to declare the right of the presbyteries of the said Church to make provision for supplying the ordinances of religion in any parish where the said ordinances have ceased to be performed by the minister thereof : Be it therefore 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, as follows :—

I. Whenever any presbytery or other court of the Church of Scotland shall have found a libel relevant, charging the minister of any parish with immoral conduct or with error in doctrine, and shall have resolved to proceed to a proof of the said libel, it is hereby declared and enacted that it is and shall be held to be the right of the said presbytery to pronounce a deliverance requiring and enjoining such minister to abstain from the exercise and discharge of all ministerial functions of his office as minister of the parish until the libel shall have been fully investigated and finally disposed of ; and in the event of an appeal against such deliverance, the same shall continue in force until the same shall have been recalled by the court of appeal ; and the ordinances of religion in the said parish shall, so long as such deliverance is unrecalled, be administered in the same way as if the parish were vacant by the decease of the minister thereof : Provided always, that nothing herein contained shall affect the right of such minister to his stipend.

II. When, in the course of any judicial process affecting the status of a minister, or on the representation of any party having interest, it has been established to the satisfaction of a presbytery or other superior court of the Church, on a certificate by the sheriff of the county, which he is hereby authorized to grant after due investigation, that the minister of any parish is

insane, and thereby disabled from discharging the duties of his office, it is hereby further declared and enacted, that it is and shall be the right of the presbytery, unless an arrangement for the purposes after mentioned shall have been made on behalf of the said minister to the satisfaction of the presbytery, to appoint a qualified assistant to perform the duties of the charge until the said minister shall be enabled to resume the same, or until the parish shall be declared vacant, and at the same time to apportion and fix, by their deliverance appointing such assistant, an allowance out of the stipend not exceeding one half of the whole proceeds of the benefice, and which shall be payable so long as such assistant shall hold and continue to act on his appointment by the presbytery; and such deliverance, when duly intimated to the heritors or others liable in payment of the stipend, shall be equivalent to a legal and completed assignation by the minister to such assistant of the portion of the stipend specified in the deliverance so long as the said deliverance shall subsist: Provided, that it shall at all times be competent to such minister to apply to the presbytery to be restored to the duties of his office on the ground of his recovery, and the presbytery, on being satisfied that such minister has recovered, shall recall the deliverance, and from the date of such recall all right and interest under the deliverance shall cease and determine.

III. When, by their final sentence upon a libel, a presbytery or other Church court shall suspend a minister from the discharge of the duties of his office for a term specified in the said sentence, it is hereby further declared and enacted, that it is and shall be held to be the right of the presbytery to appoint a qualified assistant to discharge the said duties, and to apportion and fix an allowance to such assistant out of the stipend, not exceeding one half of the whole proceeds of the benefice, and which shall be payable so long as such assistant shall hold and continue to act on his appointment by the presbytery; and such sentence, when duly intimated to the heritors or others liable in payment of the stipend, shall be equivalent to a legal and completed assignation by the minister to such assistant of the proportion of the stipend specified in the sentence.

IV. Where in any cause depending before a presbytery or

other superior court of the Church a proof shall have been allowed, it shall be lawful and competent for such court to appoint a qualified person, being an Advocate, Writer to the Signet, Solicitor before the Supreme Courts, or a Procurator duly entered as a practitioner in any Sheriff Court in Scotland, of not less than three years' standing, to sit with them for the purpose of dictating to the clerk of court the evidence given by the witnesses examined in the course of the proof, and the oath *de fidei administratione officii* shall be administered by the moderator to any person so appointed; and it shall be lawful and competent for such court, if it see fit, to appoint the evidence of the witnesses examined in the course of such proof to be taken down by a writer skilled in shorthand writing, to whom the oath *de fidei administratione officii* shall be administered; and the said shorthand writer shall afterwards, and within such time as may be fixed by the court, write out in full the evidence so taken down by him in shorthand; and the extended notes, so written out, certified by the moderator and clerk of court to be correct, shall be the record of the oral evidence in the cause: Provided always, that nothing herein contained shall prevent any Church court, if it see fit, from taking down and recording the evidence adduced in any cause, according to the form hitherto in use.

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., etc., trustees for the erection and endowment of the chapel of ease 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 chapel, that sufficient security shall be provided for an annual stipend of pounds to the minister : Therefore we, the said A. B., D. E., Esqrs., etc., 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 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 the Act 7 and 8 Vict. 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 trustees, 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 presents, 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.

D. E.

II.—ACT 7 AND 8 VICT. C. 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.

19th 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, authorized, 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 hereinafter 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 intimation 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 labour 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 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 for 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 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 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 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: Provided 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 enclosures 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 nearest 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 appointing 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.

III.—ACT 29 AND 30 VICT. C. 77.

An Act to amend the Act of the Seventh and Eighth years of Victoria, chapter Forty-four, relating to the Erection of new Parishes quoad sacra in Scotland.

6th August 1866.

Whereas, by the Act of the seventh and eighth years of the reign of her present Majesty, chapter forty-four, intituled, ‘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,’ provision is made (by section eight) in the case of a church built or acquired, or undertaken to be built or acquired, and endowed or undertaken to be endowed by any person or persons at his, her, or their expense, for the erection of such church, and a district to be attached thereto *quoad sacra*, into a church and parish in connection with the Church of Scotland: And whereas there are in Scotland united parishes in which there are already two or more parish churches maintained: And whereas in such united parishes an increase of population or other change of circumstances may take place, rendering it expedient under the provision of the said Act to apply for disjunction from such united parishes, and erection into a parish *quoad sacra* of a district thereof: And whereas by the said Act no power is conferred upon the heritors of such united parishes to convey or make over any one of the parish churches of such united parish to the party or parties who shall have endowed or undertaken to endow such parish *quoad sacra*: And whereas it is reasonable and proper that such power should be conferred: 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, as follows, viz.:—

I. On an application being made in terms of the said Act of the seventh and eighth years of her present Majesty, chapter

forty-four, to the Lords of Council and Session as commissioners for plantation of kirks and valuation of teinds, it shall be lawful for the heritors of any united parish in Scotland, being proprietors within such united parish to the extent of at least one hundred pounds Sterling of real rent yearly from land appearing on the valuation roll of the county, by a majority in value of those present at a meeting summoned by intimation from the pulpit in usual manner for the purpose, to authorize the chairman at the meeting to convey and make over, to the party or parties who shall have endowed or undertaken to endow as a parish *quoad sacra* a district within such united parish, the one of such parish churches most convenient to such district, as the church of such parish *quoad sacra* in all time coming, and the chairman so authorized shall execute the conveyance of such church in favour of such party or parties, and the conveyance of such church by the chairman of such meeting of heritors shall be a valid title thereto in all time coming.

II. This Act shall be deemed to be incorporated with the recited Act, and the recited Act shall be read and have effect accordingly.

IV.—ACT 31 VICT. c. 30.

An Act to amend the Act of the Seventh and Eighth years of the reign of Victoria, chapter forty-four, relating to the Formation of quoad sacra Parishes in Scotland, and to repeal the Act of the Twenty-ninth and Thirtieth years of the reign of Victoria, chapter Seventy-seven.

29th May 1868.

Whereas, by the Act of the seventh and eighth Victoria, chapter forty-four, intituled, '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,' provision is made (by section eight), in the case of a church built or acquired, or undertaken to be built or acquired, and endowed or undertaken to be endowed by any

person or persons, at his, her, or their expense, for the erection of such church and a district to be attached thereto *quoad sacra* into a church and parish in connection with the Church of Scotland: And whereas there are in Scotland united parishes in which there are already two or more parish churches maintained: And whereas in such united parishes an increase of population or other change of circumstances may take place, rendering it expedient, under the provisions of the said Act, to apply for disjunction from such united parishes, and erection into a parish *quoad sacra* of a district thereof: And whereas, by the Act of the twenty-ninth and thirtieth Victoria, chapter seventy-seven, power was conferred upon the heritors of such united parishes to convey or make over any one of the parish churches of such united parish to the party or parties who shall have endowed or undertaken to endow such parish *quoad sacra*; but it has been found that the said last mentioned Act has not sufficiently accomplished the objects for which it was designed; and it is expedient that the said Act should be repealed, and other provisions should be made in lieu thereof: 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, as follows, viz. :—

I. The Act twenty-ninth and thirtieth Victoria, chapter seventy-seven, is hereby repealed.

II. Whenever, in the case of any united parish, containing two or more parish churches, any persons have undertaken to endow one of the said churches along with a district, being part of such united parish, to be attached thereto, it shall be competent for them to apply for the disjunction of such district, and for the erection of it into a parish *quoad sacra*, in terms of the eighth section of the said first recited Act, and for the court to entertain and dispose of such application in the same manner and to the same effect as if the persons applying for such disjunction and erection had, at his, her, or their expense, built or acquired, or undertaken to build or acquire, a church, in order to its being erected into a parish church in connection with the Church of Scotland: Provided also, that it shall not be necessary for the persons applying for such dis-

junction and erection to make any provision for the maintenance of the fabric of the church which they shall have undertaken to endow as aforesaid.

III. It shall be competent for the court, in pronouncing decree of disjunction and erection in an application presented under the preceding section, to declare that the church undertaken to be endowed shall, from and after the date of the decree, be the parish church of the newly-erected parish, and the said church shall thereafter be the parish church of the said newly-erected parish; and the minister and kirk-session of the newly-erected parish *quoad sacra* shall be invested with all those rights in relation to the church of the newly-erected parish which were formerly vested in the minister and kirk-session of the said united parish.

IV. The church which shall be declared as aforesaid to be the church of the newly-erected parish *quoad sacra* shall not be subject to the provisions of any trust constituted in terms of the first recited Act, or to any trust applicable to a church erected by voluntary contributions as the church of a parish *quoad sacra*.

V. Nothing in this Act shall increase or affect the existing liabilities of the heritors in any parish.

VI. This Act shall be deemed to be incorporated with the first recited Act, and the said first recited Act shall be read and have effect accordingly.

VII. This Act may for all purposes be cited as the 'United Parishes (Scotland) Act, 1868.'

V.—*Forms of Deeds connected with the Erection and Endowment of Quoad Sacra Churches and Parishes.*

1.—*Form of New Deed of Constitution for Churches and Parishes Quoad Sacra.*

At Edinburgh, the day of May 18 , sess. . Which day the General Assembly of the Church of Scotland

called for the report of the committee on the endowment of chapels of ease, relative to the proposed new church and parish of _____, in the parish of _____ and county of _____, and buildings connected therewith, consisting of a church and dwelling-house or manse, and relative to the sites of the said 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 revoked and rescinded, and hereby revoke, rescind, and recall any existing deed of constitution or other regulations or enactments by any of the judicatories of the Church in relation to the said church of _____, and to the management and supply thereof, and in terms of the said report and relative deed of constitution, enacted, and hereby enact as follows:—

- 1st, That the following persons shall be trustees, of whom _____ shall be a quorum, for the purposes after mentioned, viz.:—The procurator for the Church of Scotland, the principal clerk of the General Assembly of the Church of Scotland, and the convener of the General Assembly's committee on the endowment of chapels of ease, all for the time being, who shall be trustees *ex officio*, and _____ and such person or persons as shall, in terms of article 9th hereof, be elected a trustee or trustees in the room of any trustee or trustees not being a trustee or trustees *ex officio* resigning or dying.
- 2d, That if the said trustees have not already acquired the said church of _____, the trustees, other than the trustees *ex officio*, shall acquire, or undertake to acquire, and endow or undertake to endow the same, so as to entitle them to make an application to the Lords of Council and Session, acting in their capacity of commissioners for the plantation of kirks and valuation of teinds, in conformity with the provisions of the statute 7 and 8 Vict. c. 44, and relative amending statute, titled, 'United Parishes (Scotland) Act, 1868.' When one of two or more churches in such parish is proposed to be set aside as the church of the newly-erected parish, 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 be attached, and to erect such district into a parish *quoad sacra*, in connection with the Church of Scotland. And the said trustees shall forthwith make such application, and take all steps and proceedings, usual and necessary, or that may be considered expedient for prosecuting and following out the said application, and procuring decree of disjunction and erection in terms thereof.

- 3d, That when the said church and parish shall have been so erected, the said trustees shall take such steps as shall be necessary to have a portion of the sittings in the said church set apart as free seats, for all persons frequenting the same, and the remaining sittings let and appropriated, and the pew or seat rents expended and applied in terms of the foresaid statute, and of any obligations undertaken or imposed in conformity therewith. And it shall be lawful for the said trustees to apply the surplus revenue of the said church in supplementing the stipend of the minister thereof, beyond the endowment to be secured as aforesaid; and the trustees for the time being, and the kirk-session, jointly, shall have right to appoint the precentor and beadle, and to fix salaries to be paid to those officers, provided always that at any meeting of the trustees and kirk-session, held for appointing either of these officers, the members of the meeting shall vote *per capita*, and the chairman elected to preside shall have a deliberative as well as a casting vote.
- 4th, That the said church to be erected into a parish church shall be used only as a place of worship in connection with the Church of Scotland, and it shall not be competent to elect any preacher or minister to officiate either temporarily or permanently therein, except a licentiate or ordained minister of the Church of Scotland.
- 5th, That special collections shall be made at the said church for the purposes specified in the foresaid statute, and the

said trustees shall expend and apply the monies arising therefrom in terms thereof.

6th, That the usual services and occasional evening services shall take place in the said church, and the sacrament of the Lord's Supper shall be dispensed therein at least once in the year, at such time as the kirk-session may appoint; and for sacramental expenses, including communion elements, pounds shall be allowed annually from any funds that may be at the disposal of the trustees.

7th, That the patronage of the said church and parish shall be vested in and belong to , who has undertaken to secure at least one-half of the stipend or endowment to be provided to the minister thereof, 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; and in the event of not making such presentation within six months from the date of the occurrence of such vacancy, the right to make such appointment shall devolve upon the presbytery *tanquam juri devoluti*, and shall be exercised by them in common form.

Or, that the first minister of the new church and parish shall be the Rev. , who has been ordained and admitted to the said church; and thereafter the patronage, etc., etc., as in clause 7th.

Or, in the event of the patronage being vested in the heads of families connected with the church, article 7th may run thus :—

That the patronage of the said church and parish shall be exercised as follows :—In every case of a vacancy it shall be incumbent on the trustees and elders to hold a joint meeting, to be called by the session-clerk within ten days after the date of such vacancy, for the purpose of fixing a day for convening a meeting of the male seat-holders above twenty-one years of age, who are at the time, and who have been for at least six months preceding the vacancy, in full communion with that church, whether resident

within the bounds of the said new parish or not, which last mentioned meeting shall be called within one month after such vacancy, by intimation from the pulpit on the forenoon and afternoon of the Sabbath immediately preceding the day fixed for such meeting, and at which meeting a preses shall be elected ; and the said electors, qualified as aforesaid, shall either forthwith elect a person to be the minister of the said church and parish, or they shall make such arrangements for hearing candidates as the majority of the meeting may determine ; and in the latter event a second meeting shall be called, by intimation from the pulpit on the Sabbath preceding such meeting, to be held at such time as shall be fixed at the first meeting, at which second meeting the minister shall be appointed by a majority of the votes of the male seat-holders, qualified as aforesaid, present at such meeting, without prejudice, however, to the majority at such second meeting to adjourn the same from time to time as they may consider necessary, to enable them to obtain a minister to their choice, and the person chosen to be minister at the first or any subsequent meeting shall thereupon be duly presented or nominated in the form necessary and proper to secure his right to the benefice by the said trustees ; and the person who acted as preses of the meeting at which the minister so chosen was elected, duly authorized by the meeting to that effect. And in the event of the male seat-holders, qualified as aforesaid, not making such presentation within six months from the date of the occurrence of such vacancy, the right to make such presentation shall devolve upon the presbytery *tanquam juri devoluti*, and shall be exercised by them in common form.¹

8th, That on a vacancy occurring in said church, 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

¹ In some instances it is provided that the minister shall be elected by the trustees, or trustees and committee of management, or that a leet shall be made out and submitted to the people : it does not seem necessary to give a separate form for such cases.

employ a person to supply such temporary vacancy, it shall be in the power of the trustees and kirk-session, with the 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 4th hereof.

9th, That in the event of any trustee, not being a trustee *ex officio*, resigning or dying, a new trustee shall be elected to supply the place of such trustee, by the majority of the votes of the male communicants in the said church, taken at a meeting duly intimated and called from the pulpit within two months from the date of such vacancy ; which meeting shall be called and held at such times, within said period, as may be fixed by the kirk-session ; and the moderator or senior lay member of session shall preside at such meeting, and shall collect the votes, and declare the election of the new trustee, and which trustee so to be elected shall have the same rights and powers, privileges and immunities, as if he had been herein named. Provided always, that if the kirk-session shall fail to call such meeting of communicants within the period of two months aforesaid, it shall be competent to call the same at such period thereafter as may be fixed by the presbytery of the bounds, on the application of the kirk-session.

Lastly, That the trustees hereby nominated, other than the trustees *ex officio*, and their foresaids, shall exhibit annually to the presbytery of the bounds, on a day to be fixed by them, of which fourteen days' notice shall be given by circular addressed to them by the clerk of the trustees, failing whom, by the clerk of the kirk-session, to the parties contributing to and securing the said endowment, and others, or to such persons as they shall appoint, that they may attend for their interest, 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 account shall be attested by

the moderator or clerk of the presbytery, and such attestation shall be held sufficient evidence of the accuracy of such account, and shall fix the balance due thereon.

2.—*Disposition of a Church and Site by the surviving Trustee for the Original Congregation, in favour of the Trustees under the new Constitution by the General Assembly.*

I, surviving trustee for the congregation of the church or chapel at , in the parish of , in connection with the Church of Scotland, erected on the piece of ground hereinafter disposed, conform to feu-charter thereof granted by , in favour of me, and of , all now deceased, as trustees foresaid, and to the survivors or survivor of them, and me, and the heir of the last survivor who had attained the age of twenty-one years complete, for the use and behoof of said congregation, dated the and to instrument of sasine following thereon in favour of the said deceased trustees and me, recorded , considering that (*here insert the names of one or more of the parties promoting the disjunction and erection*), and , convener of the General Assembly of the Church of Scotland's committee on the endowment of chapels of ease, for themselves, and for the other parties promoting the disjunction and erection of the said church, and of the district forming the proposed new parish of , being of opinion that the disjunction of certain lands from the parishes of , and the erection of the same, along with the said church at , into a church and parish *quoad sacra* under the Act 7 and 8 Vict. c. 44, would be highly conducive to the moral and religious interests of the inhabitants residing in the aforesaid district, and that in order to obtain the said disjunction and erection it was necessary to make application to the Court of Teinds, and that it was desirable and proper that the same should proceed with the approbation and consent of the judicatories of the Church, they had accordingly procured a deed of constitution from the General Assembly of

the Church of Scotland of date _____, by which it is enacted (*here insert such of the articles of the new constitution as are requisite*). And now, seeing that I, as surviving trustee foresaid, have been requested to convey the said church and appurtenances to the said trustees, in conformity with the enactment in the said deed of constitution, and with the provisions in the foresaid Act of Parliament, and that I, as surviving trustee foresaid, have agreed, with the consent and approbation of the congregation at present worshipping in the said church at _____, to dis-
pone the same accordingly: Therefore I, as trustee fore-
said, and as specially authorized by the congregation of the said church or chapel at _____, conform to minute of their meeting held on _____, annexed to the draft of these presents, and signed by _____, the preses of said meeting, and which draft is herewith delivered, do hereby convey, alienate, and dispone from me, as surviving trustee foresaid, and my foresaids, to and in favour of _____, and of the successors in office of the said (*here insert the names of the new trustees*), heritably and irredeemably, but in trust always for the purposes herein and in the foresaid deed of constitution mentioned, all and whole (*here take in description of the subjects*). But always with and under the provisions and restrictions specified in the precept of sasine hereinafter contained; with entry at the term of _____; and, as surviving trustee foresaid, I oblige myself to infest my said disponees as trustees foresaid, to be holden as *a me vel de me*; and I resign the said piece of ground and others for new infestment, but always with and under the provisions and restrictions before referred to and after expressed; and I assign the writs and have delivered the same as follows, viz. the foresaid feu-disposition and instrument of sasine following thereon, along with the draft of the present disposition and principal minute of said congregational meeting annexed thereto; and I assign the rents, and bind myself to free and relieve my said disponees and their foresaids of all feu-duties, casualties, and public burdens preceding the said term of _____; and I grant warrandice from fact and deed; and I consent to

registration hereof for preservation. Moreover, I, the said _____, as surviving trustee foresaid, desire any notary-public, to whom these presents may be presented, to give to the said (*here repeat the names of the trustees*) as trustees foresaid, and their foresaids, sasine of the said piece of ground and others above disposed, but in trust always as aforesaid, and with and 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 dispose the said piece of ground and others, or any part thereof, or the said church or place of worship, and other buildings erected thereon, 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 said Church of Scotland, and for the purposes or trusts specified herein and in the foresaid deed of constitution; and it is hereby further 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, etc.

3.—*Disposition of Feu-Duties purchased at a Public Sale, in security of the Stipend of the Minister.*

We, _____, heritable proprietors of the subjects after disposed, considering that upon the _____ we exposed the said subjects to public roup and sale, in terms of certain articles and conditions of roup, executed by us of same date, by which it was *inter alia* declared that, upon the purchasers making payment of the price, we should grant a formal and valid disposition of the said subjects, containing the clauses therein, and in the minute thereto subjoined enumerated and herein contained, and that the said subjects were purchased by _____, at the price of _____ on behalf of the trustees after named for the General Assembly of the Church of Scotland and their committee for the endowment of chapels of ease: And further, considering that proceedings are at present in dependence before the Lords of Council and Session, commissioners for

the plantation of kirks and valuation of teinds, for having the church of _____, situated within the parish of _____, presbytery of _____, and county of _____, and a certain district proposed to be attached thereto, disjoined from the said parish of _____, to which the same now belongs, and erected into a church and parish *quoad sacra*, to be called the church and parish of _____, in terms of, and agreeably to, the provisions of the Act 7 and 8 Vict. c. 44, and that the said subjects were purchased with the view of securing, *pro tanto*, the endowment of the minister of the said church and parish, and the maintenance of the fabric of the said church, and appurtenances: And now, seeing that _____, convener of said committee, _____, treasurer of the said committee, and _____, one of the members thereof, trustees for the said General Assembly and their said committee, have, in terms of the said articles, made payment to us of the said sum of _____: Therefore we do hereby, with consent of the said _____, trustees foresaid, dispone to and in favour of (*here take in the official and other trustees as set forth in the deed of constitution of the church by the General Assembly*), and to the survivors and survivor of them and their successors in office, nominated and appointed in terms of the deed of constitution of the said church and parish, granted by the said General Assembly, of date the _____, (four of the said trustees being always a quorum), heritably and irredeemably, all and whole (*here take in description of subjects*); but in trust always for the following uses, ends, and purposes, viz. for payment out of the rents, feu-duties, or annual produce and profits of the said subjects, and of any other subjects already vested or which may become vested in the said trustees or their foresaids for the like purposes: First, of the annual sum of £120 sterling to the minister for the time being of the said church and parish of _____, and that by two equal portions, at the terms of Whitsunday and Martinmas yearly, beginning the first payment at the first term of Whitsunday or Martinmas which shall happen after the date of the decree of erection of the said church and parish for the half-year preceding, and the next pay-

ment at the next term of Whitsunday or Martinmas thereafter; and so continuing the payment of the said moieties at the said two terms in all time coming; but declaring that, in the event of there not being a complete half-year between the date of the said decree and the said first term of payment, the said trustees shall only pay a proportional part of the said half-yearly payment, corresponding to the period between the date of the said decree and the said first term of payment. Second, of the sum of yearly, or such part thereof as shall have been necessarily expended in that year, for the purpose of maintaining and repairing the fabric of the said church and appurtenances, and that at the term of Martinmas yearly, in all time coming, beginning the first payment at the first term of Martinmas which shall happen after the date of the decree of erection of the said church and parish of

And, Third, for paying or applying any surplus towards the purposes mentioned in the article of the deed of constitution of the said church: Declaring that all such payments shall be made under reservation of all claims of relief competent under the 9th section of the statute 7 and 8 Vict. c. 44, or the deed of constitution of the said church of ; with entry at the term of

. And we oblige ourselves to infest our said disponees and the survivors and survivor of them, and their foresaids, as trustees foresaid to be holden *a nobis vel de nobis*, and we resign the said subjects and others for new infestment in trust as aforesaid; and we assign the writs and have delivered the same conform to inventory; and we assign the rents or feu-duties, and casualties of superiority, from and after the said term of entry; and we oblige ourselves to free and relieve our said disponees of all feu-duties, casualties, and public burdens; and we grant warrandice, but excepting from this warrandice the feu-rights and other rights or infestments of property granted by us, or our authors and predecessors, to the feuars and vassals in the said subjects, without prejudice to our said disponees and their foresaids, to quarrel and impugn the same upon any ground in law not inferring

warrantice against us and our foresaids; and we consent to the registration hereof for preservation. Moreover, we desire any notary-public, to whom these presents may be presented, to give to the said (*here repeat names of the trustees*), and to the survivors and survivor of them and their foresaids, sasine of the said subjects and others before disposed, but that in trust always for the uses, ends, and purposes, and with and under the conditions and others, all before specified. In witness whereof, etc.

4.—*Heritable Bond of Annual Rent for the Statutory Stipend and the Maintenance of Fabric of Church and Manse, with Appurtenances.*

I, _____, considering that by an Act passed in the 7th and 8th years of the reign of her Majesty Victoria, chapter 44, intituled, '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,' various provisions are made for the disjunction or dividing of parishes, and for the erection of new parishes *quoad sacra*, under the authority of the Court of Teinds: And farther, considering that with the view of making application to the Court of Teinds for the disjunction of certain lands situated partly within each of the parishes of _____ and _____, and _____, all lying within the presbytery of _____, and county of _____, from the said parishes respectively, and the erection of the same, along with the church after mentioned, into a church and parish *quoad sacra*, in terms of the foresaid Act, to be called the church and parish of _____, a church and manse, and offices and appurtenances, have been built on part of the lands of _____, belonging to me, in the said parish of _____: That the parties in right of the said church and 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 manse and offices and appurtenances, as the 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 in the proportions mentioned in the deed of constitution hereinafter referred to, for the purpose of providing and securing a permanent endowment or stipend for the minister of the said new church and parish, to the amount of £100 sterling per annum, being the amount of endowment required by the foresaid statute, and that I have individually undertaken to make due provision for the future maintenance of the fabrics of the said church and manse, and offices and appurtenances, and for the other requirements of the foresaid Act: And farther, considering that preparatory to making the said application to the Court of Teinds, and with the view of more efficiently carrying out, *inter alia*, the foresaid purposes, an application was made by me and the other parties interested, to the General Assembly of the Church, for a new constitution for the said church of

: That, under the authority of the said General Assembly, a new deed of constitution for the said church has been obtained, by article of which it is enacted that certain parties therein named should be trustees for the purposes specified in the said deed of constitution, and by article , that I and , convener, and in behalf of the committee of the General Assembly on the endowment of chapels of ease, should respectively grant a bond or bonds in favour of the trustees therein specified, binding and obliging ourselves and our representatives to make payment to the said trustees, and the survivors or survivor of them, and their successors in office, yearly, at two terms of the year, Whitsunday and Martinmas, by equal portions, of the sums of money which we had respectively agreed to contribute annually for the purposes mentioned in article thereof; and that in security of the annual payments therein mentioned, I, and respectively, should further either grant in favour of the said trustees and their foresaids, heritable bonds of annual rent or dispositions, one or more conveying such amount of heritable property as shall 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, such principal sum as should be sufficient to yield the annual amount of the payments to be made by us respectively under the conditions therein mentioned: And farther, considering that in terms of the arrangement entered into by and between me and the said _____, as representing the said committee, it has been agreed that in place of their making separate provision for the annual sum of _____, agreed to be contributed by them in addition to the annual sum of _____, agreed to be provided by me toward the said endowment, making together the annual sum of £100, being the amount of endowment required by the foresaid Act, the said committee should pay over to me the capital sum of _____, being the estimated value of said annual contribution of _____, and that I should grant these presents for the full endowment of £100 sterling, agreed to be provided as aforesaid, so as to meet the requirement of the foresaid Act thereanent; and now, seeing that the said committee have, by the hands of _____, their treasurer, instantly advanced and paid to me the foresaid capital sum of _____, as the agreed on price and purchase money of the said annual sum of _____, agreed to be paid and secured by me as aforesaid, of which capital sum of _____ I hereby acknowledge the receipt, renouncing all exceptions to the contrary; and that it is proper I should grant these presents in implement of the whole obligations undertaken by me: Therefore I do hereby bind and oblige myself, and my heirs, executors, and successors whomsoever, to make payment to (*here insert the names of the ex officio and other trustees contained in the deed of constitution*), trustees nominated and appointed by the foresaid deed of constitution, and to the survivors and survivor of them, and to the successors of the said (*repeat the names of the ex officio trustees before specified*), and to the successors of the said _____, or to their quorum, at two terms in the year, Whitsunday and Martinmas, by equal portions, in all time coming, of the sum of £100 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 as the said trustees shall certify by a writing under their hands to be necessary for the purpose of maintaining and repairing the fabric of the said church and dwelling-house or manse, and offices and appurtenances; 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 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, all as more particularly mentioned in the foresaid deed of constitution; beginning the first payment on account of the said annual sums at the first term of Whitsunday or Martinmas that shall happen after the date of the decree of erection of the said church and parish *quoad sacra* by the Court of Teinds, of a proportional part thereof from that date to the said term, and the next payment at the term of Whitsunday or Martinmas next thereafter for the half-year immediately preceding, and so forth half-yearly and termly thereafter in all time coming, together with a fifth part more of each term's payments or proportional parts of the same of liquidate penalty, in case of failure in payment thereof at the terms foresaid, and the legal interest of the said annual sums from and after the respective terms at which the same fall due as aforesaid, and in time coming, during the not payment thereof; but in trust always for the ends, uses, and purposes, and under the conditions and provisions expressed herein and in the said deed of constitution, so far as not hereby altered, or as they may be altered or amended by the Court of Teinds, in virtue of the provision to that effect contained in the said deed of constitution, or for the pur-

pose of making the same conform to the statute ; declaring always, as it is hereby expressly provided and declared, that the receipts of the minister for the time being of the said church and parish of for the endowment hereby provided and secured, as the same becomes due as aforesaid, shall be sufficient discharges to me and my foresaids therefor, and that it shall not be necessary to obtain the subscriptions of the said trustees to such receipts, provided always that the minister for the time being has been in full charge of the said church and parish for the period for which such receipts are drawn, and not under any legal disability ; and for the said trustees and their foresaids their further security and more sure payment of the foresaid annual sum, I hereby bind and oblige myself and my foresaids, on the charges and expenses of the said trustees, to infest, vest, and seize the said (*here repeat the names of the trustees*), trustees foresaid, or their foresaids, in the said annual sum of £100 sterling, payable at two terms in the year, Whitsunday and Martinmas, by equal portions in all time coming, and also in the said sum of , or such part thereof as the said trustees shall certify as aforesaid for the purpose of maintaining and repairing the fabrics of the said church and dwelling-house or manse, and offices and appurtenances, payable at the terms, by the proportions, and with interest and penalty as before expressed ; but in trust always for the ends, uses, and purposes, and under the conditions and provisions expressed herein, and in the said deed of constitution, in so far as not hereby altered, or as they may be altered or amended by the Court of Teinds in virtue of the provision to that effect contained in the said deed of constitution, or for making the same conform to the statute : To be uplifted and taken, the said annual sums furth and out of all and whole (*describe the lands*) ; which several annual sums uplifted out of the lands and other heritages above mentioned, and said lands and other heritages themselves and infestments to follow hereon, I bind and oblige me and my foresaids to warrant to the said trustees and their foresaids at all hands and against all

deadly: And I hereby assign, convey, and make over to the said trustees and their foresaids, not only the whole writs, titles, and securities of the said lands and other heritages, but also the first and readiest of the rents, mails, and duties of the same, to the extent of the said several annual sums and interest and penalties before specified, upliftable furth thereof; but in trust always as aforesaid: Declaring always, as it is hereby provided and declared, that while and so long as the foresaid several annual sums are regularly paid at the terms foresaid by me and my foresaids, the said trustees and their foresaids shall not be entitled to intromit with or uplift the rents of the foresaid lands, and that I and my foresaids shall be entitled to receive and discharge the same, without the consent of the said trustees or their foresaids; but in the event of our failing to make punctual payment of the foresaid several annual sums at the terms before specified, then and in that case it shall be competent to the said trustees and their foresaids to enter into possession of the foresaid lands, and to uplift, receive, and discharge the rents thereof, they always accounting for their intromissions therewith, and paying over to me and my foresaids the balance that may remain in their hands after satisfaction and payment of the said several annual sums, liquidate penalty, and interest before specified, and all expenses which may be incurred or paid by them in relation to the premises: And I consent to the registration hereof in the books of Council and Session for preservation, and that all necessary execution may pass upon a decree to be interponed hereto in common form, and for that purpose constitute my procurators. Moreover, I hereby desire any notary-public to whom these presents may be presented, to give to the said (*repeat names of trustees*), trustees foresaid, or their foresaids, sasine of the foresaid annual sum of £100 sterling, and of the said annual sum of , to be uplifted and taken at the terms, by the proportions, with interest and under the penalties particularly above specified, furth of all and whole the lands and other heritages above described, or furth of any part or portion thereof, readiest rents, mails, farms,

profits, and duties of the same : But in trust always for the purposes and with and under the conditions and provisions before specified or referred to. In witness whereof, etc.

NOTE.—The heritable bond of annual rent by an heir of entail will be in similar terms to the above form, under reference to the powers conferred on heirs of entail by the statute.

5.—*Form of Feu-Charter by a Fee-Simple Proprietor.*

Know all men by these presents, that I, _____, heritable proprietor of the piece of ground and others hereby disposed, 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 _____, 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, in full of 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 disposed, 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 dispose 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, etc.

6.—*Form of Feu-Charter by an Heir of Entail.*

Know all men by these presents, that I, _____, heir of entail in possession of the entailed lands and estate of _____, in virtue of the powers conferred on me by an Act of the 7 and 8 Vict. c. 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,¹ do sell, alienate, and in feu-farm dispone from me and the heirs of entail succeeding to me in the said entailed lands and estate of to , trustees 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,² part of the said entailed land 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

¹ 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.

² 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.

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 entry to the said piece of ground and others, in full of 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 disposed, but always with and under the burdens 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 dispoise 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, etc.

7.—*Form of Bond and Disposition in Security by a Fee-Simple Proprietor.*

I, _____, heritable proprietor of the lands and estate of _____, considering that by an Act passed in the 7 and 8 Vict. c. 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 sect. 8 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 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,' etc., 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 farther, 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 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 farther, 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 day of , by article first 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 second, provision is made for the endowment of the said church and parish: And now, seeing that I am ready and willing to implement the obligations undertaken by me in connection with said endowment: Therefore I do hereby bind and oblige myself, my heirs, executors, and representatives whomsoever, to make payment to trustees, nominated and appointed by the foresaid deed of constitution of the said church of , and to the survivors or survivor of them, and to their successors in office as trustees foresaid, or to their quorum, of the sum of sterling yearly, in trust for payment of the foresaid sum of £ , 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; which sum contained in the present bond shall be payable half-yearly at Whitsunday and Martinmas by equal portions, beginning the first term's payment thereof at the first of these terms that shall happen after the first erection of the said new parish of , and after the settlement of a minister to serve the cure thereof, for the term then ended, and so on half-yearly thereafter in all time coming: And in security of the foresaid personal obligation, I dispone to and in favour of the said and their foresaids, as trustees foresaid, heritably and irredeemably , all and whole the lands , lying within the parish of , and county of , and that in real security to the said trustees and their foresaids, as trustees foresaid, of the yearly payment before

mentioned. To be holden *a me vel de me*. And I assign the rents, but only so far as necessary to satisfy the said sum yearly as the same becomes due; and I assign the writs, but only so far as necessary to support the right hereby granted; 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.

8.—*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 7 and 8 Vict. c. 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 sect. 8 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 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,' etc., 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 sect. 11, 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,' 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 pounds¹ 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 first 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 second, provision is made for the endowment of the said church and parish: And now, seeing that I am ready and willing to implement the obligations undertaken by me in connection with said en-

¹ £120 where there is no manse.

dowment: 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, of the sum of sterling yearly,¹ in trust for payment of the foresaid sum of 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, which sum of contained in the present bond shall be payable half-yearly at Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms that shall happen after the first erection of the said new parish of , and after the settlement of a minister to serve the cure thereof, for the term then ended, and so on half-yearly thereafter in all time coming: 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 dispoñe 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 , 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 payment before mentioned. And I assign the rents, but only so far as necessary to satisfy the said sum yearly as the same becomes due; and I assign the writs, but only so far as necessary to support the right hereby granted; and I grant warrandice; and I consent to registration for

¹ The stipend granted by an heir of entail can, in no case, be more than £120, or exceed three per cent. of the clear rental of the land conveyed in security.

preservation and execution, and also to registration in the General or Particular Register of Sasines.—In witness whereof, etc.

NOTE.—A separate letter of consent given by next heir of entail, in terms of statute.

III.

CHURCHES, MANSES, AND GLEBES.

I.—31 AND 32 VICT. C. 96.

An Act to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in Scotland.

31st July 1868.

Whereas it is expedient to amend the procedure in regard to ecclesiastical buildings and glebes in Scotland: 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, as follows:—

I. Where not inconsistent with the context, the following expressions shall in this Act have the meanings hereinafter assigned to them:

The expression 'church' shall include all necessary fencing of the site whereon the church is built, in so far as the heritors are now by law bound to provide the same:

The expression 'manse' shall include all necessary and usual offices, garden, and garden walls which the heritors are now by law bound to provide:

The expression 'parish' shall include united parishes:

The expression 'glebe' shall include grass glebe or minister's grass:

The expression 'lands and heritages' shall have the meaning assigned to it in the Act 17 and 18 Vict. c. 91, intituled, 'An Act for the Valuation of Lands and Heritages in Scotland:'

The expression 'the Lord Ordinary' shall mean the Lord Ordinary in teind causes in the Court of Session :

The expression 'sheriff' shall include sheriff-substitute :

The expression 'heritor' shall mean any proprietor of lands and heritages at present liable in the assessments which may be imposed according to the real or valued rents thereof, as the case may be, for the purposes set forth in the third section hereof :

The expression 'valued rent' shall in the county and lordship of Zetland mean and include 'number of merks land.'

II. This Act may be cited as the 'Ecclesiastical Buildings and Glebes (Scotland) Act.'

III. From and after the passing of this Act, if, in the course of any proceedings before any presbytery of the Church of Scotland relating to the building, rebuilding, repairing, adding to, or other alteration of churches or manses, or to the designing or excambing of sites therefor, or to the designing or excambing of glebes or additions to glebes, or to the designing or excambing of sites for or additions to churchyards, and the suitable maintenance thereof (including the building or repairing of churchyard walls), any heritor or the minister of the parish shall be dissatisfied with any order, finding, judgment, interlocutor, or decree pronounced by such presbytery, it shall be competent for such heritor or minister, within twenty days of the date of such order, finding, judgment, interlocutor, or decree, to stay such proceedings by appealing the whole cause as hereinafter provided ; and such appeal, on being duly intimated to the clerk of the said presbytery, shall have the effect of staying the presbytery from taking any further steps in connection with said proceedings : Provided always, that if no such appeal is taken and duly intimated within the period foresaid, every such order, finding, judgment, interlocutor, or decree not appealed from as aforesaid shall be final and not subject to review : Provided also, that if the heritor or minister taking any appeal as aforesaid shall unduly delay to follow forth the same, it shall be competent for any other heritor, or for the minister of the parish, or for the clerk of the presbytery of the bounds by the authority of the said presbytery, or for the clerk of the heritors by the authority of the heritors, to sist himself

as a party to said appeal, and to follow forth the same as the original appellant could have done.

IV. An appeal under this Act shall be taken by the appellant or his agent presenting a summary petition to the sheriff of the county in which the parish concerned is situated, praying him to stay the proceedings before the presbytery, and to dispose of the same himself: Provided, that where the parish is situated within more than one county, the petition may be presented to the sheriff of either county; and the sheriff to whom the first application is made shall have the same power, authority, and jurisdiction as if the whole of the parish were situated within his county.

V. All appeals under this Act shall, within ten days of their presentation, be intimated by circular, transmitted by the appellant or his agent through the post office, addressed to each heritor or his known factor or agent, to the clerk of the heritors, if there be such clerk, to the minister of the parish (if the benefice is full at the time), and to the clerk of the presbytery of the bounds: Provided always, that where the number of heritors of the parish exceeds forty, it shall not be necessary to address a circular to each heritor or his factor or agent, but it shall be sufficient if a copy of the petition of appeal is affixed to the most patent door of the church for two successive Sundays next following the presentation of the petition, and if notice of the presentation of the petition is inserted in a newspaper circulating in the county during each of two successive weeks.

VI. Upon any petition of appeal under this Act being considered by the sheriff, he shall satisfy himself that the intimation before mentioned has been made, and, if not duly made, he shall order such intimation as he shall consider necessary, and thereafter he shall inquire into the circumstances, and hear the parties, by themselves or their agents, without any written pleadings, unless the same shall be specially ordered by him; but he shall take a note of the proceedings and of any evidence which may be laid before him, and shall dispose of the petition as shall be just.

VII. In any proceedings for the rebuilding of a church or manse the sheriff shall, unless the matter has been decided by

the presbytery by a judgment or finding final under the third section hereof, *primo loco*, consider whether, in accordance with the law as at present existing, a new edifice should be erected, or whether the existing buildings should be repaired, and for that purpose he may take such evidence and make such remits to architects or other professional persons as he shall think right, and he shall pronounce a finding accordingly: Provided always, that, if the sheriff see cause, he may dismiss the petition.

VIII. In any proceedings for the building or repairing of a church or manse, the sheriff shall inquire, with such assistance of architects or other professional persons as he shall think proper, into the truth of the allegations contained in the petition; and if he shall be satisfied that, in accordance with the law as at present existing, a church or manse should be built, or that repairs are necessary, he shall pronounce a finding accordingly: Provided always, that, if he see cause, the sheriff may dismiss the petition.

IX. Where the sheriff shall find that, in accordance with the law as at present existing, a church or manse must be built, rebuilt, or repaired, but the heritors shall delay or refuse to give effect to it, he shall remit to an architect or other professional person to prepare plans and specifications for such building, rebuilding, or repairs, and after hearing any objections thereto, he shall approve of or modify the same, and ordain the same to be executed, and, if need be, he shall remit to an architect or other professional person to receive tenders for the execution of said plans and specifications, to accept of such tenders as shall seem best, and to superintend their execution; and the sheriff shall find the heritors who are now liable in the expense of such building, rebuilding, or repairs, and shall assess and allocate the same, together with a sufficient sum to cover the expenses of collection upon them, according to their respective real rents, as these shall appear on the valuation roll or rolls in force at the date of such assessment and allocation, or according to their valued rents, as the case may be, and shall grant decree for payment thereof in such instalments and under such conditions as he shall direct.

X. In any proceedings for building or repairing churchyard walls the sheriff shall inquire as to the truth of the petitioner's

allegations, and if he shall find that the walls should be built or repaired, but the heritors shall refuse or delay to give effect to such finding, he shall remit to some person to prepare the necessary specifications (on which, if required, he shall hear parties), and he shall approve of or modify the same, and, if need be, remit to some person to take and accept tenders, and superintend the execution thereof, and he shall assess, allocate, and decern for the expenses thereof, as in the case of building, rebuilding, or repairing a church or manse.

XI. In any proceedings for designing a glebe or churchyard, or the site of a church or manse, or additions to any of the same, or for excambing a glebe, churchyard, site of a church or manse, or any portions thereof, the sheriff shall inquire into the truth of the petitioner's allegations, and for that purpose may take such evidence, and make such remits to land valuator, surveyors, or other persons of skill, as shall seem necessary, and shall dispose of the petition in accordance with the law as at present existing, and shall assess and allocate the expense of acquiring land (including any buildings thereon) for such glebe or churchyard, or for the site of such church or manse, or for additions to any of the same, and decern therefor, as in the case of building, rebuilding, or repairing a church or manse: Provided always, that the sheriff's decree of designation or excambion shall have the same force and effect as a decree of designation or excambion pronounced by a presbytery before the passing of this Act, except as hereinafter provided: Provided also, that it shall not be competent for the sheriff to pronounce any decree of excambion, unless it shall appear, under the hand of the clerk of the presbytery of the bounds, that the presbytery have given their consent to such excambion.

XII. After the completion of the works ordered in the course of any proceedings for the building, rebuilding, or repairing of any manse, it shall be competent for any heritor of the parish to move the sheriff to declare it a 'free manse;' and if the sheriff shall be satisfied that the manse is in a state of thorough repair, he shall find and declare accordingly, and his decree shall have the same force and effect as a decree in similar terms pronounced by a presbytery before the passing of this Act would have had: Provided always, that such decree shall

have effect only till the expiration of fifteen years from its date, or until the appointment of a new minister to the parish, whichever event shall first happen.

XIII. In any proceedings for the building, rebuilding, or repairing of any church or manse, or for the designation of any glebe, churchyard, site of any church or manse, or of any additions thereto, or for the excambion of any glebe, churchyard, site of any church or manse, or of any portions thereof, it shall be competent for the parties, or any of them, to require the sheriff to make a personal inspection of the premises or locality, as the case may be; and the sheriff shall comply with such requisition.

XIV. All orders, findings, judgments, interlocutors, or decrees pronounced by any sheriff under the authority of this Act shall be final and conclusive, and not subject to review by any court whatsoever, unless an appeal shall be taken to the Lord Ordinary against the same in manner hereinafter mentioned.

XV. The Lord Ordinary, or the sheriff, as the case may be, shall be entitled to dispose of all questions of expenses, and to grant decree therefor.

XVI. An appeal to the Lord Ordinary under this Act may, when otherwise competent, be taken by a note of appeal written at the end or on the margin of the order, finding, judgment, interlocutor, or decree appealed from, or by a separate note of appeal lodged with the sheriff-clerk; and such note of appeal may be in the following or similar terms:—

‘The petitioner [*or* respondent] appeals to the Lord
‘Ordinary in teinds causes.’

And the said note shall be signed by the appellant or his agent, and shall bear the date on which it is signed.

XVII. It shall not be competent to take or sign any note of appeal after the expiration of twenty days from the date of the order, finding, judgment, interlocutor, or decree complained of in any proceedings before the sheriff under this Act, and during such period of twenty days extract shall not be competent; but on the expiration of the foresaid period, if no appeal shall have been taken, the clerk of court may give out the extract.

XVIII. Such appeal shall be effectual to submit to the re-

view of the Lord Ordinary the whole orders, findings, interlocutors, judgments, or decrees pronounced by the sheriff in the cause in so far as not final as hereinbefore provided, not only at the instance of the appellant, but also at the instance of every other party appearing in the appeal, to the effect of enabling the Lord Ordinary to do complete justice without the necessity of any counter appeal; and an appellant shall not be at liberty to withdraw or abandon an appeal without leave of the Lord Ordinary; and an appeal may be insisted in by any party in the cause other than the appellant, in the same manner and to the like effect as if it had been taken by himself.

XIX. The sheriff-clerk shall, within two days after the date of any appeal being taken, send written notice of such appeal to the respondent or his agent: Provided that the failure to give such notice shall not invalidate the appeal; but the Lord Ordinary may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be thought proper.

XX. Within two days after the appeal shall have been taken, the sheriff-clerk shall transmit the process to the depute-clerk of Session attached to the bar of the Lord Ordinary, who shall subjoin to the appeal a note of the day on which it is received; and it shall be lawful for either the appellant or the respondent at any time after the expiry of eight days from the date of such note to enrol the appeal; and when the appeal is called in the roll, it shall be competent for the Lord Ordinary to order the note of appeal and any other papers or productions to be printed, or the Lord Ordinary may dispense with the printing of the same; and in case the papers ordered to be printed shall not be printed by the appellant, or in case he shall not move in the appeal, it shall be lawful for the Lord Ordinary, on a motion by any other party in the cause, to grant an order authorizing the party moving to print the papers aforesaid, and to insist in the appeal as if it had been taken by himself: Provided always, that when any appeal is taken to the Lord Ordinary, he shall have the whole powers which are hereinbefore conferred on the sheriff: Provided also, that all orders, findings, interlocutors, judgments, or decrees pronounced by the Lord Ordinary shall be final and not subject to review.

XXI. The provisions of the 'Lands Clauses Consolidation (Scotland) Act, 1845,' and the 'Lands Clauses Consolidation Acts Amendment Act, 1860,' with respect to the purchase and taking of lands by agreement, or otherwise than by agreement, shall be incorporated with this Act; and for the purposes of this Act the expression, 'the promoters of the undertaking,' wherever used in the said Acts, shall mean the heritors of any parish under this Act: Provided always, that the provisions in the said Acts 'with respect to the purchase and taking of lands otherwise than by agreement' shall have effect only in respect of such lands as the sheriff of the county shall have designated as above provided for: Provided farther, that the provisions in the said Acts with respect to lands acquired 'by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof,' shall not be restricted in operation to any fixed period after the purchase of such lands.

XXII. Notwithstanding any law, statute, or usage to the contrary, meetings of heritors for any purpose whatsoever may be called in the following manner; that is to say, on the requisition of the clerk of the heritors, or of any heritor or heritors possessed of lands yielding one-fourth part of the total real rental of the parish as the same shall appear on the valuation roll or rolls then in force, or valued at one-fourth part of the total valued rent of such parish, as the case may be, or, when he shall himself think such meeting expedient or necessary, the minister of the parish shall cause an intimation of the meeting to be given immediately after divine service in the forenoon, and circular letters containing a similar intimation to be sent to all heritors of the parish at least twenty-one free days before such meeting shall take place; provided that where in any parish the number of heritors exceeds forty, it shall not be necessary to send circular letters as before provided, but in lieu thereof intimation of the meeting shall be given by the minister by advertisement in a newspaper circulating in the county once during each of two successive weeks between the intimation from the pulpit before mentioned and the day for which the meeting has been called.

XXIII. All assessments for the purpose of defraying ex-

penses connected with the building, rebuilding, or repairing of churches or manses, or the designing or excambing of sites therefor, or the designing or excambing of glebes or additions to glebes, or the designing or excambing of sites for additions to churchyards, and the suitable maintenance thereof (including the building, rebuilding, or repairing of churchyard walls), in any parish, shall be imposed in manner after mentioned upon all lands and heritages within such parish according to the yearly value thereof as the same shall appear on the valuation roll or rolls in force in such parish at the time when such assessments are made, or according to the valued rent of such lands and heritages, as the case may be; and such assessments shall be imposed and recovered according to the present law and practice: Provided always, that when the area of any parish church heretofore erected has been allocated among the heritors according to their respective valued rents, all assessments for the repair thereof shall be imposed on such heritors according to such valued rent.

XXIV. Nothing herein contained shall have the effect of extending or increasing the burdens which now by law rest upon the minister or heritors of any parish in respect of any of the matters above set forth. Nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment.

XXV. All laws, statutes, and usages shall be and the same are hereby repealed, in so far as they are at variance or inconsistent with the provisions of this Act: Provided always, that the same shall continue in force in all other respects.

II.—ACT 29 AND 30 VICT. C. 71.

An Act to facilitate the letting on Lease, Feuing, or Selling Glebe Lands in Scotland.

6th August 1866.

Whereas it is expedient that the power should be given to grant leases or feus of glebe lands, or portions thereof, in Scotland, or to sell the same in manner after mentioned: 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, as follows, viz. :—

I. This Act may be cited as 'The Glebe Lands (Scotland) Act, 1866.'

II. In this Act, unless there be something in the subject or context repugnant to such construction—

The word 'minister' shall mean the minister of any parish in Scotland for the time who shall be in possession of a glebe :

The word 'presbytery' shall mean the presbytery within the bounds of which such parish is situated :

The word 'heritor' shall mean the proprietor of any lands within such parish to the extent of at least one hundred pounds of real rent from land yearly appearing in the valuation roll of the county within which such parish is situated :

The word 'glebe' shall mean the lands appropriated to the minister as his glebe, and any additional lands settled in perpetuity on the minister for the time being, and enjoyed by him along with his glebe :

The word 'court' shall mean the Court of Session as commissioners for the plantation of kirks and valuation of teinds.

III. A minister may, with consent and approval of the heritors and the presbytery, grant a lease or leases of his glebe, or any part or parts thereof, reserving for the use of the minister not less than five imperial acres nearest and most convenient to the manse, which shall be marked out by the heritors and the presbytery, for any term not exceeding eleven years, for such yearly rent or rents, and upon such condition or conditions, as shall be approved of by the heritors and the presbytery, but without any foregift or grassum, and under the special condition, if the said reserved five acres be included in the said lease, that such lease, in so far as they are concerned, shall cease and determine at the first term of Martinmas six months after the death, deprivation, resignation, or translation of the minister of the parish ; such consent and

approval of the heritors and the presbytery to be signified by a certificate written on the lease or leases, and signed by the clerk to the heritors and by the moderator and clerk of such presbytery; and the rent or rents payable under such lease or leases shall be paid and belong to the minister.

IV. A minister may, with consent of the presbytery and heritors, sell or dispose of, for such fixed annual payment in grain or in money as may be agreed on, any servitude or right of pasturage over any lands, which servitude or right of pasturage is possessed by him as minister of the parish: Provided always, that if the proprietor of the lands over which such servitude or right of pasturage exists elect to purchase it absolutely, the purchase money shall be invested at the sight of the heritors and presbytery on such securities and in such manner as the Court of Teinds shall direct, and the interests and proceeds only shall be paid to the minister.

V. Subject to the provisions of this Act, the minister may from time to time, with the consent of the presbytery and of the heritors as hereinafter provided, make application to the court by summary petition for authority to feu his glebe, or any part thereof, or to grant building leases thereon for any term not exceeding ninety-nine years.

VI. Previous to making any such application, the minister shall intimate his intention so to do to the presbytery by a letter addressed to the moderator, and shall transmit therewith a copy of the proposed application, which intimation and application shall be laid by the moderator before the presbytery at their first meeting after receiving the same; and if the presbytery are of opinion that it would be for the interests of the benefice that the glebe should be feued or let on building leases, they shall signify their consent to such application, subject to such conditions, if any, as they think necessary or advisable, by a certificate to that effect written on a copy of the proposed application, and signed by the moderator and clerk.

VII. Upon such certificate being granted, the minister shall call a meeting of heritors, such meeting to be summoned by intimation from the pulpit in the usual manner, and by notices, with a copy of the proposed application enclosed therein, delivered or sent by post to each heritor or his known agent, at

least thirty days previous to the day on which such meeting is to take place within the parish, such meeting to be held on a day and at an hour and at a place to be specified in such citation and notices, and at such meeting every heritor may vote by proxy or by letter under his hand.

VIII. At that meeting a copy of the proposed application to the court shall be submitted to such meeting; and if approved of by two-thirds in value of the heritors of such parish, the clerk to the heritors shall grant a certificate to that effect under his hand to the minister.

IX. Every such petition shall state the date of the petitioner's induction to the parish, the amount of the stipend and other sources of emolument attached to the living, the extent of the parish, the population according to the immediately preceding census, the nature and extent of the glebe, the purpose of the proposed feuing or granting building leases, the expected rate of feu-duty or rent, and the grounds on which the petitioner submits that benefit will arise to the minister and his successors in office by authority to feu or lease being granted; and there shall be produced therewith the certificate of the presbytery and heritors, and the form of feu charter or building lease proposed to be adopted.

X. The court shall appoint the petition to be intimated in the minute book and on the walls in common form, and to be served upon all proprietors of lands and heritages conterminous with the lands proposed to be feued or leased for building; and shall also appoint notice of the petition to be inserted once in the *Edinburgh Gazette*, and once a week for three successive weeks in such local newspaper or newspapers as the court may think proper.

XI. It shall be in the power of any proprietor of lands or heritages conterminous with the lands proposed to be feued or leased for building, to appear and object to the application being granted, on the ground of injury to the value or amenity of his said lands or heritages; and it shall be in the power of the court, on considering such objections, to give effect thereto by refusing the application in whole or in part.

XII. After intimation and advertisement aforesaid, the court, on considering the petition, with or without answers

from any party interested, may remit to such person or persons as they shall appoint, to inquire into the facts stated in the petition, and to report his or their opinion or opinions thereon, and as to any conditions or restrictions subject to which the prayer of the petition should be granted.

XIII. The court may, by order or interlocutor, and subject to any conditions or restrictions they may deem expedient, grant such authority, and shall in such order or interlocutor fix the minimum rate at which the glebe or any portion thereof shall be feued or leased for building, and shall authorize and empower the petitioner and his successors in office at the sight of the heritors and the presbytery, subject to the provisions of this Act, to grant and dispose of the glebe, or any part or parts thereof, in feu farm, fee, and heritage, for the highest feu-duties, or in building leases for the highest rent in grain or in money, that can be got for the same, not being less than the said minimum, and that either by public auction or private contract.

XIV. The court may also, on such application, authorize the minister to make and construct such streets, roads, passages, sewers, or drains in and through the glebe or any part thereof as the court on inquiry may find reasonable or expedient, with the view of the more advantageous feuing or leasing thereof.

XV. The said feu-duties and rents, and the interest of any monies arising from any sale or sales in fee-simple of any part or parts of the glebe invested as hereinafter provided, shall be taken payable to the minister and his successors in office serving the cure of the parish for the time, in all time thereafter, and be recoverable by him or them: Provided that on the death of any minister, his widow, heirs, or executors shall have right to and shall be entitled to receive and discharge the said feu-duties and rents in the same manner and for the same length of time as is provided by the thirteenth Act of the third session of the second Parliament of Charles the Second, passed at Edinburgh the 23d day of August 1672, intituled, 'Act for the Ann. due to the executors of Bishops and Ministers,' with regard to the stipend of the parish as ann.; and provided further, that in the event of any circumstance causing

a vacancy to be prolonged beyond the term during which such widow, heirs, or executors have a right to the said feu-duties and rents, it shall be lawful for the heritors of the parish and presbytery of the bounds to uplift and to apply the said feu-duties and rents to the provision of spiritual superintendence and the supply of religious ordinances in the parish during the vacancy.

XVI. Subject to the provisions of this Act, the feu-duties which shall become payable under any contracts, dispositions, or charters of feu, or writs by progress, and the rents under any building leases, to be granted in virtue of this Act, shall in all time thereafter belong to the minister, and shall be held and enjoyed by him in lieu and place of the natural possession of such glebe, or the rents, mails, duties, and profits of the same, and subject always to the burden of payment of interest on the permanent burden after referred to, so long as it subsists: Provided that, after feuing out or letting on building lease or selling the said subjects or any part thereof in virtue of this Act, it shall not be competent for the minister, or his successors in office, to make any demand upon the heritors for providing him in a glebe or in any portion of land in lieu of the glebe land so feued, leased, or sold: Provided always, that nothing herein contained shall preclude or prejudice any claim which the minister may have to any additional glebe that might have been competent to him if this Act had not passed.

XVII. When the court shall have made an order or interlocutor granting authority to feu or let on building lease, and fixing the minimum feu-duty or rent, any proprietor whose lands are conterminous with the glebe mentioned in such order or interlocutor may, within thirty days of the date of such order or interlocutor, intimate his willingness to feu or lease or to purchase so much of the said glebe at such a rate of feu-duty, or rent, or price, as the court may on a consideration of the whole circumstances of the case, and after directing such inquiry as they may consider necessary, determine; and if to feu or lease, undertaking to grant security over the whole or such part of his estate, in addition to the said glebe itself, as to the court shall seem necessary for the regular and punctual

payment of the feu-duty or rent fixed by the court; and on such intimation, and after such rate of feu-duty and security therefor, or price shall have been so fixed, the court shall, in case of feuing or leasing, interpone its authority to the bond or other writ in security, and decern accordingly, and in case of sale shall pronounce a decree of sale thereof in favour of such heritor, on which he shall be entitled to obtain a charter from the Crown for payment of a blench duty of a penny Scots, and interpone their authority accordingly: Provided always, that such heritor shall not be entitled to obtain an extract of the said decree of sale until the price shall be consigned in one of the chartered banks in Scotland for behoof of the minister; and in every case of such sale, the price, after deduction of all expenses connected with the application to the court, shall be invested at sight of the heritors and presbytery on such securities and in such manner as the Court of Teinds shall direct, and the interests or proceeds only shall be paid to the minister: And it is provided further, that it shall 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 lying contiguous to such glebe for the amount of such price, 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, the interest of such sum calculated at four and one half per centum, or the amount of such annual payment, 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 the date of creation of such burden or security.

XVIII. The court, on the granting of any such order or interlocutor, or at any time thereafter, on the summary application of the minister on whose application the interlocutor or order was granted, or his heirs, executors, administrators, or assignees, shall inquire into and ascertain the sums which shall have been paid as the costs, charges, and expenses of applying for and obtaining such order or interlocutor and incidental thereto, and of making and constructing streets, roads, passages, sewers, or drains in or through the glebe or any part thereof, and shall decern the amount thereof a permanent burden upon the glebe;

and the interest thereof, until extinguished, as after provided or otherwise, shall form a first charge on the whole produce and revenue of the said glebe.

XIX. As long as any such burden shall remain unpaid, the casualties of superiority which shall become payable under any contracts, dispositions, or charters of feu, or writs by progress for entering heirs or successors to be granted as aforesaid, as well as any payments which may be received from the grantees thereof in respect of the construction of roads, sewers, or drains, shall be invested, at the sight of the heritors and presbytery, on such securities and in such manner as the Court of Teinds shall approve, as a sinking fund to meet the said burden, and the interest of the said fund shall be paid to the minister for the time being; and as soon as the said fund shall amount to a sum sufficient to pay the said burden, the same shall be paid off; and thereupon the casualties of superiority thereafter to become due shall form part of the income of the minister for the time being, and be payable to him.

XX. The minister, with the consent of the heritors and the presbytery, as certified by the clerk to the heritors, and by the moderator and clerk of the presbytery, shall grant, subscribe, and deliver to the feuar or feuars, purchaser or purchasers, lessee or lessees, all contracts, feu charters, dispositions in feu, writs of confirmation, resignation, clare-constat, or acknowledgment, dispositions, conveyances, or other deeds or writs, containing all usual and necessary clauses for feudally conveying and vesting the subjects so feued, sold, or leased in the parties taking the same on feu or building lease, or purchasing the same, and the heirs or singular successors who shall thereafter acquire right to the same; and the said contracts and other deeds or writs so to be granted shall be deemed and held to be as legal and valid titles of property in feu and heritage, or fee-simple, or lease (as the case may be), of the properties so feued or conveyed to the several persons in whose favour respectively the same shall be granted, and their heirs and disponees, as if granted by a proprietor or superior with a completed feudal title holding immediately of the Crown, and the subjects so feued or conveyed or leased under the authority of this Act shall be subject to payment of poor rates, any law or custom to the contrary not-

withstanding ; and the said contracts and other deeds shall be recorded in the books of the heritors.

XXI. In all and each of the said contracts and other deeds or writs, the full value of the ground thereby feued or leased shall be stipulated to be paid in perpetual annual feu-duties, or rents for the endurance of such building leases, in grain or in money, payable half-yearly, without taking any sum or sums of money, or other matter or thing whatsoever, by way of fine, foregift, or grassum ; and all casualties of superiority accruing on the renewal of the title to heirs or singular successors shall be taxed at a duplicate of the annual feu-duty ; and all feu-duties, casualties, or rents shall be properly and legally secured upon the ground for which the same are payable, and on the buildings that may be erected thereon, under the usual penalties and forfeitures according to the law and practice of Scotland in feu holdings.

XXII. After any such contracts and other deeds or writs shall have been executed, the minister shall have and enjoy all the same remedies for enforcing payment of the said feu-duties and casualties of superiority thereby stipulated and agreed to be paid, and generally all other rights and privileges, which by the law and practice of Scotland belong and are competent to other superiors in feu holdings ; and the parties taking any lands in feu under the provisions of this Act, and their heirs and successors, shall have and enjoy all the rights and privileges which by the law and practice of Scotland belong and are competent to vassals in feu holdings, in the same manner and to the same effect as if they held the said lands of and under the minister as a superior holding immediately of the Crown.

XXIII. The court shall pass such Acts of Sederunt as they may consider necessary to regulate the form of procedure to be adopted under this Act for effectually carrying out the purposes thereof.

XXIV. This Act shall not affect any Act of Parliament now in existence affecting the feuing of glebes in Scotland, or anything done or contracted to be done thereunder.

III.—ACT 25 AND 26 VICT. C. 58.

An Act to make further Provision with respect to the raising of Money for erecting and improving Parochial Buildings in Scotland.

29th July 1862.

Whereas it is expedient that provision should be made for raising the money required for the erection and improvement of parochial buildings in Scotland by annual assessments extending over a limited period: 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, as follows:—

I. The expression 'parochial building' in this Act shall mean and include church, manse, churchyard walls, schoolhouse, and schoolmaster's house respectively; and the word 'sheriff' shall include sheriff-substitute.

II. The heritors of any parish in Scotland in which any new or additional parochial building is to be erected, or any existing parochial building is to be improved or enlarged, may at any meeting of such heritors resolve that the money required to defray the expense of the erection, improvement, or enlargement of such parochial building shall be raised by annual assessments extending over any period not exceeding ten years and on the adoption of such resolution, such annual assessments for the period specified therein shall be imposed, levied, and recovered on and from the heritors of such parish in the same manner, and with the same liabilities and rights of relief, as assessments for the erection, improvement, or enlargement of such parochial building are or may be levied under the authority of any existing Act relating thereto, or otherwise, according to the law of Scotland.

III. On the adoption of such resolution it shall be lawful for the heritors of such parish, if they think fit, to borrow the money required to defray the expense of the erection, improvement, or enlargement of such parochial building, and in security

of the repayment of the money so borrowed, and the interest thereof, to charge and assign the said annual assessments by a bond and assignation, signed by any two heritors authorized to sign the same at the meeting at which it shall be resolved to borrow such money ; and in case of non-payment of the money so borrowed, or any instalment thereof, and the interest thereon, when the same become due, the creditor in or person having right to such bond and assignation, shall have the same rights and remedies for the recovery of the sums, principal and interest, due or to become due under such bond and assignation, as are competent to the heritors of such parish by any existing Act, or otherwise by the law of Scotland, for levying and recovering assessments for the erection, improvement, or enlargement of such parochial building.

IV. Where there is only one heritor in any parish in which any new or additional parochial building is to be erected, or any existing parochial building is to be improved or enlarged, such heritor may apply by summary petition to the sheriff of the county in which such parish is situate for authority to raise the money required to defray the expense of the erection, improvement, or enlargement of such parochial building by annual assessments extending over any period not exceeding ten years, and to borrow the money required for that purpose, and to charge and assign such annual assessments in security of the payment thereof, and of the interest thereon ; and on considering such petition, the sheriff shall order intimation thereof to be given by advertisement inserted once in each of two successive weeks in a newspaper published or generally circulated in such county ; and after such intimation it shall be lawful for the sheriff to grant warrant and authority to such heritor to raise the money so required by annual assessments as aforesaid, and to charge and assign the same in security of the repayment of the money to be borrowed, and the interest thereof, by a bond and assignation signed by such heritor ; and the creditor in or person having right to such bond and assignation shall have the same rights and remedies for the recovery of the sums, principal and interest, due and to become due under such bond and assignation, as are hereinbefore provided with respect to bonds and assignations signed by any two heritors.

V. The money borrowed to defray the expense of erecting, improving, or enlarging any parochial building shall be repaid by annual instalments of not less in any one year than one-tenth part of the principal sum borrowed, exclusive of the payment of interest thereon.

IV.—ACT 29 AND 30 VICT. C. 75.

An Act to amend and explain the Act of the Twenty-fifth and Twenty-sixth Years of Victoria, Chapter Fifty-eight, relating to Parochial Buildings in Scotland.

6th August 1866.

Whereas, by the Act 25 and 26 Vict. c. 58, intituled, 'An Act to make further Provision with respect to the raising of Money for erecting and improving Parochial Buildings in Scotland' (in this Act hereafter referred to as the recited Act), it is enacted, by section first, 'That the expression "Parochial buildings," in the said Act, shall mean and include church, manse, churchyard walls, schoolhouse, and schoolmaster's house respectively;' and it is further enacted by section second, that 'the heritors of any parish in Scotland in which any new or additional parochial building is to be erected, or any existing parochial building is to be improved or to be enlarged, may, at any meeting of such heritors, resolve that the money required to defray the expense of erection, improvement, or enlargement of such parochial building shall be raised by annual assessments extending over a period of ten years;' and on the adoption of such resolution, such annual assessments for the period specified therein shall be imposed, levied, and recovered from the heritors of such parish, and with the liabilities and rights of relief as therein provided; and by the third section it is enacted, that on the adoption of such resolution it shall be lawful for the heritors of such parish to borrow the money required to defray the expense of the erection, improvement, or enlargement of such parochial buildings, and in security of the repayment of the money so borrowed, and the interest thereof, to

charge and assign the said annual assessments by a bond and assignation, to be signed in manner therein mentioned: And whereas doubts have arisen as to whether the powers to borrow money and grant bond therefor, under said recited Act, apply to the purchase or acquisition of parochial buildings as defined in the Act, and it is expedient that such doubts should be removed, and the recited Act amended as hereinafter provided: 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 the present Parliament assembled, and by the authority of the same, as follows, viz. :—

I. The expressions 'erection, improvement, and enlargement,' contained in the recited Act, shall extend and apply to the purchase or acquisition of parochial buildings for the purposes of the said Act, and the improvement and enlargement thereof, and the power to borrow money required to defray the expense of the erection, improvement, or enlargement of such parochial buildings, and to grant bond therefor, and the interest thereof, repayable in ten years; and the power to charge and assign the said annual assessments, as contained in the recited Act, shall extend to and include the price of parochial buildings already erected, purchased, or to be purchased for the purposes of the Act, and the ground attached thereto, and the expense of improving and enlarging the same, including the purchase of any feu or ground-annual payable for such ground or buildings; and the creditors in or persons having right to such bond and assignation shall have the same rights and remedies for recovery of the sums, principal and interest, due under such bond and assignation, as are conferred by the said recited Act.

II. This Act shall be deemed to be incorporated with the recited Act, and the recited Act shall be read and have effect accordingly.

SCHOOLMASTERS AND SCHOOLS.

I.—ACT 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 Parish 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 1696, 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 apportioning and payment of the said salary by the heritors of the said 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 Majesty, that it may be 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 of 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 hereinafter 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 1696: 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 steward 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 steward-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 hereinafter directed; and the sheriff or steward-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 Parliament of Scotland, in the year 1696.

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 the 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 steward-clerk of each shire or stewartry, and the said sheriff or steward-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 chalders 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 hereinafter 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 or pasturage, 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 hereinbefore directed.

IX. And be it further enacted, That in case the heritors shall neglect or refuse to provide the accommodations 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 advocacy, 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 schoolhouse, 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 steward of the county or stewartry, without appeal by advocacy, 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 an higher salary, they are hereby exempted from the obligation of 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 advocacy, 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 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 speci-

ally 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 anything 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, schoolhouse, and garden, within the space of three months from the date of such sentence or deposition, the sheriff of the shire, or steward 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.—ACT 8 AND 9 VICT. 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 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 the said recited Act, and such election shall be good and valid to all intents and purposes.

III.—ACT 24 AND 25 VICT. C. 107.

An Act to alter and amend the Law relating to Parochial and Burgh Schools, and to the Test required to be taken by Schoolmasters in Scotland.

6th August 1861.

Whereas an Act was passed in the forty-third year of the reign of his Majesty George the Third, c. 54, 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 it is expedient to amend the said Act, and to make further and other provisions for the maintenance and government of the said schoolmasters and schools, and to abolish the

test imposed by law on schoolmasters in Scotland: 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, as follows:—

I. Where not inconsistent with the context, the following expressions shall have the meaning hereinafter assigned them; that is to say,

The expression 'parochial school' shall mean and include every school established or to be established or provided for under the said recited Act:

The expression 'burgh school' shall mean and include every burgh, grammar, or other public school, not being a parochial school.

II. From and after the term of Martinmas next, after the passing of this Act, the salary of every schoolmaster of any parochial school shall not be less than the sum of thirty-five pounds nor more than the sum of seventy pounds per annum: Provided, always, that where two or more schools have been or shall be established in any parish in terms of the said Act, the total amount of the salary payable to the schoolmasters therein shall not be less than fifty pounds nor more than eighty pounds per annum, to be apportioned among the said schoolmasters as the heritors shall determine, in the manner provided by the said Act; and the salaries herein provided shall be in lieu of the salaries payable under the provisions of the said Act: Provided also, that it shall be lawful for the heritors, if they shall think fit, to make any addition granted by them to the salary of any schoolmaster beyond the minimum amount hereby fixed to be dependent upon the number of scholars receiving instruction in his school, under such regulations as they may deem expedient.

III. The minister of every parish in which there is a parochial school shall, within three months from and after the passing of this Act, and on every occasion of a vacancy in the office of schoolmaster, within six weeks after such vacancy shall have taken place, call a meeting of the heritors together with the said minister, in the manner prescribed in the said recited Act, for the purpose of fixing the salary of the schoolmaster.

under this Act, subject always to the appeal provided in the said recited Act; and the salary to be so fixed shall be payable in sterling money, at the same terms and under the same conditions, provisions, and regulations as are at present in use; and in case in regard to any parish such meeting shall not have been held or the salary shall not have been fixed in manner and within the period herein prescribed, the salary shall, until such meeting shall have been held and such salary so fixed, be held as fixed at the amount of fifty pounds per annum, which amount shall be payable to the schoolmaster in manner hereinbefore prescribed; and where two or more schools have been established in any one parish, the said sum of fifty pounds shall be payable to the several schoolmasters thereof, in the same proportion according to which their several salaries were payable before the passing of this Act: Provided always that where any parish shall be vacant at the time of the passing of this Act, or become vacant before any such meeting shall be called, or where any minister shall decline or delay calling such meeting, after having been required so to do by any heritor or heritors holding not less than one-third of the valuation of the parish, it shall be competent for such heritor or heritors to call, by notice affixed to the door of the parish church, and either a circular sent to each heritor, or an advertisement published in a newspaper of general circulation in the district, a meeting for the purpose of fixing the salary of the schoolmaster under this Act, and the salary fixed at such meeting within the limits specified in this Act shall be the salary of the schoolmaster or schoolmasters.

IV. At the meeting aforesaid, it shall be lawful for the heritors and minister to resolve to discontinue, from and after a date to be fixed by them, any subsisting side school in the parish: Provided always, that if such side school is not vacant at the date of such meeting they shall provide to the schoolmaster thereof during his life, from and after its discontinuance, an annual payment equal in amount to the full salary to which, at the date of the passing of this Act, he had right by law, under the provisions of the said recited Act, together with the annual value of any dwelling-house to which he may have been entitled as such schoolmaster, as the same is or shall be

valued by the assessor for the county, which amount shall be assessed, levied, and paid over and above the salaries payable under this Act, and in like manner as such salaries are hereby directed to be assessed, levied, and paid.

V. It shall be lawful for the heritors and minister, at the meeting aforesaid, or at any subsequent meeting duly called for that purpose, to resolve that a female teacher shall be established, to give instruction in such branches of female industrial and household training, as well as of elementary education, as they shall then or from time to time prescribe, and to provide, over and above the salary hereinbefore mentioned, a yearly sum not exceeding thirty pounds as a salary for such female teacher, which yearly sum shall be assessed, levied, and paid in like manner as such hereinbefore mentioned salary is hereby directed to be assessed, levied, and paid; and it shall be lawful for the said heritors and minister to engage and appoint such female teacher for such period of time and on such terms and conditions as shall be agreed on.

VI. It shall be lawful for the heritors and minister, at such meeting as aforesaid, to resolve to require the teacher of any side school in the parish, on a notice of not less than three months, to resign his office, on their providing to him during his life an annual payment equal in amount to the full salary to which at the date of the passing of this Act he had right by law, under the provisions of the said recited Act, together with the annual value of any dwelling-house to which he may have been entitled as such schoolmaster, as the same is or shall be valued by the assessor of the county, which amount shall be assessed, levied, and paid over and above the salaries payable under this Act, and in like manner as such salaries are hereby directed to be assessed, levied, and paid; and at the expiry of three months from notice as aforesaid, if such teacher shall not previously have given in his resignation, the heritors and minister having made provision for such annual payment as aforesaid, the right of such teacher to his office shall cease and determine.

VII. If in any parish the salary shall have been fixed at a yearly sum less than the maximum amount hereinbefore specified, it shall be lawful to the heritors and minister, at any

meeting to be called and held in the manner before prescribed, from time to time to increase the amount of such salary, provided the same shall not exceed the said maximum amount, and on any vacancy in the office of schoolmaster from time to time to reduce the salary, so that it shall not be less than the minimum salary hereinbefore specified; provided that it shall be the duty of the minister to call such meeting only on the requisition of any heritor or heritors being proprietors of not less than one-fourth part of the whole lands and heritages situate within the parish.

VIII. In case the heritors shall, previously to the passing of this Act, have entered into any agreement with the schoolmaster of any parish for his retirement from the performance of the duties of his office, on payment to him of a retiring allowance or otherwise, it shall be lawful to the heritors, at any meeting to be called and held as aforesaid, to declare the office of schoolmaster of such parish vacant, and to proceed to elect another schoolmaster, and to grant such retiring allowance or other terms to such retiring schoolmaster as may have been agreed upon as aforesaid, payable during the remainder of his life, which retiring allowance shall be payable in all respects in like manner with the salary of the schoolmaster.

IX. The sixteenth section of the said recited Act shall be and is hereby repealed; and in place of the examination by the presbytery therein prescribed it is hereby enacted as follows, viz. :—

- (1.) It shall be the duty of the University Court of each University in Scotland, as soon as conveniently may be, and in no case later than two months after the passing of this Act, and thereafter from time to time, to appoint six persons to be examiners of parochial schoolmasters, three of such persons being professors in the Faculty of Arts, and three of such persons being professors in the Faculty of Divinity of the University.
- (2.) The persons so appointed shall continue to be examiners during two years from and after the date of their respective appointments, and until other persons shall have been in like manner appointed in their room; provided that it shall be lawful to the University Court to re-appoint all or any of the same persons to be such examiners, and to

fill up from time to time any vacancy which may occur by the death, resignation, or disqualification of any of the examiners; and it shall be lawful to each of the persons so appointed to nominate as his deputy, with power to act as his substitute in case of his absence at any meeting of the examiners, any person who may have become a graduate in arts of the University not later than three years prior to such nomination; provided that such nomination shall be approved by the University Court, and also provided that the persons nominated by such examiners as are professors in the Faculty of Divinity shall be ministers or licentiates of the Church of Scotland.

- (3.) It shall be lawful to the examiners to make, on or before the 11th day of November 1861, and thereafter from time to time, such regulations as they shall see fit in regard to the time and manner of examinations, and as to the subjects to which the same shall extend, and to regulate the notice to be given thereof, regard being always had in the framing of these regulations to the circumstances of each particular district; provided that such regulations shall be approved of by the University Court; and the said regulations, when so approved, shall be published by advertisement in such manner as the University Court shall direct; and the examiners may appoint one of their own number, or any one of their substitutes, to act as their secretary; and such examinations shall be held within the buildings of the University, and at such time and place as shall be fixed by the University Court.
- (4.) For the purposes of the examination of parochial schoolmasters the parochial schools in Scotland shall be, and are hereby distributed into four districts, each in connection with one of the Universities, as set forth in the schedule (A) hereto annexed.
- (5.) Every person elected to be a parochial schoolmaster under the provisions of this and the said recited Act, and every person elected to be a schoolmaster under the provisions of the Act of the first and second years of the reign of her Majesty, c. 87, shall, before his admission to the said office, and as a condition thereof, submit himself to

the trial and examination of the examiners for the district to which the parish for which he has been elected appertains, as to his fitness and qualifications for the duties of the said office; and being found qualified, the said examiners shall furnish to him a certificate to that effect subscribed by them or by a majority of their number, which certificate shall be conclusive evidence that he has passed the requisite examination, and been found qualified for the said office, and the examiners shall have power, with consent of the Committee of the Privy Council on Education, to require the attendance at any such examination, for the purpose of assisting therein, of one of her Majesty's Inspectors of Schools.

X. It shall be lawful for the persons entitled to elect any burgh or parochial schoolmaster, if they shall see fit, instead of electing some one person to the vacant office, to choose and nominate two persons or three persons to be tried by the examiners, whose duty it shall be to make trial of the comparative fitness and qualifications of the persons so chosen and nominated, and to determine which of them is the best qualified and most fit for the school with reference to which they have been so chosen, and to give the person so preferred by them a certificate to that effect, and such certificate, along with the minute of nomination by the persons entitled to elect, and also, in the case of a parochial schoolmaster, the certificate of his having emitted the declaration hereinafter set forth, shall complete the right of the person so preferred to the office of schoolmaster: Provided always, that if the examiners shall not be satisfied of the fitness and qualifications of any of the persons nominated as aforesaid, they may decline to grant a certificate to any of them, of which declinature they shall forthwith cause intimation to be made to the person having the right of election; and provided further, that in the event of two or more candidates for the office of schoolmaster being remitted by the heritors and minister to the examiners for competitive examination, the heritors shall pay to each of the examiners a fee of ten shillings for each additional candidate so examined; and in the event of the magistrates of any burgh remitting any candidate for examination to the examiners, they

shall pay to each of the examiners a fee of one pound one shilling if there be only one, and a fee of ten shillings for each additional candidate.

XI. It shall be lawful to the Commissioners of her Majesty's Treasury to pay out of any monies which may be voted by Parliament for that purpose the sum of one pound one shilling to each of the said examiners for, and in respect of every person examined by them under the provisions of this Act, and also the sum of fifteen shillings for each such examination to the secretary of the examiners, out of which sum he shall defray the expense of the advertisements required by this Act and other incidental expenses.

XII. From and after the passing of this Act, it shall not be necessary for any schoolmaster, or for any person elected a schoolmaster of any parochial school, or of any school under the provisions of the Act of the first and second years of the reign of her Majesty, c. 87, to profess or subscribe the Confession of Faith, or the formula of the Church of Scotland, or to profess that he will submit himself to the government and discipline thereof: Provided always, that every person elected a schoolmaster of any such school shall, as a condition of the office, and before admission thereto, produce before the principal, or, in case of his absence or inability to act, before one or other of the professors in the Faculty of Divinity of the University in which he has been examined, an extract or certified copy of the minutes of his election, together with the said certificate by the examiners, and shall in the presence of the principal or professor emit and subscribe a declaration in the following terms, that is to say—

'I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, that as schoolmaster of the parochial school at in the parish of , and in the discharge of the said office, I will never endeavour, directly or indirectly, to teach or inculcate any opinions opposed to the divine authority of the Holy Scriptures, or to the doctrines contained in the Shorter Catechism, agreed upon by the Assembly of Divines at Westminster, and approved by the General Assembly of the Church of Scotland, in the year 1648; and that I will faithfully conform

thereto in my teaching of the said school, and that I will not exercise the functions of the said office to the prejudice or subversion of the Church of Scotland as by law established, or the doctrines and privileges thereof.'

And the person elected to be schoolmaster, having made such productions and declaration, shall be furnished with an attestation to that effect subscribed by the said principal or professor, which attestation shall complete his right to the emoluments provided by this Act.

XIII. It shall be competent for the presbytery of the bounds, or for the heritors, whensoever they shall see cause for instituting proceedings against the schoolmaster of any parish, for contravention of the said declaration, to present a complaint to one of her Majesty's Principal Secretaries of State against such schoolmaster; and it shall be lawful to the Secretary of State thereupon to appoint a commission to inquire into the said charge, and to censure, suspend, or deprive such schoolmaster, as they shall find to be just; provided that no such sentence shall take effect until it has been confirmed and approved of by the Secretary of State.

XIV. So much of the twenty-first section of the said recited Act as provides that the presbytery shall take cognizance of, and, if they see cause, proceed by libel against any schoolmaster in respect of any complaint charging him with immoral conduct, or cruel and improper treatment of the scholars under his charge, is hereby repealed; and in lieu thereof it is hereby enacted, That it shall be lawful to the heritors and ministers, or the clerk of the presbytery of the bounds, by the authority of the said presbytery, given on the application of the heritors and minister, or of any six heads of families in the parish whose children are attending the school, to make a complaint in writing to the sheriff of the county in which the school is situate, charging the schoolmaster with immoral conduct, or cruel and improper treatment of the scholars under his charge, and specifying in such complaint the particular acts in respect of which the complaint is made; and a copy of such complaint shall be served upon the schoolmaster, who shall be required, on an induciæ of fourteen days, to appear before the sheriff, by himself or his agent, to answer to the said complaint; and the

schoolmaster accused shall, if he deny the charge, if he think fit, answer the particulars of the complaint, such answer to be in writing, and to be lodged within the said fourteen days, or may, when the cause comes to be tried, state his plea to be not guilty; and the sheriff shall thereafter proceed to the trial of the complaint, and take the evidence, in the same way as and under the same rules as those which are in force in the Sheriff Court in regard to process in civil causes; and in the event that he shall find such complaint or any material and relevant part thereof to be proved, the sheriff shall give judgment accordingly, and shall pass such sentence of censure, suspension, or deprivation, as in his opinion the case requires, which sentence shall be final and not subject to review, and shall have all the effects consequent before the passing of this Act on any similar sentence of any presbytery under the provisions of the last recited section of the said Act, and no sentence of censure, suspension, or deprivation otherwise pronounced on such charges shall be valid or effectual: Provided always, that where sentence of suspension shall be pronounced, the salary of the schoolmaster in respect of his office shall cease and determine from the date of such sentence until the next term of Whitsunday or Martinmas following the expiration of the term of suspension specified in such sentence, and the salary accruing during the said period shall be applied by the heritors and minister towards providing a substitute for such schoolmaster during the period of the suspension.

XV. The sheriff shall by his decerniture ascertain and specify the amount of the expenses properly incurred by the complainers in the proceedings connected with any complaint against the schoolmaster of any parochial school; and the complainers shall be entitled to recover the amount so ascertained from the collector, and out of the readiest proceeds of the assessments commonly called the rogue-money levied for the county within which the school is situate, under the provisions of an Act passed in the eleventh year of the reign of his Majesty George the First, c. 26; and the receipt of the agent of the complainers shall be a sufficient discharge to the said collector for any payments so made by him out of the said rogue-money or assessments.

XVI. So much of the second section of the said recited Act as provides that where the salaries of parochial schoolmasters had been before the passing thereof payable in grain or meal, such salary in grain or meal should continue to be paid, and also the third, fourth, and sixth sections of the said recited Act shall be and are hereby repealed; and it is hereby declared and provided, that the right of electing a parochial schoolmaster, *juro devoluto*, conferred by the fifteenth section of the said recited Act on the commissioners of supply of the county, after the expiration of four months from the time when the vacancy in any parochial school shall have taken place, shall not arise or accrue to the commissioners of supply until the expiration of six months from the time of such vacancy.

XVII. Where in any parish it shall be necessary to provide a house for the parochial schoolmaster, in terms of the recited Act, and of an Act passed in the first and second years of the reign of her present Majesty, intituled, 'An Act to facilitate the Foundation and Endowment of additional Schools in Scotland,' or either of them, such house shall consist of at least three apartments besides the kitchen.

XVIII. Nothing in this Act shall be held to interfere with any arrangement which may have been concluded between the heritors and schoolmaster of any parish for the retirement of such schoolmaster, except as regards the house and garden, and premises attached thereto, which shall in every case be made over at the term of Whitsunday next after the passing of this Act to the person actually discharging the duties of schoolmaster; and where the use of such premises may have formed part of a retiring allowance, the heritors shall make reasonable compensation to the ex-schoolmaster.

XIX. In case it shall be found, on a report by one of her Majesty's Inspectors of Schools, made on the application of the heritors of the parish, and concurred in by the presbytery of the bounds, that the schoolmaster of any parish is disqualified because of infirmity or old age for the due performance of the duties of his office, or that from negligence or inattention he has failed efficiently to discharge such duties, it shall be lawful to the heritors and minister, at any meeting called and held as aforesaid, to permit or require such schoolmaster to resign his

said office, and in case of his refusal so to do to dismiss or suspend such schoolmaster, and when necessary to declare the school vacant; and in every case of such resignation the heritors and minister may grant to such schoolmaster a retiring allowance payable during the remainder of his life; provided that where such resignation shall not be occasioned by any fault on the part of the schoolmaster, the heritors shall grant a retiring allowance, the amount whereof shall not be less than two third parts of the amount of the salary pertaining to said office at the date of such resignation thereof, and shall not exceed the gross amount of such salary, which retiring allowance shall be payable in all respects in like manner with the salary of the schoolmaster; provided also, that no schoolmaster shall be suspended for a longer period than three months, or be dismissed for neglect of duty, excepting under the above provisions.

XX. In all cases in which the minister and heritors are by this Act empowered to provide a retiring allowance for a schoolmaster who shall resign or shall be removed from his office, it shall be lawful for them, if they see fit, to provide for such schoolmaster, in addition to such allowance, and in like manner, a further yearly sum, equal in amount to the annual value of any dwelling-house and garden to which he may be entitled as such schoolmaster, as the same shall be valued by the assessor for the county.

XXI. The whole provisions of an Act passed in the twentieth and twenty-first years of the reign of her present Majesty, c. 59, intituled, 'An Act concerning the Parochial Schoolmasters in Scotland,' shall be and are hereby repealed.

XXII. From and after the passing of this Act, it shall not be necessary for any person elected to be a schoolmaster of any burgh school to profess or subscribe the Confession of Faith, or the formula of the Church of Scotland, or to profess that he will submit himself to the government and discipline thereof; nor shall any such schoolmaster be subject to the trial, judgment, or censure of the presbytery of the bounds for his sufficiency, qualifications, or deportment in his office, any statute to the contrary notwithstanding; and this enactment shall be a sufficient defence in answer to any proceedings against any

schoolmaster of any burgh school, in respect that he has not made such profession or subscription.

XXIII. Nothing herein contained shall repeal, alter, or affect the provisions of the recited Act, or of any other Act relating to parochial schools or schoolmasters in Scotland, excepting in so far only as shall be necessary to give effect to the provisions of this Act.

XXIV. This Act may be quoted in all proceedings as 'The Parochial and Burgh Schoolmasters (Scotland) Act, 1861.'

SCHEDULE (A).

Division of Scotland into Four Districts in connection with the Four Universities.

ST. ANDREWS.	GLASGOW.	ABERDEEN.	EDINBURGH.
All the parochial schools situate within any of the counties of Clackmannan and Kinross, Fife, Forfar, Perth.	All the parochial schools situate within any of the counties of Ayr, Argyll, Bute, Dumbarton, Dumfries, Kirkcudbright, Lanark, Renfrew, Wigton.	All the parochial schools situate within any of the counties of Aberdeen, Banff, Caithness, Elgin and Nairn, Inverness, Kincardine, Orkney and Shetland, Ross and Cromarty, Sutherland.	All the parochial schools situate within any of the counties of Berwick, Edinburgh, Haddington, Linlithgow, Peebles, Roxburgh, Selkirk, Stirling.

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.

21st February 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, authorize, 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 without 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 meantime 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, authorized, 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 whereas 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 decret 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 compareance 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 decret of modification therein: Provided always, that if the stipend in any such depending case shall be augmented or modified by decret 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 decret 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 decret

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 decret 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 decret 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 decret 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 augmenta-

tion 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 authorized 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 decret of modification, and exclusive of that year in which such decret 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 authorize 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 despatch 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 despatch 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 minister 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 appear-

ance, 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.

1.—*Overture of an Act, and Rules concerning the Election and Qualifications of Members of Assembly.*

JUNE 1, 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 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, 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. Ass. 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 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 a 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 IV. 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 faith-

ful in the discharge of their respective offices, tender and circumspect in their walk, punctual in their attending upon ordinances, strict in the 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,¹ 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. 243, 244.)

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

¹ See footnote, p. 242.

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 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 p. 245.

III.—BURGHS.

It is desirable that the printed forms of commission 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,¹ 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

¹ See footnote, p. 242.

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 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 (etc., 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 35, and for 'Attestation by the Presbytery,' see page 245.

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 ac-

quaint 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 ac-

quainted 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 conscientious 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 likewise, 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, passed by the last Assembly, 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 everywhere 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 alwayse 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 indeed 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 prophaning 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 inquiring into and reforming such abuses.

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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 bestowed, 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 proficient, 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 knowledge 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 8th 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. *2do*, That where there are ministers already, they do frequently commune with, and inquire 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. *3tio*, 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 inquire 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.

ACTS ANENT MINISTERIAL COMMUNION.

In 1799, sess. 5, May 28, the General Assembly passed a declaratory Act under the title of 'A Declaratory Act, etc., respecting Unqualified Ministers and Preachers.' After declaring that none but a licentiate of, or person ordained by, the Church of Scotland was qualified to accept a presentation, the Act proceeds thus: And further, the General Assembly, considering that it is of the greatest importance to the interests of true religion, to the sound instruction of the people, to the quiet of

their minds and the peace of the Church and State, that unqualified persons who intrude themselves into the ministry of the word shall not receive any countenance from the ministers of this Church; more especially in the present times, when men, who avow their hostility to our ecclesiastical establishment, and their contempt of all the rules which the wisdom of our ancestors framed upon the model of Scripture, for the orderly dispensation of the word and sacraments, are traversing all the districts within the bounds of this Church, and attempting to alienate the minds of the people from their established teachers; considering also that it is essential to the unity and good order of the Church, and implied in the fundamental principles of Presbyterian government, that no minister shall presume to set up his individual judgment in opposition to the judgment of those to whom, at his ordination, he promised subjection in the Lord; and that every minister shall consider himself as answerable to his presbytery for the manner in which all the parts of divine service are performed during his incumbency, within the stated place of worship provided by law for that congregation which is committed to his care; do hereby discharge and prohibit, under pain of such censures as the judicatories of this Church may see cause to inflict, all the ministers of this Church, and the ministers of all chapels of ease connected therewith, from employing to preach upon any occasion, or to dispense any of the other ordinances of the gospel, within any congregation under the jurisdiction of this Church, persons who are not qualified, according to the laws of this Church, to accept of a presentation, and from holding ministerial communion in any other manner with such persons. And the General Assembly do hereby enjoin all the presbyteries of this Church to attend to any transgression of this prohibition which may occur within their bounds, and to summon the minister who is reported as being guilty of such transgression to answer for his conduct.

In Assembly 1842, an Act was passed, Act ix. sess. 4, May 21, 1842, entitled, 'Act rescinding the Act 1799 anent Ministerial Communion:—

The General Assembly, having considered the overture for rescinding the 5th Act of the General Assembly 1799, did, and

hereby do, rescind that part of the 5th Act of the Assembly of 1799 which discharges and prohibits, under pain of such censures as the judicatories of the Church may see cause to inflict, all the ministers of the Church, and the ministers of all chapels of ease connected therewith, from employing to preach, upon any occasion, or to dispense any of the other ordinances of the gospel, within any congregation under the jurisdiction of this Church, persons who are not qualified, according to the laws of the Church, to accept of a presentation, and from holding ministerial communion in any other manner with such persons; while, at the same time, the Assembly enjoins upon all ministers of this Church to guard against holding ministerial communion with men who are not duly ordained and sound in the faith.

In the Assembly 1843, the Assembly—sess. 10, May 27—passed an Act, xv., ‘Rescinding the Act passed by Assembly 1842, respecting the Act of Assembly 1799, anent Ministerial Communion,’ and appointing a committee to take the whole subject into consideration, and to report to next Assembly. On the report of that committee, the following overture was transmitted to presbyteries, and passed into an interim Act, sess. 12, May 24, 1844 :—

Whereas the General Assembly, being deeply impressed with the importance and desirableness of promoting unity and maintaining friendly relations with all who love the Lord Jesus in sincerity and truth, and at the same time feeling it of equal importance to maintain the purity of Christian doctrine and discipline, and to guard the great principle of an Established Church, it is overtured, That the admission of ministers of other communions to the pulpits of the Establishment shall not be left to the discretion of individual ministers, nor granted to those of the soundness of whose faith there is not full and official assurance, but that in every case it shall be requisite that permission be asked and received from the presbytery of the bounds, or a standing committee of their number, who shall invariably, before granting such permission, report to the presbytery. And that it shall be borne in mind by every presbytery, that such admission is to be granted only to those who, by the recognition of, and subscription to, a creed or symbol of faith, give

undoubted evidence that they maintain, with us, the vital doctrines of the Christian faith, and the principles which, as an Establishment, we are bound to maintain.

In Assembly 1845, sess. 15, June 2, it was re-transmitted and re-enacted into an interim Act, with the following alteration:—Instead of ‘standing committee of their number, who shall invariably, before granting such permission, report to the presbytery,’ read, ‘who shall report every permission so given to the presbytery at its first ordinary meeting thereafter.’ The overture not having been approved of by a majority of presbyteries, a committee was appointed to consider the subject in Assembly 1846, sess 11, May 29, and to report to next Assembly; and on their report being called for, 31st May, sess. 11, 1847, the following motion was carried:—‘That the General Assembly, having heard the report of the committee on ministerial communion, approve of the recommendation sent up in this report, and find, in terms thereof, that there is no ground or occasion for introducing any change into the law and practice of the Church as they now exist.’

After having been for some years under the consideration of a committee, the matter again became the subject of legislation in 1863, the Assembly sending down in that year to presbyteries the following overture:—

Overture anent Ministerial Communion.

EDINBURGH, *May 30, 1867. Sess. 13.*

Whereas the General Assembly are deeply impressed with the importance and desirableness of promoting unity, and maintaining friendly relations with all who love the Lord Jesus Christ in sincerity and truth, and at the same time feel it to be of equal importance to maintain the purity of Christian doctrine and discipline, and the integrity of the National Church, it is overtured, That the General Assembly, with consent of a majority of the presbyteries of this Church, enact, That it shall be lawful for the ministers of this Church, on their responsibility, to admit to their pulpits ordained ministers of other Christian

churches, whose recognised standards afford sufficient evidence that they hold, with us, the vital doctrines of the Christian faith: Provided always, that any minister of another church thus admitted, shall, in the performance of the service, conform to the existing mode of worship in this Church; and that in every instance the minister who takes advantage of the services of the minister of another church, shall, either verbally or in writing, report the fact to the first ordinary meeting of presbytery thereafter.

Overture xvii. Acts of Assembly 1863.—The result of the discussion on the returns to that overture, of which 37 presbyteries had disapproved, and 23 approved, was the passing of Act xiii. Assembly 1864, entitled:

‘Act anent declaratory Act v. of Assembly 1799.’—That Act bears, that having considered the overtures anent the said Act, the Assembly resolved to rescind and recall, and do hereby rescind and recall that portion of the said Act which is as follows:—

‘And further, the General Assembly, considering that it is of the greatest importance,’ etc., ‘that unqualified persons who intrude themselves into the ministry of the word shall not receive any countenance from the ministers of this Church,’ and so on as in the declaratory Act already quoted, pages 468, 469.

NOTE.—It would appear as the result of the above rescissory Act, therefore, that a minister is at present under no restriction whatever, so far as the church courts are concerned, as to the persons he may admit to his pulpit, as the Act not only sets aside the prohibition against admitting persons not qualified to accept a presentation, but also against admitting unqualified persons who intrude themselves into the ministry of the word, that is, it is presumed, persons having no licence or ordination from any Christian body. It becomes an important question, as to the answer to which I have no doubt, Whether any such extraordinary latitude of selection in the supply of his place in the pulpit can be exercised legally by any minister of an Established Church? and I apprehend that any member of the Church would be held to have a title to bring that question as regarded his own parish church before the civil court.

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