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A S U M M A R Y

OF THE

LAWS AND REGULATIONS OF THE  
CHURCH OF SCOTLAND.



A  
COPIOUS AND COMPREHENSIVE  
SUMMARY  
OF  
THE LAWS AND REGULATIONS  
OF THE  
Church of Scotland,  
FROM A.D. 1560 TO A.D. 1850;  
COMPRISING  
ACTS OF PARLIAMENT, BOOKS OF DISCIPLINE,  
FORMS OF PROCESS, DIRECTORY FOR PUBLIC WORSHIP,  
EXTRACTS FROM VARIOUS AUTHORITIES,  
LORD ABERDEEN'S BILL, &c. &c.



ABERDEEN:  
GEORGE AND ROBERT KING; AND ALEX. MURDOCH.  
1853.



## P R E F A C E.

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THE Compiler of this work has been led to undertake its publication, from a conviction that it will be found to contain much information, with reference to the constitution of the Church of Scotland, which many, in this country, are desirous to obtain, and which all ought to possess. Amidst the discussions regarding church polity, which have so long prevailed among us, it is difficult to say whether there has been displayed greater ignorance of the real principles in dispute, or of the constitution regarding which these disputes have been maintained: and more lately, the provisions of recent acts, affecting the settlement of ministers, and the erection of new parishes, have been unknown to the great body of the people, except as seen through their effects. That every person, adhering to the

doctrines and discipline of the Church of Scotland, should have easy access to the standards on which the polity of that church is founded ; and that all who feel interested in questions agitated in, or with respect to that church, should have a ready means of making themselves acquainted with the historical and constitutional grounds on which every matter at issue may be decided—are objects which every one will allow to be extremely desirable. The information requisite to these results has hitherto remained scattered through many volumes of great bulk and cost, which were all but inaccessible to the general reader. To bring together, in a cheap form, the most important documents bearing on the constitution of the Church, has, therefore, been the object of the Compiler. He trusts that his book will thus prove valuable as a work of reference, not merely to the minister, office-bearer, and student, but that every individual member of the church will find in it a source of information regarding the con-

stitution, principles, and prospects of the establishment to which he belongs.

To render the volume still more widely useful than it might otherwise have been, the Latin sentences have been translated into English, not, however, in the text, which might annoy the classical scholar, but in an Appendix, to which the reader may refer at pleasure.

The work commences with the period of the drawing up of the First Book of Discipline, by Knox and his associates, and includes—

1. A Chronological View of the Acts of Parliament, by which the Presbyterian Church was established, and is maintained.
2. The Books of Discipline of the Church.
3. The Forms of Process in the several Judicatories of the Church.
4. Pardovan's Collections, in Four Books.
5. Extracts from Principal Hill's Theological Institutes.
6. Lord Aberdeen's Bill, respecting the admission of Ministers to Benefices.
7. Summary of Sir James Graham's Bill.

Thus presenting to the reader a summary of most that is important in the history of

the Government of the Church of Scotland, from its establishment, A.D. 1560, down to the present time, a period extending over nearly three centuries.

ABERDEEN,  
*April, 1853.*



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CHRONOLOGICAL VIEW  
OF THE  
ACTS OF PARLIAMENT,  
BY WHICH  
**The Church of Scotland**  
WAS ESTABLISHED AND IS MAINTAINED.

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ON the 24th day of August, 1560, Popery was abolished, and the Protestant religion virtually established in Scotland, by Acts of the Estates of Parliament.

This result of the persecutions with which the professors of the reformed doctrines had been visited, and of the conflicts of reason and true religion with power and bigotry, was effected, in consequence of a petition presented to Parliament by a number of Protestants. They craved, that the doctrine maintained in the Popish church should be discarded as anti-christian—that purity of worship, as exemplified in the discipline of the primitive church, should be restored—and that the ecclesiastical revenues, which a corrupt hierarchy had enjoyed, should be applied to the maintenance of a useful clergy, to the promotion of learning, and to the relief of the poor. They impugned the clerical character of the Popish priesthood, and contended that the power which they exercised, and the vassalage under which they served to the court of Rome, rendered them unfit to be entrusted with power, or tolerated as ministers of religion.

These Protestant petitioners, therefore, called on Parlia-

ment to use the power which Providence had put into their hands for effecting this great work of reformation; and they were required by the States to prepare a summary of the doctrines which they held to be conformable to Scripture. This the reformed ministers did in the space of four days. Besides the doctrines of Christianity common to all its churches, this confession condemned as idolatrous and superstitious several particulars in the Romish system. It was submitted to the Lords of the Articles, and afterwards deliberately considered in full Parliament—the reformed ministers being in attendance to defend or explain it; and after an adjournment, that it might be duly and deliberately scrutinized, Parliament resumed the consideration, and approved of it on 17th August, 1560. It met with no opposition except from three temporal Lords (Atholl, Somerville, and Borthwick,) whose only reason was that they would “believe as their forefathers had believed,” while “the Bischopis spak nathing.” On the 24th of the same month, accordingly, the following acts of Parliament were passed:—

“The thre Estaitis then being present vnderstanding that the iurisdictione ande autoritie of the Bischope of Rome, callit the Paip, vsit within this realme in times bipast, hes bene verray hurtfull ande preiudiciall to our Soueranis autoritie ande commone weill of this realme: Thairfoir hes statute ande ordanit that the Bischope of Rome haif na jurisdiction nor autoritie within this realme in tymes cuming. And that nane of oure saidis Soueranis subiects of this realme sute or desire in ony tyme heireftir title or rycht be the said Bischope of Rome, or his sait to ony thing within this realme, vnder the panis of Barratrye—that is to say, proscriptioun, banishment, and neuir to bruke honour, office ner dignitie within this realme. And the controvencaris heirof to be callit befoir the Justice or his Deputis, or before the Lordis of Session, and pynist thairfoir, conforme to the lawis of this realme. And the furnissaris of thame with fynance of money and purchessaris of thair title of rycht, or mantencaris or defendaris of thame, sall incur the same panis. Ande that na Bischop nor vther Prelat of this realme vse ony iurisdic-



tion in tymes to cum be the said Bischop of Romeis autoritie vnder the pane foirsaide.”\*

Another act was passed the same day to this effect, that “ Forsamekile as thair hes bene diuers and sindrie actis of Parliament maide in King James the first, secunde, thrice, ferde, and fyftis tymes, Kingis of Scotlande for the tyme, ande als in our Souerane Ladeis tyme, not aggreing with Goddis holie worde. And be thame diuers personis tuke occasioun of mantenance of idolatrie and superstitioun in the kirk of Gode, and repressing of sic personis as wer professors of the said worde, quhairthrow diuers innocentis dide suffer ; for eschewing of sic in time cuming, the thre Estaites of Parliament hes annullit ande declarit all sik actis maide in tymes bipast, not aggreing with Goddis worde, and now contrair to the Confessioun of oure Fayth, according to the saide worde publist in this Parliament, to be of nane avale, force, nor effecte. And decernis the saidis actis and euery one of thame to haue na effecte nor strenth in tyme to cum, bot the samyn to be abolishit and extincte for euir, insafer as ony of the saidis actis ar repugnant and contrarie to the Confessioun and word of Gode foirsaidis, ratifit ande appreit be the saidis Estaitis in this present Parliament.”†

The Popish system being thus abolished as the established religion of Scotland, the reformers exerted themselves zealously for the attainment of a scheme of church polity consonant to the principles and objects which they had advanced in their petition to Parliament. In this they met with opposition and obstructions, suggested by the interests and passions of men in power ; and although all their views were not realized, yet they ultimately succeeded in obtaining a settlement of the reformed church, which embraced all the more vital and important parts of their scheme. As, however, the steps which were taken consisted partly of ecclesiastical and partly of civil proceedings, it is thought more expedient, for the sake of distinctness, to reserve the details for another section of this Digest, confining the particulars in

\* Acts of the Parliament of Scotland, vol. ii. p. 535. (Mr. Thomson's Edition.)

† *Ibid.*

this to a connected view of the legislative Acts of Parliament alone. Under the head of "Books of Discipline of the Church" will be found the necessary notices with regard to the combined operations of the church and the state, respecting the attainment of the fundamental platform on which our church establishment was afterwards reared.

The next steps, therefore, in the legislative measures of the Scottish Parliament, to which we are called on to advert, is, the sanction by Queen Mary to the Protestant religion as she found it on her arrival in Scotland, and the subsequent ratification of the two acts of Parliament already recited during the minority of King James VI. and the regency of Murray. This last took place on the 15th December, 1567. By two separate acts of that date, the King, with advice of the Regent and three Estates of Parliament, ratified and approved of the act abolishing Popery already recited; "and of new in this present Parliament, statutis and ordainis the said act to be as ane perpetuall law to all our Sovereine Lordis lieges in all times cumming." A similar ratification was adhibited to the other cotemporary act, which repealed the acts in favour of Popery, and recognized the new Confession; and the Confession itself referred to in it, was ingrossed in the record of Parliament, and thus incorporated with the statute law of Scotland.\*

The declaration of Queen Mary, which formed a link in the chain of statutory sanctions, is in these terms, and appears among the Acts "in the Parliament helden at Edinburgh the 19th day of April, the zeir of God 1567 zeiris."

"The quhilk day the Quenis Maiestic having considerit the estait of hir Majestic's realme that it stude at the tyme of hir arryvale furth of France, and yet presentlie standis at, foirseeing alssua the common weill of her countrie gretumlie to be inecessit and estabillishit be the keiping of the common peax and quietnes amangis all her gud subiectis. And like as hir Hienes sen hir foirsaid arryvall hes attemptit na thing

\* Vide Acts, vol. iii. p. 36.

contrar the estait of religioun, quhilk hir Maiestie fand publictlic and vniuersallie standing at her arryvale foirsaid, quhairby hir Maiestie is maist worthy to be seruit, honourit, and obeyit; richtswa hir Hienes intendis to continew in the samyne gudnes and gouernment in all tyme cuming, quhairby all hir gud subiectis professouris of the religion foirsaid, sall haif occasioun to praise God for hir gud, happye, and gratius gouernement, and to crave of God from the boddum of thair harttis, that he wald of his infinite gudnes to prosper and blis her Maiestie, and hir posteritie, with lang lyf, gud and happye gouernment, to reull and regnne ouer thame. And to the effect alsua that all hir Hienes gud subiectis, professouris of the said religioun, may assure thame selffis to be in full suretie thair of, and of thair landis, lyves, benefices, offices, dignities, jurisdictionis, priuileges, gudis, fame, and honouris in time cuming, and with the better will, jeopard and hasard thair lyves and gudis in hir Hienes seruice aganis all inymes to hir Maiestie and to the commone weill of this realme at all tymes neidful, as thair predecessouris hes maist frankly done heirtofore, and that withowtt feir of ony pane, punishment, tynsell of landis, benefices and gudis, for professing, exerceing, vsing of the said religioun in tymes by-gane, and to cum, to be impute vnto thame or thair airis, nochtwithstanding ony lawis, actis and constitutionis, and canone ciuile or municipale, or vther quhatsumeuir ordinance heirtofoir insitute in the contrar. And for thair greter suretie foirsaid, OUR SAID SOUERANE, with the awyss of the hail thre Estaitis of Perliament, hes thocht neidful and convenient to dispens, cass, abrogat and annull, like as hir Maiestie presentlie dispensis, cassis, abrogattis and annullis all and quhatsumeuir lawis, actis and constitutionis, canone, ciuile or municipale, with all vther constitutionis and practik penale intraducit contrar to the foirsaid religioun and professouris of the samyne; and ordanis thame and thair posteritie in all tymes to cum, to be fre and exemit from all pane corporall, infame, reproche, depyryng from benefices, dignitie or offices, or vther cryme or pane quhatsumeuir that may be incurrit or impute to thame be vertew of the saidis actis, lawis, ordinances, canone, ciuil or municipale and practik, for contravening of the samyne, renunceand the samyne and strenth thair of in favouris of our saidis subiectis to the effect foirsaid. And siclike the Quenis Maiestie of hir auctoritie royall granttit to hir be God, with the awyss of the thre Estaitis foirsaidis takis to hir self and hir posteritie, all hir gude

subiectis, thair benefices, landis, offices, gudis, and honouris, to be vnder hir sure salgard, maintenance, protectioun, and defence perpetuallie, aganis quhatsumeur foirane auctoritie, pouer, jurisdictione, and persute, be it ecclesiasticall or temporall. Exemand hir foirsaidis subiectis from all compeirance, summonding, or obedience pretendit or to be pretendit, heirafter aganis thame for the caussis foirsaidis, be quhatsumeur foirane persoune or vther pretendand jurisdictione or auctoritie throw thame; willing hir subiectis to duell in perpetuall securitie and quietness within this realme, be making of thair maist humbill and faithfull obedience to hir Hienes and hir posteritie in all tymes cuming heirefter allenerlie. Like as also hir Maiestie, God willing, heirefter in tyme convenient sall tak forther ordour, in all vther pointis, concerning the estait of religioun, as may best serue for the glorie of God, commone weill of this realme, and continewing of commone peax and quietnes vniversallie amangis all hir subiectes: Commanding thame, and euerie ane of thame, in all tymes heirefter, to keep mutuale, perfyte and maist hartlie kyndnes, luiff, freindschip, and nychtboureheide, ilk ane to vtheris, vnder all hieast pane and charge, that heirefter may follow, for breaking of this present act of Parliament and her Maiesties lauchfull commandment.”\*

In the first Parliament of King James VI., Dec. 1567, there were other collateral statutes passed,—among which there was one abolishing the mass, and for the punishment of all hearers, or sayers thereof. This was accompanied by another act declaratory of the reformed church according to its Confession of Faith, being the only religion established in Scotland.† The latter is in the following terms, (15 Dec. 1567, c. 6.)

“And becaus that lawis quhilkis are not cleir ar often tymes occasioun of discorde, we moist humilie desire that for avoyding of all debait, dout ande questioun that eyther may aryiss for the validitie and strenth of that Parliament as for the interpretatioun of the saidis . . . . . present Parliament, pronounce and declair first, That the ministeris of the blissit Evangell of Jesus Chryst, quh . . . . .

\* Vide Acts, vol. ii. p. 548.

† Ibid. vol. iii. p. 22, 23, 24.

God of his mercy hes now raisit vp amangis ws, or heirefter sall . . . . . aggreing with thame that now leif in doctrine and administratioun of the sacramentis, and that part of the people of this realme, that professis Jesus Chryst, as now he is offerit his Evangell and do communicat with his holie sacramentis (as in oure reformat kirkis thai ar publictlie ministrat) may be declarit the onlie trew kirk of Jesus Chryst within this realme. And that all and sindrie quha owther gaynsay the word of the Evangell, as it is now preachit ande of ws ressaute ande approvit as the heidis of the Confessioun of our Fayth mair particularlie do express, or that yet refusis the participatioun of the halie sacramentis as now thai are ministrat. Be decernit na members of the kirk within this realme sa lang as thai keip thame selfis so dividit frome the society of Chrystis body.”\*

In the same Parliament, another act (c. 8.) was passed, by which the terms of the coronation oath were established; and this being one of the fundamental and most important acts connected with the Protestant institutions of Scotland, requires a place in this chronicle of our church law.

*“ Auent the Kingis Aith to be geuin at his Coronatioun.*

“ITEM, Because that the incres of vertew, and suppressing of idolatrie, crauis that the Prince and the peple be of ane perfyte religioun, quhilk of Goddis mercie is now presentlie professit within this realme: Thairfoir it is statute and ordanit be our Souerane Lord, my Lord Regent, and thre Estaitis of this present Parliament, that all Kingis, and Princes, or Magistratis quhatsumeuir, halding thair place, quhilkis heirefter in ony tyme sall happen to regne, and beir reule ouer this realme, at the tyme of thair coronatioun, and ressaute of thair princely autoritie, mak thair faithfull promise, be aith, in presence of the Eternall God, That induring the haill cours of their lyfe, thay sall serue the samin Eternall God, to the vttermaist of thair power, according as he hes requyrit in his maist haly word, reuelit, and contentit in the New and Auld Testamentis; and according to the samin word sall mantene the trew religioun of Jesus Christ, the preicheing of his haly word, and dew and rycht ministra-

\* Acts, vol. iii., p 36.

tioun of the sacramentis now ressaifit and preichit within this realme. And sall abolische and gainstand all fals religioun contrare to the samin: And sall reule the pepill committit to thair charge, according to the will and command of God, reuelit in his foirsaid word, and according to the louabill lawis and constitutionis ressaifit in this realme, nawyse repugnant to the said word of the Eternall God. And sall procure to the vttermaist of thair power, to the kirk of God, and hail Cristiane pepil, trew and perfyte peice in all tyme euming. The rychtis and rentis, with all the iust priuilegeis, of the Crowne of Scotland to preserue and keip inuiolatit, nouthir sall thay transfer nor alienat the samin. Thay sall forbid and repres in all estatis and degreis, reif oppressioun, and all kynde of wrang. In all jugementis, they sall command and procure that justice and equitie be keipit in all creatures, without exceptioun, as the Lord and Father of all mercyis be mercifull to thame. And out of their landis and empyre they salbe cairfull to ruite out all heretykis and enemeis to the trew worschip of God, that salbe conuict be the trew kirk of God of the foirsaidis crymis. And that thay sall faithfullie affirme the thingis aboue writtin be their solempnit aith.”\*

In the Parliament holden from 28th August to 7th Sept., 1571, there was a “Ratification of the freedome and libertie of the trew Kirk of God” passed, of the following tenor:—

“ITEM, Our Souerane Lord, with auiss and consent of his said Regent, thre Estaittis, and hail body of this present Parliament, hes ratifiit, and be this present act ratifiis and approves all and quhatsumeuir actes and statutes maid of befoir be our Soueraine Lord and his predecessouris anent the freedome and libertie of the trew kirk of God, now publictlic professit within this realme.”†

And again in 1578, in another Parliament of King James VI. (25th July,) we have a reiteration of these statutory sanctions, viz.

“*The Ratificatioun of the libertie of the trew Kirk of God and Religioun.*”

“Oure Souerane Lord, with aduisse of his thrie Estaittis of

\* Acts, vol. ii. p. 23.

† Ibid, p. 58.

this present Parliament, hes ratifit and appreuit, and be the tennour heirof ratefeis and apprevis all and quhatsumeuir actis of Parliament, statutis, and constitutionis past and maid of befoir agreable to Goddis word, for maintenance of the libertie of the trew Kirk of God and religioun, now presentlie professit within this realme and puritie thairof. And decernis and declaris the samyn to haue effect in all pointis efter the forme and tenour thairof.\*

We have next, on 20th October 1579, (c. 6.) an Act "*Anent the trew and haly Kirk, and thame declairit not to be of the same;*" and another, "*Anent the Jurisdiction of the Kirk.*" The former of these is as follows:—

"Our Souerane Lord, with auise and consent of the thrie Estaites, and haill body of this . . . . . liament, ratifeis and apprevis all and quhatsumeuir actis and statutis maid of befoir be his Hienes, with auiss . . . . . Regentis, in his awin regnne or his predicessouris, anent the freidome and libertie of the trew Kirk of Gode ande religioun, now presentlie professit within this realme: And specialie ratifeis and apprevis the sext act of his Hienes Parliament, haldin in the first yeir of his Hienes regnne, intitulat, Anent the trew ande haly Kirk, and of thame that ar declairit not to be of the samyne. Ordaning the same to be heir insert of new, (becaus of sum defectioun and informaltie of wordes in default of the Prentair,) in this forme. Oure Souerane Lord, with auise of his thrie Estaites ande haill body of this present Perliament, hes declairit and declaris the ministeris of the blissede Euangel of Jesus Chryst, quhome God of his mercie hes now raisit vp amonges ws, or heirefter sall raiss, aggreing with thame that now levis in doctrine and administratioun of the sacramentis. And the people of this realme that professis Jesus Christ as he is now offerit in his Evangell, and do communicat with the haly sacramentis, as in the reformit kirkis of this realme ar publictlye administrat, according to the Confessioun of the Faythe, to be the only trew and haly kirk of Jesus Christ within this realme. And decernis and declaris that all and sundrie quha vther gaynesayis the word of the Evangell ressaut and appreuit; As the heidis of the Confes-

\* Acts, vol. iii., p. 95.

sioune of the Faythe professit in Parliament of befoir in the yeir 1560: as alsua specificit and registrat in the actis of Perliment maid in the first yeir of his Hienes regnne, mair perticularlie dois expres, ratifeit alsua and appreuit in this present Parliament: or that refusses the participatioune of the haly sacramentes as they ar now ministrat to be na membris of the saide kirk, within this realme, ande trew religioune sa lang as they keep thame selffes sa deuydit from the societie of Christes body.\*

After many struggles and difficulties, the Presbyterian form of church government was finally established on the 5th of June, 1592, by the following

‘ *Act for abolishing of the Actis contrair the trew Religioun.*

“Oure Souerane Lord and Estaittis of this present Parliament, following the lovable and gude example of thair predicessouris, hes ratifeit and appreuit, and be the tennour of this present act ratifies and appreuis all liberties, priuileges, immvnties and fredomes quhatsumeuir gevin and grantit be hes Hienes, his regentis in his name, or ony of his predicessouris to the trew and hally kirk presentlie establishit within this realme, and declairit in the first act of his Hienes Parliament the twentie day of October, the yeir of God I m<sup>vc</sup> lxxix zeirs, and all and quhatsumeuir actis of Parliament and statutes maid of befoir be his Hienes and his regentis anent the libertie and fredome of the said kirk. And specialie the first act of [the] Parliament haldin at Edinburgh the xxiiij day of October, the yier of God I m<sup>vc</sup> fourseoir ane yeirs, with the haill particular actis thairin mentionat, quhilk salbe alss sufficient as gif the samyn wer heirin exprest, and all vthir actis of Parliament maid sensyne in favouris of the trew kirk. And sielyk ratifies and appreuis the Generall Assemblies appoyntit be the said kirk. And declairis that it salbe lauchfull to the kirk and ministrie euerilk yeir at the leist, and offer *pro re nata* as occasioun and necessitie sall require, to hald and keip Generall Assemblies, providing that the Kingis Maiestic or his Commissioner with thame to be appoyntit be his Hienes, be present at ilk Generall Assemblie befoir the dissoluing thairof, nominat and ap-

\* Vol. iii, p. 187.



point tyme and place, quhen and quhair the next Generall Assemblie salbe haldin. And in caiss nather his Maestie nor his said Commissioner beis present for the tyme in that toun quhair the said Generall Assemblie beis haldin, than and in that caiss it salbe lesum to the said Generall Assemblie be thame selfis to nominat and appoynt tyme and place quhair the next Generall Assemblie of the kirk salbe keptit and haldin as they haif bene in vse to do thir tymes bipast. And als ratifies and apprevis the sinodall and provinciall assemblies to be haldin be the said kirk and ministrie twiss ilk yeir as they haif bene ande ar presentlie in vse to do within euery province of this realme. And ratifeis and apprevis the Presbiteries and particulare sessionis appointit be the said kirk with the hail iurisdiction and discipline of the same kirk aggreit vpoun be his Maestie in conférence had be his Hienes with certane of the ministrie convenit to that effect. Off the quhilkis articles the tennour followis, **MATERIS TO BE INTREATIT IN PROVINCIALL ASSEMBLIES.** Thir Assemblies ar consitute for wechtie materis necessar to be intreatit be mutuall consent and assistance of brethrene within the province as neid requyris. This Assemblie hes power to handle, ordour and redress all thingis omittit or done amiss in the particulare Assemblies. It hes power to depose the office beraris of that province for gude and iust caussis deserving deprivation. And generalie thir Assemblies hes the hail power of the particulare eldershippis quhair of thay ar collectit. **MATERIS TO BE INTREATIT IN THE PRESBITERIES.** The power of the Presbiteries is to give diligent laubouris in the boundis committit to thair chairge. That the kirkis be keptit in gude ordour. To enqyre diligentlie of nauchtie and vngodly personis, and to travell to bring thame in the way agane be admonitioun, or threatning of Goddis jugementis, or be correctioun. It appertenis to the elderschip to tak heide that the word of God be puirly preachit within thair boundis, the sacramentis richtlie ministrat, the discipline intertenyit, and the ecclesiasticall guidis vncorruptlie distributit. It belangis to this kynd of Assembleis to caus the ordinancis maid be the Assembleis provinciallis, nationallis and generallis to be keptit and put in executioun. To mak constitutionis quhilkis concernis *Το Ποσειπρον* in the kirk for decent ordour in the particulare kirk quhair they governe, provyding that they alter na rewlis maid be the provinciall or Generall Assemblies. And that they mak the Provinciall Assembleis

foirsaidis privie of the rewlis that they sall mak, and to abolishe constitutiones tending to the hurte of the same. It hes power to excommunicat the obstinat, formale proces being led and dew intervall of tymes obseruit. ANENT PARTICULARE KIRKIS. Gif they be lauchfullie rewlit be sufficient ministeris and sessioun, thay haif power and iurisdiction in thair awin congregatioun in materis ecclesiasticall. And decernis and declairis the saidis Assembleis, Presbiteries, and Sessiounes, jurisdiction and discipline thair of foirsaid to be in all tymes cuming maist iust, gude, and godlie in the selff. Notwithstanding of quhatsumeir statutes, actes, cannon, ciuile, or mvnicipale lawes maid in the contrair; to the quhilkis and every one of thame thir presentis sall make expres derogatioun. And becaus thair ar diuerss actes of Parliament maid in favouris of the papisticall kirk, tending to the preuidice of the libertie of the trew kirk of God presentlie professit within this realme, jurisdiction and discipline thair of, quhilk standis yet in the buikis of the actes of Parliament not abrogat nor annullit; thairfoir his Hienes and Estaittis foirsaidis hes abrogat, cassit and annullit, and be the tennour heirof abrogat, cassis, and annullis all acts of Parliament maid be ony of his Hienes predecessouris, for maintenance of superstitioun and idolatrie, withall and quhatsumeir actes, lawes, and statutes maid at ony tyme befor the day and daie heirof, againis the libertie of the trew kirk, jurisdiction and discipline thair of, as the samyn is vsit and exerceisit within this realm; and in speciall that part of the sevint act of Parliament halden at [Streviling the fourt day of November I m iiij<sup>e</sup> xliij] yeires, commanding obedience to be gevin to Eugen the Pape for the tyme, the j<sup>e</sup> and xj act maid be King James the thrice in his Parliament halden at Edinburgh the xxiiij of Februar I m iiij<sup>e</sup> lxxxiiij yeiris, and all vtheris actis quhairby the Paipis auctoritie is establishit. The xlvij act of King James the thrice in his Parliament halden at Edinburgh the [xx day of November I m iiij<sup>e</sup> lxix] yeiris, Anent the Satterday and vther vigillis to be hally dayes from evin sang to evin sang. *Item.* That part of the xxxj act maid be the Quene Regent in the Parliament halden at Edinburgh the first day of Februar I m v<sup>e</sup> li yeiris, geving speciall licence for haldin of Pashe and Yule. *Item,* The Kingis Maiestie and Estaittis foirsaidis declairis that the secund act of the Parliament halden at Edinburgh the xxij day of Maij, the yeir of God I m v<sup>e</sup> lxxxiiij yeiris, sall na wayes be preiudiciall nor derogat any thing to

the priuilege that God hes gevin to the spirituall office beraris in the kirk, concerning headis of religioun, materis of heresie, excommunication, collatioun, or deprivation of ministeris, or ony sic essentiall censouris, speciall groundit and havand warrand of the word of Gode. *Item*, Oure said Souerane Lorde and Estaittis of Parliament foirsaidis, abrogates, cassis, and annullis the xx act of the same Parliament halden at Edinburgh the said yeir I m v<sup>c</sup> lxxxiiij yieris, granting commissioun to Bishoppis and vtheris iuges constitute in ecclesiasticall causes to ressaue his Hienes presentation to benefices, to gif collatioun thairvpon, and to put ordour in all causes ecclesiasticall, quhilk his Maiestie and Estaittis foirsaidis declairis to be expyrit in the self and to be null in tyme cuming, and of nane avail, force nor effect. And thairfoir ordanis all presentatiounis to benefices to be direct to the particular Presbyteries in all tyme cuming, with full power to thame to giff collationis thairvpon, and to put ordour to all materis and caussis ecclesiasticall within thair boundis, according to the discipline of the kirk. Providing the foirsaidis Presbyteries be bund and astrictit to ressaue and admitt quhatsumeuir qualifiet minister presentit be his Maiestie or vther laic patrounes.”—(*Acts of the Parliament of Scotland*, edit. 1814, vol. iii. pp. 541–2.)

After the abolition of Episcopacy in 1640, there is a “*Ratificatione of the Actis of the Assemblie.*”\*

“The Estaittis of Parliament presentlie convened be his Majesteis speciall authoritie, ratifies, approves and perpetuallie confirms the act of the Generall Assemblie haldin at Edinburgh in the moneth of August last bypast, maid vpon the sevintent day of the said moneth, and in the eight sessioun of the said Assemblie, intituled Anent the sex Caussis of our by-gane evillis, quhair of the tennour followis. The Kings Majesty haveing gratuslie declared that it is his royall will and pleasour, that all questions about religion and maters ecclesiasticall be determined be assemblies of the kirk, haveing also by publict proclamation indicted this free Nationall Assemblie for setling the present distraction of this kirk, and for establishing a perfite peace against such divisions and disorders as have bene sore displeasing to his Majesty, and grevous to all

\* Acts, vol. v. p. 291.

his goode subjects. And now his Majesties commissioner, Johne Erle of Traquair, instructed and authorized with a full commission, being present and sitting in this Assemblie now fullie conveind and ordourlie constitute in all the members thareof. According to the ordor of this kirk, haveing at large declared his Majestys zeall to the reformed religion, and his royall cair and tender affection to this kirk, wher his Majesty had both his birth and baptisme, his great displeasour at the manifold distractions and divisions of this kirk and kingdome, and his desires to have all our wounds perfutely cured with a fair and fatherlie hand. And altho in the way approvyn be this kirk, tryall hath bene takin in former assemblies before from the kirk registers to our full satisfaction ; yet the Commissioners Grace making particular inquire from the members of the Assemblie now solemnlie conveind, concerning the reall and true causes of so manie and great evils as this tyme past had so sore troubled the peace of this kirk and kingdome, it was represented to his Majesteis Commissioner be this Assemblie, that beside manie other, the maine and most materiall causes wer first the pressing of this kirk by the Prelats with a Service Booke, or Booke of Commoun Prayer, without warrant or direction from the kirk, and containing besyde the Popish frame therof, diverss Popish errors and ceremonies, and the seeds of manifold gross superstitions and idolatrie, with a Booke of Canons, without warrant or direction from the Generall Assemblie, establishing a tyranicall power ovir the kirk in the persons of the Bishops, and overthrowing the whole discipline and governement of the kirk by assemblies, with a booke of consecration and ordination without warrant of auctoritie, civill or ecclesiasticall, appointing offices in the hous of God which ar not warranted be the word of God, and [are] repugnant to the discipline and acts of our kirk, and with the hie commission erected, without the consent of this kirk, subverting the jurisdiction and ordinarie judicatories of this kirk, and giving to persons meerlie ecclesiasticall the power of both swords, and to persons meerlie civill the power of the keyes and kirk censures. A second cause was the Articles of Perth, viz. the observation of festivall dayes, kneeling at the communion, confirmation, administration of the sacraments in private places, which wer brought in by a null assemblie, and ar contrarie to the Confession of Faith as it wes meant and subscriyvit anno 1580, and diverss tymes since, and to the ordor and constitution of this kirk. Thridlie,

the change of the government of the kirk from the assemblies of the kirk to the persons of some kirkmen vsurping prioritie and power ovir their brethren, by the way and vnder the name of Episcopall government, against the Confession of Faith 1580; against the ordor sett doune in the booke of policie, and against the intention and constitutions of this kirk from the beginning. Fourtlie, the civill places and power of kirkmen, ther sitting in Session, Counsall, and Exchequer: ther ryding, sitting and voteing in Parliament, and ther sitting in the bench as Justices of the Peace, which, according to the constitutions of this kirk ar incompatible with their spirituall function, lift them vp above ther brethren in worldlie pompe, and doe tend to the hinderance of the ministerie. Fyfthe, the keeping and authorizing corrupt Assemblies at Linlithgow 1606, 1608; at Glasgow 1610; At Aberdene 1616; at St. Andrews 1617, at Perth 1618, which ar null and vnlawfull, as being callit and constitute quyte contrair to the order and constitutions of this kirk, received and practized ever since the Reformation of religion, and with all labouring to introduce novations into this kirk against the ordour and religion established. A sixt cause is the want of lawfull and free General Assemblies, rightlie constitute of pastors, doctors, and elders, yearlie or oftner, *pro re nata*, according to the libertie of this kirk, expressed in the book of policie, and acknowledged in the act of Parliament 1592. After which the whole Assemblie, in one hearte and voyce, did declair that these and such other proceeding, from the neglect and breach of the Nationall Covenant of this kirke and kingdome, made anno 1580, have bene indeed the true and maine causes of all our evills and distractions; and therfor ordaine, according to the constitutions of the Generall Assemblies of this kirk, and vpon the grounds respective above speifeit, that the foirsaid service booke, bookes of canons and ordination, and the high commission be still rejected; that the articles of Perth be no more practised; that Episcopall government, the civill places and power of kirkmen, be holdin still as vnlawfull in this kirk; that the abovenameit pretendit assemblies at Linlithgow 1606, 1608; at Glasgow 1610; at Aberdene 1616; at St. Andrews 1617; at Perth 1618, be heirefter accounted as null and of none effect, and that for preservation of religion, and preventing all such evills in tyme coming, Generall Assemblies, rightlie constitute as the proper and competent judge of all maters ecclesiasticall, heirefter be

kept yeirlie and oftner, *pro re nata*, as occasion and necessitie sall require. The necessitie of these occasionall Assemblies being first remonstrat to his Majesty by humble supplication; as also that Kirk Sessions, Presbyteries, and Synodall Assemblies be constitute and observed according to the order of this kirk. Which act, with all and sindrie the particular heidis, claussis and articles thairin contained, the Estaittis now convened be his Majesteis indictione, warrand and authoritie forsaid, ratifies, approves and confirms in all pointis in maner as the same proportis. And gevis thairvnto the strenth of ane law and act of Parliament. And ordainis executioun to pass thairvpon as effeiris. And rescinds, cassis and annullis all actis and decreitts of Parliament and Counsale, formerlie maid contrair and in prejudice of the said act, or any pairt thairof.

*“ Act anent the Ratificatioun of the Covenant, and of the Assemblies supplicatioun, Act of Counsall, and Act of Assemblie concerning the Covenant.*

“The Estaites of Parliament presentlie conveyned be his Majesteis speціаль authoritie, considdering the supplicatioun of the General Assemblie at Edinburgh the 12th of August 1639, to his Majesteis Honourable Privy Counsall, and the act of the Counsall the 30th of August 1639, conteining the ansuer of the said supplicatioun; and the act of the said Generall Assemblie, ordaneing by thair ecclesiasticall constitutione, the subscriptione of the Confession of Faith and Covenant mentionat in thair supplicatioun. And withall haveing supplicated his Majestie to ratifie and injoyne the samene by his royall authoritie vnder all civill panes, as tending to the glorie of God, preservatioun of religion, the Kingis Majesteis honour and the perfyte peace of this kirk and kingdome, doe ratifie and approve the said supplicatioun, act of counsall and act of assemblie. And conform thairto, ordanis and comandis the said confession and covenant to be subscriyved be all his Majesteis subjects of what rank and qualitie soeuer, vnder all civill panes. And ordanis the said supplicatioun, act of counsall and act of the assemblie, with the hail confession and covenant it selfe, to be insert and registrat in the actis and bookis of Parliament. And also ordanis the samene to be presented at the entrie of euerie Parliament, and before

they proceed to anie vther act. That the same be publictly red and sworne be the hail memberis of Parliament clameing voyce thairin, vtherwayis the refuseris to subscriue and sweir the same sall haue no place nor voyce in Parliament. And siclyk ordanis all judges, magistratis and otheris officiaris of quhatsumeuer place, rank or qualitie, and ministeris at thair entrie, to swear and subscriue the samene covenant, quhairof and of the said supplicatioun, act of counsall and act of the assemblie, the tennour followis.

*“ The Supplication of the Generall Assembly convened at Edinburgh the 12th of August 1639, to his Majesties High Commissioner, and the Lords of his Majesties Honourable Privie Councell.*

“ Wee the Generall Assembly considering, with all humble and thankfull acknowledgement, the many recent favours bestowed upon us by his Majestie, and that there resteth nothing for crowning of his Majesteis incomparable goodness towards us, but that all the members of this kirk and kingdome be joynd in one, and the same confession and covenant with God, with the King’s Majestie and amongst our selves; and conceiving the main lett and impediment to this so good a work, and so much wished by all, to have been the informations made to his Majestie of our intentions to shake off civill and duetifull obedience due to the Sovereignty, and to diminish the Kings greatnes and authoritie, and being most willing and desirous to remove this and all such impediments which may hinder and iapede to full and perfect an union, and for clearing of our loyaltie; wee in our own names, and in name of all the rest of the subjects and congregations whom we represent, do now in all humility represent to your Grace his Majesteis Commissioner, and the Lords of his Majesteis most honourable Privie Councell, and declares before God and the world, that we never had nor have any thought of withdrawing our selves from that humble and duetifull obedience to his Majestie and to his government, which by the descent and under the reigne of 107 kings is most chearfully acknowledged by us and our predecessours, and that we never had nor have any intention nor desire to attempt any thing that may tend to the dishonour of God or the diminution of the Kings greatnesse and authoritie. But on the con-

trarie, acknowledging our quietnes, stabilitie and happines to depend upon the safety of the Kings Majesties person, and maintenance of his greatnes and royall authoritie who is Gods vice-gereut set over us for the maintenance of religion and ministration of justice. Wee have solemnly sworn and do sweare, not only our mutuall concurrence and assistance for the cause of religion, and to the uttermost of our power with our meanes and lives to stand to the defence of our dread Sovereigne, his person and authority in the preservation and defence of the true religion, liberties and lawes of this kirk and kingdome, but also in every cause which may concerne his Majesties honour, shall, according to the lawes of this kingdome and the duties of good subjects, concurre with our friends and followers in quiet manner or in armes as we shall be required of his Majestie, his councill or any having his authority. And therefore being most desirous to cleare our selves of all imputation of this kinde, and following the laudable example of our predecessours 1589, do most humbly supplicate your Grace his Majesties Commissioner and the Lords of his Majesties most honourable Privie Councill, to injoyne by act of councill that this confession and covenant, which as a testimonie of our fidelitie to God and loyaltie to our King, we have subscribed, be subscribed by all his Majesties subjects of what rank and quality soeuer.

*“ The Act of his Majesties most Honourable Privie Councill at Edinburgh, August 30, anno 1639, containing the Answer of the Supplication above written.*

“ The which day, in presence of the Lord Commissioner and Lords of Privie Councill, compeired personally John Earle of Rothes, James Earle of Montrose, John Lord Lowdoun, Sir George Stirling of Keir, knight, Sir William Douglas of Cavers, knight, Sir Henry Wood of Bonytoun, knight, John Smyth burgesse of Edinburgh, Mr Robert Barclay provest of Irwing, Mr Alexander Henderson minister at Edinburgh, and Mr Archibald Johnstone clerk to the Generall Assembly, and in the name of the present sitting Generall Assembly, gave in to the Lord Commissioner, and Lords of Privie Councill, the petition above written, which being read, heard, and considered by the saids Lords, they have ordained and ordain the same to be insert and registrate in the bookes of Privie Councill, and according to the desire thereof ordaines the said confes-



sion and covenant to be subscribed in tyme comming by all his Majesties subjects of this kingdome of what rank and quality soever.”

“ *The Act of the Generall Assembly ordaining by Ecclesiasticall Authoritie the Subscription of the Confession of Faith and Covenant.* ”

“ The Generall Assembly considering the great happinesse which may flow from a full and perfect union of this kirk and kingdome, by joyning of all in one and the same covenant with God, with the King’s Majestie, and amongst our selves, having, by our great oath, declared the uprightnes and loyalty of our intentions in all our proceedings, and having withall supplicated his Majesties High Commissioner, and the Lords of his Majesties honourable Privie Councill, to injoyne, by act of councill, all the lieges in tyme comming to subscribe the Confession of Faith and Covenant, which, as a testimony of our fidelity to God and loyaltie to our King, we have subscribed. And seeing his Majesties High Commissioner, and the Lords of his Majesties honourable Privie Councill, have granted the desire of our supplication, ordaining by civill authoritie all his Majesties lieges in tyme comming to subscrib the foresaid covenant, that our union may be more full and perfect, we, by our act and constitution ecclesiasticall, doe approve the foresaid covenant in all the heads and clauses thereof, and ordaines of new, under all ecclesiasticall censure, that all the masters of universities, colledges, and schooles, all schoollers at the passing of their degrees, all persons suspect of Papistry, or any other errour, and finally all the members of this kirk and kingdome subscribe the same, with these words prefixed to their subscription: The article of this covenant which was at the first subscription referred to the determination of the Generall Assembly being determined; and thereby the five articles of Perth, the government of the kirk by bishops, the civill places and power of kirkemen upon the reasons and grounds contained in the Acts of the Generall Assembly declared to be unlawfull within this kirk, we subscribe according to the determination foresaid; and ordaines the covenant, with this declaration, to be insert in the registers of the Assemblies of this kirk, generall, provinciall, and presbyteriall, *ad perpetuam rei memoriam*; and

in all humility supplicates his Majesties High Commissioner, and the honourable Estates of Parliament, by their authority to ratifie and injoyne the same, under all civill paines, which will tend to the glory of God, preservation of religion, the King's Majesties honour, and perfect peace of this kirk and kingdome."—*Acts of the Parliaments of Scotland*, edit. 1817, vol. v. pp. 292—294.

We now come to the period of the Revolution, 1689, when there was an "*Act abolishing Prelacie.*"

"Whereas the Estates of this kingdome, in their claime of right of the eleavinth of Apryll last, declaired, that Prelacie and the superioritie of any office in the church above Presbyters, is and hath been a greate and unsupportable greivance to this nation, and contrair to the inclinaciones of the generalitie of the people ever since the Reformation; they haveing reformed from Poperie by Presbyters, and therfor ought to be abolished, our Sovereigne Lord and Lady, the King and Queen's Majesties, with advyce and consent of the Estates of Parliament, doe heirby abolish Prelacie, and all superioritie of any office in the church in this kingdome above Presbyters; and hereby rescinds, casses, and annulls the first act of the second session of the first Parliament of King Charles the second, and all other statutes and constitutiones, in so farr allennerly as they are inconsistent with this act; and doe establish Prelacie, or the superioritie of church officers, above Presbiters. And the King and Queen's Majesties doe declare, that they, with advyce and consent of the Estates of this Parliament, will settle by law that church government in this kingdome which is most agreeable to the inclinaciones of the people."—(*Acts of the Parliament of Scotland*, edit. 1822, vol. ix., p. 104.)

The Claim of Right here referred to is of the following tenor:—

"*The Declaration of the Estates of the Kingdom of Scotland, containing the Claim of Right, and the offer of the Crown to their Majesties King William and Queen Mary.*—April 11, 1689.\*

"Whereas, King James VII. being a profest Papist, did

\* An abstract of the Claim of Right is deemed sufficient in this place.

assume the regal power, and acted as King without ever taking the oath required by law, whereby the King at his accession to the government is obliged to swear to maintain the Protestant religion ;"—“and, in a public proclamation, asserted an absolute power to cass, annul, and disable all the laws, particularly arraigning the laws establishing the Protestant religion, and did exercise the power to the subversion of the Protestant religion, and to the violation of the laws and liberties of the kingdom, (*inter alia*,) by erecting public schools and societies of the Jesuits, &c., making great fonds and dotations to Popish schools and colleges abroad, bestowing pensions upon priests, and perverting Protestants from their religion, by offers of places, preferments, and pensions ; by disarming Protestants, while, at the same time, he employed Papists in the places of the greatest trust, civil and military, such as Chancellor, Secretaries, Privy-counsellors, and Lords of Session,—thrusting out Protestants to make room for Papists, and entrusting the forts and magazines of the kingdom in their hands,—all which are utterly and directly contrary to the known laws, statutes, and freedoms of this realm : Therefore, the Estates of the kingdom of Scotland, Find and Declare, that King James VII. being a profest Papist, did assume the regal power, and acted as King, without ever taking the oath required by law ; and hath, by the advice of evil and wicked counsellors, invaded the fundamental constitution of the kingdom, and altered it, from a legal limited monarchy, to an arbitrary despotic power, and hath exercised the same to the subversion of the Protestant religion and the violation of the laws and liberties of the kingdom, inverting all the ends of government, whereby he hath forefaulted the right to the crown—and the throne is become vacant.” The Estates “do, in the first place, as their ancestors in the like cases have usually done, for the vindicating and asserting their ancient rights and liberties, Declare,

“That, by the law of this kingdom, no Papist can be King or Queen of this realm, nor bear any office whatever therein ; nor can any Protestant successor exercise the regal power until he or she swear the coronation oath.”\*

\* Acts, vol. ix. p. 38.

The Declaration and Claim of Right was followed on the 7th June 1690 by an “*Act ratifying the Confession of Faith, and settling Presbyterian Church-Government.*”\*

“Our Sovereigne 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: And 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 realme; 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 unsupportable 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 said three Estates, do hereby revive, ratify, 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 ratify and establish the Confession of Faith, now read in their presence, and voted and approved, as the publick and avowed confession of this church, containing the sum and substance of the doctrine of the reformed churches.

“As also they doe 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 114 *Act, Ja. VI. Parl. 12. Anno 1592*, entitled, Ratification of the Liberty of the trew Kirk, &c. and

\* Acts, vol. ix. p. 133.

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, except that part of it relating to patronages, which is hereafter to be taken into consideration," &c.

*Act for settling the Quiet and Peace of the Church.*

"Our Sovereign Lord and Lady, the King and Queen's Majesties, with advice and consent of the Estates of Parliament, ratify, approve, and perpetually confirm the fifth act of the second session of this current Parliament, entituled, Act ratifying the Confession of Faith and settling Presbyterian Church-government in the whole heads, articles and clauses thereof.

"And do further statute and ordain, That no person be admitted, or continued for hereafter, to be a minister or preacher within this church unless that he—subscribe the Confession of Faith ratified in the foresaid fifth act of the second session of this Parliament, declaring the same to be the Confession of his Faith, and that he owns the doctrine therein-contained, to be the true doctrine which he will constantly adhere to: And likewise that he owns and acknowledges Presbyterian church-government, as settled by the foresaid fifth act of the second session of this Parliament, to be the only government of this church, and that he will submit thereto, and concur therewith, and never endeavour, directly or indirectly, the prejudice or subversion thereof.

"And their Majesties with advice and consent foresaid, statute and ordain, That uniformity of worship, and of the administration of publick ordinances within this church, be observed by all the said ministers and preachers, as the samen are at present performed, and allowed therein, or shall be hereafter declared by the authority of the same: And that no minister or preacher be admitted or continued for hereafter, unless that he subscribe to observe, and do actually observe the foresaid uniformity."\*

These are the chief public laws of the land, by which the Presbyterian church of Scotland has been established in this

\* William & Mary, Parl. 1. Sess. 4. Act 23.

portion of the British empire. It seems unnecessary to load this epitome with any details of the several statutes by which Episcopacy was for a time restored in the reigns of King James VI. and at the restoration of Charles II. as these were all abrogated at the revolution. And, in order to complete the series, it seems only necessary to subjoin such extracts from the statutes as were passed at the time of the union with England in 1707, by which the Scottish church was finally declared to be the established form of church government in Scotland.

In the Scottish act of Parliament ratifying the Articles of Union, 16th Jan. 1707, the preamble bears: "And siclike her Majesty with advice and consent of the Estates of Parliament, resolving to establish the Protestant religion and Presbyterian church government within this kingdom, has past in this session of Parliament an act intituled, Act for securing of the Protestant religion and Presbyterian church government, which by the tenor thereof is appointed to be insert in any act ratifying the treaty, and expressly declared to be a fundamental and essential condition of the said treaty of union in all time coming."

This act for securing the Presbyterian church government is in these terms:—"Our Sovereign Lady and the Estates of Parliament considering, that by the late act of Parliament for a treaty with England for an union of both kingdoms, it is provided that the Commissioners for that treaty should not treat of or concerning any alteration of the worship, discipline, and government of the church of this kingdom as now by law established,—which treaty being now reported to the Parliament, and it being reasonable and necessary that the true Protestant religion as presently professed within this kingdom, with the worship, discipline, and government of this church, should be effectually and unalterably secured: Therefore her Majesty, with advice and consent of the said Estates of Parliament, doth 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 5th act of the 1st Parliament of King William and Queen Mary, intituled, ‘ Act ratifying the Confession of Faith and settling Presbyterian church government, with the haill other acts of Parliament relating thereto, in prosecution of the declaration of the estates of this kingdom, containing the claim of right bearing date 11th April 1689—and her Majesty, with advice and consent foresaid, expressly provides and declares that the foresaid true Protestant religion, &c. all established by the foresaid acts of Parliament, pursuant to the claim of right, shall remain and continue unalterable;—and further provides, that the colleges shall continue forever Protestant, &c. 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 forever free of any oath, test, or subscription within this kingdom, contrary to or inconsistent with the foresaid true Protestant religion,” &c. (Then follows the provision for the Coronation oath.)

“ And it is hereby statuted 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, forever.—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 of union betwixt the two kingdoms; and that the samin shall be therein expressly declared to be a fundamental and essential condition of the said treaty of union in all time coming. Which Articles of Union and act immediately above written, her Majesty, with advice and consent foresaid, statutes, enacts, and ordains to be and continue in all time coming, the sure and perpetual foundation of an complete and entire union of the two kingdoms of Scotland and England; under this express provision and condition, that the approbation and ratification of the foresaid articles and act shall be no ways binding on this kingdom, until the said articles and act be ratified, approved, and confirmed by her Majesty, with and by the authority of the Parliament of England.”

By an act of the English Parliament ratifying the Union,

these acts of the Scottish Parliament are forever ratified, approved, and confirmed — and all, and every the matters and things therein contained, and the act for securing the church of Scotland, shall “ forever he held and adjudged to be and observed as fundamental and essential conditions of the said Union, and shall in all times coming be taken to be, and are hereby declared to be essential and fundamental parts of the said Articles of Union,” &c.



THE  
FIRST BOOK OF DISCIPLINE,  
OR THE  
POLICIE AND DISCIPLINE OF THE CHURCH;

DRAWN UP BY

MR. JOHN WINRAM, MR. JOHN SPOTTISWOOD,  
JOHN WILLOCK, MR. JOHN DOUGLASSE,  
MR. JOHN ROW, AND JOHN KNOX,

AND

*Presented to the Nobilitie anno 1560, and afterwards  
Subscribed by the Kirk and Lords.*

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EXOD. xxv. 9.

“According to all that I shew thee, both after the fashion of the tabernacle, and after the fashion of all the ornaments thereof, even so shall ye make it.”

## BOOKS OF DISCIPLINE.

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Previously to the legal establishment of the Protestant religion in 1560, the Book of Common Order used by the English Church at Geneva was generally followed as the rule of worship and discipline by the Scots Reformers; but that being found inadequate to the regulation of a church consisting of numerous congregations, a Book of Discipline, adapted to the state of the Church, was soon after that event urged upon the Parliament as a necessary accompaniment to the legal institution of the National Church. Parliament, however, was dissolved without any thing being done on this subject. But the reformed clergy persevered, and the Privy Council were induced to grant a commission to five ministers to frame such a standard of ecclesiastical government. When they had completed their task on 29th May 1560, the "*Book of Policy,*" or "*First Book of Discipline,*" was submitted to the General Assembly, by whom it was approved; and though not formally ratified by the Council, it was subscribed by a great portion of the members. Many of them, however, were opposed to it; and by some it was stigmatized as a "devout inagination." The First Book of Discipline, therefore, though thus sanctioned by the church, was never formally and fully approved by the civil authorities.

After many commissions and conferences, with a view to the settlement of the discipline of the church, it was finally agreed on by the General Assembly in 1581, and registered in the Acts of the Kirk. The Confession of Faith, which had received the sanction of the civil government, was also declared to be the Confession of the Professors of the Reformed Doctrines of the Church of Scotland.

THE  
FIRST BOOK OF DISCIPLINE.\*

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To the great Councell of Scotland now admitted to the Regiment, by the providence of God, and by the common consent of the Estates thereof, your honours humble Servitors and Ministers of Christ Jesus within the same, wish grace, mercy, and peace from God the Father of our Lord Jesus Christ, with the perpetual increase of the Holy Spirit.

FROM your honours we received a charge dated at Edinburgh the 29th of April, in the yeare of our Lord 1560, requiring and commanding us, in the name of the Eternall God, as we will answer in his presence, to commit to writing, and in a book deliver to your wisdoms our judgments touching the reformation of religion which heretofore in this realme (as in others) hath been utterly corrupted; upon the receipt whereof (so many of us as were in this towne) did convene, and in unitie of minde doe offer unto your wisdoms these subsequents for common order and uniformitie to be observed in this realme concerning doctrine, administration of sacraments, election of ministers, provision for their sustentation, ecclesiastical discipline, and policie of the church; most humbly requiring your honours, that as you look for participation with Christ Jesus, that neither ye admit any thing which God's plain word shall not approve, neither yet that ye shall reject such ordinances as equitie, justice, and God's word do specifie: For as we will not bind your wisdoms to our judgments,

\* This edition of the First Book of Discipline is conformable to the edition printed *anno* 1621; the typographical errors are corrected; some words, which probably have been omitted by the printer, are supplied from other copies, but they are printed within brackets; and a few various readings are printed on the foot margin.

further then we are able to prove by God's plain Scriptures ; so must we most humbly crave of you, even as ye will answer in God's presence (before whom both ye and we must appeare to render accounts of all our facts) that ye repudiate nothing for pleasure and affection of men, which ye be not able to improve by God's written and revealed word.

## CHAP. I.

### *The First Head of Doctrine.*

Seeing that Christ Jesus is he whom God the Father hath commanded onely to be heard and followed of his sheepe, we judge it necessary, that his gospell be truly and openly preached in every church and assembly of this realme ; and that all doctrines repugnant to the same be utterly repressed, as damnable to man's salvation.

#### *The Explication of the First Head.*

1. Lest that upon this generalitie ungodly men take occasion to cavill, this we add for explication. *By preaching of the gospell*, we understand not onely the Scriptures of the New Testament, but also of the Olde, *to wit*, the Law, Prophets, and Histories, in which Christ Jesus is no less contained in figure, then we have him now expressed in veritie : And therefore, with the Apostle we affirme, that *all Scripture inspired of God is profitable to instruct, to reprove, and to exhort*. In which books of Old and New Testaments we affirme, that all thing necessary for the instruction of the church and to make the man of God perfect, is contained and sufficiently expressed.

2. *By the contrary doctrine* we understand whatsoever men by lawes, councells, or constitutions, have imposed upon the consciences of men, without the express commandment of God's word, such as be the vows of chasticite, forswearing of marriage, binding of men and women to several and disguised apparells, to the superstitious observation of fasting dayes, difference of meat for conscience sake, prayer for the dead ; and keeping of holy dayes of certaine saints commanded by man, such as be all those that the Papists have invented, as the Feasts (as they terme them) of the Apostles, Martyrs,

Virgines, of Christmasse, Circumcision, Epiphanie, Purification, and other fond Feasts of our Ladie : Which things, because in God's Scriptures they neither have commandment nor assurance, we judge them utterly to be abolished from this realme ; affirming farther, that the obstinate maintainers and teachers of such abominations ought not to escape the punishment of the civill magistrate.

## CHAP. II.

### *The Second Head, of the Sacraments.*

1. To Christ Jesus his holy gospell trully preached, or necessity it is, that his holy sacraments be annexed, and truly ministered, as seales and visible confirmations of the spirituall promises contained in the word ; and they be two, *to wit*, Baptism, and the Holy Supper of the Lord Jesus ; which are then rightly ministered, when by a lawfull minister the people before the administration of the same, are plainly instructed and put in mind of God's free grace and mercie, offered unto the penitent in Christ Jesus ; when God's promises are rehearsed, the end and use of [the] sacraments preached and declared, and that in such a tongue as the people doe understand ; when farther to them is nothing added, from them nothing diminished, and in their \*practise nothing changed besides the institution of the Lord Jesus, and practise of his holy Apostles.

2. And albeit *the order* of Geneva, which now is used in some of our churches, is sufficient to instruct the diligent reader, how that both these sacraments may be rightly ministred ; yet for an uniformitie to be kept, we have thought good to adde this as superabundant.

3. In baptisme we acknowledge nothing to be used except the element of water onely (that the word and declaration of the promises ought to preceed we have said before) ; wherefore whosoever presumeth in baptisme to use oyle, salt, waxe, spittle, conjuration and crossing, accuseth the perfect institution of Christ Jesus of *imperfection* ; for it was void of all such inventions devised by men. And such as would pre-

\* Administration.

sume to alter Christ's perfect ordinance you ought severely to punish.

4. The table of the Lord is then most rightly ministered, when it approacheth most near to Christ's own action; but plaine it is, that at supper Christ Jesus sate with his disciples, and therefore doe we judge that sitting at a table is most convenient to that holy action; that bread and wine ought to be there, that thanks ought to be given, distribution of the same made, and commandment given that the bread should be taken and eaten, and that all should likewise drinke of the cup of wine, with declaration what both the one and the other is; we suppose no godly man will doubt. For as touching the damnable error of the Papists, who dare defraud the common people of the one part of that holy sacrament, *to wit*, of the cup of the Lord's blood, we suppose their error to be so manifest, that it needeth no confutation; neither yet intend we to confute any thing in this our simple confession, but to offer public disputation to all that list oppugne any thing affirmed by us.

5. That the minister breake the bread, and distribute the same to those that be next unto him, commanding the rest, every one with reverence and sobrietie, to break with other, we thinke it nearest to Christ's action, and to the perfect practise [of the Apostles,] as we reade in St. Paul. During the which action we thinke it necessarie, that some comfortable places of the Scripture be read, which may bring in minde the death of Christ Jesus, and the benefit of the same; for seeing that in that action we ought chiefly to remember the Lord's death, we judge the Scriptures making mention of the same, most apt to stirre up our dull mindes then, and at all times. Let the discretion of the ministers appoint the places to be read as they think good. What times we think most convenient for the administration of the one and of the other of these sacraments, shall be declared in the *Policie of the Kirk*.\*

### CHAP. III.

#### *The Third Head, touching the abolishing of Idolatrie.*

1. As we require Christ Jesus to be truly preached, and his holy sacraments rightly ministred; so [we] cannot cease

\* See chap. xi. of this book, sect. 5.

to require idolatry, with all monuments and places of the same, as abbeyes, monkeries, frieries, nunneries, chapels, chanteries, cathedrall churches, chanonries, colledges, others then presently are parish-churches or schools, to be utterly suppressed in all bounds and places of this realme, except onely palaces, mansions, and dwelling places adjacent thereto, with orchards and yards of the same. As also [we desire] that idolatrie may be removed from the presence of all persons of what estate or condition that ever they be, within this realme.

2. For let your honours assuredly be perswaded, that where idolatry is maintained or permitted, where it may be suppressed, that there shall God's wrath raigne, not onely upon the blind and obstinate idolaters, but also the negligent sufferers [of the same]; especially if God have armed their hands with power to suppress such abhominacion.

3. By *idolatry* we understand, the masse, invocation of saints, adoration of images, and the keeping and retaining of the same: And finally all honouring of God, not contained in his holy Word.

## CHAP. IV.

### I. *The Fourth Head, concerning Ministers and their lawfull Election.*

1. In a church reformed or tending to reformation none ought to presume either to preach, or yet to minister the sacraments, till that orderly they be called to the same. Ordinarie vocation consisteth in election, examination, and admission. And because that election of ministers in this cursed Papistrie hath altogether been abused, we thinke expedient to intreat it more largely.

2. It appertaineth to the people, and to every several congregation, to elect their minister. And in case that they be found negligent therein the space of forty dayes, the best reformed church, *to wit*, the church of the superintendent with his councill, may present unto them a man whom they judge apt to feed the flock of Christ Jesus, who must be examined as well in life and manners, as in doctrine and knowledge.

3. And that this may be done with more exact diligence, the persons that are to be examined must be commanded to appeare before men of soundest judgement, remaining in some principall town next adjacent unto them, as they that be in *Fife, Angus, Mearnes, or Straitharne*, to present themselves in *Saint Andrews*; these that be in *Lowthian, Merse, or Tevi-dail*, in *Edinburgh*; and likewise those that be in other countries must resort to the best reformed citie and towne, *that is*, to the towne of the superintendent, where first in the schooles, or failing thereof in open assembly, and before the congregation, they must give declaration of their giftes, utterance, and knowledge, by interpreting some place of Scripture to be appointed by the ministrie; which being ended, the person that is presented, or that offereth himself to the \*administration of the church, must be examined by the ministers and elders of the church, and that openly and before all that list to heare, in all the chiefe points that now be in controversie betwixt us and the *Papists, Anabaptists, Arrians*, or other such enemies to the Christian religion. In which if he be found sound, able to perswade by wholesome doctrine, and to convince the gaine-sayer, then must he be directed to the church and congregation where he should serve, that there, in open audience of his flock in diverse public sermons, he may give confession of his faith in the article of justification, of the office of Christ Jesus, and of the number, effect, and use of the sacraments; and finally, in the whole religion, which heretofore hath been corrupted by the *Papists*.

4. If his doctrine be found wholesome and able to instruct the simple, and if the church justly can reprehend nothing in his life, doctrine, nor utterance, then we judge the church, which before was destitute, unreasonable if they refuse him whom the church did offer; and [that] they should be compelled by the censure of the councill and church, to receive the person appointed and approved by the judgement of the godly and learned; unlesse that the same church have presented a man better, or as well qualified to the examination, before that this foresaid tryall was taken of the person presented by the councill of the whole church. As for example, the councill of the church presents to any church a man to be their minister, not knowing that they are otherwise provided; in the meane time, the church is provided of another,

\* Service.



sufficient in their judgement for that charge, whom they present to the learned ministers and next reformed church to be examined. In this case the presentation of the people, to whom he should be appointed pastor, must be preferred to the presentation of the councell or greater church, unlesse the person presented by the inferiour church be judged unable of the regiment by the learned. For altogether this is to be avoided, that any man be violently intruded or thrust in upon any congregation; but this libertie with all care must be reserved to every severall church, to have their votes and suffrages in election of their ministers. But violent intrusion we call not, when the councell of the church in the feare of God, and for the salvation of the people, offereth unto them a sufficient man to instruct them, whom they shall not be forced to admit before just examination, as before is said.

II. *What may unable any person, that he may not be admitted to the Ministerie of the Church.*

5. It is to be observed that no person, noted with publique infamie, or being unable to edifie the church by wholesome doctrine, or being known of corrupt judgement, be either promoted to the regiment of the church, or yet retained in ecclesiastical administration.

*Explication.*

6. By *public infamy* we understand, not the common sinnes and offences which any hath committed in time of blindness, by fragility; if of the same by a better and more sober conversation, he hath declared himselfe verily penitent; but such capitall crimes as the civill sword ought and may punish with death by the word of God. For besides that the Apostle requireth the life of ministers to be so *irreprehensible*, that they have a *good testimonie from those that be without*; we judge it a thing unseemly and dangerous, that he shall have publick authoritie to preach to others life everlasting, from whom the civill magistrate may take the life temporall for a crime publickly committed; and if any object that the Prince hath pardoned his offence, and that he hath publickly repented [the same], and so not onely his life is in assurance, but also that he may be received to the ministerie of the church; we answer, that repentance doth not take away the temporall punishment of the law, neither doth the pardon of the Prince remove his infamie before man.

7. That the life and conversation of the person presented or to be elected, may be the more clearly knowne, publick edicts should be directed to all parts of this realme, or at the least to those parts where the person hath been most conversant ; as where he was nourished in letters, or where he continued since the yeares of infancie and childhood were passed. Straight commandment would be given, that if any capitall crimes were committed by him, that they should be notified, as if he had committed wilfull murder [or] adulterie ; [or] if he were a common fornicator, a thiefe, a drunkard, a fighter, brawler, or contentious person. These edicts ought to be notified in the chiefe cities, with the like charge and commandement, with declaration that such as concealed his sinnes knowne, did deceive and betray, so far as in them lay, the church which is the spouse of Christ Jesus, and did communicate with the sinnes of that wicked man.

### III. *Admission of Ministers.*

8. The admission of ministers to their offices, must consist in [the] consent of the people and church whereto they shall be appointed, and approbation of the learned ministers appointed for their examination.

9. We judge it expedient that the admission of ministers be in open audience, [and] that some speciall minister make a sermon touching the duty and office of ministers, touching their manners, conversation, and life ; as also touching the obedience which the church oweth to their ministers. Commandment should be given, as well to the minister as to the people, both being present, *to wit*, that he with all carefull diligence attend upon the flock of Christ Jesus, over the which he is appointed pastor ; that he will walk in the presence of God so sincerely, that the graces of the Holy Spirit may be multiplied into him ; and in the presence of men so soberly and uprightly, that his life may confirme in the eyes of men, that which by tongue and word he perswaded unto others. The people should be exhorted to reverence and honor their ministers chosen, as the servants and ambassadors of the Lord Jesus, obeying the commandments which they pronounce from God's word, even as they would obey God himselfe : For whosoever heareth Christ's ministers heareth himselfe ; and whosoever rejecteth and despiseth their ministerie and exhortation, rejecteth and despiseth Christ Jesus.

10. Other ceremonie than the public approbation of the

people, and declaration of the chiefe minister, that the person there presented is appointed to serve the \*church, we cannot approve; for albeit the Apostles used imposition of hands, yet seeing the miracle is ceased, the using of the ceremonie we judge not necessarie.†

11. The minister elected or presented, examined, and, as sayd is, publickly admitted, may neither leave the flocke at his pleasure, to which he hath promised his fidelitie and labours; neither yet may the flocke reject or change him at their appetite, unlesse they be able to convict him of such crimes as deserve deposition, whereof we shall after speak. We mean not but that the whole church, or the most part thereof, for just considerations, may transerre a minister from one church to another; neither yet mean we, that men who now serve as it were of benevolence, may not be appointed and elected to serve in other places; but once being solemnly elected and admitted, we cannot approve that they should change at their own pleasure.

12. We are not ignorant that the rarite of godly and learned men will seem to some a just reason why that so strait and sharpe examination should not be taken universally; for so it would appear, that the most part of the kirks shall have no minister at all: But let these men understand, that the lack of able men shall not excuse us before God, if by our consent unable men be placed over the flock of Christ Jesus; as also that amongst the Gentiles godly and learned men are as rare, as they be now amongst us, when the Apostle gave the same rule to trie and examine ministers, which we now follow: And lastly, let them understand that it is alike to have no minister at all, and to have an idoll in the place of a true minister, yea, and in some case it is worse; for those that be utterly destitute of ministers will be diligent to search for them, but those that have a vain shadow, do commonly without further care content themselves with the same, and so remain they continually deceived, thinking that they have a minister when in verie deed they have none; for we cannot judge him a dispensator of God's mysteries, that in no wise can breake the bread of life to the fainting and hungrie soules; neither judge we that the sacraments can be rightlie ministred by him, in whose mouth God hath put no sermon of exhortation.

\* That church.

† See the Second Book of Discipline, chap. iii. sect. 6.

13. The chiefest remedie left to your honours and to us, in all this raritie of true ministers, is fervent praier unto God, that it will please his mercie *to thrust forth faithfull workmen into this his harvest.* And next, that your honours, with consent of the church, are bound by your authoritie to compel such men as have gifts and graces able to edifie the church of God, that they bestow them where greatest necessitie shall be known; for no man may be permitted to live idle, or as themselves list, but must be appointed to travell where your wisdoms and the church shall think expedient. We cannot prescribe unto your honours certain rules how that ye shall distribute the ministers and learned men, whom God hath already sent unto you; but hereof we are assured, that it greatlie hindereth the progresse of Christ's gospell within this poore realm, that some altogether abstract their labours from the church, and others remain altogether in one place, the most part of them being idle. And therefore of your honors we require in God's name, that by your authority which he have of God, ye compell all men to whom God hath given any talent to persuade, by wholesome doctrine, to bestow the same, if they be called by the church to the advancement of Christ's glorie, and the comfort of his troubled flock; and that ye, with the consent of the church, assign unto the chiefest workmen, not onelie townes to remaine in, but also provinces, that by their faithfull labours churches may be erected, and order established where none is now. And if on this manner ye shall use your power and authoritie, chieffie seeking God's glorie, and the comfort of your brethren, we doubt not but God shall blesse you and your enterprises.

#### IV. *For Readers.*

14. To the churches where no ministers can be had presentlie, must be appointed the most apt men that distinctlie can read the common Praiers\* and the Scriptures, to exercise both themselves and the church, till they grow to greater perfection; and in process of time he that is but a reader may attain to a farther degree, and by consent of the church and discreet ministers, may be permitted to minister the sacraments; but not before that he be able somewhat to perswade by wholesome doctrine, beside his reading, and be admitted

\* That is, the Prayers that were printed with the *Book of Common Order* and Psalm Book.

to the ministerie, as before is said. Some we know that of long time have professed Christ Jesus, whose honest conversation deserveth praise of all godly men, and whose knowledge also might greatly helpe the simple [and ignorant people,] and yet they onely content themselves with reading; these must be animated, and by gentle admonition encouraged, by some exhortation to comfort their brethren, and so they may be admitted to administration of the sacraments; but such readers as neither have had exercise nor continuance in Christ's true religion, must abstain from ministration of the sacraments, till they give declaration and witnessing of their honestie and further knowledge, that none be admitted to preach but they that are qualified therefore, but rather be retained readers; and such as are preachers already, not found qualified therefore by the superintendent, [are] to be placed readers.

## CHAP. V.

*The Fift Head, concerning the Provision for the Ministers, and for the Distribution of the Rents and Possessions justly appertaining to the Church.*

1. Seeing that of our Maister Christ Jesus, and his Apostle Paul, we have *that the workman is worthy of his reward*, and *that the mouth of the labouring ox ought not to be mused*; of necessitie it is, that honest provision be made for the ministers, which we require to be such, that they have neither occasion of sollicitude, neither yet of insolencie and wantonnesse. And this provision must be made not onely for their owne sustentation, during their lives, but also for their wives and children after them. For we judge it a thing most contrarious to reason, godlinesse, and equitie, that the widow and the children of him who in his life did faithfully serve in the kirk of God, and for that cause did not carefully make provision for his family; should after his death be left comfortlesse of all provision; which provision for the wives of the ministers after their deceasse, is to be remitted to the discretion of the kirk.

2. Difficile it is to appoint a severall stipend to every minister, by reason that the charge and necessitie of all will not be alike: For some will be continuers in one place, some will

be compelled to travel and oft to change their dwelling place, if they shall have charge of divers kirks; among these some will be burdened with wife and children, and one with more than others, and some perhaps will be single men; if equal stipends should be appointed to these that in charge should be so unequal, either should the one suffer penurie, or else should the other have superfluitie and too much. We judge therefore that every minister have sufficient whereupon to keep an house and be sustained honestly in all things necessarie, as bookes, cloathes, flesh, fish, fewell, and other things necessarie, [forth] of the rents and treasure of the kirk [where he serveth,] at the discretion of the congregation, conforme to the qualitie of the person and necessitie of the time. Wherein it is thought good that every minister shall have at least fourtie bolls meale, \*twenty six bolls malt, to finde his house bread and drinke; and more, so much as the discretion of the church findes necessarie: besides money for buying of other provisions to his house and other necessaries; the modification whereof is referred to the judgement of the kirk, to be made every yeare at the choosing of the elders and deacons of the kirk. Providing alwaies that there be advanced to every minister, sufficient provision for a quarter of a year beforehand of all things.

3. But to him that travels from place to place, whom we call superintendent, who remaines as it were a month or lesse in one place for establishing of the kirk, and for the same purpose changing to another, must [further] consideration be had. And therefore to such we thinke sixe chalders beere, nine chalders meale, three chalders oates, † sixe hundred merks money, to be eiked and paired at the discretion of the prince and councill of the realme, to be payed to him in manner foresaid.

4. The children of the ministers, must have the liberties of the cites next adjacent, where there fathers laboured, freely granted. They must have the priviledges in schooles, and bursisses in colledges, *that is*, that they shall be sustained at learning, if they be found apt thereto; and failing thereof they [must] be put to some handicraft, or exercised in some vertuous industry, whereby they may be profitable

\* Some copies have only *twenty bolls malt*.

† Some copies add, *for provand to his horse*, and have only *500 merks of money*.

members of the commonwealth; and the same we require of their daughters, *to wit*, that they be vertuously brought up, and honestly doted when they come to maturity of years, at the discretion of the kirk. And this, in God's presence we witness, we require not so much for our selves, or for any that appertaine to us, as that we do it for the increase of vertue and learning, and for the profite of the posterity to come; [for] it is not to be supposed that any man will dedicate himselfe and his children so to God and to his kirk, that they look for no worldly commodity; but this cankered nature which we beare, is provoked to follow vertue when it seeth profite and honour thereto annexed; and contrarily, then is vertue by many despised when vertuous and godly men are without honour; and sorry would we be that poverty should discourage men from studie, and following of the way of vertue, by which they might edifie the kirk and flock of Christ Jesus.

5. Nothing have we spoken of the stipend of readers, because if they can do nothing but reade, they neither can be called nor judged true ministers, and yet regard must be had to their labours; but so that they may be spurred forward to vertue, and not by any stipend appointed for their reading to be retained in that estate. To a reader therefore that is newly entred, fourty merkes, or more or lesse, as parishioners and readers can agree, is sufficient: Provided that he teach the children of the parish, which he must doe, besides the reading of the common prayers,\* and bookes of the Old and New Testament. If from reading he begin to exhort and explain the Scriptures, then ought his stipend to be augmented, till finally he come to the honour of a minister: But if he be found unable after two yeares, then must he be removed from that office, and discharged of all stipend, that another may be proved as long; for this alwaies is to be avoided, that none who is judged unable to come at any time to some reasonable knowledge, whereby he may edifie the kirk, shall be perpetually sustained upon the charge of the kirk. Farther it must be avoided, that no child, nor person within age, *that is*, within twentie one yeares of age, be admitted to the office of a reader but readers ought to be endued with gravity and discretion, lest by their lightnesse the prayers or Scriptures read be of lesse price or estimation. It is to be noted that the reader be

\* That is, the prayers which were printed with the Psalm Book.

put in the kirk by the admission of the superintendent. The other sort of readers, who have long continued in [the course of] godliness, and have some gift of exhortation, who are of hope to attain to the degree of a minister, and [who] teach the children; we think an hundred merkes, or more or lesse at the discretion of the kirk, may be appointed; so that difference be made, as said is, betwixt them and the ministers that openly preaches the word and ministers the sacraments.

6. Rests yet two sorts of people to be provided for upon that which is called the patrimony of the kirk, *to wit*, the poore, and teachers of the youthhead. Every several kirk must provide for the poore within it self; for fearful and horrible it is, that the poore, whom not onely God the Father in his law, but Christ Jesus in his Evangel, and the Holy Spirit speaking by St. Paul hath so earnestly commended to our care, are universally so contemned and despised. We are not patrons for stubborne and idle beggars, who, running from place to place, make a craft of their begging, whom the civill magistrate ought to [compel to work, or then] punish: But for the widow and fatherlesse, the aged, impotent or lamed, who neither can nor may travell for their sustentation, we say that God commands his people to be careful; and therefore for such, as also for persons of honestie fallen into decay and poverty, ought such provision to be made, that of our abundance their indigence may be relieved. How this most conveniently and most easilie may be done in every citie, and other parts of this realme, God will shew you wisdome and the meanes, so that your mindes be godly inclined thereto. All must not be suffered to beg that gladly would so doe, neither yet must beggars remain where they would, but the stout and strong beggars must be compelled to worke; and every person that may not worke, must be compelled to repair to the place where he or she was borne, unlesse of long continuance they have remained in one place; and there reasonable provision must be made for [their] sustentation, as the kirk shall appoint. The order nor summes, in our judgements, cannot particularly be appointed, until such times as the poore of every citie, town and parish be compelled to repaire to the places where they were borne, or of their residence, where their names and number must be taken and put in roll, and then may the wisdome of the kirk appoint stipends accordingly.



## CHAP. VI.

I. *The Head of the Superintendents.*

1. Because we have appointed a larger stipend to them that shall be superintendents than to the rest of the ministers ; we have thought good to signifie to your honours, such reasons as moved us to make difference betwixt preachers at this time ; as also how many superintendents we think necessarie, with their bounds, office, [the manner of their] election, and [the] causes that may deserve deposition from that charge.

2. We consider that if the ministers whom God hath endowed with his singular graces amongst us, should be appointed to severall places there to make their continuall residence, that then the greatest part of the realme should be destitute of all doctrine ; which should not onely be the occasion of great murmur, but also be dangerous to the salvation of many. And therefore we have thought it a thing most expedient at this time, that from the whole number of godly and learned men, now presently in this realme, be selected ten or twelve, (for in so many provinces we have divided the whole,) to whom charge and commandement should be given to plant and erect kirkes, to set, order, and appoint ministers as the former order prescribes, to the countries that shall be appointed to their care where none are now ; and by their meanes, your love and common care over all [the] inhabitants of this realme, to whom you are equally debtors, shall evidently appear ; as also the simple and ignorant, who perchance have never heard Jesus Christ truely preached, shall come to some knowledge, by the which many that are dead in superstition and ignorance shall attaine to some feeling of godlinesse, by the which they may be provoked to search and seek farther knowledge of God, and his true religion and worshipping ; whereas by the contrary, if they shall be neglected, then shall they not onely grudge, but also seeke the meanes whereby they may continue in their blindness, or return to their accustomed idolatry. And therefore nothing we desire more earnestly, than that Christ Jesus be universally once preached throughout this realme, which shall not suddenly be, unlesse that by

you, men be appointed and compelled, faithfully to travell in such provinces as to them shall be assigned.

II. *The names of the places of residence, and severall Diocesses of the Superintendents.*

1. *In primis*, the superintendent of Orknay, whose diocesse shall comprehend the isles of [Orknay and] Zetland, with Cathnes and Stranaver, his residence to be in Kirkwall.

2. The superintendent of Rosse, whose diocesse shall comprehend Rosse, Sutherland, Murray, with the North Isles of Skie and Lewes, with the adjacents, his residence to be in the chanonrie of Rosse.

3. The superintendent of Argyle, whose diocesse shall comprehend Argyle, Kyntyre, Lorn, the South Isles, Arran, and Buite, with their adjacents, with [the countrey of] Lochwhaber, his residence to be in Argyle.

4. The superintendent of Aberdene, whose diocesse is betwixt Dee and Spay, containing the shirefdoms of Aberdene and Bamfe, whose residence shall be in Old Aberdene.

5. The superintendent of Brechen, whose diocesse shall be the whole shirefdoms of the Merns and Angus, and the Brae of Mar to Dec, his residence to be in Brechen.

6. The superintendent of Fife, [whose diocesse shall be Fife,] and Fotherinham to Stirling, and the whole sherifdome of Perth, his residence to be in Saint Androes.

7. The superintendent of Edinburgh, whose diocesse shall comprehend the whole sherifdoms of Lowthian, and Stirling on the south side of the water of Forth, his residence to be in Edinburgh.

8. The superintendent of Jedburgh, whose diocesse shall comprehend the whole Tivitdail, Tweeddale, Liddisdail, and thereto is added by consent of the whole kirk\* the Merse, Lawderdaill, and Weddaill, with the Forrest of Ettrick, his residence to be in Jedburgh.

9. The superintendent of Glasgow, whose diocesse shall comprehend Clidsdaill, Renfrew, Menteth, Lennox, Kyle, and Cunninghame, his residence to be in Glasgow.

10. The superintendent of Dumfries, whose diocesse shall

\* This seems to have been done after the first division. For in some copies the Merse, Lawderdaill, and Stow of Tweeddale are in the diocess of Edinburgh.

comprehend Galloway, Carrik, Nithsdail, Anandaile, with the rest of the Dailes in the West, his residence to be in Dumfriese.

4. Those men must not be suffered to live as your idle bishops have done heretofore, neither must they remaine where gladly they would; but they must be preachers themselves, and such as may not make long residence in any place till their kirks be planted and provided of ministers, or at least of readers. Charge must be given to them that they remain in no place above twenty daies in their visitation, till they have passed through their whole bounds. They must thrice everie week preach at the least, and when they returne to their principall town and residence, they must be likewise exercised in preaching and edification of the kirk; and yet they must not be suffered to continu there so long, that they may seem to neglect their other kirks: But after they have remained in their chiefe towne three or foure moneths at most, they shall be compelled (unlesse by sicknesse they be retained) to re-enter in visitation, in which they shall not onely preach, but also examine the life, diligence, and behaviour of the ministers; as also the order of the kirkes [and] the manners of the people. They must further consider how the poore be provided, how the youth be instructed: They must admonish where admonition needeth, and dresse such things as by good counsell they be able to be appease. And finally, they must note such crimes as be heynous, that by the censure of the kirk the same may be corrected.

5. If the superintendent be found negligent in any of the chiefe points of his office, and specially if he be noted negligent in preaching of the word, and visitation of the kirkes; or if he be convict of such crimes which in common ministers are damned, he must be deposed without respect of his person or office.

### III. *The Election of Superintendents, &c.*

6. In this present necessity, the nomination, examination, and admission of the superintendent, cannot be so straight as we require, and as afterward it must be. For this present therefore, we thinke it expedient, that either your honours by yourselves nominate so many as may serve the fore-written provinces; or that ye give commission to such men as ye suppose the feare of God to be in to doe the same: And the

same men being called in your presence shall be by you, and such as your honours please call unto you for consultation in that case, appointed to their provinces. We thinke it expedient and necessarie, that as well the gentlemen, as burgeses of every diocie be made privy at this time to the election of the superintendent, as well to bring the kirk in some practise of her liberty, as that the pastor may be the better favoured of the flock whom themselves have chosen. If your honours cannot finde for this present so many able [men] as necessity requireth, then in our judgments, more profitable it is those provinces vaike till God provide better for them, then that men unable to edifie and govern the kirk, so suddenly be placed in that charge; for experience hath taught us what pestilence hath been engendered in the kirk by men unable to discharge their offices. When therefore after three yeares any superintendent shall depart, or chance to be deposed, the cheefe towne within the province, *to wit*, the ministers, elders, and deacons, with the magistrate and councill of the same towne, shall nominate, and by public edicts proclaime, as well to the superintendents, as to two or three provinces, next adjacent, two or three of the most learned and godly ministers within the whole realme, that from amongst them one with public consent may be elected and appointed to the office then vacant: And this the chiefe towne shall be bound to doe within the space of twentie daies; which being expired and no man presented, then shall three of the next adjacent provinces, with consent of their superintendents, ministers, and elders, enter in the right and priviledge of the town, and shall present every one of them one or two, if they list to the chiefe town to be examined as the order requires; as also it shall be lawfull for all the kirks of the diocesse, to nominate within the same time such persons as they thinke worthy to stand in election, who all must be put in an edict.

7. After [the] nomination is made, publick edicts must be sent forth, warning all men that have any exception against the persons nominate, or against any of them, to be present in the chiefe town at the day affixed, and place, to object what they can against the election of any of them. Thirtie dayes we thinke sufficient to be assigned thereto. Thirtie dayes we meane after the nomination be made.

8. Which day of the election being come, the whole ministers of the province, with three or foure superintendents next

adjacent, or that shall be thereto nominated, shall examine, not onely the learning, but also the manners, prudence and habilitie to governe the kirk, of all these that be nominated ; that he who shall be found most worthie may be burdened with the charge. If the ministers of the whole province should bring with them the votes of them that were committed to their care, the election should be the more free ; but always the votes of them that convene should be required. The examinations must be publickly made, [and] they that stand in election must publickly preach ; and men must be charged in the name of God, to vote according to conscience, and not after affection : If any thing be objected against him that standeth in election, the superintendents and ministers must consider whether the objection be made of conscience or malice, and they must answer accordingly. Other ceremonies then sharp examination, approbation of the ministers and superintendents, with the publicke consent of the elders and people, we cannot allow.

9. The superintendent being elected, and appointed to his charge, must be subject to the censure and correction of ministers and elders not of his chiefe town onely, but also of the whole province over the which he is appointed overseer.

10. If his offence be known, and the ministers and elders of the towne and province be negligent in correcting of him, then the next one or two superintendents, with their ministers and elders may convene him, and the ministers and elders of his chiefe towne, providing the same be within his owne province or chiefe towne, and accuse or correct as well the superintendent in these things that are worthy of correction, as the ministers and elders of their negligence and ungodly tollerance of his offence.

11. Whatsoever crime deserves deposition or correction of any other minister, deserveth the same in the superintendent, without exception of persons.

12. After that the kirk is established, and three yeares be passed, we require that no man be called to the office of a superintendent, who hath not at the least two yeares given declaration of his faithfull labours in the ministerie of some kirk.

13. No superintendent may be transferred at the pleasure or request of any one province, no not without the consent of the whole councill of the kirk, and that for grave causes and considerations.

14. Of one thing in the end we must admonish your honours, *to wit*, that in the appoynting of the superintendents for this present, ye disappoint not your chiefe townes, and where learning is exercised, of such ministers as may more profit by residence in one place, then by continuall travell from place to place; for if ye so doe, the youth in these places shall lack the profound interpretation of Scripture, and so shall it be long before your garden send forth many plants; where by the contrary, if one or two townes be continually exercised as they may, the commonwealth shall shortly feast of their fruit, to the comfort of the godly.

## CHAP. VII.

### *Of Schools [and Universities.]*

Seeing that the office and dutie of the godly magistrate, is not onely to purge the church of God from all superstition, and to set it at liberty from tyranny and bondage; but also to provide at the utmost of his power how it may abide in some puritie in the posterity following; we can [not] but freely communicate our judgments with your honours in this behalf.

#### I. *The Necessitie of Schooles.*

1. Seeing that God hath determined that his kirk here in earth shall be taught not by angels but by men, and seeing that men are borne ignorant of God and of all godlinesse, and seeing also he ceases to illuminate men miraculously, suddenly changing them as he did the Apostles and others in the primitive kirke: Of necessity it is that your honours be most careful for the vertuous education, and godly upbringing of the youth of this realm, if either ye now thirst unfainedly the advancement of Christ's glorie, or yet desire the continuance of his benefits to the generation following; for as the youth must succeed to us, so we ought to be careful that they have knowledge and crudition to profit and comfort that which ought to be most deare to us, to wit the kirk and spouse of our Lord Jesus.

2. Of necessitie therefore we judge it, that every several

kirk have one schoolmaister appointed, such a one at least as is able to teach grammer and the Latine tongue, if the town be of any reputation: If it be\* upaland where the people convene to the doctrine but once in the week, then must either the reader or the minister there appointed, take care of the children and youth of the parish, to instruct them in the first rudiments, especially in the Catechisme,† as we have it now translated in the Booke of the Common Order, called the Order of Geneva. And furder, we think it expedient, that in every notable town, and specially in the town of the superintendent, there be erected a colledge, in which the arts, at least logick and rhetorick, together with the tongues, be read by sufficient masters, for whom honest stipends must be appointed: As also [that] provision [be made] for those that be poore, and not able by themselves nor by their friends to be sustained at letters, and in speciall these that come from landward.

3. The fruit and commoditie hereof shall suddenly appeare. For first, the youth-head and tender children shall be nourished and brought up in vertue, in presence of their friends, by whose good attendance many inconveniences may be avoyded in which the youth commonly fall, either by over much libertie which they have in strange and unknowne places, while they cannot rule themselves; or else for lack of good attendance, and [of] such necessaries as their tender age requires. Secondly, the exercise of children in every kirke, shall be great instruction to the aged [and unlearned.] Last, the great schooles called the universities, shall be replenished with these that shall be apt to learning; for this must be carefully provided, that no father of what estate or condition that even he be, use his children at his own fantasie, especially in their youth-head; but all must be compelled to bring up their children in learning and vertue.

4. The rich and potent may not be permitted to suffer their children to spend their youth in vaine idlenesse, as heretofore they have done. But they must be exhorted, and by the censure of the kirk compelled to dedicate their sonnes, by [training them up in] good exercises, to the profite of the kirk and commonwealth, and that they must doe of their own expences because they are able. The children of the poore must be supported and sustained on the charge of the kirk,

\* That is, in the country.

† That is, Calvin's Catechism.

tryall being taken whether the spirit of docility be in them found or not. If they be found apt to learning and letters, then may they not (we meane, neither the sons of the rich, nor yet of the poore) be permitted to reject learning, but must be charged to continue their studie, so that the commonwealth may have some comfort by them: And for this purpose must discreet, grave, and learned men be appointed to visit schooles for the tryall of their exercise, profit, and continuance; to wit, the minister and elders, with the best learned men in every town, shall in every quarter make examination how the youth have profited.

5. A certain time must be appointed to reading and learning of the Catechisme, and [a] certain [time] to the grammar and to the Latine tongue, and a certain [time] to the arts of philosophie, and the [other] tongues, and [a] certain [time] to that studie in the which they intend chiefly to travel for the profite of the commonwealth; which time being expired, we meane in every course, the children should either proceed to farther knowledge, or else they must be set to some handie craft, or to some other profitable exercise; providing alwaies that first they have further knowledge of Christian religion, *to wit*, the knowledge of God's law and commandments, the use and office of the same, the chief articles of the beleefe, the right form to pray unto God, the number, use, and effect of the Sacraments, the true knowledge of Christ Jesus, of his offices and natures, and such other [points,] without the knowledge whereof neither any man deserves to be called a Christian, neither ought any to be admitted to the participation of the Lord's table; and therefore thir principles ought and must be learned in the youth-head.

## II. *The Time appointed to every Course.*

6. Two yeares we thinke more then sufficient to learne to reade perfectly, to answer to the Catechisme, and to have some entres in the first rudiments of grammer; to the full accomplishment whereof (we meane of the grammer) we thinke other three years or four at most sufficient to the arts, *to wit*, logick, to rhetorick and to the Greeck tongue, [we allow other] four years; and the rest till the age of 24 years, to be spent in the study, wherein the learner would profit the church or commonwealth be it in the lawes, physick, or divinitie, which time of 24 yeares being spent in the schools, the learner must be removed to serve the church or commonwealth, unlesse he



be found a necessary reader in this same colledge or university. If God shall move your hearts to establish and execute this order, and put these things in practice, your whole realme, we doubt not, within few years, will serve itself of true preachers, and of other officers necessary for the commonwealth.

### III. *Of the Erection of Universities.*

7. The grammer schoole being erected, and of the tongues as we have said; next we think it necessary there be three universities in this whole realme, established in the three towns accustomed.\* The first in St Androes, the second in Glasgow, and the third in Aberdeen. And in the first and principal university, *viz.* St. Androes, that there be three colledges: and in the first colledge, which is the entry of the university, there be four classes or sieges, the first to the new supposts shall be only [of] Dialectick, next only Mathematicks, the third of Physicks only, the fourth of Medicine: And in the second colledge two classes or sieges, the first of Morall Philosophy, the second of the Lawes; And in the third colledge, two classes or sieges, the first of the tongues, *to wit,* Greek and Hebrue, the second of Divinity.

### IV. *Of Readers, of the Degrees, and Time of Studie, [and of Principals and Rector, and of Bursars.]*

8. *Imprimis,* In the first colledge and first classe shall be a reader of Dialectick, who shall accomplish his course thereof in a yeare. In Mathematicks, which is the second classe, shall be a reader who shall compleat his course of Arithmetick, Geometrie, Cosmography, and Astrologie in one year. In the third classe shall be a reader of Naturall Philosophy, who shall compleat his course in one yeare. And who after thir three years, by tryall and examination, shall be found sufficiently instructed in the foresaid sciences, shall be laureat and graduat in Philosophy. In the fourth classe, shall be a reader of Medicine, who shall compleat his course in five years; after the study of the which time, being by examination found sufficient, they shall be graduat in Medicine.

9. *Item,* In the second colledge in the first classe, one rea-

\* The University of Edinburgh was not founded till the year 1582; and that in the town of Aberdeen not till some time after.

der onely in the Ethicks, Œconomicks, and Politicks, who shall compleat his course in the space of one yeare. In the second classe shall be two readers in the Municipal and Roman Laws, who shall compleat their course in four yeares; after which time, being by examination found sufficient, they shall be graduate in the Lawes.

10. *Item*, In the third colledge. in the first classe, one reader of the *Hebrew* and another of the *Greek* tongue, who shall compleat the grammar thereof in three moneths, and the remanent of the yeare, the reader of the *Hebrew* shall interpret one book of Moses, [or of] the Prophets, or the Psalms, so that this course and classe shall continue one year: The reader of the *Greek* shall interpret some book of Plato, together with some places of the New Testament, [and shall compleat his course the same year.] In the second classe shall be two readers in *divinitie*, the one in the New Testament; the other in the Old, who shall compleat their course in five years; after which time, who shall be found by examination sufficient, they shall be graduate in *divinitie*.

11. *Item*, Wee thinke expedient that none be admitted to the first colledge, and be [made] supposts of the Universitie, unlesse he have from the master of the schoole, and minister of the town where he was instructed in the tongues and testimonie of his learning, docility, age and parentage; and likewise triall be taken by certain examiners, depute by the rector and principalls of the same. And if he hath been taught [the] dialectick, and be found sufficiently instructed therein, he shall incontinent the same year be promoted to the classe of mathematicks.

12. *Item*, That none be admitted to the classe of medicine, but he that shall have his testimoniall of his time well spent in Dialectic, Mathematicks, and Physicks, and of his docility in the last.

13. *Item*, That none be admitted unto the classe of the lawes, but he that shall have sufficient testimonialls of his time well spent in Dialecticks, Mathematicks, Physicks, Ethicks, Œconomicks, and Politicks, and of his docilitie in the last.

14. *Item*, That none be admitted unto the classe and siege of divinity, but he that shall have sufficient testimonialls of his time well spent in Dialectick, Mathematicks, Physicks, Ethicks, Œconomicks, and Politicks, and the Hebrew tongue, and of his docilitie in the Moral Philosophy and the Hebrew

tongue. But neither shall such as apply them[selves] to heare the Lawes, be compelled to heare Medicine; neither such as apply them[selves] to heare Divinitie, be compelled to heare either Medicine or yet the Lawes.

15. *Item*, In the second University, which is Glasgow, shall be two colledges onely: In the first shall be a classe of Dialectick, an order of Mathematicks, the third of Physicks, ordered in all sorts as S. Androes.

16. *Item*, In the second [colledge shall be] foure classes, the first of Moral Philosophy, Ethicks, Economicks, and Politicks; the second of the Municipal and Roman Lawes; the third of the Hebrew tongue; the fourth of Divinity: Which shall be ordered in all sorts [according] to what we have written in the order of the Universitie of St. Androes.\*

17. The third University of Aberdeen shall be conforme to this Universitie of Glasgow in all sorts.

18. *Item*, We thinke needfull that there be chosen [forth] of the bodie of the Universitie to every colledge, a Principall, [who must be a] man of learning, discretion, and diligence. He shall receive the whole rents of the colledge, and distribute the same according to the erection of the colledge, and shall dayly hearken the dyet counts; adjoyning to him[selfe] weekly one of the readers or regents about whom he shall take attendance upon their diligence, as well in their reading as exercising of the yowth in the matter taught; [he shall oversee] the policie and uphold of the place: And for punishment of crimes shall hold a weekly convention with the whole members of the colledge. He shall be countable yearly to the superintendent, rector, and the [rest of the] principalls convened, about the first of November. His election shall be in this sort, there shall be three of the most sufficient men of the Universitie (not principalls already) nominate by the members of the college whose principall is departed [and who are] sworn to follow their consciences, [then these three shall be] publickly proponed through the whole Universitie: Eight days after the which time, the superintendent himselfe or his speciall procurator, with the rector and the rest of the principalls, as a chapter convenit, shall confirm one of the three

\* There is here no mention made of Medicine or Greek; but it is probable that a Professor of Greek was designed both for Glasgow and Aberdeen, for the reason given in the remark on the 25th section of this chapter

† Some copies have *buildings*.

they think most sufficient; being before sworn to do the same with a single eye but respect to fead or favour.

19. *Item*, In every colledge we thinke needful at least a steward, a cooke, a gardiner, and porter, who shall be subject to [the] discipline of the principall, as [are] the rest.

20. *Item*, That everie universitie have a beddall subject to serve at all times throughout the whole universitie, as the rector and principall shall command.

21. *Item*, That everie universitie have a rector chosen from yeare to yeare as shall follow. The principalls being convened with the whole regents chapterly, shall be sworn that every man [speaking] in his [own] roome, shall nominate such a one as his conscience shall testify to be most sufficient to beare such charge and dignity; and three of them that shall be oftest nominated shall be put in edict publickly fifteen daies before Michaelmas; and then shall on Michaelmas even convene the whole principalls, regents, and supposts that are graduat, or at the least [have] studied their time in Ethicks, Œconomicks, and Politicks, and no others yonger; and every one [having] first protested in God's presence to follow the sincere dytment of their conscience, shall nominate [one] of the three, and he that hath most votes shall be confirmed by the superintendent and principals, and his duty with an exhortation proponed unto him, and this to be the 28 day of September; and thereafter [an oath] shall be taken [of] him for his just and godly government, and of the rest [for their] lawful submission and obedience: He shall be propyned by the university at his entry with a new garment,\* bearing *insignia magistratus*. [And] he shall be holden monethly to visite every colledge, and with his presence decore and examine the lections and exercises thereof. His assessors shall be a lawyer and a theologue, with whose advice he shall decide all questions civill betwixt the members of the university. If any without the university persue a member thereof, or he be persued by a member of the same, he shall assist the provost and baillies in these cases, or other judges competent, to see justice be ministred. In like wise if any of the university be criminally persued, he shall assist the judges competent, and see that justice be ministred.

22. *Item*, We thinke [it] expedient that in every colledge

\* Some copies have, *insignia magistratus* being borne before him, he shall visite every colledge monethly, &c.

in every university, there be 24 bursars, devided equally in all the classes and sieges as is above expremit; *that is*, in St. Androes 72 bursars, in Glasgow 48 bursars, in Aberdeen 48, to be susteined onely in meat upon the charges of the colledge; and to be admitted at the examination to the ministerie [of the town] and chaptour of principalls in the university as well in the docility of the persons offered, as of the ability of their parents to sustaine them themselves, and not to burden the commonwealth with them.

*V. Of the Stipends and Expenses necessary.*

23. We thinke expedient that the universities be doted with temporall lands, with rents and revenues of the bishopricks temporalitie, and of the kirkes collegiat, so farre as their ordinary charges shall require; and therefore that it would please your honours, by advice of your honourable councel and vote of Parliament, to do the same. And to the effect the same may be shortly exped, we have recollected the summes we think necessary for the same.

24. *Imprimis*, for the ordinary stipend of the Dialectician reader, the Mathematician, Physician, and Morall Philosopher, we think sufficient an hundred pounds for every one of them.

*Item*, For the stipend of every reader in Medicine and Lawes, a hundreth thirty three pounds sex shillings and eight pennies.

*Item*, To every reader in Hebrew, Greek, and Divinity, 200 pounds.

*Item*, To every principall of a colledge, 200 pounds.

*Item*, To every steward [for his fee] 16 pounds.

*Item*, To every gardiner, to every cooke, and porter, to ilk one of them ten merks.

*Item*, To the buird of every bursar without the classe of theologie, 20 pounds.

*Item*, [To every bursar] in the classes of theologie, which will be onely 12 persons in St. Androes, 24 pounds.

25. [The] summe of [the] yearly and ordinary expenses in the university of St. Androes, extendeth to 3796 pounds.

[The] summe of [the] yearly and ordinary expenses of Glasgow [extends to] 2922 pounds. \*[The summe of] Aberdeen to 2922 pounds.

\* The ordinary expenses of Glasgow or Aberdeen extend only to

[The] summe of the ordinary charges of the whole is 9640 pounds.

26. *Item*, The beddalls stipend shall be of every intrant and suppost of the university 2 shillings, of every one graduate in Philosophy three shillings, of every one graduate in Medicine or Lawes four shillings, in Theologie five shillings; all bursars being excepted.

27. *Item*, We have thought good for building and upholding of the places\* a general collect be made; and that every Earl's sonne, at his entry to the university, shall give 40 shilling, and likewise at every graduation 40 shilling. *Item*, Each Lord's sonne likewise, at such times, 30 shilling, each freeholding baron's sonne 20 shilling, every fewar and substantialous gentleman's sonne, 1 mark. *Item*, Every substantialous husband and burgess sonne at each time 10 shilling. *Item*, Every one of the rest, not excepting the bursars, 5 shilling, at each time. And that this be gathered in a common box, put in keeping to the principall of the theologians, every principall having a key thereof, to be [opened, and the money] counted each year once, with the interest of principalls to be laid in the same, upon the 15 day of November, in presence of the superintendent, rector, and whole principalls; and with their whole consent, or at least the most part of them, reserved or employed only upon the building and upholding of the places, and repairing of the same, as necessitie shall require. And therefore the rector with his assistant shall be holden to visit the places each yeare once incontinent after he be promoted, upon the last of October, or thereby.

#### VI. *Of the Priviledges of the Universitie.*

28. Seeing we desire that innocencie should defend us rather then priviledge, we think that each person of the University should answer before the Provost and Bailiffs of the town where the Universitie is, for all crimes whereof they are accused, onely that the rector be assessor to the [magistrates] in the said actions. In civill matters if the question be betwixt members of the University on each side, making their residence and exercise therein for the time, in that case the partie called shall not be holden to answer but onely be-

2722 pounds and one merk, so that probably it was designed that these two universities should have had each of them a professor of Greek, whose salary was to have been 200 pounds.

\* Fabrick.

fore the rector and his assessors heretofore exprimed : In all other cases of civill pursuit, the generall rule of the law [is] to be observed, *actor sequatur forum rei*.

29. The rector and all inferiour members of the universitie must be exempted from all taxations, imposts, [and] charges of warr ; or any other charge that may onerate or abstract him or them from the care of his office, such as tutorie, curatorie, or any such like that are established, or hereafter shall be established in our common-weale ; to the effect, that without trouble, they may wait on the up-bringing of the youth in learning, and bestow their time onely in that most necessarie exercise.

30. All other things touching the books to be read in ilk classe, and all such like particular affaires, we referre to the discretion of the masters, principals and regents, with their well-advised counsel ; not doubting but if God shall grant quietnesse, and give your wisdomes grace to set forward letters in the sort prescribed, ye shall leave wisdome and learning to your posterity, a treasure more to be esteemed than any earthly treasure ye are able to amasse for them, which without wisdome are more able to be their ruin and confusion, then [their] help and comfort. And as this is most true, so we leave it with the rest of the commodities to be weighed by your honours wisdome, and set forwards by your authority to the most high advancement of this common-wealth committed to your charge.

## CHAP. VIII.

### *The Sixt Head, of the Rents and Patrimonie of the Church.*

1. Thir two sorts of men, that is to say, ministers [of the word] and the poore, together with the schooles, when order shall be taken thereanent, must be susteyned upon the \*charges of the kirk ; and therefore provision must be made how, and by whom such summes must be lifted. But before we enter in this head, we must crave of your honours, in the name of the Eternal God and of his Son Christ Jesus, that ye have respect to your poor brethren, the labourers and manurers of the ground, who by thir cruell beastes the

\* Rents.

Papists have before been opprest, that their life to them hath been dolorous and bitter: If ye will have God author and approver of this reformation, ye must not follow their footesteps, but ye must have compassion of your brethren, appointing them to pay reasonable tiends, that they may finde some benefite of Christ Jesus now preached unto them.

2. With the griefe of our hearts we heare, that some gentlemen are now as cruell over their tenants as ever were the Papists, requiring of them [the tiends and] whatsoever they afore paid to the kirk, so that the Papistical tyrannie shall onely be changed into the tyrannie of the lord and laird. We dare not flatter your honours, neither yet is it profitable for you that we so doe: [For neither shall we,] if we permit cruelty to be used; neither shall ye, who by your authoritie ought to gainestand such oppression, nor yet they that use the same, escape God's heavie and fearfull judgements. The gentlemen, barones, earles, lords, and others, must be content to live upon their just rents, and suffer the kirk to be restored to her [right and] liberty; that by her restitution, the poore, who heretofore by the cruell Papists have been spoiled and oppressed, may now receive some comfort and relaxation, that their tiends and other exactions be cleane discharged, and no more taken in times comming. The uppermost claith, corps-present, clerke-maile, the pasche-offering, teind-ale, and all handlings upaland,\* can neither be required nor received of good conscience.

3. Neither do we judge it to proceed of justice, that any man should possesse the tiends of another, but we think it a most reasonable thing that every man have the use of his own tiends, provided that he answer to the deacons and treasurers of the kirk, of that which [of] justice shall be appointed to him. We require the deacons and treasurers rather to receive the rents, then the ministers themselves; because that of the tiends must not onely the minister be sustained, but also the poore and schooles. And therefore we think it expedient that common treasurers, viz. the deacons, be appointed from yeare to yeare, to receive the whole rents appertaining to the kirk, and that commandement be given that none be permitted either to receive or yet to intromet with any thing appertaining to the sustentation of the persons foresaid, but such as by common consent of the kirk are thereto appointed.

\* Exactions in the country.



4. If any think this prejudiciall to the tackes and assedations of them that now possesse the tiends: Let them understand that their unjust possession is no possession before God; for they of whom they received their title, and presupposed right or warrant, were theeves and murtherers, and had no power so to alienate the patrimonie and common good of the kirk. And yet we are not so extreame but that we wish just recompence to be made to such as have debursed summes of money to the unjust possessors, so that it hath not been done of late dayes in prejudice of the kirk; but such as are found and known to be done of plaine collusion, in no wayes ought to be maintained by you: And for that purpose we think it most expedient that whosoever have assedation of tiends [of] any kirk [in part or in whole,] be openly warned to produce their assedation and assurance, that cognition being taken, the just taksmen may have the just and reasonable recompence for the yeares that are to runne, the profite of the yeares past being considered and deduced; and the unjust and surmised may be served accordingly, so that the kirk in the end may receive her libertie and freedom, and that onely for the reliefe of the poore.

5. Your honours may easily understand that we speake not now for our selves, but in favour of the labourers defrauded and opprest by the priests, and by their confederate pensioners; for while that the priests pensioner his idle belly is delicately fed, the poore, to whom the portion of that appertaines, was pyned with hunger, and moreover the true labourer was compelled to pay that which he ought not: For the labourer is neither debtor to the dumbe dogge called the bishop, neither yet to his hired pensioner, but is debtor onely to the kirk; and the kirk is bound to sustaine and nourish of her charges, the persons before mentioned, *to wit*, the ministers of the word, the poore, and the teachers of the youth.

6. But now to returne to the former head. The summes able to sustaine the forenamed persons, and to furnish all things appertaining to the preservation of good order and policie within the kirk, must be lifted of the tenths, *to wit*, the tenth sheaf [of all sorts of corn,] hay, hemp, [and] lint; [tenth] fishe, tenth calf, tenth lamb, tenth wooll, tenth folle, tenth cheese. And because that we know that the tenth reasonably taken, as is before expressed, will not suffice to discharge the former necessity; we thinke that all things doted to hospitality, and annual rents both in burgh and land

pertaining to the priests, chanteries, colledges, chappellanries, and the freeries of all orders, to the sisters of the scenes, and such others [of that sort,] be retained still in the use of the kirk or kirks within the townes and parishes where they were doted. Furthermore to the upholding of the universities, and sustentation of the superintendents, the whole revenew of the temporality of the bishops, deanes, and arch-deanes lands, and of all rents of lands pertaining to the cathedrall kirks whatsoever. And further [we thinke that] merchants and rich craftsmen in free burghs, having nothing to doe with the manuring of the ground, must make some provision in their cities, towns, and dwelling places, for to support the need of the kirk.

7. To the ministers, and failing thereof the readers, must be restored their manses and gleibs; for else they cannot serve [nor attend] their flocks at all times, as their dutie is. If any gleib exceed six akers of ground, the rest shall remain in the hands of the possessours, till [further] order be taken therein.

8. The receivers and collectors of these rents and duties, must be deacons or thesaurers appointed from yeare to yeare in every kirk, and by the common consent and free election of the kirk, the deacons must distribute no part of that which is collected, but by command of the ministers and elders; and they may command nothing to be delivered, but as the kirk hath before determined, *to wit*, the deacons shall of the first part pay the summes, either quarterly, or from halfe yeare to halfe yeare, to the ministers which the kirk hath appointed. The same they shall doe to the schoolmasters, readers, and hospitall if any be, receiving alwayes an acquittance for their discharge.

9. If any extraordinary summes be to be delivered, then must the ministers, elders, and deacons consult whether the deliverance of such summes doth stand with the common utilitie of the kirk or not, and if they do universally condescend and agree upon the affirmative or negative, then because they are in credite and office for the yeare, they may do as best seems: but if there be any controversy amongst themselves, the whole kirk must be made privy, and after that the matter be proponed, and the reasons [heard], the judgment of the kirk with the minister's consent shall prevaile.

10. The deacons shall be compelled and bound to make

accounts to the minister and elders of that which they received, as oft as the policie shall appoint; and the elders when they are changed, which must be every yeare, must cleare their count before such auditors as the kirk shall appoint; and both the deacons and elders being changed, shall deliver to them that shall be new elected all summes of money, cornes, and other profites, resting in their hands: the tickets whereof must be delivered to the superintendents in their visitation, and by them to the great councill of the kirk, that as well the abundance as the indigence of everie kirk may be evidently known, that a reasonable equality may be had throughout this whole realm. If this order be perfectly kept, corruption cannot suddenly enter. For the free and yearly election of deacons and elders\* shall suffer none to usurpe a perpetuall domination over the kirk; the knowledge of the rentall shall suffer them to receive no more then whereof they shall be bound to make accounts; the deliverance of money to the new officers shall not suffer private men [to] use in their private business, that which appertaines to the publick affaires of the kirk.

## CHAP. IX.

### I. *The Seventh Head, of Ecclesiasticall Discipline.*

1. As that no common-wealth can flourish or long indure without good lawes and sharp execution of the same; so neither can the kirk of God be brought to purity neither yet retained in the same without the order of ecclesiasticall discipline, which stands in reproving and correcting of the faults, which the civill sword either doth neglect, or [may] not punish: blasphemie, adulterie, murder, perjurie, and other crimes capitall, worthy of death, ought not properly to fall under [the] censure of the kirk; because all such open transgressors of God's lawes ought to be taken away by the civill sword. But drunkenness, excesse, be it in apparell or be it in eating and drinking, fornication, oppressing of the poore by exactions, deceit in buying and selling by wrang met and

\* See the Second Book of Discipline, chap. vi. sect. 2. and chap. viii. sect. 2.

measure, wanton words and licentious living tending to slander, do properly appertain to the kirk of God to punish them as God's word commands.

2. But because this accursed Papistrie hath brought in such confusion into the world, that neither was vertue rightly praised, neither yet vice severely punished; the kirk of God is compelled to draw the sword which of God she hath received, against such open and manifest contemners, cursing and excommunicating all such, as well those whom the civill sword ought to punish as the other, from all participation with her in prayers and sacraments till open repentance appeare manifestly in them. As the order and proceeding to excommunication ought to be slow and grave, so being once pronounced against any person of what estate or condition that ever they be, it must be kept with all severity; for lawes made and not kept engender contempt of vertue, and bring in confusion and liberty to sinne: and therefore this order we thinke expedient to be observed afore, and after excommunication.

3. First, if the offence be secret or known to few men, and rather stands in suspicion then in manifest probation, the offender ought to be privately admonished to abstaine from all appearance of evill, which if he promise to doe, and declare himselfe sober, honest, and one that feares God and feares to offend his brethren, then may the secret admonition suffice for his correction. But if he either contemne the admonition or after promise made to shew himselfe no more circumspect then he was before, then must the minister admonish him, to whom if he be found inobedient they must proceed according to the rule of Christ, as after shall be declared.

4. If the crime be publick, and such as is heynous, as fornication, drunkennesse, fighting, common swearing, or execration, then ought the offender to be called in presence of the minister, elders and deacons, where his sinne and trespasse ought to be declared and aggregated, so that his conscience may feele how farre he hath offended God, and what slander he hath raised in the kirk; if signes of unfaigned repentance appeare in him, and if he require to be admitted to publick repentance, the minister may appoint unto him a day when the whole kirk convenes together, that in presence of all he may testify his repentance which before he professed: which if he accept, and with reverence confesse his sinne, earnestly desiring the congregation to pray to God with him for mercy, and

to accept him in their societie notwithstanding the former offence: then the kirk may and ought to receive him as a penitent, for the kirk ought to be no more severe then God declares himselfe to be, who witnesses that *in whatsoever houre a sinner unfeignedly repents, and turnes from his wicked way, that he will not remember one of his iniquities*; and therefore ought the kirk diligently to advert that it excommunicate not those whom God absolves.

5. If the offender called before the ministerie be found stubborn, hard-hearted, or in whom no signe of repentance appeares, then must he be dimitted with an exhortation to consider the dangerous estate in which he stands; assuring him that if they finde in him no other tokens of amendment of life, that they will be compelled to seek a further remedy; if he within a certaine space shew his repentance to the ministerie, they may present him to the kirk, as before is said.

6. If he continue not in his repentance, then must the kirk be advertised that such crimes are committed amongst them, which by the ministry hath bene reprehended, and the persons provoked to repent; whereof because no signes appeare unto them, they could not but signifie unto the kirk the crimes, but not the person, requiring them earnestly to call to God to move and touch the heart of the offender, so that suddenly and earnestly he may repent.

7. If the person maligne, the next day of publick assembly, the crime and the person must be both notified unto the kirk, and their judgments must be required, if that such crimes ought to be suffred unpunished among them: Request also should be made to the most discrete and nearest friend of the offender to travell with him to bring him to [the] knowledge of himself, and of his dangerous estate; with a commandement given to all men to call to God for the conversion of the unpenitent. If a solemne and speciall prayer were drawne for that purpose, the thing would be more gravely done.\*

8. The third Sondag the minister ought to require, if the unpenitent have declared any signes of repentance to one of the ministry; and if he have, then may the minister appoint him to be examined by the whole ministry; either then instantly, or another day affixed to the consistorie: And if repentance appeare, as well for his crime, as for his long con-

\* See the Ordour of Excommunication, and of Public Repentance chap. ii.

tempt, then he may be presented to the kirk, and make his confession to be accepted as before is said: But if no man signifie his repentance, then ought he to be excommunicated, and by the mouth of the minister, and consent of the ministry, and commandement of the kirk, must such a contemner be pronounced excommunicate from God, and from all society of the kirk.

9. After which sentence may no person (his wife and family onely excepted) have any kind of conversation with him, be it in eating and drinking, buying and selling, yea in saluting or talking with him; except that it be at commandement or licence of the ministerie for his conversion: That he, by such meanes confounded, seeing himselfe abhorred of the godly and faithfull, may have occasion to repent, and so be saved. The sentence of excommunication must be published universally throughout the realme, lest that any man should pretend ignorance.

10. His children begotten and born after that sentence and before his repentance, may not be admitted to baptisme till either they be of age to require the same, or else that the mother or some of his speciall friends, members of the kirk, offer and present the child, abhorring and damning the iniquity and obstinate contempt of the impenitent. If any man should think it severe that the child should be punished for the iniquity of the father; let him understand that the sacraments appertaine to the faithfull and their seed; but such as stubbornly contemne all godly admonition, and obstinately remaine in their iniquity, cannot be accounted amongst the faithfull.

## II. *The Order for Public Offenders.*

We have spoken nothing of them that commit horrible crimes, as murtherers, manslayers, adulterers; for such as we have said, the civill sword ought to punish to dead: But in case they be permitted to live, then must the kirk, as is before said, draw the sword which of God she hath received, holding them as accursed, even in their very fact. The offender being first called, and [the] order of the kirk used against him, in the same manner as the persons for their obstinate impenitency are publickly excommunicate. So that the obstinate impenitent after the sentence of excommunication, and the murtherer or adulterer stand in one case, as concerning the judgement of the kirk; *that is*, neither of both

may be received in the fellowship of the kirk to prayers or sacraments (but to hearing the word they may) till first they offer themselves to the ministrie, humbly requiring the ministers and elders to pray to God for them, and also to be intercessors to the kirk, that they may be admitted to publick repentance, and to the fruition of the benefits of Christ Jesus, distributed the to members of his bodie.

12. If this request be humbly made, then may not the ministers refuse to signifie the same unto the kirk, the next day of publick preaching the minister giving exhortation to the kirk to pray to God to perform the worke which he appears to have begun, working in the heart of the offender, unfaigned repentance of his greivous crime and offence, [with a sense] and feeling of his great mercy, by the operation of the Holy Spirit. Thereafter one day ought publickly to be assigned unto him to give open profession of his offence and contempt, and so to make publick satisfaction to the kirk of God: Which day the offender must appear in presence of the whole kirk, with his own mouth damning his own impiety, publickly confessing the same; desiring of God his mercy and grace, and [of] his congregation that it would please them to receive him in their society, as before is said. The minister must examine him diligently whether he finds a hatred and displeasure of his sinne, as well of his contempt as of his crime: Which if he confesse, he must travell with him, to see what hope he hath of God's mercies.

13. If he finde him [humbly disposed, and] reasonably instructed in the knowledge of Christ Jesus, and the vertue of his death; then may the minister comfort him with God's infallible promises, and demand of the kirk if they be content to receive that creature of God, whom Satan before had drawn in his nettes, into the society of their bodie, seeing that he [hath] declared himselfe penitent: Which if the kirk grant, as they cannot justly deny the same, then ought the minister in public prayer commend him to God, [and] confesse the sinne of that offender before the whole kirk, desiring mercy and grace for Christ Jesus sake. Which prayer being ended, the minister ought to exhort the kirk to receive that penitent brother into their favours, as they require God to receive themselves when they offend; and in signe of their consent, the elders and chiefe men of the kirk shall take the penitent by the hand, and one or two in the name of the rest shall kiss and embrace him with reverence and gravitie as a member of Christ Jesus.

14. Which being done, the minister shall exhort the received, that he take diligent heed in times comming, that Sathan trap him not in such crimes, admonishing him that he\* will not cease to tempt and trie by all meanes possible to bring him from that obedience which he hath given to God and to the ordinance of Jesus Christ. The exhortation being ended, the minister ought to give publick thanks unto God for the conversion of their brother, and for all benefits which we receive of Christ Jesus, praying for the increase and continuance of the same.

15. If the penitent after he hath offered himself unto the ministerie, or to the kirk, be found ignorant of the principall points of our religion, and chiefly in the articles of justification and of the offices of Christ Jesus, then ought he to be exactly instructed before he be received. For a mocking of God it is to receive them to repentance who know not wherein standeth their remedie, when they repent their sinne.

### III. *Persons subject to Discipline.*

16. To discipline, must all the Estates within this realme be subject, as well the rulers as they that are ruled; yea, and the preachers themselves, as well as the poorest within the kirk: And because the eye and mouth of the kirk ought to be most single and irreprehensible, the life and conversation of the minister ought to be diligently tried, whereof we shall speak after that we have spoken of the election of elders and deacons, who must assist the minister in all publick affairs of the kirk

## CHAP. X.

*The Eight Head, touching the Election [and Office] of Elders and Deacons; [and the Censure of Ministers, Elders, and Deacons.]*

1. Men of best knowledge in God's word, and clearest life, men faithfull and of most honest conversation that can be found in the kirk, must be nominate to be in election, and their names must be publickly read to the whole kirk by the

\* How that enemy will not, &c.



minister, giving them advertisement, that from amongst them must be chosen elders and deacons; if any of these nominate be noted with publick infamie, he ought to be repelled; for it is not seemly that the servant of corruption should have authoritie to judge in the kirk of God. If any man know others of better qualities within the kirk then these that be nominate, let them be put in election [with them], that the kirke may have the choyce.

2. If the kirk be of smaller number then that seniors and deacons can be chosen from amongst them, then may they well be joyned to the next adjacent kirks. For the pluralitie of kirks without ministers and order, shall rather hurt than edifie.

3. The election of elders and deacons ought to be made every yeare once, which we judge to be most convenient on the first day of August; lest of long continuance of such officers, men presume upon the liberty of the kirk: [And yet] it hurteth not that one be received in office moe years than one, so that he be appointed yearly [thereto] by common and free election;\* provided alwayes, that the deacons and thesaurers be not compelled to receive the [same] office againe for the space of three yeares. 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.

4. The elders being elected, must be admonished of their office, which is to assist the ministers 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.

5. Yea, the seniors ought [also] to take heed to the life, manners, diligence, and study of their ministers. If he be worthy of admonition, they must admonish him; of correction, they must correct him; and if he be worthy of deposition, they with consent of the kirk and superintendent may depose him, so that his crime deserve so. If a minister be light of conversation, by his elders and deacons he ought to

\* See the Second Book of Discipline, chap. vi. sect. 2, and chap. viii. sect. 2.

be admonished: if he be negligent in study, or one that vaikes\* not upon his charge or flock, or one that propones not faithfull doctrine, he deserves sharper admonition and correction; to the which if he be found stubborn and inobedient, then may the seniors of the kirk complain to the ministry of the two next adjacent kirks, where men of greater gravitie are, to whose admonition if he be found inobedient, he ought to be discharged of his ministry, till his repentance appeare, and a place be vakand for him.

6. If any minister be deprehended in any notable crime, as whoredome, adulterie, [murther,] manslaughter, perjurie, teaching of heresie, or any other deserving death, or that may be a note of perpetual infamie, he ought to be deposed for ever. By heresie we mean pernicious doctrine plainly taught, and †openly defended, against the foundations and principles of our faith; and such a crime we judge to deserve perpetual deposition from the ministry: for most dangerous we know it to be to commit the flocke to a man infected with the pestilence of heresie.

7. Some crimes deserve deposition for a time, and while the person give declaration of greater gravitie and honesty: As if a minister be deprehended drinking, brawling, or fighting; an open slanderer or infamer of his neighbours, factious, and a sower of discord, he must be commanded to ceass from his ministry till he declare some sign of repentance, upon which the kirk shall abide him the space of 20 dayes or further as the kirk shall think expedient, before they proceed to a new election.

8. Every inferiour kirk shall by one of their seniors and one of their deacons, once in the yeare, notifie unto the ministers of the superintendent's kirk, the life, manner, study and diligence of their ministers, to the end the discretion of some may correct the levitie of others.

9. Not onely must the life and maners of ministers come under censure and judgment of the kirk, but also of their wives, children, and familie: Judgment must be taken that he neither live riotously, neither yet avaritiously; yea respect must be had how they spend the stipend appointed to their living: If a reasonable stipend be appointed and they live avaritiously, they must be admonished to live as they receive; for as exce se and superfluitie is not tolerable in a minister,

\* Waiteth.

† Obstinate.

so is avarice and the careful solicitude of money utterly to be damned in Christ's servants, and especially in them that are fed upon the charge of the kirk: We judge it unseemly and intolerable, that ministers should be buirded in common ale-houses or in tavernes.

10. Neither must a minister be permitted to frequent and commonly haunt the court, unlesse it be for a time, when he is either sent by the kirk, or called for by the authoritie for his counsell and judgment in civill affairs.\* Neither yet must he be one of the councill,† be he judged never so apt for the purpose; but either must he cease from the ministry, (which at his own pleasure he may not do) or else from bearing charge in civill affairs, unlesse it be to assist the Parliament if he be called.

11. The office of deacons, as before is sayd, is to receive the rents, and gather the almes of the kirk, to keep and distribute the same, as by the ministers and kirk shall be appointed; they may also assist in judgement with the minister and elders, and may be admitted to read in assembly if they be required, and be able thereto.

12. The elders and deacons with their wives and household, should be under the same censure that is prescribed for the ministers; For they must be carefull over their office, and seeing they are judges over others manners, their own conversation ought to be irreprehensible: They must be sober, lovers and maintainers of concord and peace [amongst neighbours]; and finally they ought to be examples of godliness to others. And if the contrary thereof appeare, they must be admonished thereof by the ministers, or some of their brethren of the ministry, if the fault be secret: And if the fault be open and known, they must be rebuked before the ministry, and the same order kept against the senior and deacon, that before is described against the minister.

13. We think it not necessary that any public stipend shall be appointed, either to the elders, or yet to the deacons, because their travell continues but for a yeare; and also because that they are not so occupied with the affairs of the kirk, but that reasonably they may attend upon their domesticall businesse.

\* In any matter.

† Of the councill in civil affairs.

## CHAP. XI.

*The Ninth Head, concerning the Policie of the Kirk.*

1. *Policie* we call an exercise of the kirk in such things as may bring the rude and ignorant to knowledge, or else inflame the learned to greater fervencie, or to retain the kirk in good order; and thereof there be two sorts, the one utterly necessarie, as that the word be truly preached, the sacraments rightly ministred, common prayers publickly made, that the children and rude persons be instructed in the chiefe points of religion; and that offences be corrected and punished; these things be so necessary, that without the same there is no face of a visible kirk. The other is profitable but not merely necessary, [as] that psalms should be sung, that certain places of the scriptures be read when there is no sermon; that this day or that, or how many [days] in the week the kirk should assemble; of these and such others we cannot see how a certain order can be established: For in some kirks the psalmes may conveniently be sung, in others perchance they cannot; some kirkes [may] convene every day, some twice, some thrice in the week [and] some perchance but once: In this and such like must every particular kirk by their consent appoint their owne policie.

2. [Yet] in great townes we thinke expedient that every day there be either sermon or common prayers, with some exercise of reading of scriptures. What day the public sermon is, we can neither require nor greatly approve that the common prayers be publickly used: lest that we should either foster the people in superstition, who come to the prayers as they come to the masse; or else give them occasion, that they think them no prayers, which be made before and after sermons.

3. In every notable town, we require that one day beside the Sunday, be appointed to the sermon, which during the time of sermon and prayers must be kept free from all exercise of labour, as well of the maister as of the servant; in smaller townes as we have said, the common consent of the kirk must put order: But the Sunday must straitly be kept both before and after noone in all townes. Before noone must

the word be preached, and sacraments ministred, as also marriage solemnized if occasion offer: After noone must the young children be publickly examined in their catechism in the audience of the people, [in doing] whereof the minister must take great diligence, as well to cause the people understand the questions proponed as [the] answers, and the doctrine that may be collected thereof; the order [to be kept in teaching the catechism], and how much [of it] is appointed for every Sunday, is allready distinguished in [the Catechism printed with] the *Book of our Common Order*, which Catechism is the most perfect that ever yet was used in the kirk. And after noone may baptisme be ministred; when occasion is offered of great travell before noone: It is also to be observed, that prayers be after noone upon Sunday, where there is neither preaching nor catechisme.

4. It appertaines to the policie of the kirk to appoint the times when the sacraments shall be ministred. Baptisme may be ministred whensoever the word is preached; but we think it more expedient, that it be ministred upon Sunday, or upon the day of prayers, only after the sermon: Partly to remove this grosse error by the which many are deceived, thinking that children be damned if they die without baptisme; and partly to make the people have greater reverence to the administration of the sacraments then they have, for we see the people begin already to wax weary by reason of the frequent repetition of those promises.

5. Foure times in the yeare we think sufficient to the administration of the Lord's table, which we desire to be distincted, that the superstitions of times\* may be avoided so farre as may be: For your honours are not ignorant how superstitiously the people runne to that action at Pasche, even as if the time gave vertue to the sacrament; and how the rest of the whole year they are carelesse and negligent, as if it appertained not unto them, but at that time onely. We thinke therefore most expedient, that the first Sunday of March be appointed for one time [to that service]; the first Sunday of June for another; the first Sunday of September for the third; the first Sunday of December for the fourth; We do not deny but any severall kirk for reasonable causes may change the time, and may minister oftner, but we studie to repress superstition. All ministers must be admonished

\* Superstitious observation of times.

to be more carefull to instruct the ignorant then readie to serve their appetite, and to use sharp examination rather then indulgence, in admitting to thir great mysteries such as be ignorant of the use and vertue of the same : And therefore we think that the administration of the table ought never to be without examination passing before, and specially of them whose knowledge is suspect : we think that none are to be admitted to this mysterie who can not formally say the Lord's prayer, the articles of the beliefe, nor declare the summe of the law, [and understandeth not the use and vertue of this holy sacrament.]

6. Further we think it a thing most expedient and necessary, that every kirk have the Bible in *English*, and that the people be commanded to convene and heare the plaine reading and interpretation of the Scripture, as the kirk shall appoint ; [for] by frequent reading, this grosse ignorance, which in this cursed Papistrie hath overflowed all, may partly be removed. We thinke it most expedient that the Scripture be read in order, *that is*, that some one book of the Old or New Testament be begun and orderly read to the end ; and the same we judge of preaching, where the minister for the most part remains in one place : For this skipping and divagation from place to place of Scripture, be it in reading, or be it in preaching, we judge not so profitable to edifie the kirk, as the continuall following of one text.

7. Every master of household must be commanded either to instruct, or cause to be instructed, his children, servants, and family, in the principles of the Christian religion, without the knowledge whereof ought none to be admitted to the table of the Lord Jesus : For such as be so dull and so ignorant, that they can neither try themselves, nor yet know the dignitie and mysterie of that action, cannot eat and drink of that table worthily. And therefore of necessity we judge, that everie year at the least, publicke examination be had by the ministers and elders of the knowledge of every person within the kirk, *to wit*, that every master and mistresse of household come themselves and their family, so many as be come to maturity before the minister and the elders, and give confession of their faith : If they understand not, nor cannot rehearse the commandments of God's law, know not how to pray, neither wherein their righteousnesse stands or consists, they ought not to be admitted to the Lord's table : And if they stubburnly contemne, and suffer their children and ser-

vants to continue in wilfull ignorance, the discipline of the kirk must proceed against them to excommunication, and then must that matter be referred to the civill magistrate; for seeing that the just lives by his own faith, and Christ Jesus justifies by knowledge of himselfe, insufferable we judge it that men be permitted to live as members of the kirk [of God], and yet [to] continue in ignorance.

8. Moreover, men, women [and] children, would be exhorted to exercise themselves in Psalmes, that when the kirk doth convene, and sing, they may be the more able together with common hearts and voices to praise God.

9. In private houses we think expedient, that the most grave and discrete person use the common prayers at morn and at night, for the comfort and instruction of others: For seeing that we behold and see the hand of God now presently striking us with divers plagues, we thinke it a contempt of his judgements, or provocation of his anger more to be kindled against us, if we be not moved to repentance of our former unthankfulnesse, and to earnest invocation of his name, whose onely power may, and great mercy will, if we unfainedly convert unto him, remove from us thir terrible plagues which now for our iniquities hang over our heads. "Convert us, O Lord, and we shall be converted."

## CHAP. XII.

### *For Prophecyng or Interpreting of the Scriptures.*

1. To the end that the kirk of God may have a tryall of men's knowledge, judgements, graces and utterances; as also, such that have somewhat profited in God's word, may from time to time grow in more full perfection to serve the kirk, as necessity shall require; it is most expedient that in every towne, where schooles and repaire of learned men are, there be [a time] in one certain day every week appointed to that exercise which St. Paul calls prophecyng; the order whereof is expressed by him in thir words, \**Let the prophets speak two or three, and let the other judge; but if any thing be revealed to another that sitteth by, let the former keep silence: [for] ye may one by one all prophesie, that all may learne, and*

\* 1 Cor. xiv. 29, 30, 31, 32.

*all may receive consolation. And the spirits, that is, the judgements of the prophets, are subject to the prophets.* By which words of the apostle, it is evident that in the kirk of Corinth, when they did assemble for that purpose, some place of Scripture was read, upon the which one first gave his judgement to the instruction and consolation of the auditors; after whom did another either confirme what the former had said, or added what he had omitted, or did gently correct or explaine more properly where the whole verity was not revealed to the former; and in case things were hid from the one and from the other, liberty was given for a third to speak his judgement to the edification of the kirk; above which number of three, as appears, they passed not, for avoiding of confusion.

2. This exercise is a thing most necessarie for the kirk of God this day in Scotland; for thereby, as said is, shall the kirk have judgement and knowledge of the graces, gifts and utterances of every man within their bodie; the simple and such as have somewhat profited, shall be encouraged daily to studie and to proceed in knowledge, [and] the [whole] kirk shall be edified; for this exercise must be patent to such as list to hear and learne, and every man shall have liberty to utter and declare his minde and knowledge to the comfort and consolation of the kirk.

3. But least of this profitable exercise there arise debate and strife; curious, peregrine and unprofitable questions are to be avoided. All interpretation disagreeing from the principles of our faith, repugning to charity, or that stands in plaine contradiction with any other manifest place of Scripture, is to be rejected. The interpreter in this exercise, may not take to himself the liberty of a publick preacher, (yea although he be a minister appointed) but he must bind himselfe to his text, that he enter not in degression or in explaining common places: he may use no invective in that exercise, unlesse it be of sobriety in confuting heresies: in exhortations or admonitions he must be short, that the time may be spent in opening the minde of the Holy Ghost in that place; following the sequele and dependance of the text, and observing such notes as may instruct and edifie the auditor: for avoiding of contention, neither may the interpreter, nor any in the assemblie move any question in open audience, whereto himselfe is not able [presently] to give resolution without reasoning with another, but every man ought to speake his own judgement to the edification of the kirk.



4. If any be noted with curiosity or bringing in of strange doctrines, he must be admonished by the moderator, ministers and elders, immediately after the interpretation is ended. The whole ministers [with] a number of them that are of the Assembly, ought to convene together, where examination should be had, how the persons that did interpret, did handle and convey\* the matter; they themselves being removed till every man hath given his censure: after the which the persons being called [in,] the faults, if any notable be found, are noted, and the persons gently admonished. In that Assembly are all questions and doubts, if any arise, resolved without contention.

5. The ministers of the parish kirks in landwart adjacent to every chiefe town, and the readers, if they have any gift of interpretation, within sixe miles, must concurre and assist these that prophetic within the townes; to the end that they themselves may either learne, or others may learne by them. And moreover men in whom is supposed to be any gifts which might edifie the church if they were well employed, must be charged by the ministers and elders to joyn themselves with the session and company of interpreters, to the end that the kirk may judge whether they be able to serve to God's glorie, and to the profit of the kirk in the vocation of [the] ministry or not: and if any be found disobedient, and not willing to communicate the gifts and speciall graces of God with their brethren, after sufficient admonition, discipline must proceed against them, provided that the civill magistrate concurre with the judgment and election of the kirk; for no man may be permitted as best pleaseth him to live within the kirk of God, but every man must be constrained by fraternall admonition and correction, to bestow his labours when of the kirk he is required, to the edification of others.

6. What day in the week is most convenient for that exercise, what books of Scripture shall be most profitable to reade, we refer to the judgment of every particular kirk, we meane, to the wisdome of the ministers and elders.

## CHAP. XIII.

### *Of Marriage*

Because that marriage, the blessed ordinance of God, in this cursed Papistry hath partly bene contemned; and partly

\* Intreat.

hath beene so infirmed, that the parties conjoynd could never be assured in conscience, if the Bishops and Prelates list to dissolve the same; we have thought good to shew our judgements how such confusion in times comming may be avoided.

2. And first publick inhibition must be made, that no person under the power or obedience of others; such as sons and daughters, and those that be under curators, neither men nor women contract marriage privately and without [the] knowledge of their parents, tutors or curators, under whose power they are for the time: which if they doe, the censure and discipline of the kirk [ought] to proceed against them. If any son or daughter, or other [under subjection,] have their hearts touched with the desire of marriage, they are bound to give honour to their parents that they open unto them their affection, asking their counsell and assistance, how that motion, which they judge to be of God, may be performed. If the father, [nearest] friend or maister,\* gainstand their request, and have no other cause than the common sort of men have; *to wit*, lacke of goods, and because they are not so high borne as they require; yet must not the parties whose hearts are touched make any covenant till further declaration be made unto the kirk of God [or civil magistrate:] And therefore after that they have opened their mindes to their parents or such others as have charge over them, they must declare it to the ministry also, or to the civill magistrate, requiring them to travell with their parents for their consent, which to doe they are bound. And if they, *to wit*, the ministry or magistrate, find no cause that is just, why the marriage required may not be fulfilled, then after sufficient admonition to the father, friend, master, or superiour, that none of them resist the work of God, the ministry or magistrate may enter in the place of parents, and by consenting to their just requests may admit them to marriage: for the worke of God ought not to be hindred by the corrupt affections of worldly men; the work of God we call, when two hearts, without filthinesse before committed, are so joynd, and both require and are content to live together in that holy band of matrimony.

3. If any commit fornication with that woman he requires in marriage, they do both loose this foresaid benefit as well of

\* Or curator.

the kirk as of the magistrate; for neither of both ought to be intercessors or advocats for filthy fornicators. But the father, or nearest friend, whose daughter being a virgine is defloured, hath power by the law of God to compell the man that did that injurie to marry his daughter: and if the father will not accept him by reason of his offence, then may he require the dowrie of his daughter; which if the offender be not able to pay, then ought the civil magistrate to punish his body by some other punishment. And because whoredome, fornication, [and] adulterie, are sinnes most common in this realme; we require of your honors, in the name of the eternal God, that severe punishment, according as God hath commanded, be executed against such wicked contemners: for we doubt not but such enormities and crimes openly committed, provoke the wrath of God, as the apostle speaketh, not onely upon the offenders, but upon such places where without punishment they are committed.

4. But to return to our former purpose, marriage ought not to be contracted amongst persons that have no election for lack of understanding; and therefore we affirme that bairns and infants cannot lawfully be married in their minor age, *to wit*, the man within 14 yeares, and the woman 12 yeares at least; which if it have been, and they have kept themselves alwayes separate, we cannot judge them to [be bound to] adhere as man and wife, by reason of that promise, which in God's presence was no promise at all; but if in yeares\* of judgement they have embraced the one the other, then by reason† of that last consent, they have ratified that which others have promitted for them in their youth-head, [and are to be held as married persons.]

5. In a reformed kirk, marriage ought not to be secretly used, but in open face and publick audience of the kirk: and for avoiding of dangers, expedient it is that the bannes be publickly proclaimed three [several] Sondayes, unlesse the persons be so knowne that no suspicion of danger may arise, and then may the time be shortned at the discretion of the ministry; but no wayes can we admit marriage to be used secretly how honourable soever the persons be, [and therefore] the Sunday before noon we think most expedient for marriage, and [that it ought to] be used no day else without the consent of the whole ministerie.

\* After the yeares.

† Vertue.

6. Marriage once lawfully contracted, may not be dissolved at man's pleasure, as our master Christ Jesus doth witnes, unlesse adulterie be committed; which being sufficiently proved in presence of the civill magistrate, the innocent, if they so require, ought to be pronounced free, and the offender ought to suffer death as God hath commanded. If the civill sword foolishly spare the life of the offender, yet may not the kirke be negligent in their office, which is to excommunicate the wicked, and to repute them as dead members, and to pronounce the innocent partie to be at freedome, be they never so honourable before the world: [notheless] if the life be spared, as it ought not to be to the offenders, and if fruits of repentance of long time appeare in them, and if they earnestly desire to be reconciled with the kirk, we judge they may be received to the participation of the sacraments, and other benefits of the kirk; for we would not that the kirk should hold them excommunicate whom God absolved, *that is*, the penitent.

7. If any demand, whether that the offender after reconciliation with the kirk, may not marry againe? we answer, that if they cannot live continently, and if the necessity be such as that they feare further offence of God, we cannot forbid them to use the remedy ordained of God. If the partie offended, may be reconciled to the offender, then we judge that on nowayes it shall be lawfull to the offender to marry any other, except the partie that before hath been offended; and the solemnization of the latter mariage must be in the open face of the kirk like as the former, but without proclamation of bannes. This we do offer as the best counsell that God giveth unto us in so doubtosome a case; but the most perfect reformation were, if your honours would give to God his honour and glory, that ye would preferre his expresse commandment to your own corrupt judgements, especially in punishing of these crimes, which he commandeth to be punished with death: for so should ye declare your selves God's true obedient officiers, and your common-wealth should be rid of innumerable troubles. We meane not, that sinnes committed in our former blindnesse, which be almost buried in oblivion, shall be called again to examination and judgement; but we require that the law may be now and hereafter so established and execute, that this ungodly impunity of sinne have no place within this realme: for in the feare of God we signifie unto your honours, that whosoever perswades

you, that ye may pardon where God commandeth death, deceives your soules, and provokes you to offend God's Majesty.

#### CHAP. XIV.

##### *Of Buriall.*

1. Buriall in all ages hath bene holden in estimation to signifie that the same bodie which was committed to the earth should not utterly perish, but should rise againe [in the last day]: And the same we would have kept within this realme, provided that superstition, idolatry, and whatsoever hath proceeded of a false opinion and for advantage sake\* may be avoided, [such] as singing of Masse, Placebo, and Dirige, and all other prayers over or for the dead, which are not onely superstitious and vaine, but also are idolatry, and do repugne to the plaine Scriptures of God. For plaine it is, that every one that dyeth, departeth either in the faith of Christ Jesus, or departeth in incredulity: Plaine it is that they that depart in the true faith of Christ Jesus rest from their labours, and from death do goe to life everlasting, as by our Master and his Apostles we are taught; but whosoever departeth in unbeliefe or incredulitie, shall never see life, but the wrath of God abides upon him: And so we say that prayers for the dead are not onely superstitious and vaine, but do expressly repugne to the manifest Scriptures and veritie thereof.

2. For avoiding of all inconveniences we judge it best, that neither singing nor reading be at [the] buriall: For albeit things sung and read may admonish some of the living to prepare themselves for death, yet shall some superstitious think that singing and reading of the living may profite the dead. And therefore we think it most expedient, that the dead be conveyed to the place of buriall with some honest company of the kirk, without either singing or reading; yea, without all kind of ceremony heretofore used, other than that the dead be committed to the grave, with such gravity and sobriety, as those that be present may seeme to feare the judgements of God, and to hate sinne, which is the cause of death.

\* Advantage and gain

3. We are not ignorant that some require a sermon at the buriall, or else some place of Scripture to be read, to put the living in minde that they are mortall, and that likewise they must die: But let these men understand, that the sermons which be daily made serve for that use, which if men despise, the funerall sermons shall rather nourish superstition and a false opinion, as before is said, then that they shall bring such persons to a godly consideration of their own estate. Attour, either shall the ministers for the most part be occupied in funerall sermons, or else they shall have respect of persons preaching at the burialls of the rich and honourable, but keeping silence when the poore and despised departeth; and this with safe conscience cannot the minister do: For seeing that before God there is no respect of persons, and that their ministrie appertaineth to all alike, whatsoever they doe to the rich, in respect of their ministry, the same they are bound to doe to the poorest under their charge.

4. In respect of divers inconveniences, we think it not seemly that the kirk appointed for preaching and ministration of the sacraments shall be made a place of buryall, but that some other secret and convenient place, lying in the most free aire, be appointed for that use, which place ought to be walled and fenced about, and kept for that use onely.

## CHAP. XV.

### *For Reparation of the Kirkes.*

1. Least that the word of God, and ministration of the sacraments by unseemlinesse of the place, come in contempt, of necessity it is, that the kirk and place where the people ought publickly to convene, be with expedition repaired with doores, windowes, thack, and with such preparation within, as appertaineth as well to the majestic of [the word of] God, as unto the ease and commodity of the people. And because we know the slothfulnessse of men in this behalfe, and in all other [affairs], which may not redound to their private commoditie; strait charge and commandment must be given, that within an certaine day the reparation must be begun, and within another day to be affixed by your honours, that it may be finished: Penalties and summs of money must be enjoined, and without pardon taken from the contemners.

2. The reparation would be according to the ability and number of kirks. Every kirk must have dores, close windowes of glasse, thack [or sclait] able to withold raine, a bell to convocate the people together, a pulpet, a basen for baptizing, and tables\* for ministration of the Lord's supper. In greater kirks, and where the congregation is great in number, must reparation be made within the kirk, for the quiet and commodious receiving of the people. The expenses are to be lifted partly of the people, and partly of the teinds, at the consideration of the ministry.

## CHAP. XVI.

*For Punishment of those that prophane the Sacraments, and contemne the Word of God, and dare presume to minister them, not being thereto lawfully called.*

1. As Satan hath never ceased from the beginning to draw mankind into one of two extremities, *to wit*, that men should either be so ravished with gazing upon the visible creatures, that forgetting the cause wherefore they are ordained, they attribute unto them a vertue and power, which God hath not granted unto them; or else that men should so contemne and despise God's blessed ordinaunces and holy institutions, as if that neither in the right use of them there were any profite, neither yet in their prophanation there were any danger: As this way, we say, Satan hath blinded the most part of mankinde from the beginning; so doubt we not, but that he will strive to continue in his malice even to the end. Our eyes have seene, and presently do see the experience of the one and of the other, what was the opinion of the most part of men of the sacrament of Christ's bodie and bloud, during the darknesse of superstition, is not unknowne, how it was gazed upon, kneeled unto, borne in procession, and finally worshipped and honoured as Christ Jesus himselfe; and so long as Satan might then retaine men in that damnable idolatrie, he was quiet as one that possessed his kingdome of darknes peaceably. Bnt since that it hath pleased the mercie of God to reveale unto the unthankfull world the light of his word, the right use and administration of his sacraments, he assayes

\* A table.

man upon the contrary part: For where not long agoe men stood in such admiration of that idol the masse, that none durst have presumed to have said the masse, but the shaven sort, the beast's marked-men; some dare now be so bold, as without all vocation, to minister, as they suppose, the true sacraments in open assemblies; and some idiots (yet more wickedly and impudently) dare counterfeit in their house that which the true ministers doe in the open congregations, they presume we say, to doe it in houses without reverence, without word preached, and without minister. This contempt proceeds, no doubt, from the malice and craft of that serpent who first deceived man, of purpose to deface the glorie of Christ's Evangell, and to bring his blessed sacraments in a perpetuall contempt: And further, your honours may clearly see how stubbornly and proudly the most part despises the Evangell of Christ Jesus offered unto you, whom unles that sharply and stoutly ye resist, we mean as wel the manifest despiser, as the prophaner of the sacraments, ye shall find them pernicious enemies ere it be long; and therefore in the name of the eternall God, and of his Son Christ Jesus, we require of your honours that without delay, strait lawes be made against the one and the other.

2. We dare not prescribe unto you what penalties shall be required of such, but this we feare not to affirme, that the one and the other deserve death; for if he who doth falsifie the seale, subscription or coine of a king is judged worthy of death; what shall we think of him who plainly doth falsifie the scales of Christ Jesus, [who is the] Prince of the kings of the earth? If Darius pronounced that a balk should be taken from the house of that man, and he himselfe hanged upon it that durst attempt to hinder the re-edifying of the materiall temple [in Jerusalem;] what shall we say of those, that contemptuously blaspheme God, and manifestly hinder the [spirituall] temple of God, which is the soules and bodies of the elect, to be purged by the true preaching of Christ Jesus [and right administration of the sacraments,] from the superstition and damnable idolatry in which they have bene long plunged and holden captive? If ye, as God forbid, declare your selves carelesse over the true religion, God will not suffer your negligence unpunished; and therefore more earnestly we require that strait lawes may be made against the stubborne contemners of Christ Jesus, and against such as dare presume to minister his sacraments not orderly called



to that office, least while that there be none found to gainstand impiety, the wrath of God be kindled against the whole.

3. The Papisticall priests have neither power nor authoritie to minister the sacraments of Christ Jesus, because that in their mouth is not the sermon of exhortation: And therefore to them must strait inhibition be made, notwithstanding any usurpation they have made in the time of blindnesse, [not to presume upon the like hereafter, as likewise to all others who are not lawfully called to the holy ministry,] it is neither the clipping of their crownes, the greasing\* of their fingers, nor the blowing of the dumb dogges called the bishops, neither the laying on of their hands, that maketh [true] ministers of Christ Jesus. But the Spirit of God inwardly first moving the heart to seeke [to enter in the holy calling for] Christ's glory and the profite of his kirk, and thereafter the nomination of the people, the examination of the learned, and publick admission as before is said, make men lawfull ministers of the word and sacraments. We speak of the ordinarie vocation [in kirks reformed;] and not of that which is extraordinary, when God by himselfe and by his onely power, raiseth up to the ministerie such as best pleaseth his wisdom.

*The Conclusion.*

1. Thus have we in these few heads offered unto your honours our judgements, according as we were commanded, touching the reformation of things which heretofore have altogether bene abused in this cursed Papistrie. We doubt not but some of our petitions shall appeare strange unto you at the first sight: But if your wisdomes deeply consider, that we must answer not onely unto man, but also before the throne of the eternall God and of his Son Christ Jesus, for the counsell which we give in this so grave a matter; your honours shall easily consider, that more assured it is to us to fall in the displeasure of all men in the earth, than to offend the Majestie of God, whose justice cannot suffer flatterers and deceitfull counsellors unpunished.

2. That we require the kirk to be set at such liberty, that she neither be compelled to feed idle bellies, neither yet to sustaine the tyrannie which heretofore hath been by violence maintained, we know we shall offend many; but if we should

\* Crossing.

keep silence hereof, we are most assured to offend the just and righteous God, who by the mouth of his apostle hath pronounced this sentence, *He that laboureth not, let him not eat.* If we in this behalfe or in any other, require or aske any other thing, then by God's expresse commandement, [or] by equity and good conscience ye are bound to grant, let it be noted and after repudiate: but if we require nothing which God requireth not also, let your honours take heed, how ye gainstand the charge of him whose hand and punishment ye cannot escape.

3. If blind affection rather lead you to have respect to the sustentation of those your carnall friends, who tyrannously have impyred above the flock of Christ Jesus, then that the zeale of Christ Jesus his glorie provoke and move you to set his oppressed kirk at freedome and liberty; we feare your sharpe and suddaine punishments, and that the glorie and honour of this enterprise [shall] be reserved unto others: and yet shall this our judgement abide to the generations following for a monument and witsnesse, how lovingly God called you and this nation to repentance, what counsellours God sent unto you, and how ye have used the same. If obediently ye heare God now calling, we doubt not but he shall heare you in your greatest necessitie: but if, following your own corrupt judgements, ye contemne his voyce and vocation, we are assured that your former iniquitie, and present ingratitude, shall together crave great punishment from God, who cannot long delay to execute his most just judgements, when, after many offences and long blindnesse, grace and mercy offered is contemptuously refused.

4. God the Father of our Lord Jesus Christ, by the power of his Holy Spirit, so illuminate your hearts, that ye may clearly see what is pleasing and acceptable in his presence, and so bow the same to his obedience, that ye may preferre his reveiled will to your own affections: and so strengthen you by the spirit of fortitude, that boldly ye may punish vice and maintaine vertue within this realme, to the praise and glory of his holy name, to the comfort and assurance of your own consciences, and to the consolation and the good example of the posterity following. Amen.

From Edinburgh, the 20th of May 1560, by your Honours most humble Servitours.

*Act of Secret Counsell 17 of January, anno 1560.\**

Wee which have subscribed thir presents, having advised with the articles herein specified, as is above mentioned from the beginning of this Book, thinks the same good and conforme to God's word in all points ; conforme to the notes and additions hereto eiked ; and promises to set the same forward to the uttermost of our powers. Providing that the Bishops, Abbots, Priors, and other Prelates and beneficed men which els have adjoined themselves to us, bruik the revenues of their benefices during their lifetimes ; they sustaining and upholding the ministry and ministers, as herein is specified, for the preaching of the word, and ministring of the sacraments.

James Duke of Chatellerault, ancestor to the Duke of Hainiltoun.

James Hamiltoun, Earl of Arran, eldest son to the Duke of Chatellerault.

Archbald Argyle, ancestor to the Duke of Argyle.

James Steuart, Lord James Steuart, then Prior of St. Andrews, afterward Earl of Murray, known by the title of the Good Regent.

Roths, Andrew Earl of Roths.

Marshal, the Earl of Marshal.

John of Monteith, Earl of Monteith.

Mortoun, James Douglass Earl of Mortoun.

Glencairn, the Earl of Glencairn.

Boyd, Lord Boyd, ancestor to the Earl of Kilmarnock.

William Lord Hay, Lord Yester, ancestor to the Marquess of Tweeddale.

Alexander Campbel.

M. Alexander Gordon, Bishop of Galloway.

Uchiltrie, Steuart Lord Uchiltrie, now extinct.

Sanquhare, Lord Sanquhare, ancestor to the Earl of Dumfries.

St. Jhones, Sir James Sandelandes of Calder, Lord St.

Johns, ancestor to the Lord Torphichen.

William of Culross.

Drumlangrig, ancestor to the Duke of Queensberry.

Lord Lindsay, John Lord Lindsay, ancestor to the Earl of Crawford.

\* 1561. The year did not begin at that time till the 25th of March.

Maister of Lindsay, Patrick, eldest son to the Lord Lindsay.  
 Bargannie younger, Kennedy laird of Bargannie.  
 Lochinvar, ancestor to the Viscount of Kenmuir.  
 Garleiss, ancestor to the Earl of Galloway.  
 Cunninghamhead.  
 James Haliburtoun.  
 Jhone Lockart of Bar.  
 Johne Schaw of Halie.  
 Scot of Haning.  
 James Maxwell, Master of Maxwell, ancestor to the Earl of  
 Nithsdale.  
 George Fentoun of that Ilk.  
 Andro Ker of Fadonside.  
 Andro Hamiltoun of Lethane.  
 Dean of Murray. [This is probably the same with Alexander  
 Campbell above.]

The Duke of Chatellerault, the Earls of Marshal, Mon-  
 teith and Mortoun, the Lord Lindsay, and the Laird of Gar-  
 leiss, are not in the edition printed 1621. But Knox, Spotis-  
 wood and Calderwood, number them amongst the subscribers  
 to this Book of Discipline. The Master of Lindsay is added  
 from Knox and Calderwood.

*Ane schort Somme of the Buik of Discipline for the Instruc-  
 tion of Ministers and Reidaris in their Office.*

I. *Doctrine.*—The word of God onlie, quhilk is the New  
 and Auld Testament, sal be taught in everie kirk within this  
 realme, and all contraire doctrine to the same sal be impugnit  
 and utterlie suppressit.

We affirme that to be contrarious doctrine to the word,  
 that man has inventit and imposed upon the consciences of  
 men be lawis, counsallis and constitutions without the ex-  
 presse command of Godis word.

Of this kynd ar vowis of chastitie, disgysit apparell, super-  
 stitious observatioun of fasting dayis, difference of meatis for  
 conscience saik, prayer for the dead, calling upon sanctis,  
 with sic uther inventiouns of men. In this rank ar holie dayis  
 inventit be men, sic as Christimes, Circumcision, Epiphania,  
 Purificatioun, and utheris fond feastis of our Ladie : with the  
 feastis of the Apostillis, Martyris, and Virgins, with utheris  
 quhilk we judge utterlie to be abolisheit furth of this realme,

because they have na assurance in Godis word. All main-  
teinaris of sic abhominatiouns suld be punishit with the civill  
sword.

The word is sufficient for our salvatioun, and thairfoir all  
thingis neidfull for us ar conteinit in it. The Scriptures sal  
be red in privie houses for removing of this gross ignorance.

II. *Sacramentis*.—The sacramentis of necessitie are joynt  
with the word, quhilk ar twa onlie, baptime and the tabill of  
the Lord. The preaching of the word man preceid the minis-  
tratioun of the sacramentis. In the dew administratioun of  
the sacramentis all thingis suld be done according to the word,  
nothing being addit, nor zit diminisht. The sacramentis suld  
be ministerit efter the order of the kirk of Geneva. All cere-  
moneis and reittis inventit be men suld be abolisheit, and the  
sympill word followit in all poyntis.

The ministratioun of the sacramentis in na wayis suld be  
gevin him in quhais mouth God has not put the word of ex-  
hortatioun. In the ministration of the tabill sum confortabil  
places may be red of the Scriptures.

III. *Idolatrie*.—All kynd of idolatrie, and monumentis of  
idolatrie, suld be abolishit, sic as places dedicat to idolatrie and  
relickis. Idolatrie is all kynd of worshipping of God not  
conteinit in the word, as the mess, invocation of saintis, ado-  
ratioun of images, and all uther sic thingis inventit be man.

IV. *The Ministrie*.—No man suld enter in the ministrie  
without ane lawfull vocatioun. The lawfull vocatioun standeth  
in the electioun of the peopill, examinatioun of the ministrie,  
and admissioun be thame baith. The extraordinar vocatioun  
hae ane uther consideratioun, seing it is wrocht only be God  
inwartlie in menis hartis.

No minister suld be intrused upon any particular kirk  
without thair consent; but gif any kirk be negligent to elect,  
than the superintendent with his counsall suld provyde ane  
qualifeit man within fortie dayis.

Nather for raritie of men, necessity of teiching, nor for ony  
corruptioun of time, suld unable personis be admitted to the  
ministrie. Better it is to have the rowme vaikand, than to  
have unqualifiet personis, to the sclander of the ministrie and  
hurt of the kirk. In the raritie of qualifiet men, we suld call  
unto the Lord, that he of his gudnes wald send forth trew

laboreris to his harvest: the kirk and faithfull magistrate suld compell sic as have the giftis, to take the office of teiching upon thame.

We sould consider first, quhidder God has geven the giftis, to him quhame we wald choise: for God callis no man to the ministrie, quhame he armes not with necessarie giftis.

Personis noted with infamy, or unabill to edefie the kirk be helsome doctrine, or of ane corrupt judgement, suld not be admittit nor zit reteinit in the ministrie; the Princeis pardon nor reconciliatioun with the kirk takis not away the infamie befor men: thairfoir publick edictis suld be set furth in all places quhair the persone is knawin, and strait charge gevin to all men to reveill gif they knaw ony capital cryme committit be him, or gif he be sclanderous in his life.

Personis proponed be the kirk sal be examineted publicklie be the superintendent and brethren, in the principal kirk of the diocie or province. They sal geif publick declaratione of thair giftis, be the interpretatione of sum places of Scripture. Thay sal be examineted openlie in all the principall poyntis that now ar in contraversie. Quhen they ar approvyn be the judgment of the brethren, they suld mak sindrie sermones befor thair congregations afoir they be admittit.

In thair admission, the office and dewtie of ministeris and peopill sould be declarit be sum godlie and learnit minister. And sua publicklie befor the people sould they be placeit in thair kirk, and jointit to thair flock at the desire of the samin: uther ceremonies except fasting with prayer, sic as laying on of hands, we judge not necessair in the institution of ministrie.

Ministeris sa placeit, may not for their awin pleasure leve thair awin kirkis; nor zit thair kirkis refuse thaim, without sum wechtie causis tryit and knawin: but the General Assemblie for guid causes may remove ministeris from place to place without the consent of the particular kirkis.

Sic as ar preichers alreddie placit and not found qualifiet efter this forme of tryall, sal be maid reidaris: and sa for no sort of men sal this rigour of examination be omittit.

V. *Reidaris*.—Reidaris ar bot for a time, till through reiding of the Scriptures thay may come to furder knowledge and exerceis of the kirk in exhorting and explaining of the Scriptures. No reider sall be admittit within twentie ane zeiris of age, and unless thair be ane hope that be reiding he sal schortlie

com to exhorting. Reiders fund unabill, efter tua zeiris exerceis, for the ministrie, sould be removit, and uthers als lang put in thair rowme.

No reider sal attempt to minister the sacramentis, untill he be abill til exhorte and perswad be helsum doctrine. Reideris a landwart sal teiche the zouth of the parochinis.

Ministeris and reideris sal begin evir sum buik of the Auld or New Testament, and continow upon it unto the end; and not to hip from place to place as the Papists did.

VI. *Provision for Ministeris.*—The ministeris stipend sould be moderated that nether thei have occasion to be cairfull for the world, nor zit wanton nor insolent onywyse. Thair wyfis and children sould be sustenit not onlie in thair time, but also after their death.

VII. *Elderis and Deaconis.*—Men of the best knowledge, judgement and conversatioun, sould be chosin for elderis and deaconis. Thair election sal be zearlie, quhair it may be convenientlie observit. How the vottis and suffrages may be best resavit with everie manis fredome in votting, we leif to the judgement of everie particular kirk. Thei sal be publicklye admittit, and admonished of thair office, and also the pepil of thair dutie to them, at their first admission.

Thair office is to assist the ministeris in their execution of discipline in all grit and weightie matteris. The elderis sal wathe upon all manis maneris, religioun and conversatioun, that ar within thair charge: correct all licentious leveris, or else accuse them befor the session.

Thei sould tak heid to the doctrine, diligence and behavior of thair minister and his househald; and gif neid be, admonishe and correcte thame accordinglie.

It is undecent for ministeris to be buirdit in ane ailhouse or taverne, or to hant mekil the court, or to be occupiet in counsel of civill affairis.

The office of deaconis is to gadder and distribute the almes of the puire according to the directione of sessione. The deaconis suld assist the assemblie in judgement, and may reid publicklye gif neid requyris.

Elderis and deaconis being judges of uther manis maneris, man with thair houshald leve godlilie, and be subject to the censure of the kirk.

It is not necessair to appoynt ane publick stipend for elderis

and deaconis, seing thei ar changed zearlie, and may wait upon thair awin vocatioun with the charge of the kirk.

VIII. *Superintendentis*.—The necessitie, nominatioun, examination and institution of superintendentis ar at large content in the Buik of Discipline: and in monie thingis doe agrie with the examinatioun and admission of ministeris. Principall townis sal not be spoilzeit of thair ministers to be appointit superintendentis. Superintendentis ainis admittit sal not be changed without grit causeis and considerationis.

Superintendentis sal have thair awin special kirkis besyde the common charge of utheris. Thei sal not remaine in ane place untill thair kirkis be provydit of ministeris or reideris. Thei sal not remaine abone twentie dayis in ane place in thair visitation till thei pass throw thair boundis. They sal preiche themselfis thryce in the weik at the leist. Quhan thei come hame again to thair awin kirk, thei man be occupyit in preiching and edifieing of the kirk: thei sal not remain at thair cheif kirk abone thrie or four monethis, bot sal pas agane to thair visitatioun.

In thair visitatioun thei sal not onlie preiche; but als examine the doctrine, life, diligence and behavior of the ministeris, reideris, elderis and deaconis. They sal consider the ourder of the kirk, the maneris of the peopil, how the puire ar providit, how the zouth ar instructit, how the discipline and policie of the kirk ar keipit, how heinous and horribil crymis ar corrected. They sal admonish, and dress thingis out of ordour, with thair counsel as thei may best.

Superintendentis ar subject to the censure and correction not onlie of the synodal conventioun, bot also of thair awin kirk and uther within thair jurisdiction. Quhatsumevir crime deservis correctioun or depositions in ony uther minister, the same deservis the lyke in the superintendent.

Thair stipend wald be considerit and augmentit abone uther ministeris, be reasone of thair gritt charges and travell.

IX. *Discipline*.—As no common-welth can be governet without executione of gude lawis, na mair can the kirk be retained in puritie without discipline. Discipline standeth in the correctioun of these thingis that ar contrarie to Goddis law, for the edefieing of the kirk. All estatis within the realme ar subject to the discipline of the kirk, als weil reuleris and preicheris as the common peopill.



In secret and privie faultis the ordour prescribed be our Maister suld be observed, quhairof we neid not to wryte at length, seing it is largelie declared in the Buik of Excommunication.\*

Befoir the sentence proceid, labour sould be takin with the giltie be his friendis, and publick prayer maid for his conversione unto God. Quhen all is done, the minister sould ask gif ony man will assuir the kirk of his obedience, and gif ony man promeis than the sentence sall stay for that time. Gif efter publick proclameing of thair namis they promeis obedience, that sould be declarit to the kirk quha hard their former rebellione.

The sentence being ainis pronounced, na member of the kirk sould have companie with thame under pain of excommunicatione, except sic personis as ar exemit be the law. Thair children sould not be resavit to baptisme in thair name, bot be sum member of the kirk quha sal promeis for the children, and detaist the parentis impietie.

Comittaris of horribil crymis worthie of death, gif the civill sword spair them, thei sould be halden as deid to us, and cursed in their factis.

Gif God move thair hartis to repentance, the kirk cannot deny thame conciliatione, thair repentance being tryed and fund trew. Some of the elderis sould resave sic personis publickly in the kirk in taken of reconciliatione.

X. *Marriage*.—Personis under cuir of utheris sal not mary without thair consent lauchfullie requyrit. Quhen the parentis and utheris ar hard and stubborn, than the kirk and magistratis sould enter in the parentis rowme, and decerne upone the equitie of the caus without affectione : the kirk and magistrat sal not sute for thame that commit furnicatioun befoir thay sute the kirk.

Promaises of bairnes within age ar null, except thay be ratifeit efter thay cum to age.

Band of mariage suld be proclamit upon thrie severall Sondayis to tak away all excuse of impediment.

Committeris of adulterie suld not be overseit be the kirk, albeit the civil sword oversie thame, but suld be estimat as deid and excommunicate in thair wickit fact. Gif sic offenderis desire earnestlie to be reconceilit to the kirk, we dar not

\* The Book of Excommunication was written in 1567: this Summary was not written till some time after.

refuse thame, nor excommunicat them quhame God has brocht to repentance.

The 'pairtie that is provin to be innocent suld be admittit to mariage againe. As for the pairtie offending all dout of mariage wald be removit if the civil sword wald stryk according to Godis word.

XI. *Policie.*—Policie is ane exerceis of the kirk serving for instructioun of the ignorant, inflaming of the learnt to gritter service, and for reteining of the kirk of God in gude ordor.

Of the partis of policie sum ar necessar, and sum not necessar absolutlie. Necessar is the trew preiching of the word, the right ministratioun of the sacramentis, the common-prayeris, the instructioun of the zouth, the support of the puir and the punishment of vice: But singing of psalmis, certaine dayis of the conventionis in the weik, thryse or twise preiching on weik-dayis, certain places of Scripture to be red quhen thair is na sermone, with sic thingis, ar not necessar.

In townes we requyre everie day aither sermon or publick prayeris with sum reiding of Scriptures. Publick prayers ar not neidfull in the dayis of preiching, leist thereby we suld nurische the peopill in superstitioun, causing them understand that the publick prayeris succedeis to the Papisticall messe. In everi notabil towne we requyre that at the leist anis in the weik beside the Sunday the hail peopill convene to the preiching.

The Sunday man be keipit straitlie in all townis baith befoir none and efter for heiring of the word. At afternone upon the Sunday the Catechisme sal be taught, the children examinited, and the baptisme ministerit. Publick prayeris sal be usit upon the Sunday als weill after none as befoir, quhen sermones cannot be had.

It apperteinis to the policie of everie particular kirk to apoynt the time quhen the sacramentis sal be ministerit.

XII. *Baptisme.*—Baptisme may be ministerit quansoever the word is preichit, bot we think it maist expedient, that it be ministerit upon Sunday, or upon the day of common prayeris: Thus we tak away that error of the Papistis concerning the estait of the infantis depairting without baptisme. We bring the ministratioun of baptisme to the presence of the peopill, to be keipit in gritter reverence, and to put everie ane in remembrance of the promesis of baptisme, in the quhilk now mony wax faint and cauld.

XIII. *The Tabill.*—The tabill of the Lord sal be ministerit foure times in the zeir, and out of the times of superstitione. We judge the first Sunday of March, Junii, September and December to be the meitest : Bot this we leve to the judgement of the particular kirkis.

Let all ministeris be mair diligent to instruct the ignorant, and to suppress superstitioun, than to serve the vaine appetites of men. The ministratioun of the tabill suld never be without scharp examinatioun, ganging befor ; cheiffie of thame quhais life, ignorance, or religioun is suspectit. Quha can nocht say the Lordis Prayer, the Articles of the Faith, and declare the soume of the law suld not be admittit. Quhoso will stubbornly remaine ignorant of the principall poyntis of our salvation suld be excommunicat, with thair parentis and maisteris that keip thame in that ignorance : Everie maister of houshald suld be commandit aither to instruct his children and servants, or cause thame be instructit ; and gif thay will not, the kirk suld proceed agains thame.

It is verie neidfull that publick examinatioun of everie persone be maid at the leist anis in the zeir, be the ministeris and elderis.

Everie maister and maisteris of houshald suld cum with thair houshald and familie to give confessioun of thair faith, and answer to the principall poyntis of our religioun.

We think it verie expedient that prayeris be had dayly in privie houses at morne and at nicht, for the confort and instruction of utheris ; and this to be done be the maist grave and discret persone of the house.

XIV. *The Exerceis.*—In townis quhair lernit men ar, the exerceis of the Scriptures suld be weiklie. In this exerceis thre onlie sal speik to the opening of the text and edefeing of the peopill. This exerceis sal be upon sum places of Scripture, and openlie that all that will may heir and speik thair judgment to the edefeing of the kirk. In this kynd of exerceis the text is onlie openit without any digressing or exortation, following the file and dependance of the text, confuting all errors as occasion sal be geven. Na man suld move a questioun the quhilk himself is na abill to solve.

The exerceis being endit, the ministeris and elderis present suld convene apairt and correct the thingis that hes been done or spokin without ordor, and not to the edefeing of the kirk. In this public exerceis all affectatioun and vaine curiositie

man be abone all thingis eschewit, leist for cdefeing we suld slander the kirk of God.

Ministeris within sax myles about, suld cum in willinglie, and also reideris that wald profeit suld cum baith to teich uthers and to lerne: Uthers lernit men to quhame God has gevin the gift of interpretatioun, suld be chairgit to joyn themselfis.

XV. *Schulis*.—Because schulis ar the seid of the ministrie, diligent cair suld be takin over thame that thay be orderit in religioun and conversatioun according to the word. Everie towne suld have ane schule-maister, and a landwart the minister or reider suld teich the childrein that cum to thame: Men suld be compellit be the kirk and magistratis to send their bairnes to the schulis, pure menis childrein suld be helpit.

XVI. *Universities*.—The universities suld be erectit in this realme Sanct Andros, Glasgow and Aberdein: Their ordor of proceeding, provision, and degreis with their reideris and officeris, ar at length declarit in the Buik of Discipline; how mony collegis, how mony classes in everie college, and quhat suld be taucht in everie class in their expressit.

A contributioun sal be maid at the entrie of the studentis for the uphalding of the place: And ane sufficient stipend is ordeinit for everie member of the universitie according to their degrie.

XVII. *Rentis of the Kirk*.—The hail rentis of the kirk abusit in Papistrie, sal be referrit againe to the kirk, that thairbe the ministrie, schulis, and the pair may be menteinit wi thin this realme according to their first institutioun.

Everie man suld be sufferit to leid and use his awin teithis, and nocht man suld leid ane uther manis teithis. The upermost claithe, the cors-present, the cleirk-meill, the pasche offeringis, teithe-ale and hail uther sic thingis suld be dischargit.

The deaconis suld tak up the hail rentis of the kirk, disposing thame to the ministrie, the schulis and pair within their bounds according to the appointment of the kirk.

All Frearics, Noneries, Chantereis, Chapelanreis, Annual-rentis and all thingis dotit to the hospitalitie sal be reducit to the help of the kirk. Merchantis and craftismen in burgh, suld contribute to the support of the kirk.

XVIII. *Buriall.*—We desire that buriall be sa honour-able handlit that the hoip of our resurrectioun may be nurischit; and all kynd of superstitione, idolatrie, and quhatsum-ever thing procedith of the fals opinione may be avoided.

At the buriall nether singing of psalmis nor reiding sal be usit, leist the peopill sould be nurischit thairbe in that auld superstitioun of praying for the deid: But thi we remitt to the judgement of the particular kirkis with advyce of the ministeris. All superstitioun being removit, ministeris sal not be burdenit with funeral sermonis, seing that daylie sermonis are sufficient aneuch for ministering of the living. Buriall sould be without the kirk in ane fine air, and place wallit and keipit honourabillie.

XIX. *Repairing of Kirkis.*—The kirk dois crave maist earnestlie the Lordis thair assistance for hastie preparing of all paroch kirkis, quhair the peopill suld convene for the heir-ing of the word and resaving of the sacramentis: This reparatioun sould not onlie be in the wallis and fabrick, bot also in all thingis neidfull within, for the peopill and decencies of the place appoyntit for Godis service.

XX. *Punishment of Profaneris of the Sacramentis.*—We desire strait lawis to be maid for punischment of thame that abuse the sacramentis, als weill the ministeris as reideris. The halie sacramentis ar abusit quhen the minister is not lauchtullie callit, or quhen they are gevin to opin injurareis of the treuth or to profane leiveris; or quhen thay are ministerit in an privie place without the word preichit. The exempils of Scripturis do plainlie declair that the abuseris of the sacramentis, and contemneris of the word, ar worthie of deith.

This our judgment for reformatioun of the kirk sal beir witnes, baith befoir God and man, quhat we have cravit of the nobilitie, and how they have obeyit our leiving admonitiounis.

Thus far out of the Buik of Discipline quhilk was subscriyvit be the Kirk and Lordis.



THE  
SECOND BUIK OF DISCIPLINE,  
OR  
HEIDIS AND CONCLUSIONES  
OF  
THE POLICIE OF THE KIRK,  
AGREED UPON IN THE GENERAL ASSEMBLY 1578 :

*Inserted in the Registers of Assembly 1581 ;*

*Sworn to in the National Covenant, revived and ratified by  
the Assembly 1638, and by many other  
Acts of Assembly.*

AND ACCORDING TO WHICH,  
THE CHURCH GOVERNMENT IS ESTABLISHED BY  
LAW, AN. 1592 & 1690.

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1 COR. xiv. 40.

“ Let all things be done honestly, and by order.”





THE  
SECOND BUIK OF DISCIPLINE,  
OR  
HEIDIS AND CONCLUSIONES  
OF  
THE POLICIE OF THE KIRK.

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CHAP. I.

*Of the Kirk and Policie thereof in generall, and quherin it is different from the Civil Policie.*

1. THE kirk of God is sumtymes largelie takin, for all them that professe the Evangill of Jesus Christ, and so it is a company and fellowship not onely of the godly, but also of hypocrites professing alwayis outwardly ane true religion. Uther tymes it is takin for the godlie and elect onlie, and sumtymes for them that exercise spiritual function amongis the congregation of them that professe the truth.

2. The kirke in this last sense hes a certaine power grantit be God, according to the quhilk it uses a proper jurisdiction and governement, exercisit to the confort of the hole kirk. This power ecclesiasticall is an authoritie grantit be God the Father, throw the Mediator Jesus Christ, unto his kirk gatherit, and having the ground in the word of God; to be put in execution be them, unto quhom the spirituall governement of the kirk be lawful calling is committit.

3. The policie of the kirk flowing from this power, is an order or forme of spirituall government, quhilk is exercisit be the members appoyntit thereto be the word of God: And therefore is gevin immediatly to the office-beararis, be quhom it is exercisit to the weile of the hole bodie. This power is diverslie usit: For sumtyme it is severally exercisit, chiefly

by the teacharis, sumtyme conjunctly be mutuall consent of them that beir the office and charge, efter the forme of judgement. The former is commonly callit *potestas ordinis*, and the uther *potestas jurisdictionis*. These two kinds of power have both one authority, one ground, one finall cause, but are different in the manner and forme of execution, as is evident be the speiking of our Master in the 16 and 18 of Matthew.

4. This power and policie ecclesiasticall, is different and distinct in the awin nature from that power and policie, quhilk is callit the civill power, and appertenis to the civill government of the common welth: Albeit they be both of God, and tend to one end, if they be rightlie usit, *to wit*, to advance the glorie of God, and to have godlie and gud subjectis.

5. For this power ecclesiasticall flowes immediatlie from God, and the Mediator Jesus Christ, and is spirituall, and not having a temporall heid on earth, bot onlie Christ, the onlie spirituall King and Governour of his kirk.

6. It is a title falslie usurpit be Antichrist, to call himselfe heid of the kirk, and aucht not to be attribute to angel nor man, of what estait that ever he be, saving to Christ the onlie Heid and Monarch of the kirk.

7. Therefore this power and policie of the kirk, sould leane upon the word immediatlie, as the onlie ground thereof, and sould be tane from the pure fountaines of the Scriptures, the kirk hearing the voyce of Christ the onlie spirituall King, and being rewlit be his lawes.

8. It is proper to kings, princes and magistrates to be callit lordis, and dominators over their subjectis, whom they govern civilly, bot it is proper to Christ onlie to be callit Lord and Master in the spirituall government of the kirk, and all uthers that beiris office therein, aucht not to usurp dominion therein, nor be callit lordis, bot onlie ministeris, disciples, and servantis. For it is Christis proper office to command and rewll his kirk universall, and every particular kirk, throw his spirit and word, be the minstrie of men.

9. Notwithstanding, as the ministeris and uthers of the ecclesiasticall estait ar subject to the magistrat civilly, so aucht the person of the magistrat be subject to the kirk spiritually, and in ecclesiasticall government. And the exercise of both these jurisdictiones cannot stand in one person ordinarilie. The civil power is callit the power of the sword, and the uther the power of the keyes.

10. The civill power sould command the spiritual to exercise

and doe their office according to the word of God : The spiritual reularis sould requyre the Christian magistrate to minister justice, and punish vyce, and to maintaine the libertie and quietnes of the kirk within their boundis.

11. The magistrate commandes externall thingis for externall peace and quyetnes amongis the subjects : The minister handles externall thingis onlie for conscience cause.

12. The magistrat handles externall things onlie, and actions done befor men : Bot the spiritual reular judges both inward affectionis and externall actionis, in respect of conscience, be the word of God.

13. The civil magistrat craves and gettis obediance be the sword, and uther externall meanis : Bot the ministrie\* be the spiritual sword, and spirituall meanis.

14. The magistrat neither aucht to preich, minister the sacramentis, nor execute the censuris of the kirk, nor yet prescrive any rewl how it sould be done ; bot command the ministeris to observe the rewl commandit in the word, and punish the transgressouris be civill meanes : The ministeris exerce not the civill jurisdiction, bot teich the magistrat how it sould be exercit according to the word.

15. The magistrat aucht to assist, mentain and fortifie the jurisdiction of the kirk. The ministeris sould assist their princes in all thingis agreiable to the word, providing they neglect not their awin charge be involving themselvis in civil affairis.

Finally, as ministeris are subject to the judgement and punishment of the magistrat in externall things, if they offend : So aucht the magistratis to submit themselvis to the discipline of the kirk, gif they transgresse in matteris of conscience and religioun.

## CHAP. II.

*Of the Pairtes of the Policie of the Kirk, and Persons or Office-beiraris to whom the Administratioun is committit.*

1. As in the civill policie the hail common welth consistis in them that ar governours or magistratis, and them that ar governit or subjects. So in the policie of the kirk sum ar ap-

\* The copie in Spottiswood's History hath "the minister." An old manuscript hath, "the ministeris."

pointit to be rewlaris, and the rest of the members thereof to be rewlit, and obey according to the word of God, and inspiratioun of his spirit, always under one heid and chiefe governour Jesus Christ.

2. Againe, the hail policie of the kirk consisteth in three things, *viz.* in doctrine, discipline, and distribution. With doctrine is annexit the administratioun of sacramentis. And according to the partes of this division, arisis a threfald sort of office-beiraris in the kirk, to wit, of ministeris or preachers, eldaris or governours, and deaconis or distributeris.

3. And all these may be callit be ane generall word ministers of the kirk. For albeit the kirk of God be rewlit and governit be Jesus Christ, who is the onlie King, hie Priest, and Heid thereof, yit he useis the ministry of men, as the most necessar middis\* for this purpose. For so he hes from tyme to tyme, befor the law, under the law, and in the tyme of the Evangell for our great comfort raisit up men indewit with the giftis of his Spreit, for the spirituall government of his kirk, exercising be them his awin power, throw his Spreit and word to the beilding of the same.

4. And to take away all occasion of tyrannie, he willis that they sould rewl with mutuall consent of brether, and equality of power, every one according to thair functiones.

5. In the New Testament, and tyme of the Evangell, he hes usit the ministry of the apostles, prophetis, evangelistes, pastouris and doctoris in the administratioun of the word: the eldership for gude order, and administratioun of discipline: the deaconschip to have the cure of the ecclesiasticall gudis.

6. Sum of thir ecclesiasticall functiones ar ordinar, and sum extraordinar or temporarie. There be three extraordinary functiones, the office of the apostle, of the evangelist, and of the prophet, quhilkis ar not perpetuall, and now have ceisit in the kirk of God, except quhen it pleisit God extraordinarily for a tyme to steir sum of them up againe. There are foure ordinarie functiones or offices in the kirk of God, the office of the pastor, minister or bishop; the doctor; the presbyter or eldar; and the deacon.

7. Thir offices ar ordinar, and aucht to continue perpetually in the kirk, as necessar for the government and policie of the same, and no moe offices aucht to be receivit or sufferit in the trew kirk of God, establishit according to his word.†

\* An old manuscript hath, "as maist necessar servandis for his purpose."

† An old manuscript hath, "be his word."

8. Therefore all the ambitious titles inventit in the kingdome of antichrist, and in his usurpit hierarchie, quhilkis ar not of ane of these foure sorts, togither with the offices depending thereupon, in ane word aucht all utterlie to be rejectit.

### CHAP. III.

#### *How the Persones that beir Ecclesiasticall Functiones, ar admitted to thair Office.*

1. Vocation or calling is common to all that sould beir office within the kirk, quhilk is a lawfull way, be the quhilk qualifiet persones ar promotit to any spiritual office within the kirk of God: without this lawful calling it was never leisum to any person to medle with any function ecclesiasticall.

2. There are twa sorts of calling, ane extraordinar be God himself immediatelie, as war of the prophetis and apostiles, quhilk in kirks establishit, and well already reformat hes no place.

3. The uther calling is ordinar, quhilk besydes the calling of God, and inward testimonie of a good conscience, hes the lawfull approbation and outward judgement of men, according to Godis word, and order establishit in his kirk. Nane aucht to presume to enter in any office ecclesiasticall without he have this testimony of a good conscience before God, who only knaws the hartis of men.

4. This ordinar and outward calling, hes twa parts, election and ordination. Election is the chusing out of a person or persons maist able to the office that vaikes, be the judgement of the elderschip and consent of the congregation, to whom the person, or persons beis appointed. The qualities in generall requisite in all them wha sould beir charge in the kirk, consist in soundness of religion, and godlines of lyfe, according as they ar sufficiently set furth in the word.

5. In this ordinar election\* it is to be eschewit, that na person be intrusit in ony of the offices of the kirk, contrar to the will of the congregation to whom they ar appointed, or without the voice of the elderschip. Nane aucht to be in-

\* An old manuscript and some printed copies have, "in the order of election."

trusit, or placeit\* in the places alreadie plantit, or in any rounge that vaikes not, for any wardlie respect: and that quhilk is callit the benefice aucht to be nothing else, but the stipend of the ministers that ar lawfullie callit.†

6. Ordinatione is the separatione and sanctifying of the persone appointit to God and his kirk,‡ eftir he be weill tryit and fund qualifiet. The ceremonies of ordinatione are fasting, earnest prayer, and imposition of hands of the elderschip.

7. All thir, as they must be raisit up be God, and be him made able for the wark quhairto they are callit; so aucht they knaw their message to be limitit within Gods word, without the quhilk bounds they aucht not to passe. All thir sould tak these titles and names onlie (leist they be exaltit and puft up in themselfis) quhilk the Scriptures gevis unto them, as these quhilks import labour, travell and wark; and ar names of offices, and service, and not of idleness, dignitie, wardlie honour or preheminance,§ quhilk be Christ our Maister is expreslie reprovit and forbidden.

8. All these office-beararis sould have their awin particular flockis amongst whom they exercise their charge, and sould mak residence with them, and tak the inspection and oversight of them, every ane in his vocation. And generallie thir twa things aucht they all to respect, the glorie of God, and edifieng of his kirk, in discharging their dewties in their callings.

#### CHAP. IV.

##### *Of the Office-beararis in particular, and first of the Pastoris or Ministeris.*

1. Pastors, bishops, or ministers, ar thay wha ar appointit to particular congregations, quhilk they rewill be the word of God, and over the quhilk they watch. In respect whair of, sumetyme they ar callit pastors, becaus they feid their con-

\* An old manuscript hath, "or enterit in the places;" the copie which is in Spottiswood's Illstory, "or placed in the ministry in place."

† An old mauseript hath, "callit and electit."

‡ The old manuscript hath, "be God and his kirk." Spottiswood hath, "by," &c.

§ Some copies have, "honour or warldlie preferment."

gregation; sumetyne *episcopi*, or bishops, because they watch over their flock; sumetyms ministers be reason of their service and office; and sumetyms also presbyters or seniors, for the gravity in manners, quhilk they aucht to have in taking cure of the spirituall government, quhilk aucht to be most deir unto them.

2. They that are callit unto the ministrie, or that offer themselvis thereunto, aucht not to be electit without ane certain flock be assignit unto them.

3. Na man aucht to ingyre himselve, or usurpe this office without lawfull calling.

4. Thay that ar anis callit be God, and dewlic electit be man, eftir that they have anis acceptit the charge of the ministrie, may not leive their functions: the desertours sould be admonishit, and in case of obstinacie finallie excommunicate.

5. Na pastor may leive his flock without licence\* of the provincially or nationall Assemblie, quhilk gif he do eftir admonition not obeyit, let the censures of the kirk strike upon him.

6. 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 Gods word prescryves to him.

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

8. It apperteinis be the same reason to the pastors to pray for the people, and namely 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.

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

10. It apperteines to the minister eftir lawfull proceeding† be the elderschip, to pronounce the sentence of binding and lowsing upon any person, according unto the power of the keyes grantit unto the kirk.

\* An old manuscript hath, "advyce."

† An old manuscript hath, "it apperteinis to the minister be lawfull precluding with the eldership," &c.

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

12. And generallie all publick denunciations that ar to be made in the kirk before the congregation, concerning the ecclesiasticall affaires belong to the office of a minister ; for he is as a messenger and herauld betwix God and the people in all these affairs.

## CHAP. V.

### *Of Doctors and thair Office, and of the Schoolis.*

1. Ane of the twa ordinar and perpetuall functions that travell in the word, is the office of the Doctor, quha also may be callit Prophet, Bischop, Elder, Catechizar, that is, teacher of the catchisme and rudiments of religione.

2. His office is to open up the mynde of the Spirit of God in the Scriptures simplie, without sic applications as the ministers usis, to the end that the faithfull may be instructit, and sound doctrine teichit, and that the purity of the Gospell be not corruptit throw ignorance or evill opinions.

3. He is different from the pastor not onely in name, but in diversity of gifts. For to the Doctor is gine the word of knowledge, to open up be simple teiching the mysteries of faith ; to the pastor the gift of wisdom, to apply the same be exhortation to the manners of the flock, as occasion craveth.

4. Under the name and office of a Doctor, we comprehend also the order in schooles, colledges and universities, quhilk hes bene from tyme to tyme carefullie maintainit als weill among the Jewes and Christians as amangs the prophane nations.

5. The Doctor being an elder, as said is, sould assist the pastor in the government of the kirk, and concurre with the elders his brethren in all assemblies ; be reason the interpretation of the word, quhilk is onlic judge in ecclesiasticall matters, is committit to his charge.

6. Bot to preich unto the people, to minister the sacraments, and to celebrate mariages, preteinis not to the Doctor, unlesse



he be utherwyse callit ordinarily ; howbeit the pastor may teich in the schoolis, as he wha hes also the gift of knowledge oftentimes meit therefore, as the examples of Polycarpus and uthers testifie.

## CHAP. VI.

### *Of Elders, and their Office.*

1. The word *Eldar* in the Scripture sumetyne is the name of age, sumetyne of office, when it is in the name of ane office, sumetyne it is taken largely, comprehending als weill the pastors and Doctors, as them who ar callit seniors or elders.

2. In this our division, we call these elders, whom the Apostles call presidents or governours. Their office as it is ordinar, so is it perpetuall, and alwayes necessar in the kirk of God. The elderschip is a spirituall function, as is the ministrie. Eldars anis lawfully callit to the office, and having gifts of God meit to exercise the same, may not leive it again. Albeit sic a number of eldars may be chosen in certane congregations, that ane pairt of them may reliefe anuther for a reasonable space, as was among the Levites under the law in serving of the temple. The number of the eldars in every congregation cannot weill be limitit, but sould be according to the bounds and necessitie of the people.

3. It is not necessar that all elders be also teichars of the word, albeit the chief aucht to be sic,\* and swa ar worthie of double honour. What manner of persons they aucht to be, we referre it to the expresse word of God, and namely the Canons written be the Apostle Paul.

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

5. As the Pastors and Doctors sould be diligent in teiching and sawing the seid of the word, so the elders sould be cairfull in seiking the fruit of the same in the people.

6. It appertaines to them to assist the pastor in examination of them that cumis to the Lords table : *Item*, in visiting the sick.

\* The copie in Spottiswood's History and several manuscripts have, "albeit chieüy they aucht to be sic."

7. They sould cause the actes of the Assemblies, als weil particular as generall, to be put in execution cairfullie.\*

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

9. Their principall office is to hald assemblies with the pastors, and doctors who ar also of their number, for establishing of gude ordor, and execution of discipline. Unto the quhilks assemblies all persones ar subject that remain within thair bounds.

## CHAP. VII.

### *Of the Elderschips, and Assemblies, and Discipline.*

1. Elderschips and assemblies are commonlie constitute of Pastors, Doctors, and sic as we commonlie call Elders, that labour not in the word and doctrine, of quhom, and of whais severall power hes bene spokin.

2. Assemblies ar of four sortis. For aither ar they of particular kirks and congregations ane or ma, or of a province, or of ane hail nation, or of all and divers nations professing one Jesus Christ.

3. All the ecclesiasticall assemblies have power to convene lawfully togidder for treating of things concerning the kirk, and perteing to thair charge. They have power to appoynt tymes, and places to that effect; and at ane meiting to appoint the dyet, time and place for anuther.

4. In all assemblies ane moderator sould be chosen be common consent of the hail brethren convenient, who sould propone matters, gather the votes, and cause gude ordor to be keipit in the assemblies. Diligence sould be taken, chiefly be the moderator, that onlie ecclesiasticall things be handlit in the assemblies, and that there be na medling with ony thing preteining to the civill jurisdiction.

5. Every assembly hes power to send furth from them of their awin number, ane or moe visitours to sie how all things beis rewlit in the bounds of thair jurisdiction. Visitation of mae kirks is na ordinar office ecclesiastick in the person of ane

\* An old manuscript hath, " als weil particular, as provincial or generall."

man, naither may the name of a Bischop be attribute to the visitor onlie, naither is it necessar to abyde alwayes in ane mans person, but it is the part of the elderschip to send out qualifeit persons to visit *pro re nata*.

6. The finall end of all assemblies is first to keip the religion and doctrine in puritie, without error and corruption. Next, to keip cumelines and gude ordor in the kirk.

7. For this orders cause, they may make certane rewls and constitutions appertaining to the gude behaviour of all the members of the kirk in thair vocation.

8. They have power also to abrogate and abolish all statutes and ordinances concerning ecclesiasticall matters that are found noysome and unprofitable, and agrie not with the tyme, or ar abusit be the people.

9. They have power to execute ecclesiastical discipline and punishment upon all transgressors, and proud contemners of the gude ordor and policie of the kirk, and swa the hail discipline is in thair hands.

10. The first kynde and sort of assemblies, although they be within particuar congregations, yet they exerce the power, authoritie, and jurisdiction of the kirk with mutuall consent, and therefore beir sumtyme the name of the kirk. When we speik of the elders of the particular congregations, we mein not that every particular parish kirk can, or may have their awin particular elderschips, specially to landwart, bot we think thrie or four, mae or fewar particular kirks, may have ane common elderschip to them all, to judge thair ecclesiasticall causes. Albeit this is meit that some of the elders be chosen out of everie particular congregation, to concurre with the rest of their brethren in the common assemblee, and to take up the delations of offences within their awin kirks, and bring them to the Assemblee. This we gather of the practise of the primitive kirk, where elders or colleges of seniors were constitute in cities and famous places.

11. The power of thir particular elderschips, is to use diligent labours in the boundis committit to thair charge, that the kirks be kept in gude order, to inquire diligently of nauchtie and unruly persons, and to travell to bring them in the way againe, aither be admonition or threatning of Gods judgements, or be correction.

12. It pertaines to the elderschip to take heid, that the word of God be purely preichit within their bounds, the sacraments rightly ministrat, the discipline rightly mantenit, and the ecclesiasticall gudes uncorruptlie distributit.

13. It belongs to this kynde of assembly, to cause the ordinances made be the assemblies provinciall, nationall, and generall, to be keipit, and put in execution. To mak constitutions quhilk concerne τὸ πρότερον in the kirk, for the decent order of these particular kirks\* where they governe: Provyding they alter no rewls made by the general or provinciall assemblies foresein of these rewls that they sal mak, and abolish them that tend to the hurt of the same.

14. It hes power to excommunicat the obstinat.

15. The power of election of them who beir ecclesiasticall charges, perteines to this kynde of assemblie, within their awin bounds, being well erectit, and constitute of many pastors and elders of sufficient abilitie.

16. By the like reason their deposition also perteines to this kynde of assemblie, as of them that teich erroneous and corrupt doctrine; that be of sclandrous lyfe, and efter admonition desist not; that be gine to schisme or rebellion against the kirke, manifest blasphemie, simonie, corruption of brybes, falsett, perjurie, whoredome, thift, drunkennes, feghting worthy of punishment be the law, usurie, dancing, infamie, and all uthers that deserve separation fra the kirk: These also who are fund altogither insufficient to execute their charge sould be deposit. Quhair of uther kirks wald be advertisit, that they receive not the persons deposit.

17. Yit they aucht not to be deposit, wha throw age, sicknes, or uther accidents, become unmeit to do thair office; in the quhilk case their honour sould remain to them, their kirk sould mantein them; and uthers aucht to be provedit to do thair office.

18. Provinciall assemblies we call lawful conventions of the pastors, doctors, and uther eldaris of a province, gatherit for the common affaires of the kirkes thereof, quhilk also may be callit the conference of the kirk and brethren.

19. Thir assemblies are institute for weighty matters, to be intreatit be mutuall consent and assistance of the brethren within that province, as neid requyres.

20. This assemblie hes power to handle, ordor, and redresse all things ommittit or done amisse in the particular assemblies. It hes power to depose the office-beirers of that province for gude and just causes deserving deprivation. And generallie thir assemblies have the hail power of the particular elderschips whair of they ar collectit.

21. The nationall assemblie quhilk is generall to us, is a

\* An old manuscript hath, "Paroch kirks."

lawfull convention of the haill kirks of the realm or nation, where it is usit and gatherit for the common affaires of the kirk; and may be callit the generall eldership of the haill kirk within the realme. Nane ar subject to repaire to this assemble to vote bot ecclesiasticall persons to sic a number as shall be thocht gude be the same assemble: Not excluding uther persons that will repaire to the said assemble to propone, heir and reason.

22. This assemble is institute, that all things aither omittit, or done amisse in the provinciall assemblies, may be redressit and handlit: And things generally serving for the weill of the haill bodie of the kirk within the realme may be foirsein, intreatit, and set furth to Godis glorie.

23. It sould tak cair, that kirks be plantit in places quhair they are not plantit. It sould prescrive the rewil how the uther twa kynds of assemblies sould proceed in all things.

24. This assemble sould tak heid, that the spirituall jurisdiction and civill be not confoundit to the hurt of the kirk: That the patrimonie of the kirk be not consumit\* nor abusit: And generallie concerning all weighty affaires that concerne the weill and gude ordor of the haill kirks of the realm, it aucht to interpone autoritie thairto.

25. There is besydes these, an uther mair generall kynde of assemble, quhilk is of all nations and estaits of persons within the kirk, representing the universall kirk of Christ: Quhilk may be callit properlie the Generall Assemble or Generall Councell of the haill kirk of God.

These assemblies wer appoyntit and callit together, specially when ony great schisme or contraversie in doctrine did aryse in the kirk, and wer convocat at command of godlie emperours being for the tyme, for avoiding of schismes within the universal kirk of God: Quhilk because they apperteine not to the particular estait of ane realme, we ceis further to speik of them.

## CHAP. VIII.

*Of the Deaconis and thair Office, the last ordinar function in the Kirk.*

1. The word *Διάκονος* sumtymes is largely takin, comprehending all them that beir office in the ministrie and spirituall

\* An old manuscript hath, "diminishit or abusit."

function in the kirk: Bot now, as we speik, it is taken only for them, unto whom the collection and distribution of the almes of the faithfull and ecclesiasticall gudes does belang.

2. The office of the deacons sa takin, is an ordinar and perpetuall ecclesiasticall function in the kirk of Christ. Of what properties and dewties he oucht to be that is callit to this function, we remit it to the manifest Scriptures. The deacon aucht to be callit and electit as the rest of the spirituall officers, of the quhilk election was spokin befoir.

3. Their office and power is to receive, and to distribute the hail ecclesiasticall gudes unto them to whom they ar appoyntit. This they aucht to do according to the judgement, and appoyntment of the Presbyteries or elderschips (of the quhilk the deacons ar not) that the patrimonie of the kirk and pair be not convertit to privat mens usis, nor wrangfullie distributit.

## CHAP. IX.

### *Of the Patrimonie of the Kirk and Distribution thair of.*

1. Be the patrimonie of the kirk, we mein whatsumever thing hath bene at any tyme before, or shall be in tymes coming gevin; or be consent or universall custome of countries professing the Christian religion, applyit to the publique use and utilitie of the kirk. Swa that under the patrimonie we comprehend all things gevin, or to be gevin to the kirk and service of God, as lands, biggings, possessions, annual-rents, and all sic lyke, wherewith the kirk is dotit, either be donations, foundations, mortifications or ony uther lawfull titles, of Kings, Princes, or ony persons inferiour to them; together with the continuall oblations of the faithfull. We comprehend also all sic things as be lawis or custome, or use of countries, hes bene applyit to the use and utilitie of the kirk; of the quhilk sort ar teinds, manses, gleibs and sic lyke, quhilks be common and municipall lawis and universall custome ar possessit be the kirk.

2. To tak ony of this patrimonie be unlawfull meinis, and convert it to the particular and profane use of ony person, we hald it ane detestable sacriledge befoir God.

3. The gudes ecclesiasticall aucht to be collectit, and distributit be the deacons, as the word of God appoynts, that they who beir office in the kirk be providit for without cair or soli-

citude. In the apostolicall kirk, the deacons wer appoyntit to collect and distribute quhatsumevir was collectit of the faithfull to distribute unto the necessitie of the saincts ; sa that nane lackit amang the faithfull. These collections war not onlie of that quhilk was collectit in manner of almes, as sume suppose ; bot of uther gudes, moveable and unmoveable, of lands and possessions, the price quhairof was brocht to the feit of the Apostles. This office continuit in the deacons hands, quha intromettit with the hail gudes of the kirk, ay and whil the estate therof was corruptit be Antichrist, as the ancient canons beir witnes.

4. The same canons mak mention of ane fourfald distribution of the patrimonie of the kirk, quhairof ane part was applyit to the pastor or bischop for his sustentation and hospitalitie ; anuther to the elders and deacons, and all the clergie ; the third to the puir, sick persons and strangers ; the fourth to the uphald and uther affaires of the kirk, speciallie extraordinar : We adde hereunto the schules and schuile-maisters also, quhilk aucht and may be weill susteinitt of the same gudes, and ar comprehended under the clergie. To wham we joyn also clerks of assemblies als weill particular as generall ; syndicks or procutors of the kirk affaires, takers up of psalmes, and sic lyke uther ordinar officers of the kirk, sa far as they ar necessar.

## CHAP. X.

### *Of the Office of a Christian Magistrat in the Kirk.*

1. Although all the members of the kirk be halden every ane in their vocation, and according therto to advance the kingdom of Jesus Christ sa far as lyis in their power ; yit chiefly Christian Princes, and uther magistrates, ar halden to do the same : for they ar callit in the Scripture nourishers of the kirk, for sameikle as be them it is, or at least aucht to be manteinit, fosterit, uphalden, and defendit agains all that wald procure the hurt thereof.

2. Sua it perteinis to the office of a Christian magistrat, to assist and fortifie the godly proceedings of the kirk in all behalves ; and namely to sie that the publique estait and ministrie thereof be manteinit and susteinitt as it apperteins, according to Godis word.

3. To sie that the kirk be not invadit nor hurt be false teichers and hyrelings, nor the rowmes therof be occupyit be dumb dogs, or idle bellies.

4. To assist and manteine the discipline of the kirk ; and punish them civilly, that will not obey the censure of the same, without confounding always the anc jurisdiction with the uther.

5. To sie that sufficient provision be made for the ministrie, the schules, and the pair : and if they have not sufficient to awaite upon their charges, to supplie their indigence even with their awin rents, if neid require. To hald hand als weill to the saving of their persons from injurie and opin violence ; as to their rents and possessions, that they be not defraudit, robbit, nor spuilziet thereof.

6. Not to suffer the patrimony of the kirk to be applyit to profane and unlawful uses, or to be devorit be idle bellies, and sic as have na lawfull function in the kirk, to the hurt of the ministry, schules, puire, and other godly uses, quhairupon the same aucht to be bestowit.

7. To mak lawis and constitutions agreeable to Gods word, for advancement of the kirk, and policie therof ; without usurping ony thing that perteins not to the civil sword, bot belongs to the offices that ar meirlic ecclesiasticall, as is the ministrie of the word and sacramentis, using of ecclesiasticall discipline and the spirituall execution thereof, or ony part of the power of the spiritual keyis, quhilks our Maister gave to the Apostles, and their trew successours. And although Kings and Princes that be godlie, sumtymes be their awin authority, whan the kirk is corruptit, and all things out of ordor ; place ministers, and restore the trew service of the Lord, efter the examples of sum godly Kings of Juda, and divers godly Emperours and Kings also in the licht of the New Testament : Yit quhair the ministrie of the kirk is anes lawfullie constitute, and they that are placeit do thair office faithfullie, all godlie princes and magistratis aucht to heir and obey thair office, and reverence the majestie of the Son of God speiking be them.



## CHAP. XI.

*Of the present Abuses remaining in the Kirk, quhilks we desyre to be Reformit.*

1. As it is the dewtie of the godlie magistrat to mantein the present liberty quhilck God of his mercie hes grantit to the preaching of his word, and the trew administration of the sacraments within this realme: sa is it to provyde, that all abuses quhilks as yit remaine in the kirk, be removit, and utterly takin away.

2. Thairfoir first the admission of men to Papisticall titles of benefices, sic as serve not, nor have na function in the reformit kirk of Christ, as abbotis, commendatoris, prioris, priorassis, and uther titles of abbyis, quhais places are now for the maist part be the just judgement of God demolishit and purgit of idolatrie, is plaine abusion, and is not to receive the kingdom of Christ amangs us, bot rather to refuse it.

3. Siclyke that they that of auld wer callit the chapters and convents of abbayis, cathedrall kirks, and the lyke places, serve for nathing now, bot to set fewes and tacks, if ony thing be left of the kirklands and teinds, in hurt and prejudice thairof, as daily experience teiches, and thairfoir aucht to be utterly abrogat and abolishit. Of the lyke nature ar the deanes, archdeanes, chantors, subchantors, thesaurers, cancellars, and uthers having the lyke titles flowing from the Pape and canon law onlie, wha heve na place in the reformit kirk.

4. The kirks also quhilks ar unitit together, and joynit be annexation to thair benefices, aught to be separatit and dividit, and gine to qualifiet ministers, as Gods word craves.

5. Neither aucht sic abusers of the kirks patrimony to have vote in Parliament, nor sit in councell under the name of kirk and kirk-men, to the hurt and prejudice of the libertie thairof, and lawes of the realm made in favouris of the reformit kirk.

6. Meikle less is it lawfull, that ony person amang these men sould have fyve, sax, ten or twenty kirks, or mae, all having the charge of saules:\* and bruik the patrimonie

\* The copy in Calderwood's History, that printed anno 1621 in 4to, and that printed in 8vo, anno 1682, have, "all craving the charge of

thairof, either be admission of the prince, or of the kirk, in this licht of the Evangell; for it is but mockage to crave reformation where sic lyke hes place.

7. \*And albeit it was thocht gude, for avoyding of greater inconvenientis, that the auld possessors of sic benefices quha had imbracit the trew religion, suld enjoy be permission the twa part of the rentis quhilks they possesst of befoir during thair lyfetye: Yit it is not tolerabil to continew in the lyke abuse, to geve thaise places and uthers benefices of new to als unmeit men or rather unmeitar, quha ar not myndit to serve in the kirk, bot leif an idle lyfe as uthers did quha bruikit them in the tyme of blindnes.

8. And in sa farr as in the order takin at Leith in the zeir of our Lord 1571, it appeires that sic may be admittit, being found qualifiet; either that pretendit order is agains all gude order, or else it must be understood not of them that be qualifiet in worldly affaires or to serve in court; bot of sic as are qualifiet to teich Godis word, having their lawfull admission of the kirk.

9. As to Bischops, if the name *επισκοπος* be properly takin they ar all ane with the ministers, as befoir was declairit. For it is not a name of superiorite and lordschip, bot of office and watching. Yit because in the corruption of the kirk, this name (as uthers) hes bene abusit, and yit is lykeli to be; we cannot allow the fashion of thir new chosin bishops, neither of the chapiters that ar electors of them to sic offices as they are chosen to.

10. Trew bishops sould addict themselves to ane particular flock, quhilk sindry of them refuses, neither sould they usurpe lordship over their brethren and over the inheritance of Christ, as these men doe.

11. Pastors, in sa far as they ar pastors, have not the office of visitation of mae kirks joynit to the pastorship, without it be gine them. It is a corruption, that bishops sould have farder boundis to visit, nor they may lawfullie.† Na man

soules." An old manuscript hath, "and have the charge of thair saules." The copy in Spottiswood's History hath, "all having the cure of soules."

\* This paragraph is not in the copy which is in Calderwood's History; neither is it in the copy printed in 4to, anno 1621, nor in that printed in 8vo. anno 1682. But it is in the Church registers and other manuscripts, and in Spottiswood's History.

† The copy in Spottiswood's History hath, "than they may conveniently overtake:"

aucht to have the office of visitation, bot he that is lawfully chosin be the Presbytrie thereunto. The elderschips being well establishit, have power to send out visitors ane or mae, with commission to visit the bounds within their elderschip : And siclyke efter compt takin of them, either continew them, or remove them from tyme to tyme, to the quhilks elderschips they shall be alwayes subject.

12. The criminal jurisdiction in\* the person of a pastor, is a corruption.

13. It agries not with the word of God that bishops sould be pastors of pastors, pastors of monie flocks ; and yit without ane certaine flock, and without ordinar teiching. It agries not with the Scriptures, that they sould be exemit fra the correction of their brethren, and discipline of the particular elderschip of the kirk, where they shall serve ; neither that they usurpe the office of visitation of uther kirks, nor ony uther function besyde uther ministers, bot sa far as sall be committit to them be the kirk.

14. Heirfoir we desyre the bishops that now ar, either to agrie to that order that Gods word requyres in them, as the generall kirk will prescrive unto them, not passing that bounds either in ecclesiasticall or civill affaires, or else to be deposit fra all function in the kirk.

15. We deny not in the mein tyme, bot ministers may and sould assist their Princes when they are requyrit, in all things agreiable to the word, quhither it be in Councill or Parliament, or utherwayis, provyding alwayis they neither neglect theira win charge, nor throw flatterie of Princes, hurt the publick estait of the kirk. Bot generallie, we say no person, under whatsumever title of the kirk, and specially the abusit titles in Papistrie, of Prelates, Convents, and Chapters, aucht to attempt ony act in the kirks name, either in Councill or Parliament, or out of Councill, having na commission of the reformat kirk within this realme.

16. And be act of Parliament it is providit that the Papisicall kirk and jurisdiction sould have na place within the same, and na bishop nor uther prelate in tymes cuming sould use ony jurisdiction flowing from his autoritie. And again, that na uther ecclesiasticall jurisdiction sould be acknowledged within this realm, bot that quhilk is, and shall be in the

\* The copy printed in 8vo, anno 1632, which is said to have been printed from the Presbytery Book of Haddington, hath "civil jurisdiction."

reformat kirk, and flowing therefra. Sa we esteim halding of chapiters in Papisticall manner, aither in cathedrall kirks, abbayis, colledges, or uther conventuall places, usurping the name and authoritie of the kirk, to hurt the patrimonie thair of, or use ony uther act to the prejudice of the same, sen the zeir of our Lord 1560, to be abusion and corruption, contrar to the libertie of the trew kirk and lawis of the realme, and thairfor aucht to be annullit, reducit, and in all tyme cuming allutterlic dischargit.

17. The dependances also of the Papisticall jurisdiction ar to be abolishit, of the quhilk sort is the minglit jurisdiction of the commissars, in sa far as they meddle with ecclesiasticall matters, and have na commission of the kirk thairto, but wer erectit in tyme of our Sovereignis mother, whan things war out of order. It is an absurd thing that sindry of them having na function of the kirk, sould be judgis to ministers, and depose them from their roumis. Thairfoir they either wald be dischargit to medle with ecclesiasticall matters, or it wald be limitit to them in quhat matters they might be judges, and not hurt the libertie of the kirk.

18. They also that befoir wer of the ecclesiasticall estait in the Papis kirk, or that are admittit of new to the Papisticall titles, and now ar tollerat be the lawes of the realme to possess the twa pairt of thair ecclesiasticall rents, aucht not to have ony farther libertie bot to intromet with the portion assignit and grantit to them for their lyfetyemes: And not, under the abusit titles quhilks they had, to dispone the kirk rentis, set tackes and fewes thair of at their pleasure, to the grit hurt of the kirk, and pure lawbourers that dwell upon the kirk-lands, contrar to all good conscience, and ordor.

## CHAP. XII.

### *Certain speciall Heids of Reformation quhilk we crave.*

1. Quhatsumever hes bene spokin of the offices of the kirk, the severall power of the office-beirars, their conjunct power also, and last of the patrimonie of the kirk; we understand it to be the right reformation, which God craves at our hands, that the kirk be orderit according thairto, as with that order quhilk is most agreeable to the word. Bot because sumthing

wald be touched in particular, concerning the estait of the countrey, and that quhilk we principally seik to be reformat in the same, we have collectit them in thir heids following.

2. Seeing the hail countrey is dividit in provinces, and thir provinces again are dividit in parishes, als weill in landwart as in townes; in every parish and reasonable congregation there wald be placit ane or mae pastors to feid the flock, and no pastor or minister alwaies to be burdenit with the particular charge of mae kirks or flockes than ane alanerly.

3. And because it will be thocht hard to finde out pastors or ministers to all the paroch kirks of the realm, als well in landwart as in townes, we think be the advice of sic, as commission may be gine to be the kirk and prince, parishes in landwart or small villages, mae be joined twa or three mae, in sum places together, and the principall and maist commodious kirks, to stand, and be repairit sufficiently, and qualifiit ministers placit thereat; and the uther kirks, quhilk ar not fund necessar, may be sufferit to decay, their kirkyards alwaies beand kept for buriall places: And in some places where neid requyres ane parish, where the congregation is owir great for ane kirk, may be dividit in twa or mae.

4. Doctors wald be appointit in universities, colledges, and in uther places neidfull, and sufficiently provided for; to opin up the meining of the Scriptures, and to have the charge of schules, and teach the rudiments of religion.

5. As for elders there wald be sume to be censurers of the manners of the people, ane or mae in every congregation; bot not an assembly of elders in every particular kirk, bot only in townes and famous places quhere resort of men of judgement and habilitie to that effect may be had, quhere the elders of the particular kirks about may convene together, and have a common eldership and assembly place among them, to treat of all things that concernes the congregations of which they have the oversicht.

6. And as there ought to be men appointit to unite and divyde the parishes, as necessity and commodity requyres: Sa wald there be appointit be the generall kirk, with advyce\* of the prince, sic men as feir God, and know the estait of the countries, that were able to nominate and desyne the places, quhere the particular elderships should convene, taking con-

\* Some copies have, " assent."

sideration of the diocesses as they were dividit of auld, and of the estait of the countries and provinces of the realme.

7. Lykewise concerning provinciall and synodall assemblies, consideration wer easie to be taken, how mony and in quhat places they were to be halden, and how oft they sould convene, aucht to be referrit to the libertie of the general kirk, and ordor to be appoyntit therein.

8. The nationall assemblies of this countrey, callit commonlie the Generall Assemblies, aucht alwayes to be reteinit in their awin libertie, and have their awin place. With power to the kirk, to appoynt tymes and places convenient for the same, and all men, als weill magistrats as inferiours, to be subject to the judgement of the same in ecclesiasticall causes, without any reclamation or appellation to ony judge, civill or ecclesiasticall within the realm.

9. The libertie of the election of persons callit to the ecclesiasticall functions, and observit without interruption swa lang as the kirk was not corruptit be Antichrist, we desyre to be restorit and reteinit within this realm. Swa that nane be intrusit upon ony congregation, either be the prince or ony inferiour person, without lawfull election and the assent of the people ovir quham the person is placit; as the practise of the apostolical and primitive kirk, and gude order craves.

10. And because this order, quhilk Gods word craves, cannot stand with patronages and presentation to benefices usit in the Paipes kirk: We desyre all them that trewlie feir God earnestly to consider, that for swa meikle as the names of patronages and benefices, together with the effect thair of have flowit fra the Paip and corruption of the canon law only, in sa far as thereby ony person was intrusit or placit owir kirks having *curam animarum*. And for swa meikle as that manner of proceeding hes na ground in the word of God, but is contrar to the same, and to the said libertie of election, they aucht not now to have place in this licht of reformation. And therefore quhasumever will embrace Gods word, and desyre the kingdome of his Son Christ Jesus to be advancit, they will also embrace, and receive that policie and order quhilk the word of God, and upright estait of his kirk craves, otherwise it is in vaine that they have profest the same.

11. Notwithstanding as concerning uther patronages of benefices that have not *curam animarum*, as they speak: Such as ar chaplanries, prebendaries foundit upon temporall lands, annuals, and sic lyke, may be reservit unto the ancient pa-

trones, to dispone thairupon, quhan they vaike, to schulis and bursars, as they are requyrit be act of Parliament.\*

12. As for the kirk rents in generall, we desyre that order be admittit and mentainit amangis us, that may stand with the sinceritie of Gods word, and practise of the purity of the kirk of Christ. *To wit*, that as was before spoken, the haill rent and patrimonie of the kirk, exceptand the small patronages befor mentionat, may be dividit in four portions: Ane thereof to be assignit to the pastor for his intertainment, and hospitalitie: An uther to the elders, deacons and uther officers of the kirk, sic as clerks of assemblies, takers up of the psalmes, beadels and keipers of the kirk sa far as is necessar; joining therewith also the doctors of schules, to help the ancient foundations where neid requires: The third portion to be bestowed upon the puir members of the faithfull, and on hospitals: The fourth for reparation of the kirks, and uther extraordinar charges as ar profitable for the kirk; and also for the common weil, if neid rcquyre.

13. We desyre therefore the ecclesiasticall gudes to be upliftit, and distributit faithfullie to quham they appertein, and that be the ministerie of the deacons, to quhais office properlie the collection and distribution thereof belangs; that the puir may be answerit of their portion thereof, and they of the ministry live without care and solicitude: As also the rest of the treasurie of the kirk may be reservit, and bestowit to their richt uses. Gif these deacons be electit with sic qualities as Gods word craves to be in them, there is na feir that they sall abuse themselvis in their office, as the prophane collectors did of before.

14. Yit because this vocation appeires to many to be dangerous, let them be oblishit as they wer of auld to a yeirlic count to the pastors and elderschip; and gif the kirk and prince think expedient, let cautioners be oblishit for their fidelitie, that the kirk rents on na wayes be dilapidat.

15. And to the effect this order may tak place, it is to be provydit, that all uthers intromettors with the kirk rent, collectors general or speciall, whether it be by appointment of the prince, or utherwaies, may be denudit of farther intromission therewith; and suffer the kirk rents in tyme cumming to be haillie intromettit with be the ministrie of the deacons, and distribute to the use before mentionat.

\* Jam. VI Parl. 1. Cap. 12. Afterward ratified, Jam. VI. Parl. 12 Cap. 161.

16. And also to the effect, that the ecclesiasticall rents may suffice to these uses, for the quhilk they are to be appointit; we think it necessar to be desyrit, that all alienations, setting of fewes or tacks of the rents of the kirk, als weil lands as teinds, in hurt and diminution of the auld rentals, be reducit and annullit, and the patrimony of the kirk restorit to the former auld libertie. And lykewise, that in tymes cumming the teinds be set to nane, but to the labourers of the ground, or else not set at all, as was agriet upon, and subscribit be the nobilitie of before.\*

### CHAP. XIII.

*The Utilitie that sall flow fra this Reformation to all Estaites.*

1. Seing the end of this spirituall government and policie, quhair of we speik, is that God may be glorifiet, the kingdom of Jesus Christ advancit, and all who are of his mysticall bodie may live peaceable in conscience: Therefore we dar bauldly affirme, that all these who have true respect to thir ends, will even for conscience cause gladly agrie and conforme themselves to this order, and advance the same, sa far as in them lyes, that their conscience being set at rest, they may be replenishit with spirituall gladnes in giving full obedience to that quhilk Godis word and the testimonie of their awin conscience does crave, and in refusing all corruption contrar to the sam.

2. Nixt we sall becum an example and paterne of gude and godly order to uther nations, countries and kirks professing the same religion with us, that as they have glorified God in our continueing in the sinceritie of the word hitherto, without any errours, praise be to his name: So they may have the lyke occasion in our conversation, when as we conform our selfis to that discipline, pollicie and gude order, quhilk the same word and purity of reformation craveth at our hands; utherwise that fearfull sentence may be justly said to us, "The servant knowing the will of his maister, and not doing it." &c.

\* See Chap. 8. of the First Book of Discipline, which was subscribed by many of the nobility. See also, the Proceedings of the General Assemblies about the Policie of the Kirk.



3. Mairover, gif we have any pity or respect to the puir members of Jesus Christ, who so greatly increase and multiply amanges us, we will not suffer them to be langer defraudit of that part of the patrimonie of the kirk, quhilk justly belangs unto them : And by this order, if it be deuly put to execution, the burden of them sall be taken of us to our great confort, the streits sall be cleansed of thair cryings and murmurings ; swa as we sall na mair be an skandall to uther nations as we have hitherto bene for not taking order with the puir amanges us, and causing the word quhilk we profess to be evill spokin of, giving occasion of sclander to the enemies, and offending the consciences of the sempil and godly.

4. Besydes this, it sall be a great ease and commoditie to the hail common people, in relieving them of the beilding and uphalding of thair kirks, in bigging of brigges and uther lyke publick warks : It sall be a relief to the labourers of the ground in payment of their teinds ; and schortlie in all these things, whereinto they have bene hitherto rigorously handlit be them that were falslie callit kirkemen, thair tacksmen, factours, chalmerlanes and extortionars.

Finally, to the Kings Majestie and common-weill of the cuntry, this profite shall redound : That the uther affaires of the kirk beand sufficientlie provydit according to the distribution of the quhilk hes bene spokin ; the superplus beand collectit in the treasurie of the kirk, may be profitablie imployit, and liberallie bestowit upon the extraordinar support of the affaires of the Prince and common-weill, and speciallie of that part quhilk is appoyntit for reparation of kirks.

Sa to conclude, all beand willing to apply themselvis to this order, the people suffering themselvis to be rewlit according thereto ; the Princes and Magistrates not beand exemit, and these that ar placit in the ecclesiasticall estait richtlie rewling and governing, God sall be glorifiet, the kirk edifiet, and the bounds thereof inlargit, Christ Jesus and his kingdome set up, Satan and his kingdom subvertit, and God sall dwell in the middis of us, to our comfort, through Jesus Christ, who, together with the Father and the Holy Ghost, abydes blessit in all eternity. Amen.



THE  
FORM OF PROCESS  
IN THE  
JUDICATORIES OF THE CHURCH OF SCOTLAND,  
WITH RELATION TO  
SCANDALS AND CENSURES,

*Approved by Act of the General Assembly, April 18, 1707.*

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THE  
FORM OF PROCESS.

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CHAP. I.

*Concerning Church Government, Discipline, Scandals, and  
Censures in general.*

1. OUR Lord Jesus Christ hath instituted a government, and governors ecclesiastical in his house, with power to meet for the order and government thereof; and to that purpose, the apostles did immediately receive the keys from the hands of their Lord and Master Jesus Christ, and did use and exercise the same upon all occasions, and Christ hath from time to time furnished some in his church with gifts for government, and with commission to exercise it when called thereunto, and has promised his presence to be with them to the end of the world.

2. It is agreeable to and founded on the word of God, that some others, besides these who labour in the word and doctrine, be church governors, to join with the ministers of the word in the government of the church, and exercise of discipline and oversight of the manners of the people, which officers are called ruling elders: As also, that the church be governed by several sorts of judicatories, and one in subordination to the other, such as kirk-sessions, presbyteries, provincial synods, and general assemblies.

3. Church discipline and censures, for judging and removing of offences, are of great use and necessity in the church, that the name of God, by reason of ungodly and wicked persons living in the church, be not blasphemed, nor his wrath provoked against his people, that the godly be not leavened with, but preserved from the contagion, and stricken with fear, and that sinners who are to be censured may be ashamed, to the destruction of the flesh, and saving of the spirit in the day of the Lord Jesus.

4. Nothing ought to be admitted by any church judicatory as the ground of a process for censure, but what hath been declared censurable by the word of God, or some act or universal custom of this national church agreeable thereto: and

the several judicatories of this church ought to take timeous notice of all scandals: but it is judged, that if a scandal shall happen not to be noticed in order to censure for the space of five years, it should not be again revived, so as to enter in a process thereanent, unless it be of an heinous nature, or become again flagrant; but the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty.

5. These assemblies or church judicatories before mentioned, have power to convene and call before them any persons within their own bounds, whom the ecclesiastic business which is before them doth concern, either as party, witness, or otherwise, and to examine them according to the nature of the affair, and to hear and determine in such cases as shall orderly come before them, and accordingly dispense church censures.

6. If a person be charged with a scandal, who lives within the bounds of another parish, the kirk-session of the parish where that person resides should be desired to cause cite that person to answer before the session in whose bounds the scandal happened, and the same course is to be followed in such cases by the other judicatories of the church, seeing for order's sake they should not presume to exerce their authority without their own bounds.

7. The minister of the word being an office above that of the ruling elder, cannot be liable to the censure of the kirk-session, but to the superior judicatories of the church.

## CHAP. II.

*Concerning the entering Processes, Citation of Partics and Witnesses, and taking Depositions, and anent Fugitives from Discipline.*

1. Members of kirk-sessions are wisely to consider the information they get of scandals, and consult with their minister thereanent, even before the same be communicate to others, that thereby the spreading of the scandal may be prevented, and it may be removed by private admonition according to our Lord and Saviour's rule, Math. xviii. 15, which if amendment follow, is the far better way of gaining and recovering a lapsed brother, whereas the needless spreading of a scandal does sometimes harden the guilty, grieve the godly, and is dishonourable to religion.

2. When any business is moved in a church judicatory,

whether by information, petition, or otherwise, they are in the first place to consider, whether the matter in its circumstantiated case be proper for them to enter upon, and whether it be orderly brought in, and proper for them to cognosce and discuss it themselves, or prepare it for superior judicatories; and should endeavour to shorten their work as much as with the edification of the church they can, especially as to the head of scandal, but still on all occasions the office-bearers in the house of God are to shew all prudent zeal against sin.

3. In proceeding in all causes, where there is any person or parties concerned, the judicatory is to see, that before they proceed, these persons or parties be duly sisted before them by a legal and timeous citation in writ, bearing its cause, either at the instance of a party complaining, or at least by order of the judicatory; and if they be residing within the parish, the same may be upon forty-eight hours advertisement, and the execution of the summons bearing its cause, and made before two or three witnesses insert, is to be returned by the beadle or officer in writing, and the persons cited, called at the door; and this is especially to be observed by presbyteries and other superior judicatories of the church.

4. Sometimes it may be fit that the party be privately spoken to, before any citation be given or process begun, for their better gaining; in which case the minister is to exercise his own discretion, and take the concurrence of elders and others with him; but if the party cited as above appear not, there ought to be a second and then a third citation given by the order of the sessions and presbyteries, either personally, or left at their dwelling house, before the judicatory declare the person contumacious, unless the party be cited to appear before a superior judicatory by reference or appeal, in which case there is not that need of so many citations before the superior judicatory, the party having actually appeared before the inferior judicatory, and being cited *apud acta* to appear before the superior, and the same marked in the minutes, or having been declared contumacious before the cause was brought before the superior judicatory.

5. All citations *apud acta*, are peremptory, and if instructed, infer contumacy if not obeyed.

6. If the person do not appear on the third citation, or upon a citation *apud acta*, and no relevant excuse adduced and verified, though in that case he be censurable for contumacy, yet it may be fit the judicatory proceed to take cognition, either by examining witnesses upon oath, or by other docu-

ments of the verity of the scandals delated against him, before they censure him for contumacy.

7. If the party appear, then the moderator is to inform the person of the occasion of his being called, and to give him, if desired, a short note in writing thereof, with the names of the witnesses that are to be made use of.

8. There seems to be no need of accusers or informers in ecclesiastic processes, where the same are not raised at the instance of a party complaining formally, but the party is cited by order of the judicatory, is to answer the judicatory, in what is laid to his charge; yet so, that if the party cited be found innocent and acquitted, these who informed the judicatory, whether the party require it or not, ought to be noticed, for either their calumny or imprudence, as the judicatory shall find cause.

9. If there be witnesses to be made use of in the process, a list of their names ought to be given to the defenders some time before, or at least at their compearance, and their witnesses ought to be timeously cited to give evidence; and if they refuse after three citations given, and executions returned, may be proceeded with as contumacious; or if judged needful, after the first or second citation, application may be made to the civil magistrate, that he may oblige them to appear.

10. Before the witnesses be judicially examined, the accused person is to be called, and the relevancy of the libel discussed, and if the defender compear, he may object against any of them, and if the objection be relevant, and made evident to the judicatory, the witnesses are to be cast; but a person's being the delator or informer, doth not hinder him to be a witness, except in the case where he formerly complained for his own interest, or of pregnant presumptions of malice against the person accused.

11. Though there be no relevant objection, yet the witnesses are solemnly to be purged of malice, bribe, or good deed done or to be done, and of partial counsel.

12. The witnesses are to be sworn and examined in the presence of the accused party, if compearing; and he may desire the moderator to propose such questions or cross questions to the witnesses, as may tend for his exculpation, which if the judicatory think pertinent are to be proposed, but no accused person is to interrupt the witness, or speak during the time of deposition.

13. If the party accused do before probation offer grounds

of exculpation to be proven by witnesses, the moderator and clerk, if required, are to give warrant to cite the witnesses upon the party's charges, the relevancy of the offered exculpation being first considered and sustained by the judicatory; and if the exculpation be fully proven as to the substance of the scandal, all further proof of the libel and accusation must there sist, and the defender is to be assolzied; as, if the libel be speціаль as to the time and place of a fact, and the accused more pregnantly allege and clearly prove *alibi*. But if the substance of the scandal be once sustained and deponed upon, there can be no place for exculpation, unless it be as to some extenuating or alleviating circumstances not contrary to, but consisting with the depositions already taken.

14. If the witnesses cannot subscribe their names to their deposition, the clerk is to mark that they declare they cannot write, and the moderator is to subscribe the same, whether they can subscribe or not.

15. After the depositions are ended, the parties being removed, the members of the judicatory at the same or some after diet thereto appointed, are to advise the cause, and there and then to reason the affair calmly, speaking always to the moderator one after another, without interrupting one another, using no reflecting language to, or of one another, nor too long harangues or digressions.

16. If any person or persons under process for scandals, 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, and where they reside, and if they do not thereupon appear before the judicatory before whom the process depends, they are, by order of the presbytery, to be cited from the pulpits of all the kirks within their bounds, to compear before the presbytery: and if they do not then compear, they are to be declared fugitive from church discipline, and the same intimate in all the kirks within the bounds of the presbytery: desiring, that if any knows of the saids fugitives, they may acquaint the minister or elder of the bounds thereof, and the presbytery are to sist there until they get further notice of these persons.



## CHAP. III.

*Concerning Swearers, Cursers, Profaners of the Lord's Day, Drunkards, and other Scandals of that nature.*

1. It may fall out that one single act of drunkenness or breach of the Lord's day, disobedience to parents, or of swearing, cursing, scolding, fighting, lying, cheating or stealing, may be clothed with such circumstances as may be a just ground of process immediately, and even bring the persons guilty under the censure of the lesser excommunication and suspension from the benefit of the sealing ordinances, and require their appearance in presence of the congregation to be rebuked, before relaxation; but the weight of this is duly to be pondered, and church judicatories and members thereof, are to consider whether the private admonition of persons alledged and found guilty of the above scandals, if not clothed with such circumstances or bringing the them to public, will tend most to edification, and proceed accordingly.

2. But ordinarily in all such offences, the guilty for the first fault would be spoken to in private by the minister or an elder, and admonished; and on promise from a sense of guilt to amend, they may sist there.

3. But if the person relapse, he should be called before the session, and if found guilty may be there judicially rebuked; where the session on promise, from a due sense of sin, to amend, may again sist.

4. But if the person amend not after that, the session should orderly proceed, unless repentance appear and due satisfaction be offered, till they inflict the censure of the lesser excommunication and suspension from the benefit of the sealing ordinances, under which the censured are to lie till amendment and reformation.

5. With respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftener than once before the congregation, the rules prescribed by the fourth act of the General Assembly, anno 1705, are to be followed.

6. If the guilty persons continue in this condition, or lie under the censure of the lesser excommunication a considerable time, and yet be found frequently relapsing in these vices they are censured for, it may be constructed such a degree of contumacy, and so aggravate the crime as to found a process of the censure of the higher excommunication, which is to be

inflicted, or not, as may tend most to the reclaiming of the guilty person and edification of the church.

#### CHAP. IV.

##### *Concerning the Sin of Fornication, Adultery, and scandalous Carriage tending thereto.*

1. In delations about the sin of uncleanness, it falls frequently out, that when the matter is put to the strictest trial, all that can be proven is but presumptions of guilt or scandalous behaviour, and not the act of uncleanness, the same being a work of darkness; and therefore this should oblige the kirk session to be very cautious how to admit the public entering a process without good warrant, where there is not a child in the case, unless the scandal be very flagrant.

2. Many of these actions which give occasion to the raising a scandal of uncleanness, are such as are not themselves alone publicly censurable, but to be past by with a private rebuke or admonition.

3. Yet some of these actions which come under the name of scandalous behaviour, may be so lascivious and obscene, and clothed with such circumstances, as may be as offensive as the act of uncleanness itself, and as censurable.

4. If a married woman, whose husband hath been notoriously absent for a considerable time, beyond the ordinary time that women use to go with child, be found with child, this also may give ground to a kirk session for a process against her; but in this case judicatories would be prudent in considering well all circumstances, and whether or not the person hath been always of entire fame before, as also how the public fame now runs.

5. When an unmarried woman is known to be with child, the same gives ground to a kirk session for a process against her; and after she is cited before the session, and appeareth, she is to be interrogate who is the father of that child, and though in other cases the divulging of a secret may be very imprudent, and indeed the raising of a scandal, yet in this case where there is a child, whereby there is an undeniable scandal, and the keeping secret of the father a ground of greater offence, and of suspecting many innocent persons, if she discover not the father, she is to be lookt upon as contumacious.

6. Prudence may sometimes require that the person she nameth to be the father of the child, be informed thereof, and

spoke to privately; and if he deny the same, he is seriously to be dealt with to confess, but if he still deny, then the session is to cause cite him to appear before them.

7. In this process, when the delated father compeareth, he is to be interrogate, and if he deny, he is to be confronted with the woman, and the presumptions, as particularly held forth as possible; and all along there should be private treating with him, in all meekness, charity and seriousness; and if after all this, he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as suspicious frequenting her company, or being *solus cum sola in loco suspecto*, or in suspect postures and such like, which he cannot disprove to the satisfaction of the session, may so lay the guilt upon him, as to shew him, that there appears no other way of removing the scandal, but his appearance to be publickly rebuked therefore; if he will not submit himself to be rebuked as above, it perhaps may be more for edification that a true narrative of the case be laid before the congregation, and intimation given that there can be no further procedure in that matter, till God in his providence give further light, and to sist there at the time, than that an oath be press'd, and upon refusal proceed to the higher excommunication; but if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may (if they shall judge it for edification and removing of the scandal) allow the same, which may be to this purpose.

“ I A. B. now under process before the presbytery of \_\_\_\_\_ for the sin of \_\_\_\_\_ alledged to be committed by me with C. D. and lying under that grievous slander, being reputed 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 \_\_\_\_\_ that I am innocent and free of the said sin of \_\_\_\_\_ or having carnal knowledge of the said C. D. and hereby call the great God, the judger 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 heart, according to the truth of the matter and mine own conscience, as I shall answer to God in the last and great day, when I shall stand before him to answer for all that I do in the flesh, and as I would partake of his glory in heaven after this life is at an end.”

S. In taking this oath for purgation, all tenderness and

caution is to be used; nor is the session to press any man thereto, but they are to deal with him and his conscience, as in the sight of God; and if he offer to give his oath, the judicatory are to accept it or not as they shall see cause, and then to proceed to remove the scandal, with the advice of the presbytery, as may be most to edification; but this oath is not to be taken in any case but this, when the presumptions are so great that they create such jealousy in that congregation and session, that nothing will remove the suspicion but the man's oath of purgation, and when his oath will probably remove the scandal and suspicion; in all other cases this oath is in vain, and so should not be admitted, and never but by advice of the presbytery.

9. This oath for purgation is to be taken either before the kirk session or presbytery, or the congregation as the presbytery shall determine; and if the oath be taken before the session or presbytery, it is to be intimate to the congregation that such a person hath taken such an oath, and the party may be obliged to be present in the congregation, and may be put publicly to own his purging himself by oath, and so be declared free from the alleged scandal.

10. After an end is made as above, with the delated father, the woman is to be dealt with to give the true father, and if after all serious dealing, and due diligence, she give no other, she is to be censured according to the quality of the offence confessed by her, without naming the person delated by her; the judicatory reserving place for further censure upon further discovery.

11. If the woman who hath brought forth the child, doth declare she knoweth not the father, alleging she was forced, as in the fields, by a person unknown, or any the like reason; in these cases, great prudence is to be used, the former behaviour of the woman exactly searcht into, and she seriously dealt with to be ingenuous; and if she hath been of entire fame, she may be put to it to declare the truth as if she were upon oath, but not without the advice of the presbytery, and no formal oath should be taken; and if the woman confess she was not forced, but doth not know the man, whether married or unmarried, the same censure is to be inflicted upon her as in the case of adultery.

12. If a person doth voluntarily confess uncleanness, and if there be no child, and the case be brought to the kirk-session, the session is to enquire what presumptions there are of the truth of the thing confessed, or what may have moved the

person to make that confession, whether it floweth from disquietness of mind, or from sinistrous design, as when a man suing to a woman for marriage, is denied, and for revenge, or for to obtain his desire, spreads the report that he hath been guilty with her, they are to be dealt with according as the presumptions upon search are found, or not.

13. If it be found that there is no ground for the confession and that it is false, the person confessing is to be censured as defaming himself, and likewise as a slanderer of the other party; and withal application is to be made by the session to the civil magistrate, that he may be punished according to law.

14. If there be need of witnesses, the directions formerly mentioned, chap. 2d, are to be followed.

15. When persons guilty of uncleanness, live one in one parish, and another in another parish, the process against them and censures are to be before the session of the parish where the woman liveth, or where the scandal is most notour.

16. If a scandal of uncleanness be committed where neither party resides, as if persons having their fixed residence in one parish, do commit uncleanness in another parish, or perhaps in the fields, or in the time of fairs or markets; in these cases, they are to be processed and censured where their ordinary abode is, except the place of their abode be at a considerable distance from the place where the sin was committed, and the scandal be most flagrant where it was committed.

17. When there is a scandal of uncleanness whereof persons are guilty, living in different parishes, the session where the sin was committed, is to acquaint the other sessions where any of the persons resides, who are *ex debito* to cause summon these persons to appear before that session, where the scandal is to be tried.

18. When a person is convict of scandal by a session of another congregation than his own, and the censure of the lesser excommunication is inflicted, the session is to send an account thereof to that session to which he belongs; but there is no need of any other sentence of his own session to fix the censure on him, but only a public intimation thereof to be made in his own parish.

19. When a person is censured and absolved from his scandal in another congregation than where he lives, he is to bring a testimonial of his absolution, which is to be intimate to the congregation he lives in, if the scandal be also flagrant

there ; otherwise it will be sufficient to intimate the same to the session ; and the same is to be done in the case of the profession of repentance where there has been a sentence of the lesser excommunication.

## CHAP. V.

### *Concerning Appeals from a Kirk Session to a Presbytery, &c.*

1. All persons who judge themselves lesed by the procedure or sentence of a kirk-session, may appeal to the presbytery, by declaring and protesting at passing of the sentence ; and should thereupon, according to the eighth act of General Assembly, 1694, give in the appeal with the reasons thereof in writ, to the moderator or clerk of the session, within the space of ten days after the time of appealing, and procure extracts thereof, and present the same to the next meeting of the presbytery thereafter, if there be a competent time, at least ten days free betwixt the time of appealing and the meeting of the presbytery ; and should then insist in the appeal ; wherein if the appellant fail, the appeal *ipso facto* falls and becomes null, and the appellant is to be held as contumacious, and proceeded against accordingly by the kirk-session.

2. When an appeal is brought from a kirk-session to a presbytery, the presbytery is to consider, whether the cause is of that nature, as it behoveth at length to come to the presbytery by the course of discipline, before the final determination thereof, as if it be in a process of alleged adultery or such like ; then the presbytery, to save themselves time, may fall upon the consideration of the affair without insisting much upon the *bene* or *male appellatum*, though it seem to be preposterously appealed.

3. But if the cause be such as the kirk session are the competent and proper judges of, even to its ultimate decision, and if there hath been no cause given by the kirk session, by their breaking the rules of an orderly process, either by the course of the process, or by the incompetency of the censure, the presbytery is not to sustain the appeal.

4. If the presbytery do not sustain the appeal, and find there hath been some fault, passion, or culpable mistake in the appellant, the presbytery is to inflict some censure, such as a reproof before the presbytery, or appoint an acknowledging of their precipitancy before their own session or such like, on these appealers they find to have been malicious and litigi-

ous, thereby to prevent unnecessary appeals; and that beside remitting back to the session, to stand either to the censure of the session, if it be inflicted already, or to sist themselves during the process, if it be depending.

5. If the appeal be sustained, and yet upon proceeding on the cause the presbytery find the appellant censurable, it is always to be minded, that whatever censure be inflicted to remove the offence he hath given to the presbytery, yet the appellant, if found guilty, is to undergo a censure, either before the kirk session or congregation he belongs to, such as the presbytery thinks he deserves, else presbyteries will be always troubled with appeals.

6. If on the other hand, on trial of the process, the presbytery find the kirk session hath unwarrantably proceeded either in contributing to the raising of a scandal, or inflicting the censure without a sufficient cause, and thereby the appellant lesed; the presbytery is not only to assoilzie the appellant, but to take such ways as may be proper and effectual to vindicate the appellant's innocence, and wipe off the scandal taken at him.

7. Herein the presbytery is to exercise great prudence, doing justice to the innocent, yet so, as not to weaken the kirk session's authority in that congregation, if in justice it can be avoided.

8. But such an emergent may very well occasion the presbytery's giving the minister and elders of that session suitable injunctions and rules to walk by, or private admonitions, or to call for a visitation of their session register.

9. The same method is to be followed in appeals from presbyteries to synods, and from synods to general assemblies.

10. An appeal being made by parties, should sist the execution of the sentence appealed from, only while the appeal is duly and diligently prosecute, and may thereby be determined; otherwise not, unless the judicatory appealed to, receive the appeal, and take the affair before them, and in that case the judicatory appealed from, is to sist until the appeal be discust.

## CHAP. VI.

*Concerning Processes which natively begin at the Kirk Session but are not to be brought to a final determination by them.*

1. There are some processes which natively begin at the kirk session, which, for the atrocity of the scandal, or difficulty

in the affair, or general concern, the session having the opportunity of frequent meetings of the presbytery to have recourse unto, do not determine of themselves; such as scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the congregation, schism and separation from the public ordinances, processes in order to the highest censures of the church, and continued contumacy; but the kirk session having received information of such gross scandals, they are to weigh the same according to the rules and directions prescribed them in processes, which belong to their peculiar province; and if they find good ground for a process, they are to deal with the person accused to confess, that which now cannot be hid nor amended, till satisfaction be made to the church, which when done, the session is to refer the case, and send an extract of their procedure thereanent to the presbytery.

2. When there is no confession of the scandals above mentioned, the session are not to proceed to lead probation by witnesses or presumptions, till an account of the matter be brought by reference to the presbytery as aforesaid, and the presbytery do thereupon appoint the session to proceed and lead probation; and after probation is led, the same is to be brought to the presbytery who may inflict what censure they see cause.

3. Sometimes it will fall out that the process is so clear, as in a case of judicial confession, that the kirk session may summon the delinquent when before them *apud acta*, to compare before the presbytery, without previous acquainting them thereof, but where there is any difficulty, the kirk-session should inform the presbytery, and take their advice before a party be summoned before them.

4. When the party or parties compare before the presbytery, if they confess and profess repentance for their sin, then the presbytery having gravely rebuked, and seriously exhorted the party or parties, are to determine the censure, and prescribe the time and place of the parties, their profession of repentance publicly in the church of that congregation where the process began, the scandal being there to be taken away, or remit them to the session to receive orders thereanent.

5. It is thought more fit that the delinquents be appointed to remove the scandal in the congregation, where the offence is most flagrant, especially if they reside there, rather than in the place where it was committed, if it be not public there,



and that intimation of the removing thereof be made in other places, if the judicatory shall find it needful.

6. When persons censured for these grosser scandals do apply to the kirk-session for relaxation, they may both be privately conferred with, and likewise their acknowledgments heard before the session; but they ought not to be brought before the congregation, in order to their absolution, nor absolved, but by advice and order of the presbytery.

## CHAP. VII.

### *Concerning Processes against Ministers.*

1. All processes against any minister, are to begin before the presbytery to which he belongeth, and not before the kirk-session of his own parish.

2. The credit and success of the gospel (in the way of an ordinary mean) much depending on the entire credit and reputation of ministers, their sound doctrine and holy conversation, no stain thereof ought lightly to be received; nor when it comes before a judicatory ought to be negligently enquired into, or when found evident, ought to be slightly censured.

3. And because a scandal committed by a minister hath on these accounts many aggravations, and once raised, though it may be found to be without any ground, yet it is not easily wiped of; therefore a presbytery would exactly ponder by whose information and complaint it comes first before them; and a presbytery is not so far to receive the information, as to proceed to the citation of a minister, or any way begin the process, until there be first some person, who under his hand gives in the complaint with some account of its probability, and undertakes to make out the libel. *2do*, Or at least do before the presbytery undertake to make it out under the pain of being censured as slanderers. Or *3tio*, That the *fama clamosa* of the scandal be so great, as that the presbytery, for their own vindication, see themselves necessitate to begin the process, without any particular accuser; but the presbytery in this case would be careful, first, to enquire into the rise, occasion, broachers and grounds of this *fama clamosa*.

4. All Christians ought to be so prudent and wary in accusing ministers of any censurable fault, as that they ought neither to publish nor spread the same, nor accuse the minister before the presbytery without first acquainting the minister himself if they can have access thereto, and then, if need

be, some of the most prudent of the ministers and elders of that presbytery, and their advice got in the affair.

5. If there shall be ground found to enter in a process against a minister, the presbytery should first consider the libel, then order him to be cited, and to get a full copy, with a list of the witnesses names to be led for proving thereof, and a formal citation in writ is to be made either personally or at his dwelling house, bearing a competent time allowed to give in answers to the libel, and his just defences and objections against witnesses, at least ten free days before the day of compearance, and the citation should bear the date when given, and the names of the witnesses to the giving thereof: and the execution bearing its date, with the names and designations of the witnesses, should be made in writ, and signed by the officer and witnesses; which being accordingly returned, he is to be called, and if he compear, the libel is to be read unto him, and he is to be enquired if he has any answers to give in to the libel, that they may be read and considered, in order to the discussing of the relevancy; and if the presbytery find the same, and there is cause to insist, they are to endeavour to bring him to a confession, whereby he may most glorify God; and if he confess, and the matter confest be of a scandalous nature, censurable in others, such as the sin of uncleanness, or some other gross scandal, the presbytery (whatever be the nature of his penitency, though to the conviction of all) are *instanter* to depose him *ab officio*, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence, by the public profession of his repentance.

6. If a minister be accused of any scandal, and cited to appear before his own presbytery, and do absent himself by leaving the place, and be contumacious without making any relevant excuse, after a new public citation and intimation made at his own church when the congregation is met, he is to be holden as confest, and to be deposed and censured *instanter* with the lesser excommunication; but if after some time he do not return and subject himself to the censures of the church, he may be proceeded against till he be censured with the greater excommunication, if the judicatory see cause for it.

7. If the minister accused do appear and deny the fact after the relevancy is found, the presbytery proceeding to probation, and to find the truth of the matter, all the circum-

stances are to be exactly canvassed, and the accused heard to object against the witnesses. As also, he should be allowed to be present at the examination, and modestly to cross interrogate, and then the reputation of the witnesses and their hability duly regarded, and the examinations considered. If after consideration of all these, the judicatory shall find the scandal sufficiently proven, they are to proceed to censure, as advised in the case of confession in paragraph 5th.

8. If the matter laid to the minister's charge be such practices as in their own nature manifestly subvert that order, unity, and peace, which Christ hath established in his church, or unsoundness and heterodoxy in doctrine, then great caution would be used, and the knowledge and understanding of witnesses much looked into; and withal, if the errors be not gross and striking at the vitals of religion, or if they be not pertinaciously stuck unto, or industriously spread, with a visible design to corrupt, or that the errors are not spreading among the people, then lenitives, admonitions, instructions, and frequent conferences are to be tried to reclaim, without cutting off, and the advice of other presbyteries sought; and unless the thing be doing much hurt, so as it admits of no delay, the synod or general assembly may be advised with in the affair, and the same intimate to the minister concerned.

9. If the libel and complaint brought against a minister be a multitude of smaller things laid together, as several acts of negligence or other unsuitable actions, the presbytery in proceeding therein are to make a presbyterial visitation of that parish to which the minister belongs, and at the said visitation, are first to see if any of these things now laid to the minister's charge, were committed prior to the last presbyterial visitation of that parish, and whether they were then laid to his charge, and if they were not, it would be tried how they come to be laid to his charge now.

10. If the presbytery find these things laid to his charge to be committed since the last visitation, or find a satisfying reason wherefore they were not then tabled, they are to enquire what diligence hath been used in acquainting the minister with the offence taken at these things when first committed by him, and how far the minister had been guilty of giving offence, after he knew offence to be taken.

11. It would likewise in this case be enquired, whether any of the complainers did first in a prudent, private way, inform any of the neighbour ministers, of some of these things committed by their minister, who is now challenged,

before these offences came to be so many, as to merit a public and solemn trial, and accordingly the presbytery is to judge.

12. If the presbytery find upon trial, the complaint to resolve on the minister's having committed such acts of infirmity or passion as, considering all the circumstances, may be either amended and the people satisfied, and no such offence taken, or at least not to remain, so as to hinder the minister's profiting the people, and that the offence was taken by the minister's own people only or mainly; then the presbytery is to take all prudent ways to satisfy and reclaim both minister and people, and do away the offence.

13. But before a minister deposed for scandalous carriage can be restored to the exercise of the ministry, there would not only be convincing evidences of a deep sorrow for sin, but an eminent and exemplary humble walk, and edifying conversation, so apparent and convincing as hath worn out and healed the wound the scandal gave.

14. Immediately on the minister's being deposed by the presbytery, the sentence is to be intimate in his congregation, the church declared vacant, the planting thereof with another minister hastened, and never delayed on the expectation of his being reponed, it being almost impossible that ever he can prove useful in that parish again.

## CHAP. VIII.

### *Concerning Processes in Order to the Censure of the greater Excommunication.*

1. Since there is a distinction betwixt the greater and the lesser excommunication, it seems that whatever have been the causes of the first process, yet ordinarily all processes that are in order to the greater excommunication are to be grounded on manifest contumacy, or obstinate continuance in scandalous practices; and where there is no manifest contumacy, or continuance as aforesaid, the lesser excommunication needs only have place. Yet in some extraordinary cases, the church, according to Scripture warrant, hath summarily excommunicated persons guilty of notour atrocious scandalous sins, to shew the church's abhorrence of such wickedness.

2. Even where there hath been a scandal delated, and contumacy following by not appearing, it would be considered, whether any scandalous practice hath been proven, or not; if not proven, then only the simple contumacy is to be pro-

ceeded against, for which it were hard to go a greater length than the lesser excommunication.

3. If the scandal hath been proven, and the censure of the lesser excommunication intimated as in chapter third ; it seems most reasonable that there be no further proceeding, unless the scandal be gross, or of an heinous nature, or that it is spreading and infectious, as in heresies or schism in the church : In which cases, contumacy is to be proceeded against in order to the greater excommunication.

4. The kirk-session having brought the process to an intimation of the censure of the lesser excommunication, before they inflict the same, they are to refer the affair to the presbytery, bringing their whole proceedings before the presbytery in writ, that the presbytery may thereby have a clear and full view of the whole affair.

5. The presbytery finding the kirk-session hath orderly proceeded, and that the lesser excommunication is not sufficient, and that the affair is so weighty as to oblige them to enter on the process, they are to cause their officer to cite the scandalous person.

6. If the party appear, then the presbytery is to proceed in the enquiry at the accused, about the scandal alleged and libelled ; and if he deny it, then they are to proceed and lead probation, as in other cases.

7. But if the party appear not, but contemn the citation, the presbytery causeth renew the same, until he hath got three citations ; and after the three citations, he is to be cited out of the pulpit ; and for the further conviction of all concerned, intimation is to be made that the judicatory will proceed and enquire into the presumptions or probation of the guilt, and this is to be done although the delinquent be absent.

8. Then the presbytery is to order the minister of the congregation next Sabbath after forenoon's sermon, to acquaint the congregation what proceedings the kirk-session, first and thereafter the presbytery, hath made in the affair, and how contumacious the party was, and that the presbytery intended to proceed to the highest censure : and the minister is gravely to admonish the party (if present) to repent and submit himself to the discipline of the church, threatening him, if he continue impenitent, that the church will proceed ; yet though he be absent, the minister is to acquaint the people, that the church requires him to repent and submit as abovesaid, under the foresaid certification.

9. There should be three public admonitions, and a presbytery should intervene betwixt each admonition; and if after all, that person continue impenitent or contumacious, the same is to be represented to the presbytery, who are thereupon to appoint public prayers thrice to be made, in which the minister is to exhort the congregation seriously to join with him in prayer, for the scandalous, impenitent or contumacious person, which he is solemnly to put up to God, humbly begging that he would deal with the soul of the impenitent, and convince him of the evil of his ways.

10. These public prayers of the church are to be put up three several Sabbath days, a presbytery (where its meetings are more frequent, once a month at least) intervening between each public prayer, both to shew the church's tenderness towards their lapsed brother, their earnestness to have him reclaimed, and likewise to create a greater regard and terror of that dreadful censure, both in the party and in all the people.

11. If after all, the scandalous person makes no application, but continues impenitent; the presbytery, after prayer, is to pass sentence, and appoint a minister to intimate the same, and to shew the presbytery's resolution to proceed upon such a Sabbath as they shall name, for pronouncing that dreadful sentence solemnly in face of the congregation, unless either the party or some for him, signify some relevant ground to stop their procedure.

12. That day being come, it were fit the minister did preach a sermon suited to that solemn occasion, or at least after sermon the minister should shew the congregation what he is going about, introducing the narrative of the process, with a discourse concerning the nature, use and end of church censures, particularly that of the greater excommunication, if he hath not done it fully in his sermon.

13. The narrating all the steps of the process in order, shewing the church's faithfulness and tenderness towards the scandalous person, and declaring his obstinate impenitency; and that now after all other means were used, there remained only that of cutting off the scandalous person from the society of the faithful, and intimating the church's warrant and order to him so to do.

14. And before the minister pronounce the sentence, he is to pray, and desire all the congregation to join with him therein, that God would grant repentance to the obstinate person, would graciously bless his own ordinance, and make the cen-

sure effectual, both to edify others, and to be a mean to reclaim the obstinate sinner.

15. Then after prayer, the minister is, with great gravity and authority, to pronounce the censure ; shewing his warrant from our Lord's command, and the Apostle Paul's direction, and recapitulating the presbytery's warrant in obedience thereunto, and resuming the scandalous and obstinate person's behaviour, whom he is to name ; he therefore, in the name and authority of our Lord and Master Jesus Christ, doth *in verbis de presenti* pronounce and declare him or her excommunicated and shut out from the communion of the faithful, debarring that person from their privileges ; and in the words of the Apostle, delivering that person over to Satan, which sentence is to be intimate according to the 9th act of the Assembly anno 1704.

16. If after prayer or before the censure be pronounced, the scandalous person do make any public signification of his repentance, and of his desire to have the censure stopt, the minister, upon apparent seriousness in the scandalous person, which he sheweth to the congregation, may thereupon delay pronouncing the sentence, till he report to the presbytery at their next meeting, who are then to deal with the scandalous person as they shall find cause.

17. After the pronounciation of this sentence, the people are to be warned that they hold that person to be cast out of the communion of the church, and that they shun all unnecessary converse with him or her ; nevertheless excommunication dissolveth not the bonds of civil or natural relations, nor exempts from the duties belonging to them.

18. Although it be the duty of pastors and ruling elders to use all diligence and vigilance, both by doctrine and discipline respectively, for preventing and purging out such errors, heresies, schisms and scandals as tend to the detriment and disturbance of the church ; yet because it may fall out through the pride and stubbornness of offenders, that these means alone will not be effectual to that purpose ; it is therefore necessary after all this, to employ the aid of the civil magistrate, who ought to use his coercive power for the suppressing of all such offences, and vindicating the discipline of the church from contempt.

## CHAP. IX.

*Concerning the Order of proceeding to Absolution.*

1. If after excommunication, the signs of repentance appear in the excommunicated person; such as godly sorrow, for having incurred God's heavy displeasure by his sin, occasioned grief to his brethren, and justly provoked the church to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God through Christ, and to reform his life and conversation, with an humble desire of recovering peace with God and his people, and to be restored to the favour of God and light of his countenance, through the blood of Jesus Christ, and to the communion of the church, and the presbytery upon his application be satisfied therewith, and judge that he ought to be absolved, and thereupon give warrant for his absolution; he is to be brought before the congregation, and there also to make free confession of his sin and sorrow for it, to call upon God for mercy in Christ, to seek to be restored to the communion of the church, promising to God through grace, new obedience, and more holy and circumspect walking as becomes the gospel, and that this appearance before the congregation, be as often as church judicatories shall find may be for edification and trial of the professing penitent's sincerity; and being satisfied in this, then the minister and congregation are to praise God, who delighteth not in the death of a sinner, but rather that he should repent and live; as also, for blessing the ordinance of excommunication, and making it effectual by his Spirit to the recovering of this offender, to magnify the mercy of God through Jesus Christ, in pardoning and receiving to his favour the most grievous offenders whensoever they unfeignedly repent and forsake their sins; but before the minister proceed to absolution, he is to pray with the congregation to this effect: "That the Lord Jesus Christ, Prophet, Priest and King of his church, who with the preaching of the gospel hath joined the power to bind and loose the sins of men; who hath also declared, that whatsoever by his ministers is bound on earth, shall be bound in heaven, and also, that whatsoever is loosed by the same, shall be loosed and absolved in heaven, would mercifully accept his creature N. whom Satan of long time hath holden in bondage, so that he not only drew him to iniquity, but also so hardened his heart, that he despised all admonitions, for the which his sin and contempt, the church was



compelled to excommunicate him from the society of the faithful ; but now seeing the Holy Spirit by his grace hath so prevailed, that he is returned, and professeth repentance toward God, and faith toward our Lord Jesus Christ, that it may please God by his Spirit and grace to make him a sincere and unfeigned penitent, and for the obedience of our Lord Jesus Christ unto death, so to accept of this poor believing and returning sinner, that his former disobedience be never laid to his charge, and that he may increase in all godliness, so that Satan in the end may be trodden under feet by the power of our Lord Jesus Christ, and God may be glorified, the church edified, and the penitent saved in the day of our Lord."

Then shall follow the sentence of absolution in these or the like words : " Whereas thou N. hast for thy sin been shut out from the communion of the faithful, and hast now manifested thy repentance, wherein the church resteth satisfied, I in the name of the Lord Jesus, before this congregation, pronounce and declare thee absolved from the sentence of excommunication formerly denounced against thee, and do receive thee to the communion of the church, and the free use of all the ordinances of Christ, that thou mayest be partaker of all his benefits to thy eternall salvation."

3. After this sentence of absolution, the minister speaketh to him as a brother, exhorteth him to watch and pray, and comforting him as there shall be cause ; the elders embrace, and the whole congregation holdeth communion with him, as one of their own ; and the absolution should be intimate in all the churches where the excommunication was intimate.



COLLECTIONS & OBSERVATIONS  
METHODIZED,

CONCERNING THE  
WORSHIP, DISCIPLINE, AND GOVERNMENT  
OF

**The Church of Scotland.**

IN FOUR BOOKS.

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By WALTER STEUART, Esq.

OF PARDOVAN.

TO THE HONOURABLE  
SIR JOHN MAXWELL

OF NETHER-POLLOCK, KNIGHT BARONET, ONE OF THE  
SENATORS OF THE COLLEGE OF JUSTICE.

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MY LORD,

It was matter of regret, especially about the beginning of our happy Revolution in the year 1689, that the judicatories of this church, very much wanted fixed and established rules, for directing their proceedings; or, though they had them, yet they lay so scattered and hid, that intrants to the holy ministry, and the younger pastors, yea even some among the more aged of that sacred order, were too much strangers to them. The consideration whereof, did chiefly move me to set about this work: And if my endeavours herein, may but a little contribute to the benefit or service of the office-bearers and guides of this Church, it is a reward greater than I deserve. However, to testify the honour and respect I have for your Lordship, I dedicate them to you, one of her honourable ruling elders. It gives no small satisfaction to all honest men who know you, that ye still enjoy the ancient heritage of your honourable family, in despite of all the illegal attempts made against both your excellent father and yourself, under the two reigns before the year 1689. But above all, it is ground of praise to God, that you walk in the steps of such a father, and those of your pious mother. That you may all the days of your life go on, and serve your generation according to the will of God, and in the end be gathered to your godly progenitors in his eternal glory, is the hope and wish of,

MY LORD,

Your Lordship's very humble servant,

WALTER STEUART.

## THE PREFACE.

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I HAVE already, in my Dedication, hinted at the design and usefulness of these Collections, unto the office-bearers in this Church; and, if there be yet among them any want of uniformity or exactness in the exercise of the discipline, worship, and government thereof, it may not without ground be imputed to our not training up the students of theology *ex professo* at universities, in the knowledge of these as well as in her doctrine. Therefore, to prevent all grounds for fearing of such ignorance, and the bad effects thereof; it were fit, that professors of Divinity were enjoined to give their scholars lessons on these subjects: And till a better compend be composed, these Collections are humbly offered, to be recommended by Professors to their students; for, except this subject be studied and understood by Ministers and Elders, their memories may be well burdened with their duty, but their judgments, till then, shall still remain ignorant and unsatisfied about it.

Now, as for those of our neighbour churches in this and the other island, who now differ from us, I hereby present them with that form of the house of God in Scotland, with which their pious, wise, and learned predecessors did once so passionately desire uniformity. So that whenever it shall please our great and good God to animate their successors with the like spirit, they may fall about building conform to this pattern. Not that I propose this work as the deed of the Church of Scotland, or of any judicatory therein; only in so far as what is collected or observed in it, shall be found supported by their acts or universal customs.

The materials of these Collections, and in particular, of what is said on that title concerning Parochial Visitations by Presbyteries, were chiefly gathered from, and lay scattered among the old and late manuscript and printed acts of General Assemblies. The overtures concerning discipline, transmitted by them to Presbyteries, the Directory for worship and church government, and the constitutions of some other churches, have been helpful to the completing of the composure. Besides, I thought it not improper to add, here and there, some hints of civil laws, which I hope the reader will not find unuseful or impertinent, seeing there are some circumstances concerning the worship of God, and the government of his church, common to human actions and societies, which are to be ordered by the light of nature and Christian prudence, according to the general rules of the word.

I have divided these Collections into four Books. The first treats of Church Government, which principally concerns her office-bearers and judicatories. The second is concerning the Worship of God and sacred things, with what relates to the maintenance thereof. The third and fourth Books treat of Church Discipline; the one concerning errors and scandals; and the other about the method of reclaiming and censuring the erroneous and scandalous.

COLLECTIONS AND OBSERVATIONS  
METHODIZED, &c.

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BOOK FIRST.

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TITLE I.

*Of the Election and Ordination of Pastors.*

1. OUR Lord Jesus Christ hath instituted a government and governors ecclesiastical in his house, with power to meet for the order and government thereof: and to that purpose the Apostles did immediately receive the keys from the hands of their Lord and Master, Jesus Christ, who hath, from time to time, furnished some in His church, with gifts for government, and with commission to exercise it when called thereunto. And it is also agreeable to, and warranted by the word of God, that some others, besides those who labour in the word and doctrine, be church-governors, to join with the ministers of the word, in the government of the church, and exercise of discipline: which office-bearers, reformed churches do commonly call ruling elders. It is likewise agreeable to the same word, that the church be governed by several sorts of judicatures, such as kirk-sessions, presbyteries, provincial and general assemblies; all which have power, one in subordination to the other, to call before them any persons within their own bounds, whom the ecclesiastical business which is before them doth concern, either as party or witness. *Vide cap. 1. act 11. Assem. 1707.* The Church of Scotland, by this article, denies the independency of presbyteries and provincial synods, as much as they do the independency of a single congregation. But till the churches become all of one mind in the Lord, and civil rulers become her nursing fathers, in their several independent kingdoms and governments, it would seem, till these good days come, the churches are to manage their own affairs independently upon each other: not that this

independency proceeds either from Scripture or the nature of the church, but from restraint and misunderstandings. See the last Title of this Book.

2. Pastors, bishops, and ministers, are they who are appointed to particular congregations: in respect whereof, sometimes they are called pastors, because they feed their congregations; sometimes bishops, because they watch over their flocks: sometimes ministers, because of their service; sometimes also presbyters or seniors, for the gravity of manners which they ought, and are supposed to have. *Vide* Polity of the Kirk, cap. 4. By the act of Assembly, Dec. 17, 18, 1633, art. 19. seeing the office of diocesan or lordly bishop is removed and abjured by this kirk, it is thought fit that all titles of dignity, savouring more of Popery than of Christian liberty, as chapters with their elections and consecrations, abbots, priors, deans, arch-deacons, preaching-deacons, chanters, sub-chanters, and others, having the like title, be no more used hereafter, under pain of church censure.

3. When the presbytery are well informed that a parish, for the most part, is unanimous to elect a fit person to be their pastor; then they are to appoint one of their number to preach on a Lord's day in the vacant congregation, and, after forenoon's sermon, to intimate, that elders, heritors, magistrates, and town council (when that vacancy happens in a burgh-royal,) and heads of families, do meet at the church on such a week-day (being always ten free days after the intimation,) in order to the electing of a fit person to supply their vacancy. Which order seemeth most agreeable to that apostolical practice, Acts vi. 3. "Wherefore, brethren, look ye out among you, seven men of honest report, full of the Holy Ghost, and wisdom, whom we may appoint over this business." And the presbytery, for ordinary, waits till the electors apply to them for that intimation; which application will stop and interrupt the *Jus Devolutum* (of which hereafter,) although it be made by a few electors, because their meeting to apply hath no con- vener.

4. By the Act of Assembly, August 4th, 1649, the kirk session is to meet and proceed to the election; and it doth most properly belong to them, as the representatives of that congregation, to look out for a fit person to be their pastor. But seeing the heritors (especially such as reside in the parish) and magistrates, with their town council, in burghs, are the most lasting, as well as the most considerable heads of families, on whose satisfaction and assistance the comfortable living of ministers

may much depend, the 33d act, sess. 2. of K. William & Q. Mary's Parliament hath joined them (being Protestants) with the elders, in subscribing of calls to ministers. It is to be minded, that both session and town council do subscribe personally as the heritors do. By the above mentioned act of Assembly, no person, under the censure of the kirk, is to be admitted to vote in the election of a minister. By the 6th act of the 4th sess. of K. William and Q. Mary's Parliament, all persons whosoever, giving voice in calling of ministers, are, at their meeting appointed for that effect, to swear the oath of allegiance, and subscribe the same, with the assurance.

5. By that same last mentioned act of Parliament, it is enacted, that if application be not made by the elders and heritors of the parish, to the presbytery, for the call and choice of a minister, within the space of six months after the vacancy, that then the presbytery may proceed to plant a minister *tanquam jure devoluto*. *Vide Sect. 3 sub finem*. And that forecited act of Assembly 1649, appoints, where the congregation is disaffected or malignant, the presbytery to provide them with a minister. Where a parish, or its greater part, is remiss or erroneous, and therefore will not, or delays to call a minister, the presbytery, in that case, by their power from Christ, may give a mission or call to a particular person, and ordain him to labour in the work of the ministry among that people; by virtue whereof, he hath right to enjoy both office and benefice. By the 18th canon *Concilii Antiocheni*, it is determined, *Si quis ordinatus non ierit in parochiam ad quam est ordinatus, non sua quidem culpa, sed propter populi recusationem, vel aliquam aliam causam quæ a se non oritur is sit et honoris et muneris particeps*.

6. When the day is come on which the electors were appointed to meet, by the above-mentioned order of intimation, the minister, whom the presbytery ordered to moderate at the election, having ended sermon, and dismissed the congregation, except these concerned, is to open the meeting of electors with prayer; and thereafter they proceed to vote the person to be their minister, as they are called upon by the session-clerk, who is also clerk to that meeting; which vote being taken and carefully marked, the moderator is to pronounce the mind of the meeting, viz. that a call be given to the person named, which the clerk is to have ready drawn up to be read and signed by them in presence of the moderator. The meeting of electors having been convened upon the presby-



tery's intimation, if either heritors, elders or town council, be wanting or absent, their power accresceth to these present, they having all had the lawful advertisement given them, and none of these distinct bodies has a negative upon another.

7. We the heritors, elders, and magistrates of the town-council of \_\_\_\_\_ being destitute of a fixed pastor, and being most assured by good information, and our own experience, of the ministerial abilities, piety, literature and prudence, as also of the suitableness to our capacities of the gifts of you Mr A. B. preacher of the Gospel, or minister at C. have agreed, with the advice and consent of the parishioners foresaid, and concurrence of the reverend presbytery of D. to invite, call and intreat. Likeas, we, by these presents, do heartily invite, call and intreat you, to undertake the office of a pastor among us, and the charge of our souls. And further, upon your accepting of this our call, promise you all dutiful respect, encouragement and obedience in the Lord. In witness whereof, &c.

8. Thereafter the moderator is to attest, that, conform to the presbytery's appointment, he did moderate at the meeting of electors, the plurality, or all whereof present made choice of Mr A. B. to be their pastor at such time and place. Which attestation he is to sign upon the call, See Sect. 33.—In case there be a parity among the electors votes, (that is, when they split or divide in their calling of two persons,) then the moderator must either be allowed the casting vote, or else application must be renewed to the presbytery to convene the electors a second time.

9. The right of patronage, according to Streinius's *Summa Juris Canonici*, is a power to present a fit person to a vacant church benefice: which right is acquired several ways: As, 1. When one gifts ground to build a church upon. 2. If with consent of the Bishop one build a church. 3. If one bestows upon a church, or mortifies to these serving the cure thereat, some considerable maintenance: These three ways are contained in that known verse, *Patronum faciunt, Dos Edificatio, Fundus*. The 4th way is, An immemorial custom of presenting. 5. By a privilege and gift thereto derived from the Pope.

10. The right of patronages with us in times of the late Prelacy became so twisted with other secular interests, that it was expressly avowed and pleaded for as a part of a man's private patrimony, the rights whereof he had settled and confirmed to him and his heirs, as these of his other estate, by

charters under the seals, and might lawfully sell and dispose of it, and from which he could not be excluded without injustice, These rights were then transmitted according to the common degrees and rules of blood.

11. This church maintains, that the patron's pretended privilege of a negative interest in the call and maintenance of ministers, is a sinful and wrongous usurpation, without warrant from the word of God, destructive of true liberties and interest of the church, and most scandalously offensive to all ranks of Christians therein. This is gathered from their writings and sermons, and act of Assembly, Aug. 4. 1649.

12. The minister who moderated the call, and these commissioned to prosecute the same, shall next presbytery day present the call to them. If they find no ground to demur upon granting their concurrence, then they are to grant the same, which the clerk is to signify upon the call. But if they find grounds to delay or refuse their approbation, in that case these are to be particularly condescended upon in their records: Thus the presbytery is vindicated from arbitrary procedure, and parties concerned have access to make answer for themselves.

13. If the call be a probationer within the Presbytery's bounds, then the presbytery is to put him upon trials, in order to ordination. But if he be under the inspection of another presbytery, then the presbytery to whom the call was first presented, and with which they have concurred, is to write, or send one of their number, together with the parish commissioners, and desire that presbytery where the probationer resides, to concur with them in offering the call to him, and injoining him to repair to the bounds to which he is called, and there submit to the ordinary trials, in order to ordination. How the call should be prosecuted to a fixed minister, see in the following Title.

14. It is to be remembered, that no probationer or minister, is to receive any call to a vacant congregation, but from the hands of the presbytery to which they belong: For, it is by their determination that the calling and entry of a minister is to be ordered and concluded. K. William and Q. Mary's Parl. sess. 2. cap. 23.

15. Ordination is the solemn act of the presbytery, setting apart a person to some publick church-office: For this see the Directory. It is agreeable to the word of God, and very expedient that such as are to be ordained ministers be designed to some particular church, or other ministerial charge. See

the Directory and Heads of the Polity of the Kirk : As also the 10th act, cap. 1st of the French Church Discipline : wherein they agree, that ministers shall not be ordained, without assigning them a particular flock.

16. By the same article, ministers must be fit for the flocks which shall be assigned unto them. And by the act of Assembly 1596, ratified Dec. 1638, it is determined, that because men may be fit for some places, who are not meet for others ; the principal places are to be provided with men of most worthy gifts, and none are to accept of a greater charge than they are able to discharge. Indeed, when a minister is endowed with prudence, and hath love and respect from his people, a greater charge will be easier to him than to another.

17. On a probationer's accepting of the call of a parish, which is understood to be done when he submits himself to the presbytery to undergo his trials in order to ordination, he is by them to be tried, as when he was licensed (for which see that Title) except the homilies and previous catechetick trials. When the presbytery is satisfied of his trials, they send one of their number to preach in that congregation, and after forenoon's sermon, to intimate to them, that the probationer whom they have called to be their minister, his edict was now to be served. Which edict, after reading by him or the precenter, is to be affixed by the bedal upon the most patent church-door : The tenor whereof is as follows.

18. This presbytery having received a call from the parish of \_\_\_\_\_ to Mr A. B. preacher of the gospel, to be their minister, and finding the same orderly proceeded, and the said Mr A. B. having undergone all the parts of his trial, in order to his ordination ; and the presbytery upon the whole judging him qualified to be a minister of the gospel, and fit to be pastor of this congregation, have resolved to proceed, unless something occur which may justly impede the same : And therefore do hereby give notice to all persons, especially the members of this congregation, that if any of them have any thing to object, why the said Mr A. B. should not be admitted pastor here, they may repair to the presbytery, which is to meet at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ with certification, that if no person object any thing that day, the presbytery will proceed without further delay.

19. The presbytery meeting, as it was appointed by the preceding, for receiving the execution of the edict, which ought to be ten free days after serving of the same, the minister who was appointed to preach at serving of the edict, is to

give an account of his diligence, and return the edict indorsed by himself or the precenter and bedal. Then the presbytery is to order their officer, three several times, at the most patent door of the church, to give notice, that if there be any there who has any thing to object against the person called his being their minister, they may come and do it to the presbytery ; with certification, as in the edict.

20. If there be no material impediment found, the presbytery is to name a convenient day within less than ten days, if it can be, for their meeting to ordain the candidate at the church of the congregation to which he is to belong. The day appointed for his ordination, is to be intimated from the pulpit on the Lord's day preceding, inviting all to be present, and telling them that they are to set apart that day as a fast to be by them observed with more than ordinary supplication, for the assistance and blessing of God upon the ordinance of Christ, and labours of his servant. But the ordination day is more proper for thanksgiving than fasting, and experience may confirm us herein : for we find, that on the account of some things convenient to be done that day, another before were fitter to be observed for the fast.

21. Our church doth condemn any doctrine that tends to support the people's power of ordaining their ministers : For by the 5th act of Assembly 1698, upon information that a divine of the church of England had in his sermon charged them as corruptors of the word of God, who, to favour popular ordinations, had caused that passage of Scripture, Acts vi. 3. " Whom *we* may appoint over this business," to be printed, " Whom *ye* may appoint," &c they did unanimously disclaim the above-mentioned error of the press, and did declare, they did not own any other reading of that text to be according to the original, but " Whom *we* may appoint," &c.

22. The ordination day being come, conform to the presbytery's appointment, one of their number preacheth ; the subject of whose sermon should be concerning the qualifications of ministers, and the reciprocal duties betwixt them and their people. The sermon, prayer, and praises after sermon, being ended, the minister from the pulpit is to shew the occasion of that day's meeting, and all the steps of the presbytery's procedure hitherto with respect to that affair.

23. Then the minister calls on the intrant, who, in face and audience of the congregation, is to answer to these following questions : 1. If he doth believe the Scriptures of the Old and New Testaments, and the truths therein contained, to be the

word of God? 2. If he doth own, and will adhere unto the Confession of Faith, and Catechisms of this church, and doctrine therein contained, as being founded on, and consonant to the Holy Scriptures? 3. If he will be faithful and zealous in maintaining all the truths of the Gospel, the unity of the church, and peace thereof, against all error and schism whatsoever, notwithstanding of what trouble or persecution may happen? 4. If he do likewise own and will adhere to the worship, discipline and government of this church, as being founded on, and consonant to the Holy Scriptures? 5. If he hath been led in his designing the work of the ministry, by a single and sincere love to God, and aim at His glory in the gospel of His Son, and not by filthy lucre, and the motives of worldly gain, as the great inducement moving him to the ministerial work? 6. If he hereby engage to be diligent and assiduous in praying, reading, meditating, preaching, administering the sacraments, catechizing, and exercising of discipline, and in performing all other ministerial duties towards the people committed to his charge? 7. If he resolves to own his ordination to the holy function of the ministry, and to continue in duty, notwithstanding of any trouble that may arise in the church hereafter? *Vide Quæ.* 3. 8. If he will humbly and willingly submit himself unto the admonitions of his brethren, and discipline of this church? Lastly, If he will take care that he himself and his family shall walk unblameably, be examples to the flock, and adorn the profession of the Gospel by their conversation?

24. In the most conspicuous place of the church, and near to the pulpit, a table and seats being placed, where the brethren of the presbytery, the heritors and elders of the congregation, with the magistrates and council, when in burghs royal, are to sit, together with the intrant, so that all the ministers may conveniently give him imposition of hands, and the others may take him by the hand, when thereunto called: the minister is to come from the pulpit to the foresaid place, where the intrant kneeling, (for the more decent and convenient laying on of hands) and the brethren standing, he, as their mouth, in their Master's name and authority, doth in and by prayer set the candidate apart (not only the minister who prays, but all the brethren that conveniently can, laying their hands upon his head) to the office of the ministry, invoking God for His blessing to this effect.

25. Thankfully acknowledging the great mercy of God in sending Jesus Christ for the redemption of his people, and for

his ascension to the right hand of God the Father, and thence pouring out his Spirit, and giving gifts to men, apostles, evangelists, prophets, pastors and teachers, for the gathering and building up of his church, and for fitting and inclining this man to this great work, and to intreat him to fit him with his Holy Spirit, to give him, who in his name is set apart to his holy service, to fulfil the work of the ministry in all things, that he may both save himself and the people committed to his charge.

26. The prayer being ended, the minister who moderates in the action, and thereafter all the ministers of the presbytery, takes the person ordained by the right hand, saying unto him, We give unto you the right hand of fellowship, to take part of the ministry with us. Then the heritors, elders, and magistrates, when in burghs, should salute him as their minister, in taking him by the right hand, as a testimony of their acceptance of him. Then the minister returning to the pulpit, after having had a short and pertinent exhortation, both to the minister and people, he is by solemn prayer to commend both pastor and flock to God's grace. Then he is to sing a part of a psalm, such as 132, from verse 13, and dismiss the congregation, with pronouncing the blessing.

27. The whilk day the presbytery of \_\_\_\_\_ met at the kirk of \_\_\_\_\_ considering that there had been a call presented upon the \_\_\_\_\_ day of \_\_\_\_\_ unto them, from the heritors, elders, and parishioners of the said parish of \_\_\_\_\_ to \_\_\_\_\_ preacher of the Gospel, to be their minister. To which call the said presbytery of \_\_\_\_\_ their concurrence was sought by the said parish, within the bounds of which presbytery the said parish lies. And with which call the said presbytery did concur, as their act thereanent, dated, &c. bears: Likeas, conform to the acts and constitutions of this church, observed in the like cases, and at the desire of the said parish, the said presbytery did put the said \_\_\_\_\_ then only a probationer, to all the parts of his trial for the ministry, as is usual, wherein he was approven to the satisfaction of the said presbytery. After which, the presbytery of \_\_\_\_\_ did cause serve his edict at the said church of \_\_\_\_\_ in the due and orderly form, on a Sabbath-day, being the \_\_\_\_\_ day of \_\_\_\_\_ whereby it was publicly intimate to the said congregation, that in case any person had any thing to object against the said Mr \_\_\_\_\_ why he should not be ordained and admitted minister to the said charge of \_\_\_\_\_ they might apply themselves to the said presbytery of \_\_\_\_\_ which was

to sit at the day of where they should be fully heard ; with certification as effeirs. And accordingly, the brethren of the presbytery met at the day aforesaid, and the edict being returned indorsed, and all parties concerned in the said congregation being lawfully called, and none comparing to object against the said ordination and admission, therefore the said presbytery did determine to meet at the kirk of upon the day of in order to the ordination and admission of the said Mr to the said parish, and appointed Mr minister of the gospel at within their bounds. to preach at the said admission and ordination. Which being accordingly performed, the brethren met presbyterially, taking the whole matter to consideration, as said is, did then and there, in due order, and all requisite formalities, solemnly ordain, admit, and set apart, by imposition of hands and prayer, the said Mr in face of the whole congregation there present, to the sacred order of the ministry, in the said congregation and parish ; and afterwards was received to ministerial communion by the brethren of the ministry, and by the heritors and elders as their minister. This is extracted, &c.

28. While the church doth enjoy peace, and is at full liberty, it is very reasonable that the above comely order should be observed : but in troublesome times, and in cases of great necessity, ministers must be ordained without particular relation to a parochial charge, otherwise there shall be no ordination in times of persecution. By act 4. chap. 1. of the French Church Discipline, it is declared, that in such extraordinary cases, a minister of the Gospel may be ordained by three ministers : But in times of peace, by no fewer than seven ; and in case the colloquy consist of fewer, it shall call in some of the neighbouring ministers to accomplish that number.

29. You will find the old manner of electing and ordaining of ministers at the beginning of our Reformation, in Knox's Forms, prefixed to the old Psalms, that it was performed without imposition of hands, and without a nursery of expectants ; which notwithstanding was an ordination both valid and lawful, especially in that infant state of this reformed church.

30. By the 2d and 3d articles, chap. 1. of the French Church Discipline, the bishops, curates, priests, and friars, among the Popish clergy, turning Protestants were to be re-ordained by imposition of hands. And in the sixth session of Assembly 1690; the moderator is allowed and authorised to

declare, in their name, that they would depose no incumbents simply for their judgement about the government of the church, nor urge re-ordination upon them.

31. None are allowed to enter the ministry under the age of twenty-five years, except such as the synod or assembly judge fit for the same: See Assem. 1638, 1647, and 1704, session 10. Other churches have likewise very much regarded the age of intrants to the ministry; for by the 14 *Canon Concilli Sexti in Trullo*, it is said, *Sanctorum Divinorumque patrum nostrorum Canon in his quoque valeat, ut Presbyter ante trigesimum annum non ordinetur, etiamsi sit homo valde dignus*; which canon agrees with the 11th *Concil. Neocæsar.* This church hath likewise a special regard to the literature of intrants (of which more afterwards,) and it is generally esteemed an essential accomplishment, that they should have the Latin tongue: For you will see in the supplement to Calderwood's History, that in the Assembly 1575, it was ordained, that none should be admitted ministers except such as can interpret and speak congruous Latin, unless the General Assembly, for their singular gifts and graces, found cause to dispense therewith. Accordingly they have, both of old and of late, dispensed therewith: particularly the Assembly 1708, appointed the presbytery of Sky, after trial of his other qualifications, to ordain one to be minister at St. Kilda, who wanted the Latin tongue.

32. By the 9th Act of Assembly 1699, ministers and probationers having the Irish language, are not to be settled in the low-country, till the highland places be first provided: And by the 16th session of the same Assembly, presbyteries are to be censured who settle any probationer in the south, who was born on the north side of Tay (except it be in the case of a call given to such probationers by the city of Edinburgh) till they have been twelve months in the north, without receiving a call there; in which case they are free to come south, and accept of a call. And any north-country probationer who shall be otherwise settled, is *ipso facto* transportable. And no doubt the same certification may be extended against ministers and probationers, having the Irish language, that are settled in lowland congregations, contrary to the foresaid act, conform to the 11th act of Assembly 1708.

33. By the 16th act of Assembly 1697, for the more expeditious planting of the north, the agent of the kirk, or any person deputed by him, is authorised to prosecute calls from the north side of Tay, and other presbyteries there mentioned,



to any minister belonging to any parish on the south side of Tay. But as for parishes in the south of Scotland, they prosecute calls thus : After the call hath been signed and attested, as is Sect. 8, the moderator is to propose to the meeting, that they appoint some of their number, not only to present their call to the presbytery, for their approbation and concurrence, but to prosecute the same till it be brought to an issue. Which commission is to be signed by the moderator and session-clerk, in respect that all the deeds of that meeting are recorded in the session-books.

34. By the 13th act of Assembly 1697, upon a letter from the Commander in Chief of His Majesty's Forces, it is recommended to the respective kirk-sessions where the forces are quartered, to provide them with convenient seats for hearing, and to inspect them as they do other parishioners. And the commission of the General Assembly, upon application from the chief commanders, is to settle ministers in regiments belonging to this kingdom : But when the commission is not instructed to receive such applications, then, no doubt, they are to be made to the presbyteries. Thus we see that ministers do not receive their warrant to take oversight of a regiment, as colonels and other officers do their commissions from the Sovereign.

35. By the 13th act of Assembly 1708, it is transmitted as an overture to presbyteries, that when the sufficiency of intrants to the holy ministry is contested in the presbytery that ordains them, that in this case the presbytery shall refer the whole affair to the respective synods, and that the synod shall appoint some of their number to examine *coram* such intrants, and give directions to the presbyteries in such cases.

## TITLE II.

### *Of Transportation and Admission of Ministers.*

1. Transportation or translation, is an authoritative loosing of a minister's relation to one charge, and a making up of that same relation betwixt him and another, done for the greater good of the church. This act hath no resemblance to the dissolving of the relation itself betwixt a minister and the church, as in the censure of deposition : But it only resembles a master's taking one from labouring in such a part of his vineyard, to continue the same work in another part thereof.

2. No minister is to receive or entertain a call from another

congregation, till it come to him by his own presbytery. And any man transporting himself to another congregation, deserves both to be loosed from his own charge, and debarred from entering into the other: The canonists upon this title do thus determine, *Qui enim sua proprii autoritate ad aliam se transfert eclesiam, priore relicta, et suam amittit et ab aliena repellitur. Vide Petri Biarnoy Examen Juridicum.*

3. The presbytery having heard, by word or petition, these commissioned from the vacant congregation to prosecute the call, and after sustaining their commissions, and finding the call, as to what appeareth at present, to be orderly, and the reasons thereof not without some ground and weight, they are thereafter, at the same diet, to deliver their call, by their moderator, to the minister desired to be transported, with the reasons thereof, and to summon him, *apud acta*, to appear before the presbytery, the time for compearance being at least fifteen free days thereafter.

4. If the minister called be absent from the presbytery, then the call, with the reasons thereof, or rather a double of both, attested under the clerk's hand, are to be delivered him by to the presbytery officer, either personally, or at his dwelling-house, together with a citation for him and his parish to appear *ut supra*.

5. A. B. Moderator, &c. Forasmuch as, the heritors, elders, &c. of the parish of \_\_\_\_\_ have applied to us for our warrant and precept to cite Mr C. D. minister at \_\_\_\_\_ and the parishioners thereof, to hear and see the said Mr C. D. transported in manner, and to the effect under-written, conform to a call given him by the said parish. Herefore, we require you, that upon sight hereof, ye pass, and lawfully summon the said Mr C. D. personally, or at his dwelling-place: And siclike, all and sundry the parishioners of the said parish of \_\_\_\_\_ by open reading hereof, and affixing a just copy of the same at and upon the parish kirk door, upon a Sabbath day before noon, immediately after sermon and pronouncing the blessing, all upon fifteen free days warning, to compear before the said presbytery, within the kirk of \_\_\_\_\_ upon the \_\_\_\_\_ day of \_\_\_\_\_ next to come, in the hour of \_\_\_\_\_ cause, with continuation of \_\_\_\_\_ days, to hear and see the said Mr C. D. transported, by sentence of the said presbytery, from the said parish of \_\_\_\_\_ to the said parish of \_\_\_\_\_ to serve in the work of the ministry thereat; or else to alledge a reasonable cause to the contrary. With certification to them if they fail, they shall be holden as consenting

to the said transportation : And the said presbytery will proceed to do therein according as they shall find just. And this our precept you are to return duly execute and indorsed. Given at \_\_\_\_\_ by A. B. *Prbrii. Cts.*

6. If the presbytery have ground to fear that their officer may meet with molestation or opposition, in executing of their summons, the General Assembly, for preventing of deforcement and profanation of the Sabbath, by their 7th act, 1704, ordains the minister himself, being cited *apud acta* by the presbytery, or, if absent, by the presbytery's letter, to be present at the day appointed for hearing the cause ; whereof the minister is appointed to give advertisement from the pulpit, to his elders, heritors, &c. In short, to all that were concerned in calling him, they may be present at the presbytery, on such a day. For which cause the minister is appointed to communicate unto them the call, and the reasons thereof, transmitted to him. But this he ought also to communicate in all ordinary citations, if he intends the parish should defend their right and possession. As for this extraordinary way for citing a parish, there was more need for it at the beginning of our happy Revolution, when there were few ministers and expectants, and many competing vacancies. But now when the churches are generally planted, and seeing there is such a plentiful nursery of hopeful probationers for supplying the few remaining vacancies, there is rather ground to fear that there be competing different calls from one parish, than of calls from distinct parishes to one man. But if it should happen that neither minister nor parish compear, then the presbytery is to grant certification against them, by holding them as consenting to the desired transportation.

7. By the 6th act of Assembly 1694, it is recommended to vacant parishes, that they do not attempt a transportation, till they first seriously essay and follow other means of providing themselves : Which is indeed the speedy way to increase the number of labourers in the Lord's vineyard, and to continue others at the place appointed for their work.

8. By the same act of Assembly, all debates in processes of transportation, must be managed with that meekness and brotherly kindness, as becometh parts and members of the same body of Christ, and that they represent their reasons and answers with perspicuity and brevity.

9. And to prevent contentious appeals in such matters, it is ordained by that act, that if both the competing parishes be within the same presbytery, in that case the presbytery's

decision shall be obeyed; or if the parishes be in different presbyteries, and both presbyteries in the same synod, in that case the decision of the synod shall take effect. But with certification that the respective judicatories appealed from, shall be censured, if they be found to have malversed; and on the other hand, if any be found unnecessarily to pursue appeals and complaints, they shall be severely censured therefor.

10. By the 5th act of Assembly 1702, the parish craving transportation is to satisfy the judicature if there be a legal stipend, and a decret therefor. It were to be wished that the church were truly and better informed of the quantity and circumstances of every benefice within the nation, that so they might be directed to apply accordingly: and for that end, let presbyteries be appointed to give in an exact account of these within their bounds, that the same may be insert and registrate in the books of the General Assembly, conform to the act August 31, 1647.

11. Actual ministers, when transported, are not to be tried again, as was done at their entry to the ministry. But only the presbytery, in which the calling parish lies, shall judge of his gifts, from what they have heard of him in the exercise thereof, whether they be fit and answerable for the condition and disposition of that congregation. There are abilities requisite to make one a fit minister for some considerable *parishes*, which are not so necessary to one in a small private *parish*. Eminent congregations are such, where are universities, towns and burghs, places of noblemen's residence, or frequency of Papists. *Vide* Assem. 2d Aug. 1642, interpreting the act 1596, concerning the trial of ministers, ratified December 17, 1638, and § 16. Tit. 1.

12. As there useth to be solemn prayer at the fixing of a ministerial relation to a certain charge, so when that is changed and carried into another, it is very fit, as is used, that light and direction should be sought in such a weighty and concerning matter to the church, from the glorions God and blessed Head thereof, and that immediately before the judicature enter upon the process.

13. The which day, anent the summons touching and anent the citations given to the said Mr A. B. and his said parishioners, to have compared before the said presbytery, at certain days now by-past, with continuation of days. The said summons, and all parties having interest, being called in presence of the said presbytery; and last of all,

upon the day and date of thir presents the said pursuers compeared by \_\_\_\_\_ their commissioner; and the said Mr A. B. and his parish of \_\_\_\_\_ being lawfully summoned, and they compearing; the said presbytery having heard and considered the call given to the said Mr A. B. by the said parish of \_\_\_\_\_ and the reasons produced by the pursuers for inforcing the said transportation; and also having maturely considered the good and advantage of the church in the said transportation and being well and ripely advised in the hail premises; the said presbytery (after calling upon God for light and direction) by their vote, have transported, and hereby transports the said Mr A. B. from the said parish of \_\_\_\_\_ to the said parish of \_\_\_\_\_ to serve in the work of the ministry, as their lawful pastor thereat, and appoint Mr C. D. minister of \_\_\_\_\_ to declare the said kirks of \_\_\_\_\_ vacant upon Sabbath the \_\_\_\_\_ day of \_\_\_\_\_ conform to the acts, practice, and constitutions of this church used in the like cases.

14. If the congregation to which the minister is called doth lie in the bounds of another presbytery, then the presbytery to which he belongs does only transport him, declares his kirk vacant, and appoints him to wait for, and obey the orders of the presbytery where the charge lies to which he is transported, as to the time of his admission thereto. But if both parishes lie within the bounds of the judicature which transports, then they appoint the time of his admission also.

15. If the minister called had not any relation to a particular charge in the church, then the presbytery hath nothing to do but admit him after the former steps of call and edict, &c.

16. When a minister, formerly ordained, comes to be admitted minister in such a congregation, the same is performed by the presbytery in face of the congregation, with the same solemnities of an ordination: Only there is no re-imposition of hands, nor any thing that is peculiar or essential to ordination. And the only questions needful are these: 1. If he does adhere unto, and promise, in the Lord's strength, to perform his ordination engagements? 2. If he hath had any indirect hand in his own transportation or admission to this parish? 3. If he doth now accept of the charge of this parish, and promise, in the Lord's assistance, to discharge all the parts of the ministerial function among them faithfully?

17. The presbytery of \_\_\_\_\_ being met at the parish kirk of \_\_\_\_\_ conform to an appointment made by the said pres-

bytery, dated                    to the effect under-written ; taking to consideration, that the present magistrates, town council, heritors, and elders of the said burgh and parish of                    had given a call to Mr A. B. minister of the Gospel, inviting him to be their minister. And sicklike, that the said call had been orderly presented to the said presbytery, and by them sustained ; and also that the said call had been accepted by the said Mr A. B. and that thereupon the said presbytery had appointed the said Mr A. B. his edict to be served upon Sabbath the                    day of                    and also appointed a meeting of the said presbytery for his admission, to be held this present day and place. The said presbytery being now met conform to the said appointment, and having seen and considered the said edict duly and orderly served and indorsed, and returned conform to the practice of this church, did cause thrice publickly call all having or pretending to have interest, to compear and propone their objections, if they any had, against the said Mr A. B. his life, doctrine, or qualifications, or against the foresaid call, and the procedure thereon above-mentioned, why he should not be admitted lawful minister of the said burgh and parish : but none compeared to oject there-against. Likeas thereupon after sermon preached, conform to appointment of the said presbytery by Mr C. D. minister at                    the said presbytery, did in presence of the whole congregation there assembled for the time, admit, receive and appoint the said Mr A. B. to be minister of the foresaid burgh and parish, according to the order and practice of this church. And sicklike, the magistrates, town council, heritors and elders of the said burgh and parish, did take the said Mr A. B. by the hand, in testimony of their receiving him to be their minister. Extracted forth of the records of the said presbytery, by                    &c.

18. Acts of ordination and admission by the presbytery, are in place of presentation, collation, and institution, and serve for them all, as a sufficient and legal title to the benefice.

19. Some things there are which may debar a man's entering into the ministry, and may be reason enough for the church to shut the door upon him, such as some mistakes and escapes offensive in the life, that may proceed from rashness, weakness, ignorance, or want of prudence : yet when once he is admitted, and entered, the like escapes will not be found sufficient to depose and thrust him out ; for *multa impediunt matrimonium contrahendum, quæ non dirimunt contractum.*

## TITLE III.

*Of Acts of Transportability, of Demissions, and Missions, and Colleague Ministers.*

1. When a minister labours under insupportable grievances in a parish, whereby his ministry is rendered unedifying to the people, and uncomfortable to himself; in these circumstances (all other means having been essayed and proved ineffectual for redressing his grievances) the pastor doth apply to the presbytery for an act of transportability. Whereupon they appoint one of their number to preach at that kirk, and after forenoon's sermon, to advertise the parish, being the defenders, to appear before the presbytery, on such a day, and there hear and see their minister obtain that act in his favours, or otherwise to propone reasons in the contrary. After hearing of both parties, their brother's complaint being found relevant and verified, an act of transportability is granted.

2. By which act the presbytery looseth their brother's relation to that parish as fixed minister thereof, and declares that through their direction and inspection, he is capable to receive a call to any other charge, without their being called as having any interest; yet, in the mean time, till such an occasion of removal be offered, they do appoint him to exerce his ministry in that parish; whereby his right to intromit with the benefice continueth as formerly, the act of transportability being occasioned through the people's fault. But this act will be but rarely sought in a well-planted church; and, without granting it, the presbytery may use innocent and prudent methods for obtaining a call to their grieved brother from some vacant parish, which will as effectually answer the end as such an act can do. Upon the whole, this practice hath been but rare, and its expediency, to say no more of it, is disputed by many.

3. It is in the church's power to accept of demissions or not, as they find the grounds of them to be. They use to run in these terms. I Mr A. B. minister at C. for such causes demit my ministry at the said parish of C. purely and simply into the hands of the presbytery of D. declaring that for my part, the said parish shall be held vacant, and that it shall be free to the parish and presbytery, after due intimation hereof, by warrant of the presbytery, to call and plant another minister therein, and consents that this be recorded

in the presbytery books, *ad futurum rei memoriam*. In witness whereof I have subscribed thir presents at &c.

4. Which demissions being received by the presbytery, they are thereupon to appoint one of their number to preach at that kirk, and after forenoon sermon to make intimation of the acceptation of the demission, and the presbytery's order thereon, to declare the kirk vacant. The execution whereof being reported to the presbytery, and recorded by them, they are to proceed and plant that parish, as they do other vacant congregations.

5. When the vacancies are many, and the ministers in some part of the church so few in number, that it exceeds the power of classical or provincial assemblies, in whose bounds they lie, to supply them; then the General Assembly who is concerned in these bounds, as parts of the national church, doth appoint ministers by way of mission to supply these vacancies: for this, see the acts of several late Assemblies for supplying the north, and the instructions given to their commissions concerning that affair. As also, by appointment of this church, ministers have been transported, ordained, and sent in mission to the Scots African and Indian Company's colony in Caledonia in America.

6. Upon petition from the most part of the Scottish nation in the north of Ireland, in their own name, and in name of the rest of the Protestants there, to the General Assembly in the years 1642, 1643, and 1644, representing the extreme necessity they had of more ministers, and how this church had formerly supplied other churches in Germany and France: The Assembly being willing to sympathise with every member of Christ's body, although never so remote, much more with that plantation which was a branch of their own church, they did for some years send ministers in mission to supply there, as may be seen by the printed acts in the years above-named. But in Assembly 1690, Sess. 8, they declined to send any ministers to Northumberland, upon a petition from some in that country, in respect that these people do not belong to this national church.

7. As it is the constant prayer and hope of the reformed churches, that the kingdom of Christ may and shall be enlarged by sending the gospel to the rest of the heathen; so, in testimony of the sincerity of these hopes and prayers, they must be joined with suitable endeavours for spreading the gospel among them. This church hath not that happy opportunity, and invitation of concurring Providence to forward



that work that some other churches have, through our want of foreign plantations, and by being injuriously dispossessed of what we had, as the 33<sup>th</sup> minute of the proceedings in Parliament 1701 doth complain.

8. When a parish, though not of so great extent as to require a new erection, becometh so numerous, that albeit a minister's voice may easily reach them all, the seats being conveniently placed; yet he is not able alone to discharge the other ministerial duties, with that exactness and ease which pastors of ordinary parishes may do, it is but reasonable in that case to join a yoke-fellow with him. By the act of Assembly, July 30, 1641, it is declared that old ministers and professors of divinity, shall not, by their cessation from their charge, through age and inability, be put from enjoying their old maintenance and respect. This doth likewise agree with the 48<sup>th</sup> act, chap. 1, of the French Church Discipline. And by the Book of Policy, chap. 7, when ministers through age, sickness, or other accidents, become unmeet to do their office, in that case, their honour should remain to them, their kirk should maintain them, and others ought to be provided to do their office. Thus they still enjoy double honour, viz. reverence and maintenance.

9. When a parish findeth work for two ministers, and they divide the same equally between them, nothing can be reasonably alleged against sharing of their wages from the parish accordingly; except it be said, that he who gets the first call to the greater benefice, will from that take advantage to keep possession thereof. Which practice, however it may receive protection from strict law, yet justice, which is mixed with equity and kindness, condemns it: Seeing his helper or second is to be always as fit for the same charge as he, is appointed by Assembly 1646, in the first remedy proposed against the corruptions of the ministry.

10. When he who had the greater stipend (it having been neglected at his entry, to oblige him to divide the same equally with his colleague) is now removed by death or otherwise, then the parish is not obliged to allow the surviving colleague to succeed to and uplift the first stipend, except he be content and engage to amend his predecessor's manners, which if he refuse to do, at the sight of his callers and the presbytery, then let him only enjoy the stipend to which he was called. But the most effectual way and proper season for obliging colleagues to share their benefices, is thus to be done at their calling and admission: Insert in the call, that as he is to be one

of the ministers of such a parish, so he is to have the half of the stipend : and let his ordination and admission act carry that same qualification. But colleagues of consent may prevent this.

11. By the act of Assembly, December 17, 18, anno 1638, one of the ministers without advice of his colleague, is not to appoint diets of communion nor examination, neither to hinder his colleague from catechising, (to wit, from house to house,) and using other religious exercises as oft as he pleaseth. But now the kirk-session doth direct as to these diets, for communion especially.

12. Colleagues are to apply themselves to doctrine, according to the gifts wherein they most excell, and as they shall agree betwixt themselves. See Directory for Preaching the Word.

#### TITLE IV.

##### *Of Expectants, as also Students and Bursars.*

1. The Presbytery is not only to hinder those whom they know to be unfit, from entering upon their trials ; but also they are to look out for, and stir up such, whose gifts are promising, to submit themselves unto trial, and that albeit the one were a professed student of theology, and the other were not.

2. Before any presbytery invite students to pass their trials, they are to be satisfied as to the soundness of their principles, and of their sober, grave, prudent, and pious behaviour. And it is appointed, that such persons shall produce, before the presbyteries who admit them to trials, sufficient testimonials from the ministers of the parishes where they lived, and from the legally established presbyteries in whose bounds they reside, and also from the Professors of Divinity. See the 10th act of Assembly 1694. As also, by an act of the Assembly thereafter, it is recommended to presbyteries, before any be admitted to trials, that they see their testimonials of their passing their course in philosophy, and their obtaining their degrees of Masters of Arts in some university. And by the 13th act of Assembly, 1696, probationers that apply to presbyteries are not only to bring sufficient testimonials, but also a letter of recommendation from a person known to the presbytery. And by the 5th act of Assembly 1705, testimonials from professors of theology, in favour of such as are to enter upon their trials, are not to be regarded by presbyteries, un-

less they bear their knowledge of these they recommend to trials, 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 fitness to serve the church.

3. The trials of a student, in order to his being licensed to preach the gospel, do consist in these parts: 1. The Homily, which is a discourse upon some text of Holy Scripture assigned unto him by the presbytery, and delivered before them in private. 2. The *Exegesis*, which is a discourse in Latin upon some common head of divinity appointed him by the presbytery, and delivered before them, at which time also he gives in the substance of his discourse, comprised in a short thesis or doctrinal proposition in paper, which he is to defend, at the presbytery's next meeting, against two or three ministers who are appointed to impugn his thesis. 3. The Presbyterial exercise and addition: The exercise gives the coherence of the text and context, the logical division, and explanation of the words, clearing hard and unusual phrases, if any be, with their true and proper meaning according to the original language, and other parallel places of Scripture, proposing and answering any textual questions that occur, and then a plain and short paraphrase upon the text: This is ordinarily the work of one half hour. The addition gives the doctrinal propositions or truths, which, without straining, may be deduced from the text so explained, with reasons, applications and pertinent improvement and application, as the other half hour will allow. 4. A lecture, or exposition of a large portion of Scripture, ordinarily a whole chapter. 5. A popular sermon. These three pieces of exercise, viz. Presbyterial exercise, lecture, and popular sermon, are to be in the pulpit before the people. 6. He is to be tried in his knowledge of the original languages, by interpreting a portion of the Greek New Testament *ad aperturam libri*, and reading and expounding a portion of some Psalm in Hebrew. Of his knowledge of sacred chronology, ecclesiastic history, especially of our own church, answering extemporary questions, of the meaning of hard places of Scripture, on heads of divinity, polemic or practical, on cases of conscience, on church government and discipline, and is likewise to be tried as to his piety, prudence, and former godly conversation, Act of Assembly, January 30, 1698.

4. By the 10th act of Assembly 1704, presbyteries are appointed to lay it on some of their number to examine the stu-

dents in their own presence upon the several heads of divinity, and the government of the church, and to know what reason they can give of their faith, and if they can answer to some principal objections of adversaries against it, and that previously to all other parts of their trial. From all which it appears, that from the beginning of trials to the time they are licensed to preach the gospel as probationers for the ministry, they are a full half year exercised in order thereto, allowing the ordinary meetings for presbyteries to be once a month. Which time for trials will yet be longer, if we consider the 13th act of Assembly 1708, appointing private trials concerning his sense, and experience of religion, yet previous to all these mentioned.

5. By the 3d act of Assembly 1697, the commissioners from the several presbyteries within this church, are to bring in an account to the General Assembly yearly, of all expectants or probationers for the ministry. As also, of all students who attend lessons of theology in universities, and perform the exercises enjoined them there, that their names may be read in open Assembly, and recorded in their register. Which is a mean to bind all candidates for the ministry to a circumspect walk, that the church may receive good impressions of them.

6. At the day of the which day the presbytery of taking to their consideration, that in obedience to several acts of General Assemblies made anent trials in order to preaching, they had upon the day of received sufficient testimonials in favours of Mr A. B. student in divinity, and that thereupon they had appointed some of their number to make search and inquiry into the literature and behaviour of him the said Mr A. B. Which brethren having upon the day of reported, that according to the appointment foresaid, they had privately taken trial of his knowledge in divinity, and of what sense and impression he had of religion upon his own soul, and that they had cause, from what they found in the foresaid trial, to judge him fit to be received and entered upon public trials, in order to his being licensed. Whereupon they, the said presbytery, had admitted the said Mr A. B. upon probationary trials, who having, in all the usual parts thereof, at divers times thereafter, acquitted himself to their satisfaction and approbation; therefore they did and hereby do LICENSE the said Mr A. B. to preach the gospel of Christ as a probationer for the ministry within their bounds, he having in their pre-

sence undertaken the usual engagements appointed by the acts of this church. Extracted, &c. *Nota*, These engagements are here omitted, *brevitatis causa. vide § seq.* At his removal out of the bounds of the presbytery where he was licensed, his testimonial is in this form. At the day of the which day, the presbytery of do testify and declare, that Mr A. B. preacher of the gospel, has, since his being licensed by them, preached several times both at their appointment and the desire of particular brethren within the bounds, to their satisfaction, and that his carriage, so far as they know, hath since that time, been pious, exemplary and edifying as became a preacher of the gospel, and that he hath been obsequious to all their appointments. Therefore they do by these presents recommend the said Mr A. B. accordingly to any presbytery where God in his providence shall cast his lot, for all due and suitable encouragement from them.—Extracted, &c.

7. By the 10th act of Assembly 1691, it is appointed, That when persons are first licensed to preach, they shall oblige themselves to preach only within the bounds, or by the direction of that presbytery which did license them; and they shall also, by promise and supplication, engage themselves that they shall be subject to the said presbytery, or to any other church judicature, where in Providence they shall have their abode, and that they shall follow no divisive course; which engagement is to be insert in the body of their license. *Vide lib. 3. tit. 8 § 11.*

8. By that same act it is appointed, that when they are removing from that presbytery which did licence them, they shall carry with them an extract of their license, and a testimonial of their carriage, which they are to produce to some presbytery constituted by the legal establishment, or at least to some minister therein, before they preach within that bounds; which minister is not to employ them, except in his own pulpit, till he give notice thereof to the presbytery at their next meeting. And they are then to require the same subjection and orderly carriage from them, during their abode in that bounds, to which they were engaged to the presbytery by which they were licensed.

9. And in case any probationers shall have their licenses suspended or recalled, for error in doctrine or malverse in conversation, then intimation shall be made thereof by the judicature which hath so censured them to the neighbouring judicatories, or where they shall understand the said probationers are, that so none may employ them to preach.

10. And, lastly, by the same act it is declared, That probationers are not to be esteemed, by themselves or others, to preach by virtue of any pastoral office, but only to make way for their being called into a pastoral charge.

11. It is the laudable practice of some presbyteries, to license no probationers till they acquaint their neighbouring presbyteries, that such persons are passing their trials before them. And upon a return, that they know nothing that should impede their being licensed, then they proceed.

12. Every presbytery, consisting of twelve ministers, is appointed to maintain a bursar, (that is, one out of the common purse,) and where the number is fewer than twelve, they shall be joined to another presbytery. See act of Assembly, Aug. 7, 1641.

13. Every bursar must have yearly paid him an hundred pounds Scots at least, the fund whereof ought to be the penalties exacted of delinquents, and scandalous persons, by the civil magistrate, and by him delivered to the kirk-sessions. But if that fail, then the kirk-boxes in these presbyteries are to be proportionally stinted by them, according to the number of communicants in each parish; which maintenance of an hundred pounds is to be collected by the moderator, of the which the several synods are to take account, and their books are to bear the report thereof to the General Assembly. It is also appointed, that the abode of bursars at schools of divinity exceed not four years. Vide act of Assembly, Feb. 7, 1645.

14. By the same act, bursars of theology are appointed to bring with them yearly from the universities, testimonials of their good behaviour and proficiency: and that none be chosen for bursars by presbyteries, but such as are of good report, and have past their course of philosophy, and their qualifications are to be tried likewise before they go to universities, conform to acts of Assemblies 1647, 48, and 49. And by the 5th act of Assembly 1705, it is ordained, that in no parish the minister recommend youth to be taught in Latin upon charity in any grammar-school, but such as be dexterous in reading, and can write, and such as he judges to be of virtuous inclinations, which trial is to be in presence of some elders, and no school-masters are to teach any upon charity, but upon such recommendations. Item, it is ordained that presbyteries appoint a committee of their number yearly to examine poor scholars in grammar-schools, that so none of them be suffered to proceed to colleges with an eye to bursaries, but such as are of good behaviour, and proficient in the Latin; and ministers are to recommend none to bursaries

not so qualified : and masters of colleges are to lauriate no bursars, but upon clear evidence of sufficient learning and good behaviour after strict examination.

15. For the better breeding of young men to the ministry, who are not able to maintain themselves at universities, (nor perhaps find that favour as to get bursaries,) presbyteries where such reside are appointed to direct their studies. Act June 18, Assembly 1646.

16. In order to the advancement and increase of the knowledge of God in the Highlands, by the act of Assembly 1701, it is recommended to several synods to maintain a bursar of theology, having the Irish language, out of their own purses. And by the 13th act of Assembly 1704, in respect the Lowland presbyteries besouth Tay are competently planted, and that the promoting of knowledge in the Highlands is of common concern ; therefore it is appointed that the one half of all bursaries of the presbyteries be-south Tay be bestowed on students having the Irish, at least the half thereof ; which act is to continue at least for four years, and longer, if there shall be found need : and by the 5th act of Assembly 1707, contributions, and erecting of societies for the maintenance of poor scholars, are to be encouraged by judicatures and the commissions of Assemblies.

17. By the act of Assembly Feb. 7, 1645, it is appointed that notwithstanding of any progress any may pretend to have made privately in their studies, yet in the college they shall not at first enter to any higher class than that wherein the Greek language is taught ; and being entered, they shall proceed orderly through the rest of the classes, until they finish the ordinary course of four years ; and otherwise that none be admitted to the degree of Master of Arts, unless the Faculty of Arts find him to be of extraordinary learning.

18. By that same act it is appointed, that none be allowed to enter the Greek class, but such who are found can make congruous themes in Latin, and are not to be promoted to any higher class, till it be found that they understand what was taught them in the lower. The annual examination of students at the first sitting down of colleges, looketh as if something like this were intended : but the best effects that such examinations do ordinarily now produce, may be the doing of justice upon some poor ignorant students in keeping them back from advancing to higher classes. And as for the rest who pay the masters their ordinary dues, they are only thereby excited to be at more than ordinary pains for some few days. It

is a piece of justice done to the world, that those who are to gain and live by their learning, should not, under that pretence, be suffered to impose upon men by ignorance or craft. For, what a great deal of hurt are immoral, ignorant, crafty, and idle scholars, capable to work in their generations? Let them be directed and obliged to serve their time in some honest vocation, where the want of so much knowledge cannot do so great prejudice; otherwise, it is highly reasonable they should study to have accomplishments, and a conversation suitable to the profession and character they bear in the world.

19. By that same act, none who have entered to one college should be admitted to any class in another, than that wherein he was, or should have been in the college from whence he came; nor be admitted without testimonials from the former masters, both concerning his literature and dutiful behaviour; that so these who have been rejected or removed as unworthy or ignorant by one college, may not be admitted or promoted in another. And in order to the better education of young men for the ministry, by the 22d act of Assembly 1696, it is recommended to professors of divinity that they require of such students, as they employ in any exercises, testimonials from universities where they have studied, and the places where they have lived.

20. By the act of Assembly August *ult.* 1647, it is recommended to universities to take an account of all their scholars on the Sabbath-day, of the sermons, and of their lessons on the Catechism.

## TITLE V.

### *Of School-Masters, and Instructors of Youth.*

1. By the 17th act of K. W. and Q. Mary's Parliament, it is ordained that no professors, principals, regents, masters or others, bearing office in any university, college, or school, within this kingdom, be either admitted or allowed to continue in the exercise of their said functions, but such as do acknowledge and profess, and shall subscribe the Confession of Faith, and swear the oath of allegiance (and now they must subscribe the same with the assurance. *Vide* act 6. Parl. 1693,) and withal shall be found of a pious, loyal, and peaceable conversation, and of good and sufficient literature and abilities for their respective employments, and submitting unto the government of the church now settled by law. And by the 10th act of Assembly 1700, all presbyteries are ap-



pointed to take special, particular, and exact notice of all school-masters, chaplains, governors, and pedagogues of youth within their respective bounds, and oblige them to subscribe the Confession of Faith; and in case of continued negligence, (after admonition,) error, or immorality, or not being careful to educate these under their charge in the Protestant reformed religion; the presbytery, with respect to school-masters, is to apply to the civil magistrates of burghs, and heritors in land-ward: And with respect to governors, chaplains, and pedagogues, to their masters, for removing such persons from these offices: And if this be not remedied by them, that the presbytery, with respect to school-masters, apply to the Commission of Parliament for visitation of schools and colleges: And it is appointed, that an account be given in every half year to the presbytery, by ministers, what school-masters, chaplains, governors, and pedagogues are in their respective parishes. And by the 13th act of Assembly 1706, such as have power of settling school-masters, are to prefer thereto men who have past their course at college, and have taken their degrees, before others who have not, *cæteris paribus*.

2. By the act of Assembly Dec. 17, 18, 1638, presbyteries are to see that schools in land-ward parishes be settled with able men, for the charge of teaching the youth, public reading, and presenting of the psalm, and the catechizing of the common people. Which teaching of the youth I understand to be, teaching to read, write, and know the principles of religion, according to the act of Assembly Aug. 3. 1642; and by that same act, every presbytery, seat, and burgh, is to have a grammar school.

## TITLE VI.

### *Of Doctors, and Professors of Theology.*

1. According to the fifth chapter of the Policy of the Kirk, in the General Assembly 1581, the office of the doctor or catechiser, is one of the two ordinary and perpetual functions that travel in the word. He is to open up the mind of the Spirit of God simply, without such applications as the ministers use. They are such properly who teach in schools, colleges, or universities: But to preach unto the people, to administer the sacraments, and to celebrate marriage, do not pertain to him, except he be called and ordained thereto. If

the pastor be qualified for it, he may perform all the parts of the doctor's office, that being included in the pastoral. By the 2d article, chap. 11. of the Discipline of the French Church, a doctor in the church cannot preach nor administer the sacraments, unless he be both doctor and minister. And when the General Assembly, February 10, 1645, ratifies the propositions sent to them from the Assembly of Divines at Westminster, concerning church-government, and ordination of ministers, they expressly provide, that the present ratification shall be noways prejudicial to the further discussion and examination of one of the articles or propositions, which holds forth, that the doctor or teacher hath power of the administration of sacraments, as well as the pastor.

2. Though the office of a deacon is included in the office of a ruling elder, yet it is fit that some be appointed deacons, distinct from that of the elder; so, albeit the office of a doctor be included in that of the pastor, yet it were very fit that some not in the sacred order of the ministry were ordained and set apart to teach and catechise the people, especially in large and incommodious parishes, (see § 3. of the preceding Title,) as well as in schools and colleges.

3. By the act of Assembly February 13, 1645, for encouragement to scholars for professions in schools, it is recommended to synods, to try who within their bounds most probably may be for a profession in the schools, and report their names to the General Assembly, that they may be stirred up and encouraged by them to frame their studies for such places. This cumulative power doth noways prejudice or hinder the faculty of an university (which hath power and right to elect) from doing of the same. It were to be wished, that this custom of synods, reporting to General Assemblies the names of such as are fit to be professors, were again revived, and more exactly practised; for it would prevent the transporting of ministers to be only teachers or masters in universities, which is an appointing of him to exercise the office of a doctor, and dispensing with him from preaching of the word, and administrating of the sacraments: Which dispensation, or the loosing of which tie, if it be a favour, it can never be imposed upon any pastor without his own consent: but if it be a punishment, it can be inflicted upon none without their fault. It is liker a commutation of offices than a transportation: or if he still continue to be a pastor, his pastoral talent is thereby but much hid in a napkin. By the 3d article, 2d chap. of the French church-discipline, doctors and

professor of divinity shall be elected and tried by the synods of the province where the academies are.

4. By the 5th chap. of the Policy of the Kirk of Scotland, the doctor, being an elder, is to assist the pastor in the government of the kirk. And by the act of Assembly August 4. 1643, professors of theology cannot be elected commissioners to General Assemblies, except they be ministers; so that, as doctors, they are not ruling elders, and the Assembly consists of none but pastors and elders: therefore, as doctors, they cannot be members of church judicatures for government and ruling; see §. 1. huj. tit.

5. By the act of Assembly June 18, 1646, professors of divinity are desired to present their dictates to the next General Assembly; but they declined at that time to make any act about it for the future, till further consideration.

## TITLE VII.

### *Of Ruling Elders.*

1. He is called a ruling elder, because to rule and govern the church is the chief part of his charge and employment therein; and albeit he may act as a deacon, yet his principal business is to rule well, and it belongs not to him to preach or teach.

2. If there be a total vacancy of ministers and elders in a parish, the presbytery should intimate to the heads of families, to meet with some of their number on an appointed day, and then name elders. But if the masters of families do not keep the appointment, then the presbytery are to nominate and chuse the persons to be elders. In case the vacancy be not total, then the minister and elders do chuse such as should be added to their own number from among the heads of families, and the fittest and most experienced of them may be supposed to be among the deacons; see Assembly August 1, 1642.

3. The trial is to be by the minister and eldership of the congregation; or, in case of the want of these, by the presbytery; and they are to be tried both with respect to their conversation, and also of their knowledge in the principles of religion, and their ability and prudence for government.

4. Before ordination of elders, the names of the persons nominated and tried in order thereto, are to be publicly intimate to the congregation; whereby all are required, in case of their having any objection that is relevant and true against their ordination, to represent the same to the kirk session.

5. Their ordination is to be by the minister of the congregation ; or by one from the presbytery, in the case above supposed, in presence of the congregation, upon a Lord's day after sermon is ended in the forenoon : at which time, the minister calling upon the persons chosen to be elders, they are to be interrogate concerning their orthodoxy, and to be taken solemnly engaged, to adhere to, and maintain the doctrine, worship, discipline, and government of the church, and to lay themselves furth, by their office and example, to suppress vice, cherish piety, and exerce discipline faithfully and diligently. Then the elders chosen, still standing up, the minister is next, by solemn prayer, to set them apart, *in verbis de præsenti*, After prayer the minister is to exhort both elders and people to their respective duties.

6. In case an elder change his residence, by removing into another congregation, if the session, upon a savoury report concerning him, shall think fit to add him to their number ; then, if he be content to accept, his edict is to be served, and he is thereafter admitted into the session ; his qualifications having been tried already in the congregation where he was ordained.

7. As the pastors and doctors should be diligent in teaching, and sowing the word of God, so the elders should be careful, in seeking after the fruit thereof among people's lives. They are to assist the pastor in the examination of them that come to the Lord's table, and in visiting the sick : They should cause the acts of Assemblies to be obeyed : They should be diligent in admonishing all men of their duty, according to the rules of the Evangel. And things that they cannot correct by private admonition, they should bring to the eldership. See the Heads of the Policy of the Kirk.

8. By the ecclesiastic remedies against profaneness, enacted in the Assembly August 10, 1648, it is appointed, that every elder have a certain bounds assigned him, that he may visit the same, every month at least, and to report to the session what scandals and abuses are therein, or what persons have entered without testimonials : and it were fit, that then some time were set apart for prayer : and it were also fit that elders should always keep an exact list of all examinable persons within their quarters, and thereunto put marks, to distinguish communicants from the ignorant and scandalous, and the poor and indigent from such as need not.

9. The duties of elders which are more public are these which lie upon them in the Assemblies of the church : in

which ruling elders have right to reason and vote in all matters coming before them, even as ministers have : for to General Assemblies, their commissions bear them to the same power with pastors. Howbeit, by the practice of our church, the execution of some decrees of the church doth belong to the pastors only ; such as, the imposition of hands, the pronouncing the sentences of excommunication and absolution, the receiving of penitents, the intimation of sentences and censures about ministers, and such like. In short, the elder is to speak nothing to the church from the pulpit.

10. The number of elders in every congregation is to be more or less, according to the number of people therein, and plenty of fit and qualified persons for that charge ; and when they are once lawfully called to the office, they may not leave it again, while their gifts and abilities for discharging the same do continue. Albeit in some congregations, such a number of elders may be chosen, so as one part of them may relieve another for a reasonable time, from the burden and exercise of their office, as was done among the Levites under the law. See the Book of Policy, chap. 6.

## TITLE. VIII.

### *Of Deacons.*

1. The word Deacon is sometimes largely taken for all that bear office in the ministry, and spiritual function in the church : but commonly it is taken for that ordinary and perpetual ecclesiastical office in the kirk of Christ, to whom the collection and distribution of the alms of the faithful, and ecclesiastical goods do belong. See chap. 8, of the Policy of the Kirk : Where it follows, that, seeing this office is of divine institution, it is an unwarrantable omission in some congregations, that either they put no difference betwixt elders and deacons, or else they neglect to appoint any to the office of a deacon. See tit. 6. § 2. I do not think it reasonable or very consistent, for any to be zealous against adding to the kinds of office-bearers of Christ's appointment, while they are active in or connive at the diminution of any of them. If it be said, the elder is a deacon, I answer, albeit the pastor includes the office of a doctor, elder, and deacon, yet seeing these are of divine institution, reverence is in so far due unto it as to set up these distinct offices : as nothing should be added to the divine institution, upon pretence of imagined decency or order in the invention, so nothing ought to be diminished therefrom,

upon pretence that some things in the institution are needless or superfluous.

2. As to what respects the election, trial, ordination, admission, continuance, and number of deacons, the same method may be used about them, as was done concerning elders, *mutatis mutandis*.

3. The duties of deacons may be reduced to these heads collected from Mr. Guthrie's treatise of elders and deacons, and the heads of the Policy of the kirk. 1. That they take exact notice of the poor, and that they timeously make their case known to the session, to the end their straits may be relieved, and so their breaking out into begging may be prevented. 2. They are to collect and receive that supply for the poor, which the members of that congregation, or strangers shall be inclined to offer. 3. That the money so received be faithfully delivered to the session, according to whose judgment and appointment the deacons are to distribute the church-goods. In which matters they have a decisive vote with the elders: but in other cases their opinion is only consultive, and they may be always present. 4. That they take care of orphans and idiots, and such as want knowledge and ability to dispose of, and order the things that concern their food and raiment. 5. They are to take care that what belongs to the poor be not dilapidated, or misapplied. 6. They are to acquaint the ministers and elders of the sick within their quarters, that so they may be visited, and, if need be, supplied. 7. By the 9th chapter of the Policy of the Kirk, deacons were not only to collect and distribute the ordinary alms, but all the church-goods, teinds, &c. and uplift and pay to the ministers their stipends. This were indeed a work proper for their office, an ease to the minister, and would prevent much noise and offence that is raised when charges to make payment are given, either at their own instance, or in name of their assignees or factors. 8. They may be employed to provide the elements, to carry them, and serve the communicants at the Lord's table.

## TITLE IX.

### *Of Moderators of Church-judicatures.*

1. Seeing the moderator is frequently called to exercise the power of order, as solemn public ecclesiastic prayer, at least twice every session, to wit, at its first opening, and then at its closing, authoritative exhortation, rebuke, direction, it

is convenient the moderator be always a minister : But if any affect this office, he should be opposed in his ambitious purposes. The person chosen to be a moderator should be of such abilities that he can discharge the following work, viz. He is to look on himself as the mouth of the meeting ; he is to take on him authority, yet looking on it as theirs, not his ; he is to see all the rules for decency and order, prescribed by the judicature, exactly kept and observed ; he is to acquaint the judicature, of all the affairs that lie before them, and may propose the most speedy method how to dispatch them : he is to keep the members from interrupting one another, and from speaking among themselves, or from directing their discourse to any other than to himself ; he should likewise keep members, in their speaking, close to the present business ; any thing that is spoken impertinently, he is calmly to resent it, according to its demerit, that greater heats may be prevented and diverted ; lastly, after the matter hath been fully reasoned on all hands, then he is briefly to resume the substance of what hath been spoke, and thereupon state the vote, and put the question. If the vote be equally carried, then the moderator, (who never votes but in that case) may cast it : and if he be *non liquet*, then the question may be put again at some other time. The moderator may likewise, upon any extraordinary emergency, by his circular letters, convene presbyteries and synods, before their ordinary time of meeting : So may the moderator of the last General Assembly, only they should be sure to have sufficient ground, and so cautious as to have a multitude of counsellors to warrant and support their adventure.

2. Our judicatures chuse no assessors to their moderators, only he ordinarily prevails with, or invites the most experienced to sit near him, that he may have them ready to direct and advise him ; and, in absence of the present moderator, his predecessor in that chair moderates ; and, in case of his absence, the eldest minister.

3. There is no constant moderator but in kirk-sessions, where the minister moderates *ex officio* ; and if there be colleagues, they moderate by turns. Every presbytery, before they fall about business, chuse one of their brethren to be moderator, who continues for six months, from one provincial synod to another ; but the moderators of synods and assemblies are changed at every new synod and assembly. The manner of chusing the moderators of these judicatures is thus : A list is proposed by the former moderator of two or three ;

which list is ordinarily approved, with the addition of one or two more; out of which list, the candidates having first, by turns, given their voice, and removed, the moderator is chosen by the suffrages of the ministers and elders, and set in the place of the former moderator.

4. It is the privilege of all the members of any free judicature, to propose a vote, and have it put to the question, provided it be seconded by another member, and that although both the moderator and other members should oppose the motion.

## TITLE X.

### *Of Clerks, Readers, and Precentors.*

1. Every judicature of the church is to have a clerk of their own chusing, to record their acts. They are, I think, as free courts as any councils of royal burghs, on whom the imposing a clerk is declared to have been contrary to law, by the meeting of estates 1689. At his admission, he is to give his oath *de fidei*, and continues either during pleasure or life, as they please to make it: But in case neither of these be clearly expressed in his act of admission, then it is to be understood only during pleasure, because all judicatures are still supposed to retain their liberty to dismiss servants when they will, unless a surrender or restriction of that liberty be proven.

2. Acts and deeds under clerks hands are probative writs, and the warrants thereof are presumed; yet so, as if they be recently quarrelled, the warrants must be produced. No wise clerk will give an extract till the minutes of that diet have first been read. The extracts prove what was done by the judge, or what was said or alledged by parties, but they do not prove that the things alledged were true, except in so far as the instructions thereof are expressed. See Stair's Institut. page 688.

3. Albeit clerks be very near of kin to parties, yet considering the knowledge and faithfulness, that in charity is supposed to be in church-judicatures, it may be thought that they will rather over-rule their clerk, than he them; and therefore he cannot be declined. In inferior civil courts, where frequently there is but one judge, and it is known the clerk doth commonly excel him in knowledge, in which case a declinator should be sustained, and another appointed to be clerk to that process in his place, who is not of near kin to the party.



4. At the beginning of the Reformation, when there was such a scarcity of ministers, and few of the people could either read themselves, or had ever heard the word of God publicly read in their own language; our reformers, in the year 1605, did appoint men to read the Common Prayers and Scriptures, till these churches should be furnished with ministers: but now, seeing there is such an increase of knowledge, and plenty of teachers, there is no public reading of the word, except by such as are licensed, or ordained to preach it, and can help the hearers to understand the meaning thereof.

5. Precentors, or chanters, are they who begin and order the tune of the psalm that is to be sung, and thereby direct the church's music: By the vulgar sort they are yet called readers, though improperly. They are in most congregations clerks to the kirk-sessions; see Book II. tit. 1. § 25.

6. Beddals, or beedles, are by our judicatures called officers. They are to the church what the *apparitores* were to civil courts, viz. *magistratum ministri, qui eorum jussa exequuntur*, so called, *quia præsto sunt, obsequunturque magistratibus*. At their admission they give their oath *de fidei*, because their executions bear faith. They should be persons of a blameless life, and well affected to the church establishment, who will not discover the secrets of the judicature; and they should also be such as can read and write.

## TITLE XI.

### *Of Kirk-Sessions.*

1. Albeit in a session the minister is moderator *ex officio*, as hath been said, yet he hath by right no more power thereby than the moderators of other church judicatures. See the act of the General Assembly, Dec. 17, 1638, anent voting in kirk-sessions; ministers moderating therein, are not to usurp a negative voice over the members of his session; and where there are two or more ministers in one congregation, that they have equal power in voting, that one of them hinder not the reasoning or voting of any thing, being agreeable to the acts and practice of the kirk; and, even in that case, voting and reasoning upon any subject can never be hindered, it being inconsistent with the liberty of a free court to be impeded or compelled: But the debate may perhaps furnish ground for a protestation or appeal. See Tit. 8. § 6.

2. The kirk-session consists of one or more ministers, and of the elders of the congregation, and it is most convenient

they meet weekly on a week day after sermon; for on the Sabbath, matters of civil right, such as discharging of the almoners' intrusions, securing of money, or ordering of diligence for recovering the same, ought not to be treated or concerted by any man, and far less by church guides, whose office it is to check that profanity in others. The deacons are always present, not for discipline, but for what relates to their own office. Ignorant and scandalous persons are to be put off, and kept off from kirk-sessions. See act of Assembly, Aug. 10, 1648.

3. The matters treated by them, are what concern church discipline, and the worship of God in that congregation; as, what days of the week are meetest for assembling to public worship, and what hour on the Lord's day before and after noon; when it is seasonable for parochial fasts and thanksgivings, what times are fittest for catechising and visiting of families; how often, and when the Lord's supper is to be celebrated. They are likewise to inquire into the knowledge and spiritual state of the members of the congregation, whom they are to admonish or encourage as they see cause, and to exclude from the Lord's table all who are found ignorant or scandalous.

4. In the ordering of all which matters, nothing is to be done by them, but what is according to the settled order and practice of this church; and if there be any new or difficult emergency that causeth doubting or hesitation, the matter is to be referred to the Presbytery, for their direction and authority.

5. By the 5th chap. 28th and 30th articles of the French church discipline, consistories shall not give certificates to magistrates by act or otherwise, nor shall particular members of consistories discover unto any the confessions of penitents, which voluntarily, or by admonitions given them, shall have confessed their faults unto them, except it be in the case of treason. And as for crimes which shall be disclosed to ministers by those who desire counsel and consolation, they are enjoined not to reveal them to magistrates, fearing lest blame should be drawn on the ministry, and sinners for the future should be discouraged to come to repentance, and make confession of their faults, which shall stand good in all crimes confessed, except it be treason. It should be considered, that none of the reformed churches of France had the happiness always to have those of their own religion to be their constant judges; and the reputation of the Protestant religion was not

tenderly treated, nor duly regarded, when consistorial delations against their brethren were made to Popish judges, 1 Cor. vi. 1, "Dare any of you having a matter against another, go to law before the unjust, and not before the saints," in these times, when the church's enemies have power and authority? But now, when the civil judges own the same way of God with the church, what should hinder them to inform the magistrate against delinquents, both to their and others terrors?

6. In every session there ought to be twice in the year privy censures of the members, clerk and beddal. The ministers undergoing their privy censures in the presbytery, are not to undergo them before the session. In the managing of this censure, the members are one after another to be removed, and then the rest of the members declare what they have observed concerning the conversation of him removed, and of his diligence and prudence of his station. It is to be remembered by all church judicatures at their privy censures, that no member judicially delate another, unless secret satisfaction hath been sought and refused. After elders, deacons, clerk, and beddal have past their censure, each of them, as they are called in, is either to be admonished before all, or others empowered to do it privately, or else they are to be encouraged as need requireth.

7. By the act of Assembly August 19, 1639, the books of kirk sessions are to be presented once a year to the presbytery, that they may be tried by them; or when there is a visitation of the parish by the presbytery. Assembly Aug. 10, 1648.

8. By the act of Assembly February 12, 1645, it is recommended to every kirk-session to buy the printed acts of the Assembly, and presbyteries are ordained to crave account thereof, and synods are to crave account from presbyteries. And it is added to this act, by the 18th of the Assembly 1705, that the agent for the kirk in all time coming, after every Assembly, so soon as the acts thereof shall be printed, transmit as many copies of the same to every presbytery as there be parishes therein; and both presbyteries and sessions are ordained, at their first meeting after receiving the said acts, to cause read so many of them as are of public concern, in order to their observing thereof. And all this to be upon the charges of the several presbyteries and sessions.

9. By the 4th article of the 5th chapter of the French Church Discipline, it shall not be permitted to establish other

council for any church business whatsoever, and if in any other church, there shall any other council be established, different from the consistory, it shall forthwith be suppressed; nevertheless, the consistory may sometimes call to its aid such of the church as shall be thought convenient, and that the ecclesiastical matters be treated of only in the place where the consistory doth assemble. They have lately erected in England societies for reformation of manners, not without some seeming success against vice and immorality, which is commendable and requisite there, until the discipline and government of their church be more pure, and better reformed. But for the church of Scotland, as now established, to imitate that example, beside that it might become an introduction to innovations, it would resemble a vain youth's bringing wide sleeved coats in fashion, because some persons of quality, who had a distemper in their arms, were necessitated to cause make them wide for their own ease. The author of the *Stage Condemned*, p. 45, proves stage plays to be condemned in Scripture by this argument, that which God hath appointed sufficient means to accomplish, it is unlawful for men to appoint other means to accomplish it. But God hath appointed sufficient means for recommending virtue and discountenancing vice without the stage: Ergo, it is unlawful for men to appoint the stage for recommending virtue, and discountenancing vice. And the same argument, *mutatis mutandis*, militates against these new lay societies for reformation of manners in the church.

## TITLE XII.

### *Of Presbyteries.*

1. This judicature consists of all the pastors within the bounds, and one ruling elder from each parish therein, who receives a commission from the eldership to be a member of the presbytery, and represent them there till the next synod be over: thus twice a year there are now elections of the ruling elders. The number of parishes associated in presbyteries for their mutual help, is determined by authority of the national synod, December 17, 18, 1638, article 8, as the adjacency of the congregations, and the easiness of travelling doth best allow. Where there are collegiate ministers, that session may send as many ruling elders. The directory for government saith, that to perform any classical act of government or ordination, there shall be present, at least a major part of

the ministers of the whole *classis*. Presbyteries should meet every third week, and oftener if business require it : But of this see § 3 of this title.

2. Every meeting of a presbytery is to begin with a sermon by one of the brethren appointed formerly for that effect, upon a text assigned him by them, except when probationers or intrants supply the pulpit in their public trials. The half of the time allowed for this presbyterial exercise is to be taken up in the explicatory and analytic part of the text, and in answering textual and critical questions and difficulties ; this part of the work is called *making*, and requires more especially the gift of the doctor. The other half of the time allowed is to be taken up in raising of doctrines and observations from the text, and applying them in their several uses ; which last part is called *adding*, and it requires more especially the gift, and necessarily the authority of the pastor. After the exercise is over, and the presbytery constitute, the censure of the exercise they have heard useth always to be their first work, which may be done before them who had the exercise. Beside this, the brethren of the presbytery, by the act of Assembly December 17, 18, 1638, are to have some common head of doctrine publicly disputed in the presbytery among the brethren, every first presbytery of the month, according to the act of Assembly holden at Dundee 1598, sess. 12.

3. By the foresaid act 1638, presbyterial meetings are to be weekly, except in places far distant, who, between the 1st of October and 1st of April, are dispensed with for meeting once in the fourteen days. See § 1. tit. 12. Likewise that act appoints all absents to be censured, especially those that should exercise and add, according to the act of Assembly, April 24, 1582.

4. The presbytery treats of such matters as concern the particular churches within their bounds, as the examination, admission, ordination, and censuring of ministers ; the licensing of probationers, rebuking of gross or contumacious sinners ; the directing of the censure of excommunication ; the cognoscing upon references and appeals from kirk-sessions ; the revising and rectifying what hath been ill done or negligently omitted by them, at their approving of the kirk-session books and records ; the answering of questions, cases of conscience, and solving of difficulties in doctrine or discipline, with petitions from their own or those in other presbyteries ; the examining and censuring according to the word of God, any erroneous doctrine, which hath been publicly or more pri-

vately vented within their bounds, and the endeavouring the reducing and conversion of any that remain in error and schism; the appointing of visitation of churches by themselves as occasion offers, or the perambulation of parishes in order to their uniting or disjoining; all which are either concluded or continued to further consideration, or referred to the synod.

5. By chap. 6, act 11, of Assembly 1707, there are some processes which natively begin at the kirk-session, but for the atrocity of the scandal, or difficulty in the affair, or general concern, the session having frequent meetings of the presbytery to have recourse unto, do not determine of themselves, such as scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, heresy, and error, vented and made public by any in the congregation, schism, and separation from the public ordinances, processes in order to the highest censure, and continued contumacy. But processes for all such crimes and scandals are to be referred to the presbytery, by an extract of their procedure thereanent. And when there is no confession of the scandals above mentioned, the session is not so much as to proceed to lead probation by witnesses or presumptions, till they be authorised thereto by the presbytery's answer to their reference foresaid.

6. When the process is so clear, as in the case of a judicial confession, then the kirk-session may summon the delinquent when before them *apud acta*, to compare before the presbytery; but where there is any difficulty, they should first inform the presbytery, and get their allowance before the party be summoned before them.

7. When persons censured for these grosser scandals do apply to the kirk-session for relaxation, they may both be privately conferred with, and likewise their acknowledgments heard before the session; but they ought not to be brought before the congregation, in order to their absolution, nor absolved but by direction and order of the presbytery.

8. Presbyteries in some cases may send commissioners to other presbyteries, either to advise them, or to seek advice from them. By act of Assembly, June 18, 1646, it is recommended, that a correspondence be kept among presbyteries constantly by letters, whereby they may be mutually assisting to each other.

9. In every presbytery, at least twice a-year, on days for prayer, as should be done in sessions likewise, before each

synod, there ought to be privy censures, whereby each minister is removed by course, and then inquiry is made at the pastors and elders, if there be any known scandal, fault, or negligence in him, that it may be in a brotherly manner censured; after the ministers, the presbytery clerk is to pass these censures likewise. By the 6th article of the 7th chapter of the French Church Discipline, at the end of the colloquies, amicable and brotherly censures shall be made, as well by the pastors as by the elders, which shall be there present, of all things which shall be thought fit to be represented unto them.

## TITLE XIII.

*Of Parochial Visitations by the Presbytery.*

1. Parishes are visited by presbyteries, either occasionally, *pro re nata*, according to the weight of the emergent which doth require the visitation, or ordinarily and in course, whereby every congregational church is visited once a year, Assem. 1633, sess. 23, 24, art. 3. At least this ordinary visitation should be going round all the parishes in order till they be visited, before others be revisited in ordinary: For by the 16th act of Assembly 1706, presbyterial visitations of parishes are to be frequent.

2. The presbytery is to cause intimation to be made of their appointed day for the visitation of that parish, by a brother of another congregation, from the pulpit, immediately after the forenoon's sermon, on the Sabbath, ten days preceding the day for the visitation, requiring the minister of the parish to preach at that time and place on his ordinary text, and summoning the heritors, elders, and whole congregation, to be present that day, to hear sermon; and thereafter, that the minister, heritors, elders, and heads of families, do attend the presbytery, to acquaint them with the state of that kirk and congregation in every point; and if any of them have certain knowledge of anything amiss in their minister, elders, deacons, precenter, session-clerk, schoolmaster, or beddal, that they do then acquaint the presbytery therewith.

3. The session registers, together with a catalogue of the minister's books, are to be produced to the presbytery, before the visitation, and given to two of the fittest brethren, and best acquainted with that minister and people, to be seen and revised; and they to report at the visitation.

4. Sermon being ended, and the presbytery constituted,

the minister's doctrine he had in his sermon, is first to be considered, as in the presbyterial exercise ; then the church Bible, Confession of Faith, acts of the General Assemblies, acts and proclamations against profaneness, and other acts and papers relative to the church, are all to be called for and produced before the presbytery. The visitors of the session's registers, and minister's library, are to make their report. The presbytery, at the entry on the visitation, having removed the minister, are to cause read over their actings at the last visitation, and see if what was then recommended or ordered hath been made effectual, and take the excuses of absent elders and deacons therefrom ; and, if need be, to call in any party for information. If nothing arise from that, to divert the presbytery from the orderly method, all parties being removed, the presbytery is to call in the session one by one, and to enquire at them concerning their minister : yea further, by the act of Assembly, June 13, 1646, at visitation of kirks, the elders, one by one, the rest being removed, are to be called in, and examined upon oath concerning the minister's behaviour.

5. By the act of Assembly 1596, ratified December 17, 18, 1638, at visitation of kirks, the families of ministers are to give an account, and to be tried concerning the good order and behaviour that they observe within their families ; and such as are found neglecters of family-worship, or instructing of all in their families, or such as remove not those who are offensive therefrom, shall, after due admonition, be judged unfit to rule the house of God ; for he ought to be one that ruleth well his own house, 1 Tim. iii. 4.

6. The questions to be inquired by a presbytery at the eldership concerning a minister may be these, and such like : 1. Hath your minister a gospel walk and conversation before the people ? And doth he keep family-worship ? And is he one who rules well his own house ? Is he a haunter of ale-houses and taverns ? Is he a dancer, carder, or dicer ? Is he proud or vain-glorious ? Is he greedy, or worldly, or an usurer ? Is he contentious, a brawler, fighter, or striker ? Is he a swearer of small minced oaths ? Useth he to say, Before God it is so ; or, in his common conference, I protest, or, I protest before God ? Or, says he, Lord, what is that ? All which are more than yea and nay. Is he a filthy speaker or jester ? Bears he a familiar company with disaffected, profane, or scandalous persons ? Is he dissolute, prodigal, light, or loose in his carriage, apparel, or words ? How spends



he the Sabbath after sermon? Saw ye him ever drink healths? Is he at variance with any? Is there any that reproaches him? Or, is he well beloved of all? And upon what ground is it that the variance or good liking of the people is?—2. Keeps he much at home at his ministerial work? Or, doth he occasion to himself distractions and unnecessary diversions therefrom? Is he constant at his calling and studies, or takes he but pains at fits and starts, such as at fasts, communions, visitations, &c.? Is Saturday only his book-day, or is he constantly at his calling?—3. Doth he discountenance or discourage any that is seeking Christ? Doth he preach sound doctrine, so far as ye can understand? Doth he preach plainly, or is he hard to be understood for his scholastic terms, matter, or manner of preaching? Doth he faithfully reprove sin, especially such as most prevail in the parish? What time of day doth he ordinarily begin sermon on the Sabbath? And when doth he dismiss the people? Spends he too much time in his sermon, in repetition of what he said before? Doth he lecture and preach in the forenoon, and preach again in the afternoon on the Lord's day, and that both summer and winter? Doth he read a large portion of scripture in public, and expound the same? Doth he preach catechetical doctrine ordinarily in the afternoon? Hath he a week day's sermon, and collections on these days? When the Lord in his providence is speaking extraordinary things, doth he tie himself to his ordinary text; or makes he choice of one more apposite and suitable to the dispensation? Seeks he to preach Christ his beauty and excellency, and to open up the power and life of godliness? Endeavours he to discuss cases of conscience, to let you know your spiritual state, what it is?—4. Doth he according to the act of Assembly 1708, visit the people and families, at least once a year in a ministerial way, teaching and admonishing from house to house? And doth he visit the sick when needful, and pray over them? Doth he visit them who, through age and sickness, cannot come to the public worship? Doth he labour to speak to the sick suitably to their various inward conditions? Doth he not especially visit such as be exercised in conscience? Doth he visit such as are afflicted by death of children, or other relations? Visits he the widows, orphans, and poor? If he be minister of a burgh, visits he the prisoners? Is he not careful when he visits families to confer with them in private, and pray with them, thereby learning the case of their souls, that so the doctrine in public may the better meet with their condition?—5.

Doth he administer the sacrament of baptism in an orderly way, when the congregation is convened; or doth he it at any time privately? Doth he add any word to, or alter the words of institution?—6. Doth he frequently catechise his parishioners, and administer the sacrament of the Lord's supper to them? And is he careful in keeping from that holy ordinance all who are known to be scandalous, grossly ignorant, or erroneous? How often have ye the communion every year? Doth he not begin to catechise young ones about nine or ten years of age, and how censures he contemners of catechising? What course is taken with contemners of the Lord's supper upon frivolous pretences? At the Lord's supper doth he not cause cut the bread in large and fair shaves fit for mutual fraction and distribution, that as they give the cup to the nearest assident, so having broken off a part of the bread with their hand for themselves, they give the rest to the person sitting nearest them? Do your people all sit at the Lord's table? In the time of distribution, eating, and drinking, is there any reading, or singing of psalms, or is there silence, and so time for meditation, except it be a short pertinent, and awakening word dropped by the pastor?—7. Hath he a competent number of elders? And hath he deacons in the parish distinct from elders? Doth he keep sessional meetings frequently? And is he impartial in the exercise of discipline against all offenders? Is there frequent meetings of the members of session, for fasting and prayer, according to the act of Assembly 1699? Doth he travail with public penitents in private, to make them sensible of their sin, according to its circumstances, and sensible of mercy, that the love of Christ may overcome the love of sin? And then doth he absolve them, when brought up to some ingenuous confession and resolution for the future? Doth he ever censure persons for living idle, breaking of promise, or for backbiting? Doth he censure keepers of superstitious days? How doth he restrain abuses at penny-bridals? Doth your session meet weekly? Doth your minister coolzie any whom another brother hath in process? Or doth he carry any way partially, that so he may become popular? Doth he in session assume to himself a negative voice? When he is necessitated to leave his flock, doth he not acquaint the session with it?—8. Is he careful to take away variances that fall out among families, and compose differences among particular persons in the congregation?

7. After that the elders have answered to these or the like

questions, then the heads of families are to be interrogate in general concerning the lives and manners of the members of the session ; and the pastor is to answer more particularly to these or the like questions: 1. Is your session rightly constitute, and all the elders and deacons duly admitted according to the acts of the Assembly? 2. Do they all attend gospel-ordinances, and the diets of the session? 3. Are they grave, pious, and exemplary in their lives and conversations? Do they worship God in their families? Is any of your elders an ignorant man, a drinker of healths, a tippler, a drinker excessively to drunkenness, a swearer, an observer of Yule-days, &c.? Is he one that observes not the Sabbath? Is he careful to keep his oath of admission taken before God in face of the congregation, not to delate or censure, but as edification requires? Do any of them work on solemn fast or thanksgiving days? Is any of them a mocker of piety? 4. Are they diligent, careful, and impartial in the exercise of their offices? Do the elders visit the families within the quarter and bounds assigned to each of them? Are they careful to have the worship of God set up in the families of their bounds? Are they careful in calling for testimonials from persons who come to reside in the parish? Do the elders take all discipline upon themselves without the minister? Or do they labour to carry things factiously, or by plurality of voices, contrary to God's word, and the laudable acts of the presbytery, provincial, or General Assemblies? 5. Have the elders subscribed the Confession of Faith? And are they well affected to the government, worship, and discipline of this church? 6. Have the elders and deacons their distinct bounds assigned them for their particular inspection? 7. Does your session always appoint a ruling elder to attend presbyteries and synods? 8. Are the deacons faithful in their office, in collecting and distributing all the kirk-goods, and in having a care of the sick poor. After all these queries are over, the minister and elders are to be severally encouraged or admonished as the presbytery sees need.

8. Then the precentor, schoolmaster, and clerk of the session, who in country congregations are ordinarily one and the same, and after them the beadles, bell-men, and church servants, being removed, the presbytery is to inquire at the minister, session, and heads of families, concerning their conversation, fidelity, and diligence, in their offices; and the presbytery is thereupon to proceed as the matter requires.

9. After all these inquiries, the presbytery removing the

heads of families, the minister and elders are to be inquired concerning the congregation, 1. Doth the body of the people attend ordinances duly and timeously, and stay till the blessing be pronounced? Are they diligent in improving the means of knowledge, and are they growing therein? 2. Are they submissive to public and private exhortations, and to the discipline and censure of the church, by admonitions and reproofs, as need requires? And do they by their words and actions manifest a suitable respect to their minister and respective elders? 3. Are they careful to educate their children and servants in the knowledge of God? What success hath the gospel and labours of ministers and elders among them? What scandals, schisins, heresies, or divisions are among them, and if on the growing hand? How doth they observe the Lord's day?

10. Then the minister, heritors, session, and heads of families being present, the presbytery is to enquire after the state of the church, as to its fabric, the seats therein, and division of the same, the church-yard dikes, the utensils of the church, communion cups, cloths, the minister's manse, if it be in repair, the glebe and stipend, the salary of the school-master, precentor, session-clerk, and beadies, and how the communion elements are provided, whether they be paid for out of the poor's money, and that when the communion is but celebrated once a year? See lb. 2, tit. 2, § 24. Inquiry is to be made how much the stipend is? of what nature? how paid? and if there be a decret of locality for it? As also about the state of the poor, whether there be any mortifications and legacies for them, or other pious uses? and how these are secured, and their interest paid and applied, and how they have been managed and employed from time to time? Sess. 18, Assemb. 1700. After the visitation is over, all parties are to be called in, and the moderator is to conclude all with prayer.

#### TITLE XIV.

##### *Of Provincial Synods.*

1. The synod or provincial assembly is immediately superior to the presbytery, and consists of several presbyteries met together for their mutual help and comfort, and for managing the affairs of public concern within their bounds. The number of presbyteries in each synod is determined by the National Assembly, and they meet ordinarily twice every

year, and at such set times as the neighbouring synods may conveniently correspond one with another, which is done by sending a minister and ruling elder mutually from one to another, viz. the provincials of Lothian, Merse, &c. the provincials of Dumfries, Galloway, Glasgow, and Argyle; the provincials of Perth, Fife, and Angus, &c. the provincials of Aberdeen and Murray; the provincials of Ross, Caithness, and Orkney. See likewise the order of the Provincial Assemblies in Scotland, according to the presbyteries therein contained, in the act of Assembly, December 17, 18, 1638, act 24.

2. The moderator of the former synod doth in the morning before the meeting, preach a sermon suited to the occasion, and after sermon doth intimate to the members, that they immediately repair to the synod house; when they are met, he doth open the meeting with solemn prayer; then the clerk having made up the synod roll from the rolls of each presbytery presented to him by their respective moderators, he is to call the same over, and to mark the absents. In making up the synod roll it is usual to change the order thereof every synod, so that the presbytery that was first called in the roll of the former synod is now called last. Then the synod proceeds to the choice of a new moderator, who first calls for the correspondents from the neighbouring synods; and their commissions being read, they are inrolled as correspondents.

3. Committees are to prepare matters; and to lop off unnecessary work for gaining of time, and to hinder heats by public debates, and to facilitate their work, they may sub-commit any part thereof to a few of their own number; and they may likewise advise one with another in weighty affairs, even before report to the synod, thereby the more to prevent debates. Any affair tabled before them, though by them rejected, may be brought in, in full synod; yet so as the member or party who bringeth in the matter, be sure to have very much reason or necessity for so doing. All synods may have the following committees. 1, A committee for overtures; 2, Another for bills, references, and appeals; and, 3, For revising presbytery books, who are to meet at such times and places as the synod appoints: Each committee and sub-committee is to consist of ministers and ruling elders; the moderator and clerk of the synod, is moderator and clerk to the committee of overtures. All other committees choose their own moderator and clerk, who is to present their report to the synod in writing: Any member of a judicature may be

present with the committee though none of the number, and may advise but not vote there; as also one of a committee may be present in sub-committees of their own appointment; all which committees are chosen by the synod only, as General Assemblies do theirs.

4. The presbytery books are called for and produced, and each book is committed to some members of other presbyteries to be revised and examined by them, that it may appear how each presbytery hath kept order, and performed what was recommended to them by synods or General Assemblies; and upon the revisers their report, they are censured or approved accordingly. What was obscure or difficult for the presbyteries, or might concern them all in common, is resolved and ordered; what hath been done amiss by presbyteries is redressed; and if any difficulty arise which doth not fall under some church constitution, it is referred to the National Assembly.

5. Every presbytery is to get an extract of the acts of every synod, and to read such of them in the presbytery as are of general concern, or which particularly relate to any in their bounds, that they may be the better observed.

6. At the privy censures, none ought to be present but members. Upon the revisers their report of the presbytery books, each presbytery is removed *per vices*, in order to privy censure, in the same manner as was said of the ministers in presbyteries, and of elders in sessions. See tit. 15, § 1.

7. By the 12th article of chap. 8. of the French Church Discipline, concerning provincial synods, the pastors in each province shall represent the widows and children of ministers who died in the service of the church, to be supported and maintained at the common charge of each province; and where the province shall be ungrateful, the national synod shall redress it. Our church proposeth the same persons as proper objects for the pastors in the synods their charity, and the *centesima*, or hundredth part of each benefice to be the fund, and paid in to the collector thereof yearly, who is to be appointed by each synod, and is to distribute the same to the relicts, and children of deceased ministers within the bounds of the synod, conform to their order.

## TITLE XV.

*Of Extraordinary Synods, and General Assemblies.*

1. Extraordinary Synods, I call such as that of the Assembly at Westminster, which consisted of divines and gentlemen, many of whom were not elders, called and nominated by the civil power to consult about the doctrine, worship, and government of the church. Or, when ministers without delegation from the church, do of themselves meet by virtue of their office: Which synods this church doth not approve of in a settled and constitute condition, but only in such churches as are not yet constituted. It being always free to the magistrate to advise with synods of ministers and ruling elders meeting upon delegation from their churches, either ordinarily, or being indicted by his authority occasionally. See the act of Assembly 1647, approving the Confession of Faith. Yet by act of Assembly, December 19th, 1638, ministers are obliged to give their advice and good counsel in matters concerning the kirk, or the conscience of any whatsoever, to his Majesty, to the Parliament, to the Council, or to any members thereof, for their resolutions from the word of God.

2. By the Directory for Church Government, as it was printed in the year 1647, to be examined by presbyteries, the Assembly was to consist of as many ruling elders as ministers, which doth agree with the 9th chap. art 3. of the French Church Discipline; but by the directions of the English Parliament, Aug. 19, 1645, it is provided, that there be in all Assemblies two ruling elders to one minister. It seems indeed but reasonable, when presbyteries, the constituents of General Assemblies, do consist of ministers and ruling elders equally, that they should be equally represented there likewise.

3. At the beginning of our Reformation, the Assembly did consist of these of the reformed religion, delegated from some shires and burghs where the reformed dwelt. The number of pastors was then so small that it did not exceed the fourth part of the meeting, as may be seen from their sederunts in the copy of the MS. acts of Assemblies; and until the number of ministers did increase and multiply, it was at first a general meeting of them all; but thereafter they did empower and commission a few to represent them, who are thereupon only designed "the Commissioners of the General Assembly."

4. If an Assembly be indicted by the civil magistrate, on so short an advertisement as twenty days, that presbyteries, (especially the more remote,) are not timeously advertised to choose commissioners, and so the church not fully represented, an Assembly so meeting is declared null. All new Scots Parliaments were called on forty days, and what prejudice can it do if presbyteries receive as fair an advertisement, unless it be to the service of some present design against the church? *2do*, An Assembly is null where the members, or a great many of them, are not elected by presbyteries, but named by the magistrate; in which case, though they may act as advisers of the magistrate, yet they cannot act as those having authority from the church. *3tio*, An Assembly is null, when presbyteries are represented by more ministers than the standing acts of Assemblies, regulating the representation, doth allow, or where no ruling elders are commissioned. *4to*, An Assembly is null, when members do vote for these matters, to which they are threatened to give their vote, by the civil magistrate. *5to*, An Assembly is null, when a moderator or clerk is imposed upon them without their suffrage. See at length Acts of Assembly, December 4, 1638.

5. The General Assembly, December 20, 1638, declares, that by divine, ecclesiastical, and civil warrant, the Assembly of this national church hath power and liberty to assemble and convene in her yearly General Assemblies, and oftener, *pro re nata*, as occasion and necessity shall require: To this agrees the act of Parliament 1690, ratifying the Confession of Faith, and settling Presbyterial church government; so that the Sovereign, till these laws be altered, cannot, by his mere authority or proclamation, render the meetings of Assemblies precarious and uncertain, unless he run the risk of renewing the dispensing power.

6. By the 5th act of Assembly 1694, the representation of the several presbyteries in this national church in its General Assemblies, shall hold proportion to the number of parishes, whether vacant or planted, within each presbytery, in manner following: All presbyteries consisting of twelve parishes, or under that number, shall send two ministers and one ruling elder. And all presbyteries consisting of eighteen parishes, or under that number, but above twelve, shall send three ministers and one ruling elder. And all presbyteries consisting of twenty-four parishes, or under that number, but above eighteen, shall send four ministers and two ruling elders. And, lastly, all presbyteries consisting of above twenty-four



parishes, shall send five ministers and two ruling elders. And every collegiate church where there use to be two or more ministers, are, so far as concerns the design of this act, understood to be as many distinct parishes: So that presbyteries delegate not less than a sixth part, nor more than a fifth part of the ministry. Conform to the representation proportioned by this act, the number of ministers delegate from presbyteries are one hundred and eighty, and of ruling elders sixty-eight. But each royal burgh having the privilege, (if they please to use it,) to be represented there by a ruling elder, and the city of Edinburgh by two, this would add sixty-seven more ruling elders to that order, making in all of elders one hundred and thirty-five. By that same act, no persons shall be admitted members of Assemblies, but such as are either ministers or ruling elders. And by the 6th act of Assembly, 1698, it is recommended to presbyteries to choose only such ruling elders as may and will give attendance.

7. Commissioners from royal burghs, till the matter be further thought upon, by the act of Assembly, July 15, 1648, are to observe the ordinary practice, viz. That each burgh send one, and Edinburgh send two ruling elders, approved of and consented to by the ministry and session of the burgh. But yet each university may be represented, by a minister or ruling elder; neither is that kind of approbation of the choice required, albeit there may be the same reason for it: For the members of a faculty as such are not obliged to be either ministers or ruling elders. But upon the whole, our practice would be more easily accounted for, and a great deal more agreeable to that of foreign churches, if delegations were only from presbyteries, and the delegates equally both of ministers and elders.

8. By the 6th act of Assembly 1704, no minister or elder can be commissioned to the General Assembly by any presbytery, burgh, or university, but such as usually reside in, or have a relation to the presbytery, burgh, or university they are commissioned from. This is enacted, that pragmatic and designing men may be kept out from being members of assemblies; after their own presbyteries, &c. (perhaps from some such apprehension,) had been pleased to neglect them in their choice.

9. The Assembly by their act the 9th of August, 1641, considering, that if the Scots kirk at Campvere were joined as a member of the Kirk of Scotland, it would be convenient

for correspondence from foreign parts for the well of this kirk ; therefore they desired the said kirk of Campvere to send their minister with a ruling elder, with their commission to the next General Assembly, at which time they should be inrolled as commissioners from that kirk. When that church is vacant, the Convention of Royal Burrows have been in use to present a minister, and act as patrons. And by the act of Assembly 1704, some propositions concerning the said kirk, approved by the Assembly 1642, are of new enacted and authorised, viz. (1.) That the said kirk observe that order in the outward worship of God, and exercise of discipline, as is here received by law and practice. (2.) That, at least, every third year their commissioners be at the Assembly, whose expenses are to be paid by their own kirk, till this church be in a better capacity to do it. (3.) That they advise with the presbytery of Edinburgh, or the commission of Assembly, concerning emergent difficulties.

10. By the act of Assembly 1638, December 17, 18, it is referred to particular presbyteries, and especially to the ruling elders therein, that commissioners to Assemblies their expenses be borne conform to former acts of Assemblies, by the particular parishes in every presbytery, and proportionally by all sorts of persons therein, able in land or money ; which act is ratified by the Assembly 1639, August 29, and extended to the expenses bearing of such as shall be sent in commission by General Assemblies : But it is referred to the Parliament for making these who are stented to pay their proportions ; by which it is clear that presbyteries may stent the people within their own bounds, for defraying the charges of those therein, who attend General Assemblies ; but then it must not be exacted, but only received from a willing condescending people, which will certainly be very unserviceable if otherwise received, unless the expenses be most inconsiderable. And the practice might prove more serviceable in a disturbed state of the church, when ministers come to be deprived of their stipends. Since the year 1642, our Sovereigns have bestowed four or five hundred pounds sterling yearly, to be employed by General Assemblies, which will do much to defray the expenses of commissions from General Assemblies, sent to visit the remoter parts of the church. See Assem. 1642, August 5.

11. The General Assembly, by their 8th act 1695, gives the form after insert for a directory to presbyteries in their giving commissions to their members for General Assemblies ;

which form is likewise observed by universities, each whereof sends one, as also royal burghs, *mutatis mutandis*. At the day of years, the which day the presbytery of did, and hereby does nominate and appoint Mr A. B. minister at C. Mr D. E. minister at F. and ruling elders, their commissioners to the next General Assembly of this church, indicted to meet at the day of next to come, or when or where it shall happen to sit, willing them to repair thereto, and attend at 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 good of his church, according to the word of God, the Confession of Faith, and agreeable to the constitutions of this church, as they will be answerable, and that they report their diligence therein at their return therefrom. Extracted by me, &c. And by the 6th act of Assembly 1704, this clause must be insert and added to the said form of all commissions, viz. that they have subscribed the Confession of Faith of this church, according to the 11th act of the General Assembly anno 1700.

12. The reason for enacting this uniform method was, that all members might be alike free; for before this time several presbyteries did insert, in their commissions, particular instructions and limitations, which did not a little muzzle and confuse the members, and might at some occasions have proved an advantageous handle for such as were not tender of the church's peace.

13. By the 4th act of Assembly 1694, commissioners from presbyteries and others are appointed to give in their respective commissions to the clerk of the General Assembly, the night at least before the first diet or meeting thereof, to the effect the rolls may be timeously made up, and that the commissions may be considered by the Assembly without any interruption; and all commissions not so given in, shall be delivered in the intervals, betwixt and the after-diets.

14. By the 6th act of Assembly 1698, presbyteries are appointed to choose their commissioners to General Assemblies at least forty days before the sitting thereof. That which gave rise to this act was, that the civil authority, for some time before that, had been pleased, (though not agreeably to the act of Parliament 1690 in favours of the church,) to interpose a privative power in adjourning General Assemblies to a longer time than the appointment of the preceding Assembly, whereby their meetings were rendered both unfrequent and

uncertain ; and with some view to obviate this, I think the act hath been made, but yet especially that members might be in case to attend, being so long chosen before the time.

15. The General Assembly useth to be honoured with the Sovereign's presence, either by their royal person, or by their High Commissioner : for which the Moderator in the Assembly's name doth use to express their thankfulness, and how great a mercy they do esteem it to have the countenance of civil authority. But there have been many General Assemblies begun, held, and continued in Scotland, without either the King or his Commissioner's presence : and that it was not, nor yet is contrary to law, is evident, if the first act of Parliament 1592, ratified in Parliament 1690, be duly considered.

16. The first commission that was granted, was by King James VI. anno 1580, as may be seen in an old MS. of the acts of Assemblies, and was nothing else but a missive letter under the King's own hand, the tenor whereof follows : " Trusty and well-beloved friends, we greet you well. We have directed towards you, our trusty friends the Prior of Pittenweem, and the Laird of Lundie, intrusted with our power for that effect, for assisting you with their presence and counsel in all things that they may, tending to the glory of God, and the preservation of us and our estate, desiring you heartily accept them, and our good will committed to them for the present in good part. Sua we recommend you to God's blessed protection. From our palace at Falkland, the 22d day of July, 1580. JAMES R."

17. But now these commissions are more pompous and solemn, passing in Latin under the great seal. Sometimes they have been complex, clothing the commissioners with somewhat of a viceroyship in the state, as well as Commissioner to the Assembly : thus it is said the Marquis of Hamilton, and Earl of Traquair, their commissions were in the years 1638 and 1639. The commissions granted since the revolution, you may see in the printed acts of Assemblies. Though these Commissioners be respected in the Assemblies, and about Assembly affairs, as representing the Sovereign's person ; yet I doubt if they could claim any place or precedence in meetings of state, merely as Commissioners to the Assembly. But this is still kept undecided, as appears by their disappearing at such meetings while the General Assembly is sitting.

18. The presbytery of Caledonia in Darien, is authorised

to send yearly two representatives to the General Assembly : they being a part of this national church, and subject to her Assemblies, as appears from the instructions given them by the commission of the General Assembly 1699.

19. The moderator of the former Assembly opens it with a sermon ; but in case of his absence, his predecessor in that chair hath the sermon : and in absence of them both, the eldest minister of the town where they meet preacheth, and openeth the Assembly by prayer, and moderates till a new moderator be chosen. Thus it was done in the Assembly at Glasgow 1638. After sermon the members go into the Assembly-house, where, after prayer by him who preached, a new moderator is chosen in the manner before mentioned, their clerk continuing by commission, sometimes during life. It is to be remembered, that before the new moderator is chosen the rolls must first be made up ; and at the calling of each presbytery, burgh, and university, their commission is read. After the Assembly is thus constitute, the person representing the Sovereign, produceth the commission to him for that effect, and ordinarily a letter also from the Sovereign to the Assembly, both which are publicly read with great honour and respect, the members standing all the time that the letter directed to them is reading ; and by their appointment, both commission and letter are recorded in their books. And all the time of the Commissioner's presence, the members sit uncovered. The Commissioner ordinarily has a discourse to the Assembly, assuring them of their Majesty's protection, and continued favour ; and he intreats them to unanimity and dispatch in their affairs ; to which the new moderator useth, in name of the Assembly, to make a short and suitable return ; both which are likewise recorded.

20. By the act of Assembly July 29, 1640, it is appointed, that the commissioners sit together unmixed, and the places where they sit be divided from the seats of others. As also, that four persons of respect have warrant to enjoin that there be no noise, no standing, nor disorderly behaviour ; and if any shall disobey them, or direct his speech to any, except to the moderator, and that one at once, with leave first asked and given, he is to be rebuked by the moderator : and if he desist not, he is to be removed out of the Assembly for that session. As also, that the minutes of ilk session be read before their rising ; and if the matter concern the whole kirk, let it be read in the beginning of the next session. This order is to be read the first session of each Assembly, and the act is ratified 28th July 1641, and 6th August 1642.

21. The ordinary committees used in General Assemblies are, 1. The committee for overtures. 2. The committee for bills, references, and appeals. 3. The committee for elections and commissions. 4. Committees for revising synod-books and registers, and of commissions of General Assemblies. 5. A committee for censuring of absents, and nominating ministers to preach before the Commissioner, if present. 6. When the King or Queen honours them with a letter, there is, in the first place, appointed a committee for drawing an answer thereto. There are also other committees for particular matters, named as is found needful. All committees of Assemblies are to consist of ministers and ruling elders, members of several synods; and in more numerous committees, some out of every synod: all which committees are ordinarily named by the moderatour, in presence, and approved by tacit consent, only sometimes members propose the adding of some others, whose motion useth likewise to be acquiesced in: so that there hath never yet been any election of committees, either by synods giving in separate lists, or by members giving in lists, as hath been done in our late parliaments. Only for preventing the perplexing of Assembly business, it is fit that no member be put upon more committees than one.

22. Albeit no business ought to come in to the Assembly directly, till it be proposed to, and prepared by some committee to whom it properly belongs; yet no committee hath a negative over the Assembly: and it was never their intention to confine and restrict themselves only to consider of these matters which their committees were pleased to allow and transmit to their consideration: for, by act of Assembly, July 29, 1640, an overture (and from a parity of reason, a petition or any other thing) may be proposed in full Assembly, with the reasons thereof, after that the committee hath refused to transmit the same.

23. To avoid alterations and debates in open Assembly, which might prove dangerous, and are always very indecent, after matters have been prepared by committees, they are transmitted to the Assembly. Now this design and order may be much struck at and inverted, when members or particular persons do print their petitions or overtures to the General Assembly and nation, before they be orderly brought in: Therefore by the 17th act of Assembly 1700, all persons are discharged to presume to print any petition, appeal, reasons, or answers, or any part of any process to be brought in to the General Assembly, or any other church judicatory,

without leave given by them, with certification, that the same shall not be read nor considered.

24. It is the laudable custom of Assemblies, before they begin close to their work, to appoint betwixt nine and twelve in the forenoon, to be set apart by the members for public prayer in the Assembly-house, to the Almighty God, for his countenancing and directing them in the matters that shall come before them : where the Commissioner is likewise pleased to attend and join in prayer : as may be seen in the first three printed acts of Assembly since the Revolution, and among the indices of unprinted acts thereafter.

25. Conform to ancient custom, by the 3d act of Assembly 1702, all synod books are appointed to be punctually brought in and presented to the General Assembly yearly, in the beginning thereof : Which books, after hearing a report concerning them, from the committee appointed to revise them, the Assembly does approve or disallow thereof as they find ground. All references from synods, appeals, grievances, petitions and complaints, are here examined and answered : Acts and constitutions for all the churches are agreed upon with common consent, conform to the 9th act of Assembly 1697, of which hereafter about preventing of innovations. Here course is taken for planting of churches with well qualified ministers : Rules are set down, by which inferior judicatures shall be directed in all their proceedings. It is their business to see that the small part of the patrimony of the church yet remaining be preserved and rightly applied. They join or disjoin parishes from presbyteries, and presbyteries from synods : They indict national fasts and thanksgivings : They are concerned to appoint fit persons and methods for drawing up the history of the church ; they also ought to take care that works of charity, for sustentation of the poor, be promoted. By the wisdom and authority of this Assembly, gangrenes of errors and divisions are prevented, that they spread not against truth and unity. But they decline to meddle in these matters they judge civil, as being incompetent to them, as may be seen by the index of unprinted acts of Assembly 1690. Church judicatures ought not to meddle formally with civil matters, no more than the state ought to meddle formally with matters ecclesiastic ; but the object materially considered may be the same, and fall under consideration, both of church and state, in different respects. By the 5th article of the 31st chapter of our Confession, synods or councils are to handle or conclude nothing but what

is ecclesiastical, and are not to inter-meddle with civil affairs which concern the commonwealth, unless by way of humble petition in cases extraordinary, or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate.

26. What matters General Assemblies cannot overtake themselves, they do refer to their commissions; in propriety of speech, they do import the same thing with committees; yet, *de praxi*, a committee is appointed only to prepare matters, whereas a commission determines in matters committed to them, and from whose sentence therein there lieth no appeal to the ensuing General Assembly, though a complaint may be tabled before the next Assembly against the commission their proceedings. The power of the General Assembly is never lodged in them, as to making acts in any case: And it is both more expedient and decent that the Assembly determine in cases of appeals from synods, where they have been unanimous in their sentence, than to refer the final decision to a commission, who may be of a smaller number than the synod, and whose quorum is but about the eighth part of some synods. Delegation or commission to determine, seems inconsistent with the principles of presbyterial government: For if the Assemblies of the church can give power to delegates to determine in one point, they may in more, and consequently in all, and thereby may introduce a prelacy. General Assemblies should not give any other delegations but executive, except in extraordinary cases: For they being delegates themselves, ought least of any church Assembly to delegate: And if they can commit their power to twenty-one, certainly they may commit the same to fourteen. Commissions may have sub-committees for preparing and reporting, but not to determine, or so as to roll the commission upon them. The commission and the proceedings, and register of their actings, are always subject to the censure of a General Assembly; if the Assembly do not appoint their moderator and clerk to attend them in those stations, they may then nominate their own moderator and clerk. Their quorum is twenty-one, whereof fifteen to be always ministers, and they continue till a new General Assembly meet, as may be seen in the printed commissions in the acts of Assemblies.

27. The General Assembly, by their 6th act 1705, does appoint that the whole presbyteries of this national church be equally represented in commissions, and that their representation be proportioned to the number of ministers, that are in



each presbytery ; the old ministers who were ordained before the year 1662, being always supernumerary : and that two or three of the members of the General Assembly in each synod, be appointed as a committee to name the members of the commission, and that the whole representatives of presbyteries in the several synods at Assemblies, do meet by themselves, and name their respective members of the said committee. And the General Assembly, by the same act, does appoint the expenses of the said commissioners to be borne and defrayed by the several presbyteries which they represent, according to the number of the days of their attendance ; and that their presbyteries take care to supply their charges with preaching during their absence, on the account foresaid.

28. The General Assembly, by their 6th act 1703, does require the members of the commission to give all due attendance thereon, as they will be answerable, which members are condescended upon by the 15th act of Assembly 1705, to be one at least of that number of the several presbyteries who are members of the commission, and they are to attend the meetings thereof by turns. And presbyteries are ordained to send into the commission the names of such as they have appointed to attend the several diets thereof. And by the foresaid act 1703, the clerks of the commission are ordained to record lists of the absents from each quarterly meeting, and from the meetings in time of Parliament, or who shall go away therefrom without leave first obtained, and send an extract of their names to the respective synods, who are impartially to censure them, and make report thereof to the next General Assembly : And to this effect, the clerks of the commission are ordered to lay before that Assembly the lists of these absents. And in the instructions to the commission 1703, all presbyteries within twelve miles of Edinburgh are discharged to meet during sitting of the commission.

29. Some few years ago, the presbyteries of this church, conform to what had been before practised, did delegate one of their number, being a minister, to repair to the city where the Parliament did sit, and during that time attend, and watch *ne quid detrimenti caperet ecclesia*. But the commission consisting of both ministers and elders, without which no ecclesiastical judicatory or committee thereof can be lawful, (See § 4. of this Title,) and also, that all the presbyteries are therein represented, and that the commission now is ordered to attend in the time of Parliament ; the former meeting of

such delegates is now supplied more conveniently by the meeting of the commission; and I am sure, much more legally both by church and state constitutions: For neither do authorise any other ecclesiastical judicature but Assemblies, synods, presbyteries, and kirk-sessions, or their committees, consisting of ministers and ruling elders. And the act of Parliament 1690, ratifying the Confession of Faith, and settling presbyterian church government, doth establish the exercise of that church government in the hands of ministers and ruling elders. And it may be doubted if the state would correspond with such delegates, or receive addresses from them, their meetings wanting the stamp, both of civil and ecclesiastical authority.

30. In the act of Assembly, 29th July 1640, art. 2, concerning ordering the Assembly-house, the commissioners to General Assemblies are to receive tickets from the magistrates of the burgh where the Assembly sits at the delivery of their commissions, whereby they may have ready access to the Assembly-house; and this act is renewed by the Assembly 1690, and is among the unprinted acts.

31. By that same act, whatsoever presbytery, burgh, or university, shall not send commissioners, is to be summoned to the next General Assembly, to be censured by them as they find reasonable. And by the 6th act of Assembly 1699, such commissioners as do not attend duly from the beginning and through the whole diets of the General Assembly, and the committees which they may be put upon, not having a relevant excuse, may be censured as the Assembly shall think fit.

32. The stile of acts of the General Assembly, runs thus: The General Assembly appoints and ordains, and sometimes recommends. Their acts should rather be like directions from the chair, than discourses from the pulpit. Though the Sovereign's person be therein sometimes represented, yet his name cannot be joined with the General Assembly, in making of acts. Because the civil magistrate considered as such, is neither head nor member of the church, nor of any of her judicatures, and it is the authority of the General Assembly of this national church that can alone bind her members. Which authority doth not so properly consist in making of laws, as it doth in declaring what their Lord and Master hath already appointed. And though ecclesiastical constitutions should be enacted in the Sovereign's name and authority, yet these could never bind the subjects as such, because the legislative

power is lodged in the Sovereign and estates of Parliament, and in them only: Hence all petitions to the General Assembly are only addressd to the moderator and members thereof, and not to the Sovereign nor his Commissioner, though present: For petitions can be presented to none, but to such as those in whose name and authority they are granted.

33. By the act of Assembly, December 20, 1638, they ordain presbyteries and provincial Assemblies to convene before them such as will not acknowledge that Assembly, (and from a parity of reason any other Assembly,) nor acquiesce unto the acts thereof, and to censure them accordingly, and refractory presbyteries are to be summoned by the commission to compear before the next General Assembly to abide their trial; and by a clause in the end of the 5th act, session 2, King William and Queen Mary's Parliament, it is provided, that whatsoever minister being convened before the General Assembly or representatives of this church, or their commissions, or the visitors to be by them appointed, shall either prove contumacious in not appearing, or be found guilty, and therefore censured, whether by suspension or deposition, they shall *ipso facto* be suspended from, or deprived of their stipends and benefices. And by the book of canons put in form for the government of the church of Scotland, by English bishops, their counsel and influence, and approved by King Charles I. his proclamation, dated at Greenwich, the 23d day of May 1635, it is appointed, that national synods called by his Majesty's authority, for matters concerning the state of the church in general, shall bind all persons as well absent as present, to the obedience of the decrees thereof in matters ecclesiastical. And if any shall affirm or maintain that a national synod so assembled ought not to be obeyed, he shall be excommunicated till he publicly repent and revoke his error.

34. Beside the clerk of the Assembly, there useth to be an advocate or procurator for the kirk chosen by them, who was to advise them in matters of civil right, and to plead what concerns the right of the church before civil courts; and in his name summonses are raised before the commission of Parliament for plantation of kirks, or Lords of Session. The agent or solicitor for the kirk is likewise elected by the Assembly, and he acts and agents their business in such order as they appoint him. Their agent was privileged to be present at all the meetings of that commission of Parliament, even when they acted with close doors. In the late prelatie

times, the King's solicitor was by his patent constitute solicitor for the church too : but whether in this government her Majesty's advocâte be also by his patent constitute advocate for the church, is a thing I cannot certainly assert. The agent has the care put upon him of sending dispatches to the several presbyteries.

35. All church judicatures at every rising appoint their next sitting ; so that their meetings are not so precarious and uncertain, but entirely and intrinsically, as to their time and frequency, lodged in the will and discretion of the plurality of the members of her respective judicatures. The kirk session, being properly the only radical church judicature, not consisting of delegate, but of perpetual and fixed members, cannot be at any time dissolved, but by themselves are adjourned from time to time : Albeit they use to begin and conclude the number of their sessions, at and after the presbytery hath approved of their proceedings. All church judicatures, but especially this, were called Consistories, where the judges did stand in administering justice (see Stair's Instit. p. 524,) and even yet, their moderators, presidents, or prolocutors, do stand, as the mouth of their meetings. Presbyteries are radical as to the pastors, and delegate as to the ruling elders, (see tit. 12, § 1.) For the first presbytery after each ordinary meeting of the synod, when new elections of elders are returned, that presbytery doth begin the first session thereof, and so other sessions of the same continue till the next synod in ordinary be over. And provincial synods consisting of presbyteries, they do in part dissolve twice a year, and so the synodical sessions are counted from one ordinary synod to the next ordinary meeting of another synod. But National Assemblies being annual, and consisting all of delegates, as hath been said, the sessions thereof are counted from the first meeting until they part and dissolve in the same place, at least by the constitutions and practice of this church, until, and no longer than the ordinary time for a new annual Assembly : for no doubt, an Assembly, if the affairs of the church so require, may translate, and also continue their meeting, as was done anno 1641 ; but it necessarily dissolves before the year. At the closing of every session of the Assembly, the moderator appoints the next diet, in presence, and with consent of the members ; then he turns to the Commissioner, and acquaints his Grace thereof, to which he ordinarily answers, Be it so, or, I am satisfied ; whereupon the adjournment is intimated publicly at the door

by the beddal, afterwards the moderator closes with prayer.

36. At closing of the General Assembly, some few of their number are nominated to assist the moderator and clerk, in revising the minutes and proceedings of that Assembly, before the same be recorded in their registers, and to determine what of their acts are fit to be printed : but it were as proper for the Assembly to give orders therein, as the acts are passed.

37. All the affairs which the Assembly could overtake, being brought to a close, the moderator causeth read the minutes of the last sederunt, these of former sederunts being always read at the beginning of each session : which being done, he discourseth to the Assembly concerning the good providence of God that brought them together, and in allowing them the countenance and protection of the supreme magistrate ; and exhorteth the members, to faithfulness, loyalty, and diligence in their stations. The moderator having understood the mind of the Assembly from previous communings with the members, as to the particular time and place of the next Assembly's meeting, which diet being concerted before, also with the Commissioner, he doth in their name represent the same to the King or Queen, or their Commissioner, if present, and upon their agreeing thereto, it is to be recorded and publicly intimate at the door of the Assembly-house by their order. The Commissioner agrees ordinarily thereto in these or the like words, (to many offensive enough,) I do in my Master's name (or her Majesty's name) dissolve this Assembly ; and, in the same name and authority, I appoint the next General Assembly to meet at such a time and place, which ordinarily is the same with that which the moderator in name of the Assembly did represent. Then the moderator closeth the Assembly with prayer, singing of psalms, and pronouncing of the blessing.

38. Indeed, when it happens that a Commissioner doth rather cross than countenance the Assembly, either by an abrupt and interrupting dissolution, or by not appointing the next annual Assembly according to law ; in these cases their behaviour is different, as may appear in the two following instances. The first was in the Assembly 1638. There the M. of H. his Majesty's Commissioner, having dissolved them after some few days sitting, both in the Assembly-house and by public proclamation ; they did notwithstanding (having protested against their dissolution) continue their sitting till they ended the work they met for, and appointed the time

for their next General Assembly, for which you will find their apologetical vindication in their printed letter to the King. Another instance is this, the E. of Lothian, their Majesties Commissioner to the General Assembly 1692, upon Saturday the 13th of February, (the Assembly being met and constitute by prayer,) did immediately thereafter deliver himself as follows: Moderator, what I said last had so little success, that I intend to give you no more trouble of that nature; only this, you have now sat about a month, which was a competent time both to have done what was the principal design in calling this Assembly, (of uniting with your brethren,) and to have done what else related unto the church; but his Majesty perceiving no great inclination among you to comply with his demands, hath commanded me to dissolve this present General Assembly; so I, in their Majesties name and authority, do dissolve this present General Assembly. Whereupon the moderator asked his Grace, if this Assembly was dissolved, without naming a diet for another? To this his Grace made return in these words: His Majesty will appoint another Assembly in due time, wherewith you will be timeously advertised. Upon this, the moderator desiring of his Grace that he might be heard a few words, his Grace told him that he could not hear him as moderator, but only as a private person: the moderator answered, in whatever capacity your Grace pleaseth, I beg to be heard a few words. His Grace replied, That as a private man he might speak; whereupon the moderator delivered himself as follows: May it please your Grace, this Assembly, and all the members of this national church, are under the greatest obligations possible to his Majesty, and if his Majesty's commands to us had been in any or all our concerns in the world, we would have laid our hands on our mouths and been silent: but they being for a dissolution of this Assembly, without indicting another to a certain day; therefore, (having been moderator to this Assembly,) in their name, they adhering to me, I humbly crave leave to declare, that the office-bearers in the house of God, have a spiritual intrinsic power from Jesus Christ, the only head of his church, to meet in assemblies about the affairs thereof, the necessity of the same being first represented to the magistrate. And further, I humbly crave, that the dissolution of this Assembly, without indicting a new one to a certain day, may not be to the prejudice of our yearly General Assemblies granted to us by the laws of this kingdom. Here the mem-

bers rose up, and with one voice, declared their adherence to what the moderator had said; whereupon the moderator, turning himself to the Assembly, cried, Brethren, let us pray; but the members, by a general cry, pressed to name a diet for the next General Assembly. Whereupon the moderator said, If they pleased, the next General Assembly might meet here at Edinburgh upon the third Wednesday of August 1693, and the members did again with one voice declare their approbation thereof. Then the moderator having ordered silence, concluded with prayer, and singing the 133d psalm, and pronouncing of the blessing.

39. In the end of the act of Assembly 1647, approving the Confession of Faith, it is asserted, that it is always free to the magistrate to advise with synods of ministers and ruling elders meeting upon delegation from their churches, either ordinarily, or being indicted by his authority occasionally, and *pro re nata*. It being also free to assemble together synodically, as well *pro re nata*, as at the ordinary times upon delegations from the churches, by the intrinsic power received from Christ, as often as it is necessary for the good of the church to assemble, in case the magistrate to the detriment of the church withhold or deny his consent, the necessity of occasional Assemblies being first remonstrated unto him by humble supplication; see § 1. of this title.

#### TITLE. XVI.

*The Order of the Rolls of Church-Judicatures, and Ranking of Church Office-bearers. And of her Registers.*

1. Ruling elders and deacons in church-sessions should be regularly inrolled, and called to take place, according to the seniority of their ordination: but the poverty of the church being such, that there is no maintenance or benefice annexed to these offices, therefore they use to be ranked according to their secular stations and employments; only seniority of ordination may be a rule whereby disputes for precedency among equals are to be decided.

2. All ministers are inrolled in presbyteries, and have place only according to the seniority of their ordination; a presbyter labouring in the word and doctrine, being the highest officer in the church, to be sure no office-bearer of an inferior order will ever compete with him: and therefore a minister of a later ordination, albeit he have the character and station of almoner or chaplain to the Royal Family, or of being historio-

grapher, principal, or professor of theology or philosophy in any university, yet he will not presume thereupon to take place from one of a prior ordination; because all these stations and characters, ecclesiastically considered, are of an inferior order to that of the pastor, unless he pretend unto it by virtue of civil place and power, which is condemned in pastors as incompatible with their spiritual function, by Assembly 1638, Decem. 19, but the order in which ministers deliver the presbyterial exercises, is according to the seniority of erection of the parish churches where they officiate.

3. It is usual to change the order of the roll every synod, so that the presbytery that was first called in the roll of the former synod, is now called last (as was said above,) and that which was in the second place is now called first: and the members are called according to the roll of each presbytery, presented to the clerk by the moderators thereof, with the ruling elders therein insert. And though a parish be vacant, or the minister thereof not present, yet the ruling elder for that church session is to be called for and inrolled. But those who are against ruling elders their being supernumerary to ministers in judicatures may dislike this: Yet if once a judicature fix on a quorum, whereof always so many are to be ministers, though double their number of elders should come and be present, there is nothing as yet to hinder them all from voting.

4. The rolls of General Assemblies do begin with the synod which in the former Assembly was called in the second place, leaving the synod which was then first called now last; by which rotation the equality is better preserved. Commissioners from presbyteries are placed in their commissions according to the seniority of their ordination. Next to them are inrolled the commissioners from the universities within the bounds; and next to them such as have commissions from royal burghs therein. In General Assemblies, ruling elders are called immediately after the ministers their colleague commissioners.

5. The first thing to be done at every diet, after calling the rolls, is the hearing the minutes of the last sederunt or session read; and till they be passed and allowed by the judicature, and also subscribed by the moderator, there ought no extracts thereof to be given, nor, till then, should it be warrantable for the clerk to enter them into the register.

6. In any thing wherein the moderator or clerk is particularly concerned, they ought in that case both to subscribe the



minutes, as the privy seal used to be appended to charters, or the like passing the great seal in favours of the keeper of the great seal. And at the close of the register of every General Assembly, and of each inferior church judicature, when they are given in to be approved by their next immediately superior judicature, they bear, "Here ends the register of the acts and proceedings of                    from                    to                    consisting of                    pages." And this attestation is to be subscribed by the moderator and clerk: and every record at the beginning is to bear its own proper title, viz. the register of the acts and proceedings of such a judicature, begun at the                    day of                    &c.

7. By the ninth act of Assembly 1700, they appoint all provincial synods and presbyteries to be careful in revising the registers of the judicatures under their immediate inspection, and that they appoint a competent number of the most fit and experienced among them, for that work; and when they find nothing to challenge in any register, they are to give it the attestation following: "The provincial synod of                    having heard the report of those appointed to revise the presbytery book of                    and having heard their remarks thereupon, and the said presbytery'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 presbytery, and nothing appearing censurable, ordered the clerk to attest this in their presbytery-book." And so for the registers of provincial synods and kirk-sessions, *mutatis mutandis*; and also for the registers of the commissions of Assemblies, by the 8th act of Assembly 1706. But if there be any thing truly censurable in the said books, with respect to discipline, that it be recorded as censured both in the synod book and attestation.

8. All sentences and acts are to be filled up in the records, as all other things should be, according to the priority of their being voted or agreed unto, and that although no extract hath been, or perhaps ever may be called for. And when any thing is omitted in the body of a record, it may be written on the margin, which the moderator and clerk must subscribe again. When any thing is delete, let it be marked delete on the margin, and subscribed as the other, counting the lines or words blotted out. But interlinings are most improper, and derogatory to that credit which a record should bear. Further, when any blank is left in the record, and yet there is nothing wanting, it may be scored, or what is more proper, filled up

with *nihil hic deest* ; which words may be lengthened or shortened according to the bounds of the blank. See the 9th act of Assembly 1706.

9. By the 11th act of Assembly 1703, for the better preservation of their registers, they enact and appoint, that there be two authentic copies thereof, both subscribed by the moderator and clerk ; one copy whereof to lie in the clerk's custody, and the other to be sealed, and laid in some secure place, where the Assembly or commission shall appoint ; as also that a subscribed extract of the proceedings of each General Assembly be sent, a little after the rising thereof, to the several synods within this church, to be by them recorded in a book.

10. As to the style of the Assembly's addresses and letters to their Sovereigns or foreign churches, and as to the style of their letters to the Assembly, both may be seen in their printed registers ; as also these with the records of their commissions will evidence what civilities the church pays in congratulating and attending on the ministers of state and other great men : thus they court their favour, and return them their thanks, all done for the benefit and advantage of the present church establishment.

## TITLE XVII.

### *Of Visitation of Schools and Universities.*

1. All schools and colleges were to be reformed, and none admitted to instruct the youth privately or publicly, but such as should be tried by the visitors of the kirk, James VI. Par. 1, cap. 11. And even under the late Prelacy, none were admitted to teach in any public schools without licence from the ordinary, Charles II. Par. 1, sess. 2, cap. 4, *sub fin.* ; and also, by the act of Assembly, Dec. 17, 18, 1638, art. 4, they ratify the acts of Assembly 1565, 1567, and 1595, whereby visitation of colleges is to be by way of commission from the General Assembly ; and the principal regents and professors within colleges, and masters and doctors of schools, are to be tried by them concerning the soundness of their judgment in matters of religion, their ability for discharge of their calling, and the honesty of their conversation. It is no wonder the church think herself much concerned, that these seminaries of learning be duly regulated, considering how much it tends to the increase of Christian knowledge and learning, and the advantage of true piety and religion. By

the General Assembly 1638, they grant commissions for visitation of the colleges of Aberdeen and Glasgow. And the Assembly 1639, appoints visitations of the universities of St Andrews and Glasgow. Again, the Assembly 1640, appoints visitations of Glasgow and Aberdeen colleges, as may be seen in the index of the unprinted acts of these and subsequent Assemblies.

2. The power of visitations of universities, colleges, and schools, is now claimed by the Sovereigns to be their undoubted right and prerogative, as is evident from the narrative of the act of Parliament 1690, for the visitation of universities. The power granted to the visitors by that act, is only executive or judicative, and not legislative, which neither can nor should be. For seeing the trust wherewith the legislators themselves are clothed is only personal, it cannot be delegated to others, unless they receive power from their constituents for that effect and purpose. But though their power could be delegated, it should not be done; for some designing and disaffected members in such commissions might so manage the plurality of a quorum to plant and regulate these nurseries of church and state, as might pave the way, and dispose the nation more easily for some pernicious revolution. The visitors appointed in that commission are both members of Parliament and ministers. The one sort, I think, is appointed to remove disloyal teachers, and to consider the foundations of these seminaries, with the rents and revenues thereof, and how the same have been managed, and to set down good rules for the good management thereof. And ministers, I think, are named to take trial if the teachers be erroneous, scandalous, negligent, or insufficient, and for ordering the manner of teaching; and thereupon present their humble advice to the statesmen: for authoritatively they cannot act without delegation from the church. See the title about Extraordinary Synods, § 1.

3. There is none will grudge the church the exercise of this power of visiting colleges, so much as these masters, who have ground to fear that their insufficiency and negligence may come to be exposed and discovered upon an exact and judicious trial. Again, there are some factious masters that desire only statesmen to be visitors, among whom they think some of their *quondam* disciples may be found, who will be influenced to favour their ambitious or revengeful designs.

4. As to grammar schools, the power of visiting them remains with presbyteries; for by the 23d act, Parl. 1693, it is

declared, that all school-masters and teachers of youth in schools, are and shall be liable to the trial, judgment, and censure of the presbyteries of the bounds, for their sufficiency, qualifications, and deportment in the said office. By the act of Assembly 7th Feb. 1645, they appoint that every grammar school be visited twice in the year, by visitors to be appointed by presbyteries and kirk-sessions in landward parishes, and by the town-council in burghs with their ministers; and where universities are, by the universities, with consent always of the patron of the schools, that both the fidelity and diligence of the masters, and proficiency of the scholars in piety and learning, may appear. Inquiry is also to be made if masters be diverted from due attendance by any other employment. By the 13th act, Assembly 1706, somewhat of the same nature is enjoined, viz. that presbyteries visit grammar schools twice a year by some of their own number.

5. By the foresaid act 1645, they appoint that no school-master be admitted to teach a grammar school in burghs or other considerable parishes, but such as, after examination by the ministers, deputies of the town and kirk-session, and parish, (which is, I think, the heritors,) shall be found skilful in the Latin tongue, not only for prose, but also for verse, and shall be also approved by the presbytery therein.

6. By the foresaid act, they appoint that at the time of every General Assembly, the commissioners directed thereto from universities, meet and consult together for the advancement of piety and learning, and keeping of an uniformity in doctrine, and good order among the universities. What they do this way is not to bind the universities, till it be presented to the General Assembly, and receive their authority, as may be gathered from the Assembly's act, 18th June, 1646. This of new is enacted by the 6th act of Assembly 1707.

### TITLE XVIII.

#### *Of a General Council of Protestants.*

1. As Provincial Assemblies may, and do correspond with other Provincial Assemblies, so may General Assemblies with the Assemblies of other churches. In a manuscript of the Acts of Assemblies, Edinburgh, October 25, 1577, you will find that Casmir having written to the Queen of England, of a council to be held at Magdeburg, for establishing the Augustine confession, the Queen wrote thereof to the Regent in Scotland, who communicated her letter to the Assembly, and

desired they might send some of their number to assist thereat. Whereupon the Assembly named Mr Andrew Melvill, and some others. And some ministers and elders were sent from the General Assembly to the Assembly of Divines at Westminster, in order to carry on the unity and uniformity in religion and church government. It belongs in these cases to the civil powers of these nations from which they go to take care that their charges be honestly defrayed. And the states in whose dominions the council is to be, use to grant a safe conduct to the foreign correspondents. See tit. 15. § 9.

2. In the Book of Policie of the Kirk agreed unto *anno* 1581, they say, beside these Assemblies, there is another more general kind of Assembly, an universal Assembly of the Church of Christ in the world, which was commonly called an œcumenic council, representing the universal church, which is the body of Christ. Their warrant to meet, and the authority of their meeting, must be as good and as great, with respect to National and General Assemblies or convocations, as the authority of these are, with respect to provincial assemblies or synods.

3. If the Protestant Princes and commonwealths would condescend and concert, that there should be a general council at such a time and place; then the National, or rather Provincial Assemblies, at the appointment of their respective Sovereigns, might meet and delegate one pastor and elder for each province consisting of an hundred parishes. Only from each distinct sovereignty, though consisting of less than fifty parishes, there might be at least a representation of the church therein by one pastor and ruling elder.

4. Most of the churches being already bound and obliged to own and maintain that Confession of Faith, which they have by their canons authorised and approved; and their being an universal harmony in the doctrine contained in all the confessions of the reformed churches; the work of a general council as to matters of faith, would, in all probability, be sweet and easy: And if in what relateth to the worship, discipline, or government of the church, there should be some misunderstandings, God should even reveal this unto them. Nevertheless, whereto we have already attained, let us walk by the same rule, let us mind the same things, Phil. iii. 15, 16.

5. If this council were once met and constitute, and countenanced by the authority of their several Sovereigns, then they might appoint the time and place of their next council, which might be every seventh year; and let one from differ-

ent churches be chosen to the chair at every new council. To prepare the way for such a catholic meeting, it were fit in the mean time to have a correspondence kept among all the churches. See § 1 of this title.

6. In the subordination of these Assemblies, parochial, presbyterial, provincial, and national, the lesser unto the greater, doth consist the external order, strength and stedfastness of the church of Scotland. And when it shall please the Lord to make ready and dispose the nations for a general council, then shall that beauty and strength appear more remarkably in the whole catholic church, which is the body of Christ. Then should the churches be established in the faith, increased in number daily; and as they went through the cities, delivering them the decrees to keep, that were ordained of the apostles and elders which were at that general council, Acts xvi. 4, 5, they should give occasion to many to rejoice for the consolation. Such a time is rather to be wished than hoped for. See tit. 1, § 1, of this Book.

## BOOK SECOND.

### TITLE I.

*Of Lecturing, Preaching, Catechising, Public Prayers before and after Sermon, Singing of Psalms, and Ministerial Benediction.*

1. By the 15th act of Assembly 1707, they declare that there are some innovations set up of late by Prelatists in their public Assemblies, which are dangerous to this church, and manifestly contrary to the constant practice and known principle thereof, which is, that nothing is to be admitted in the worship of God, but what is prescribed in the Holy Scriptures. Therefore they discharge the practice of all such innovations in divine worship within this church, and ministers are required to inform their people of the evil thereof.

2. All are to enter the Assembly in a grave and seemly manner, to take their seats or places without adoration, or

bowing themselves towards one place or another. If any through necessity be hindered from being present at the beginning, they ought not, when they come into the congregation, to betake themselves to their private devotions, but reverently compose themselves to join with the Assembly in that ordinance of God, which is then in hand. Most of what is said on this title may be found in the Directory.

3. The congregation being assembled, the minister, after solemn calling on them to the worshipping of the great name of God, is to begin with prayer. The public worship being begun, the people are wholly to attend on it; forbearing to read anything, except what the minister is then reading or citing; much more are they to abstain from all private whisperings, conferences, salutations, or doing reverence to any person present, or coming in, as also from all gazing, sleeping, or other indecent behaviour.

4. Reading of the word in the congregation, being a part of the public worship of God, (wherein we acknowledge our dependence upon him, and subjection to him,) and one mean sanctified, by him for the edifying of his people. is to be performed by the pastors and teachers, and preachers licensed by the presbytery thereunto, who should, (as Ezra and his companions did, Neh. viii. 8.) read in the book in the law of God distinctly, and give the sense, and cause them to understand the reading.

5. How large a portion is to be read at once, is left to the wisdom and discretion of the minister; but it is convenient that ordinarily one chapter of each Testament be read at every meeting, and sometimes more, where the chapters be short, or the coherence of the matter requireth it. It is also requisite that all the Canonical books be read over in order, that the people may be the better acquainted with the whole body of the Scriptures, and where the reading in either Testament endeth on one Lord's day, it is to begin the next. The more frequent reading of such Scriptures is also commended, as he that readeth shall think best for edification of his hearers, as the Book of Psalms and such like; and when he shall judge it necessary to expound any part of what is read, that work is not to begin, until the reading of the whole chapter or psalm be ended.

6. Regard is always to be had to the time, that neither preaching nor other ordinance be straitened or rendered tedious; which rule is to be observed in all other public performances; and therefore, by the act of Assembly, Feb. 7, 1645,

for regulating of that exercise of reading and expounding the Scriptures upon the Lord's day, mentioned in the Directory, they ordain the minister and people to repair to the church half an hour before that time, at which ordinarily the minister now entereth to the public worship; and that that exercise of reading and expounding, together with the ordinary exercise of preaching, be perfected and ended at the time, which formerly closed the exercise of public worship. And for recovering the old custom established by the Directory, the General Assembly 1694, sess. 9, appoints ministers to read and open to the people some large and considerable portion of God's word. And the diligence of ministers in this is to be inquired into by presbyteries at their privy censures, Assem. 1704, sess. 8, and also at parochial visitations, Assem. 1706, act 10.

7. Preaching of the word being the power of God unto salvation, and one of the greatest and most excellent works belonging to the ministry of the gospel, should be so performed that the workman need not be ashamed, but may save himself and those that hear him. Ordinarily, the subject of his sermon is to be some text of the Scripture holding forth some principle or head of religion, or suitable to the special occasion emergent. Or he may go on in some chapter, psalm, or book of the Scripture, as he shall see fit. By the 5th art. cap. 3, of our Confession of Faith, the doctrine of the high mystery of predestination is to be handled with special prudence and care. And albeit Mr. Turrentine in his *Instit. Theol. Loc. 4, quest. 6*, maintains very warrantably, that it should be publicly taught, yet he thinks it a subject more proper for the schools than the pulpits.

8. The introduction to the text is to be brief and perspicuous, drawn from the text itself or context, or some parallel place of Scripture. If the text be long, (as in histories and parables sometimes it must be,) he is to give a brief sum of it; if short, a paraphrase thereof, if need be; in both looking diligently to the scope of the text, and pointing at the chief heads and grounds of doctrines which he is to raise from it. In analysing and dividing his text, he is to regard more the order of matter than of words, and neither to burden the memory of the hearers in the beginning with too many members of division, nor to trouble their minds with obscure terms of art.

9. In raising doctrines from the text, his care ought to be, 1st, That the matter be the truth of God. 2dly, That it be truth



grounded on, or contained in that text, that the hearers may discern how God teacheth it from thence. 3dly, That he chiefly insist upon these doctrines which are principally intended, and make most for the edification of the hearers. The doctrine is to be expressed in plain terms, or if any thing in it need explication, it is to be opened, and the consequence also from the text cleared. The parallel places of Scripture confirming the doctrine are rather to be plain and pertinent than many; and if need be, somewhat insisted upon, and applied to the purpose in hand. The reasons or arguments are to be solid, and as much as may be, convincing. The illustrations, of what kind soever, ought to be full of light, and such as may convey the truth into the hearer's hearts with spiritual delight.

10. If any doubt, obvious from Scripture or reason, or prejudice of the hearers, seem to arise, it is very requisite to remove it, by reconciling the seeming differences, answering the reasons, and discovering and taking away the causes of prejudice and mistakes: otherwise it is not fit to detain the hearers with propounding or answering vain or wicked cavils, which, as they are endless, so the propounding and answering of them, doth more hinder than promote edification.

11. The doctrine is to be brought home to special use by application to the hearers, that they may feel the word of God to be quick and powerful, and a discernor of the thoughts and intents of the heart. In the use of instruction or information in the knowledge of some truth, which is a consequence from his doctrine, he may, when convenient, confirm it by a few firm arguments, from the text in hand, and other places of Scripture, or from the nature of that common place of divinity, whereof that truth is a branch. In confutation of false doctrines, he is neither to raise an old heresy from the grave, nor to mention a blssphemous opinion unnecessarily; but if the people be in danger of an error, he is to confute it soundly, and endeavour to satisfy their judgments and consciences against all objection. In exhortation to duties, he is, as he seeth cause, to teach also the means that help to the performance of them. In dehortation, reprehension, and admonition, which requireth special wisdom, he is, as need requires, not only to discover the nature and greatness of the sin, with the misery attending it, but also to show the danger the hearers are in to be overtaken and surprised by it, together with the remedies and best way to avoid it. In applying comfort, whether general against all temptations, or particular against

some special troubles and terrors, he is carefully to answer such objections as a troubled heart and afflicted spirit may suggest to the contrary. It is also sometimes requisite to give some notes of trial, which is very profitable, especially when performed by able and experienced ministers, with circumspection and prudence, and the signs clearly grounded on the holy Scripture, whereby the hearers may be able to examine themselves, whether they have attained those graces, and performed those duties to which he exhorteth, or be guilty of the sin reprehended, and in danger of the judgment threatened, or are such to whom the consolations propounded do belong.

12. This method is not prescribed in the Directory as necessary for every man, or upon every text: nor is it necessary to prosecute every doctrine which lies in the text, and such uses as are wisely to be made choice of, as by the minister's residence and conversing with his flock he findeth most needful and seasonable for them: but only it is recommended as a method which hath in experience been found much blessed of God, and very helpful for the people's understandings and memories.

13. Ministers are to preach catechetical doctrine, besides their ordinary work of catechising, in such manner as they find most conducive to the edification of their flocks, by act of Assembly 1695, sess. 17. This work of catechising, is a familiar way of instruction or teaching, when the scholar answers the question asked. It is in a plain way to instruct those of their charge in the first principles of the Christian religion. This was the apostolical way of teaching the churches at their first plantation, Heb. v. 12, and vi. 1, 2, 1 Cor. iii. 1, 2. This is the periphrasis of pastor and people, which the Holy Ghost useth, setting forth the reciprocal relation and office betwixt them, Gal. vi. 6. "Let him that is taught," or catechised, "in the word, communicate unto him that teacheth," or catechiseth, "in all good things." *Catechumeni*, was a word used by the primitive church, to signify such as learned the principles of religion, and were not yet baptised; and since, such as are catechised, but who have not received the Lord's supper. These *Catechumeni*, were of two sorts: one sort was, of those who had not access to baptism till they made public profession of their faith in Jesus Christ, because their parents were Heathens, and themselves strangers to the Christian doctrine; such were catechised before baptism. The other sort of *Catechumeni* was, the children of professed believers, who were baptised when infants, having a right to that

seal by virtue of that promise made to believers and to their children ; these, after their infancy was over, and they had been privately instructed in the principles of the Christian religion, offered themselves to public catechising. Both these sorts, after they had made such proficiency in the knowledge of religion, as thereupon they were admitted to the Lord's table, they got the name of *Perfecti*.

14. By the 25th article, cap. 1, French Church Discipline, the minister of one parish cannot preach in another, without first obtaining leave of the minister of that, unless in case of his absence. In which case it must be the consistory that invites him : and if the flock be dispersed by reason of persecution or other trouble, the stranger shall endeavour to assemble the deacons and elders, which if he cannot do, he shall nevertheless be permitted to preach to re-unite the flock. And by the 20th canon *Concilii sexti in Trullo* : " Ne liceat episcopo in alia, quæ ad se non pertinet, civitate publice docere : si quis autem hoc facere deprehensus fuerit, ab episcopatu desistat, presbyteri autem munere fungatur."

15. Every minister is ordained to have weekly catechising of some part of the parish, and masters of families are to catechise their children and servants at home, whereof account may be taken by the minister and elders assisting him in the visitation of every family ; see act of Assembly, August 30, 1639. And by the act of Assembly, July 30, 1649, the fore-said act is renewed. I know no act for weekly sermons, yet weekly preaching there is ; ministers, it is true, are appointed to preach every Lord's day, both before and after noon, Assem. 1648, sess. 3s. But there is none for week-day's sermons, yet the one is observed, and the other too much in desuetude. By that act 1649, ministers are so to order their catechetic questions, as thereby, the people present may at every diet have the chief heads of saving knowledge presented unto them. And by the same act, every presbytery is ordained to take trial twice in the year, whether all the ministers be careful to keep weekly diets for catechising : and if any be found negligent therein, they shall be admonished for the first fault ; and if after such admonition, they shall not amend, the presbytery then shall rebuke them sharply : And if after such rebuke they shall not yet amend, they shall be suspended. Ministers of land-ward congregations are certainly to be exempted from this in seed-time and harvest, and the act is to be so understood.

16. All of every quality are to be examined of whose

knowledge ministers are not certain, (which clearly supposeth that a minister being once satisfied with a person's knowledge is not obliged again to examine him,) and young persons from the time they are capable of instruction, which it seems hath been thought to be about nine years of age, by the MS. acts of Assembly at Edinburgh 1570. But see Assem. 1648, sess. 38, among remedies ecclesiastical, in particular against ignorance. And Assem. 1646, sess. 10, remed. 9, ministers are to have rolls of their parish, not only for examination, but for considering the several dispositions of the people, that accordingly they may be admonished and prayed for by them in secret.

17. The larger and shorter Catechisms agreed upon by the Assembly of Divines at Westminster, with assistance of commissioners from this church, are by the Assembly 1648, July 28, and August 20, approved and appointed directories, the larger for catechising proficients in religion, and the shorter for catechising such as are of weaker capacity. By the act of Assembly 1649, sess. 30, sessions are to take care that in every family, there be at least one copy of these Catechisms, Confession of Faith, and Directory for Worship.

18. By the act of Assembly July 28, 1648, they having found in a little Catechism printed at Edinburgh 1647, entitled, "The A, B, C, with the Catechism," that is to say, "An instruction to be taught and learned of young children," very gross errors in the point of universal redemption, and in the number of the sacraments, they do discharge the selling, using, and reprinting thereof.

19. Some persons may be rebuked at the time of catechising, who deserve more than a private rebuke, and yet need not be brought to public repentance, Assem. 1648, sess. 38.

20. The intention of the composers of our Directory for public prayer is expressed towards the end of their preface. Their own words are, "our meaning therein being only that the general heads, the sense and scope of the prayers and other parts of public worship being known to all, there may be a consent of all the churches in these things that contain the substance of the service and worship of God, and the ministers may be hereby directed in their administrations, to keep like soundness of doctrine and prayer, and may, if need be, have some help and furniture: yet so as they become not hereby slothful and negligent in stirring up the gifts of Christ in them; but that each one, by meditation, by taking heed to himself, and the flock of God committed to him, and by wise

observing the ways of divine Providence, may be careful to furnish his heart and tongue, with further or other materials for prayer, as shall be needful on all occasions."

21. The Directory for public prayer doth recommend that prayer which Christ taught his disciples, to be also used in the prayers of the church; because it is not only a pattern of prayer, but is itself a most comprehensive prayer. I do think there are no public prayers used in our church, wherein the petitions in the Lord's prayer, are not expressed throughout their prayers; though perhaps neither at the beginning or conclusion, or all at once, by way of form. But if any, notwithstanding, think fit to say it likewise all at once, the most proper time for that, some think, would be immediately before the other form used for the ministerial benediction. See § 29, of this Title.

22. After reading of the word, and singing of the Psalm, the Lord is to be called upon to this effect, viz. To acknowledge our great sinfulness, first, by reason of original sin, which, besides the guilt that makes us liable to everlasting damnation, is the seed of all others sins that hath depraved and poisoned all the faculties and powers of soul and body, doth defile our best actions, and were it not restrained, or our hearts renewed by grace, would break forth into innumerable transgressions, and greatest rebellions against the Lord, that ever were committed by the vilest of the sons of men. And next, by reason of actual sins, our own sins, the sins of magistrates, of ministers, and of the whole nation, unto which we are many ways accessory. Which sins of ours, receive many fearful aggravations, we having broken all the commandments of the holy, just, and good law of God, doing that which is forbidden, and leaving undone that which is enjoined, and that not only out of ignorance and infirmity, but also more presumptuously against the light of our minds, checks of our consciences, and motions of his own holy Spirit to the contrary. So that we have no cloak for our sin, yea, not only despising the riches of God's goodness, forbearance, and long suffering, but standing out against many invitations and offers of grace in the gospel. To bewail our blindness of mind, hardness of heart, unbelief, impenitency, security, backwardness, barrenness, our not endeavouring after mortification, and newness of life, nor after the exercise of godliness in the power thereof, and that the best of us have not walked so steadfastly with God, kept our garments so unspotted, nor been so zealous of his glory, and the good of others as we

ought, and to mourn over such other sins as the congregation is particularly guilty of, notwithstanding the manifold and great mercies of our God, the love of Christ, the light of the gospel, and reformation of religion, our own purposes, promises, vows, solemn covenants, and other obligations to the contrary. To acknowledge and confess, that as we are convinced of our guilt, so, out of a deep sense thereof, we judge ourselves unworthy of the smallest benefits, most worthy of God's fiercest wrath inflicted upon the most rebellious sinners, and that he might justly take his kingdom and gospel from us, plague us with all sorts of spiritual and temporal judgments in this life; and after cast us into utter darkness. Notwithstanding all which, to draw near to the throne of grace, encouraging ourselves with hopes of a gracious answer of our prayers in the riches and all-sufficiency of that only one oblation, the satisfaction and intercession of the Lord Jesus Christ, at the right hand of his Father and our Father, and in confidence of the exceeding great and precious promises of mercy and grace in the new covenant, through the same Mediator thereof, to deprecate the heavy wrath and curse of God, which we are not able to avoid or bear, and humbly and earnestly to supplicate for mercy in the free and full remission of our sins, and that only for the bitter sufferings and precious merits of that of our only Saviour Jesus Christ. That the Lord would vouchsafe to shed abroad his love in our hearts by the Holy Ghost; seal unto us by the same spirit of adoption, the full assurance of our pardon and reconciliation; comfort all that mourn in Zion, speak peace to the wounded and troubled in spirit, and bind up the broken-hearted: And as for secure and presumptuous sinners, that he would open their eyes, convince their consciences, and turn them from darkness unto light. To pray for sanctification by his Spirit, the mortification of sin dwelling in, and many times tyrannizing over us, the quickening of our dead spirits, with the life of God in Christ, grace to enable us for all duties of our conversation and callings towards God and men, strength against temptations, the sanctified use of blessings and crosses, and perseverance in faith and obedience unto the end. To pray for the propagation of the gospel and kingdom of Christ to all nations, for the conversion of the Jews, and the fulness of the Gentiles, the fall of Antichrist, and the hastening of the second coming of our Lord; for the deliverance of the distressed churches abroad, from the tyranny of the Antichristian faction, and from the cruel oppressions and blasphemies of the Turk; for the blessing of God upon all the reformed churches,

especially upon the churches and kingdoms of Scotland, England, and Ireland, more particularly for that church and kingdom whereof we are members, that therein God would establish peace and truth, the purity of all his ordinances, and the power of godliness, prevent and remove heresy, schism, profaneness, superstition, security and unfruitfulness under the means of grace, heal all our rents and divisions, and preserve us from breach of our solemn covenant. Prayers are to be put up for all in supreme authority, and those in subordinate authority to them, 1 Tim. ii. 1, 2, 4. Which prayers are to be directed by their circumstances. We are to pray for all pastors and teachers, that God would fill them with his Spirit, and make them powerful in their ministry, and give unto all his people pastors according to his own heart; for the universities and schools, and religious seminaries, for church and commonwealth, that they may flourish more in learning and piety; for the particular city or congregation, that God would pour out a blessing upon the ministry of the word, sacraments, and discipline, upon the civil government, and all the families and persons therein; for mercy to the afflicted in any inward or outward distress; for seasonable weather, and fruitful seasons, as time may require, for averting judgments that we either feel or fear, or are liable unto, as famine, sword, pestilence, and such like. To pray earnestly for his grace and effectual assistance to the sanctification of his holy Sabbath, the Lord's day, in all the duties thereof, that the Lord, who teacheth to profit, would graciously please to pour out the spirit of grace, together with the outward means thereof, causing us to attain such a measure of the excellency of the knowledge of Christ Jesus our Lord, that we may account all things but as dross, in comparison of him; and that we, tasting the first fruits of the glory to come, may long for a more full and perfect communion with him. That God would in a special manner furnish his servant now called to dispense the bread of life unto his household, with wisdom, fidelity, zeal, and utterance, that he may divide the word of God aright, to every one his portion, in evidence and demonstration of the Spirit and power, and that the Lord would circumcise the ears and hearts of the hearers to hear in love, and receive with meekness, the ingrafted word, strengthen them against the temptations of Satan, the cares of the world, the hardness of their own hearts, and whatsoever else may hinder their profitable and saving hearing.

23. The sermon being ended, the minister is to give thanks

for the great love of God in sending of his Son Jesus Christ unto us, for the communication of his Holy Spirit, for the light and liberty of the glorious gospel, for the admirable goodness of God, in freeing the land from Anti-christian darkness and tyranny, for the reformation of religion, and many temporal blessings: and to pray for the continuance of the gospel, and all ordinances thereof in their purity, power and liberty: and to turn some of the most useful heads of the sermon into some few petitions, and to pray that it may abide in the heart, and bring forth fruit in the life and conversation. To pray for preparation for death and judgment, and a watching for the coming of our Lord Jesus Christ; to intreat of God the forgiveness of the iniquity of our holy things, and the acceptance of our spiritual sacrifice, through the merit and mediation of our great High Priest and Saviour, the Lord Jesus Christ.

24. Notwithstanding of the above Directory for public prayers, the minister may (as in prudence he shall see meet) make use of some part of these petitions after the sermon, or he may offer up to God some of the thanksgivings in his prayer before sermon.

25. By the act of Assembly, Aug. 6, 1649, their commission being empowered to emit the Paraphrase of the Psalms, and establish the same for public use, they did accordingly conclude and establish the Paraphrase of the Psalms in metre, now used in this church, after the presbyteries had sent their animadversions thereupon.

26. It was the ancient practice of the church, as it is yet of some reformed churches abroad, for the minister or precentor to read over as much of the Psalm in metre together, as was intended to be sung at once, and then the harmony and melody followed without interruption, and people did either learn to read, or get most of the Psalms by heart; but afterwards it being found, that when a new Paraphrase of the Psalms was appointed, it could not at first be so easy for the people to follow, then it became customary that each line was read by itself, and then sung. But now, having for so long time made use of this Paraphrase, and the number of those who can read being increased, it is but reasonable that the ancient custom should be revived, according to what is insinuated by the Directory on this subject. And that such who cannot read may know what Psalms to get by heart, let such be affixed on some conspicuous part of the pulpit as are to be sung in public at next meeting of the congregation. It were to be wished that



masters of families would path the way for the more easy introducing of our former practice, by reviving and observing the same in their family worship.

27. In the 33th Sess. of Assembly, 1648, there is an act for examining the labours of Mr Zachary Boyd, upon the other scripture songs. And by Assembly 1706, sess. 4, the scripture songs by Mr Patrick Sympson, minister at Renfrew, are recommended to be used in private families: and in order to prepare them for the public use of the church, this was renewed in Assembly 1707; and by the 15th act of Assembly 1708, their commission is instructed and appointed to consider the printed version of the scripture songs, with the remarks of presbyteries thereupon; and after examination thereof, they are authorised and empowered to conclude and emit the same, for the public use of the church: the present version of the Psalms having been ordered in the same manner, in the year 1649.

28. Though a believer be afflicted, yet he is to sing since it is such a duty as prayer is, tendeth to cheer the soul's disposition, and to sweeten and mitigate the cross unto it. Complaints of our sin and failings may be mournful songs; and because God hath redeemed, pardoned, and comforted others, therefore we are to rejoice in the hope and desires of the same to ourselves. Though the subject of a song doth not always quadrate with our case, yet unto a judicious attentive person there is always some attribute of God, some providence or word of his, in that very subject to be praised. In the imprecatory Psalms, we sing to the praise of divine justice, against the malicious enemies of his church, like unto these that the Psalmist did aim against.

29. The minister useth to dismiss the congregation with a solemn blessing or prayer to God for them, which ordinarily is in these or the like words, 2 Cor. xiii. 14. "The grace of the Lord Jesus Christ, the love of God the Father, and the communion of the Holy Ghost, be with you all, Amen:" But when probationers for the ministry are preaching, they use to pronounce the blessing with this variation: Instead of "be with you," they say, "be with us." And the moderators of General Assemblies observe the same stile in pronouncing of the blessing at their dissolution. Yet seeing no minister of a congregation doth put up that public prayer alone, it would therefore seem, it should always run in the ordinary stile of other congregational petitions, viz. "be with us."

30. Ministers their bowing in the pulpit, though a lawful custom, is hereafter to be laid aside, for satisfaction of the desires of the synod of England, February 7, 1645.

## TITLE II.

### *Of Family Worship.*

1. By act of Assembly, August 24, 1647, revived Assembly 1694, they approve of the following rules and directions for private and secret worship, and mutual edification, for cherishing piety, maintaining unity, and avoiding schism and division. And ministers and ruling elders are required to make diligent search in the congregation, whether there be among them any family which neglects to perform family worship; and if any such be found, the head of the family is first to be admonished privately to amend his fault; and in case of his continuance therein, he is to be gravely reprov'd by the session: After which reproof, if he be found still to neglect family worship, let him be suspended from the Lord's supper.

2. The head of every family is to have a care, that both themselves, and all within their charge, be daily diligent in performing of secret worship, and be given to prayer and meditation.

3. The ordinary duties of families convened for the exercise of piety are these; first, prayer and praises; next, reading of the Scriptures, with catechising in a plain way together, with godly conferences; as also admonitions and rebukes upon just reasons.

4. The master of a family, though of the best qualifications, is not to take on him to interpret the Scriptures; yet it is commendable that, by way of conference, they make some good use of what hath been read and heard. As for example, if any sin be reprov'd in the word read, use may be made thereof, to make all the family circumspect and watchful against the same; or, if any judgment be threatened, or mentioned to have been inflicted in that portion of Scripture which is read, use may be made, to make all the family fear, lest the same or a worse judgment befall them, unless they beware of the sins that procured it. And finally, if any duty be required, or comfort held forth in a promise, use may be made to stir up themselves to implore Christ for strength to enable them for doing commanded duty, and to apply the offered comfort. In all which the master of the family is to

have the chief hand, and any member of the family may propound a question or doubt for resolution.

5. Persons of quality are allowed to entertain one approved by the presbytery, for performing the worship of God in their families. And in other families where the head is unfit, one constantly residing in the family, and approved by the minister and session, may be employed in that service: yet it was never the mind of the church, that persons of quality should lay their family worship entirely upon their chaplains, and never perform it in their own persons, as appears from the solemn acknowledgment of sins, where they confess, the ignorance of God and his Son prevails exceedingly in the land; the greatest part of masters of families amongst noblemen, barons, gentlemen, burgesses, and commons, neglect to seek God in their families, and to endeavour the reformation thereof; and albeit it hath been much pressed, yet few of our nobles and great ones ever to this day could be persuaded to perform family duties themselves, and in their own persons, which makes so necessary and useful a duty to be misregarded by others of inferior rank; nay, many of the nobility, gentry, and barons, who should have been examples of godliness and sober walking unto others, have been ringleaders of excess and rioting.

6. Considering that persons aiming at division may be ready to creep into houses, and lead captive silly and unstable souls; for preventing whereof, no idler who hath no particular calling, or vagrant person, under pretence of a calling, is to be suffered to perform worship in families. The not observing of this direction hath been of sad consequence to some families in this land in the late times. Neither are persons from divers families to be invited or admitted into family worship, unless it be these who are lodged with them or at meat, or otherwise with them upon some lawful occasion.

7. So many as can conceive prayer ought to make use of that gift of God, albeit those who are rude and weaker may begin with a set form of prayer, but so as they be not sluggish in stirring up in themselves the spirit of prayer, which is given to all the children of God in some measure.

8. Let them confess to God how unworthy they are to come in his presence, and how unfit to worship his Majesty, and therefore earnestly ask of God the spirit of prayer. They are to confess their sins, and the sins of the family, accusing, judging, and condemning themselves for them, till they bring their souls to some measure of true humiliation; they are to

pour out their souls to God in the name of Christ, by the Spirit, for forgiveness of sins, for grace to repent, to believe, and to live soberly, righteously, and godly; and that they may serve God with joy and delight, walking before him; they are to give thanks to God for his many mercies to his people, and to themselves, and especially for his love in Christ, and for the light of the Gospel; they are to pray for such particular benefits, spiritual and temporal, as they stand in need of for the time: they ought to pray for the church of Christ in general, for all the reformed churches, and for this church in particular, and for all that suffer for the name of Christ, for all superiors, for the Queen's Majesty, and inferior magistrates; for the magistrates, ministers, and whole body of the congregation; and for their neighbours absent about their lawful affairs, and for these that are at home. The prayer may be closed with an earnest desire, that God may be glorified in the coming of the kingdom of his Son, and that what they have asked according to his will may be done.

9. Extraordinary duties both of humiliation and thanksgiving are to be carefully performed in families, when the Lord, by extraordinary occasions, private or public, calleth for them.

10. Persons of divers families being abroad upon their particular vocations, or any necessary occasions, are to take care that the duties of prayer and thanksgiving be performed by such as the company shall judge fittest.

11. By an act of Assembly 1697, sess. 5, such elders and deacons as obstinately refuse or neglect family worship by themselves or others appointed for that end, are to be removed from their office.

### TITLE III.

#### *Of Baptism.*

1. Baptism is a sacrament of the New Testament, wherein Christ hath ordained the washing with water in the name of the Father, Son, and Holy Ghost, to be a sign and seal of ingrafting into himself, and of partaking of the benefits of the covenant of grace, and whereby the parties baptised are solemnly admitted into the visible church, and enter into an open and professed engagement to be only and wholly the Lord's.

2. The visible church, which is catholic or universal under the gospel, consists of all these throughout the world that pro-

ness the true religion, together with their children : and baptism is not to be administered to any that are out of the same, they being strangers to the covenant of promise, till they profess their faith in Christ, and obedience to him : but infants descending from parents, either both, or but one of them, professing faith in Christ and obedience to him, are in that respect within the covenant, and to be baptised. The Directory for worship says, that children of professing parents are Christians, and federally holy before baptism, and therefore are they baptised ; for their baptism supposeth them to be church members, and doth not make or constitute them such. And therefore the practice of denying burial among Christians unto children unbaptised, is unagreeable to this doctrine, and is most unwarrantable : if we consider, that the sacraments are ordinances to be administered in the church, and to the church, they necessarily suppose the pre-existence of a church, and the child's previous right to that seal.

3. By that covenant, whereof baptism is a seal, the Lord promiseth to be our God, and we are in his promised strength to engage to be his people ; which engagement, though Christian infants be not capable to come under of themselves formally ; yet by their parents vowing in their name and stead, they do thereby become absolutely bound to the performance thereof, because their obligation and duty to be the Lord's were supposed, and previous unto their being baptised.

4. When both parents are dead, or necessarily absent, another sponsor is to be taken ; or, when they are scandalous and erroneous, and thereby give ground to think they are none of Christ's, and for which they may merit the highest censures of the church, if not prevented by evidences of their sincere repentance : in that case, to testify that it doth not appear that the children have any right unto the privilege of that sealing ordinance through their immediate parents ; and that they may, notwithstanding, have a right thereto by their more remote parents, it is necessary that a sponsor present the children, and engage for them. The parent is to be required to provide some fit person, and, if it can be, one related as a parent to the child, should be sponsor. Yet it seems ignorant parents are to be admitted to present their children : for, by act of Assembly 1648, sess. 38, art. 3, of domestic remedies of the sins of the land, this is one, that persons to be married, and who have children to be baptised, who are very rude and ignorant, be stirred up and exhorted, as at all times, so especially at that time, to attain some measure of Christian know-

ledge in the grounds of religion, that they may give to the minister, before the elder of the bounds where they live, some account of their knowledge, that so they may the better teach their family, and train up their children.

In case of children exposed, whose baptism, after inquiry, cannot be known, the session is to order the presenting of the child to baptism, and the session itself is to see to the Christian education of the child: as also, when scandalous parents cannot prevail with any fit person, or rather relation, to present the child in their name, or when the relations of deceased parents refuse to become their sponsors, the session then is to order as is said. The magistrate is to take care that exposed infants be maintained, by laying the expenses thereof upon the parish proportionally. By the 84th canon. con. 6. *In Trullo*, “*Canonicas patrum leges sequentes, de infantibus quoque decernimus, quoties non inveniuntur firmi testes qui eos absque ulla dubitatione baptisatos esse dicant, nec ipsi, propter ætatem de sibi tradito mysterio apte respondere possint, debere absque ulla offensione baptisari.*”

6. By the 4th article, cap. 11, of the French Church Discipline, the children of fathers and mothers of the Romish church, and of excommunicated persons, cannot be admitted into the church, though they were presented by believing sponsors, unless their fathers and mothers consent to it, and desire it, in quitting and yielding up to the sponsors their right as to instructing them: for baptism being a privilege and benefit, it is not to be imposed, nor children baptised against their parents will, into a communion whereof they are not members; hence the custom of the church, at administering of baptism, is, to ask the parent or sponsor, if they present that child to be baptised, to which they declare their willingness by their answering affirmatively. By the 10th act of the said 11th chapter, those who present children to be baptised, must be, at least, fourteen years of age, having received the sacrament of the Lord's supper; and if they have not, that they promise faithfully to use their endeavours to prepare for it.

7. When single persons or families remove unto other congregations, they cannot regularly there be admitted unto the benefit of the sacraments for themselves or children, till they produce a declaration of the church from which they came, testifying them to be free of any known scandal, otherwise these holy things may be profaned, contrary unto that church practice and precept, *sacra sacris*, of which testimonials there

should a register be kept, and they run in this form: "These are to testify, that the bearer hereof                    hath lived in this parish of                    preceding                    last by past. During which space he behaved himself civilly and honestly, free of all church censure, or public scandal known to us. This given by command of the kirk session of the said parish. At the                    day of                    years, by A. B. session clerk."

8. This testimonial imports, that the person attested is not *per famam clamorosa*, or notoriously scandalous, through error or immorality; but it doth not suppose him to have a competent measure of knowledge, for that is left to the trial and inquiry of the church, to which he seeks to be added as a member. Therefore their judgment is never anticipate by any such clause, unless in testimonials for persons desiring the benefit of the Lord's supper in another parish, where the pastor thereof cannot then get time to examine all strangers. It is true, when men's lives and measure of knowledge are generally believed to be good and competent, this order, as to such, may be dispensed with; yet it were to be wished that even those would observe it, and not give occasion to others, not so good or knowing, to be angry, when they are restricted or obliged unto it.

9. In the baptismal engagement, the parent or sponsor is, in name of the child, to renounce the devil and all his works, the vain pomp and glory of this wicked world, and all the sinful lusts of the flesh. He is to promise to bring up the child in the knowledge of the grounds of the Christian religion, as they are contained in the holy Scriptures of the Old and New Testament: and lastly, he is to bring up the child in that holy life and practice which God hath commanded in his word. The engagements to be given in name of children at baptism, should be expressed in these or the like general terms, conform to the Directory for worship, approved by the General Assembly, 7th February 1645, the due observation whereof is seriously recommended by the 10th act of Assembly 1705.

10. The sacrament of baptism is to be administrate in the face of the congregation after sermon, and before pronouncing of the blessing, (see act of Assembly, Feb. 7, 1645.) The child to be baptised, after notice given to the minister the day before, is to be presented, the pastor remaining in the same place where he hath preached, and having water provided in a large bason; he is before baptism to use some words of in-

struction, touching the author, institution, nature, use, and end of this sacrament; he is also to admonish all that are present to repent of their sins against their covenant with God, and to improve and make the right use of their baptism: next, the parent, or sponsor, is to be exhorted to order his conversation aright, and walk circumspectly; when he is to be engaged in the words of the form above. This being done, prayer is also to be joined with the word of institution, for sanctifying the water to this spiritual use. The prayer is to this or the like effect, That the Lord, who hath not left us as strangers without the covenant of promise, but called us to the privileges of his ordinances, would graciously vouchsafe to sanctify and bless his own ordinance of baptism at this time: that he would join the inward baptism of his Spirit with the outward baptism of water; make this baptism to this infant a seal of adoption, regeneration, and eternal life, and of all other promises of the covenant of grace; that the child may be planted in the likeness of the death and resurrection of Christ, and that the body of sin being destroyed in him, he may serve God in newness of life all his days. Then the minister is to demand the name of the child, which being told him, he is to say (calling the child by his name) "I baptise thee in the name of the Father, of the Son, and of the Holy Ghost." As he pronounceth these words, he is to baptise the child with water, which for the manner of doing, it is not only lawful but sufficient, and most expedient, to be by pouring or sprinkling of the water on the face of the child, without adding any other ceremony. This done, he is to give thanks and pray to this or the like purpose; acknowledging, with all thankfulness, that the Lord is true and faithful in keeping covenant and mercy; that he is good and gracious, not only that he numbereth us among his saints, but is pleased also to bestow upon our children this singular token and badge of his love in Christ; that in his truth and special providence, he daily bringeth some into the bosom of his church, to be partakers of his inestimable benefits purchased by the blood of his dear Son, for the continuance and increase of his church; and praying, that the Lord would still continue and daily confirm more and more this his unspeakable favour; that he would receive the infant now baptised, and solemnly entered into the household of faith, into his fatherly tuition and defence, and remember him with the favour he sheweth unto his people; that if he shall be taken out of this life in his infancy, the Lord, who is rich in mercy, would be pleased to receive



him up into glory, and if he live and attain the years of discretion, that the Lord would so teach him by his word and Spirit, and make his baptism effectual to him, and so uphold him by his divine power and grace, that by faith he may prevail against the devil, the world, and the flesh; till in the end he obtain a full and final victory, and so be kept by the power of God through faith unto salvation, through Jesus Christ our Lord.

11. By the 14th article, chap. 11. of the French Church Discipline, ministers shall reject names given to children, that savour of ancient Paganism, such as Diana, and the like; and the names attributed to God, such as Emmanuel, and the like; but the names of holy men and women in Scripture are to be chosen.

12. By the 10th act of Assembly 1690, they considering, that the parties receiving the sacraments are solemnly devoted and engaged to God before angels and men, and are solemnly received as members of the church, and do entertain communion with her; and that by former acts, viz. December 10, 1638, and Feb. 7, 1645, the private use of them hath been condemned; as also, that by allowing the private use of the same in pretended cases of necessity, the superstitious opinion is nourished, that they are necessary unto salvation, not only as commanded duties, but as means without which salvation cannot be attained, therefore they discharge the administration of the Lord's supper to sick persons in their houses, and all other use of the same, except in the public Assemblies of the church; and also, they discharge the administration of baptism in private, that is, in any place, or at any time, when the congregation is not orderly called together to wait on the dispensing of the word, which is agreeable to the 6th article, chap. 11, of the French Church Discipline, and not to be dispensed with, except in times of persecution; and when a child is baptised in a private house, as is used in England, in that case the minister is to certify the congregation to which the child belongs, that the same was baptised by him, at such a time, and in such a place, before divers witnesses. By the 31st can. conc. 6, in *Trullo*: "Clericos qui in oratoriis quæ sunt intra domos sacra faciunt vel baptizant hoc illius loci episcopi sententia facere debere, decernimus. Quare si quis clericus hoc non sic servaverit, deponatur."

13. There is a register to be kept of the names of all baptised, and of their parents names and designations, and of the time of their baptism, and of the names of the witnesses thereto; and of all illegitimate children their names, and

those of their parents shall be likewise insert ; but of such it is only said, that they are not born in lawful marriage. When it is an incestuous child, it shall suffice to name the mother, with the presenter of the child, that the remembrance of so heinous a sin may be extinguished. This is conform to the 19th article of the foresaid 11th chapter.

14. Baptism is not to be administered but once unto any person. It is not the practice of the reformed churches to re-baptize those who were baptized by the Popish clergy ; for they baptize with water in the name of the Father, Son, and Holy Ghost as we do. But Quakers, and others, who want this external seal of the covenant of grace, though such should make profession of the true faith, that sacrament of baptism doth remain to be administered unto them, before they or their children can enjoy the privileges of church members.

15. Neither of the sacraments may be dispensed by any but a minister of the word lawfully ordained, saith our Confession of Faith, cap. 27. art. 4. And persons are to be baptized by a minister of the gospel lawfully called thereunto, according to art. 2. cap 28. Our law makes infestments void and null, where they are not given by such as it appoints and authoriseth to give them : Thus are all infestments in royal burghs, not given by some of the magistrates or clerks thereof. Yet baptism, when it is administered by a person, whose ordination and call is not agreeable to the principles, constitutions, and practice of this church, the essentials of the sacrament being observed, that baptism is esteemed as valid, though not as lawful. And although the reformed churches, (so far as I can learn,) would inflict the highest censure upon women or laicks, as profaners and mockers of the holy sacraments, if they presumed to dispense them, and would not have the least scruple to baptize those on whom they had wickedly usurped a power to impose a mock of it ; yet I find they have declined to determine so clearly in the case of re-baptizing of these who were baptized by deposed ministers ; which, I think, doth not proceed so much from the want of a parity of reason, as it doth from the offence, which may sometimes be taken by a great part of a church, who do not understand, or are not satisfied with the grounds of their deposition, or perhaps may be altogether ignorant of their being deposed. But when a deposed minister hath so little interest, and so few followers, that he is esteemed by most, yea by a vast majority, to be lawfully deposed ; in that case it might give offence, not to re-baptize a child who was so unlawfully baptised.

## TITLE IV.

*Of the Lord's Supper.*

1. The Lord's Supper, so called from the time of its institution and first celebration, is a sacrament of the New Testament, wherein by giving and receiving bread and wine, according to the appointment of Jesus Christ, his death is shewed forth, and they that worthily communicate, not after a corporal and carnal manner, but by faith, feed upon his body and blood, to their spiritual nourishment and growth in grace, have their union and communion with Him confirmed, testify and renew their thankfulness and engagements to God, and their mutual love and fellowship each with other, as members of the same mystical body.

2. Those who are to be admitted to this sacrament, must be found to have a competent knowledge of the fundamentals of the Christian religion, and to be of such an inoffensive walk and conversation, both towards God and their neighbours, that they are not known to be guilty of any scandal that meriteth church censure. By the 12th chapter of the French Church Discipline, art. 2, persons shall not be admitted to the Lord's supper, till they be above twelve years of age. But I am sure, if children at nine years of age can express themselves piously and knowingly, shewing that they have the grace signified and promised, the seal of the promise cannot warrantably be denied unto them. By the 6th article of that chapter, a man that is deaf and dumb, shewing his piety and religion what he can, by evident signs, tokens, and gestures, may be admitted to partake, when by a long experience of the holiness of his life, the church shall perceive he has faith. By the 7th art. thereof, the bread of the sacrament is to be administered to those who cannot drink wine, they protesting that it is not through contempt, and they doing what they can towards it, by putting the cup as near their mouth as they may do, to avoid giving any manner of offence. And by the 10th art. of the same 12th chapter, they say, in as much as several sick persons come to receive this sacrament, which gives occasion that severals make scruple of drinking the wine after them, the pastors and elders shall be warned to take good heed that care and prudence be used in this matter. They may communicate last.

3. Ordinary bread is to be used ; and it is most decent it be leavened wheat bread. Any kind of wine may be used in

the Lord's supper, yet wine of a red colour seemeth most suitable. In case a society of Christians should want the fruits of the vine of all sorts, I cannot think but it might be supplied by some composure as like unto it as could be made: And if any church laboured under that invincible necessity, were it not safer for them to interpret that as a call and warrant to communicate, though wanting the fruit of the vine, than to construct it an authorizing them in a perpetual neglect of that sacrament?

4. When the admission of those who are allowed to partake of the Lord's supper, is once recorded by a sentence of the church session, which is to proceed either upon the minister's examining of the parties in their presence, or at least of two or three of the elders, that so the rest may pass their sentence on their testimony and report; in that case there will never be any necessity of coming afterwards to ministers and elders for re-admission, unless by after scandal they be judicially suspended from that privilege. See the Vindication of Presbyterian Government, printed at London 1659, page 143. See § 6, and 16, of this title.

5. When the sacrament of the Lord's supper is to be celebrated in a neighbouring congregation, who have not leisure, and whose work is not to examine strangers, (as above,) the minister, or any two elders in his absence, may give testimonials; yea, should give to any of their parish, who communicate ordinarily at their own parish church, and are without scandal in their life for the time, who are thereupon to be admitted *ex debito*, and by reason of the communion of saints. But this is not to prejudge the admission of any honest person, who occasionally is in the place where the communion is celebrate, or such as by death or absence of their own minister or elders, could not have a testimonial. Act of Assembly, Feb. 7, 1645, art. 12, about uniformity of worship.

6. By the 11th act of Assembly 1706, it is recommended to all ministers, to take as strict a trial as can be of such as they admit to the Lord's supper, especially before their first admission thereto, and that they diligently instruct them, particularly as to the covenant of grace, and the nature and end of that ordinance as a seal thereof, and charge upon their consciences the obligations they lie under from their baptismal covenant, and seriously exhort them to renew the same. This fully answers the end that any Protestant Bishop can have in ministering of confirmation, or laying on of hands upon those that are baptised and come to years of discretion; neither doth

it savour of any superstition, or any scandalous-like approach to the Papists their confirmation, (by chrism on infants,) for the receiving of the Holy Ghost, which is nothing else but an audacious and apish imitation of conveying miraculous operations by the Apostles hands.

7. It is agreeable to the law of nature to seek and promote the good of others, according to our ability and opportunity, by admonishing them to forbear sin and repent for it, Lev. xix. 17. "Thou shalt not hate thy brother in thy heart, thou shalt in any ways rebuke thy neighbour, and not suffer sin upon him." See Matth. xviii. 15. I suppose that the Sovereigns on earth did publish their intentions of pardoning all traitors, who should express their sorrow and hatred at former treasons; and as a mean to reduce them to that happy temper, had strictly commanded and required all their good subjects, to put them in mind of the ingratitude, folly and danger of their treason: Would not we conclude that a neighbour seeing his fellow commit treason, and not reproving him therefor, did neither regard his Sovereign's honour and authority, nor yet valued his neighbour's happiness? How much more justly may our Lord and Saviour load and charge church rulers with this sin, if they fail to perform that duty, seeing he hath laid his special commands upon them to do it? And, therefore, if any elder or minister, shall suffer one whom they know to be guilty of some scandalous or heinous sin, though not public, to approach unto the Lord's table, without satisfying acknowledgments made in private for it, they do thereby, for aught they know, suffer him to partake of that holy supper, with unrepented sin upon him.

8. As there are divers kinds of good gifts, so there are divers degrees of them, according to which we may and ought to love our neighbour, more or less, because we are commanded to do good unto all men, both with our spiritual advice, and with our worldly goods, ministering to their necessities, but especially unto them who are of the household of faith, Gal. vi. 10. We are bound to shew our love to our enemies, by overcoming evil with good, Rom. xii. 21. Which is the way, not only to be even with them that wrong us, but to be above them. Every man is called to provide for his own, especially for those of his own house, 1 Tim. v. 8. We are to have a natural affection for such as be near to us in blood, and the want thereof is discovered by their want of converse. The Apostle, (1 Cor. v. 11.) forbids to keep company with some scandalous persons, and admitting that precept to be prohibitive of a civil

intimacy, it holds as a stronger argument against religious communion with, or at least admission of them to such a distinguishing ordinance. Solomon, (Prov. xxii. 24,) forbids us to go into the company of a furious man, and to converse frequently and familiarly with an angry man, as friends use to do. So that, though there are common offices due to all men, yet that distinguishing practice of friends in frequent conversing together, is free and optional, as the bestowing of gifts is. Indeed, when notour scandalous breaches and differences do happen, in that case, the parties should be obliged to a formal agreement, by conversing in presence of those, whose work it is to compose such differences; but even then, they can be obliged to continue in no more friendship than a common converse imports, especially the lesed party. They may be indeed both obliged to profess a sincere reconciliation, though not unto a familiar conversation. But as to the usual converse with those of our household and blood-relations, as husband with wife, and father with children, or the like, it is agreeable both to the laws of nature and interest, firmly to preserve and persevere in that. Wherefore upon the whole, where such near relations refuse usual converse with one another, or neighbours at variance shall refuse to renew or continue a common converse, in that case, neither of the guilty parties ought to be admitted to the Lord's table.

9. *Fama clamosa, publica et frequens*, doth supply the part of an accuser, so that any who lie under the lash of such reports, must be so far from being admitted to the Lord's table, or yet attested of, as free of scandal, that they should be processed thereupon, and have the benefit of neither, till they justify themselves. See tit. 8. of Visitation of Families.

10. When one church government is established, if the church shall even then be so unhappy as to be afflicted, with schism from those who own the same; in that case, there ought to be union and communion sought and admitted, notwithstanding failings and defects of several kinds, providing union and communion may be had without accession to the guilt or defects of others: that is, without being obliged to approve of them, or condemn in our own practice what we judged right, or that we be not by any engagement restrained from a duty. Indeed where there is no union in church government, Mr Durham on Scandal, chap. 13, says, he cannot nor dares not offer any directions for making up an union here. As for allowing these who in their judgment differ about church government to communicate with us, it is safer to allow them to communicate

with us, than for us to communicate with them ; for by this way, they may be brought unto us, and we out of hazard of being led away by them. But for all this, such persons are not to be admitted, if they be in their practice culpable of any thing which would justly keep back those of our own communion ; that would be truly a contracting of too much guilt, for gaining of any occasional proselyte or communicant.

11. When there hath been a great and general defection by a church and kingdom, then the National Assembly useth to appoint a national fast and humiliation for these causes. See the act for a fast November 12, 1690. And whoever had been guilty or accessory to the sins and evils therein acknowledged, if they joined in the public fasting, they did thereby acknowledge the causes thereof to be just and true, and professed their sorrow and humiliation therefor : wherewith the session ought to be satisfied, if they signify their meaning to have been so, or that they judge the causes of the fast true and relevant.

12. By the act of Assembly 3d August 1642, every presbytery is enjoined to proceed against non-communicants ; and by the 11th art. cap. 12. of the French Church Discipline, those who have been a long time in the church, and will not communicate of the Lord's supper, if they do it through contempt, or for fear of being obliged to forsake all manner of idolatry, after several admonitions, they shall be cut off from the body of the church ; but if it be through infirmity, they shall be borne with for some time, until they can be established. And by the act of Parliament 16th James VI. cap. 17, which is never yet rescinded, but rather included in the acts made and ratified against profaneness : By it all men are to communicate once a year, without respect to the excuse of deadly feuds, under pecunial pains, according to the quality of the transgressors. This act is ratified by the parliament 1641. Though people ought not, nor cannot, be compelled to communicate, yet non-communicating, not being a matter indifferent, but a palpable disobedience to God's voice in the gospel, (Luke xxii. 19,) they ought to account for that scandalous neglect and intermission, before they be of new admitted.

13. None must presume to sit down at the Lord's table but such as are admitted according to order, except those whose fitness is unquestioned and notour. Each person, before communicating, doth deliver the parish lead ticket, when sought for, to one of the elders or deacons when sitting at the table :

but it were safer to demand these warrants or tokens at their entry to the tables ; for a person unwarily or designedly approaching to the table without a token, may, with less observation or offence, be thus kept from it, than raised from it. These tickets are distributed by the session, or members thereof, by their allowance, to such as they have admitted, or known to be lawfully attested from other parishes.

14. The minister and session having, according to the rules of discipline, admitted unto or debarred persons from the Lord's table, the pastor doth now, immediately before he read the words of institution, doctrinally debar from, and inviteth all unto the Lord's table, according to the state and condition they really are in. If there has been an unexactness or omission in the exercise of discipline, through which some are admitted whom the word of God forbids to approach on their peril, this doctrinal debarring may scar such from partaking ; but if there hath been an imprudent and uncharitable exercise of discipline, in debarring of some wrongously, then the pastor's doctrinal opening of the tables, and inviting such from the word of God to approach, although debarred by the key of discipline, may nevertheless comfort themselves in the Lord, who will be a little sanctuary unto them who are thus roughly and indiscreetly treated by the watchmen. From all which we may gather, that it is safer to err on the right hand of charity, than on the left hand of strictness and severity : The civil law gives this rule, "*Semper in dubiis benigniora præferenda sunt.*"

15. It is so far from being a warrant, and satisfying to a man's conscience, for approaching the Lords's table, because the discipline of the church admits him, that even a man habitually gracious and prepared, will not for ordinary adventure to approach it, except he hath made conscience of getting himself actually prepared, and his graces put in exercise, and set apart some considerable time for that purpose.

16. By the act of Assembly 7th February 1545, about the observation of the Directory in some points of public worship, congregations are still to be tried and examined before the communion. Item, That when the communion is to be celebrate, one minister may be employed for assisting the minister of the parish, or at most two. Item, that there be one sermon of preparation delivered in the ordinary place of public worship, upon the day immediately preceding. Item, that the ministers who cometh to assist, have a special care to provide his own parish. Item, that before serving of the tables,



there be only one sermon delivered to those who are to communicate, and that there be one sermon of thanksgiving after the communion is ended. Item, when the parishioners are so numerous, that many of them cannot conveniently have place, in that case the brother who assists the minister of the parish is to preach to them who are not to communicate that day, which is not to begin until the sermon in the kirk be ended, viz., sermon in the forenoon.

17. But by the present practice, the Thursday, or some other day of the week preceding the communion, is kept as a fast-day, on which there are three sermons delivered by so many neighbouring ministers, which yet to some seems not very proper: For the design of that day being a congregational fast, on which the sins of that parish are to be mourned before the Lord, no other minister can have such particular knowledge thereof, as he who labours and travels among them. Upon Saturday there are two preparation sermons, and upon the Lord's day there are in some churches two action sermons, beside the thanksgiving sermons. There will be at these occasions, three, five, or perhaps more ministers assisting the pastor of the congregation, because of the great confluence of people that resort thereto. Intimation of the celebration of the supper, is made two or three Sabbaths before, (the Directory speaks but of one;) and on the Sabbath immediately preceding, public intimation is made of the fast.

18. Upon the day of the communion, a large table being so placed, as the communicants may best sit, and the congregation may both see and hear, the public worship is begun as on other Sabbaths. And immediately after sermon, the minister prays and sings a part of some psalm; then, having had an exhortation, he desires the elders and deacons to bring forward the elements, while he cometh from the pulpit, and sitteth down at the table; and the congregation again sing; thereafter he fenceth and openeth the tables, as before was said. The bread now standing before him, in large dishes, fitly prepared for breaking and distribution, and the wine in large cups, he reads, and may shortly expound the words of the institution, 1 Cor. xi. 23—27. Next, he useth a prayer, wherein he both giveth thanks for the inestimable benefit of redemption, and prays to God to sanctify the elements, and accompany his own ordinance with the effectual working of his Spirit.

19. The elements being thus sanctified by word and prayer, the minister is to take the bread, and say, according to the

holy institution, command, and example of our blessed Lord and Saviour Jesus Christ, I take this bread, and having given thanks, I break it, and give it unto you, Take ye, Eat ye, this is the body of Christ which is broken for you, do this in remembrance of him. In like manner, the minister is to take the cup, and say, according to the institution, command, and example of our Lord Jesus Christ, I take this cup, and give it unto you. This cup is the New Testament, in the blood of Christ, which is shed for the remission of the sins of many, drink ye all of it: For as oft as ye eat this bread, and drink this cup, ye do shew the Lord's death till he come. If the minister have no other brethren assisting him in the administration, from whom he is rather to take the communion at the next table, he is to communicate himself at the first breaking of the bread, and distributing the cup.

20. All the while the elders and deacons in a competent number, and in a grave and reverend manner, do attend about the table to see that none be admitted without tokens, as in the 13th sect. of this title; and that all who are admitted, may have the bread and wine in their own place and order of sitting, which is without difference of degrees, or respect of persons.

21. By the last mentioned act of Assembly, there is to be no reading in the time of communicating, but the minister maketh a short exhortation at every table; that there be silence during the time of the communicants receiving, only the minister may drop a short and suitable sentence. By that same act, the distribution of the elements among the communicants is to be universally used, after the minister hath broken and delivered it to the nearest. Item, That while the tables are dissolving and filling, there be always singing of some portion of a psalm. Item, That the communicants, both before their going to, and after their coming from the table, shall only join themselves to the present public exercise then in hand. Item, That none of those who are present in the kirk, where the communion is celebrate, be permitted to go forth till the whole tables be served, and the blessing pronounced, unless it be for more commodious order, and in other cases of necessity.

22. The last table, after they have received, ordinarily sitteth still, to avoid any trouble by going to their own places. Then the minister goes to the pulpit, where, in a few words, he putteth them in mind of the grace of God in Jesus Christ, held forth in this sacrament, and exhorts them to walk wor-

thy of it. Then he gives solemn thanks to God for his rich mercy in Jesus Christ, begs his pardon for the defects of the whole service, and intreats his assistance to walk as becometh those who have received so great pledges of salvation, and then concludes with the usual petitions in the public prayers of the church. After prayer, all join in singing a part of a psalm suitable to the occasion, and are dismissed with the blessing.

23. In the manuscript acts of Assembly, there is an act, Dec. 1562, appointing the communion to be celebrate four times a year in towns, and twice a year in country parishes; yea, it was administered then once a month, as may be seen by the old Discipline bound in with the old Psalms and Forms for prayer in Mr Knox's time. And by the 14th art. cap. 12, of the French Church Discipline, it is recommended to their national synod, to give directions about the more frequent celebration of the Lord's supper, and their custom then was four times a year. But our acts of Assembly 1633, sess. 23, act. 12; act 19, of Assem. 1701, and Directory for Worship, do only recommend the frequent celebration of the Lord's supper: But how often is to be determined by the kirk-sessions, as they shall find most convenient for the people, their comfort and edification. These recommendations seem to be treated with little or no regard among us; for as yet, so far as I know, not one parish hath celebrate it once more than ordinary upon their account. I am sure, if they would have it but once a year, yet parishes in the neighbourhood may so correspond, as to have it in that bounds all the months of the year, which will supply the want of its frequency in one parish, at least unto such as may well travel unto their neighbour churches.

24. By the act James VI. Parl. 3, cap. 24, *sub fin.* the parsons of all parish kirks are to furnish bread and wine to the communion so oft as it shall be administrate. And by the act of Assembly 1633, sess. 23, art. 12, where the minister of a parish has only allowance for furnishing communion elements once a year, it is declared, that the charges should rather be paid out of that day's collection, than that the congregation want the more frequent use of the sacrament. Spanhemius, in his Introduction to Sacred History, tells us, that in the second century, the Lord's supper was then expressed by several names, and among others it was called the *Oblation*, from the people's offering the bread and wine. And truly, if the people were desired to contribute money for that end, it

were but reasonable, and not to be grudged, even though it were but once a year celebrated, where the minister has no allowance even for that once, and wants likewise a legal maintenance, allocated and secured unto him. But where the communion is but once a year, and the minister hath a legal stipend secured to him, he ought to be discharged to take or defray the expenses of the elements out of the money given and mortified for the use of the poor; and this practice is rendered yet the more scandalous and inexcusable in parishes where this sacrament is but once a year celebrate, and where there be colleagues, who have both legal stipends. The sum ordinarily modified for communion elements doth not exceed fifty merks Scots, which the heritors are liable yearly to pay, although the communion be not administrate in the parish, providing the minister offer to apply it for the use of the poor.

## TITLE V.

### *Of the Solemnization of Marriage.*

1. *Matrimonium* is defined by Modestinus to be, “*Maris et foeminae conjunctio, et omnis vitae consortium, divini et humani juris communicatio,*” i. e. the conjunction of man and woman to be comforts for all their life, with a communication of rights divine and human. By the laws of the Church of England, as they are reformed by Henry VIII. and Edward VI. in the latter edition printed at London 1641, marriage is defined, “*Legitimus contractus mutuam et perpetuam viri cum foemina conjunctionem, Dei jussu inducens et perficiens; in quo tradit uterque alteri potestatem sui corporis, vel ad prolem suscipiendam, vel ad scortationem evitandam.*” *Nuptiæ* are sometimes taken *pro ritu nuptiali*, for wedding ceremonies.

2. The *sponsalia*, or espousals, “*Sunt mentio et repromissio futurarum nuptiarum,*” or “*De futuro matrimonio.*” It is only a consent *de presenti* that makes marriage: but the consent *de futuro*, which is given at the contract of marriage, on proclamation of banns, is only the espousals, which are promised to marriage; it being so solemn an act, should be performed with due deliberation. By the civil law and custom of this nation, there is place, *rebus integris*, for either party to repent and renounce the espousals. See Stair’s *Instit.* p. 25. And by the 9th art. cap. 13, of the French Church Discipline, though it be prohibited to marry the sister of the deceased, yet it doth not condemn marrying the sister of one contracted that is dead, because it supposes that an alliance is

not consummated but by commixion of blood or sex. See the Commentary on that article.

3. Marriage ought not to be within the degrees of consanguinity or affinity, forbidden by the eighteenth chapter of Leviticus. The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of the husband's kindred nearer in blood than of her own, (see the Confession of Faith,) otherwise the marriage may be declared to have been null. A man may marry any of his wife's allies, or a woman any of her husband's allies, "nam non datur affinitas affinitatis."

4. Marriage being ordained for the increase of mankind, and for preventing of uncleanness, persons naturally impotent are therefore incapable to marry. Yet by the laws of the Church of England, as reformed by King Henry VIII. and King Edward VI. *De Matrimonio*, cap. 7, their canon runs thus: "Verum si nota sit utrique perversitas, et tamen mutus perducet de matrimonio consensus, nuptiæ procedant; quoniam volentibus nulla injuria potest fieri."

5. Those who cannot consent, cannot marry, such as idiots and furious persons, *durante furore*; neither they who have not the use of their reason, as infants and those under age, who are not come to the use of discretion, that is when the person is within the years of pupillarity, commonly established in law to be fourteen in males, and twelve in females, *nisi malitia suppleat ætatem*, which without further probation declares them to be arrived at that discretion which fits them for marriage.

6. If it be asked, whether the consent of parents, curators, or nearest friends in their place be essential to marriage? the common sentence will resolve it, "Multa impediunt matrimonium contrahendum, quæ non dirimunt contractum." So that their consent becomes necessary, as it were, "necessitate præcepti, sed non necessitate medii." And by an overture of Assembly June 4, 1644, it is proposed to be considered on, and reported by the presbyteries, that promises of marriage made by minors, to women with whom they have committed fornication, be declared null and of no effect; especially when the youth is not willing to observe the same, because his parents threaten him with the loss of their blessing and of his birth-right. This is proposed as being agreeable to the word of God.

7. Errors in the substantials make void the consent, unless future consent supervene, as it did in Jacob, who supposed

that he had married and received Rachel, but by mistake got Leah; yet was content to retain her, and to serve for the other also: but errors in qualities or circumstantials vitiate not, as if one supposing he had married a maid or chaste woman, had married a whore, according to Stair's Institutions, page 26. Yet by Deuteronomy xxii. 21, that error seemeth to be accounted substantial; for, by that text, a woman so deceiving a man was to be put to death; and by the 38th art. cap. 13, French Church Discipline, if it should happen, that after contracts and promises made, and before the accomplishment of marriage, the bride is found to have committed fornication, before or after the said promises, and that it was unknown to him who had promised her marriage, the consistory may proceed to a new marriage; and the bride shall have the same liberty, if it be found that the bridegroom has been guilty of fornication before the said promise. By the 5th art. cap. 24, of our Confession of Faith, that case is only determined thus far, viz. adultery or fornication committed after a contract, being detected before marriage, giveth just occasion to the innocent party to dissolve that contract, and they support this from that Scripture, Math. i. 18, 19, 20.

8. Partics cannot be married without they be known to be single persons, either by the minister's own proper knowledge, or by a testimonial from some minister, elders, or session, bearing the same: but albeit they cannot procure a testimonial in common form, through their being scandalous, yet the benefit of marriage cannot be denied them after the proclamation of banns. But by the 21st art. cap. 23, of the French Church Discipline, if one of the parties who desire to be married is excommunicated, the marriage shall not be admitted in the church, unless the excommunicate person make confession of his faults; but those that are suspended from the Lord's supper they allow to be married.

9. By the 3d article, chap. 24, of our Confession of Faith, such as profess the true reformed religion, should not marry with Infidels, Papists, or with other idolaters, or with such as maintain damnable heresies. And in pursuance of that, by an overture of the Assembly 1701, the transgressors were to be excommunicated. But our statesmen disliking the same, this overture in the Assembly 1704, act 22, issued only in a recommendation. By the 72d Canon *Concilii sexti in Trullo*, it is determined thus: "Non licere virum orthodoxum cum muliere hæretica conjungi, neque vero orthodoxum cum viro hæretico copulari, sed et si quid ejusmodi ab ullo ex omnibus

factum apparueret, irritas nuptias existimare et nefarium conjugium dissolvi." But if two infidels marry, and one of them becometh Christian, the person converted is not thereupon warranted to desert or put away the other party who continues blind, 1 Corinthians vii. 13, 14. And by can. 31. *Concilii Laodiceni*, "Quod non oportet cum omni hæretico matrimonium contrahere, vel dare filios aut filias, sed potius accipere si se Christianos futuros profiteantur." And by the 20th article, cap. 13. of the French Church Discipline, when one of the parties is of a contrary religion, the purposes of marriage shall not be published in the church, until the party doth publicly profess in the church, that with full resolution he renounceth all idolatry and superstition, particularly the mass; and if any pastor or consistory do otherwise, they may be suspended or turned out of their office: thus difference in religion justly impedes but doth not annul marriage.

10. If parties delay their marriage forty days after proclamation, they are to be put to the renewing of the same before they be married; and the French Church Discipline, cap. 13, art. 26, doth recommend not to delay the celebration, after proclamation of banns, above six weeks, to prevent inconveniences and ill consequences. The resiling of parties after proclamation, is commonly called among us, a scorning of the kirk, though the injury or affront redounds mostly against themselves, and not so much upon the congregation. Indeed, if it could be known that parties never had a serious purpose for marriage, but only from a profane making and vain temper had desired themselves to be proclaimed; in this case, they deserve to be treated as mockers of God and his people. There are other ways whereby God and his church may be mocked, when persons, who be sound in body and mind, are given up to be minded in the public prayers of the church, when they are truly distressed in neither, the authors of which mocking and forgery deserve to be proceeded against with the censures of the church.

11. Adultery and wilful desertion do not annul the marriage on any absolute necessity, but they are just occasions upon which the persons injured may annul it, and be free; otherwise, if they please to continue, the marriage remains valid, excepting when the adultery is committed or accompanied with incest, as if a man should lie with his wife's sister, in which case the wife cannot free herself from the scandal of incest, if she, after knowledge thereof, continue to cohabit with him as her husband. And by the Parl. 1573, cap. 55, it is

ordered, that the deserter, after four years wilful desertion without a reasonable cause, must be first pursued, and discerned to adhere, and being thereupon denounced, and also after private and public admonitions by the church, excommunicate, the commissaries are warranted to proceed to divorce. But simple absence will not be accounted wilful desertion, if he be following any lawful employment abroad. In case then, a party be out of the country, I see not how this order can be used and proceeded in, unless it were sufficiently verified and made appear, that he knew of his being cited before their consistorial courts, and that his absence was wilful and not necessary.

12. A party divorced for adultery may marry again, so it be not to those with whom the adultery, upon which the divorce proceeded, was committed: for marriage between such is declared null, and the issue inhabile to succeed to their parents as heirs, Parl. 1600, cap. 20; yea, it seems agreeable to equity and reason, that where adultery was proven, albeit no divorce ensued, in that case the adulterers cannot marry together. Which agrees with the Civilians, that, “*Dolus malus facit cessare quodcunque privilegium, fraus enim nemini debet patrocinari imo punienda.*”

13. Marriage contracted with a woman ravished or violently taken away and still reclaiming, is annulled from the beginning: See *Mackenzie et Mathæus de Raptu*. And to this agrees that forecited book of the ecclesiastical laws of England, cap. 12, *De Matrimonio*. But I am sure it is unjust to treat their children as sons of whores; see lib. 3, tit. Ravishers of women.

14. After banns have been lawfully proclaimed, and none found objecting against the marriage, the same may thereafter be celebrate in private houses, before witnesses, as the custom is now become, upon any week-day, not being a fast-day. Albeit by the Directory for worship, it is publicly to be solemnized in the place appointed by authority for public worship, before a competent number of credible witnesses, and they advise that it be not on the Lord's day. I am sure, seamen who are to loose and go to sea on Monday, may marry on the Saturday as well as on the Sabbath before.

15. Marriage without proclamation is discharged, as having dangerous effects, excepting where the presbytery, in some necessary exigencies, dispense therewith, Assembly 1638, sess. 23, art. 21; Assem. 1690, sess. 12. Before any proclamation of banns be made, the names of parties, and their



parents, tutors, or curators, are to be given up to the minister, that the consent of friends may be known; and the proclamation is to be made before divine service begin, for three several Sabbaths; the parties named being designed as fully as they use to be in writs or contracts of marriage, and in collegiate churches, the proclamation is to be in every church of the town, Assem. 1699, sess. 5. By the 18th art. 13th cap. of the French Church Discipline, those who live in places where the usual exercises of religion is not established, may cause their banns to be published in Romish churches, in as much as the matter is partly of a political nature. And by the 22d article of that chapter, the banns of widows who remarry shall not be published in the church, till seven months and two weeks, at least, after the decease of their former husbands, to avoid the scandals and inconveniences that may happen by it, unless it so happen that the magistrates order may interpose to the contrary.

16. One may be clandestinely married, either when banns are not proclaimed, or when the marriage is celebrated by one not ordained and admitted by the church, nor authorised by the state. By our acts of Parliament, William's Parl. sess. 5, cap. 12, the persons clandestinely married, may now be prosecuted by every procurator fiscal. And by cap. 6, sess. 7, Parl. King William, persons clandestinely married, are obliged, when required, to declare the name of the celebrator, and witnesses, under the pains following, viz. each nobleman £2000, the landed gentlemen 2000 merks, any other gentleman or burgess £1000, and any other person 200 merks, and to be imprisoned till they declare and pay. The celebrator is punishable by the council, not only with banishment, but in such pecunial or corporal pains as they shall think fit; the witnesses are made liable in the sum of £100. None of the parties (if both be residing in Scotland) shall get themselves married in England, or Ireland, without proclamation of banns in Scotland, and against the order of the kirk, under the pains as aforesaid, which are always without prejudice of kirk-censure. And there is no doubt they should be rebuked as unnecessary transgressors of a very comely and rational church-order.

17. By the form of solemnization of matrimony, prescribed by the church of England, in the Book of Common Prayer, if any man upon the day of marriage, do allege and declare any impediment, why the parties may not be coupled together in matrimony, by God's laws, and the laws of the realm, and

will be bound, and sufficient sureties with him, to the parties, or else put in a caution (to the full value of such charges as the persons to be married do thereby sustain) to prove his allegation; then the solemnization must be deferred until such time as the truth be tried.

18. After the purpose of marriage hath been orderly published, the minister is first to pray for a blessing upon the parties appearing to be married; which being ended, he is briefly to declare unto them out of the Scripture, the institution, use, and ends of marriage, with the conjugal duties. Then he is solemnly to charge the persons to be married, that they would answer as in the sight of God, to whom they must give a strict account at the last day, that if either of them know any cause, by pre-contract or otherwise, why they may not lawfully proceed to marriage, that they now discover it. The minister, if no impediment be acknowledged, shall cause first the man take the woman by the right hand, saying these words, "I, N. do take thee N. to be my married wife, and do, in the presence of God, and before these witnesses, promise and covenant to be a loving and faithful husband unto thee, until God shall separate us by death." Then the woman shall take the man by the right hand, saying these words: "I, N. do take thee N. to be my married husband, and I do, in the presence of God, and before these witnesses, promise and covenant, to be a loving, faithful, and obedient wife unto thee, until God shall separate us by death." Then without further ceremony, the minister shall pronounce them to be husband and wife, according to God's ordinance, and so conclude the action with prayer.

19. By the Directory for worship on this head, a register is to be carefully kept, wherein the names of the parties so married, with the time of their marriage, are forthwith to be fairly recorded, for the perusal of all whom it may concern. And that the registers of baptisms and marriages may bear the greater faith, it is fit they be subscribed on each page by the minister; or, in a vacancy, by two elders, and the clerk of the session.

## TITLE VI.

### *Of Visitation of the Sick.*

1. We are admonished by the Apostle Paul, 1 Cor. x. 32, to give offence neither to the Jews, nor to the Gentiles, nor to the church of God. By the 41st canon, *Concil. Carthagin.*

“ Clerici ad viduas vel virgines non ingrediantur, sed cum con-clericis, vel ubi adsunt clerici, vel aliqui bonæ existimationis Christiani.” And by the act of Assembly August 24, 1647, sess. 19, art. 13, sometimes the person troubled may be of that condition, or that sex, that discretion, modesty, or fear of scandal, requireth a godly grave friend to be present, when the pastor is visiting the troubled person.

2. It is the minister's duty to admonish, exhort, reprove, and comfort those committed to his charge, upon all reasonable occasions, so far as his time, strength, and personal safety will permit. The people are often to confer with their minister about the state of their souls, and in times of sickness to desire his advice and help, before their strength and understanding fail them: for this, and what follows of this title, see the Directory.

3. The minister being sent for, is to repair to the sick, and to apply himself with all tenderness and love to his soul, instructing him out of the Scripture, that diseases come not by chance, or by distempers of body only, but by the wise hand of God; and whether it be laid upon one out of displeasure for sin, for his correction or amendment, or for trial and exercise of his graces, or for other special and excellent ends, all his sufferings shall turn to his profit, if he sincerely labour to make a sanctified use of God's visitation, neither despising his chastening, nor waxing weary of his correction.

4. If the minister suspect him of ignorance, he shall examine and instruct him in the principles of religion, and in the nature, use, excellency and necessity of the graces of the Spirit of God. He shall stir up the sick person to examine himself, to search and try his former ways, and his state towards God. If the sick person shall declare any scruple, doubt, or temptation, that is upon him, instructions and resolutions shall be given to settle him. But if it appear that he hath not a due sense of his sins, endeavours ought to be used to convince him, of the guilt, pollution and desert of them; and withal, to make known the danger of delaying repentance, and to rouse him out of a stupid secure condition, to apprehend the justice and wrath of God, before whom none who are out of Christ can stand: care must be taken that the sick person be not cast down into despair, by such a severe representation of the wrath of God due to him for his sins, as is not mollified by a seasonable propounding of Christ and his merits, for a door of hope to every penitent believer.

5. If the sick person have endeavoured to walk in the ways

of holiness, and to serve God in uprightness, although not without many failings and infirmities; or, if his spirit be broken with the sense of sin, or cast down through the sense of the want of God's favour, then it will be fit to raise him up, by setting before him the freeness and fulness of God's grace, the sufficiency of Christ's righteousness, and the gracious offers in the Gospel: It may be also useful to shew him, that death hath no spiritual evil to be feared by those who are in Christ, because sin, the sting of death, is taken away by him, who hath delivered all that are his from the bondage of the fear of death. Let advice also be given, as to beware of an ill-grounded persuasion on mercy, or on the goodness of his condition for Heaven, so to disclaim all merit in himself, and to cast himself wholly upon God for mercy, in the sole merits and mediation of Jesus Christ.

6. When the sick person is best composed, may be least disturbed, and other necessary offices about him least hindered; the minister, if desired, shall pray with and for him, confessing and bewailing original and actual sin, acknowledging it to be the cause of all misery; imploring God's mercy for the sick person through the blood of Christ, beseeching that God would open his eyes, cause him to see himself lost in himself, make known to him the cause why God smiteth him, reveal Jesus Christ to his soul for righteousness and life, give unto him his Holy Spirit to create and strengthen faith, to work in him comfortable evidences of his love, to arm him against temptations, to take off his heart from the world, to furnish him with patience and strength to bear his present visitation, and to give him perseverance in faith to the end; that if God shall please to add to his days, he would vouchsafe to bless all means of his recovery, renew his strength, and enable him to walk worthy of God, by a faithful remembrance and diligent observing of his vows and promises of holiness and obedience. And if God hath determined to finish his days, by the present visitation, he may find such evidence of his interest in Christ, as may cause his inward man to be renewed, while his outward man decayeth.

7. The minister shall admonish him also, as there shall be cause, to set his house in order, thereby to prevent inconveniences, to take care for the payment of his debts, and to make restitution or satisfaction where he hath done any wrong, to be reconciled to those with whom he hath been at variance, and fully to forgive as he expects forgiveness. He may also improve the present occasion, to exhort those about the sick per-

son to consider their own mortality; and in health, so to prepare for sickness, death and judgment, that when Christ, who is our life, shall appear, they may appear with him in glory. When sick persons desire the prayers of the congregation, it is like an intimation and suit to those who have any moyen with God to pray for them in secret, and continue so to do, as well as in public.

### TITLE VII.

#### *Of Burial of the Dead, Lyke-wakes, and Dirgies.*

1. By the Directory for worship, upon the day of burial, the dead body is to be attended decently, suitable to the rank of the deceased party, to the burial-place, and there immediately interred, without any ceremony. It is most convenient that at such occasions we have meditations and conferences suited thereto, and that the minister, as upon other occasions, so at this time, if he be present, may put them in remembrance of their duty.

2. By the old Book of Discipline in Mr Knox's time, annexed to the old paraphrase of the Psalms, after burial, the minister, if present, and desired, goeth to the church, if it be not far off, and maketh some comfortable exhortation to the people, touching death and the resurrection; but by the act of Assembly 1638, sess. 23, 24, art. 22, all funeral sermons are discharged.

3. By the act of Assembly 1643, sess. 9, they discharge burials, and hanging of honours, broads, and arms of persons, of whatsoever quality, within the kirk where the people meet for public worship; for perhaps at some times the people would be incommoded with open graves. Bishop Hall of Norwich was of opinion, that God's house was not a mere repository for the bodies of the greatest saints.

4. By the acts of Assembly 1645, sess. 8, Assembly 1701, sess. *ult.* all lyke-wakes are discharged, as fostering superstition and profanity through the land. No doubt, dirgies have likewise had as bad effects; and from the same reason may be also understood to be discharged.

### TITLE VIII.

#### *Of Ministerial Visitation of Families.*

1. It hath been the laudable practice of this church, at least once a year, (if the largeness of the parish, or bodily in-

ability, or other such like do not hinder,) for ministers to visit all the families in their parish, and oftener if the bounds be small, and they able to perform it. Among other reasons for these annual visitations of families, this may be one, that because, by the order prescribed by our Lord, Math. xviii. there may be several offences known to ministers, elders, or neighbours, which may justly keep back offenders from partaking of the Lord's supper ; and yet it were disorderly and unedifying to remove these offences in a public way. These visitations may serve to purge a congregation of such private scandals.

2. Although in regard of the different circumstances of some parishes, families, and persons, much of the management of the work must be left to the prudence and discretion of ministers, in their respective oversights ; yet these following directions are offered by Assembly 1708, April 27, as helps for the more uniform and successful management thereof, that it be not done in a slight and overly manner, which supposeth the universal practice thereof through this church, and that the total neglectors may be censured therefor as supinely negligent.

3. Such a time of year is to be chosen for ministerial visitation, as the families which he visits may be best at leisure to meet with him ; and if that time should happen immediately after the communion, then it is seasonable, as it were, to beat the iron while it is hot. Timeous intimation is to be made to them of the visitation ; and the elder of that bounds of the parish which is to be visited, is to accompany the minister ; and they should previously confer together concerning the condition and state of the persons and families of those bounds.

4. When they enter a house, they are to express their wishes and desires for the blessing of God upon it, and that above all, that their souls may prosper : then let them take an account of the names of the family, inquire for testimonials from them who are lately come to the parish, and mark them in the roll for catechising, and let them take notice who can read, and of the age of children capable to be catechised ; then the minister is to speak to them all in general, of the necessity and advantage of godliness, of justice and charity towards man.

5. He is next, more particularly, to speak to servants of their duty, to serve and fear God ; to be dutiful, faithful, and obedient servants, and of the promises made to such, commending to them the reading of the Scriptures, and secret worship,

and love and concord among themselves, and in particular, a holy care of sanctifying the Lord's day.

6. The minister is to shew the children and young servants the advantage of knowing, seeking, and loving God, and remembering their Creator and Redeemer in the days of their youth, and to mind them how they are dedicated to God in baptism; and when of age, and after due instruction in the nature of the covenant of grace, to excite them to engage themselves personally to the Lord, and to design and prepare for the first opportunity they can have of partaking of the Lord's supper, to be especially careful how they at first communicate.

7. Then he is to speak privately to the heads of the family about their personal duties towards God, and the care of their own souls; and their obligation to promote religion and the worship of God in their family, and to restrain and get vice punished, and piety encouraged, and to be careful that they and all in their house serve the Lord, and sanctify his day. He is more particularly to enquire, 1. Whether God be worshipped in the family, by prayers, praises, and reading of the Scripture? 2. Concerning the behaviour of servants towards God and towards man, if they attend family and public worship? How they sanctify the Lord's day? And if they be given to secret prayer and reading the Scriptures? 3. If there be catechising in the family? if their children be trained up in reading, according to the act of Assembly, August 10, 1648? in all which the minister may intermix suitable directions, encouragements, and admonitions, as may be most edifying.

8. The minister is to enquire who want Bibles: And if they be not able to buy them, let the poor's box be at the expenses; and recommend to the heads of the family to get the Confession of Faith, Catechisms and other good books, for instructing in life and faith, according to their ability. *2do*, Those who are tainted with error or vice are to be admonished secretly, or in the family, as may most edify; and all are to be exhorted to carry toward such as walk orderly according to the rule, Matth. xviii. 15. *3tio*, The minister is to endeavour to remove divisions in the family, or with their neighbours, and exhort them to follow peace with all men, as far as is possible. *4to*, Let it be inquired who have communicated, that they may be called to an account privately how they have profited, and put in mind to pay their vows to the Lord. Confer also with others about the causes of their not communicating.

9. As for those who pretend conscience for not keeping communion with us, or whatever their motives be, ministers ought to deal with God for them, and with themselves, in such a way as may be most proper to gain them, and exoner their consciences, waiting if peradventure God will prevail with him. Who can tell if their making them sensible of their tender love and affection to their persons, especially to their souls, giving them all due respect, and doing them all the good they can, yet still discountenancing their sin, may in the end be blessed of God for their good, Jud. v. 22, 23, 2 Tim. ii. 24, 25.

10. Seeing in the whole of this work, there is great need of much prudence, zeal for God, and love to souls; visitation of families should be carried on with dependence on God, and fervent prayer to him, both before the minister set forth to such a work, and with the visited, as there can be access to, and opportunity for it.

#### TITLE IX.

##### *Of Sanctification of the Lord's Day; and observing Fast and Thanksgiving Days.*

1. The Sabbath is to be sanctified by an holy resting all that day, even from such worldly employments and recreations as are lawful on other days, and spending the whole time in the public and private exercises of God's worship, except so much as is to be taken up in the works of necessity and mercy, as our Shorter Catechism beareth, authorized by Assembly, August 28th, 1648; from which we may gather what the church understands by sanctifying or profaning of the Lord's day, and so will either approve or censure.

2. By the act of Assembly 1647, concerning family worship, Direct. 8, the master of the family ought to take care, that all within his charge repair to the public worship, which being finished, he is to see the rest of that day spent in the private and secret exercises of piety. Care is also to be taken that the diet on that day be so ordered, that neither servants be unnecessarily detained from the public worship of God, nor any other persons hindered from sanctifying that day. Private preparation is likewise to be made for the Sabbath, by prayer and such holy exercises, as may dispose to a more comfortable communion with God in his public ordinances. See the Directory.

3. When some great and notable judgments are either in-



licted or imminent, or by some extraordinary provocation notoriously deserved; as also, when some special blessing is to be sought or obtained; when great duties are called for, or when sins are extraordinary for their number or nature, then it is that a church may injoin fasting: which is observed by a total abstinence, not only from all food, (unless bodily weakness do manifestly disable from holding out till the fast be ended, in which case somewhat may be taken, yet very sparingly, to support nature when ready to faint,) but also from all worldly labour, discourses and thoughts, and from all bodily delights though at other times lawful, rich apparel, ornaments, and such like, during the fast; and much more from whatever is in its nature or use scandalous or offensive, as gaudish attire, lascivious habits and gestures, and other vanities of either sex: which the composers of the Directory recommend to all ministers in their places diligently and zealously to reprove, as at other times, so especially at a fast.

4. The Sabbath before the fast, the causes thereof are publicly read from the pulpit, and the day of the week intimated upon which it is to be kept. The people are then to be earnestly exhorted to prepare themselves for afflicting their souls upon that day of extraordinary humiliation. So large a portion of that day, as conveniently may be, is to be spent in public reading, and preaching of the word, with singing of psalms, fit to quicken affections suitable to such a duty, but especially in prayer, to this or the like effect; giving glory to the great majesty of God, the Creator, Preserver, and Supreme Ruler of all the world, acknowledging his manifold great and tender mercies, especially to the church and nation, humbly confessing sins of all sorts, with their several aggravations, justifying God's righteous judgments, as being far less than our sins do deserve, yet humbly and earnestly imploring his mercy and grace for ourselves, the church and nation, the Queen, and all in authority, and for all others for whom we are bound to pray, (according as the present exigency requireth,) with more special importunity and enlargement than at other times; applying by faith the promises and goodness of God for pardon, help, and deliverance from the evils felt, feared, or deserved; and for obtaining the blessings which we need and expect, together with a giving up of ourselves wholly, and for ever unto the Lord.

5. Besides solemn and general fasts appointed by the Assemblies or their commissions, or by civil authority, upon application from some church-judicature unto them, provincial

synods, presbyteries, and kirk-sessions may appoint fast-days to be kept within their respective bounds, as Divine Providence shall administer unto them special occasions. Likewise families and particular persons may do the same, providing their fasts be not on those days on which the congregation is to meet for public worship.

6. Our fasting days must be indicted for such causes as are both clear and just, and when it will be most for edification ; for that, as other positive duties, doth not always bind : therefore the church is to take heed of appointing fasts through insinuations or solicitations from statesmen, lest they be branded as tools, to some who would fast for strife and debate, that others who differ from them about state-matters may be exposed to the odium of the people, as ill countrymen.

7. The causes of the fast enumerate in the act of Assembly 1690, November 12, were these and the like. 1. Perjury, dealing treacherously with the Lord, and being unsteadfast in his covenant. 2. Unfruitfulness under the purity of doctrine, worship and government, having a form of godliness, but denying the power thereof. 3. Abuse of God's great goodness and deliverance, evidenced by a course of manifest wickedness, and shameful debauchery, such as drunkenness, cursing, swearing, adultery, and uncleanness of all sorts. 4. The supremacy, which was advanced in such a way, and to such a height, as never any Christian church acknowledged, and whereby the interest of our Lord Jesus Christ was entirely sacrificed to the lawless lusts and wills of men. 5. Abjured prelacy was introduced, and the government of the church was overturned, without the church's consent, and contrary to the standing acts of our national Assemblies. 6. Compliance with that defection, both in ministers and others, some from a principle of pride and covetousness, or man pleasing, and others through infirmity and weakness, or fear of man, and want of courage and zeal for God. 7. Persecution of the godly for non-compliance with that sinful course : Many faithful ministers were cast out, and many insufficient and scandalous men thrust in on their charges, and many families ruined because they would not own them as their pastors. 8. Decay of piety under the late Prelacy, so that it was enough to make a man be nick-named a Fanatic, if he did not run to the same excess of riot with others. 9. Atheism, which discovered itself in some by their dreadful boldness against God, in disputing his being, and providence, the divine authority of the Scriptures, the life to come, and immortality of

the soul; yea, and scoffed at those things. 10. Imposing and taking unlawful oaths and bonds: lawful oaths have been broken, and ungodly and conscience-polluting oaths have been imposed and taken, whereby the consciences of many through the land are become so debauched that they scruple at no oath, though many have been oppressed and ruined for refusing them. 11. Neglect of the worship of God, both in public, in private families, and in secret. 12. Profanation of the Lord's day, succeeded in place of that wonted care of strict and religious sanctifying of it. 13. The shedding of innocent blood. 14. Pride and vanity; yea, Sodom's sins have abounded among us, idleness, fulness of bread, vanity of apparel, and shameful sensuality filled the land. 15. As also great perverting of justice, by making and executing unrighteous statutes. 16. Silence of ministers in the time of such a great defection, as well as too general a fainting among professors: And as some shewed no zeal in giving seasonable and necessary testimony against the defections and evils of the time, nor kept a due distance from them; so, on the other hand, some managed their zeal with too little discretion and meekness. 17. The abominable idolatry of the mass was set up in many places, and Popish schools erected, whereby shameful advances were made towards Popery. 18. Great ignorance of the way of salvation through the Lord Jesus Christ. Though we profess to acknowledge there can be no pardon of sins, no peace and reconciliation with God but by his blood, yet few know him, or see the necessity and excellency of him, and few esteem, desire, or receive him as he is offered in the gospel: And as few are acquainted with faith in him, and living by faith on him, so few walk as becometh the gospel, and imitate our holy Lord in humility, meekness, self-denial, heavenly mindedness, zeal for God, and charity towards men. 19. Great contempt of the gospel, barrenness under it, and a deep security under our sin and danger. 20. Though the Lord, by casting us into the furnace of affliction, hath been giving us a sight of the vanity of all things beside himself; yet, to this day, there is a woeful selfishness among us, every one seeking his own things, few or none the things of Jesus Christ, the public good, or one another's welfare. 21. A bitter spirit of consorioness, whereby the most part are more ready to carp at the sins and defections of others, than to repent and mourn for their own. These and the like were the causes of the fasts in the year 1690, and to them the fasts appointed since, do ordinarily refer. See also how

the land expressed the sense it had of the guilt of all ranks in the solemn acknowledgment of public sins, and breaches of the covenant; and a solemn engagement to all the duties contained therein; namely, those which did in a more special way relate unto the dangers of that time. Act of the commission of Assembly, October 6, 1648, for renewing the solemn league and covenant, ratified by the Assembly thereafter.

8. Albeit by the treatise of fasting, emitted by the Assembly 25th Decem. 1565, the Sundays were appointed for some fasts, as being for the greater ease of the people; and since, by the last act of Assembly 1646, a fast is appointed on the Sabbath next except one, preceding the then following General Assembly: Yet seeing the work to be performed on the first day of the week is by divine institution already determined, we ought to set about it exactly, which we all acknowledge to be a thanksgiving and not a fast. Extraordinary duties are not to interfere with the ordinary, nor is one duty to shuffle out another. If either should be allowed, it would look somewhat like the reverse of redeeming the time, for thereby diligence is rather diminished, than doubled in the service of God.

9. Days of thanksgiving being intimate on the preceding Sabbath, for some deliverance obtained, or mercy received, are wholly to be spent in the public and private exercises of divine worship and praises; the people are to rejoice with trembling, and to beware of all excess in eating or drinking. And demonstrations of civil mirth, such as ringing of bells, firing of guns, bonfires, and illuminating of windows, should not be intermixed with the religious duties of that day; but as upon fasts, so upon those days, there should be liberal collections for the poor, that their bowels may bless us, and rejoice the more with us. In the 6th section, the church was cautioned against appointing fasts for strife and debate, so I hope they shall be directed to avoid injoining of thanksgiving days from any false or unjust ends.

#### TITLE X.

##### *Of Collections and Recommendations for the Poor.*

1. By the act of Assembly 11th August 1648, collections for the poor in time of divine service, (which is practised in some churches abroad,) are discharged, as being a very great and unseemly disturbance thereof. And kirk-sessions are or-

dained to appoint some other way for receiving these collections. The method now ordinarily taken is this; the elders or deacons do collect at the church door from the people as they enter in, or else from them when within the church, immediately before pronouncing the blessing, and after divine service is ended.

2. Beside these ordinary collections for the poor, there are frequently extraordinary collections made for charitable and pious uses; particularly by session 10, Assembly 1704, there is an act for a voluntary contribution by way of subscription in each presbytery, for gathering from noblemen, gentlemen, and other charitably disposed people, for erecting English schools, and educating youth in the Highlands and Isles.

3. For preventing unnecessary begging, or imposing upon charitable people, no church judicatory is to give recommendations for charity to any without their own bounds, and these recommendations are to be only for a definite time. Assembly 1695, sess. 17.

## TITLE XI.

### *Of Provision for Schools and Universities.*

1. By King William's Parl. sess. 6, cap. 26, it is appointed that there be a schoolmaster and school in every parish, his fee not under one hundred merks, nor above two, to be paid by the heritors and liferenters of the parish, who are to have relief for the half of it, off their tenants; and that letters of horning be therefore directed at the instance of the schoolmaster, conform to the proportions due by the heritors, laid on by the major part of them, (I suppose, convened by public intimation from the minister in the pulpit, by order or advice of the session,) or failing of whom by any five commissioners of supply, within the shire, upon the presbytery's application to them; and the heritors for the salary are to be stinted conform to their valued rent. Item, Provision for schools and schoolmasters are declared to be a pious use, to which patrons may employ vacant stipends, at the sight of the Sheriff of the bounds. Excepting from this act the stipends vacant in the synod of Argyle, because of the act, Parl. William and Mary, sess 2, cap. 24, in their favours. And by the 10th act, Assembly 1699, it is recommended to the several presbyteries, to use their endeavours that schools be erected in every parish conform to the acts of Parliament, and acts of Assembly, and it is recommended to synods to see this observed.

2. By the foresaid 26th act, and likewise by the 14th act of the same session of Parliament, the privileges granted to ministers for their stipends, viz. that there be no suspension, except on consignation, are extended to universities, schools, and hospitals, for the ingathering of their rents and debts. See more of this on the title of Mortifications and Ministers Stipends.

3. When the Directory was established, by which public reading of the Scriptures was committed to the preachers ; and fearing lest the maintenance on that pretence might be withdrawn from the readers, the Assembly did, August 6, 1649, require the presbyteries, to see that none of the maintenance given to such readers, precentors, and schoolmasters, be taken from them, notwithstanding that recommended alteration in the Directory.

4. A tack or lease of teinds set by an university for a definite time, with an obligation to renew the same in all time thereafter, was found not effectual after the definite time was expired ; though the same rent was received for some years after, that was not sustained as an homologation, but as a tacit relocation. See Stair's Instit. p. 301 ; so that after the definite time is expired, they might increase the tack duty.

5. So careful have our Sovereigns and Parliaments been for the flourishing of these seminaries of church and state, that for their provision and bettering of their stocks, they have sometimes upon the offer made by the clergy, ordained forty pounds, or six per cent. out of every thousand merks of ministers rents, to be paid yearly for five years, Car. II. Parl. 1, sess. 3, cap. 24, and at other times vacant stipends are assigned for their better provision for a time, Car. II. Parl. 2, sess. 3, cap. 20 ; James VII. Parl. 1, cap. 18. They have likewise imposed a cess upon the kingdom for preserving of some universities, Car. II. Parl. 3, cap. 23. Now the universities, by gift under the great seal, do share liberally of the bishops rents, and some of them have lucrative and easy tacks of certain bishopricks, and large allowances too, even out of these tack duties, sometimes for salaries to new professions.

## TITLE. XII.

### *Of the Immunity and Union of Churches.*

1. By the canon law, there are certain immunities or privileges granted within church walls and church yards, called local, so as that secular judges within that bounds can cog-

nosce upon no civil or criminal action ; also, that no incorporations, councils, or fairs, meet or hold there ; that there be no university discourses there ; that secular affairs be not the subject of any conversation there ; moreover, that there be no feasting there, and that these bounds be sanctuaries to the guilty flying there for refuge, and they are not to be pulled thence to punishment, unless the atrocity of the crime be such as may induce the church to surrender them. This privilege is also extended to the houses and palaces of bishops. The temple of Jerusalem was built by God's direction, it was dedicated by man, and God's acceptance of it was testified. It appears by John ii. 19, that it was an illustrious type of Christ's body, and by the 16th verse, we find that our Lord resenteth the profanation of that holy place. Yet, notwithstanding of all that, God doth so abhor proud and malicious sinners, that he commands them to be taken from his altar that they may die, Ex. xxi. 14 ; and Joab was slain in the tabernacle of the Lord, 1 Kings ii. 31. But that special kind of respect which was due to that hallowed and typical temple, is not communicate, extended, or confined to the places of worship under the New Testament, John iv. 21.

2. Likewise by the canon law, there is another immunity or privilege, called personal, granted to the clergy, such as, that they are excused from accepting to be tutors or curators, and that none in sacred orders shall be liable to the payment of public burdens. I acknowledge, ministers ought not to be so imposed upon as to be perplexed with secular affairs, and far less should they ever do it of choice : and albeit the vocation of a pastor, his commission and instructions relating thereto, be all of a spiritual nature, and of divine original, yet their persons, estates, and behaviour, considered in a civil capacity, are, according to Scripture and reason, subject to the civil government. Their persons are accounted so sacred among our people, and they judge themselves so secure from that venerable impression, they very well know, is generally received of their character, that they rarely make ordinary journies with arms, as gentlemen and other travellers do. They are by law still excoemed from attending the king's host, except the nation become so miserable, that necessity or their own security oblige them : and even in that extraordinary case, they may, if they please, only act in the army as ministers or chaplains. Since the year 1689, both poll and hearth money have been imposed upon ministers by authority of Parliament.

3. By the canon law on this title, two churches may be made one, when the maintenance is so inconsiderable, that two pastors can have no comfortable living upon them, or when one of them is become desolate by the sword of an enemy, or the number of parishioners small or very much diminished. In which case it would be for the greater good of the church, if two such small charges were reduced into one, providing the benefice of the small charge, now united, be not condemned to any secular or other use, but only applied to maintain a pastor in a new erection, or else a colleague in some numerous congregation; for two competent stipends are not to be united, till there be no need for any new erection or augmentation in the church.

4. If the heritors and elders of two kirk-sessions shall agree to the uniting of some parts or skirts of one of the parishes to another, or to transplant the church from one part of the same parish to another part therein, for the people's greater ease and convenience, in that case, the presbytery, upon application of the parties concerned, may, for any of these ends, interpose their authority to their agreement, providing they find it may tend to the greater ease and edification of the people; and providing there be still two distinct parishes, and the quantity and quality of both stipends preserved undiminished and unaltered. What I here propose is conform to the 5th art. cap. 7, of the French Church Discipline, in these words; "The colloquies and synods shall deliberate of limiting the extent of places wherein each minister shall exercise his ministry."

### TITLE XIII.

*Of Churches, Church-Dikes, Manses, Yards, Glebes, Bells, Utensils, Ornaments, Books, and High-roads to Churches.*

1. Churches are public houses erected for public divine worship, and for hearing the preaching of the word of God; they are to be repaired out of the vacant stipend; for that 18th act James VII. Parl. 1. is never yet in so far rescinded: and when the vacant stipends fail, the burden of building and repairing the church doth lie upon the heritors, whether residing in the parish or not. The majority of these that meet, must stent themselves for that effect, according to their rents. But if the heritors refuse, being required thereto by the minister from the kirk-session, the Lords of Session, by a bill given in by the minister, will grant warrant to him and his



session to convene at a certain day, for trying what sum will repair the church, and to stent the heritors in that sum conform to their valued rents, and to appoint a collector to uplift the same. But before the making up of that stent-roll, the heritors ought again to be publicly advertised to meet, and then to make the same. If, after this order is used, they fail, the session then concludes the stent, and letters will be directed at their collector's instance, against the heritors for paying the proportions they are stented in Stair's Instit. p. 192, and act *ult.* Parl. 3, James VI.

2. Church-yards are dormitories for human bodies, and ordinarily that spot of ground within which the church stands. Our law allows to church-yards equal privileges with churches, in many things; particularly, that the raising of tumults or frays in time of divine service in churches, or church-yards, is punished with loss of moveables, act 27, Parl. 11, James VI. The church-yard is fenced with dikes, partly for ornament, and partly as a preservative to the dead bodies from being digged up or torn by beasts. The only right that ministers have to the grass growing in the church-yards, is, that they may cause their servants cut it, and hinder others from doing so; the heritors are obliged to repair the church-yard dikes with stone and mortar, two ells high, with sufficient stiles and entries; and the Lords of Session are obliged to direct letters of horning against them for that effect, cap. 232, Parl. 15, Jam. VI.

3. The minister, at the sight of the presbytery, or such of their number as they shall appoint, with two or three discreet men of the parish, may build or repair his own manse upon the expences of the heritors and liferenters, who are respectively liable to reimburse him of what he truly and profitably hath bestowed that way, unless they offered to contribute their own materials, and he refused them: See Mackenzie's observations on the 48th act, Parl. 3, Jam. VI. Where there is a competent manse already, the heritors must repair it once sufficiently at the minister's entry, who is thereafter to uphold the same during his incumbency, and they out of the vacant stipend, in time of the vacancy, act 21, Parl. 1, sess. 3, Car. II. As the minister is obliged to leave the manse in as good condition as he entered to it, so before he can be made liable so to do, the heritors ought to move the presbytery to pass an act in their favours, to declare it a free manse; but before they can pass any such act, a committee of their number must visit it, after it is built or repaired, and find, upon the depo-

sitions of four discreet workmen, who understand that work, but have not been employed therein, two whereof to be chosen by the heritors, and other two by the minister, that the building or reparation is sufficiently finished. And if there be any materials left, or money remaining not expended, after that is declared, the surplus belongs to the heritors. If the minister be not able or willing to advance that money, which has been declared to be necessary for materials and workmanship, or if heritors refuse to meet and stent themselves for that effect, then what should hinder the minister to take the same course, and obtain the same redress that is granted against refusers to build or repair churches, as in § 1 & 2.

4. It is usual to allow half an acre of ground for manse and yard. The manse is not to exceed £1000, nor to be under 500 merks of value. Ministers hold their manses and glebes of none but the King. Glebes are to consist of four acres of arable ground; failing of which, sixteen souns grass of the best and most commodious pasturage of any kirklands within the parish, Jam. VI. Par. 18, cap. 7, and by the 21st act, Par. 1, sess. 3, Car. II. ministers (excepting ministers of burghs royal where there is no landward parish, and who have no right to glebes) are to have grass for one horse and two kine, or else, that the heritors pay to the minister twenty pounds yearly.

5. Manses and glebes, where they have not been designed, or not the full quantity, are now designed by the presbytery, or their committee, with two or three discreet men of the parish. The minister, or a procurator in his name, receives infestment therein from the moderator, upon which he takes instruments in the hands of a notary, or of the clerk of the presbytery. And upon a petition given in by the minister to the Lords of Session, with the act of designation and instrument, they will interpose their authority for removing the heritors and possessors of the lands designed, in terms of the 48th act, Parl. 3, James VI. by granting letters of horning, to charge them to remove within ten days. And glebes are designed with freedom of foggage, fuel, feal, divot, loaning, free ish and entry, and other privileges, according to use and wont. James VI. Parl. 13, cap. 161.

6. The proprietors of the lands designed must get relief *pro rata*, off the rest of the heritors of kirk-lands, within the parish, if the designation was out of kirk-lands, and they not being the glebes and manses of old pertaining to persons or vicars; for there is no relief competent to the feuars or tacks-

men of such lands, except only against such as have feus of other parts of the said old glebe or manse, act 199, Parl. 18<sup>c</sup> James VI. When the designation is out of temporal lands, the rest of the heritors of the like lands are to contribute proportionally for relief thereof.

7. It would look more impartial like, and resemble more that humility, love, and simplicity recommended to Christians by the apostle (James ii. 1.) and would look liker the subjects of Christ's kingdom, which is not of this world, if church members would take their seats in the church without respect of their civil character, as they do at the Lord's table. Some seats are built and repaired at the general charge of the parish, in which all have a common interest; and there are others which particular heritors have built for their own use with consent of the kirk-session, or which they have prescribed a right unto by forty years possession. In several burghs royal, within this kingdom, the disposal of all the church seats, at least upon the bounds at first allotted to them for their inhabitants by the kirk-session, is thereafter ordered and parcelled out by the town-council, and burdened with certain yearly sums for a minister's stipend, and where the seats are disposed upon to burgesses without that burden; and it be found that without it there cannot be a competent stipend to the ministers. The dispositions and rights so made, may, no doubt, be reduced on that head; for it was never the intention of the kirk-session, who gave these rights, to authorise an absolute alienation of seats, to the obstructing and preventing funds, for maintaining the public preaching of God's word.

8. The keys of seats are to be kept by beddals, that when the proprietors are absent, such as wants seats, or throng the seats of others, may be accommodated for the time; but in case the owners be so little concerned with religion, as not to countenance the public worship of God, or averse to serve such as attend upon it with their empty seats, the people that want accommodation cannot be blamed to possess and occupy that void in their absence; and if the owners, or others by their order, shall offer to dispossess them violently, especially in time of divine service, they should be prosecuted as disturbers of public worship, both before the civil magistrate and church judicatures.

9. The heritors are bound to pay for, and are stated in the property of the bells, books, utensils, and ornaments of the church; but the minister and kirk-session, to whose custody they are committed, may pursue for any of them that are ab-

stracted. A charge for a stent imposed for buying of bells to a church within a burgh royal hath been sustained against the land-ward heritors, albeit the burgesses and indwellers would have more advantage by them. See the new Treatise on Church Lands, page 212.

10. Every one must have some way to the church, but cannot pretend to any special way, as the nearest, through another man's land, without proving immemorial possession, which is reckoned forty years, of such a gate or passage. And to make up this immemorial possession, a person will be allowed to conjoin his predecessor's possession of that road with his own. See the forecited Book, p. 212.

#### TITLE XIV.

##### *Of Tithes, Stipends, and Mortifications.*

1. The maintenance belonging to ministers for their labours we call stipends, but more commonly and by the canon law they are named benefices. Calvin, in his *Lexicon Juridicum*, tells us, that the rewards and privileges given and granted of old to soldiers for their service, were called benefices and stipends. The canonists define a stipend or benefice thus, "Est jus perpetuum percipiendi fructus ex bonis ecclesiasticis, propter aliquod officium spirituale, auctoritate ecclesiæ constitutum." Whatever belongs to church-men is likewise called the patrimony of the church, the word signifying an inheritance left by a father; because, when legislatures or private persons do authorise or destinate suitable encouragement for the comfortable life of church guides and pastors, they do, in so far, act the part of nursing fathers unto the church. In the 9th chapter of the Policy of the Kirk, they comprehend under the church's patrimony, all things given, or to be given to the kirk, and service of God, as lands, buildings, possessions, annual rents, and all such like wherewith the kirk is doted, either by donations, mortifications, or any other lawful titles, together with the continual oblations of the faithful; as also teinds, manses, glebes, and such like, which by the common and municipal laws, and universal customs, are possessed by the kirk. And to take any of this patrimony and convert it to the particular and private use of any person, is reputed a detestable sacrilege before God, by our church.

2. The work of the ministry is a warfare, and it is not ordinary for soldiers to maintain themselves without pay, 1 Cor. ix. 7, and the light of nature teacheth that the labourer is worthy of his hire. By the 42d article of cap. 1, French

Church Discipline, it is found, that ministers who are rich, and have of their own, should nevertheless take wages of their flocks, lest their example do prejudice to other pastors and churches. And M'Kenzie and Stair, in their Institutions, do maintain that some part of our goods is due, by divine right, towards the maintenance of the clergy; but that the proportion may be determined by human laws, according to circumstances. By the 19th act of Parliament 1633, all ministers are appointed to be provided with sufficient stipends, being eight chalders of victual, or eight hundred merks at least, beside manse and glebe, except in singular cases referred to the commission for plantation of kirks. In some places of Scotland, ministers may maintain their families for less than the half, which must be allowed to maintain the same families in other parts of the kingdom. Seeing ministers do deny themselves to the gain of civil employments, whereby they might have a more unlimited prospect, not only of maintaining their families, but of purchasing stocks for their posterity, therefore the Dutch custom is not unreasonable, which alloweth to ministers so much for every son, in order to his better education and breeding.

3. The canon law defines tithes thus: "Est quota honorum mobilium, licite quæditorum, pro sacerdotibus Dei, ipsius locum in terris tenentibus, tam divina quam humana constitutione debita." Ministers stipends and augmentations thereof are legal burdens, and the main one to which teinds are liable, against which no title or right whatsoever can secure. And the truth is, till once the parish minister is sufficiently provided no person can safely buy his own teinds: For they are always subject to be evicted for that end, by the common law and our custom, even after the heritor has bought them: See that New Treatise on Tithes, p. 340. By William and Mary's Parliament, sess. 4, cap. 24, it is appointed, that teinds belonging to their Majesties, by the abolishing of Prelacy, so long as they remain undisposed, as likewise teinds belonging to colleges and hospitals, or destined to pious uses, are not to be sold, but may only be valued, and made liable thereafter for payment of the valued duties.

4. Former Parliaments referred to their commissions the plantations of kirks and valuation of teinds; but now, the last session of the last Parliament, have in place of all further commissions for such matters, empowered and appointed the Lords of Session to judge in all affairs and causes, which by former laws did pertain to the cognizance and jurisdiction of

commissions of Parliament: Only they are restricted from transporting of a kirk, without consent of most of the heritors of the parish. Every Wednesday afternoon in time of session, the Lords meet to call and discuss such causes.

5. By the 4th act, Parl. 22, Jam. VI. bishops are discharged to set in tack longer than nineteen years, and inferior beneficed persons for longer space than their own lifetime, and five years thereafter (except the commission authorise it) under the pain of deprivation: and further, the contraveners declared infamous and incapable of any church office. Longer tacks were ordained to be registrate within forty days, in a particular book to be kept by the clerk-register for that effect, otherwise to be null. And where it is said, that the inferior clergy can set tacks to run five years after their decease, that is always to be understood with consent of the patron, obtained either before or after the setting of the tacks: For without that they can set but three years tacks, act 15, Parl. 23, Jam. VI. and that the ecclesiastical rents may suffice to their uses, all alienations, setting of feus or tacks of the rents of the kirk, as well lands as teinds, in hurt and diminution of the old rentals, ought to be reduced and annulled. And likewise, that in all times coming, the teinds be set to none but to the labourers of the ground, or else not set at all. See cap. 12 of the Policy of the Kirk.

6. The legal terms of paying or vaiking of benefices and stipends are, Whitsunday, at which time the fruits are held to be fully sown, and Michaelmas, when they are presumed to be fully separated. If the incumbent's entry be after Michaelmas, and before Whitsunday, he hath that whole year; if after Whitsunday, the half of that year; or if he die, be deposed, or transported before Whitsunday, he hath no part of that year; if after Whitsunday, and before Michaelmas, he hath the half of that year.

7. Although a benefice be vaik when a minister is deposed, yet till the same he intimate, the parishioners may pay their stipends into him, and his discharges will defend them. But after intimation is made, no payment will be sustained. See Stair's Inst. p. 151.

8. The annat due to the executors of deceased ministers is declared to be half a year's rent, over what is due to the defunct for his incumbency, to wit, if he survive Whitsunday, the half of that year is due for his incumbency, and the other half for the annat; and if he survive Michaelmas, the whole year is due for his incumbency, and the half of the next year

for the annat, and the executors need not to confirm it, Parl. 2, sess. 3, cap. 13, Car. II. Neither can it be disposed to strangers by the defunct, nor affected by his creditors; for it did never belong unto him, it being only a gratuity which the law indulgeth, upon the account that ministers are supposed not to die rich. The annat divides betwixt the relict and the nearest of kin, if there be no children, and is extended to the profit of the glebe, if there be no new intrant: But where there is an intrant, the glebe belongs to him, and is no part of the annat, nor did belong to the former minister, unless it was sown by him, and the crop upon it at the entry of the intrant. See Stair's Instit. p. 306.

9. General letters of horning, (so called, because they do not express *nominatim* the persons to be charged), are allowed upon decreets of locality, act 13, sess. 2, Parl. William and Mary; and these letters are effectual, not only against the persons decerned in the decrets, but also against their heirs and singular successors possessing the lands affected with the locality. But summary horning was not sustained at the instance of a minister's executor for his stipend. Ministers pointing for their stipends need not to carry the goods to the market-cross of the head burgh of the proper jurisdiction, but may comprise them on the ground where they are, by honest sworn men, act 21, sess. 3, Par. 1, Car. II. No suspensions of special decreets for ministers stipends can pass, except upon production of discharges, or upon consignment of the sums charged for; and if victual be the subject of the charge, one hundred merks must be consigned for each chalder, and proportionally where less than a chalder is charged, without prejudice to the Lords of Session to modify more or less at the discussing, act 6, sess. 1, Parl. 2, Car. II. Actions for ministers stipends commenced in inferior courts, cannot be advocated. Suspensions of and actions for them before the session are discussed summarily, without abiding the course of the roll; and suspenders, against whom letters are found orderly proceeded, should be decerned in a fifth part more at least than the sums charged for, to pay the minister's expenses and damage, act 27, sess. 5 of King William's Parliament.

10. Although the power of presenting ministers by patrons to vacant churches be discharged, yet that is but prejudice to them of their right to employ the vacant stipends on pious uses within the respective parishes, except where the patron is Popish; in which case he is to employ the same on pious uses, by the advice, and at appointment of the presbytery; and in

case the patron shall fail in applying the vacant stipends for the uses foresaid, that he shall lose his right of administration of the vacant stipend for that and the next vacancy, and the same shall be disposed upon by the presbytery to the uses foresaid. Excepting always the vacant stipends within the bounds of the synod of Argyle, which synod is empowered to dispose thereof for training up of youth at schools and colleges, and for other pious uses, with consent of the heritors, William and Mary's Parl. sess. 2, acts 23, 24.

11. Ministers stipends prescribe *quoad modum probandi*, if not pursued within five years after the same are due: so that after that time they cannot be proven to be resting unpaid, except by the oaths of the defenders, or by a special writ under their hands acknowledging what is resting.

12. A minister having charged for the payment of the bolls contained in his decret of locality, the debtor was ordained by the Lords to depone upon the prices he got; although he had offered the fiars by way of instrument within seven days after the charge, and produced receipts of the charger and his predecessors, for instructing that they were not in use to uplift the bolls *in ipsis corporibus*. It seems as unreasonable to oblige a minister to accept the fiars from the heritors, as it were to oblige the heritors to accept the fiars from their tenants. Yet I think the liquid price of vacant stipends, according to custom, is the fiar of the respective shires. See that forecited Treatise on Tithes, p. 427.

13. The bolls contained in a minister's decret, if no measure be therein specified, should be paid according to the Linlithgow measure; unless the minister hath been thirteen years in possession of uplifting according to another measure, or the modified stipend would fall short of the quantity in the act of Parliament by Linlithgow measure. For in that case the minister ought to be paid conform to the measure of the shire in which the parish lies. See that Treatise on Church Lands, p. 428.

14. An ecclesiastical pension is a certain portion of yearly rent payable for a time out of another's benefice. Ecclesiastical pensions seem to have been introduced at first, as a mean of subsistence to incumbents who, through sickness or infirmity of old age, were turned unable to officiate: for such were allowed to resign their benefices, reserving to themselves pensions out of them, as they might live upon, suitable to their former character. As church-men turned afterwards more degenerate, and benefices became merchandise, resignations



and pensions upon trivial reasons were sustained. See book foresaid, page 160.

15. The pastoral charge, or the office of professor of theology in schools, is of that weight and consequence, that to discharge any one of them satisfactorily, will be exercise enough to any honest man, however sufficient, all the days of his life. By the canons of the synod of London, October 25, 1597, in Bishop Sparrow's Collections, the extraordinary parts and merits of some is pretended for a ground to dispense with a plurality. This were relevant to be practised for some time *in ecclesia constituenda*, where gifted men are rare: but to continue that custom *in ecclesia constituta*, where gifts do abound, it were to neglect both the maintenance, and likewise the gifts of God that he hath bestowed on some, and to overvalue the gifts he hath given to others, and hinder them from discharging of the duties belonging to one office eminently. There were in Christ's time abundance of idle Pharisees, Scribes, and Priests, that spent their time in teaching the people their rites, ceremonies, and traditions: but there were always but a few labourers in God's harvest; hence Chrysostome thought that but few ministers will be saved. What man or angel is sufficient for the ministerial work! But their sufficiency is of God.

16. By the 22d act of Assembly 1700, presbyteries are to take notice, how 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 dilapidations of any such sums, that those guilty thereof be pursued according to law, and the synods are to see to the presbyteries diligence herein.

17. By cap. 6, Parl. 1, Car. 1, gifts, legacies, or donations for pious uses, must not be inverted from the specific use destinate by the disponent, and the persons intrusted are made countable for the same, and ordinary profits thereof to the kirks, colleges, and others to whom they are disposed; and this is extended to all such dispositions as have been made since the majority of King James VI. and that letters be thereon direct.

18. That forecited book on Church Lands, page 107, tells us, that Charles the Great discharged ecclesiastics to accept of mortifications, whereby children would in effect be disinherited. So good Augustine refused universal legacies in favours of his church, when the testator left children or parents who might be prejudged and suffer thereby. Nor was this

generosity of his singular; for a certain man having no children, nor hopes of any, having gifted his estate to the church of Carthage, only with the reservation of his own liferent, Aurelius the Bishop reponed him to his former right, upon the unexpected birth of a son.

19. By the 29th act, Parl. 11, Jam. VI. Popish benefices are annexed to the crown, or converted into civil uses. Consider that these mortifications were fraudulently elicited from persons, imposed upon by ways and means of priestcraft; and that they had been originally destinate to maintain an idolatrous and superstitious worship. Now, it being the public interest that none make a wrong, far less a sinful use of their property, it is incumbent on the orthodox magistrate, to convert what was mortified and fraudulently obtained for maintenance of idolatry, to the maintenance of the true worship of God: and in case there shall happen any excrecence, over and above what may support the same, and the ministers thereof comfortably, then may not that be applied for some honest and necessary use in the republic, until the affairs of the church require the same again. This is confirmed by the Policy of the Kirk, cap. 12, art. 14.

20. The visitors of hospitals are to be appointed by the Sovereigns, act 101, Parl. 7, James V. and accordingly by William's Parl. sess. 6, cap. 29, there is a recommendation to his Majesty to cause visit hospitals, and inquire after mortifications. This is renewed sess. 3, cap. 21. It would seem by the 27th act, Parl. 2, James I. that actions for bringing patrons and others to count for their intromissions with the rents of hospitals, may be intented at the Chancellor's instance, especially in case no royal visitation be appointed.

21. In the 9th and 12th chapters of the Heads of Policy of the Kirk, they allow of a fourfold distribution of the churches patrimony; one portion thereof to be assigned to the pastor for his entertainment and hospitality: another to the deacons, elders, and other officers of the kirk and kirk-servants, such as clerks of assemblies, takers up of psalms, beddals, and keepers of the kirk, joining with them also the doctors, and schools, to help their old rents where need requires; the third portion to be bestowed on the poor members of the faithful, and on hospitals: the fourth for reparation of kirks, and other extraordinary charges as are profitable for the kirk, and also for the commonwealth if need require.

22. In the 12th chapter of that book of discipline, the collection and distribution of all ecclesiastical goods or patrimony

properly belongs to the office of the deacons, (see the title of Deacons,) that the poor may be answered of their portion thereof, and they of the ministry live without care and solicitude, as also the rest of the treasure of the kirk may be reserved and bestowed to their right uses. If these deacons be elected with such qualifications as God's word requires, there is no fear that they will abuse their office. Yet, because the giving so great trust to them, appeareth to many to be dangerous, let them be obliged to find caution for their fidelity, that the kirk rents be no way dilapidated.

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## BOOK THIRD.

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### TITLE I.

#### *Of Apostacy, and Atheistical Opinions of Deists.*

1. Apostates are these who altogether desert the Christian faith: yet sometimes they are taken for such as desert that holy faith to which they are engaged at baptism, and become professors of a false religion. All heretics are not apostates.

2. By the 21st act of Assembly 1696, all ministers are enjoined, where there is any apparent hazard of contagion from such persons as are of atheistical opinions, to detect the abominableness of their tenets; such as, the denying of all revealed religion, and the grand mysteries of the gospel, viz. the doctrine of the Trinity, the incarnation of the Son of God, his satisfaction to divine justice, justification by his imputed righteousness to them who believe in his name, the resurrection of the dead; and, in a word, the certainty and authority of all scripture revelation; as also, their asserting, that there must be a mathematical demonstration for each purpose, before we can be obliged to assent thereunto, and that natural light is sufficient to salvation.

3. By the 11th act of King William, Parl. 1695, it is ordained, that whoever shall, in their writing or discourse, deny,

impugn, or quarrel, argue, or reason, against the being of God, or any of the persons of the blessed Trinity, or the authority of the holy scriptures, or the providence of God in the government of the world, shall, for the first fault, be punished with imprisonment, aye and while they find bail to give public satisfaction in sackcloth to the congregation within which the scandal was committed; and, for the second fault, the delinquent shall be fined in one year's valued rent, and the twentieth part of his free personal estate, besides his being imprisoned, aye and while he give satisfaction again *ut supra*; and for the third fault, he shall be punished with death as an obstinate blasphemer: See title of Blasphemy. Accordingly one Aikenhead was hanged for that crime betwixt Leith and Edinburgh, about the year 1697. All judges and ministers of the law are enjoined to execute this act for the first fault, and all inferior magistrates of shires, regalities, stewardries, and their deputies, and magistrates of burghs, are to execute this act as to the second fault; and, as to the third fault, the execution thereof is remitted to the Lords of Justiciary.

## TITLE II.

### *Of Papists, Quakers, and Bourignianists.*

1. According to the canon law, "Hæretici sunt illi qui vanæ gloriæ principatusque sui causa, falsas opiniones gignunt vel sequuntur." Anciently the word *Hæresis* was taken for a firm opinion, whether the same was good or bad. It is committed by Christians when they pertinaciously propagate or follow opinions contrary to the received fundamental doctrine of the church.

2. That no man should be compelled by temporal punishments to profess the true faith, is a doctrine universally received among the reformed churches. It is *crimen mere ecclesiasticum*, at least as to its cognition *prima instantia*. The reformed churches never deliver any they find heretics to the civil judge, or rather, according to the employment given the judges by Papists, the civil executioners. One continuing a heretic ought to be rejected and excommunicated, compare Titus iii. 10, with 1 Tim. i. 20. Our Sovereigns, by their coronation oath, are to root out all heretics that shall be convicted by the true kirk of God, from their empire of Scotland, which doth not oblige them to persecution, nor to pay blind obedience to the church, but only it binds them, at least chiefly to execute the laws against Papists, who are declared

common enemies to all Protestant states, Jam. VI. Parl. 16, cap. 18.

3. The severity of our laws against Papists will be further justified, if we consider, that by the law of God idolaters were to be put to death, Deut. xvii. and agreeable thereto, Popish idolaters are to be punished with death, by the 104th act, Parl. 7, Jam. VI. By Jam. VI., Parl. 6, cap. 71, persons going out of the country for further knowledge of letters, are to have the King's licence, which shall contain this provision, that they shall adhere to the true religion, and do nothing against it, under the pain of barrety (which with us is committed by those who go to Rome to buy benefices, and is punishable by infamy and banishment, Jam. VI. Parl. 1, cap. 2) ; and that within twenty days after their return, they make and give before their ordinary, the confession of their faith as now established, or otherwise devoid the kingdom within forty days thereafter, or be pursued as adversaries to the religion. By Jam. VI. Parl. 7, cap. 104, none are to go on pilgrimage to kirks, chapels, crosses, or the like, keep saints days, sing carols within and about kirks, or observe other superstitious papistical rites, under the pecunial pains therein contained, for the first fault, and under the pain of death to the continuers therein. By King William's Parl. sess. 5, cap. 26, no Papist can make any gratuitous disposition or deed in prejudice of their apparent heirs, declaring such disposition or deed to be null : And that it be judged gratuitous, unless the granter, writer, and witnesses, declare upon oath, before the judge of the bounds, that it was granted for an onerous adequate cause. By King William's Parl. sess. 9, cap. 3, these above mentioned acts are ratified, with all other laws made against Popery and Papists, especially these against Jesuits, Priests, or trafficking Papists ; and all sayers and hearers of mass, and concealers of the same. Item, whoever seizes any Priest, Jesuit, or trafficking Papist, or their reseters, upon certificate of the conviction of the person seized by the judge, shall have 500 merks for his reward from the treasury ; for which the receiver-general may be pursued before the Lords of Session. Item if it be proven that the said Priest, Jesuit, or trafficking Papist, was held in repute such, or that he changed his name, and shall refuse the formula of purgation subjoined to this act, it shall be sufficient ground for the council to banish him, never to return a Papist under pain of death, to be inflicted by the Lords of Justiciary. Item, If any person be found in any meeting where there is any altar, mass-book, or other instru-

ments of Popish superstition, and shall refuse to purge, as above, it shall be sufficient ground to the council to banish, under any certification they shall think fit, even to that of death; and whosoever discovers and seizes the said banished person, after his return, shall have the foresaid reward of 500 merks. Item, the 8th act, Parl. 1, Charles II, is ratified; and any Protestant relation, or his Majesty's advocate or solicitor, may pursue for the exhibition and education of children in the keeping of Papists; and the Lords of Session are empowered to modify an aliment out of the children's or their parents means; and it is recommended to Presbyteries to inform in this matter. Item, No Papist professed, or not purged, can receive any voluntary deed or disposition made to him of any lands, or real rights, or tacks of lands, or teinds, but the same are declared null, and to remain with the granter, and no action for warrandice or repetition of the price. Item, No Papist past the age of fifteen years, can succeed either as heir, or by other conveyance from the person to whom he may be heir, until he purge himself of Popery, as above; and if being educate in the Popish religion, he succeed as above, before the said age, then he shall be obliged to purge before he attain the same; and the person so succeeding, failing in either of these cases, devolves to the next Protestant heir, who is to be served as such to the defunct, and to have right to the estate and rents, from the said irritancy, aye and while the person excluded, or his heir, purge himself, as above; in which he is to be reponed as before the exclusion. The intervening rents, with the burden of current annual rents of debts, remaining with the Protestant successor; but this exclusion to be without prejudice of creditors before the exclusion. Item, No Papist may grant any gratuitous deed in prejudice of his heir, but the same is declared null, save as to the affecting the granter's person and moveables. See the forecited 26th act, sess. 5, King William's Parliament. Item, The Protestant on whom the succession devolves by the said exclusion, must prosecute his right within two years, else it falls to the next, and so on. Item, The Papist and his heir must renounce Popery within ten years after the said irritancy, (minority not reckoned), or is to be excluded for ever; and the estate thus devolving, devolves with all its lawful conditions and burdens. Item, No voluntary right by a Papist in favours of his apparent heir, also a Papist, shall be of force, though prior to this act, unless clad with infestment or possession, or proceeded in judgment prior thereto. Item,

All dispositions or deeds in favours of cloisters, or other Popish societies are declared void, and to accresce to the next Protestant heir to the granter. Item, No adjudication is to expire in the person of a Papist, but coming in the person of a Protestant, the legal being run, it expires within year and day thereafter, and no adjudication or real diligence is competent to a Papist, upon any gratuitous bond or deed. Item, That the formula of purgation be taken before the council, or before the Presbytery, and reported within forty days to the council. Item, A Protestant apostatizing to Popery, forfeits his estate immediately to his next heir, being Protestant, as if he were dead; and this next heir, if in pupilarity, is to be reckoned Protestant, if his education be such; or if it be Popish, he is excluded until he purge, as above. Item, That no suspected Papist be capable of any trust of the person or affairs of minors, and that none employ them in such trusts, until they purge as above, under the pain of a year's valued rent, or a thousand merks, if the valued rent be less. Item, No suspected Papist may teach any science, art, or exercise in families, or out with, nor may a Protestant have a Popish domestic servant, under the pain of five hundred merks, which may be pursued by any Protestant; and, upon conviction, to have the same for reward. By the 23th act, sess. 6, of King William's Parliament, whoever perverts a Protestant subject to Popery, shall be proceeded against as a trafficking Papist; that a Protestant servant turning Papist in a Popish family, be punished as an apostate; and the master, when required, is obliged to dismiss that servant, never more to be received by him, or any other Popish master, under pain of an hundred pounds; and that Popish masters allow their servants due liberty to attend worship and catechising, under the said pain: and that these servants use that liberty, under the pain of being banished the parish. By the 5th act, Parl. 1, James VI. the sayers and hearers of mass, or such as are present thereat, are punished by confiscation of all their goods, moveable and immoveable, and an arbitrary punishment of their persons for the first fault, banishment for the second, and death for the third fault. By the 122d act, Parl. 12, James VI. the sayers of mass, resettlers of Jesuits, seminary priests, and trafficking Papists, against the King's Majesty, and religion presently professed within this realm, is, and shall be a just cause to infer the crime and pain of treason, provided how soon they satisfy the Prince and the kirk the penalty foresaid shall not strike against the resetter. By the declar-

ation of the estates, containing the claim of right, April 11, 1689, it is declared, that by the law of this kingdom, no Papist can be King or Queen of this realm, nor bear any office whatsoever therein.

4. The latest and most comprehensive acts of Assembly against Popery, are these: By act July 29, 1640, all idolatrous monuments are appointed to be taken down and destroyed; and presbyteries and synods are to see this work with all diligence performed. This is conform to the 64th and 90th canons, Concil. Carthag. "Ut reliquæ idolorum radicitus extirpentur, simpliciter placuit peti a gloriosissimis imperatoribus, ut reliquæ idololatriæ non solum quæ sunt in statuis: sed quæ sunt in quibusuis locis vel lucis vel arboribus, omni modo deleantur." By Assembly 1642, sess. 7, and 1648, sess. 38, presbyteries are appointed to convene known Papists in their bounds, and oblige them, within a month, to put from their company Popish friends and servants, and give their children about seven years of age, to be educated at their charges, by such Protestant friends as the presbytery shall approve, and find caution, within three months, to bring home such of their children as are abroad, to be educated at the sight of the presbytery. The obstinate are to be processed *instanter*, and those who comply are to confer with professors in the next university, in order to their conversion. Item, The government is to be supplicate for an act, that in no regiment that goes out of the kingdom, any Papist bear office, and the colonel to find caution for this effect. But the substance of this desired act is already declared in the claim of right, and enacted by 9th act, Parl. 1, James VI. and the 5th act, Parl. 2, James VI. By the 8th act of Assembly 1699, they appoint all ministers to study Popish controversies more. Item, That all due endeavours be used to unite Protestants among themselves. Item, That ministers faithfully watch the flock committed to them, that so, by public preaching, private instruction and conference, apostacy may be prevented. Item, Ministers are to deal wisely and convincingly with those who have fallen to Popery, and other corrupt practices, for their recovery. Item, When other means are ineffectual, presbyteries are appointed to proceed to church censure. Item, That, according to the former acts of Assemblies, and acts of Parliament, the names of Popish priests and Jesuits, and trafficking Papists, and of those who have sent their children to Popish colleges and countries, be given in to each provincial synod, and by them transmitted to the respective



magistrates, to the effect they be proceeded against according to law, Car. II. Parl. 3, act 6. Item, The General Assembly resolves, that application be made to the civil magistrate, as often as need requires, for the vigorous execution of the laws against Papists, Popish school-masters, mistresses, governors, and pedagogues, and Popish meetings, and for seeing to the training up of Popish youth in the Protestant religion. By the Assembly 1704, scandalous persons turning Popish, or pretending to do so, to evite censure, shall, after due pains to reclaim them, be excommunicated. By the 17th sess. of Assem. 1700, and 9th sess. of Assem. 1703, no private acknowledgement of a Papist's renouncing that religion verbally, is to be held sufficient to admit them into church privileges; but their reception thereunto must be the deed of a church judicature, not below a presbytery. By the 8th act of Assembly, 1707, it is appointed that the synod in which these presbyteries are where Popery increaseth, do sometimes send ministers that are well acquainted with these controversies, to assist the ministers of the bounds in conferring with the seduced, and for establishing others. Item, Probationers, well seen in such controversies, are to be sent to assist the ministers in these parts in preaching, that they may have the more time to instruct the people, and watch over them against Popery. All which acts and recommendations, as to ministers' diligence against Popery, are revived by the 4th act of Assembly 1708. Calderwood, in his History, p. 594, tells us of an act against Papists made in that pretended Assembly holden at Linlithgow 1608, wherein they appoint, at every service of any person, as heir to his father, or any of his predecessors, he be not served by any judge without the testimonial of the Bishop, and moderator of the presbytery, where he dwells, bearing the confession of his faith, and integrity in the religion presently professed.

5. By the 23d art. cap. 14, of the French Church Discipline, all violence and unbecoming language against those of the Romish Church, and even against priests and friars, shall not only be hindered, but also wholly suppressed, as much as possibly may be.

6. By the 10th act of Assembly 1695, for preventing of the growth of these abominable heresies of the Quakers, it is recommended to all church judicatures to use all proper means for reclaiming of them, and in case of their obstinacy, to proceed against them with the censure of the church, but especially against the ringleaders, or those who have apostatized from our holy faith.

7. The Assembly 1701, by their 11th act, finds, that the writings of M. Antonia Bourignon, are fraughted with impious and damnable doctrines, as they are represented in the Apology for her, condemned by the immediately preceding act, which exhibits to the world an epitome of her errors in the fairest dress; such as, 1. The denying the permission of sin, and the inflicting of vengeance and damnation for it. 2. The attributing to Christ a twofold human nature, one of which was produced of Adam, before the woman was formed, the other born of the Virgin Mary. 3. The denying the decrees of election and reprobation, and the loading these acts of grace and sovereignty, with a multitude of odious and blasphemous aspersions, particularly, wickedness, cruelty, and respect of persons. 4. That there is a good spirit and an evil spirit the in souls of all men before they are born. 5. That the will of man is unlimited, and that there must be in man some infinite quality, whereby he may unite himself to God. 6. The denying of the doctrine of divine prescience. 7. The asserting of the sinful corruption of Christ's human nature, and rebellion in Christ's natural will to the will of God. And, 8. The asserting a state of perfection in this life, and a state of putrefaction in the life to come; that generation takes place in heaven, and that there are no true Christians in the world.

### TITLE III.

*Of Schism and Frelacy, and of the Laws and Acts for preventing Innovations and Errors.*

1. According to the canon law, "Schismaticus est qui ab unitate ecclesie se separat," schism is to the church what a cut is to the natural body, and it may be where no heresy in doctrine is: it is a breaking of that church union and communion which ought to be among her members.

2. Schism in church government is either about the government itself, or about the persons in whom it is lodged; which difference may occasion the erecting of *altare contra altare*. Schism may be in worship, when both the same doctrine and government are acknowledged, but communion is not kept in the Lord's supper, according to Christ's appointment. This seems in part to have been the schism among the Corinthians, occasioned perhaps through the corruption of some members with whom others have scrupled to communicate.

3. The understanding having such influence upon the will and affections, and union having so much interest in both, the

same will be more easily attained by persuasive reasonings than authoritative injunctions. Though the authority of a church may be interposed to condemn heretical and scandalous members, yet it is rarely found to be the way of uniting a rent church, but rather the way to govern an united church: For it often happens, where such divisions arise, that parties do reciprocally decline each others authority; indeed, where schism is only a spreading, or but among few, who cannot be otherwise gained; in that case, the censures of the church may be more successfully applied against them.

4. The General Assembly, by their act December 8, 1638, having considered the proceedings of this kirk, and acts of General Assemblies in former years, the vote was stated, whether, according to the Confession of Faith, (*i. e.* the national covenant) as it was professed in the years 1580, 1581, and 1590, there be any other bishop, but a pastor of a particular flock, having no pre-eminence nor power over his brethren? And, whether by that Confession, as it was then professed, all other Episcopacy is abjured, and ought to be removed out of this kirk? The hail Assembly most unanimously (one only hesitating) did voice, that all Episcopacy, different from that of a pastor over a particular flock, was abjured in this kirk; and therefore prohibits, under the pain of ecclesiastical censure, any to usurp, accept, defend, or obey the pretended authority of bishops in time coming. By the act of Assembly, August 17, 1639, it is declared, that the changing of the government of the kirk from the Assemblies thereof to the persons of some kirk-men, under the name of Episcopal government, was against the Confession of Faith 1580, against the order set down in the Book of Policy, and against the intention and constitution of this kirk, and which from the beginning, hath been one of the chief causes of the bygone evils therein. The Assembly, in their answer August 9, 1641, to the English ministers, declare, they are persuaded Presbyterial kirk government to be of God, and Episcopal government to be only of men; and they resolve to hold the same constantly. Again, by their answer August 3, 1642, to the declaration of the Parliament of England, they say, the reformed kirks do hold, without doubting, their kirk officers and kirk government, by Assemblies higher and lower, in their strong and beautiful subordination, to be *jure divino*; yet Prelacy, as it differeth from the office of a pastor, is almost universally acknowledged by the prelates themselves, to be but an human ordinance, settled by human law for supposed conveniency; wherefore,

by human authority, without wronging any man's conscience, the same may be abolished upon so great a necessity as is a hearty conjunction with all the reformed kirks. Among the causes of that fast appointed by Assembly 1690, this is one, that the government of the church was altered, and Prelacy re-introduced without the consent of the church, and contrary to the standing acts of our National Assemblies. From all which it appears, that the re-introducing of Prelacy, was always lay, and Parliamentary only; and the government of the church by presbyters was orderly and synodically established by the guides and governors of the church, her preaching and ruling elders.

5. The meeting of estates in their claim of right, April 11, 1689, declare, 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. In pursuance whereof, it is abolished by the 3d act of Parl. 1689, and by the 3d act of the 1st sess. of Queen Anne's Parliament, it is statute and declared high treason to quarrel, impugn, or endeavour, by writing, malicious and advised speaking, or other open act or deed, to alter or innovate the claim of right, or any article thereof. Which act is as a hedge about the Revolution establishment; for after the same was voted and enacted, never durst any presume to offer any act or overture for a toleration to Prelacy; whereas, before that, some offered in Parliament draughts of acts for a toleration to Prelacy, and moved that the commission of the late Assembly 1703 should be called to the bar for asserting in their address, that the Parliament's granting a toleration to Prelacy would be to establish iniquity by law.

6. The Assembly 1638, December 20, inhibiteth all printers within this church to print any act of this or preceding Assemblies, any Confession of Faith, any debates about present divisions, or any treatise whatsoever, which may concern the church of Scotland, without warrant from the clerk of the Assembly, or to reprint the same by any other not appointed by him: and that under pain of ecclesiastical censure. By the 14th chap. art. 19, of the French Discipline, all printers and stationers are warned, not to print or sell books that shall concern religion or ecclesiastical discipline, without the consistory's allowance, and no book is to be sold that tends to ad-

vance idolatry, and corrupt good manners. And by the 16th art. of the foresaid 14th chapter, ministers, nor any else in the church, cannot print books made by themselves or others, touching religion, nor any way publish them without allowance from the presbytery or synod, or from those authorised by the synod to license books. By the 7th act of Assembly 1707, presbyteries are appointed to take special notice, of any book or pamphlet which has for its author or publisher any minister of this church, and examine if there be any thing therein contrary to her doctrine, worship, discipline or government, and that they censure such as shall transgress herein, according to the demerit of the cause. The sellers also and dispersers of erroneous and Popish books, are to be punished arbitrarily by the rubric of the 25th act, Parl. 11, James VI. But the statutory words run only against the home-bringers of such books, the books also are to be destroyed, and warrantice given to magistrates of burghs, with a minister, to intromit with them, without hazard of spuilzie: *de praxi*, sheriffs and other magistrates intromit with such books without a minister's presence or concurrence: See Mackenzie, title Heresy.

7. For preventing innovations, sudden alterations, by passing of acts which may threaten the peace of the church, it is enacted, that before any Assembly make acts which are to be new standing rules and constitutions to the church, the same be first past as overtures, to be transmitted to the several presbyteries, and their consent reported to the next Assembly, who may pass the same into acts, if the more general opinion of the church agree thereto. See Assembly 1634, August 30. Assembly 1641, sess. 14. Assembly 1695, sess. 7. Assembly 1697, sess. 6, and by the act of Assembly 1700, sess. 17, any overtures of general concern proposed to the Assembly, after the first reading, are to lie on the table to be seen by all the members till the next day of the Assembly's sitting, and when transmitted, presbyteries are to consider of them, before the meeting of the synod, next after the Assembly, and their opinion is to be sent to the next Assembly in writing. When presbyteries observe this order, then the Assembly gathers the opinion of the church from the plurality of the written opinions returned; but in case a great number of presbyteries, should either be so well satisfied, or so indifferent about the overture transmitted, or give such absolute trust and credit to their commissioners, that they give no opinion in the matter, in that case the opinion of the com-

missioners is to be looked upon as the opinion of their constituents.

8. The same authority and method that was necessary unto the framing of an ecclesiastic constitution, must be interposed and used at its repealing, "Nam nihil est tam naturale, quam eo genere quidque dissolvi, quo colligatum est." By the 8th act of Assembly 1706, commission books are only to be attested in a negative style, even as those of synods; yet by the 9th act of Assembly 1707, the actings and proceedings of the preceding commission are ratified, and approved positively and solemnly, as former commissions had been, because of their extraordinary faithfulness, zeal, and diligence in addressing and petitioning the Parliament against the dangers and evils feared from the then designed incorporating union with England.

9. By the 21st act of Assembly 1696, and by the 12th and 18th acts of Assembly 1704, all ministers and members of this church are discharged to publish or vent, either by speaking, writing, or printing, by teaching or preaching, any doctrine, tenet, or opinion, contrary unto any head, article, part, or proposition of the Confession of Faith of this church, and particularly the venting any Arminian or Socinian errors; and church judicatures are ordained to advert to any who shall teach or vent such errors, and proceed to censure them for the same. And also all presbyteries are enjoined to censure such persons within their bounds, who do carry on divisive courses, and withdraw from communion with this church, under a pretext of zeal to her doctrine, worship, discipline, and government, and that all means be used for reclaiming such misled people.

10. By the 6th act of Assembly 1690, it is recommended to presbyteries, to take notice of all ministers, whether the late conforming incumbents or others, who shall not observe fast and thanksgiving days, indicted by the church, or who shall be found guilty of administering the sacraments in private, or celebrating clandestine marriages without proclamation of banns, and to censure them accordingly.

11. For retaining unity and soundness of doctrine, all probationers licensed to preach, all intrants into the ministry, and all other ministers and elders, all schoolmasters, chaplains, governors, and pedagogues of youth, are appointed to subscribe, at the sight of presbyteries, their approbation of the Confession of Faith, as the confession of their faith, Assem. 1690, act 7; Assem. 1700, 10th and 11th acts. And by the 11th act of

Assembly 1694, any of the late conform ministers may be received by the commission of the Assembly into ministerial communion, who shall acknowledge, engage, and subscribe, upon the end of the Confession of Faith, the following formula. And by the 16th act of Assembly 1705, all students of theology licensed to preach, and all ministers and elders are in like manner to subscribe the same; the tenor whereof follows: "I A. B. do sincerely own and declare, the above Confession of Faith, approved by former General Assemblies, 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 unto; as likeways, that I own and acknowledge the Presbyterian 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 or indirectly, the prejudice or subversion thereof; and that I shall observe uniformity of worship, and of the administration of all public ordinances, as the same are at present performed and allowed." See book 1, tit. 4, sect. 7.

12. The synods of this national church, in the year 1702, considering the great affair of the union of the two kingdoms, then under deliberation, did, for mutual edification, and strengthening one another's hands in the Lord's work, appoint each minister and probationer, judicially, in their respective presbyteries, to profess and declare their resolutions and engagements to maintain, by God's grace, the true doctrine of this church, according to our Confession of Faith, and the purity of worship, discipline, and Presbyterian government of this church, founded on the word of God, and that they promise to disown all principles contrary thereto.

13. The fourth article of cap. 23, of the Confession of Faith, has these words: "Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him." Which are generally understood thus, viz., that the principles of our holy and peaceable religion do not deny but infidels and Papists may be lawful magistrates in such countries or kingdoms where these false religions are established, and if any of our religion happen to sojourn in these territories, they ought notwithstanding to own their just and legal authority, and obey their lawful commands. But in other kingdoms or countries, such as this of Scotland is, where professing and

defending of the Protestant religion is made a condition of government, betwixt the magistrate and people, in that case, if he shall either be of, or fall away to a false religion, and violate the said condition and agreement, then there is ground and reason for the people's representatives to claim their right, and declare him on that account to have forfeited his right to the crown, and declare the throne vacant, as did our meeting of estates, April 11, 1689.

14. The act of Assembly, August 31, 1647, considering how the errors of independency and separation have spread in England so much, that exceeding great errors and blasphemies have issued therefrom, and are sheltered thereby: therefore all persons are discharged from frequent and familiar converse with persons tainted with such errors, or to import, sell, or disperse such erroneous books or papers; and it is recommended to the magistrate, to be assisting to ministers, in the execution of this act. There is a former act of Assembly, August 9, 1643, to the same purpose; and by the 10th act of Assembly 1701, the foresaid act 1647 is ratified. See § 6.

15. By the act of Assembly, August 24, 1647, for preserving order, peace, and unity in the kirk, preventing of schism, and for maintaining that respect which is due to the ministers of Jesus Christ, every member of a congregation is ordained to keep his own parish kirk, to communicate there in word and sacraments, and if any person or persons shall usually absent themselves from their own congregation, except in urgent cases, made known to, and approved by the presbytery, the ministers of those congregations whereto they resort, shall both in public by preaching, and in private admonition, shew their dislike of their withdrawing from their own minister: likeas, the minister of that congregation from which they do withdraw, shall labour first by private admonition to reclaim them, and if that fail, they are to be cited to the session, and censured as contemners of the order of the kirk; and if the matter be not taken order with there, it is to be brought to the presbytery.

16. By the 6th act of Assembly 1708, all presbyteries and synods are strictly and peremptorily appointed to take particular notice of ministers, preachers, or others, who fall into irregularities or schismatical courses, that they duly censure them, according to the merit of their fault, even to deposition of ministers and elders.

17. The Assembly, August 4, 1641, doth charge all ministers and members of this kirk, to suppress all impiety and



mocking of religious exercises, and that they eschew all meetings under the name and pretext of religious exercises, which are apt to breed error, scandal, schism, neglect of duties in particular callings, and such other evils.

18. For preventing of abuse to the kirk in general, and ministers in particular, the Assembly, by their act, August 5, 1642, doth prohibit and discharge all and every one, to pretend or use the name of ministers to any petition, declaration, or such like, without their knowledge, consent, and assistance; and the transgressors hereof are to be proceeded against, with the highest censures of the church.

19. The General Assembly enjoins all the members of this kirk to forbear the swearing, subscribing, or pressing of any new oaths or bonds, in the cause of reformation, without advice and concurrence of the kirk. See act and declaration, July 28, 1648.

20. In the General Assembly's answer, Februrry 13, 1645, to the Assembly of Divines in England, they seem to acknowledge, that they have some practices in this church which are in themselves indifferent; for they express themselves thus: Nevertheless in other particulars we are resolved, and do agree to do as ye have desired us in your letter, that is, not to be tenacious of old customs, though lawful in themselves. But to lay them aside for the nearer uniformity with the kirk of England, that rather than fail on our part, we do most willingly part with such practices and customs of our own, and without the violation of any of Christ's ordinances.

21. It is no small security to the Protestant religion, and tends much to the preventing of innovations and errors, that none are capable of civil trust, but true Protestants; for they who profess not the true religion, contained in the Confession of Faith, established by the first Parliament of King James VI. may not be a judge, procurator, nor member of any court, cap. 9, Parl. 1, Jam. VI. And by cap. 5, Parl. 2, Jam. VI. this act is extended to all and whatsoever offices, without any exception, or restriction, in all time coming. And such churchmen, as will not subscribe the above-mentioned confession, are deprived: and all such as refuse to subscribe the same, are to be reputed rebels and enemies to the King and his government, cap. 46, 47, Parl. 3, Jam. VI.

## TITLE. IV.

*Of Witches and Charmers.*

1. Our General Assembly, July 29, 1640, ordains all ministers carefully to take notice of charmers, witches, and all such abusers of the people, and to urge the acts of Parliament to be execute against them. By another act, August 19, 1643, ministers must be careful to instruct the people, press holiness of life upon them, and use the censure of the kirk against profane persons; moreover, let the people seek knowledge, study to believe, walk in holiness, and be instant in prayer; all which is proposed as means to prevent the growth of witchcraft; and further, presbyteries are ordained to take under consideration by what other ways or means these sins may be tried, restrained, and condignly censured and punished, ecclesiastically and civilly. In pursuance whereof, the Assembly, August 6, 1649, for advising anent the trial and punishment of witchcraft, charming, and consulting, there is a commission granted to twenty-one ministers, for a conference in the said matter, with nine lawyers and three physicians. And in the Assembly 1700, among the unprinted acts, you will find a committee of ministers appointed to attend the Lords of Council and Justiciary concerning witchcraft, when called thereto by their Lordships. By the Assembly, August 5, 1642, presbyteries are ordained to give up to the Lords of Justiciary, the names of witches, sorcerers and charmers; and because such sins proceed often from ignorance, therefore all ministers are ordained (especially in the north where these sins are more frequent) to be diligent in preaching, catechising, and conferring, to inform their people therein. By the forecited act of Assembly 1643, they declare the occasions of witchcraft to be these especially viz. extremity of grief, malice, passion, and desire of revenge, pinching poverty, and solicitation of other witches. They say the reasons of Satan's prevailing, are, gross ignorance, infidelity, want of love to the truth, and profaneness of life. The means they propose, for bringing them to a just punishment, are, that a commission be granted to some gentlemen and magistrates, within the bounds of such presbyteries, as shall crave it, giving them power to cause apprehend, try, and execute justice upon persons guilty of such crimes. They declare the grounds for apprehending witches, to be these. A reigning report of witchcraft, backed with delations of confessing witches, being confronted with them: for it is found, that the

delations of two or three confessing witches hath ordinarily proved true : as also, depositions of honest persons concerning evil deeds committed, or cures used by them, may be a ground for apprehending them. Mackenzie on this Title, says, that none should be apprehended for witches except it appear by the event of the inquisition, that they lie under many and pregnant presumptions, such as, that they are defamed by other witches, that they have been themselves of an ill fame, that they have been found charming, or that the ordinary instruments of charming be found in their houses ; and it is to be remembered, that “ Ad assumendas informationes, sufficient levia Judicia, sed gravia requiruntur ad hoc ut citetur reus et ut Judex specialiter inquireat.” By the foresaid act of Assembly, after they are apprehended, honest and discreet persons should be appointed to watch them, to prevent their being suborned and hardened by others, or destroying themselves ; and ministers should be careful at all times, especially morning and evening, to deal with them, by prayer and conference, while they are in prison or restraint.

Witchcraft was *crimen utriusque fori* by the canon law, and with us, the kirk-session did use to inquire into it in order to the scandal, and take the confession of parties, or receive witnesses against them ; but since so much weight is laid upon the depositions there emitted, they should be very cautious in their procedure. By the 73d act, Parl. 9, Queen Mary, although inferior judges may concur to the punishment of this crime, by apprehending and imprisoning the parties suspect, yet seeing the relevancy is oft times so intricate, and the procedure requires necessarily so much arbitrariness, and the punishment is so severe, upon these considerations, the cognition of that crime should be solely appropriate to the justice court.

3. Paction to serve the Devil is certainly *per se* relevant, without any addition, providing they acknowledge they knew him to be the Devil. This paction is either express, performed by a formal promise given to him, then present, to serve him ; or by presenting a supplication to him, or by giving the promise, to a proxy empowered by the Devil for that effect, which he indulgeth to some who dare not see himself. There is likewise a tacit paction with the Devil, when a person useth the words or signs which sorcerers use, knowing them to be such ; and this is condemned as sorcery, and is relevant to infer the crime of witchcraft. But to use these words or signs, when the user knows them not to be such, if the ignor-

ance be probable, and the user be content to abstain, it is no such crime. Renouncing of baptism is most relevant *per se* to infer the crime of witchcraft. Witches use to confess, that in so doing they use this solemnity, by putting one of their hands on the crown of their head, and the other beneath the sole of their foot, at which time he gives them new names.

4. To libel the Devil's mark is not *per se* relevant, unless it be confessed by them, that they got that mark by their own consent, *quo casu*, it is equivalent to a paction. The prickers say, if the place bleed not, or if the person be not sensible, then he or she hath the mark; which is given by a nip in any part of the body, and is blue, as is alleged: But it is hard to distinguish any such marks, *a nœvo, clavo, vel impertigine naturali*. Where threatenings are specific, bearing a promise to do a particular ill, and when charms are used to obtain its execution, and when it is known that the threatener had a preceding enmity against the person threatened; under these circumstances, *malum minatum et damnum secutum* libelled, would seem to be relevant. Yet it is safer to punish these threatenings with some milder punishment than death, as *crimen in suo genere*, and not as witchcraft. Indeed if the person who used the charms, knew them to be such, as witches and sorcerers do make use of, for procuring such mischief, it is relevant to infer witchcraft, as hath been said. The using of magic arts or charms, though for good ends, as for the curing of diseases in men or cattle, has no place to make a relevant defence. Since the law cannot know exactly, what efficacy there is in natural causes, it may very well discharge all such acts, wherein there is no necessary connection, *inter causam et effectum*, as it pleases, under the pain of witchcraft. Nor can those who are accused complain of severity, since *sibi imputent* that use these forbidden things; and therefore, since the law and practice hath forbidden all charms, it is most just that those who use the same should be severely punished, whatever the pretext be upon which they are used, or after whatever way and manner, or to whatever end, whether good or bad. Consulting with witches, when done knowingly, intentionally, and in earnest, or a professing of necromancy, which was a prophesying by departed spirits, as also predictions and responses by the sieve, and the shear, and by the book, and all such cheats, and species of sorcery: See the 73d act, Parl. 9, of Queen Mary. When persons are delated by other witches, or *per defamationem*, which we call common report, and open fame, and thereupon libelled, that

article is never sustained as relevant *per se* to infer witchcraft : Yet sometimes articles that are of themselves irrelevant, are sustained relevant, being joined with that of fame and delation ; but it is hard, and seems unjust to compose a relevant libel, out of articles that are *per se* irrelevant.

5. The relevancy of this crime being discussed, the ordinary probation of it is, by confession or witnesses ; it should be evident that the person confessing is not weary of life, or oppressed with melancholy. Albeit “ *hic non semper requiritur ut constet de corpore delicti,*” this being a crime which consists *in animo*, yet the confession ought to be such, as contains nothing in it that is impossible : It is condescended by lawyers, that *succubi et incubi sunt possibiles* ; that the devil may lie in the shape of a man with a woman, or in the shape of a woman with a man, having first formed to himself a body of condensed air ; or that he may transport witches to their public conventions, and upon such confessions some have been punished as witches. The probation of this crime by witnesses is very difficult, and therefore *socii criminis*, or other confessing witches are adduced. But yet these do not prove witchcraft solely, though dying and penitent : Whereas it may be doubted if the consulting of witches may not be proved by two of them who were consulted : For if this be not a sufficient probation, it may sometimes be impossible to prove consulting any other way ; but if such be sustained, why may not *socii criminis* be allowed as habile witnesses. The persons injured by witches are admitted witnesses against them, but *cum nota*, women are received witnesses in this crime ; witches do rarely weep, because they are ordinarily hardened.

6. It is thought lawful, by some, for all who are bewitched, to desire the bewitchers to take off the disease, providing the same can be removed by taking away the old charm, without any new application to the devil ; which practice seems yet to be forbidden, Isa. viii. 19. “ And when they shall say unto you, seek unto them that have familiar spirits, and unto wizards that peep and that mutter ; should not a people seek unto their God ? for the living to the dead.” Yet it is not unlawful for any to remove the charm, or sign of it, if it be in their power to do it, without any application to the devil or his instruments.

7. Witches do likewise torment mankind, by making images of clay or wax, and when they prick them, the persons do find extreme torment, which doth not proceed from any influence these images have upon the body tormented, but the

Devil doth by natural means raise these torments in the person, at the very same time that the witches do prick, or pounce, or hold to the fire these images. Witches confessing this manner of torment, may very judicially be found guilty, since *constat de corpore delicti, de modo delinquendi, et inimicitiiis præviis*. The punishment of this crime is with us death, and the doom ordinarily bears, to be worried at the stake and burnt.

8. Fortune-tellers are those who do profess to reveal and discover secrets, by means altogether inept or unlawful, and they are punished with us arbitrarily, not capitally; and by the law of England, cited by Mackenzie on this title, such persons are to be imprisoned for the space of a whole year, during which time they are to be pillored quarterly.

### TITLE V.

#### *Of Blasphemy, Cursing, Profane Swearing, and Lottery.*

1. Blasphemy is a divine lese-majesty or treason, and is committed either by denying that of God which belongs to him, or by attributing to him that which is absurd. These who swear by the head or feet of God, are guilty of this crime by the canon law, "*Videntur enim amplecti anthromorphitarum hæresin, quæ membra Deo tribuebat.*" They are also, according to them, punishable, who delate not blasphemers.

2. By the 21st cap. Parl. 1, Car. II. it is appointed, that whoever, not being distracted in his wits, shall rail upon or curse God, or any of the persons of the blessed Trinity, be processed before the chief justice, and being found guilty, punished with death. From which act, it is clear, that this crime can only be tried before the justices, and that distraction is only a relevant defence against the punishment. So that passion, rusticity, or raillery, excuse not. Yet if the denying of God's attributes, or any of the persons of the Holy Trinity, proceed from ignorance, and the denial be not obstinately persisted in, they should be pitied, rather than punished. It seems to me a good defence against the punishment of blasphemy, when one is compelled to blaspheme through torture, as the saints did through the torments and madness of Saul's persecution, Acts xxvi. 11; and Solomon, Eccl. vii. 7, says, "Surely oppression maketh a wise man mad," that is, it maketh him speak or act like a madman.

3. By the 103d cap. Jam. VI. Parl. 7, magistrates to burgh and landward are ordained to appoint censors in public

markets and fairs, with power to exact the pains of swearing, and that householders delate offenders within their houses, under the pain of being esteemed as offenders themselves. By cap. 16. Parl. 5. Queen Mary, particular pains are ordained against profane swearers, with gradual augmentations, and ending in banishment; which acts are ratified by Charles II. Parl. 1. sess. 1. cap. 19; and farther it is enacted, that who shall swear or curse, shall pay, the nobleman 20 pounds, the baron 20 merks, the gentleman, heritor, or burges, 10 merks, the yeoman 40 shillings, the servant 20 shillings, *toties quoties*; and the minister the fifth part of his stipend to be applied to pious uses, the one-half in the parish where the offence was committed, and the other half to be betwixt the informer and prosecutor, and other uses, at the sight of the judges, as in the act about Justices of the Peace, and the insolvent to be punished in their persons. By the French Church Discipline, cap. 14. art. 24. profane swearers, who through custom or anger take the name of God in vain, after one or two admonitions, if they desist not, shall be suspended the Lord's table; so that custom and passion do not defend against punishment. But whether passion will excuse, at least in part, from being punished as a swearer and curser, when provoked thereto while employed about lawful honest business, I think needs be no difficult question; yet no lawyer will say, that anger doth lessen this vice, committed by him who is unlawfully employed, as in playing at cards, or in excessive and unseasonable drinking. See Mackenzie on the Criminal Law, p. 26.

4. There is a lottery which is necessary, and useful in some cases, for ending of debates and controversies among men; as for example, where there is one adjudication in favour of divers creditors, they must have their preference by lot, in choice of the rooms of lands adjudged, see Stair's Instit. p. 75, 626, and 648. So the land of Canaan was divided among the Israelites by lot. But there is a lusory lottery, such as playing at cards, &c. which is condemned by the practice of most who have the commendation of good Christians in this church; and by the Assembly 1638, sess. 23, 24. art. 9. carding and diceing are noted as unlawful games: and by the 50th canon, *Concil. sexti in Trullo*, "Nullum omnium, sive clericum, sive laicum ab hoc deinceps tempore alea ludere permittimus, si quis autem hoc deinceps facere ab hoc tempore aggressus fuerit, si sit quidem clericus deponatur, si laicus, segregetur." To discourage this kind of lottery, it is enacted,

by James VI. Parl. 23, cap. 14, that none play at cards or dice in any common house, town, hostelry, or cook's house, under the pain of forty pounds to the keeper of the said house for the first, and loss of liberty for the second fault; and that there be no playing in a private house, except where the master plays; and if more be won in twenty-four hours than one hundred merks, it shall be consigned in the kirk treasurer's hands in Edinburgh, or in the collector for the poor his hands in the country. And the magistrates of burghs, and sheriffs, and justices of peace in the country, are empowered to pursue for the superplus winning, or otherwise are declared liable to the informers for the double; whereof the half to himself, the other to the poor.

#### TITLE VI.

*Of the Profanation of the Sabbath; of not observing Fast and Thanksgiving Days; of Withdrawers from, and Disturbers of the Public Worship, and Observers of Superstitious Days.*

1. The Assembly dischargeth the breach of the Sabbath, by labouring either in seed-time or harvest, or by going of mills, salt-pans, fishing salmon, or white fish, under pain of incurring the censures of the kirk; and for preventing its profanation, they appoint both diets, fore and afternoon, to be kept even in landward for public divine service, 17th December 1638, and sess. 21, 1639. The Assembly likewise declares, that these acts made against breach of the Sabbath, shall not only reach the servants, who actually work, but also the same shall be extended against their masters and hirers, 14th August 1643. By act of Assembly, 18th June, 1646, all such skippers and sailors who begin any voyage, or loose any ships, barks, or boats, out of road or harbour on the Lord's day, are to be censured. By sess. 38, 1648, elders are to take notice, how such as are within their bounds keep the kirk, and how the time is spent before and after public worship. By the 25th act of Assembly 1690, all unnecessary sailing and travelling is prohibited on the Lord's day. *Item*, By act of Assembly 1705, sess. 12, ministers are to contribute their endeavours for suppressing gross profaning of the Lord's day, especially idle strolling on the streets of Edinburgh, pier and shore of Leith, King's-park, &c. and that by an impartial and prudent exercise of discipline. By the 12th act of Assembly 1708, for the better observation of the Lord's day, they appoint some to be sent from each presbytery within this church to at-



tend the Lords of Justiciary, at their circuit within their bounds, and then to represent the profanation of the Lord's day by travelling thereupon, carrying goods, driving of cattle, and other abuses; and they seriously recommend it to the said Lords, to restrain and punish the foresaid abuses, which the Assembly will acknowledge as a singular service done to God and this church. And all ministers are enjoined, to advertise their people, among whom such practices are, of the great hazard their immortal souls are thereby in; and that if they continue therein, there will be a necessity to represent them as such transgressors to the foresaid Lords. So much respect doth our law pay to the Sabbath or Lord's day, that it cannot be taken for redemption of lands, and a wood-setter cannot be obliged to attend and perform the requisites of consignment, by numeration of money, perusal of writs, and subscribing a renunciation on the Sabbath day. It is relevant to alledge, that an arrestment or horning is null, as being execute upon a Sabbath day; and poinding on the Lord's day, or on solemn days appointed by church or state for humiliation or thanksgiving, are void and punishable, see Stair's Instit. p. 336, 375, 411, and 728. And if the law did not thus order it, the conscientious observers of the Lord's day would certainly be molested, and advantage taken of them by worldly wretches, and contemners of holy things. By cap. 70, Parl. 6, James VI. gaming, playing, passing to taverns or alehouses, selling of meat and drink, and willful remaining from kirk in time of sermon or prayers, is discharged under the pain of twenty shillings, and if the offenders be unable to pay, they are to be put in the stocks or joggs. Item, By cap. 18, sess. 1, Parl. 1, Car. II. all salmon fishing, going of salt-pans, mills or kills, hiring of shearers, carrying of loads, keeping of markets, and using of merchandise on that day, and all other profanations thereof, are discharged, under the pain of twenty pounds for salt-pan, mill, or kill, and ten pounds for each other profanation, to be applied as in Title 5, § 3, and that the insolvents be punished in their persons. By the 14th act of Parl. 1695, it is declared lawful to all burghs, not only of royalty, but of regality, barony, and villages, and kirk towns, whose weekly markets are kept on Mondays and Saturdays, to change and alter the same. And the said burghs and villages are to make timeous intimation of the change to the next adjacent burghs, and providing they pitch not upon the market days of any burgh royal, or of any other market-town within four miles.

2. King Charles I. was prevailed on by Laud and his faction (little to his credit) to publish his declaration concerning recreations on the Lord's day after evening prayer, dated 18th October, in the 9th year of his reign, which he founds upon another of his father's to the same purpose in the year 1618. He declares his pleasure was, that his good people should not be hindered after the end of divine service on Sundays from their lawful recreations, such as dancing, either men or women, archery, leaping, vaulting, nor from having of May-games, Whitson-ales, Morris-dances, and setting up of May-poles, or other sports therewith used, but he debars from the privilege of these sports all recusants that abstain from coming to church and divine service. How this agrees with the civil law, you may see in the end of the title *De Feriis*, in Justinian's Codex. "Dominicum diem ita semper honorabilem decernimus et venerandum, ut a cunctis executionibus excusetur, nulla quenquam urgeat admonitio, nulla fide jussionis flagitetur exactio, taceat apparitio, advocatio delistecat. Sit ille dies a cognitionibus alienus, præconis horrida vox silescat, respirent a controversis litigantes. Et postea, nec hujus tamen religiosi diei otio relaxantes obscænis quenquam patimur voluptatibus ditineri, nihil eodem die sibi vendicet scæna theatralis, aut circense certamen, aut ferarum lacrymosa spectacula; et si in nostrum natalem celebranda solemnitas incidere differatur."

3. The non-observers of fast and thanksgiving days, may be punished as profaners of the Sabbath; I mean, at least, with the like punished as profaners of the Sabbath; I mean, at least, with the like punishment; for by the acts of Parliament 1693 and 1695, appointing fasts, the non-observers are punished more severely; and I know nothing to hinder the church from censuring such, as they do profaners of Sabbath.

4. By cap. 27, Parl. 11, James VI., it is enacted, that troublers of the kirk, or who raise any fray therein, or in the kirkyard, in time of divine service, be punished by loss of all their moveables. If the magistrate be present, no doubt, he may ordain the disturbers to be removed, and secured, till they find bail to answer therefor.

5. By the act of Assembly, 13th February, 1645, it is un-animously ordained, that the observer of Yule-day, or other superstitious days, shall be proceeded against by kirk censures, and shall make their public repentance therefor in the face of the offended congregation. And if masters of schools or colleges grant vacancy on that day, they are to be cited to au-

swer to the next Assembly by the ministers of the place ; and no vacancy is to be granted at that or any time thereafter in compensation thereof. And scholars guilty herein, are to be corrected by their masters ; but if they refuse to subject themselves to correction, or be fugitives from discipline, they are not to be received into any other school or college within the kingdom. By the 22d cap. sess. 2. Parl. King William and Queen Mary, the keeping of the Yule vacancy, and all observation thereof, is discharged.

6. This church hath no anniversary feast or festival days, but doth only set apart a day or days for thanksgiving or humiliation, as emergent providences do call for. By the 1st act, Parl. 15, James VI. the 5th day of August is appointed to be a day of thanksgiving to God, for King James his preservation from the treasonable attempt of the Earl of Gowrie and his brother ; but the truth of this matter being much questioned by many, it never received universal obedience, and at length turned wholly into desuetude. By Parl. 1, sess. 1, cap. 17, and Parl. 2, sess. 3, cap. 12, Car. II. the 29th day of May is appointed for the solemn commemoration of his birth and restoration ; and, for that end, that it be set apart as a holy day unto the Lord. But one of the reasons why the Presbyterians did not keep this day is, because, in the act of Parliament appointing it, there is a long preface full of black aspirations upon the whole church and nation, and such reflections upon religion and the work of God, as cannot be read without horror. And they were followed with acts that destroyed the church-government, contrary to national solemn engagements, and gave a deep wound to true religion ; so that however the king's restoration might otherwise have been matter of joy, yet in this respect it could not be so to any in this land that had a true regard for the interest of religion. Our Prelatists did use to observe the 30th day of January as an humiliation day, because upon it King Charles I. was beheaded in England, by the authority and power of the usurpers and sectaries there ; but though that horrid fact was still detested and abhorred, both by this church and kingdom, yet we never would observe it, because of our notour innocence in that matter. It is true, it is our duty to mourn for the sins of others, but not as our own sins, except we have had some sinful active accession thereto.

7. It is not to be reputed an observing of superstitious days, when people, in obedience to civil authority, do refrain from work thereupon, according to the 21st act, cap. 14. of the French Church Discipline.

## TITLE VII.

*Of Slandering, and assaulting of Ministers, beating and cursing of Parents, and Injuries personal and real.*

1. Raising of scandals and prejudices against ministers, being so obstructive to the success of the gospel, the Assembly, by their act August 6, 1642, doth ordain presbyteries and synods to proceed diligently against all persons that shall reproach ministers, with the censure of the kirk, even to the highest, according to the degree and quality of the scandal.

2. By the 27th act, Parl. 11, James VI. and act 7, Parl. 1, Car. I. and act 5, sess. 1, Parl. 2, Car. II. it is appointed, that who invades or puts violent hands, or offers violence to ministers, by themselves, their men, tenants, or servants, or any others, of their hounding out or allowance, for whatever cause, shall be punished by tinsel of moveables, the one half to the King, and the other half to the party offended, for the violence allenary; but prejudice of greater punishment, if any higher crime concur, such as mutilation or slaughter; and that landlords, heritors, and chiefs of clans, where the invaders dwell or haunt, be holden, upon complaint of the party, to exhibit them; and if, after legal intimation made to the said landlords, &c. the said delinquents be found within their bounds, haunting openly for ten days, that they be holden as connivers, and be obliged to exhibit them under the like punishment: But by the 37th act of Parliament 1685, it is ordained, that whosoever shall be found guilty of assaulting the lives of ministers, or of invading or robbing their houses, or actually attempting the same, shall be punished with death.

3. By the 20th act, sess. 1, Parl. 1, Car. II. beating or cursing of parents is declared to be punishable by the law of God with death, and therefore ordains, that whatsoever son or daughter, above the age of sixteen years, and not distracted, shall beat or curse his father or mother, he shall die without mercy; but if they be within the age of sixteen, and past pupillarity, they are to be punished arbitrarily.

4. Verbal injuries are committed by unwarrantable expressions, as to call a man a cheat. Calvin, in his *Lexicon Juridicum*, says, that “*Diffamare est per diversas partes famam divulgare, facta vitiorum commemoratione.*” In libelling of such injuries, there is requisite, 1st, that the particular expressions be distinctly condescended on, that the injury may be accordingly estimate. Next, that the *calumniandi*, or

*injuriandi animus*, the design of injuring, as well as the injuring words, must be libelled and proven, except the words infer so clearly the injury, that there is no necessity to libel the design. In the last place, that the pursuer did presently resent the injury, and thereupon did signify, either expressly, or by some other acts, his dissatisfaction therewith; for, if he was of such a temper as not to signify any resentment thereof at first, the law will not allow him to repent of that good humour. Bockelman, in his Compend of the Institutions of the Civil Law, says, that "*injuria est delictum, quo quid ad contumeliam vel dolorem alterius admittitur.*" And by the canon law, it is "*dictum vel factum alterius famam vel dignitatem minuens.*" Sometimes injuries are inferred, not only from express words, but even from the presumptive meaning of the speakers; as to look in a man's face and say, I am not such a liar as others are; or to say slantingly to a clergyman, You are a fine churchman, indeed!

5. Since injuries are estimate, according to the design of the offender, it follows that men who are fools, idiots, very young, or very drunk, are not punishable for verbal injuries, except the offender did become drunk upon design to offend; and great passion, which breaks off all designing *justa et non affectata ira*, excuseth also in this case. The relating also of what we have heard from good authors, who design no prejudice, is sufficient also to defend against the punishment due to injurers,

6. Real injuries, according to that forecited civilian, are "*cum quis pugno pulsatur, fustibus cæditur, verberatur, cumque bona ejus qui nihil debet ut debitoris possidentur cum quis vexandi causa, in jus vocatur, aliudve quid ad invidiam alterius fit vel geritur.*" Mackenzie, on this title, tells us, real injuries are committed by hindering a man to use what is his own, by removing his seat out of its place in the church, by giving a man medicaments which may affront him, by arresting his goods unjustly, by wearing, in contempt, what belongs to another man as a mark of honour, by razing shamefully a man's hair, or beard, or by offering to strike him in public.

7. *Libelli famosa*; that is, infamous libels are the most permanent of all injuries; for the offender in them shews more design, and therefore are more severely punished; which, with us, is arbitrary, except where the prince is maliciously and designedly abused. He who writes, dictates, or affixes

infamous libels, or causes write, dictate, or affix them, is punishable. If the offender was a minor, or was provoked; or if he did tear it before it was fully written, or after it was affixed, confessed his fault, and said he only did it out of passion; or if what was said was true, these things will lessen the punishment.

8. According to our law, verbal injuries are punished by the commissars, except they were committed against a magistrate: in which case, the council or criminal court uses to emerciate them, especially when he is spoken against in the exercise of his office: but real injuries may be pursued before the council or criminal court. By the civil law, verbal injuries are extinguished, if they be not pursued within a year, or by posterior express friendship.

9. When the complaint consists of some injury done to the complainer, it is fit that the church should endeavour to compose and remove such differences privately; but if the bringing of it before them cannot be got avoided, let it rather be tabled by order of the eldership, than pursued at the instance of the complainer, because thus the thing as scandalous may be more abstractly considered, the person more easily convinced, and the heat of parties prevented. But if parties will enter their own complaint, let them be acquainted, that they are not to expect that the church can civilly punish the injury, but they are to be exhorted to pardon it as to any vindictive humour, and told, that it is only their business to remove the scandal, and gain and please parties, to their edification. And I suppose the calumniator complained of should prove what he alleged against the pursuer; yet even that cannot vindicate him altogether, except the end of his divulging it appeareth really to be his brother's edification: See Durham on Scandal. Upon the whole, where there is no probable ground to expect edification in giving way to such processes, according to that author, it were expedient for the church altogether to wave them.

## TITLE VIII.

### *Of Bribery, Partiality, and Negligence of Judges.*

1. It is to no purpose to make good canons and constitutions, if the execution of them be not committed to just and diligent persons; as it is to no purpose to have an exact balance, if that balance be not put in a good hand. Bribing is the taking of money or other good deeds, either for doing of

justice, or committing of injustice. And if they be taken upon that account, whether by the judges, their wives, children, or servants, the judge is thereby guilty as if done by himself, providing the same be done by his command or rathabitation.

2. Judges are partial, when they are moved to act, or forbear, either from fear of angering and disobliging parties, or from a design and love to gain their favour. By the act of Assembly 10th August 1648, impartial church procedure is proposed as a general remedy against the growing of sins in the land. And the Assembly, 11th June 1697, appoints ministers and members of kirk-sessions impartially to exercise church discipline; and excites them thereunto, by putting them in mind, that in these matters, they have to do with the great and terrible God, whose honour and favour is to be preferred, and whose wrath and anger is to be feared before all other considerations whatsoever. By the 104th act, Parl. 7, James V. consulting, or giving partial judgment, or taking of bribes, is declared infamous in any judge. By the 93d act, Parl. 6, James VI. the taking of bribes is discharged to the Lords of Session, their wives and servants, under the pain of infamy and deprivation.

3. By the laws of this and other well governed nations, judges negligent in putting laws to execution, are punishable for their remissness and negligence. And by act of Assembly January 30, 1699, it is enacted, that whatever minister or member of session be found faulty in neglecting to pursue the scandals therein mentioned, in their stations, the said minister or member of session be complained of, and censured by the presbytery for the first fault, and that the censure be recorded; and that the second negligence be delated to, and censured by the synod; and for the third neglect, they be censured by the synod with suspension from their office, which is to be recorded in the synod register. See Book 4, Tit. 5.

## TITLE IX.

### *Of Deforcement of Officers.*

1. How citations are sometimes appointed to be execute, for preventing of deforcement, see book 1, tit. 2, sec. 6. Deforcement is that force or violence which opposeth church officers while they are in the execution of the orders and appointments of church judicatures. But if any officer want his orders in writing along with him, the violence offered to him

in that case cannot be espoused by church-courts as an indignity offered to them, otherwise strangers might be emboldened to affront others by assuming and pretending their authority. Therefore, when any injury is offered or committed against so unexact and negligent church officer, it is only to be resented as if it had been done by him when going about his own affairs.

2. Whoever may be admitted witnesses for proving of other offences, may be sustained as witnesses to prove the deforcement, otherwise it may never be proven; but then the witnesses must not be pursuers or complainers, even though they were abused; and if they do depone of any wrong done to themselves, they may be rejected as prejudicate witnesses.

## TITLE X.

### *Of Murder, Parricide, Duels, and Self-Murder.*

1. Among the ecclesiastical remedies enacted against profaneness, August 10, 1648, art. 5, it is proposed to the consideration of Presbyteries how murder should be censured, in case the magistrate do not his duty in punishing it capitally. And in that Form of Process hereto prefixed, enacted by Assembly 1707, cap. 6, art. 1, murder among divers horrible crimes, is there enumerated as the object of the church's cognizance. It is not improper that church-men understand somewhat of the laws and customs relating to criminal matters, the relevancy and punishment of many crimes being either founded upon or expressed in the word of God, whereof they are the authorised ministerial interpreters. It is true, it may be feared, that church discipline shall have but small success upon obdured or monstrous criminals; yet, it being a mean appointed by Jesus Christ for reclaiming of sinners, it should on that account be tried, and no more neglected than his word and sacraments, which very often have no better effects. This church hath very clearly expressed her opinion about the extent of the object of church discipline, Assembly 1638, sess. 23, 24, art. 13, where they ordain, that discipline in kirk sessions (for there all processes against church members do first begin) strike not only upon gross sins, as bloodshed, &c. but against all sins repugnant to the word of God.

2. Civilians define murder to be the killing man by man unlawfully; and they divide it into that which is committed casually, in defence, culpably, or wilfully; casual homicide is, when a man is killed, without either the fault or design of the killer, as if an axe-head should fall off and kill a by-stander,



or a rider should kill with his horse's hinder feet. Casual slaughter or homicide, then, is that which is occasioned by mistake and just ignorance: for if it proceed from affected ignorance, as for instance if a man will not know what he may know, his ignorance in that case will not make the murder following upon it to be constructed casual homicide; but if it proceed from gross and *supina ignorantia*, it may be punished by an extraordinary or arbitrary punishment, but not by death. It is then necessary, that the committer used all exact diligence to evite the crime, else he is not in the case of casual homicide. Further instances whereof are, if a mason, before he throw down stones, advertise all below, though in the throwing he kill, he is to be cleared from murder. Or if a hunter shoot at a beast, but a man come in the way and be killed; and yet if either the mason cry not, or if the hunter did shoot in a place where people used to be, he is judged by some lawyers to be guilty of faulty murder. If the committer do what is against the law of nature, or what is criminal; or if what he doth may produce ill consequences and murder, though he designed not the same: in all which cases, he ought to be liable. And it seems reasonable, that he who killed, when he was doing what was unlawful, may be arbitrarily punished, though he did exact diligence to shun killing.

3. *Homicidium necessarium*, or homicide committed in self-defence, is, when a man being pursued, or reduced to inevitable necessity, has now way left him to evite his own death, but by killing the aggressor: This is in law called, *Inculpatæ tutela*, or, *Moderamen inculpatæ tutelæ*; within which moderation, if the defender contain himself, he is no way punishable; and so favourable is self-defence, that the exceder is not liable to the ordinary punishment, but is punishable according to the excess, at the discretion of the judge. This moderation is said to be exceeded in these three: 1st, In arms, as if the aggressor have only a staff, and the defender wound him with a sword or pistol, the defender is in that case punishable. And yet this conclusion is not infallible; for if the defender was much weaker than the aggressor, he might be excused to use such unequal weapons, according to Mackenzie on this Title. 2dly, The defender is said to exceed in time, if he strike the aggressor, *antequam sit in actu proximo occidendi*, for else it should be lawful to every man, upon the first apprehension of fear, to kill the aggressor. If he threaten to kill, and be one who is known to have any design

to murder, or be a person who useth to execute what he threatens, and if he have a sword though not drawn, or a pistol though not cocked, if he hath either of these, according to the forecited author, he may be lawfully killed, because he is *in actu proximo offendendi*, and yet he thinks the defender may be arbitrarily punished. 3dly, The defender is said to exceed in the measure, as if he killed him for wounding, whom he might have shunned, or if he followed the aggressor. Although much be left to the arbitration of the judge, as to all the three; yet the general rule is, that if the defender exceed only in either of the three, as *v. g.* in the arms or time, the excess is said to be *culpa levissima*: if in two of these, as in time and arms, then it is accounted *culpa alevis*, and is punishable: but if the defender exceed all the three, as in time, arms, and way of prosecution, then it is *culpa lata*, but yet he is not punishable as if he had *dolose* murdered; for though it be a rule *in civilibus*, that “*culpa lata æquiparatur dolo*,” yet it is a rule *in criminalibus*, that “*culpa lata nunquam æquiparatur dolo, ubi agitur de pœna corporis afflictiva*.” This exception of self-defence must be proponed against the relevancy, and must be condescended upon, thus, the defender or pannel nowise acknowledging the killing, yet if he killed, it was done in his own defence, in so far as the defunct drew a sword and thrust, or offered a pistol. And though he prove not his exception of self-defence, he will not therefore be condemned, except the pursuer prove the libel. The way of proving this exception of self-defence is so favourable, that it may be proved by presumptions, and by witnesses, otherwise declinable, ascousins, servants, and witnesses, who depone only upon credulity.

4. *Homicidium culposum*, or faulty slaughter, is, where the murder was not designed, and yet it was committed merely by accident, as if one should hound a dog at another, who should bite him at whom he was hounded, so that he should die thereby; in that and the like case, the offender is not to be punished with death, but arbitrarily, because *aberrat animus occidendi*. The difference between this and casual homicide, is in this, the committer *versatur in illicito*, but not so in the other; yet they both agree in this, that they wanted all design of killing.

5. Wilful murder is comitted by fore-thought felony; and if he who intended to kill one, did not by a mistake kill him, but killed another, yet he is to die because he killed a man designedly. Since the design of killing depends much upon

the nature of the wound given, then where the wound was not deadly, the inflictor thereof cannot be punished as a murderer, though the person wounded thereafter die: And though some be of opinion, that if the party live three days after receiving of the wound, the same is thereby presumed not to be mortal; yet generally this is referred to the arbitrament of the judge, who is in this to follow the opinion of physicians, or of one physician, if more were not present: but if they vary, then the judge shall not incline to punish by death, but by an extraordinary punishment. For murder is not to be inferred but from a concluding probation: and if the wound be but small, and a fever follow, then it is presumed that the party died rather of a fever, especially if the person wounded walked a foot for forty days: and seeing ordinarily, wounds that are mortal do kill the receiver in that time, it were therefore not hard to conclude, that he who dies thereafter, dies not of his wounds if he has walked a foot all that time.

6. Night thieves, robbers, and murderers, may be killed without any punishment, when private persons are warranted to pursue them by sheriffs, justices of the peace, or privy counsellors, and the robber or murderer resists to be apprehended. And by the civil law, it was lawful for a father to kill his own daughter, if he found her committing adultery, and to kill also her adulterer; and if the husband kill the adulterer of his wife, he was only to be punished by some arbitrary punishment, but not by death. See the Title of the Pandects, *de Adulter*. But there is no such decision yet happened in this country. In the Memoirs of the Marquis of Langallery, printed at London in the year 1708, p. 85, the following passage is related: viz. A citizen of Madrid, finding a Frenchman and his wife on the bed, stabbed them both. After the execution, he goes out with his dagger in his hand, stained with the blood of these two persons, and presents himself before the judges, who were then upon the bench. The court of justice, without any other formality, upon the recital of the action, declared him innocent; this, he says, happened in the year 1700, and the Frenchman was a gentleman of the retinue of the French ambassador.

7. *Monomachus*, or, the fighter of a single combat, is, "singulus qui pugnat cum singulo." By the 12th act of the 16th Parl. Jam. VI. all such fighters are punishable with death, although none of them be killed, and the provoker is to be punished with a more ignominious death than the defender. The giving or accepting challenges to fight, and those who

carry them, and the seconds of such, may be punished by the council arbitrarily, although combat follow not, because they tend to disturb the peace. The General Assembly, by their act 1648, discharges duels, and ordains all who shall fight them, or make, write, or receive, or with their knowledge carry challenges, or go to the fields, either as principals or seconds to fight, the contraveners are to be brought into public twice, once in order to their being rebuked, and again, in order to the professing their repentance. (But the method of censuring such now, is to be regulate according to the Form of Process, enacted by Assembly 1707, of which more hereafter, Book 4.) If the person guilty be elder or deacon, he is to be deposed; and whosoever shall refuse to submit to the censure appointed by the church, shall be processed to excommunication. And by cap. 14, art. 32, of the French Church Discipline, the same upon the matter is enacted.

8. Self-murder is punished with confiscation of moveables, and Christian burial is denied them. Furiosity and madness ought to defend against this punishment, even though he hath lucid intervals, seeing it is more humane to presume he killed himself in his madness, except it can be proved that he used even in his lucid intervals to wish he were dead, or to commend self-murder. An endeavour to kill one's self, is punishable by confiscation, as self-murder. But it may be reasonably feared, that the inflicting that punishment upon it, will tempt the poor creature to renew his endeavour with better success. Self murder may likewise be committed by omission, as if a man should designedly starve himself.

9. Parricide is a crime which is committed by killing our parents, or, by the civil law, ascendants or descendants in any degree. By the 220th act, Parl. 14, James VI. parricide is punished only in him who kills his father or mother, good-sire or good-dame, and they are ordained to be disinherited *in linea recta*.

10. By the 21st act of King William and Queen Mary, for preventing the murder of children, it is enacted, that if any woman shall conceal her being with child during the whole space, and shall not call for and make use of assistance in the birth, the child being found dead or amissing, the mother shall be holden and repute the murderer of her own child, though there be no appearance of bruise or wound upon the body of the child.

11. The taking of potions to cause abortion, after the child was quick, should be capitally punished, though the using such

means before the *fœtus fuit animatus*, or to hinder conception, is to be punished arbitrarily. By the 91st canon *Conciliæ sexti in Trullo*, it is thus determined, “Eas quæ dant abortionem facientia medicamenta, et quæ fœtus necantia venena accipiunt, homicidæ pœnis subjicimus.”

12. If the exposed infants do thereby die, the exposers are as guilty as the takers of abortive potions, especially if the place was solitary and remote from society, and where beasts might devour them. But if they were exposed where people resort, and might easily be seen, those who laid them down are only to be punished arbitrarily. Since in this land most rarely are children lawfully begotten ever exposed, therefore we are not obliged to repute them otherwise than unlawfully begotten; see *Matthæus de Crim. Expos. Infant.* The parish where such children are found, is certainly at first to bear the burden of their maintenance and education.

## TITLE XI.

### *Of Incest, Adultery, Bigamy, Rapes, Fornication, et de Venere Monstrosa.*

1. Incest is defined by civilians to be, “*Fæda et nefaria maris et fœminæ commixtio, contra reverentiam sanguini debitam;*” and they divide it into two kinds, viz. that which is against the law of nature; of this sort is all copulation between ascendants and descendants; the other branch is that which is against the municipal law of the country; but our law does not observe this distinction; for it is enacted by Parl. 1, Jam. VI. act 14, that whosoever pollutes his body with such persons in degree as God’s word doth contain, Levit. xviii. shall be punished with death. By the act of Assembly 1648, sess. 38, incestuous persons, in case the magistrate doth not punish them capitally, are to make public profession of repentance for the space of 52 Sabbaths; but this act is innovate and amended by the 4th act of Assembly 1705, and the 11th act of Assembly 1707.

2. Adultery is the violation of another’s bed: hence some give its derivation *ad alterius thorum*, and is committed by a married person’s lying with an unmarried, or an unmarried person’s lying with one who is married. If the woman with whom the adultery is committed was at that time living as a common whore, and the committer was a single man, and knew nothing of her being married, his punishment should be moderated on that account; but if the man was married, the crime

is the same whether the woman was a whore or not, it being still a violation on his part. And that the lying with a man's betrothed or affidat spouse, may be constructed adultery, (*see pages 296, 297*;) because he who lies with one who is to be shortly married, renders the succession as doubtful as he who lies with a married wife.

3. Notour adultery is by the 74th act of Parl. 9, Queen Mary, declared to be punishable by death, after premonition is made to abstain from the same manifest and notour crime. Yet by the explanation of this act given by the 105th act, Parl. 7, Jam. VI. that is only declared to be notour adultery, where, 1st, There are bairns ane or mae procreated betwixt adulterers. 2dly, When they keep company or bed together notoriously known. 3dly, When they are suspected of adultery, and thereby give slander to the kirk, whereupon being admonished to satisfy the kirk, they contemptuously refuse, and for their refusal are excommunicate. If either of which three degrees be proved before the Justices, the committers are punishable by death.

4. Although there be no express law for inflicting death upon ordinary adulterers, yet Mackenzie on this title thinks, that judges are not hindered to inflict the punishment of death upon ordinary adulterers, by any thing expressed in that forecited act of James VI. otherwise, it should be an act in prejudice of the law of God, which expressly ordains adulterers to be put to death, Deut. xxii. By Justinian's 134, N. cap. 11, the civil law is altered, appointing death to be inflicted upon adulterers; and by the law of most nations, adultery is only punished by pecuniary mulcts. With us notour adultery has been punished with death, and single adultery arbitrarily.

5. By the act of Assembly, Ang. 5, 1642, all presbyteries are ordained to give up to the Lords of Justiciary the names of the adulterers and incestuous persons, witches, and sorcerers, within their bounds, that they may be processed and punished according to law. By Assembly 1648, sess. 38, a person being once guilty of adultery, is to make public profession of repentance twenty-six Sabbaths in sackcloth; and a relapse in adultery three quarters of a year; but this act is innovate and amended by the forecited act 4, of Assembly 1705. And by that same act 1648, persons guilty of a relapse in adultery are to be more summarily excommunicated.

6. Since adultery is only committed by married persons, it is therefore requisite that the libel in adultery bear, That

such persons were married; and except it be proven or be netour to the assize, they should not file the pannel, though copulation be proved. Adultery may be proven by strong and violent presumptions, as the being in bed together alone, and being naked, and the being frequently alone together. Likewise gifts, love-letters, close doors, the wife's being abroad all night, the entertaining persons that are known to be pimps, and cohabitation, are all presumptions, upon which it is ordinary for assizes to file pannels, with the assistance of any other probation.

7. By the 11th act of Assembly 1707, cap. 4, if the woman who hath brought forth the child, doth declare she knoweth not the father, and that she was not forced, whether married or unmarried, the same censure is to be inflicted upon her as in the case of adultery. But if she allege she was forced in the fields by a person unknown, in that case the former behaviour of the woman should be inquired into, and she seriously dealt with to be ingenuous; and if she hath been of entire fame, she may be put to it to declare the truth, as if she were upon oath, but not without the advice of the presbytery, and no formal oath should be taken.

8. In our law a man marrying two wives, or a woman marrying two husbands, commits bigamy; and this is accounted by the 19th act, Parl. 5, Queen Mary, a breach of the oath made at marriage, and therefore is punishable as perjury, by confiscation of all their moveables, warding of their persons for year and day, and longer during the Queen's will, and as infamous persons never to bruik office, honour, dignity, or benefice in time coming. It may be doubted if Quakers can be punished as perjurers, seeing they give no oath at marriage, and certainly they should, seeing marriage implies a vow, though no explicit oath be given. It may be doubted also if the two persons marrying be guilty of bigamy *eo ipso* that they marry, though because of some intervening accident they bed not, but seeing by the second marriage they give contrary oaths, certainly they are guilty of perjury; for perjury being the *medium peccati* in this crime, and not *copulatio* or *coitus*, as in adultery. "Reatus contrahitur per controriæ vota."

9. Rape, or ravishment, is that crime which is committed in the violent carrying away a woman from one place to another, for satisfying the ravisher's lust, and is in the civil law punishable by death, L. Un. C. de Rap. Virg. &c. The canon law describes it thus: "Est rapina et violentia quædam, qua

mulier de cujus nuptiis nihil actum est antea, abducitur, invitis parentibus." By the 4th act, Parl. 21, James VI. it is declared, that although the consent and declaration of the woman ravished, declaring that she went away of her own free will, may free the committer from capital punishment, yet shall it not free him from arbitrary punishment; which act insinuates that the crime with us is otherwise capital.

10. Since minors are punishable for adultery, much more ought they for a rape; for men in these years are more prone and liable to perpetrate such extravagancies than when at a greater age. Though it may seem that whores are *infra legum observantiam*, and ought not to have protection from law, who offend against it; yet if the whore be now become a penitent, and reconciled to the church, and for a long tract of time hath had a chaste and laudable conversation; it may be doubted if the ravisher of such a person may not be punished *pœna ordinaria*.

11. Fornication is committed by the carnal knowledge of unmarried persons. The canon law distinguisheth thus: "Stuprum (say they) est virginis defloratio, et illicitus cum vidua concubitus." That law commands such abusers of virgins to marry them, the parents consenting thereto; and if they refuse to do so, his body is to be chastised, and himself excommunicated. But if the father of the corrupted virgin will not bestow her upon him in marriage, then the man is obliged to give her such a dowry as virgins of her degree and quality use to get. That same law says, simple fornication is *concubitus soluti cum soluta et impudica*, the punishment whereof is left unto the judge's discretion. That there should be a distinction of punishment inflicted upon the deflowerers of virgins, and abusers of honest widows, from those who abuse themselves with such women as have sinned so already, is very reasonable. By the act of Assembly, Aug. 10, 1648, fornicators are to make profession of their repentance three several Sabbaths; who are guilty of a relapse therein, six Sabbaths; who are guilty of a trilapse, twenty-six Sabbaths; and of a quadrilapse, three quarters of a year, all in sackcloth, and are first to appear before the presbytery, confessing their sin there, before they be admitted to public profession of repentance for it; but this act is reformed and amended by the Form of Process. By cap. 38, sess. 1, Parl. 1, Car. II. fornication is fineable in £400 to noblemen, £200 the baron, £100 the gentleman and burgess, and £10 every inferior person; and that the pain be doubled *toties quoties*, and to be



levied off the man as well as the woman, to be applied to pious uses. But if fornicators be insolvent, they are to be punished corporally, according to the 13th act, Parl. 1. James VI.

12. Although the subsequent marriage of fornicators may defend them from civil punishment, and likewise legitimates the children begotten before marriage, according to the present practice, yet the church doth not judge the scandal given to thereby removed; and therefore, by their act 11th June, 1646, they appoint all married persons, under public scandal of fornication before marriage, although the scandal thereof hath not appeared before marriage to satisfy publicly therefor, their being in the state of marriage notwithstanding, and in the same manner they should have done if they were not married.

13. According to Mattheus *de Criminibus*, “*Monstrous Venus est quæcunque vel virum vel fœminam mentitur.*” With us the confession of sodomy itself, without any other adminicles, is sufficient to infer the punishment of death, except the confessor be known, or at least suspected to be dis-tempered. Bestiality is likewise punishable with death; and the endeavour is as highly punishable, if the delinquent was only hindered by others. In both these crimes witnesses who are liable to exceptions will be received, because of the atrocity of the crime, as some authors think. See Mackenzie on this title. We have reason to bless God that these crimes are rarely committed, and some of them not so much as known in this land; and therefore never any particular statute against them hath yet been made. But our libels against them bear, that although by the law of Omnipotent God, as it is declared Levit. xx. as well the man who lieth with mankind, as well the man who lieth with a beast, be punishable with death, &c. the ordinary punishment, in both these are burning, and the beast is also burnt or drowned with which the bestiality was committed; partly for the preventing of monstrous births, and partly to blot out the memory of so loathsome a crime.

## TITLE XII.

*Of Penny Bridals, Promiscuous Dancing, Stage Plays, Immodesty of Apparel, Drunkenness, Tippling, and acts in general against Profaneness.*

1. Penny-weddings are neither by our civil nor ecclesiastical constitutions absolutely discharged, for that were to de-

prive the poorer sort of the satisfaction of meeting with their friends on that occasion. But our Assembly considering that many persons do invite to these penny-weddings excessive numbers, among whom there frequently falls out drunkenness and uncleanness, for preventing whereof, by their act February 13, 1645, they ordain presbyteries to take special care for restraining the abuses ordinarily committed at these occasions, as they shall think fit, and to take a strict account of the obedience of every session to their orders thereanent, and that at their visitation of parishes within their bounds: Which act is ratified March 8, 1701. And by the 12th sess. Assembly 1706, presbyteries are to apply to magistrates for executing the laws relating to penny-bridals, and the commission, upon application from them, are to apply to the government for obliging the judges, who refuse, to execute their office in that matter. By the 14th act, Parl. 3, Car. II. it is ordained, that at marriages, besides the married persons, their parents, brothers, and sisters, and the family wherein they live, there shall not be present above four friends on either side. And if there shall be any greater number of persons at penny-weddings, within a town, or two miles thereof, that the master of the house shall be fined in the sum of 500 merks.

2. The General Assembly, by their act July 19th, 1649, finding that scandal and abuse arises from promiscuous dancing, do therefore discharge the same: The censure thereof is referred to the several presbyteries, which is ratified March 8, 1701. By the Church Discipline of France, cap 14, art. 27, those who make account to dance, or are present at dancing, after having been several times admonished, shall be excommunicated upon their growing obstinate and rebellious; and all church judicatures are to see this act put into execution. By the 53d canon *Concilii Laodicensi*, "Non oportet Christianos ad nuptias venientes ballare vel saltare, sed modeste cœnare vel prandere, ut decet Christianos."

3. By the 28th art. of the forecited cap. of the French Church Discipline, Christian magistrates are exhorted not to tolerate *hocus pocus*, and slight of hand plays, nor puppet and stage players, neither shall it be lawful for believers to assist at comedies or tragedies, and such other plays, acted in public or private, seeing that in all ages they have been prohibited among Christians, as tending to the corrupting of good manners. Nevertheless, when in colleges it shall be thought fit that youth may represent some history, it may be tolerated, providing it be not contained in the Holy Scriptures, and done

very seldom, and even then by advice of the colloquy, which shall first be satisfied with the composition. In the third book of the Digests, tit. 2, De his qui notantur infamia, book 2, § 5, sub fin. “Eos enim qui quæstus causa in certamina descendunt, et omnes propter præmium in scænam prodeuntes, famosos esse.”

4. By the 25th art. of the above cited cap. of the French Church Discipline, the churches shall advertise believers to use great modesty in apparel, and shall give order to abate the superfluity therein committed. Nevertheless, the churches shall make no law thereabout, the making of such appertaining to the magistrate. And by art. 26, all persons who wear habits to have open marks of dissoluteness, shame, and too much newness, as painting, naked breasts, and the like, the consistory shall use all possible means to suppress such badges of immodesty by censures. All obscene pictures, which are apt to dispose and incite to unclean thoughts and desires, are most improper furniture for the houses of Christians, and therefore the users of them may fall under church censures if they be not removed.

5. Temperance is the golden mids between abstinence and intemperance; for attaining whereof, when we are sufficiently strengthened and refreshed with our ordinary diets, we should abstain betwixt them; and if we will not suffer ourselves to be thus rationally bounded, I cannot see how we can otherwise eschew the evil of being tempted to excess in drinking, both from the specious pretences and solicitations of our own voluptuous tempers, and the enticement and example of others: And if we transgress the bound above proposed, we cannot but fall into temptation: For as Card. Bona, *de Vitæ Christianæ Principiis*, saith, “sæpe nescimus utrum subsidium petat inevitabilis corporis cura, an fallacia concupiscentiæ nos decipiat, et in hac incertitudine hilarescit infelix anima, ut salutis obtentu intemperantiam excuset.” Our law seems to approve and appoint this manner of bounding, for the 20th act, Parl. 22, James VI. dischargeth all haunting of taverns and ale-houses after ten hours at night, or any time of the day, excepting time of travel, or for ordinary refreshments, under the pain of being punished as drunkards. And therefore, if one accused for drunkenness, deny the same, or impute the signs and effects thereof proven against him, to other causes, as sickness of the stomach, giddiness of the head, or the like; these defences, though they may be true, yet are not relevant to defend the accused against the punishment of drunkenness, pro-

viding his tipping be proven by the unseasonable haunting of taverns ; and it needs not be thought hard that no distinction is made betwixt drunkenness and tipping, seeing it is a common observation, that tipplers are harder to be reclaimed than drunkards themselves.

6. Among the remedies proposed against the corruption of the ministry, by Assembly 13th June 1646, act 11, ministers are not only to forbear drinking of healths, called Satan's snare, leading to excess, but likewise to reprove it in others : and the following act of Parliament punishing the sin of drunkenness, doth appoint excessive drinking, especially under the name of healths, to be punished. The act I mean is 19th sess. 1. Parl. 1. Car. II. which enacts, that who drinks to excess, or haunts taverns as above, shall pay, the nobleman £20, the baron 20 merks, the gentleman, heritor, or burges, 10 merks, the yeoman 40 shillings, and the servant 20 shillings, *toties quoties*, and the minister the fifth part of his stipend : which fines are to be applied as the fines for other immoralities, and the insolvent are to be punished in their persons.

7. Such as commit crimes in their drink, are sometimes, for want of design and malice, more meekly punished than others, especially if they were cheated upon design, into that condition by others. And in this case, the law distinguisheth *inter ebrios*, who are rarely drunk, and *ebriosos*, who are habitually such ; for these last should be most severely punished, both for their drunkenness, and the crimes occasioned by it. And such as make themselves drunk, upon design to excuse or lessen thereby the sin they are to commit, merit no favour ; and such as know they are subject to extravagancies in their drink, merit as little. Persons that are incapable and stupid through drink, the law not only forbids people to contract with them, but makes all contracts then made reducible on that head. The law is so far from countenancing fraud, that it repairs the injured against it. See Stair's Instit. p. 98, and 602.

8. By the 40th act, sess. 4, Parl. King William and Queen Mary, presbyteries are ordained to appoint informers against and prosecutors of profane persons, within their bounds, before the civil magistrate. And by the 13th act of the following session of that Parliament, all magistrates are strictly required to execute the laws against profaneness at all times, and against all persons, whether officers, soldiers, or others, without exception. And if any of these judg<sup>es</sup>

shall refuse or delay to put the said laws to execution upon application from minister, kirk-session, or any in their name, giving information, and offering sufficient probation against the offender, that every one of the judges so refusing or neglecting, shall, *toties quoties*, be subject and liable to a fine of an hundred pounds, to be applied for the use of the poor of the parish where the scandal was committed; declaring hereby, that any for the kirk-session or minister, having their warrant, may pursue any of these negligent judges before the Lords of Session, who are ordained to proceed summarily; and that it shall be a sufficient probation of the judges' refusal, if the pursuer instruct, by an instrument under a notary's hand, and witnesses thereto subscribing, and deponing thereupon, that he made application to the said judge, unless the judge so pursued, condescend and instruct, that within the space of ten days after the said application, he gave orders to cite the party complained on, within the space of ten days, and at the day of compearance, he was ready to have taken cognition of the scandal complained on, and instruct and condescend on a relevant reason why the laws were not put in execution. By the 31st act, sess. 6, of King William's Parl. it is ordained, that in every parish, where any of the ordinary inferior judges happen to reside, they shall execute the laws against profaneness, and mocking religion and the exercise thereof, at the instance of any person whatsoever who shall pursue the same; certifying them, if they fail therein, either by themselves, or their deputes, the Lords of Session will appoint judges in that part. And in other parishes where no such magistrates do reside it is ordained, that the foresaid persons shall appoint deputes for the said parishes, with the power and for the end foresaid, such as shall be named to them by the heritors and kirk-session thereof. But, really, it is foreign to members of a kirk-session, considered as such, to chuse or present a civil magistrate, even as it is to a civil court, as such, to chuse or present the members of a kirk-session. And farther, they discharge advocacy, simpliciter, of processes, against immorality from these parish judges; and likewise, all suspensions of their sentences, without consignation or liquidate discharges. It is also ordained, that in case of calumnious suspending, the Lords of Session decern a third part more than is decerned, for expences; and likewise, they appoint the fines to be instantly paid in to the parish collector for the poor, or the party imprisoned till sufficient caution be found for the payment of the same, or otherwise to

be exemplary punished in his person in case of inability. It is also enacted, that no pretence of different persuasion in matters of religion, shall exeeem the delinquent from being censured and punished for such immoralities, as by the laws of this kingdom are declared to be punishable by fining. And it is recommended to the privy council, to take further effectual course against profaneness, and for encouraging of such as shall execute the laws against it.

9. By the acts of Assembly for suppressing profaneness, they appoint as follows. That church judicatures execute discipline faithfully against all scandalous conversation, and in particular, against drunkenness and swearing, but with that gravity, prudence, and meekness of wisdom, as may prove most effectual for reclaiming them. And ministers are to be free with persons of quality for amending of their faults; and if it be found needful, presbyteries are to appoint some of their number to concur with the minister in admonishing such. Masters of families are to receive no servants, but such as have testimonials of their honest behaviour, and none ought to get testimonials, but such as are free of scolding, swearing, and such like more common sins, as well as fornication, adultery, drunkenness, and other heinous gross evils. And the ordinary time of giving testimonials is to be in face of session; but if an extraordinary exigent happen, let it be given by the minister with consent of the elder of the quarter. If they have fallen, or relapsed into scandalous sins, let their testimonials bear both their fall and repentance; but it were more charitable that the scandal were suppressed, and remembered no more. And persons of quality removing to Edinburgh or elsewhere, with their families and followers, if they carry not testimonials along with them, the minister from whom they remove, shall advertise the minister to whom they come, if to his knowledge they be lying under any scandal. It is recommended to ministers, presbyteries, and sessions, to meet together for private fasting and prayer, and conference about the state of the church, with respect to the growth and decay of godliness, and success of the gospel; and in these days the presbyteries ought to pass their privy censures, and both synods and they are exhorted to perform them with more accuracy, diligence, and zeal. It is appointed that ministers be frequent in private personal conference, with those of their charge, about the state of their souls. And presbyteries are to take special notice of ministers, who do converse frequently and ordinarily with malignants, and with scandalous and pro-

fane persons, especially such as belong to their parishes. Whereas men of business for their too late sitting in taverns, especially on Saturdays night, do pretend relaxation of their minds; therefore it is recommended to ministers, where such sinful customs are, to represent the evil thereof both publicly and privately, and call such to redeem that time, which they have from business, and employ the same in conversing with God. It is appointed likewise, that carriers and travellers bring testimonials from the places where they rested on those Lord's days wherein they were from home, to their own ministers. An abstract of all acts of Assemblies against profaneness, is to be got and printed, and also it is overtured, that an abstract of all acts of Parliament against the same be gotten. And each presbytery is to hear the same read twice a year, at two diets to be appointed for that effect, And it is likewise recommended to presbyteries, to prepare overtures to General Assemblies, that they being found proper means for curbing of vice, may by them be enacted. It is appointed, that persons grossly ignorant be debarred from the communion; for the first and second time suppressing their names; for the third time expressing their names; and for the fourth time let them be brought to public repentance: This is to be understood of those that profit nothing, nor labour for knowledge; for if they be labouring to profit, they ought by the act of Assembly to be treated with more forbearance. All which means for suppressing of profanity, are enacted by Assemblies, August 10, 1648, April 14, 1694, January 24, 1698, January 30, 1699.

## TITLE XIII.

*Of Theft, Sacrilege, Usury, Falsehood, Beggars and Vagabonds.*

1. Theft is described by lawyers to be "fraudulosa contractatio, lucri faciendi gratia, vel ipsius rei, vel etiam usus ejus possessionisve, quod lege naturali prohibitum est." By the word *contractatio* they understand, not only the taking away of a thing, for theft is committed not only by concealing what was taken from another, but likewise the using a thing deposite or impignorate to other ends and uses than was agreed upon. When one is urged by necessity, not from a desire to gain, to take food or raiment from the owners thereof without their consent, he is not to be despised, but rather pitied and pardoned, Prov. vi. 30. By the 83d act, Parl. 11, James VI.

it is statute, that whosoever destroys plough, or plough-graith in time of tilling, or wilfully destroys the corns, shall be punished therefor by the justices to the death as thieves. But our practice in this is a little arbitrary and uncertain. By the 26th act, sess. 1, Parl. 1. Car. II. it is appointed, that the persons from whom goods are stolen, pursuing the thief, *usque ad sententiam*, shall have his own goods again wherever they can be had, or the value, and he is to have his expenses of prosecuting the thief, out of the readiest of the thief's goods.

2. "Sacrilagus dicitur qui sacra legit." By the canon law, sacrilege is committed, either properly, when a thing sacred is taken out of a sacred place; or less properly, when a sacred thing is taken out of a profane place, or when a profane thing is taken out of a sacred place: This crime is likewise committed when sacred things are embezzled. Though with us, there be no formal consecrations of churches, vestments, cups, &c. yet to steal any thing destinate to God's service, or even to steal any thing out of a church, ought to be looked on as an aggravation of the crime of theft.

3. The taking of more annual-rent, than the quota stated by law, is the first branch of usury; the second is to take annual rents, before the term of payment; the third is, to take wadsets in defraud of the law; by doing this, they do not take more annual rent directly than what is prescribed by the law, but they take wadsets of land from the debtor, for more than their annual rents can extend to, and then they set back-tacks to him, for payment of what is agreed upon. The fourth branch of usury with us, is to take bud or bribe for the loan of money, or for continuing it. But it were against reason, that by lending money to my friend, I should become incapable of a donation from him. By the 7th act, Parl. 16, James VI. it is appointed, that usury shall be proved by the oath of the party receiver, of the unlawful annual rent, and witnesses insert, without receiving the oath of the giver of the usury, for eviting perjury. The pain of usury with us, is, that the debtor shall be free from his obligation, or have back his pledge; or if the debtor conceal, then the revealer shall have right to the sums. Act 222, Parl. 14, James VI. and by the 248th act, Parl. 15, James VI. it is appointed, that the usury bond or contract shall be reduced; and being reduced, the sum shall belong to his Majesty or his donators; and the party to have repetition of the unlawful annual rent paid by him, in case only he concur with the donator in the reduction.



Usury is called *crimen utriusque fori*; and how ministers are to be censured for it, see Book 4, title 5.

4. Falsehood is a fraudulent suppression, or imitation of truth in prejudice of another. This description of *crimen falsi*, or *falsitas*, doth agree with that given by the canonists, viz., “*Est fraudelenta sive dolosa veritatis imitatio, vel occultatio.*” This crime is committed in writ, either by producing a false writ, if they knew it to be false, and abide by it, or by fabricating a false writ. Again, it is committed by omission, in a notary’s not setting down what he was required to insert in his instrument, or the omitting to express the day and place, when the omitting thereof might have been disadvantageous. By the 22d act, Parl. 23, James VI. the makers or users of false writs, or accessory to the making thereof, are to be punished with the pains of falsehood; and the counterfeiter, falsifier, or accessory, cannot, by passing from the writ quarrelled, free himself from the punishment. The punishment of forgery is declared by act 22, Parl. 5, Queen Mary, to be proscscription, dismembering of the hand or tongue, and other pains of the canon or civil law. The second species of falsehood is, that which is committed by witnesses in their depositions, by taking money to depone or not depone; by concealing the truth, or expressing more than the truth, though they received no money. And, thirdly, by deponing things expressly contradictory; but in this case, the contradiction must be palpable and not consequential, “*Nam omnis interpretatio præferenda est ut dicta testium reconcilientur.*” By cap. 46, Parl. 6, Queen Mary, false witnesses and their inducers are to be punished by piercing their tongues, escheat of moveables, and infamy, and farther at the judge’s discretion. Perjury differs not much herefrom, for it is defined by lawyers to be a lie affirmed judicially upon oath, and it is punishable by confiscation of all their moveable goods, warding of their persons for year and day, and longer during the Queen’s will, and that as infamous persons they shall never be able to bruik office, honour, dignity, nor benefice in time coming; For this, see the 19th act, Parl. 5, Queen Mary. There is a third species of falsehood committed by forging true money without authority, by coining false money, or by mixing and alloying worsen with nobler metals in current coins, or by venting and passing the adulterate money coined by others, or entertaining the forgers, or being art and part with these coiners. This crime is commonly punished by death. The fourth species of falsehood is committed by using of false

weights and measures. By the 19th Parl. act 2, James VI., the users of false weights and measures, are to lose their whole goods and gear. Having of false weights in the shop, presumes using, except this presumption be taken off, by alledging that the weights are presently bought or borrowed, or laid aside as light. Falsehood is also committed by assuming a false name, and by presenting one person for another at the subscribing of papers: for such impostors the punishment of death hath been inflicted. December 12, 1611, mentioned by Mackenzie on this Title.

5. By the 22d act, Parl. 4, James V. no beggar born in one parish is to be allowed to beg in another, and badges are to be made by the headsman of each parish for that effect; which law agrees with those of other nations, see *Matth. de Crim. improba de Mendicitate*. And by the Book 11, Title 25, of the *Codex de validis Mendicantibus*, they are distinguished from the poor, and punished as we do sturdy beggars and vagabonds. By Car. II. Par. 1, sess. 3, cap. 10, it is ordained, that all masters of manufactories, may, with advice of the magistrates of the place, seize vagabonds, and idle poor persons, and employ them in their work, and exact of the parishes where they were born; or if not known, the parishes where they have haunted for three years before, two shillings *per diem*, in manner prescribed in the act; and thereafter may retain them in their service for seven years for meat and clothes. Sturdy beggars and vagabonds should be proceeded against by the sheriffs, and other judges, and they may exact caution of them, but if they find none, they should be denounced fugitives, and they may be sent to public work-houses, or correction-houses, or put in the stocks; and if they be reset after they are denounced fugitives, their resctters are liable for the prejudice sustained, and the parties damnified will have action against the magistrates, within whose bounds these vagabonds are willingly reset. See James VI. Parl. 1. cap. 97, and Parl. 11, cap. 97, Parl. 12, cap. 124, 144, 147, and Parl. 15, cap. 268, and Car. II. Parl. 2, sess. 3, cap. 18. By the act of the General Assembly, September 1, 1647, it is recommended to presbyteries, to consider of the best remedies, for preventing abuses committed by beggars, living in great vileness, and many of their children wanting baptism.

## TITLE XIV.

*Of Art and Part.*

1. Those who are assisters by counsel or otherwise are in our law said to be art and part of the crime. By art is meant, that the crime was contrived by their art and skill, *eorum arte* ; by part is meant, that they were sharers in the crime committed, when it was committed, *et quorum pars magna*. The civilians used, in place of art and part, *ope et consilio* ; by our law such assisters are called *complices*.

2. By the 151st act, Parl. 11, James VI. it is ordained, that nothing can be objected against the relevancy of that part of the summons, which bears, that the persons complained upon are art and part of the crimes libelled. But the judge here is to consider, whether the adviser gave the counsel upon the account of former malice conceived by himself ; or if it was only given in resentment of any wrong done to the committer, and is to be more severely punished in the first case than in the last. 2. In the case of advice, the adviser's age is much to be considered : for though minors, and those who are drunk, may be punished for murder, yet it were hard to punish them for advice. 3. The words in which the advice was conceived, should still be interpreted most favourably for the adviser, for words are capable of several and distinct senses, as they are understood by the respective speakers, and they vary by the very accent or punctuation. 4. If the adviser retracted his opinion, he ought not to be punished with the ordinary punishment, if he thereafter and instantly intimated to the person against whom the advice was given, what danger he was in ; and also dissuaded the committer from following the advice given.

3. He who allowed his house to the adulterers, for perpetrating that crime, or for consulting about the committing thereof, is certainly punishable, though it was not committed. He who retains his wife, after he found her committing adultery, and lets go the adulterer, is punishable as a *leno*, pimp, or bawd, providing he take money to conceal the adultery, " *Nam lenocinium est, ubi maritus quæstum facit de corpore uxoris.*" He who gives warrant and order, or hires others to commit adultery, deserves the same punishment with the adulterer, and in effect he is most guilty, seeing he wants the natural temptation of the adulterer, and commits the crime in contempt of the law.

4. Panders, pimps, and bawds, making gain of the whoredom of others by their help and advice, deserve severe punishment as accessories to their wickedness. As likewise, the keepers of taverns and ale-houses, who furnish their guests with liquors unto drunkenness, or sell those liquors at unlawful times, or to drunkards, are to be punished themselves, as drunkards, according to the instructions given to justices of the peace in the 19th act, Parl. 1, sess. 1, Car. II. And there seems to be good reason for it, seeing the best of drugs given to excess, either as to quantity or quality, and whatever overpowers our nature, is poisonable.

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## BOOK FOURTH.

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### TITLE I.

*Of Scandals and Church Discipline in general. Of the method of proceeding with the Scandalous, and how Scandals are to be tabled before Church Judicatures.*

1. We are not here to understand by scandal, a thing actually displeasing the party offended; nor is it always to be judged by the matter, seeing offence in lawful matter may be taken, where it is not given, as in that eating and drinking mentioned, Rom. xiv. Or in taking wages for preaching the gospel, 1 Cor. ix. Neither is it the pleasing of men that doth always edify them, nor the displeasing of them that doth stumble or scandalize them; but scandal is something accompanying word or deed, with such circumstances as maketh that word or deed inductive to sin, or impeditive of the spiritual life or comfort of others.

2. Church discipline serves chiefly to curb and restrain the more peccant humours of professors, and therefore sins of infirmity, strictly so called, which are not in themselves so scandalous to others, should not be any part of the object thereof, otherwise its exercise might prove more molesting and offensive than edifying and sanative. Again, offences from disputable practices, or things indifferent, are not pro-

perly the object of church censure, because there is not a solid ground therefrom for thorough conviction of the party. Further, offences which the church may find cannot be proven, ought not to be prosecute, for thus her authority is much weakened, and neither is the offender edified. In the last place, though some gross scandals, (which are not public or flagrant,) may be proven by two or three witnesses, (especially if it be against a person otherwise orderly,) yet he is not therefore to be cited to appear in public, except upon supposition of his obstinacy to acknowledge the offence to those who knew and were offended therewith; which method is agreeable to that of Christ's prescribing, Mat. xviii. for the removal of private offences. But, on the other hand, scandals should be taken public notice of, when they are of their own nature gross and infectious. Next, when the offence becometh public, though at first it was not so, and when it is accompanied with contempt of private admonition, or with frequent relapses therein.

3. Church discipline and censures are for vindicating the honour of Christ, that suffers in the miscarriage of any member. Again, they are inflicted on the church's account, for preserving of her authority, discipline being as the ecclesiastical whip for that end, and for preserving her from corruption by the spreading of the leaven of profanity. Another end of church discipline is for the offenders' good, that they may be ashamed to the destruction of the flesh, and saving of the spirit in the day of the Lord Jesus, 1 Cor. v. 5, act 11, Assembly 1707, cap. 1, sec. 3.

4. The same offences upon the matter are not to be prosecute at all times, nor against all persons, and in all places, in the same manner: thus we see the Apostle Paul in some cases censuring corrupt men, as Hymeneus and Philetus, 1 Tim. i. 20. Sometimes he threateneth, and yet spareth, although the scandal did merit censure. Gal. v. 12, he saith, "I wish they were cut off that trouble you;" yet he cuts them not then off, because he found not the present circumstances of the church to require it. See also 2 Cor. x. 6, where he saith, "Having in a readiness to revenge all disobedience, when your obedience is fulfilled; therefore it ought not always to be accounted partiality, when such differences in church procedure are observed; providing nothing be done with respect of persons, on civil or natural accounts; and also, providing the difference be rather in the manner and circumstances of proceeding against some offences, (especially

if they be such where no rule how to proceed against them is fixed,) than in dispensing with what seemeth to be material.

5. The order prescribed by our Lord Jesus Christ, Mat. xviii. for repairing and prosecuting of private offences, implies, first, That whether they be in lesser particulars, or in greater, yet if known to be but a few, they are not instantly to be brought to public, (except some circumstance necessitate the same for greater edification,) which order ought to be observed by ministers, elders, and private persons, act 11, Assem. 1707, cap. 2, sec. 1. It implies further, That when the persons offending doth accept of a private admonition, there is then no more mention to be made thereof. Again, if that private admonition prevail not, then the person offended is purposely and seriously to take two or three with him, for the further reclaiming and admonition of the offender, before it come to the church, which may be fitly done at ministerial visitation of families. Moreover it implies, if this hath not the desired effect, then is the offence to be delated unto the church session; and when it is brought there, it were fit, that some who had been witnesses to the private admonition, were brought with the parties, to inform the judicature, and instruct that the offender hath been seriously admonished in private, but without success: therefore it is convenient that the witnesses to the private admonition be members of the session. In the last place, we may draw from this order, that if the sessional admonition have weight with the offender, so as to reclaim him, and satisfy those he had scandalized, there is no need for rebuking him before the congregation, except the forbearing a congregational rebuke may hazard the infection of others, and encourage them to follow the offender's practice.

6. One is obstinate when he doth refuse either to hear private admonition, or doth decline to appear and answer before church judicatures, after a third citation, either personally apprehended, or a copy thereof left at his dwelling house; but one citation given *apud acta*, is peremptory, and disobedience thereunto may infer contumacy likewise, act 11, Assem. 1707, cap. 2, sec. 4, 5. In the next place it is contempt in one, when appearing, to justify his offence, or deny it when evidently proven. It is also contempt, when one acknowledges his offence, but with a proud and insolent behaviour; or, who useth haughty, reflecting, or irreverent expressions; such an offender doth thereby vilify the ordinance

of Christ more than if he had made no compearance at all. Lastly, it may be constructed a not hearing of the church, when one continues to commit the same sins, notwithstanding of his serious-like penitence for the same.

7. Every verbal acknowledgement and promise of amendment, ought not always to be so satisfying as to sist process; for notwithstanding of all that, the offender's gesture when compearing, his expressions elsewhere, and his common walk and conversation, may convince the judicature that he is but a mocker; on the other hand, church officers ought not to delay the removing of an offence, till they be satisfied that the offender is sincerely and graciously penitent, for that would engage church judicatures to decide as to the state of some souls, which is bold for them judically to dive into, and when all is done, impossible to arrive at any certainty about it. It is to be noticed, that in church discipline, a difference is to be made between what is satisfactory unto a church judicature, so as to admit the offender unto all church privileges, as if the offence had never been; and what may be satisfying, so as to sist procedure for the time. Upon the confession of Simon Magus, Acts viii. 24. it is not probable that as he then did thereby prevent excommunication; so upon it, it is not probable, that he was thereupon immediately admitted into church communion. There is requisite then in the offender, who intendeth to have access to church privileges, a sober, serious acknowledgment of the offence, with the expression of an unfeigned like purpose to walk inoffensively, and especially to watch against relapses; and if there appear no ground for hindering the judicature to esteem the offender one, who purposeth as he expresseth, they should accept of his expressions as satisfactory.

8. By the act of Assembly 1596, ratified 1638, it is appointed, that none falling into public slanders be received into the fellowship of the kirk, except the minister have some appearance and warrant in conscience, that he hath both a feeling of sin and apprehension of mercy, and for this effect, that the minister travel with him in doctrine, and in private instruction, to bring him hereto, and especially in the doctrine of repentance, which being neglected, the public place of repentance is turned into a mock. By the 4th act of Assembly 1705, they do appoint and ordain (with respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftener than once before the congregation) that after such persons are convict before the session, it be ju-

dicially declared unto them, that they have rendered themselves incapable of communion with the people of God in sealing ordinances, and that they be appointed to appear in public to be rebuked for their sin, whether they appear penitent or not, conform to the divine institution, 1 Tim. v. 20, and it is referred to the respective church judicatures concerned, to determine how often such delinquents shall appear in public: and they ordain, that after a public rebuke, the minister and elders be at further pains in instructing the minds of the scandalous, and that the session upon satisfaction with their knowledge, and sense of their sin, do admit them to public profession of their repentance, in order to absolution. But if, after taking pains on them for some competent time, they still remain grossly ignorant, insensible, and unreformed, the session is to advise with the presbytery; and if the presbytery shall see cause that then the sentence of the lesser excommunication be pronounced against them in face of the congregation, from which they are not to be relaxed, nor admitted to make public profession of their repentance, in order thereto, till the session be satisfied with their knowledge, seriousness, and reformation.

9. By the 11th act of Assembly 1707, cap. 3, in offences, such as swearing, cursing, profaning of the Lord's day, drunkenness, and other scandals of that nature, ordinarily the guilt for the first fault would be spoken to in private by the minister or an elder, and on promise (from a sense of guilt) to amend after admonition, they may sist there; but if the person relapse, he should be called before the session, and if found guilty, may be there judically rebuked, where the session on promise, from a due sense to amend, may again sist; but if the person amend not after that, the session should orderly proceed, unless repentance appear, and due satisfaction be offered, till they inflict the censure of the lesser excommunication.

10. Perhaps an offender may make such satisfying acknowledgments for his scandal, that the judicature cannot but judge them sufficient to remove the same, but only he refuses to appear in the accustomed place, where scandalous persons do publicly profess their repentance; in which case, I am sure that formality and circumstance of a fixed place is not of such moment, as to bear the stress and weight of one satisfying the church. For the apostolical order, 1 Tim. v. 20, joining all who have offended, publicly to be rebuked before all, is sufficiently answered by their receiving a public re-



buke for their scandal, in the usual place and seat where they hear the word preached, and that without putting of their person under arrest in some certain place, for some time.

11. The key of doctrine differs from the key of discipline, thus; the first doth only absolve a sinner upon the condition of saving grace, but the other doth absolve upon an outward serious profession of repentance; by the one, men's faults are only reprov'd, but by the other, particular persons are by name reprehended. Though a person be guilty of some alleged scandalous sin, yet a minister cannot, in public, give him an ecclesiastic rebuke for it, without the previous trial, and thereafter the sentence of a church judicature, otherwise he usurpeth their authority, and sheweth more of himself than of respect to church order and edification. Indeed I confess a minister may sometimes very consequentially from his text reprove such sins and their aggravations, as may make impression upon all the hearers, that the application does agree with such circumstantiated sins, whereof they know such persons to be guilty. In which case, the reproof is to be regarded as coming from the word of God: but if there must be a plain deviation from the text, before the preacher can get that sin then reprov'd, in that case it looks somewhat like a design, and cannot but be feared it may want its due authority. Now a minister may easily prevent this, if he shall but choose those texts which point, without any violence, against such sins.

12. At the offender's first appearance, he is to acknowledge himself guilty of the sin for which he is to be rebuked. Again, he should edifyingly declare his sorrow for it before absolution, that the congregation may the more cordially readmit him into their communion. But much or oft speaking is to be demanded or allowed, as it may be found most edifying: yet all recantations of errors are always to be made explicitly. A public rebuke ought to be so managed, that there be no ground given for constructing it a penance, punishment, or mark of reproach, but the minister is to carry therein, as one much affected and afflicted with the sin: he is to behave authoritatively, having words fitted for edifying the congregation, and humbling of the offender. And that the authority and solemnity of the rebuke may have the deeper impression on all, it were fit that God were addressed in reference thereto, either before or after the rebuke.

13. Matters may fall under the cognition of church judica-

tures several ways; as, first, by accusation, when a party formally appeareth, as an accuser, and is content *inscribere in crimen*, that is, to bind himself to underly the same censure, (he not proving the accusation) which the defender would have merited had the libel been proven. If, upon trial, there be found any presumptions of guilt, or, if it appear that there was a *fama clamosa* for what is libelled, the pursuer in that case ought not to be repute a calumnious accuser, even though he succumb in his probation. No infamous person can be admitted an accuser. Infamy, by *Matthæus de Crimini-bus*, is defined, “*Ignominia seu existimationis læsio, quæ quis virorum honestorum numero eximitur.*” Neither are such as are contemners of church authority, or who have been in former pursuits rash and calumnious, to be admitted accusers, A formal accuser is not necessary when the offence is public. If a party cited, either upon accusation, or order of the judicature, be found innocent and acquitted, those who inform them thereof, whether the party require it or not, ought to be noticed, either for their calumny or impudence, as they shall find cause, act 11, Assembly 1707, cap. 2, sec. 8.

14. An accusation, though unduly given, should have this effect, as to prompt the judicatory to enquire and search into the truth of the things represented; this gives no allowance to search and pry into faults *ex levibus conjecturis*; but the warrant for it should be founded upon *fama publica, clamosa, et frequens*. A delation is a verbal information or intimation made against some persons, for faults and offences, unto the members of a church judicature. By the canon law, an informer or delator doth differ from an accuser in this, that he is not obliged *inscribere in crimen*; neither incurs he any penalty although the information be not proven; and by the 11th act, Assembly 1707, cap. 2, sect. 10, the informer may be a witness, except in the case of pregnant presumptions of malice against the person accused, or where he formerly complained for his own interest. Many times offences and scandals are discovered to church judicatures, by the exceptions or objections proponed by parties against each other; I confess, there useth to be too much liberty taken for recriminations in processes, which at any other time were more inexcusable.

15. When persons guilty of uncleanness live in different parishes, the process and censures against them are to be before that session where the woman liveth, or where the scandal is most notour. If the uncleanness be committed where

neither party resides, as perhaps in the fields, or in time of fairs or markets, in these cases, they are to be processed and censured where their ordinary abode is, except the place of their abode be at a considerable distance from the place where the sin was committed, and the scandal be most flagrant where it was committed. The session, where the sin is to be tried and censured, is to acquaint the other session where any of the parties reside, who are, *ex debito*, to cause summon them to compear before that session where the scandal is to be tried. Church sessions are not to enter upon processes for uncleanness, where there is not a child in the case, unless the scandal be very flagrant. For, upon the one hand, many of these actions, which give occasion to the raising the scandal of uncleanness, are such as are not themselves alone publicly censurable, but are to be past by with a private rebuke; yet, on the other hand, some of these actions, which come under the name of scandalous behaviour, may be so lascivious and obscene, and clothed with such circumstances, as may be as offensive and censurable as the act of uncleanness itself, act 11, cap. 4, Assembly 1707.

## TITLE II.

### *Of the Transaction, and Prescription of Scandals.*

1. Though a party who commenced a process of scandal, doth disclaim or renounce the same, yet the church may proceed; for transactions between parties cannot take away the church's interest in removing offences; yea, even though a party hath been dismissed for a time, through want of probation, if it shall afterwards emerge, the process may thereupon be wakened.

2. By the 11th act, Assembly 1707, cap. 1, sec. 4, the several judicatures of this church ought to take timeous notice of all scandals; but it is judged, that if a scandal shall happen not to be noticed in order to censure, for the space of five years, it should not be again revived, so as to enter in a process thereanent, (unless it be of a very heinous nature, or become again flagrant); but the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty. And for the same reason, persons who have resided in parishes, for the space foresaid, should not ordinarily be challenged for want of testimonials. When nothing hath been objected by the members of presbyteries or sessions, against any of the ministers or elders, at

the privy censures of these respective judicatures, the members thereafter ought not to be heard in their accusations against one another, for any thing that was committed before the last privy censure. And neither should the people be heard in their accusations against any of their ministers or elders, or any of the ministers or elders against one another, for anything that was committed prior to the last presbyterial visitation of the parish; because then it was the season, and hour of cause, to have propalled it, if private methods had not succeeded for removing the same; and the insisting, after such an omission, is rendered most suspicious, unless satisfying reasons be given for it. See cap. 7, sect. 9, of the forecited act of Assembly.

### TITLE III.

#### *Of Libels, Probation, and Citation.*

1. A libel is a law syllogism, consisting of the proposition or relevancy, which is founded upon the laws of God, or some ecclesiastical constitution agreeable thereto, as, whosoever is absent from public divine service on the Lord's day, ought to be censured. The second part consists of the subsumption or probation, which condescends on matter of fact, viz. but such a person did, upon such or such a Lord's day, absent unnecessarily from the public worship of God. The third part consists of the conclusion or sentence, which contains a desire, that the profaners of the Lord's day, according to the laws and customs mentioned in the first part, may be censured.

2. By cap. 2, sec. 7, act 11, Assembly 1707, the moderator is to inform the offender appearing, of the occasion of his being called, and to give him, if desired, a short note thereof in writing, with the names of the witnesses that are to be made use of against him, that so he may be prepared to defend himself, which is agreeable to the common principles of justice and equity. The libel must condescend on time and place, when and where the facts and offences libelled were committed, that so the offender may not be precluded from proving himself to have been absent, and so impossible for him to have done such a deed, or so offended, at the time and place libelled.

3. The relevancy of the libel is the justness of the proposition, whether the matter of fact subsumed be proven or not; and therefore, if the thing offered to probation be obviously

irrelevant and frivolous, it ought to be rejected and not admitted to proof. For nothing is to be admitted by any church judicature as the ground of a process for censure, but what hath been declared censurable by the word of God, or some act or universal custom of this church agreeable thereto, as said in cap. 1, sec. 4, forecited act. Although one article of the libel, *per se*, be not relevant, yet if three or four articles *conjunctim* be relevant, the same may be admitted to probation. The relevancy of a libel is so much to be regarded, that, I think, it is unlawful for any to be either witnesses or members of inquest upon irrelevant libels. What? Is not this to be a "witness against thy neighbour without cause," Prov. xxiv. 28. It was a truth that Abimelech the priest gave hallowed bread, and the sword of Goliah to David; yet it was a bloody sin for Doeg the Edomite, to inform the wicked King against the Lord's Priest, 1 Sam. xxi. and xxii. It was a presbyterian minister's duty to preach the Gospel under the late persecution, secretly and cautiously, to honest hearers at their desire; yet it would have been a Doeg-like sin, to have witnessed the truth in that matter before our then judges, seeing by the 8th act of Parl. 1685, it was death for such, even to preach in houses. What is here said against such witness-bearing, strikes with as much force against the members of inquests finding such irrelevant libels proven; for though it was both true, what the one witnessed, and the other found, yet I would be afraid, if I were in their case, that before God I should be condemned as accessory to the shedding of innocent blood. Before the witnesses be judicially examined, the accused party is to be called, and the relevancy of the libel discussed, sect. 10, cap. 2, act fore-said. But in causes intricate and difficult, the discussing of the relevancy may be delayed till probation be taken: and then, greater light being thereby given, both relevancy and probation may be advised jointly, as the Lords of Session and Privy Council have oftentimes done.

4. When the libel is read, the defender sometimes proposeth a defence, which, if admitted and proven, exculpates and clears him from the fault libelled, either in whole or in part, as, if the libel be murder, and the defence *inculpata tutela*; or, if the libel be adultery, at such a time and place, and the defence be *alibi*. But the party accused must, before probation, offer the grounds of exculpation to be proven by witnesses; in which case, the moderator and clerk, if required, are to give warrant to cite witnesses upon the parties'

charges, the relevancy of the offered exculpation being first sustained by the judicature: and if the exculpation be fully proven, all further proof of the libel must there sist. But if the substance of the scandal be once proven, there can be no place for exculpation, unless it be as to some extenuating circumstances, not contrary to, but consisting with the depositions already taken.

5. Probation is that, whereby the judge is convinced that what is asserted is true; and he must be convinced, either by confession or oath of party, or writ, witnesses, or presumptions, as follows: Probation by confession, if judicial, is the strongest of all probation; but if men confess a crime, rather from weariness of, or aversion to life, than from conscience of guilt: or, if there appear any signs of distraction or madness, then such confessions ought not to be rested upon, except they be adminiculate with other probation. Confessions before a church judicature are not rested upon before civil courts, except they be renewed before themselves; and so it is *e contra*, for men may incline to confess things before church judicatures, knowing that church discipline is "*medicina, non pœna*," or "*ob levamen conscientiae*," which ought not to be discouraged; whereas they may deny the same fault, and resile before the civil judge, for fear of corporal punishment.

6. An oath of calumny may be exacted of either party, whereby they swear that they believe or judge, that the points they insist on, are both just and true, and they will be holden as confessed, if they refuse to depono when required. By an oath of verity, or for confirmation, the swearer positively affirmeth by his oath, that what he asserteth is true: and it is the only oath sworn by a party which can terminate the plea and strife. But by an oath of credulity, the swearer doth not assert the verity of the matter, but the verity of his belief of the matter, which only terminates the plea in so far as to exclude him who sweareth, from insisting on these points contrary to his own belief or persuasion. See Stair's Instit. p. 698, 701.

7. If the delated father of a child, after private conferences, do still deny, then the session is to cause cite him to appear before them: if he persist in his denial, when compearing, he is to be confronted with the woman, and the presumptions held forth as particularly as possible: and if after all this he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as,

suspicious frequenting her company, or being "solus cum sola, in loco suspecto," or in suspected postures, and such like, which he cannot disprove, may so lay the guilt upon him, as to shew him, that there appears no other way of removing the scandal, but his appearance to be publicly rebuked therefor; if he will not submit himself to be rebuked, it is safer that a true narrative of the case be laid before the congregation, and intimation given, that there can be no further procedure in the matter, till God in his providence give further light, than that an oath be pressed, and upon refusal, proceed to the higher excommunication. But if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may allow the same, the form whereof may be as follows.

S. I A. B. now under process before the presbytery of \_\_\_\_\_ for the sin of \_\_\_\_\_ alleged to be committed by me with C. D. and lying under that heavy slander, being reputed as one guilty of that sin: I, for ending the said process, and giving satisfaction to all good people, do declare before God, and this \_\_\_\_\_ that I am innocent and free of the said sin of \_\_\_\_\_ or having carnal knowledge of the said C. D., and hereby I 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 in swearing by him who is the great Judge, Punisher, and Avenger, as said is, and that in the 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.

9. But this oath is not allowed to be taken in any case but this, when the presumptions are so great, that they create such jealousy in that congregation and session, that nothing will remove the suspicion but the man's oath of purgation; and when his oath will indeed remove the scandal and suspicion; in all other cases this oath is in vain, and so should not be admitted, and never but by advice of the presbytery. It is to be taken either before the session, presbytery, or congregation, as the presbytery shall determine. And if it be taken before the session or presbytery, it is to be intimate to the congregation, that such a person hath taken such an oath, and the party may be obliged to be present in the congregation, and may be put publicly to own his purging himself by

oath, and thereupon be declared free from the alleged scandal. All what concerns this oath, is recommended by cap. 4, sect. 6, &c. of the forecited act of Assembly.

10. After an end is made, as above, with the person delated as father, the woman is to be dealt with to give the true father; and if after all serious dealing and due diligence, she give no other, she is to be censured according to the quality of the offence confessed by her, without naming the person delated; the judicature reserving place for further censure, upon further discovery.

11. If a person do voluntarily confess uncleanness where there is no child, and the case be brought to the kirk-session, they are to enquire whether it floweth from disquietness of mind, or from sinister design; as when a man suing to a woman for marriage, is denied, but spreads the report that he hath been guilty with her. If it be found that there is no ground for the confession, the person confessing is to be censured as defaming himself, and likewise as a slanderer of the other party; and withal, application is to be made by the session to the civil magistrate, that he may be punished according to law: see that forecited 4th chapter of the act of Assembly.

12. It is rare to prove a scandal by writ, but yet it may happen so to be proven, and the want of the writer's name and witnesses, ought to be no objection in church courts against writs, more than in bills of exchange. If one denieth that to be his subscription, it is hard to sustain its being proven to be his *per comparationem literarum*, which is but a presumption, and men's hands may be sometimes so artificially imitated, that it shall be hard to discern which is which; besides, one man's writ may differ from itself at several occasions.

13. Probable presumptions, and many concurring, may do much to prove, especially in such things which rarely can be proven with ordinary clearness. The presumption of cohabitation, after the parties are discharged, is sufficient, as may be seen on that title, to infer adultery; also, cohabitation, and behaving as man and wife, for some considerable time, presumeth marriage; and the depositions of witnesses, are sometimes founded upon presumptions, as when they depone upon things which depend upon acts of the mind, as, ebriety, and *dolus malus*. But when a libel is only proven by presumptions, it is not safe to pass the ordinary censure thereupon, as if it had been proven by unexceptionable witnesses and full probation.



14. Witnesses may be cited on fewer days than parties. The diligence against them may run in this form, viz., Mr. A. B. moderator, &c. Forasmuch as                      pursuer, &c. having applied to us for 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                      personally, or at their dwelling places, to compare 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 enquired at them; with certification as effeirs. And this our precept you are to return duly execute and indorsate. Given, &c. by warrant &c. If witnesses refuse, after three citations to compare, then they may be proceeded against as contumacious; or, if judged needful, after the first or second citation is disobeyed, application should be made to the civil magistrate, that he may oblige them to appear; see that 9th sect. cap. 2, of that frequently above cited act of Assembly.

15. In church judicatures, women and minors past fourteen years of age, are received witnesses. If the defender appear, he may object against any of them, and if the objection be relevant, and made evident to the judicature, the witnesses are to be cast. For which, see the same act. The objections of infamy, or enmity, are relevant to cast any witness; but the design of church courts being *ad tollendum scandalum, et ad eruendam veritatem*, they will sometimes receive witnesses, *cum nota*, against whom some common and general objections have been made, reserving to themselves to consider how far they will make use of their testimony at advising the sufficiency of the probation.

16. Witnesses are to be sworn thus, lifting and holding up the right hand: They swear by God, and as they shall answer to Him, they shall tell the truth, and nothing but the truth, concerning the articles and points of the present process, in so far as they know, or shall be asked. Which oath the moderator is judicially to administer, and though there be no relevant objection against the witnesses, yet they are to be solemnly purged of malice, bribe, or good deed, done or to be done, and of partial counsel, by which some understand prompting or consulting for making of the process. The witnesses are to be sworn and examined in presence of the accused party, if comparing, and he may desire the modera-

tor to propose such questions, or cross-questions, to the witnesses, as may tend to his exculpation, which, if the judicature think pertinent, are to be proposed. The *initialia testimoniorum*, such as their age, married, or unmarried, or *soluti*, that is, widows, and the like, are proposed, that the deponent's veracity may by these be traced. If witnesses cannot subscribe their names to their deposition, the clerk is to mark, that they declare they cannot write, and the moderator is always to subscribe the same, whether they can write or not. If they can but subscribe the initial letters of their names, they should do it, and the clerk is to write about their mark thus, (Adam A. B. Bruce his mark.)

17. A singular witness is one that hath no concurring witness. The singularity is either, *obstativa*, which is, in a crime, not reiterable; as if one should depone, that a man was murdered at one place, and another depone he was murdered at another place. Again, there is a *singularitas adminiculativa*, which is, where the witnesses do not concur in their depositions; yet they are not contrary, but the one assists the other, as in the proving that a horse was stolen, one should depone that he saw the thief go in without a horse, and another saw him take the horse. In the third place, there is a *singularitas diversificativa*, when witnesses depone different acts in a crime, which is reiterable; as if one witness depone upon an adultery, committed at one time, and another of an adultery committed at another time. Is that person's being guilty of adultery, sufficiently proven?

18. Of things notour, there are some which cannot be proven, and yet are true, as such a man is another's son; other things can be proven which are *facti permanentis*, such as, that there is a palace or fountain in such a town, *sed notorium non indiget probatione*. Again, there are things notour, which need no probation, which are *facti transeuntis*, as that such a person did publicly commit murder. Although judges cannot be both judges and witnesses, yet he is a witness and a judge too of what he sees and hears in judgment, for these are counted as notour: See Stair's Instit. p. 704.

19. It is repugnant to the laws of God and man, to condemn any that is absent or unheard, unless his absence proceed from his own fraud or stubbornness: therefore, in order to a due hearing, citations must be given to parties concerned, in writing, especially if they be called before presbyteries, and other superior judicatures of the church; see the 2nd cap. of the forecited act of Assembly. The citation

must bear, 1. The judicature before which the person cited is to appear. 2. The name of the pursuer (if the party be not cited by order of the judicature.) 3. The name of the defender. 4. The cause for which the person is cited. 5. The place where compearance must be made. And lastly, The time when they must compear. And this is to be observed, that all parties and witnesses cited before church courts, are to be designed in these citations, as they are or may be commonly in all other writs. If they be residing within the parish, they may be cited upon forty-eight hours advertisement.

20. It hath sometimes been practised, to cite parties even when out of the country, a particular instance whereof is, the commission of Assembly 1644, caused cite some Scots, then about Oxford in England, (for emitting a malignant declaration) at the market-cross of Edinburgh, pier and shore of Leith, to appear before the then next ensuing General Assembly, upon sixty days warning, counting from the day of the citation.

21. If the persons be charged with scandal, who live within the bounds of another parish, the kirk session of that parish where that person resides, should be desired to cause cite them to answer before the session in whose bounds the scandal happened, and the same course is to be followed in such cases by the other judicatures of the church.

22. Citations are called dilatory for the first and second, that the party may appear; and the third, or one given *apud acta*, is called peremptory, wherein the judicature certifies the person cited, that they will proceed to the cognition of the cause, though he appear not, or that they will proceed against him as contumacious. If the person do not compear upon this peremptory citation, and no relevant excuse therefor be proposed and sustained, the judicature is to proceed to take cognition, either by examining of witnesses, or by other documents, for the verity of the scandal, and that before they censure him for contumacy; see cap. 2, sect. 6, of the fore-cited act. If any under process for scandal abscond, they should be cited first from the pulpit of the parish where the process depends, and where they reside; and if they do not thereupon appear, they are next, by order of the presbytery, to be cited from the pulpits of all the kirks within their bounds, to compear before them; and if they do not then appear, they are to be declared fugitives from church discipline in all the kirks within that bounds, desiring that if any

know of the said fugitives, they may give notice thereof, and the presbytery to sist there, until they get some further account of these persons; see sect. 18 of the forecited cap. and act. This citation is commonly called *edictal*, and likewise takes place when the person to be cited takes methods to hinder a copy to be given in the usual way, or, when it is dangerous for the officer to travel to that place.

23. Sometimes the warrant for citing bears the libel, and then a full copy thereof is given, but sometimes it bears not the libel, and then the defender is cited to hear and see the informations against him, and must, when appearing, be treated as in sect. 2 of this title; the form of which summons may run thus: Mr. A. B. minister, and remanent members of the church session of \_\_\_\_\_ to \_\_\_\_\_ our officer, we require you, that upon sight hereof, ye pass and lawfully summon \_\_\_\_\_ personally, or at his dwelling-house, to compear before the said session, within the session-house at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ next to come, in the hour of cause, to answer to the information or libel against him, for the sin and scandal of \_\_\_\_\_ laid to his charge: with certification &c., given at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ by warrant of the said session, A. B. sess. clk. Besides the general certification of the church censures, which is the method ecclesiastic courts do take, to procure obedience to their orders, there are some proper certifications, as in transportation of ministers, and their edicts of ordination and admission, of which already in Book I. Now the copy of a summons may run thus: "I \_\_\_\_\_ church officer of \_\_\_\_\_ by virtue of an order directed from them, lawfully summons you \_\_\_\_\_ to compear, &c. with certification, &c. conform to the principal warrant, dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ This by warrant of the said session I give, before these witnesses, \_\_\_\_\_ &c. A. B. officer. He is to return the summons execute in these terms, viz. upon the \_\_\_\_\_ day of \_\_\_\_\_ I \_\_\_\_\_ church officer of \_\_\_\_\_ past at the command of the within written order directed from the church session of \_\_\_\_\_ and by virtue thereof, lawfully summoned the within mentioned \_\_\_\_\_ personally apprehended, and delivered to him a true copy of the said warrant, to compear before the said session, day and place within specified, to answer for the sin and scandal of \_\_\_\_\_ laid to his charge, and made certification as is within exprest. This I did conform to the within written warrant in all points; before these witnesses, A. B. &c. And for the

more verification hereof, we have subscribed thir presents, at the day of &c. The execution must bear that either citation was given to the party personally, as above, or left at his dwelling-house, with his wife, children, or servants, if the officer get entry, or by affixing a copy on the door, after knocking several times if he get not entry. If any man bind as cautioner for another that he shall undergo the discipline of the church, under a pecunial pain for the use of the poor, he should bind to the magistrate and not to the church.

24. When minors are convened before church judicatures, their curators are not to be cited as before civil courts, though they may be acquainted therewith, that their pupils may receive suitable advice and instruction from them. A minor, that is a male past fourteen, and a female past twelve years of age, may be called before church judicatures; when guilty, as for pupils under that age, it will be rare if ever they be concerned as delinquents, except *ubi malitia supplet etatem*, that is, where strength of nature is as far advanced in them as it useth to be in others of riper years. The conclusion of all church process, being against the defenders themselves, none can appear for them; nay, advocates are not so much as allowed to plead for compearing parties, otherwise pleas would probably be more frequent and tedious too; and the truth hath been many times expiscate by the countenance, behaviour, or expressions of parties themselves, which would have been concealed by advocates. In the MS. acts of Assembly at Edinburgh, 1575, they refuse to allow advocates to plead before them in a process of dilapidation, against the Bishop of Dunkeld, but ordains him to answer himself, and if he think fit may choose any minister to reason for him. When incorporations are cited, it is necessary they be allowed to answer by some commissioned from their body, who must be members of that society, or reside therein: if a burgh royal were cited, they would not be allowed to appear by him who resides not among them, but only is one of their honorary burgesses; and no party sustains great loss thereby, seeing they may advise with whom they please in drawing of answers, and the like.

## TITLE IV.

*Of the vocational and personal Faults of Ministers and Probationers, how they are Censured, and of the method of proceeding to Censure, and of Reponing them against these Censures.*

1. By the 132d cap. Parl. 8, James VI. non-residence is declared to be, when a minister resides not within the parish, but is absent therefrom, and from his kirk, and using of his office, for the space of four Sabbaths in the year, without a lawful cause allowed by the presbytery; which non-residence is deprivation. By parity of reason the same pain may be applied against principals and masters of universities, who attend not upon their charges. The ministry is said to be *militia spiritualis*, they are watchmen fixed by their superiors as sentinels at such posts, which, if they desert without warrant, all the order of the spiritual discipline is overturned. Agreeable hereunto is the act of Assembly 1596, ratified by Assembly 1638, whereby it is appointed, that ministers not resident with their flocks be deposed, according to the acts of the General Assembly, and laws of this realm, otherwise the burden is to lie on the presbytery, and they to be censured for the same. And by the 5th article of the same act, it is appointed conform to the old acts of Assemblies therein mentioned, that ministers reside in their own parishes, or at their ordinary manses. By the 4th chapter of the Policy of the Kirk, they who are once called of God, and duly elected by man, and have once accepted the charge of the ministry, may not leave their functions, otherwise the deserters are to be admonished, and in case of obstinacy, excommunicated. And by the MS. acts of Assembly at Edinburgh, 1570, it is appointed, that ministers at their public instalment, shall promise solemnly never to leave their ministry at any time thereafter, under the pain of infamy and perjury. Conform hereunto, in the 1st chap, article 14. of the French Church Discipline, ministers with their families, must actually reside in their parishes, under pain of deposition; and by the 23d article, deserters of the ministry shall be excommunicated, if they do not repent, and re-assume the office God hath committed unto them. By the Assembly 1690, sess. 15, although ministers have received their ordination from foreign churches, yet if they have a standing relation to any charge in this church, they are not to remove out of the kingdom, without consent of

the respective judicatures of this church, otherwise they may be treated as deserters; see the Ordination Engagements, Book 1. If persecution be particular against one minister, in that case, it is generally thought, he may warrantably flee, without being esteemed a deserter: but it will scarcely defend against desertion, when the persecution becomes general. A minister seems to be particularly tied to wait upon his charge in the time of a public calamity: and therefore the commission, 16th May, 1645, found that Mr Mungo Law, minister at Edinburgh, could not be spared from his charge, to attend the general's regiment, in respect of the fear of the infection in the city.

2. Supine negligence is, an habitual or customary neglect of some one or other of the pastoral duties; but every escape cannot infer it, the pastoral office being in some sense a burden too heavy for the shoulders of angels. By our law supine negligence is relevant to infer deposition, even as error, scandal, ignorance, and contumacy are; see the act of Parl. 1690, settling the church government. And by the forecited act of Assem. 1596, it is appointed, That such ministers as be slothful in the ministration of the sacrament of the Lord's supper, be sharply rebuked; and if they continue therein, that they be deposed. And by the act of Assem. June 13, 1646, among the enormities and corruptions of the ministerial calling, the following is mentioned, viz. idleness, that is, seldom preaching, as once on the Lord's day, or in preparation for public duties, not being given to reading and meditation, but only now and then, not like other tradesmen, continually at their work.

3. Dilapidation of benefices is, the deed of any churchman, whereby his rents are wasted, diminished, or altered to the worse from what they were. And the punishment is, disannulling of the deed, and deprivation to the granter, James VI. Parl. 7, cap. 101. By that forecited act of Assem. 1596, it is declared, that dilapidation of benefices, demitting of them for favour or money, without advice of the kirk; interchanging of benefices, by transaction, or transporting of themselves by that occasion, without advice of the kirk, are precisely to be punished. Such like, setting of tacks without consent of the Assembly, is to be punished as dilapidation.

4. Simony is the buying or selling of any spiritual thing, or of what is annexed thereto. The canonists describe it to be, "*Studiosa voluntas, seu cupiditas emendi vel vendendi spiritualia, vel spiritualibus annexa.*" Thus simony may be

committed by making advantage of administering the sacraments : By James VI. Parl. 21, act 1, any condition made by the intrant with the patron, reserving to himself a sufficient maintenance, answerable to the state of the benefice, is declared not to be simony. In this crime, witnesses who are not very habile, or “ omni exceptione majores,” such as whores and infamous persons, may be admitted, and it may be proven by presumption or oath of party, according to the opinion of some lawyers, and all because it is ordinarily carried on with much privacy and clandestine dealing. “ Ambitus” is “ crimen mere ecclesiasticum,” and not usually punished by laicks. By the forecited act of Assembly, 1596, it is provided, that none seek presentations to benefices without advice of the presbytery ; and if any do in the contrary, they are to be repelled as *rei ambitus*. They further appoint that it be enquired, if any by solicitation or moyen, directly or indirectly, press to enter into the ministry ; and if it be found, the person so soliciting, is to be repelled ; these three crimes, dilapidation simony, and ambitus, do often meet in one and the same person, and the crime is denominate from that which most predominates in it.

5. By the 23d act of Assembly, 1696, it is recommended to all synods and presbyteries, that they advert to the many irregularities committed by vagrant unfixed ministers ; and presbyteries, where any difficulties occur, are to consult their synods before they proceed to censure. By the 27th act of that Assembly, they suspend one from the exercise of his ministry, because he exercised it in a vagrant disorderly way. And by the 18th act of Assembly 1701, presbyteries are appointed to send in to the commission an account of such ministers, or preachers, as intrude into parishes, that application may be made to the government for removing them, that the kirks intruded into may be orderly planted. Assembly 1694, sess. 14, the Queen, by her proclamation, dated at Windsor, Sept. 20, 1708, in pursuance of several acts of Parliament, made in favours of the present church establishment, particularly the act 1695, against intruders, doth require and command, all such as have intruded upon churches or manses, to remove therefrom, and all magistrates and judges within their respective jurisdictions, are to see the same executed, by discerning accordingly, and procuring letters of horning and caption thereupon to be directed *in communi forma*. By the Discipline of the French Church, cap. 1, art. 26, the minister that shall intrude himself, although he were approved by the peo-



ple, is not to be approved by the neighbouring ministers or others, but notice must be given to the colloquy thereof, or provincial synod. And by the 55th article of that chapter, the names of vagrant ministers are to be proclaimed through all the churches.

6. By the foresaid act of Assembly 1596, ratified 1638, it is enacted, that such ministers as shall be found not given to their books, and study of the Scripture, not given to sanctification and prayer, that studies not to be powerful and spiritual, not applying the doctrines against corruptions, which is the pastoral work, obscure and too scholastic before the people, cold and wanting in spiritual zeal, negligent in visiting the sick, or caring for the poor, or indiscreet in choosing parts of the word not meetest for the flock, flatterers and dissembling of public sins, and especially of great personages in their congregations; all such ministers are to be censured according to the degree of their fault, and continuing therein are to be deprived. Item, such as be slothful in the ministration of the sacraments, and irreverent, or profaners thereof, by admitting the ignorant or profane thereto, and omitting the due trial of such as are to be admitted, or using but light trial or having respect in their trial to persons. All such ministers are to be sharply rebuked, and if they continue therein, are to be deposed. Item, but if any minister be found a seller of the sacraments, he is to be deposed simpliciter; and such as colude with scandalous persons, by overlooking them for money, do incur the like punishment. Item, all ministers, who neglect the due exercise of discipline, and continue therein after admonition, are to be deposed.

7. By the forecited act 1596, it is appointed, that such ministers as are light and wanton in their behaviour, as in gorgeous and light apparel, or in speech, or in using light and profane company, or that are guilty of dancing, carding, dicing, and the like, if they continue therein after due admonition, shall be deposed, as scandalous to the gospel; and agreeable hereto is the 54th canon *Concilii Laodiceni*, "Quod non oportet sacratos, vel clericos in nuptiis vel conviviis aliqua spectacula contemplari, sed priusquam ingrediantur Thymelici, surgere et secedere debeant." Item, ministers found to be swearers, or banners, profaners of the Sabbath, drunkards or fighters, are to be deposed *simpliciter*. By the 27th and 42d of these canons, called *apostolical*, "Episcopum, vel presbyterum, vel diaconum verberantem fideles peccantes, aut infideles injuriam facientes ac per hoc timeri volentem, ab officio

deponi mandamus." And by the other canon, "Episcopus, presbyter, aut diaconus, aleæ vacans, aut ebrietatibus, vel desistat, vel gradu suo dejiatur." Item, ministers that are detractors, flatterers, breakers of promise, liars, brawlers, and quarrellers, after admonition, if they continue therein, they are to be deposed. By the 53d canon, called *apostolical*, "Si quis clericus in caupona comedens deprehensus fuerit, a communionis sodalitate secernatur, præter eum qui vitæ necessitate diverit in hospitium." And by the 55th canon *Concilii Laodicensi*, "Quod non oportet sacros vel clericos, ex collatione, convivia peragere, sed neque laicos." And by the 43d canon, *Concil. Carthaginen.* "Ne in caupona versentur clerici, nisi hospitio accepti. Ut clerici comedendi, vel bibendi gratia, non ingrediantur, nisi hospitii necessitate compulsi." By our law, (vid. tit. 13. book. 3.) the haunting of taverns at unreasonable hours therein condescended upon, is equally punishable with drunkenness. So that a minister's drinking temperately in change-houses, though with good company, (but at forbidden hours) will not defend him against the punishment of drunkenness. Item, ministers are not to take usury, and if they continue therein, they are to be deprived. By the 44th of these canons called *apostolical*, "Episcopus, aut presbyter, aut diaconus, usuras exigens a debitoribus, vel desistat, vel ordine mulctator." Item, ministers given to unlawful trades and occupations, for filthy gain, such as, keeping of inns, bearing of worldly offices in noblemen and gentlemen's houses, merchandise, and such like, buying of victual, and keeping it to the dearth, and all such worldly occupations, as may distract them from their charge: All such are to be admonished, and if they continue therein are to be deposed. By the 6th of these apostolical canons, "Episcopus aut presbyter, aut diaconus seculares curas non adsumat, alioqui deponatur." And by the 20th canon, "Clericus se fidei jussionibus implicans gradu suo dejiatur." Calderwood, in his History, p. 438, acquaints us, that by acts of Assembly ministers are prohibited to join with their ministry, the office of a notary, husbandry, or hostilary, &c. under the pain of deposition. In the MS. acts of Assembly 1572, the regent desiring some learned ministers to be planted senators of the college of justice, the Assembly finds that none were able to bear both the said charges. The Assembly 1643, (in the index of their unprinted acts you may find some of it,) considering that Mr William Bennet, minister at Ancrum, did vote in the election of a commissioner to the convention of estates from the shire

of Roxburgh, as one of the barons and freeholders there, they do recommend it to him to abstain from civil courts and meetings. As also, they understanding, that Mr Andrew Murray minister at Ebde, had come to succeed to the Lord Balvaird, they appoint him to exercise his calling of the ministry, and to reject such temporal honours during his own life, as being incompatible with that calling, and very good reason that the lesser and least useful should cede to the greater and better work. Item, By the forecited Assembly, act 1596, ratified by the Assembly 1638, all their members are discharged from attending the court, and affairs thereof, without the advice, and allowance of their presbytery: And that they intent no civil action without the said advice, except in small matters. Calderwood, in his history of Assembly 1600, saith to this purpose, "Qui ambulat in sole coloratur, qui tangit picem inquinatur, qui frequentat aulum et curiam profanatur; forum pontificis Petrum ad abnegationem Christi adegit quæ est corporum constitutio, ea est et morum, circumposito aere calido calescimus, et rursus frigido frigescimus; cum sanctis sanctus eris, cum perversis perverteris." Item, ministers are to use godly exercises in their families, such as teaching of their wives, children and servants, in ordering prayers, reading of the scriptures, and such like other points of godly conversation: whoever be found negligent therein, after due admonition, are to be deposed. Item, ministers that are not spiritual, and profitable in their ordinary converse, are, upon due trial, to be sharply rebuked. Item, no minister is to countenance or assist a public offender challenged by his own minister for his public offence, or to bear with him, as if his own minister were too severe upon him, under pain of admonition and rebuke.

8. The General Assembly, by their act 13th June 1646, provide the following remedies against the evils both in the calling and lives of ministers, and appoints them to be observed: *Imprimis*, None are to be taken in to be a helper, or second minister, but such as are able for the same charge. Item, That presbyteries be faithful in the trial of intrants, and in loving admonitions one of another secretly, and that absents from synods and presbyteries, be censured. Item, the moderators of presbyteries are to see the godly conference be entertained at presbyterial meetings, even in the time of their refreshments. Item, ministers are to have more frequent converse among themselves, for strengthening one another's hands, and begetting and cherishing of friendship, and

removing of misconstructions. Item, ministers are to cherish weak beginnings in the ways of God, and courageously oppose all revilers and mockers of the godly. Item, Silence, or ambiguous speaking in the public cause, and not speaking against the corruptions of the time, are to be seasonably censured; and such as mock upbraid, or threaten, stop or disturb ministers for freedom in preaching, and the faithful discharge of their conscience, are to be processed; see Assembly 1648, sess. 26.

9. A presbytery is not to proceed to the citation of a minister, or any way begin the process, until there be first some person, who under his hand gives in the complaint, with some account of its probability, and undertakes to make out the libel, at least under pain of being censured as a slanderer. This informer or accuser ought to be of good report; for it were of dangerous consequence to admit every body to accuse. By the 21st canon *Concilii Chalced.* “Clericos vel laicos, episcopus aut laicos accusantes, non indiscriminatim, nec citra inquisitionem, ad accusationem, nisi eorum existimatio primo examinata fuerit.” Yet presbyteries may proceed against ministers, when a *fama clamosa* of the scandal is so great, that for their own vindication, they find themselves obliged to begin the process without any particular accuser, after they have enquired into the rise, occasion, broachers, and grounds of the said common fame.

10. After the presbytery has considered the libel raised against the minister, then they order him to be cited to get a full copy, with the list of the witnesses names to be led for proving thereof, and a formal citation is to be made in writ, either personally or at his dwelling house, bearing a competent time allowed to give in answers unto the libel, and his just defences and objections against witnesses, at least ten free days before the day of compearance, and the citation should bear the date when given, and the names of the witnesses to the giving thereof, and the execution bearing its date, with the names and designations of the witnesses, should be made in writ, and signed by the officer and witnesses: which being accordingly returned, he is to be called. As to the form and manner of citations, it is not to be understood as a privilege restricted to ministers only, but it is to be extended to all who are convened before church judicatures, with little difference, as has been observed on title citations.

11. If the minister compear, the libel is to be read unto him, and his answers thereunto are to be read, in order to the

discussing of the relevancy. If the libel be found relevant, then the presbytery is to endeavour to bring him to a confession: if the matter confessed be of a scandalous nature, such as uncleanness, or the like, the presbytery, whatever be the nature of his penitence, are *instantly* to depose him *ab officio*, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence, by the public profession of his repentance.

12. If a minister absent himself by leaving the place, and be contumacious, without making any relevant excuse, after a new public citation, and intimation made at his own church, when the congregation is met, he is to be holden as confessed, and to be deposed and censured *instantly* with the lesser excommunication; but if after some time he do not subject himself to the censures of the church, he may be proceeded against till he be censured with the greater excommunication.

13. If a minister accused do appear, and deny the fact, after the relevancy is found, the accused is to be heard object against the witnesses, and allowed to be present at the examination, and modestly to cross-interrogate. If after consideration of the reputation, hability, and depositions of the witnesses, the judicature shall find the scandal sufficiently proven, they are to proceed to censure, as in the case of confession.

14. If the errors be not gross, and striking at the vitals of religion, or if they be not pertinaciously stuck unto, or industriously spread, with a visible design to corrupt, or that the errors are not spreading among the people, then lenitives, admonitions, instructions, and frequent conferences, are to be tried in order to reclaim. And unless the thing be doing much hurt, so as it admits of no delay, the synod or General Assembly are to be advised with, and the reference intimated to the minister concerned, which is agreeable to the 12th act of Assembly 1694. And by that act all the judicatures of the church are forbidden to censure any minister whatsoever for not qualifying themselves in the terms of the act of Parliament, by taking the oaths to the civil government. It is true, that appointment continues only till the next Assembly; but the same reason for making that temporary, may make it a perpetual act.

15. If the libel against a minister be for a multitude of smaller things laid together, the presbytery in proceeding therein are to make a presbyterial visitation of that minister's parish. And if they find these things laid to his charge, to

have been committed since the last visitation, or find a satisfying reason wherefore they were not then tabled, they are to enquire how far the minister hath been guilty of giving offence, after he was acquainted that offence had been taken at these things he is charged with: it should be likewise enquired, if any of the complainers did first in a private way inform any of the neighbouring ministers of these things now publicly complained of? and the presbytery is to judge accordingly. If they find upon trial, the complaint to resolve on the ministers having committed such acts of infirmity or passion; as, considering all the circumstances, may be either amended, and the people satisfied, and that the offence was taken by the minister's own people, only or mainly, then the presbytery is to take all prudent ways to satisfy and reclaim both minister and people.

16. By the 4th act, sess. 2, Parl. 1, Car. II. ministers are to be suspended that absent from the diocesan synod for the first fault, and that such a censure may be inflicted where no excuse is offered is not to be doubted. Yet our church judicatures are rather inclinable to threaten, and be in readiness to revenge every disobedience, than actually to inflict the censures they may, upon every just provocation. Ministers are said to be suspended, because their restoring or deposing is yet doubtful, and doth much depend upon their future behaviour, or upon further discoveries and clearer probation.

17. By the General Assembly, April 1582, are related in Calderwood's History, the causes of deposition were judged to be these, viz. heresy, Popery, blasphemy, perjury, adultery, incest, fornication, slaughter, theft, common oppression, common drunkenness, usury against the laws of the realm, non-residence, absence from his kirk, and neglect of his office for forty days together in a year, without a lawful impediment allowed by the next General Assembly; plurality of benefices, (but the act of Parliament says, plurality of benefices having cure,) dilapidation thereof, and simony. Which crimes are likewise declared causes of deprivation, by cap. 132, of Parl. 1584. It is to be observed, that the church doth not, except in some most horrid crimes, depose and excommunicate both at once. By the 25th of the canons, called Apostolical, "*Episcopus, aut presbyter, aut diaconus in scortatione, vel perjurio, vel furto deprehensus, ordine suo summoveatur; ab ecclesia tamen non excludatur,*" ministers are not to employ deposed ministers in any exercise of the pastoral calling, or entertain ministerial communion with them, under pain of

deposition. By the 11th of these forecited canons, “*Si quis clericus cum deposito, ut cum clerico, simul oraverit deponatur et ipse,*” if any deposed minister shall apply to the civil magistrate for redress against that sentence, in so doing he acknowledgeth in the civil magistrate a privative power, to hinder the church from exercising that jurisdiction she hath received from Christ, and therefore he puts himself out of all hopes of almost ever being restored. By the 12th canon Concil. Antiocheni, “*Si quis a proprio episcopo depositus, presbyter vel diaconus, vel episcopus a synodo, ausus fuit, imperatoris auribus molestiam exhiberi, cum oporteat ad majorem synodum converti, et jus quod se habere putat ad plures episcopos referre, eorumque examinationem et judicium suscipere: qui itaque his contemptis imperatori molestus fuerit is nulla venia dignus, neque sui defendendi locum habeat, nec restitutionis futuræ spem expectet.*”

18. By deprivation a minister is removed only from his particular charge, and loseth the benefice, as was done against the ministers of Linlithgow and Bathgate, by the synod of Lothian, in May 1660; but instances of this kind are rare. By deposition a minister is deposed simpliciter from both office and benefice. This church doth not make that distinction, which the canonists do, betwixt deposition and degradation: for they say, that deposition is pronounced verbally, by his superiors removing him from his office, but in degradation, the ensigns and vestments of the several degrees of orders he had been invested with, are pulled off him, and thereafter his person is delivered to the civil magistrate, to be punished for his crimes.

19. The custom of this church is, that when they enter upon a process of deposition, the name of God is solemnly called upon, for light and direction. Solemn prayer is likewise made before they enter upon the grounds for reponing of deposed ministers. The act of deposition runs in this or the like form: At \_\_\_\_\_ the which day anent the summons and complaint pursued before the presbytery of \_\_\_\_\_ at the instance of \_\_\_\_\_ against \_\_\_\_\_ minister at \_\_\_\_\_ mentioning, &c. And anent the citation, &c. to have compeared, &c. to have answered to the said complaint given in against him, and the same being proven, to have heard a sentence of deposition, or such other censure given and pronounced against him, by authority of the said presbytery, as he should be found to deserve, conform to the acts and practice of this church, observed in the like cases, or else to have

alleged a reasonable cause in the contrary ; with certification, if he failed, the said presbytery would proceed, and do therein as they should find just. Which summons being oft and divers times called, &c. pursuers present and compearing, the said \_\_\_\_\_ defender absent ; the said presbytery having considered the articles of the said summons and complaint ; and being well and ripely advised therewith, they found the same relevant by the acts and practice of this church to infer deposition ; as also, they found the articles of the said complaint sufficiently proven, by the depositions of several famous witnesses, lawfully summoned, solemnly sworn, purged and interrogate thereupon. That, &c. (here narrate the particular things found proven) as the depositions of the said witnesses extant in process bear ; and therefore the said presbytery did by their vote depose the said \_\_\_\_\_ 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, actually depose the said \_\_\_\_\_ 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. Extracted, &c. The sentence of suspension runs in this form : They do suspend the said \_\_\_\_\_ from the exercise of his ministry till a definite time, prohibiting him to exercise the same during the said space, till he be orderly reponed thereto, under the pain of deposition. The Assembly, August 5th, 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. See also act of Assembly, Dec. 18, 1638, sess. 14.

20. By the 3d article of the 10th act of Assembly 1694, if probationers malverse in doctrine or conversation, they shall be accountable to and censurable by presbyteries ; and if they refuse subjection, or prove contumacious to such censures, whether of suspending or recalling their licence, intimation thereof shall be made to the church judicatures where they reside or haunt, that so none may employ them to preach.

21. By the act of Assembly 2d August 1641, ministers deposed for the public cause of reformation, and transgressing the order of this kirk, shall not be suddenly received



again to the ministry, till they first evidence their repentance both before their presbytery and synod, and thereafter the same be reported to the General Assembly. The Assembly 12th August 1643, considering that sentences of superior judicatures should stand effectual till they be taken away by themselves, therefore synods are discharged to repon ministers deposed by Assemblies, and presbyteries from reponing any minister deposed by either. By act of Assembly 13th February 1645, it is ordained, that no minister deposed shall be restored again unto that place where formerly he served, as being a thing prejudicial to the congregation, and derogatory to the weight of that sentence of deposition, and it being almost impossible that ever he can prove useful in that parish again. See the Form of Process on this head. By act of Assembly August 12, 1648, it is enacted, that no minister deposed for being an enemy to the government of this church, when it shall fall out, that he be put in a capacity of re-admission to the ministry, shall enter into the congregation of any other minister, who also hath been deposed for that same fault. By the 53d article of the French Church Discipline, ministers who have been deposed for crimes which deserve signal punishment, or that bear marks of infamy, cannot be restored to their office, what acknowledgment soever they make. And as for other less faults, after due acknowledgment made, they may be restored by the national synod, to serve in another church, and not otherwise, which agrees with these acts of our Assemblies just now cited.

22. By the 13th act of Assembly 1690, all sentences past against any minister, *hinc inde*, by any church judicature, upon the account of the late differences among Presbyterians from the year 1650, till the reintroduction of Prelacy, are declared to be of themselves void and null, to all effects and intents.

## TITLE V.

### *Of Sentences, and their Reviews, of Declinatures, References and Appeals.*

1. Judicial sentences are either interlocutors, that is, a sentence intermediâte between the dependence and termination of processes; or they are definitive, that is, they terminate processes. And these are either absolvitures, whereby the defender is freed and assoilzied from the conclusion of the libel or process, or they are condemnatory, whereby the conclusion

of the process is found just and true against the defender ; or they are mixed, whereby the defender is absolved from some part of the conclusion of the process, and is condemned in other parts thereof.

2. The moderator of no judicature ought to give forth their sentence, till the same be first put in writing, and then he is to order the clerk to read it in presence of all parties. Thus no judicature can be in the least wronged by any clerk's unfaithfulness or omission.

3. When it is doubtful what sentence should be past, it is the safest side, and the least error, either to drop the process for the time, or else to absolve the defender conform to that maxim in law, "*Satius est impunitum relinqui facinus nocentis, quam innocentem damnare, l. 5. d. de pæn.*" for in absolving the guilty there is but an omission, whereas in condemning the innocent there is committing of iniquity and injustice.

4. Before a judicature can think to pass a sentence, parties being first fully heard, must close what they have to say, and after they have concluded their defences and answers, then the judicature begins to advise what sentence to pronounce ; and seeing the pursuer speaks first by his libel, the defender is allowed to be the last speaker.

5. When faults are singular and monstrous, it is the laudable practice of judges, to order the punishment and trial of such crimes in private ; I am sure, to acquaint the people of some unnatural sins, whereof they had never heard, were but a scandalous and pernicious instruction. See the 51st art. 1. cap. and 10th and 11th art. of the 5th cap of the French Church Discipline.

6. Sentences are in themselves null, when pronounced against the general acts of the church, or by an incompetent judge, such as the sentences of kirk sessions against ministers, or even by presbyteries and synods, when the process is carried and admitted before their superior judicatures.

7. When the party neglects to use the ordinary remedy of appeal, he is allowed (where the sentence is palpably gravaminous) to pursue a review thereof before a superior judicature. They are like reductions, and ought to be so libelled, calling the parties and judge to produce what is craved, to be reviewed. They are not much in use with us, and if they were, some self-willed and litigious persons would take too much encouragement from it. Assemblies, from which there lies no appeal, may review or recal their own sentences, on

some new or extraordinary discovery. But inferior judicatures from which parties may appeal, are not to determine, but to refer the desired review or reduction to their superior judicature. If a party shall omit to propone a competent and proper defence, with a fraudulent and vexatious intention to protract and resume debates, in that case he ought not to be heard in his making thereof out of due time and order. But to hear emergent and new discovered defences since the conclusion of the cause, is but just.

8. In the latter part of the 23d act, Parl. 1693, it is statute, that the lords of their Majesty's privy council, and all other magistrates, judges, and officers of justice, give all due assistance, for making the sentences and censures of the church, and judicatures thereof to be obeyed, or otherwise effectual as accords.

9. Declinatures are *ante latam sententiam definitivam*; but appeals are made from and after that sentence. These declinatures are of two sorts; the first unwarrantable, when a judicature is declined, as having no authority, as if a minister should decline his own presbytery, or the other superior judicatures of the church to be his lawful judges, which is a higher degree of contumacy, than that which follows upon non-compearance, and may be warrantably censured with deposition by the 5th act of Parliament 1690. There is a warrantable declinature, when a judicature is declined as having committed injustice in some interlocutory sentence. There is likewise a warrantable declinature, which may be made against particular members, who are related to the party by consanguinity or affinity, nearer than a cousin-german, or who have behaved themselves as parties in the cause. It is just now said, that appeals are properly made from definitive sentences, but they are likewise made from interlocutory sentences, when they contain such damage to the party, whereof no reparation can be expected, from the definitive sentence that is to ensue. Thus Paul's appeal was just, Acts xxv. 9. for although his accusers could not prove their libel against him, yet his judge did not absolve him, but partially and unjustly remitted him to the judgment of his false and malicious accusers.

10. *Appellatio* is by lawyers said to be "*Iniquitatis sententiæ querela, a minore iudice ad superiorem provocans;*" the design of appeals is to redress wrongs done by the iniquity, unskilfulness, or precipitancy of judges.

11. As to the effect of appeals, "*non sortiuntur effectum*

suspensivum sed devolutivum tantum," and consequently resolve only in the nature of protests for remeid of law against a sentence pronounced by the Lords of Session, and not in the nature of suspensions. By the last article, cap. 5. act 11. Assembly 1707, an appeal being made by parties, should sist the execution of the sentence appealed from, only while the appeal is duly and diligently prosecute, and may thereby be determined, otherwise not; unless the judicature appealed to, receive the appeal, and take the affair before them: and in that case, the judicature appealed from, is to sist till the appeal be discussed.

12. By the act of Assembly, August 30, 1639, appellations are discharged to be made by leaping over either presbytery or synod, except it be after the synod is past, and immediately before or in the time of the sitting of the General Assembly. The Assembly 1648, sess. 30, orders thus, that where the appeal after sentence is not ready to be given in, the party shall protest for liberty to appeal, and accordingly, within ten days, give in his written appeal to the judicature or moderator thereof, otherwise it falls; which order and method is further cleared by the 8th act of Assembly 1694, whereby it is appointed, that verbal appellants give in their subscribed appeals, within ten days to the clerk of the judicature appealed from, (notwithstanding the judicature may be up before the time,) and also intimate the same to the moderator, by leaving with him an authentic copy thereof, with the reasons of the same, to be registered by the clerk, and summons direct thereupon against parties defenders, and extracts thereof, with the citation foresaid, are to be produced by the appellants at the discussing thereof, declaring that any appeals or insistings thereupon, otherwise made, shall be rejected.

13. When the judicature *ad quem* meets, the party appealed, and oftentimes the judge *a quo*, craves that the appellant may be called, and if he appear not, the appeal is holden as deserted; in which case *firmatur sententia*. If the appellant fail, then to insist, it *ipso facto* falls, becomes void, and the sentence of the judicature appealed from, is to be put in execution. See the Form of Process on this head, enacted 1707. Unless the appellants send full instructions and documents for the necessity of their absence. See chap. 9, art. 9, of the French Church Discipline.

14. By the act of Assembly, August 3, 1643, it is appointed, that all bills whatsoever of particular concernment, where-

unto all parties having interest are not cited, should be rejected. As also, that they be first presented to the inferior judicatures of the kirk, who may competently consider of them, and from them be orderly *et gradatim* brought to the Assembly, and references are to be made by the inferior to the immediate superior judicatures in the same manner. Likewise, upon a reference made and intimate, all parties present are thereby cited, *apud acta*, to the judicature referred unto: but if absent, the clerk must be ordered to direct summons against them, which if omitted, the reference cannot be received.

15. When an appeal is brought from the kirk-session to the presbytery, they are to consider, whether the cause is of that nature, as it behoved at length to come to the presbytery, by the course of discipline, before the final determination thereof: as, if it be in a process of alledged adultery or such like; in which case, they may, to save themselves time, fall upon consideration of the affair, without insisting upon the *bene* or *male appellatum*, even though it seem to be preposterously appealed. But if the cause be such, as the kirk-session are the competent and proper judges of, to its ultimate decision, and if there hath no cause been given by the session, through transgressing the rules of an orderly process, or by the incompetency of the censure, the presbytery is not to sustain the appeal; and if they do not sustain it, but find the appellants to have been malicious, litigious, or precipitant, then they are to inflict some censure, such as reproof before the presbytery, or appoint them to acknowledge their precipitancy before their own session, and that besides remitting the process to them. If the appeal to be sustained, and yet upon proceeding in the cause, the presbytery find the appellant censurable, they are to order him to be censured accordingly; but if they find that the kirk-session hath unwarrantably proceeded, either to the contributing to the raising of a scandal, or inflicting a censure without a sufficient cause, they are then not only to absolve the appellant, but to take proper ways for vindicating his innocence: yet so as not to weaken the kirk-session's authority; for which end they may give that session suitable instructions and rules to walk by, or private admonition, or to call for a visitation of their session register. See that forecited Form of Process, Assembly 1707.

## TITLE VI.

*Of the Order of Proceeding to Excommunication.*

1. If a guilty person continue in that condition mentioned Tit. 1, of this Book, or lie under the censure of the lesser excommunication for a considerable time, after intimation thereof hath been made, both in the congregation where it was inflicted, and also in that to which he belongeth, and yet be found frequently relapsing in these vices he was censured for, it may be constructed such a degree of contumacy, and so aggravate the crime, as to found a process for the censure of the higher excommunication, which is to be inflicted or not, as may most tend to the reclaiming of the guilty person, and edification of the church. Where there is no obdurate contumacy, the lesser excommunication needs only have place. Again, where no scandalous practice hath been proven, only there is a simple contumacy following by not appearing, in that case, the lesser excommunication is length enough. But if the scandal be of an heinous nature, and that it is spreading and infectious, as in heresies or schism in the church, in which cases, contumacy is to be proceeded against.

2. Yet every error or difference in judgment about points wherein learned and godly men may differ, and which subverts not the faith, nor is destructive to godliness, or when persons out of conscience do not come up to the observation of all these rules, which are or shall be established by authority for regulating the outward worship of God, and government of his church, the censure of excommunication should not be inflicted for such causes. See Durham on Scandal. The letter from the Assembly of Divines at Westminster, with the answer of our General Assembly, 1645.

3. The kirk-session having brought the process to the lesser excommunication, before they proceed further, they are by a reference to lay their whole proceeding in writ before the presbytery, who finding them to have orderly proceeded, and that the lesser excommunication is not sufficient, they are to cause cite the scandalous person. If he appear, and deny the scandal alleged and libelled, then they are to lead probation as in other cases. If he appear not, then the citation is to be renewed till he hath got three.

4. If he contemn these three citations, then he is to be admonished out of the pulpit, to appear and submit three several Sabbaths; and a presbytery diet should intervene betwixt

every one of these admonitions. By these admonitions intimation is to be made, that the presbytery will proceed to inquire into the guilt, although the delinquent be absent, and threatening him with the highest censure of the church, if he continue impenitent; and therefore the minister is gravely to admonish the party present or absent, to repent and submit himself to the discipline of the church.

5. If after all, the person continue impenitent or contumacious, the presbytery appoints the minister to pray for him publicly in the congregation, and he is to exhort them to join with him in prayer, that God would deal with the soul of the impenitent, and convince him of the evil of his ways. Which prayers of the church, are to be put up three several Sabbath days, a presbytery intervening betwixt each prayer.

6. The scandalous person still continuing impenitent, and making no application or submission, the presbytery is then to appoint the minister to intimate their resolution to proceed upon such a Sabbath as they shall name for pronouncing that dreadful sentence, unless either the party, or some for him, signify some relevant ground to stop the procedure, that so, upon the congregation's tacit consent and acquiescence, the sentence may have its due weight and intended effect.

7. All these slow and several steps of the church's proceedings to this high censure, do shew their tenderness towards their lapsed brother, their earnestness to have him reclaimed, and also to create a greater regard and terror of that dreadful censure, both in the party and all the people. Let not those who deserve it, or upon whom it hath been orderly and justly inflicted, mock and say, *parturiunt montes*, &c. For whatsoever the church shall so bind on earth, our Lord hath said it shall be bound in heaven, Mat. xviii. 18. And this censure is like a seal to all the threatenings of God in his word, which shall verily be execute against impenitent sinners.

8. The day being come, the minister is to preach a sermon suited to that solemn occasion, concerning the nature, use, and ends of church censures; then, after the ordinary prayers and praises of the congregation are performed, the minister is to narrate all the steps of the process, shew the obstinate impenitency of the scandalous person, and that now there remained only that mean of cutting him off from the society of the faithful. Then he is to desire the congregation to join with him in prayer, that God would grant repentance to the obstinate person, would graciously bless his own ordinance, to be a mean for reclaiming him, and that others may fear.

9. Then immediately after prayer that terrible sentence is to be pronounced, in these or the like words, speaking to him in the second person, if present, and of him in the third person, if absent—"Whereas, thou N. hast been by sufficient proof convicted of [here mention the sin] and after due admonition and prayer, remainest obstinate without any evidence or sign of true repentance. Therefore, in the name of the Lord Jesus Christ, and before this congregation, I pronounce and declare thee N. excommunicated, shut out from the communion of the faithful, debars thee from their privileges, and delivers thee unto Satan for the destruction of thy flesh, that thy spirit may be saved in the day of the Lord Jesus."

10. Why the apostle, 1 Cor. v. 5, expresses excommunication by delivering to Satan, may be for this, among other reasons, that Satan is called the God of this world, as world is taken in opposition to the church of God, so that delivering to him implies no more than that Mat. xviii. 17, if he neglect to hear the church, let him be to thee as an heathen man and publican, thereby letting us know how dreadful a thing it is to be shut out from the ordinary means of grace and salvation, and exposed to the temptations of our grand adversary the devil.

11. If after prayer, or before pronouncing of that sentence, the scandalous person make any public signification of his penitency, and of his desire to have the censure stopped, the minister may, upon 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, and the presbytery is thereupon to deal with the scandalous person as they shall see cause.

12. After the pronouncing of this sentence, 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. By the act of Assembly 1596, revived Assembly 1638, sess. 23, art. 16, such are appointed to be excommunicated, as will not forbear the company of excommunicated persons. By the 10th of these canons, called Apostolical, "*Si quis etiam domi cum excommunicato simul oraverit, is pariter excommunicetur.*" By Assembly 1643, sess. ult. and Assembly 1648, sess. 38, art.



13, if a minister haunt the company of excommunicated persons, he shall be suspended for the first fault, and deprived for the second, unless he have licence from the presbytery, or else the excommunicated person be *in extremis*. No civil penalty, such as escheat of moveables or caption, doth now follow upon this sentence, so that the liberty and estates of church members are not endangered by it, nor do they depend upon church-men. But upon a presbytery's representation to the privy council, against persons that are contumacious, such may not expect to enjoy their places, or be intrusted with any, as the last act made against profaneness in King William's reign doth insinuate. By James VI. Parl. 11, cap. 27, excommunicate persons are to be charged by the minister to depart from the church in time of ministration of sacraments and prayer, and not to disobey, under the penalties therein mentioned.

13. The minister is to conclude this censure with prayer to this purpose, that God, who hath appointed this terrible sentence for removing of offences, and reducing of obstinate sinners, would ratify in heaven, what in his name, and by his warrant, hath now been done on earth, and that the shutting him out of the church may fill him with fear and shame, break his obstinate heart, and be a mean to destroy the flesh, and recover from the power of the devil, that his spirit may yet be saved, and also that others may be stricken with fear, and not dare to sin so presumptuously, or contemn the authority and voice of his church. See Knox's Forms, prefixed to the old Psalms. Then the congregation is to be dismissed with the blessing, after singing the last part of the 101st Psalm.

14. The 4th art. cap. 30. of our Confession of Faith saith, that for the better attaining the ends of church censures, the officers of the church are to proceed by admonition and suspension from the sacrament of the Lord's supper for a time, and by excommunication from the church. The difference then betwixt these two censures is; suspension from the Lord's supper, which imports that the person so censured is in eminent danger of being excommunicated and cut off from the church; but before that heavy and finishing stroke be inflicted, there are further means to be used, such as prayers and admonitions, in order to his reclaiming, 2d Thess. iii. 6. 14. 15. "Now we command you brethren, in the name of our Lord Jesus Christ, that ye withdraw yourselves from every brother that walketh disorderly: and if any man obey not our word by this epistle, note that man, and have no

company with him, that he may be ashamed, yet count him not as an enemy, but admonish him as a brother." Whereas, when a person is cut off by that high censure, he is to be looked on as a heathen man, Matth. xviii. 17. upon which the church ceaseth to be his reprover, they giving him over for dead or desperate, and will administer no more of the medicine of church discipline unto him, 1. Cor. xii. 13. "For what hath the church to do to judge them that are without? Do not they judge them that are within? But them that are without, God judgeth."

15. Persons guilty of relapse in adultery, or who are often guilty of other gross scandals, are to be more summarily excommunicate than in ordinary processes, both for the heinousness of the sin, and for terror to others. See sess. 38, Assem. 1648. There is no excommunication absolutely summary, that is, without previous citations, admonitions and prayers, but it is comparatively summary, because they are not first suspended, as in ordinary church procedures against scandalous persons. I am sure, where there is no obdurate contumacy, but on the contrary, edifying signs of true repentance, to such *sinus ecclesie semper patet*: for the repentance of the greatest sinners is more edifying and grateful than their excommunication; and if the Holy one of Israel, who is absolute and sovereign in bestowing of his mercy and grace to whom and when he will, shall think fit, by giving unfeigned repentance to that notour atrocious sinner, to signify his forgiving of him, and receiving him into his favour; how dare any church upon earth presume to deliver such a person unto Satan?

16. In case the excommunicate person continue 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 appoint intimation thereof to be made in all the kirks of their bounds; and if need be, the synod is to bring the case to the Assembly, that the sentence may be intimate through all the churches of the kingdom. Assembly 1704. sess. 10, Assembly 1648, August 10. Only let this be remembered, that if he come to be absolved, justice be done him, in causing the absolution be intimate, wherever the excommunication had been, so the plaister will be proportioned to the sore.

17. There is in the canon law a church censure which they call *Interdictum*, by which they excommunicate whole kingdoms and provinces for the fault of some, whereby they make

the innocent suffer with the guilty, through the forbidding the public exercise of God's worship in that kingdom, place, or province. They have a particular *Interdictum* by which they excommunicate a number of persons specially designed. By the first of these the inhabitants are only affected and reached with its censure during their abode or residence in the place interdicted. But the particular *Interdict* doth reach and follow the particular persons thereby censured, wherever they sojourn.

18. Calderwood in his History, page 205, tells us, that anathematization is a censure of an higher degree than excommunication, but the reformed churches generally esteem excommunication to be *Severissima disciplina, et ultimum fulmen ecclesie*; and in the 16th sect. art. 1. of the Directory for church government, as it was printed anno 1647, to be examined by the Assembly, it is said, excommunication is a shutting out of a person from the communion of the church, and it is the greatest and last censure. And pray, what can a church do more? Or, what have they to do more with a person shut out of their communion? The anathematization among the canonists hath no other effects, but is the same upon the matter with their greater excommunication; only, when the same is inflicted with a number of more solemnities and formalities, because of that parade, it is then called anathematization. And we find by Knox's Forms, that he useth the words excommunicated and accursed, as synonymous or equipollent: See the Form of Process both on this and the subsequent Title, Assembly 1707.

## TITLE VII.

### *Of the Order of proceeding to Absolution.*

1. By the manuscript acts of Assembly, at Edinburgh, March 1569, persons excommunicated for their offences, in order to their absolution, shall stand bare-headed at the kirk door till prayers and singing be ended, and then enter the kirk, and sit at the public place of repentance bare-headed all the time of the sermon, and again depart before the last prayer, which is agreeable to Knox's Forms, concluded anno 1567, and ordered to be printed by Assembly 1571, and is not disagreeable to the primitive practice of the church. But now if, after excommunication, the signs of repentance appear in the person excommunicated, such as godly sorrow for sin, as having thereby incurred God's heavy displeasure, occa-

sioned grief to his brethren, and justly provoked them to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God, with a humble desire of recovering peace with God and his people. All which the presbytery being satisfied with, they give warrant for his absolution. But, in order thereto, he is to be brought before the congregation, and there also make free confession and express sorrow for his sin, call upon God for mercy in Christ, seek to be restored to the communion of the church; and he must promise, through the Lord's strength, new obedience and more holy and circumspect walking. Which appearance before the congregation, shall be as often as church judicatures shall find may be for edification and trial of the professing penitent's sincerity.

2. A minister may warrantably, without licence from the presbytery, haunt the company of excommunicate persons *in extremis*, as is said, *Tit Præc.* And if he shall then find in the dying person true signs of repentance, what is there to forbid his administrating the comfortable sentence of absolution to him, seeing it is due to the signs of his repentance, and his dying condition cannot admit of longer delay. But that ministers might have better warrant, and the fears of dying penitents be more easily removed, I wish there were some church act expressly authorising ministers to absolve persons in such circumstances.

3. In the preceding title there is an edict of excommunication mentioned; so, in like manner, and on the same ground, there should be published an edict of absolution, at least a Sabbath before the same, that so the penitent may be restored to the apparent and tacit satisfaction of that congregation who had so consented to his seclusion.

4. The day being come, the minister is to preach a sermon suited to that occasion; then after the ordinary prayers and praises of the congregation are ended, he is to call upon the professed penitent, and make him declare, promise, and call upon God as above: Thereafter he is to desire the congregation to join with him in prayer to this purpose, that the Lord Jesus Christ, who hath pronounced, that whosoever by his ministers is bound on earth, shall be bound in heaven; and also, that whosoever is loosed by the same, shall be loosed and absolved with him in heaven, would mercifully accept his creature this professing penitent N., whom Satan of a long time hath held in bondage, so that he not only drew him to

iniquity, but also so hardened his heart, that he despised all admonitions, for the which his sin and contempt, they were compelled to excommunicate him from the society of the faithful. But now seeing the Holy Spirit hath so far prevailed, that he professeth repentance for his sin, that it may please God by his spirit and grace, to make him a sincere and unfeigned penitent: and for the obedience of the Lord Jesus Christ unto death, so to accept of this poor returning sinner, that his former disobedience be never laid to his charge, and that he may increase in all godliness, so that Satan in the end may be trodden under foot by the power of our Lord Jesus, and God may be glorified, the church edified, and the penitent saved in the day of the Lord.

5. After prayer, the sentence of absolution is to be pronounced in these or the like words:—"Whereas thou N. hast been shut out, for thy sin, from the congregation of the faithful, and hast now manifested thy repentance, wherein the church resteth satisfied; in the name of the Lord Jesus Christ, before this congregation, I pronounce and declare thee absolved from the sentence of excommunication formerly denounced against thee, and do receive thee into the communion of the church, and the free use of all the ordinances of Christ, that thou mayest be partaker of all his benefits to thy eternal salvation." After this is pronounced, the minister speaketh to him as a brother, exhorting him to watch and pray, or comforting him, if there be need, the elders embrace him, and the whole congregation holdeth communion with him as one of their own.

6. When the presbytery hath given warrant for absolving the excommunicate person, he is thereupon materially absolved, and therefore may be admitted to church worship, before he be actually and formally pronounced and declared such. The church may pray for excommunicate persons, unless they had certain knowledge, I mean very well grounded, that any of them had committed the unpardonable sin, and that unto death, 1 John v. 16.—Mat. xii. 31, 32; and when we do pray for these excommunicated, whom we hope not to be so guilty, yet we do not pray for them as Christians, or of our communion, but as if they were heathens, for their conversation and repentance.

7. The minister is to conclude the absolution with prayer, thanking God who delighteth not in the death of a sinner, but rather that he should repent and live; and magnifying the

mercy of God through Jesus Christ, in pardoning and receiving into his favour the most grievous offenders, whenever by his grace, they unfeignedly repent and forsake their sins. Thereafter the congregation is dismissed with a blessing, after singing a part of some penitential psalm.

EXTRACTS

FROM

“THEOLOGICAL INSTITUTES,”

BY

GEORGE HILL, D.D., F.R.S.E.,

&c. &c.





## EXTRACTS, &c.

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### I. *The Judicial, Legislative, and Executive Power of the Church of Scotland.\**

#### JUDICIAL POWER.

1. The judicial power of the church appears in the infliction or removal of those censures which belong to a spiritual society. This power is not entrusted by the constitution of our church to the minister of a parish; for, while he performs various offices in his personal capacity, it is only when he sits in the kirk-session as moderator, or acts by their authority, that he exercises the judicial power of rebuking, of suspending, or excluding from the privileges of the church, and of absolving from censure. While those inhabitants of a parish who are of the communion of the established church, are thus secured from suffering by the caprice of an individual, they are also guarded against the intrusion of a neighbouring jurisdiction. They are placed by the constitution, under the inspection of the kirk-session of their own parish: there the judicial power, when it is exercised with regard to laymen, must originate; and no other ecclesiastical court is entitled to interfere in the first instance; although every judicial discussion before a kirk-session may ascend through the gradation of judicatories, so as to be finally decided by the General Assembly.

The office of a minister being superior to that of an elder, and the minister of a parish being officially the moderator of his own kirk-session, he is not amenable to their jurisdiction. His immediate superiors are the presbytery from whom he received the charge of his parish, who have a title, at any time, to enquire in what manner he performs his official duty, who exercise a censorial inspection over his whole conduct, and who are the only court before whom it is competent for those who wish to appear as his accusers in an ecclesiastical process, to lodge any complaint against his doctrine, or his moral character. Ministers, besides being liable to the same censures as other Christians, may be suspended from the exercise of their ministry, or deposed; and, in consequence of the connection between the church and the state, a sentence of deposition, regularly pronounced by the church-courts, deprives a minister of that right to the stipend and other emoluments which he acquired by his admission, and renders his parish vacant in the eye of law.

It is a matter of essential justice, that every man who is to be tried should know the shape which his accusation must assume, and the form in which he is required to make his defence. The strict observance of a known established mode of trial is peculiarly necessary in the judicial proceedings of the church, where sentences

\* Inst. Part II. § 5, p. 229, (first edition,) and p. 104 of edit. 1817.

which affect the character and comfort of the parties, and which deprive a minister of his usefulness and his freehold, are pronounced by large popular assemblies, the members of which, not being conversant in legal discussion, are in danger of deciding from some strong present impression. One of the first objects to which the Church of Scotland turned her attention after the establishment of Presbyterian government at the Revolution, was the state of her judicial proceedings: and what is called the Form of Process, a code of laws which regulates the manner of commencing, of conducting, and of terminating processes for censure, was enacted by the church in the year 1707. In 1787, Lord Robertson, who was then procurator for the Church of Scotland, made an attempt to obtain the sanction of the church to a more perfect code, into which he had introduced various improvements, proceeding upon the liberal accurate ideas which are congenial to his mind. The attempt failed of success: and from the difficulties with which it appeared to be attended, there is no great reason to hope that we shall soon obtain the enactment of any law of the church, so complex as the case would require. But we have the satisfaction of thinking, that our Form of Process is in many respects excellent; and that with the help of those explications which some parts of it have already received from practice, and with a due attention to the rules of Christian prudence and charity, it may be executed in such a manner as to attain the great purposes of a judicial code.

#### LEGISLATIVE POWER.

2. Every judicatory is occasionally called to enforce the laws of the church, by making such special enactments, in conformity to those general laws, as are suggested by the circumstances of the district under its jurisdiction; and church-courts, like all others, have a right, within certain limits, to regulate the forms of their own proceedings. It is not to such partial enactments or regulations that we refer, when we speak of the legislative power of the church. We apply that term to the power of making standing laws concerning matters of general importance, which are binding upon all the members and judicatories of the church. From the first establishment of presbyterian government in 1560, till some years after the Revolution, such laws proceeded from the sole authority of the General Assembly: But an act of the church in the year 1697, which we are accustomed to call the Barrier Act, prescribes the following mode of enacting permanent and standing constitutions. The proposal of making a new general law, or of repealing an old one, which, in our 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. The General Assembly may dismiss the overture, if they judge it unnecessary, or improper; or adopt it as it was sent, or introduce any alteration which the matter or the form seems to require. If it is not dismissed, it is transmitted by the General Assembly, 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 presbyteries approve.

The Barrier Act, according to its own preamble, was intended "for preventing any sudden alteration, or innovation, or other prejudice to the church, in either doctrine, worship, discipline, or government, now happily established therein;" and any person who considers the momentary impressions incident to all large bodies of men in the heat of debate, or in their zeal for a particular object, will not think it advisable that a court so numerous as the General Assembly, which sits once a year for ten days, should have the uncontroled power of making standing laws upon the spur of the occasion. At the same time, it must be acknowledged, that the operation of the Barrier Act tends to produce great tardiness in the legislation of the church. For some presbyteries neglect to send any opinion; others disapprove; others propose alterations; so that many years sometimes elapse before the consent of forty presbyteries can be obtained to the whole complex proposition that was transmitted to them. The remedy for this tardiness is found in that legislative authority which seems to be reserved to the General Assembly by the Barrier Act. The Assembly 1695, which prepared the overture, 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, does, in the meantime, revive the acts of the former Assemblies made thereanent; and the Assembly 1697, upon the same day on which it converted the overture of 1695 into a binding rule and constitution to the church, does obtest and beseech all the ministers of this church "to consider how much it is their duty to give punctual and exemplary obedience to all the acts and appointments of the Assemblies thereof." Accordingly, ever since that period, when the immediate enactment of the new law proposed in an overture appeared essential for the good of the church, the General Assembly has exercised the power of converting the overture into what we are accustomed to call an interim act;\* and 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. If presbyteries disapprove of them, they will express their disapprobation in the opinion which they transmit; and the voice of their representatives in the next Assembly will prevent the re-enactment of the overture. The power, therefore, of passing interim acts cannot produce permanent evil; it generally has the effect of rousing presbyteries to consider the overtures transmitted to them; and, in many instances, the temporary regulations by which this power of the General Assembly had applied an immediate remedy to evils under which the church was suffering, have acquired the authority of standing laws, either by the tacit acquiescence of the church during a long course of years, or by the explicit approbation at length obtained from a majority of presbyteries.†

\* Assemblies 1711, 1719, 1731, 1737, 1739, 1742, &c. &c.

† The act of Assembly 1711, concerning probationers, and settling

## EXECUTIVE POWER.

3. The General Assembly, from its first meeting under the authority of Parliament, in the year 1560, assumed the direction of the ecclesiastical business of the nation, which it managed, first by

ministers, never received the explicit approbation of the presbyteries of this church; but being generally observed, it came, by long and uniform practice, to be considered as constitutional law. A more distinct and comprehensive act anent licensing probationers, was first introduced in the year 1740; and after undergoing various alterations in the Assembly, and being transmitted for many successive years, was, in consequence of the approbation of a majority of presbyteries, converted into a standing law by the Assembly 1782. The act respecting chapels of ease may be mentioned to the honour of the Church of Scotland, as an example of presbyteries being effectually roused by circumstances that require promptitude and vigour. The increasing wealth and population of various districts of Scotland having produced many applications for chapels of ease, there being no public law upon this novel subject, and different presbyteries having erected chapels of ease upon plans widely dissimilar, and in some instances dangerous to the ecclesiastical and civil establishment, it was judged necessary to introduce into the Assembly 1796 an overture, founded upon the report of a committee, which had been appointed by the Assembly 1795 to consider the subject, "that presbyteries shall not pronounce a final judgment upon any petition for the erection of a chapel of ease, until they shall have received the special directions of the Assembly thereon." This overture having been adopted by the Assembly 1796, was transmitted to presbyteries for their opinion, and was at the same time enacted as an interim order. It was re-transmitted, and re enacted by the Assembly 1797; and a considerable majority of the presbyteries of the church having transmitted to the Assembly 1798 their opinions in favour of the overture, it was, by that Assembly, within two years after its being introduced, enacted into a standing law of the church. See acts of Assembly 1798, session 6.

There occurred lately a stronger example of the sense of public duty correcting the tardiness incident to our mode of legislation. The General Assembly, from considering the circumstances of the case, had, in a few recent instances, given permission to a clergyman holding a professorship in an university, to hold, at the same time, a parochial charge in the country. In many parts of Scotland, apprehensions were entertained that this permission might introduce abuses hurtful to the interests of religion and literature; and the desire became very general that, by a law regularly enacted, an effectual check might be given to a practice which was considered by many as a most serious evil. In compliance with this desire, the General Assembly, May 22, 1816, appointed the committee of overtures "to prepare an overture for preventing the improper union of offices, to be reported to the Assembly." The overture prepared by the committee was produced and read, May 25, 1816; "and after a few amendments made upon it, the Assembly agree, without a vote, to transmit this overture to presbyteries for their opinion, and,

superintendants, and afterwards by the presbyteries which it erected in the different districts of the kingdom. In the Second Book of Discipline, which was agreed upon in the Assembly 1578, and inserted in the registers of Assembly 1581, it specified minutely the powers of presbyteries and synods; and nearly the same powers described in that book were confirmed by the act of Parliament 1592, c. 114, which has been properly termed the law of the land respecting our ecclesiastical constitution.\* The powers thus committed to the inferior judicatories of the Church of Scotland, are exercised by all of them in the ordinary discharge of their duty; and in the trial of candidates for the ministry, presbyteries are in a special manner the executive officers of the church. But the supreme executive power remains with the General Assembly, which having, in concurrence with the state, given at first to the inferior judicatories all the ecclesiastical powers which they possess, still, according to the powers which, in the Second Book of Discipline, it reserved to itself, "prescribes the rule how the other two kinds of Assemblies should proceed in all things; and generally, concerning all weighty affairs that concern the weal and good order of the whole kirks of the realm, interpones authority thereto." In the exercise of these powers, the General Assembly often issues peremptory mandates, summoning individuals and inferior courts to appear at its bar. It sends precise orders to particular judicatories, directing, assisting, or restraining them in the discharge of their functions; and its superintending controuling authority maintains soundness of doctrine, checks irregularity, and enforces the observance of general laws throughout all the districts of the church. As the decisions of the General Assembly, which constitute the common law of the church, may give a false interpretation of the statute-law, so the orders of the General Assembly, may infringe the constitutional liberties of the separate judicatories. But when an opinion comes to prevail throughout the church that the General Assembly has acted improperly, the representatives sent by the presbyteries to future General Assemblies will give decisions of an opposite tendency; and acts will be passed in the ordinary course of legislation, applying the proper remedy to the abuse of authority, and preventing the repetition of that abuse. The executive power may err in the church, as in the state; and in both, the errors of the executive are corrected by the voice of the legislative.

"The General Assembly" (says the Reverend Professor Finlayson, in the heads of an argument in support of the overture respecting chapels of ease, with which he favoured the public in the

in the meantime, they convert the same into an interim act." The committee appointed by Assembly 1817 to class returns to overtures being able to report, "that a majority of presbyteries have given their consent to the overture relating to the union of offices;" the General Assembly, May 28, 1817, within twelve months after its being introduced, "did enact and ordain that the said overture shall be held and acted upon, in all time coming, as a standing law of this church."

\* See the act, p. 38, of this Compendium.

year 1797,) "is the corner-stone of our ecclesiastical government. The powers which originally belonged to it have continued to be exerted occasionally through the whole period of its history. In the last century, its arm appears almost every where, directing the course of ecclesiastical procedure. And even in the present century, after a more settled state of things has rendered its interpositions less frequent, we see it still exerting the superintending and legislative authority with which it is vested, whenever necessity or the general good requires. The existence of this authority is essential to the unity and vigour of our political system. Without it the Church of Scotland would soon lose its glory, and separate into a number of petty independent jurisdictions, scattered over the districts of the country, unequal to their own defence, and insufficient for the purposes of an ecclesiastical establishment."

The settlements of vacant parishes have furnished the most important occasions for calling forth the executive power of the General Assembly. Ever since the establishment of the Church of Scotland, and particularly since patrons were restored to their ancient rights by the act 1712, presbyteries, even when they did not find any defect in the personal qualifications of the presentee, have often, from a supposed deficiency in his call, from regard to the wishes of the people, or from some local circumstances, delayed or even refused to settle him. When the matter is brought before the General Assembly, that supreme court, if satisfied that the conduct of the presbytery was not warranted by the laws of the Church, interposes its authority, and enjoins them to proceed with all convenient speed, according to the rules of the Church, to receive and admit the presentee, minister of the vacant parish. If the reluctance discovered by the members of the presbytery appears to be such that they cannot safely be trusted with any discretionary powers, the General Assembly appoints the particular days of their meeting, in order to take the steps previous to the settlement, prescribes the whole course of their procedure, and constitutes them, in that particular case, the ministerial officers of the General Assembly, who are not allowed to exercise their own judgment, but are required implicitly to obey the instructions given by their superiors. As the existence of the society depends upon the maintenance of this paramount authority, ministers have often been censured, and sometimes deposed, when setting their own judgment in opposition to that subordination which the constitution implies, and which their solemn promise at the time of their admission bound upon their conscience, they have finally refused to comply with the orders of the supreme executive power.

It may be impossible for a court which sits only once a-year for ten days, to decide all the questions that are brought before it; and circumstances may occur in the intervals between General Assemblies, which call for the interposition of the supreme executive power of the Church. The constitution of the Church of Scotland, therefore, is completed by the Commission of the General Assembly; a court composed of the Moderator and all the members, with the addition of one who is named by the Moderator, which meets after the Assembly is dissolved, without the representation of the Sovereign, and may be considered as a committee of the whole house.

The General Assembly gives power to the said Commissioners, or their quorum, which is declared to be thirty-one of their number, whereof twenty-one are always to be ministers, to meet within the assembly-house, the first day after the dissolution of the Assembly, and thereafter the second Wednesday of August, third Wednesday of November, and first Wednesday of March, and oftener, when and where they shall think fit and convenient, with power to chuse their own Moderator. And it empowers them finally to determine, as they shall see cause, in every matter referred to them by the Assembly: appointing, however, that no private processes be determined except at the four stated diets, and that what shall be determined at one diet of the Commission, with relation to private causes, shall be unalterable by any other diet thereof, and shall continue in force till disapproved of by the General Assembly. As, amongst the annual instructions given to the Commissioners, they receive a general direction, "to advert to the interest of the Church on every occasion, that the Church, and present establishment thereof, do not suffer or sustain any prejudice which they can prevent, as they will be answerable," they may find it expedient to meet oftener than at the four stated diets; and a Commission is legally constituted at any time when thirty-one of the Commissioners, whereof twenty-one are ministers, finding themselves assembled in any place, proceed to chuse a Moderator. It has been usual for the moderator of the last Assembly, upon the few occasions when an extraordinary meeting of the Commission has been held, to give public notice, at the desire of some members, of the day upon which it appears to them expedient to meet. But there is no reason to think that the Moderator of the last Assembly, by withholding his compliance with that request, can restrain the Commission from meeting, or that it would be incompetent for the Commissioners to act, although circumstances should prevent a quorum of their number from assembling upon the very day which he had named. As the Commission is a delegated court, the Commissioners are accountable for all their actings to the next General Assembly, who may reverse their sentences, and find those who concurred in them censurable, if it shall appear that they have exceeded their powers; that is, have either meddled in any other matters than what were committed and referred to them, or have acted contrary to the acts and constitution of the Church, or to the prejudice thereof. But, within these limits, the Commission is vested with the executive authority of the General Assembly; and, by carrying into effect the sentences and judgments of the Church, has, in many important cases, maintained that subordination of judicatories in which consists "the unity and vigour of our political system."

From this delineation of the constitution of the Church of Scotland, it appears that the distribution of power amongst the courts of which it is composed, is artificial and skilful. The judicial power ascends through all the courts, terminating in the General Assembly: The legislative both originates and ends there, with this restriction upon the exercise of it, that, without the concurrence of a majority of presbyteries, the General Assembly cannot enact any standing law: The supreme executive is lodged in the General Assembly, whose orders direct and controul the inferior

branches, until the whole body declare that they are illegal. In this distribution of power, there is sufficient energy and vigour for the dispatch of business; there is a tardiness only with regard to that which of all things requires the most deliberation, the enactment of permanent laws; and there is a provision made for the constitutional operation of that jealousy natural and proper in all republics, by which the rights and liberties of the inferior branches are defended against encroachment; and the General Assembly, however respectable by the description of its members, and the various offices assigned it, is effectually restrained from making innovations. This constitution gives the ministers of the Church of Scotland a voice in framing those regulations which are enacted to direct their conduct. It affords them such opportunities of displaying personal talents as are unknown under episcopal government, and it has a tendency to form that manly, enlightened, and independent mind, which becomes all who are employed in the ministrations of the sacred office.

## II. *The Judicatories of the Church of Scotland.\**

### I. KIRK SESSIONS.

The lowest judicatory in the Church of Scotland is the *Kirk Session*: composed of the minister of the parish, who is officially moderator, and of lay-elders. New elders are chosen by the voice of the session. After their election has been agreed upon, their names are read from the pulpit, in a paper called an edict, appointing a day, at the distance of not less than ten days, for their ordination. If no member of the congregation offers any objection upon that day, or if the session finds the objections that are offered frivolous, or unsupported by evidence, the minister proceeds, in face of the congregation, to ordain the new elders; that is, to set them apart to that office by prayer, accompanied with an exhortation to them, and an address to the people. According to the ancient laws and the universal practice of the church, elders are required, at the time of their ordination, to declare explicitly their assent to all that is contained in the Confession of Faith.† The session is legally convened, when summoned by the minister from the pulpit, or by personal citation to the members. But it cannot exercise any judicial authority, unless the minister of the parish, or some other minister, acting either in his name, or by appointment of the presbytery, constitute the meeting by prayer, and preside during its deliberations. It has a clerk of its own nomination, and an officer to execute its orders.

### 2. PRESBYTERIES.

The number of parishes which may compose a presbytery is indefinite. In some of the populous districts of Scotland, there are

\* Part II. § 4, p. 212, and in 2d edit. p. 80.

† Act 7th, Assembly 1690. Act 11th, 1694. Act 11th, 1700. Act 4th, 1720. See sentence of General Assembly in case of Dundee, 1800, session 7th.



thirty ministers in a presbytery: in some remote situations, where a few parishes cover a great district, not more than four. As the General Assembly has the power of disjoining and erecting presbyteries at its pleasure, their bounds may be altered, or their number increased, according to the change of circumstances. At present, there are seventy-eight presbyteries in the Church of Scotland. A presbytery consists of the ministers of all the parishes within the bounds of that district, of the Professors of Divinity, if they be ministers, in any university that is situate within these bounds, and of representatives from the kirk-sessions in the district. Every kirk-session has the right of sending one elder; so that unless there be a collegiate charge or an university within the bounds of the district, the number of ministers and of elders in any meeting of presbytery may be equal. Independently of the local business of the district, which generally requires frequent meetings in the course of the year, two meetings are necessary for the annual choice of its representatives in the General Assembly; one, at which a day, not less than ten days distant, is appointed for the election; another, at which the election is made. A moderator, who must be a minister, is chosen twice a-year. The presbytery has a clerk of its own nomination, and an officer to execute its orders.

### 3. PROVINCIAL SYNODS.

Three or more presbyteries, as the matter happens to be regulated, compose a provincial synod. There are at present fifteen provincial synods in the church; most of which meet twice in the year. Every minister of all the presbyteries, within the bounds of the synod, is a member of that court, and the same elder who had last represented the kirk-session in the presbytery, is its representative in the synod; so that the number of ministers and of elders may be equal. Neighbouring synods correspond with one another, by sending one minister and one elder, who are entitled to sit, to deliberate, and to vote with the original members of the synod to which they are sent. At every meeting of synod, a moderator, who must be a minister, is chosen. A synod has its own clerk and officers.

### 4. GENERAL ASSEMBLY.

The highest ecclesiastical court is the General Assembly. The 936 ministers who enjoy\* benefices, and possess ecclesiastical authority in Scotland, attend personally the presbyteries and synods into which they are distributed; but they sit in the supreme court by a representation; and the proportion which the representation of the several presbyteries in the General Assembly, bears to the number of parishes within each presbytery, was settled not long after the Revolution, in the following manner:† “That all presbyteries consisting of twelve parishes, or under that number, shall send in two ministers and one ruling elder; that all presbyteries consisting of eighteen parishes, or under that number, but above twelve, shall send in three ministers and one ruling elder; that all

\* Dr Singer's statement of the numbers, &c. of the clergy of Scotland.

† Act 5th, Assembly 1694.

presbyteries consisting of twenty-four parishes, or under that number, shall send in four ministers and two ruling elders; and that presbyteries consisting of above twenty-four parishes, shall send five ministers and two ruling elders: 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 as many distinct parishes; and that no persons are to be admitted members of Assemblies, but such as are either ministers or ruling elders." And as the number of the ministers of Edinburgh continued to increase after the Revolution, it was provided by a subsequent act,\* "That each presbytery whose number doth exceed thirty ministerial charges, shall send to the General Assembly six ministers and three ruling elders." The sixty-six royal burghs of Scotland are represented in the General Assembly by ruling elders; Edinburgh sending two, and every other burgh one: and each of the five universities in Scotland is represented by one of its members,† who may be either a minister or an elder.

\* Act 6th, Assembly 1712.

† By Acts of Assembly 1641 and 1704, the Scots Kirk of Campvere was empowered to send commissioners to the General Assembly; but that establishment was abolished, some years ago, by the Batavian Republic.

On the 30th May 1814, an Act of Assembly was passed for the establishment of a branch of the church in India. The Directors of the East India Company having agreed to the endowment of three churches at the three Presidencies of Bengal, Madras, and Bombay, the Assembly, upon a report by a committee, of which Dr Hill, Dr Inglis, Dr Lamont, and Dr Brown were members, resolved "to continue in full union and connection with the church of Scotland," the several ministers who might be appointed to those charges,—empowered them to nominate elders, and to constitute kirk-sessions, subject to the ecclesiastical jurisdiction of the Presbytery of Edinburgh; and authorised "the three chaplains and their kirk-sessions to unite in any manner that they may find expedient, in sending one minister and one elder as their representatives to the General Assembly of the Church of Scotland." The representatives of the church in India have accordingly been constituent members of almost every Assembly since the date of the act,—and although it has been held by some that the act is not authoritative, never having been transmitted to presbyteries in terms of the barrier act, and as being an extension of the settled representation of the church, in the General Assembly, the commissions from India have always been sustained. The branch in India may, in fact, be regarded as coming in place of that of Campvere, now cut off, and therefore as inferring no alteration on the composition of the Assembly, as fixed by the 5th act of Assembly 1694.

An attempt, indeed, was made in the Assembly of 1821, to cast the commission from the churches in India,—but it was completely frustrated, and the doctrine laid down by Dr Hill, (as quoted at p. 457,) that the General Assembly has the power of disjoining and erecting presbyteries at its pleasure, and altering their bounds, or increasing their number, or extending branches of our church to foreign parts,

According to this proportion of representation, the General Assembly, in the present state of the church, consists of the following members :

- 200 Ministers representing Presbyteries.
- 89 Elders representing Presbyteries.
- 67 Elders representing Royal Burghs.
- 5 Ministers or Elders representing Universities.

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according to the change of circumstances, was fully confirmed by the votes of 134 to 82,—the latter of whom supported a motion for transmitting the act as to the Indian churches to presbyteries in the form of an overture. This supreme power of disjoining and erecting presbyteries, and erecting churches in the colonies, and thus adding to the representation of the church, consistently with the provisions of the act 1694, was supported in the discussion by reference to the cases of Campvere, Darien, Orkney, and Zetland. In the first, the right to send representatives though created by an act 1641—fifty-eight years before the barrier act was passed, was confirmed in 1704—seven years after its enactment. In the case of Darien, the members of the Scottish church in that colony, were assured by their commission from the Assembly, July 21, 1699, (only two years after the barrier act passed,) that such as came from them “will be received as members of the General Assembly, and of this church, and of their commission for that year in which they come.” And in 1725, twenty-eight years after the passing of the barrier act, the presbytery of Orkney was divided into three presbyteries—Zetland being also erected into a separate one—and a proportionate addition made to the number of representatives. These instances were adduced as proofs that the arrangement, with respect to the churches in India, was no infringement either of the principles of the barrier act, or of the inherent supreme and superintending power exercised by the General Assemblies of the church in the erection of presbyteries and synods, or sections of these, from the earliest times of its history:—and the arrangement relative to the churches in India by the act 1814, without transmitting an overture to presbyteries on the subject, was defended on the precedents now referred to, in which the power of the Assembly, subsequently to the passing of the barrier act, was fully exemplified, and had never been challenged. In certain reasons of dissent, as well as in the discussion of 1821, it was said that the case of Campvere took place before the barrier act,—but it was not stated that that was confirmed *after* the barrier act; and these particulars are stated to counteract the tendency of a disingenuous and ribald publication, which was put forth at Edinburgh in Sept. 1821, with a view of raising doubts as to the legality of our establishment in the East, and casting obloquy on the Assembly, by which its existence and rights were fully recognised.—EDIT.

It may be noticed here, that in the Assembly 1829, it was decided in the case of the Rev. Edward Irving, that *preaching elders*, having an actual cure, whether in Scotland or elsewhere, are ineligible as *ruling elders* to the General Assembly. The soundness of this decision may well be doubted.

It appears from this list, that if all the three hundred and sixty-one members of Assembly were present, the majority would be ministers: But in the Assembly 1806, the fullest I ever witnessed, there sat only three-hundred and twenty-two.\* There had voted in the competition for a vacant office on the first day of meeting 314. The moderator, the two candidates who were members, and one other member, who was present, did not vote. But four members arrived on some of the following days.

The General Assembly, so respectable from the number and the description of the persons who compose it, is honoured with a representation of the Sovereign by the Lord High Commissioner, whose presence is the gracious pledge of protection and countenance to the Established Church, and the symbol of that sanction which the civil authority of the state is ready to give to its legal acts.

The Church of Scotland claims the right of meeting in a General Assembly, as well as in inferior courts, by its own appointment. But it also recognises the right of the supreme magistrate to call synods, and to be present at them; and the two rights are easily reconciled, when there subsists between the church and the state that good understanding which the true friends of both will always study to cultivate. As, by the constitution of the Church of Scotland, the ecclesiastical business of the country cannot be conducted without the frequent meeting of General Assemblies, the act 1592, which established Presbyterian government, declares, that "it shall be lawful to the kirk and ministers, every year at the least, and oftener *pro re nata*, as occasion and necessity shall require, to hold and keep General Assemblies:" And the act, June 7, 1690, which restored the Presbyterian church government, ratified and established by act 1592, "appoints the first meeting of the General Assembly of this church, as above established, to be at Edinburgh, the third Tuesday of October next to come in this instant year 1690." In pursuance of these acts, the General Assembly meets annually, now always in the month of May. On the first day of meeting a moderator is chosen; it has a respectable establishment of clerks and officers; it continues to sit ten days, and is then dissolved, first, by the moderator, who, in the name of the Lord Jesus, the King and Head of his Church, appoints another Assembly to be held on a certain day in the month of May of the following year,—and afterwards by the Lord High Commissioner, who, in his Majesty's name, appoints another Assembly to be held upon the day which had been mentioned by the moderator,

The times of electing members of Assembly and the forms of the instruments of their election, which are called their commissions, are precisely regulated by acts of Assembly; and a strict conformity to the regulations prescribed by these acts is indispensable.

On the evening before the Assembly meets, commissions are lodged with the clerks, who prepare from them a roll of Assembly, to which they are afterwards instructed to add the names of members whose commissions are given in on subsequent days, and from

\* In the Assembly 1823, the number who voted was 300, and a good many paired off.

which they are instructed to erase the names of those whose commissions are found informal.

On the day appointed for the meeting of Assembly, which is always a Thursday, the Lord High Commissioner goes in state to the High Church of Edinburgh, where a sermon is preached by the moderator of the last Assembly; after which his Grace proceeds in state to the Assembly House, which is an aisle of the High Church, where a throne is prepared for his reception. The moderator of the last Assembly opens the meeting by prayer, the clerks read the roll of members which they had prepared, and one of the ministers upon that roll is chosen moderator.

The first business of the new moderator is to receive a communication, from the throne, of the commission appointing the Nobleman who delivers it to represent the Sovereign, and of a letter from the Sovereign to the General Assembly. After the royal commission and letter are read by the principal clerk, and ordered by the house to be recorded, the Lord High Commissioner addresses from the throne a speech to the Assembly, and the moderator, in their name, makes a suitable reply.

The court being thus constituted, a committee is appointed to prepare an answer to the King's letter; and if the General Assembly judge it proper, in the circumstances of the times, to present an address to the Sovereign, the same committee is instructed to frame a dutiful and loyal address, embracing the topics which had been suggested in the motion for an address. Another committee is appointed to examine commissions. Both committees meet on Thursday evening. The clerks having, upon Thursday, been directed by the Assembly to divide, under the inspection of the moderator, all the members upon the roll which they had prepared, into two great committees,—the committee of bills and the committee of overtures,—the names of the members upon each committee are read by the clerks in the Assembly upon Friday—a meeting spent in prayer—during the intervals between two of the addresses to Heaven, offered by the ministers whom the moderator calls to pray: additions are made to each committee, as other members arrive. These two great committees hold their first meeting on the evening of Friday, the second on the evening of Saturday, the third on the evening of Monday. They meet afterwards as they are appointed, and no business comes before the Assembly but through them.

To the committee on bills are given in all papers relative to private causes which come from the inferior courts. To the other committee are given in overtures, that is, propositions from synods, presbyteries, or individual ministers, for a new law of the church, for the repeal of an old law, or for any regulation or exercise of ecclesiastical authority which circumstances appear to require. Either committee may refuse to transmit to the Assembly what is laid before them: but the business may be brought in under the form of protest. Although they have not the absolute power of excluding any matter from the consideration of the Assembly, the resistance which they make to the introduction of it is a call upon the Assembly to examine with a degree of suspicion what is thus resisted.

Upon Friday, ministers are named to preach before his Grace the Lord High Commissiener, in the High Church of Edinburgh, on the two Sundays during his commission.

Upon Saturday, the General Assembly examines the answer to the king's letter, and the address to the king, if any had been ordered; which, having been prepared by the committee appointed for that purpose, pass through the committee of overtures, and form the first part of its report to the Assembly. The committee on commissions having been also instructed to report to the committee on overtures, any objections made to commissions, form the second part of its report, and occupy the attention of the Assembly before it can enter upon any further business. Upon Saturday or Monday, as the case happens, the Assembly, having discussed the objections to commissions, receives other parts of the report of the committee on overtures, and the report of the committee on bills; and proceeds to make such arrangements as the nature and extent of the two reports render expedient.

In discussing business, the General Assembly has adopted some of the forms necessary in all great meetings, the observance of which, supported by the authority of the moderator, and the general feeling of the house, is commonly sufficient to preserve a becoming degree of order. Upon a division, the sense of the house is collected by the names on the roll being called by one of the clerks, and the votes, as they are given, being marked by the principal clerk, under the eye of the moderator.

Council are heard at the bar of the Assembly, when it is judging private causes, but not when it is discussing overtures, which are matters of internal regulation; and, although most of the questions which come before a church court may be presumed to be not of general, but of local concern, yet occasions often arise when the education and habits of the clergy, together with the legal knowledge and extensive information possessed by some of the lay members who take part in the discussion, render the debates in the General Assembly an interesting object of attention to all classes of the community.

##### 5. SUBORDINATION OF JUDICATORIES.

In order to understand the constitution of the Church of Scotland, it is necessary to consider the four courts which have been described, as they are bound together by that subordination which is characteristic of Presbyterian government.

In all governments conducted by men, wrong may be done from bad intention, from the imperceptible influence of local prejudices, or from some other species of human infirmity. To prevent the continued existence of wrong, it is provided, in every good government, that sentences which are complained of may be reviewed; and although there must be a last resort where the review stops, the security against permanent wrong will be as effectual as the nature of the case admits, if there is a gradation of authority, by which those who had no concern in the origin of the proceedings, have a right to annul or confirm them, as they see cause. This is the great principle of our republican constitution, which does not invest any individual with a control over his brethren, but employs

the wisdom and impartiality of a greater number of counsellors to sanction the judgments, or to correct the errors of a smaller. When presbyteries pronounce decisions with regard to manse and glebes, they act in a civil capacity, discharging a function which the law of the land has committed to them for the benefit of the established church; and their judgments, possessing an authority which is derived merely from human law, may be affirmed or reversed by the civil courts. But every ecclesiastical business that is transacted in any church judicatory, is subject to the review only of its ecclesiastical superiors, and may come before the court immediately above it in four different ways.

#### 6. RIGHT OF CONTROL IN A SUPERIOR COURT.

1. The superior court may take up the business by an exercise of its inherent right of superintendance and control. For in testimony of that subordination of judicatories which pervades the Church of Scotland, it is a standing order, that the books, containing the minutes of the inferior court, shall be laid before the court immediately above it. In the ordinary course of ecclesiastical transactions, this is often neglected. But a superior court may, at any time, issue a peremptory mandate for the production of the books of its subordinate judicatories; and having the whole train of their proceedings thus regularly submitted to its inspection, it may take such measures as, upon this review, appear to be necessary, in order to correct errors, to redress wrong, to enforce the observance of general rules, and to promote the edification of the people, in the several districts within its bounds.

#### REFERENCE.

2. When an inferior court entertains doubt, or apprehends difficulty and inconvenience, it sometimes declines giving a decision, and refers the matter upon which it had deliberated to the superior court, whose wisdom may solve the doubt, and whose authority may obviate the inconvenience. In this case, the members of the court which had referred are not precluded from sitting and judging with the court to which the reference is made, in the same manner as if it had come from any other quarter. Although inferior courts are entitled, by the constitution, to refer to the court above them, and although a reference may, in some circumstances, be highly proper, it is, generally speaking, more conducive to the public good, that every court should fulfil its duty by exercising its judgment; and it is not creditable for judges to refer in any case where suspicions may be entertained, that the reference arose from a desire to retain the right of voting in the superior court.

#### APPEAL.

3. When a party conceives that the judgment of an inferior court is unjust or erroneous, he is entitled to seek redress by appealing to the court above it. The appeal, if conducted in the regular manner which the laws of the church prescribe, stops the final execution of the judgment, brings the whole proceedings of the court which had pronounced the judgment under review, and sists the members at the bar of the superior court; that is, they are not en-

titled to deliberate and vote in the review of their own judgment ; but they are called to state, in such manner as they think proper, the reasons upon which their judgment proceeded ; so that the sentence appealed from is commonly defended before the superior court, both by the party who considered it as favourable to his interest, and also by the members who concurred in pronouncing it. If the members of an inferior court have acted according to the best of their judgment, and with good intention, they incur no blame although their sentence be reserved : but they are answerable to the superior court for every part of their conduct in the business brought under review, and they may be found deserving of censure.

#### COMPLAINT.

4. It is possible that the judgment of an inferior court may be favourable to the views of the only party who had sisted himself at their bar ; that it may do no wrong to any individual ; or that the party who is aggrieved may decline the trouble of conducting an appeal : and yet the judgment may appear to some of the members of the court contrary to the laws of the church, hurtful to the interests of religion, and such as involves in blame or in danger those by whom it is pronounced. In this case, the minority have a right to record in the minutes of the court their dissent, by which they save themselves from any share of the blame or the danger ; and they have also a right to complain to the superior court. This complaint brings the whole proceedings under review, and sists the members who concurred in the judgment, the complainers, and all parties, at the bar of the superior court ; and if the complaint appear to be well founded, it may have the effect, not only of bringing censure upon those who concurred in the judgment complained of, but also of reversing that judgment, and placing matters in the same situation in which they were before the judgment was pronounced. It was, in my remembrance, a matter of doubt, whether, if there was no appeal by a party, a complaint from the minority of a court could have the effect of reversing the judgment of the majority. But the doubt has been completely removed by a number of decisions in different years, conformable, in my opinion, to the nature and reason of the case ; and it is now understood to be part of the law of the church, that upon a complaint from the minority of an inferior court, the court of review may dispose of the sentence complained of, in the same manner as if it had been brought before them by the appeal of a party.\* The members of every church

\* The sentence here subjoined will serve as an example how far the effect of a complaint may go. Assembly 1798, session 8. "A dissent and complaint by Mr Robert Home of Polwarth, Dr Robert Douglas at Galashiels, and others, from a sentence of the Synod of Merse and Tiviotdale, of 24th October last, respecting the settlement of Mr James Young in the parish of Legertwood, heard : Two several motions were made, and the roll being called, and votes marked, the Assembly, by a great majority, found, that Mr James Young was not qualified, according to the laws of this church, to accept the presentation to the church of Legertwood ; and therefore reversed



judicatory are thus taught to consider themselves as guardians of the constitution : they are called to attend, not only to the particular business concerning which they judge, but also to that general interest of the church, which, in the eye of parties, may be of little importance ; and they have the satisfaction of knowing, that by discharging their duty with intelligence and firmness in the inferior courts, they may, in the end obtain full redress of the injury which the church might have sustained by judgments in which parties were willing to acquiesce.

### III. *Of the Admission of Ministers into the Church of Scotland.\**

#### I. TRIAL OF THE QUALIFICATIONS.

The laws of the state require those who enter into the Established Church, to take the oaths of allegiance, in testimony of their attachment to the civil government. But they leave the church in virtue of the powers derived from its Divine Founder, and agreeably to the directions delivered by his apostles, to try, examine, and finally decern with regard to doctrine, literature, and moral character ; and, upon any question respecting those points, they do not admit the possibility of appealing from an ecclesiastical to a civil court. Accordingly the church, in her standing laws, prescribes the previous education of intrants to the ministry, the amount of the testimonials which they must bring from the professors under whose inspection their education was conducted, the nature of the exercises which they have to perform for the satisfaction of those by whom they are tried, and all the other prerequisites, in order to their obtaining what is called a Licence to preach the Gospel. When a student has gone through a full course of philosophy in some university, and has, after finishing that course, continued to prosecute the study of divinity for the time prescribed, he may be proposed to a presbytery, in order to be taken upon trials. But the church, with a becoming jealousy of her most sacred right, does not

the sentence of the Synod of Merse and Tiviotdale in October last, complained of, recommending to the Presbytery of Lauder to sustain that presentation : Found, That the Presbytery of Lauder acted with great irregularity in proceeding, as they stated at the bar, to admit Mr James Young upon the 6th of December last, notwithstanding the dissent and complaint of several members of the Synod : Annulled all the proceedings of the Presbytery of Lauder in relation to the settlement of the parish of Legertwood, subsequent to the meeting of the Synod of Merse and Tiviotdale in October last ; rescinded the settlement of Mr James Young, and declared the parish of Legertwood vacant, as if no such settlement had taken place. The Assembly appointed an extract of this sentence to be sent by the Moderator in a letter to George Kerr, Esq. of Moriston, patron of the parish of Legertwood ; and appointed the Presbytery of Lauder to meet the second Thursday of June next, in order to appoint supplies for the vacant parish of Legertwood."

\* Dr. Hill's View, 2d edition, page 54.

permit presbyteries to take any student upon trials without the consent of a superior court, known in Scotland by the name of the Synod; by which means, if a report unfavourable to the character of the candidate has arisen in any of the presbyteries of which the synod is composed, his trials cannot proceed till the matter be enquired into. If presbyteries are guilty of oppression in trying those whom the synod allows them to take upon trials, redress may be obtained by an appeal to their ecclesiastical superiors. But as there is more reason to apprehend that presbyteries will discover too much facility in the trial of young men than too much severity, they are wisely invested with powers ample, and, in some respects, discretionary, lest the apprehension of being wantonly brought into embarrassment and trouble for acting according to their conscience, might prove an additional temptation to remissness in the discharge of an important duty.

As the Church of Scotland does not sustain a licence granted by the dissenting classes in England, or by any community of Christians in foreign countries,\* all those whom she considers as licentiates, are persons of whose character, literature, and abilities, some presbytery had the fullest opportunities of judging; and who, at the time of their being licensed, testified their attachment to the doctrine, worship, discipline, and government of this church, by subscribing the subjoined formula.† They are under the inspec-

\* Act 9th, General Assembly 1779. "The General Assembly, upon the report of their committee for overtures, finding that a considerable majority of the presbyteries of this church have now agreed to an overture anent persons going to be licensed and ordained without the bounds of this church, did thereupon agree, without a vote, to turn the said overture into a standing act; and accordingly the General Assembly did, and hereby do, enact and prohibit all persons educated or residing within the bounds of this church, from going out of its bounds to obtain licences to preach; and prohibit all preachers, licensed by this church, from going without its bounds to obtain ordination, unless they are called to a particular congregation in another country: And enact, that licences obtained in that manner shall not be received, or have any effect in this church; and such preachers as contravene this act, shall forfeit the licence formerly given them, and be no longer entitled to the privileges which belong to a preacher of the Gospel in this church."

† By act 10th, Assembly 1711, the licencing, ordaining, and admitting any who shall not subscribe, before they be licensed, ordained, or admitted respectively, the formula here subjoined is prohibited and discharged.—"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 Parliamont since that time, to be the truths of God: And I do own the same as the confession of my faith. As likewise I do own the purity of worship presently authorised and practised in this church; and also the Presbyterian government and discipline, now so happily established therein; which doctrine, worship, and church-government, I am persuaded, are founded upon the word of

tion, and, in some respects, subject to the orders of the presbytery within which they reside; and the nature of their situation is properly expressed by the ecclesiastical name probationers; a name which reminds them that the course of their studies, as well as their general conduct, should be directed with a view to their future establishment; and that, during the time of their probation for the ministry, although they have no right to dispense the sacraments, they may improve their talents for composition and elocution, by preaching occasionally as they are called.

In the Church of England, neither priests nor deacons orders are conferred without a title; that is, without a connection with some place where the sacred office is to be exercised, and from whence the person who applies for orders may derive a maintenance. But it is impossible to demand the production of such a title from those who are proposed for trials in a church, which does not admit of a plurality of benefices having the cure of souls, which requires every minister to reside in his parish, and presumes that he is to do the duty himself. A probationer, therefore, unless he be engaged to assist a clergyman disabled by age or sickness, remains without any regular employment, or fixed charge, until he receive a presentation to a church. He then undergoes a second trial, before the presbytery to whom the presentation is addressed: He is required by them to repeat his subscription to the formula; and if they find that he is not qualified in respect of doctrine, literature, or moral character, their sentence, declaring him unqualified, unless it be reversed by their ecclesiastical superiors, renders his presentation void.

## 2. PRESENTATION OF THE PATRON.

In the year 1565, an Assembly of the church, which prepared matters for the establishment of presbyterian government in Scotland, expressed most accurately, in a message to Queen Mary, their opinion concerning the proper 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 apper-

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 courses from the present establishment in this church; renouncing all doctrines, tenets, and opinions whatsoever, contrary to, or inconsistent with the said doctrine, worship, discipline, and government of this church."

tains 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?"\* When presbyterian government was established, the spirit of this message was followed out in the acts of the parliament of Scotland, 1567, and 1592,† by which "the presentation of laick patronages is reserved to the just and ancient patrons: and presbyteries are bound and astricted to receive and admit whatsoever qualified minister presented by his Majesty or laick patrons." When presbyterian government was revived at the Revolution, an act of the Scots parliament 1690, c. 23, constituted the heritors and kirk-session of every parish, patrons: but that act was repealed by an act of the British Parliament 1712, c. 12, which restored patrons to their ancient rights; declaring, "that the presbytery of the respective bounds is obliged to receive and admit in the same manner, such qualified persons as shall be presented by the respective patrons, as the persons presented before the making of the act ought to have been admitted;" and at the same time providing, "that, in case the patron of any church shall neglect or refuse to present any qualified minister to such church that shall at any time be vacant, for the space of six months after such vacancy shall happen, 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*."

The Church of Scotland complained of this act as an invasion of its privileges, made various ineffectual efforts to obtain a repeal of it, and during a great part of the last century gave annual instructions to the commission of the General Assembly to make due application to the King and Parliament for redress of the grievance of patronage, in case a favourable opportunity for so doing should occur. But since the year 1784, this article has been left out of the instructions given to the commission. A great majority of the members of the church, both ministers and laymen, are now convinced, that patronage affords the most expedient method of settling vacant parishes; and whatever difference of opinion may still prevail upon the question of expediency, few pretend to doubt, that patronage is the law of the land, interpreted and confirmed by various decisions of the civil courts, and by the uniform train of the judgments pronounced by the church during a long course of years.

Patronage would be a grievance, if the patron had it in his power, by neglect, or from any improper motive, to keep a parish long vacant. But the law, with a becoming attention to the religious instruction of the people, has empowered the presbytery, if the patron does not present for the space of six months after the commencement of the vacancy, to take such steps as to them appear proper for supplying the vacant parish with a minister.

Patronage might be made an instrument of oppression, if it im-

\* Petrie's Church History, p. 349.

† See Act 1567, c. 7, and 1592, c. 114.

plied a right to compel a person to enter into the church, or to move against his inclination from one charge to another. But this evil, which had been felt and complained of upon the revival of the right of patronage, was effectually removed by the following clause of the act 1719, c. 29, "Whereas great obstructions have been made to the planting, supplying, or filling up of vacant churches in Scotland with ministers qualified according to law; patrons presenting persons to churches who are not qualified, by taking the oaths appointed by law, or who, being settled in other churches, cannot, or will not accept of such presentations: Be it enacted, That if any patron shall present any person to a vacant church who shall not be qualified, by taking and subscribing the said oath in manner aforesaid, or shall present a person to any vacancy, who is then or shall be pastor or minister of any other church or parish, or any person who shall not accept or declare his willingness to accept of the presentation and charge to which he is presented, within the said time, such presentation shall not be accounted any interruption of the course of time allowed to the patron for presenting: but the *jus devolutum* shall take place, as if no such presentation had been offered; any law or custom to the contrary notwithstanding."

The right of patronage would be productive of the most pernicious consequences, if a person holding that right were permitted to receive a sum of money as a compensation for the exercise of it. But the abhorrence of simoniacal practices is in this country so strong and general, that reports and suspicions of such practices are extremely rare: And the church, by the laws against simony, which she orders to be read to every candidate for obtaining either a licence or a settlement, holds forth a warning and a pledge, that all her vigilance and authority will be exerted in preventing that corruption of the morals of the clergy, and that complete degradation of the whole order, which would advance with rapid strides, if the moderate endowments provided by the ecclesiastical establishment of Scotland were to become a matter of traffic.\*

The church would have reason to complain of patronage, "if it were lawful to patrons to present whom they pleased." But the effectual remedy against the abuse of patronage, is found in the absolute and final powers as to the trial and qualifications of ministers, which, having been conveyed to the church from the Lord Jesus, are recognised by the acts 1567 and 1592, which established Presbyterian government in Scotland, and also by the act 1719, c. 29, the last British statute upon the subject, which, in the concluding clause, declares and enacts, "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." A license is the stamp of the church, declaring that a person is qualified to receive a presentation. She has herself to blame if the stamp be improperly affixed: But her privileges are completely secured against invasion, when the choice of patrons is by law restricted to those whom she has licensed to preach the gospel, and when it is competent for her to extend her trial to those particular qualifications

\* See Assembly, *May* 30, 1759, *sess.* 5.

which local circumstances render indispensable. The church has found, since her own act in 1779, that a presentation granted to a person who had obtained his licence from one of the dissenting classes in England, was void, and that the patron was bound to present another.\* She has found, that a total ignorance of the Gaelic language disqualifies a person from officiating in some districts of Scotland; † and I have no doubt of her having a right to find, that a natural incapacity of being heard in the place of worship where a parish assembles, is a legal disqualification for being minister of that parish.

While the power of the patrons is thus limited by the powers of the church, the right of patronage is effectually guarded against capricious invasion: For, unless the church-courts find the presentee not qualified, "they are bound and astricted to receive him." In the year 1592, when presbyterian government obtained a legal establishment in Scotland, it was provided by law, that "in case the presbytery refuses to admit any qualified minister presented to them be the patron, it shall be lauchfull to the patron to retain the haile fruits of the said benefice in his awin hands." ‡ And the civil courts applying this ancient statute in different cases, have found, that if a presbytery refuse to admit a person presented by the legal patron, for any other cause than a want of sufficient qualifications, and proceed to settle another, their sentence has not the effect of giving the minister whom they settle a right to the emoluments of the benefice; but the patron is entitled to retain the stipend in his hands, in the same manner as if the parish had continued vacant.

### 3. VOICE OF THE PEOPLE.

The idea of a right in the whole congregation to appoint and ordain their own minister, belongs to the independents or congregationalists, is inconsistent with the principles of presbyterian government, and has been often disclaimed by the Church of Scotland, both in ancient and in modern times. The idea of a right in the

\* Assembly 1798, session 5th. "The Assembly found, that Mr James Gary, presentee to the parish of Brechin, has not gone through that course of University education in philosophy and theology which the laws of this church require, as necessary for all the probationers thereof; that the certificate of licence and ordination he has produced, from three Protestant Dissenting Ministers in England, cannot, in consistency with the laws of the church, be held as qualifying him to accept a presentation to any parish in this church: and that the deed of the presbytery of Chanonry, of September 5, 1796, laid before the presbytery of Brechin along with the presentation, was rash and unwarranted, and did not qualify him to accept of that presentation: Therefore remitted this cause to the presbytery of Brechin, directing them to pronounce, at their next meeting, a sentence refusing to sustain the presentation to Mr Gary, in respect that the presentee is not qualified according to the laws of the church." See also session 8, of Assembly 1798.

† Assembly 1772, session 9.

‡ See Act 115, 1592.

people to elect a person to be presented to the presbytery, that in consequence of that election he may by them be ordained and admitted, is inconsistent with the nature of the religious establishment of this country, in which the state, by reserving to the patrons their ancient rights, ascertains a particular mode of inducting into the church those who are to receive the legal emoluments. The idea of a right in the heritors and elders, as representatives of the parish, to elect a minister, arises purely from the act of the Parliament of Scotland 1690, c. 23, which, in the preamble of the British statute 1712, c. 12, is said to have proved inconvenient, and to have occasioned great heats and divisions. That act is now repealed; and although, from the influence which the heritors and elders may be supposed to have in their respective parishes, it ought always to be considered as a matter, not of courtesy only, but of prudence and propriety, to solicit their concurrence, the settlement of a presentee does not depend upon their consent.

Yet the constitution of our church, regarding the inhabitants of a parish as deeply interested in the character of the person who is to minister to them in holy things, has not overlooked them in his settlement, but in two different ways affords them an opportunity of expressing their sentiments. Before a presbytery to whom a presentation is addressed, takes the candidate upon the second trials, which, if a probationer, he is, by the laws of the church, required to undergo, they appoint him to preach in the parish-church: And whether he is a probationer or an ordained minister, they assemble there upon a day, of which notice had been given to the parish at least ten days before: and, after a sermon suited to the occasion by one of their number, they inform the people, that a presentation in his favour has been received, and ask them to subscribe a paper named a call, inviting him to be their minister, and promising him subjection in the Lord. It has been the immemorial practice of the church of Scotland, by appointing the moderation of a call, to give the people an opportunity of encouraging the labours of their future minister, by addressing to him this invitation; and in consequence of this practice, one of the legal steps in the settlement of a minister, is a sentence of the presbytery sustaining the call. But whatever was the state of matters at the time when the practice began, it is now understood, that a call may be sustained, however small the number of subscribers. For although the matter was long vehemently contested, and is still occasionally the subject of discussion, the church courts have shewn, by the train of their decisions during the greater part of the last century, that they do not consider themselves as warranted by law to refuse admission to a presentee upon account of any deficiency in the subscriptions to his call.

The second way in which the constitution of our church provides for the voice of the people being legally heard in the admission of their minister, is by giving the inhabitants of a parish a right to appear as accusers of the presentee. At any time during the course of his trials, they may give in to the presbytery a libel, charging him with immorality of conduct or unsoundness of doctrine. When they present the libel, they bind themselves, under pain of ecclesiastical censure, to prove it; but the presbytery is not at liberty to

proceed to the settlement till the libel be discussed. After the trials of the presentee are finished, all who have any objections to his life or doctrine are summoned, by a paper read from the pulpit, called an edict, to appear on the day appointed for his ordination, which is at the distance of not less than ten days from the reading of the edict, and may then, without the formality of a libel, state their objections as matter of charge. The charge will be disregarded by the presbytery if it is frivolous; and as proof must be instantly adduced, the edict does not afford any occasion of vexatious delay; but it gives persons the most unacquainted with the forms of business an opportunity of stating their personal knowledge of any circumstance in the character and conduct of the presentee which renders him unworthy of being a minister of the gospel; and by exhibiting the jealousy with which the constitution of our church watches over the qualifications of intrants, it furnishes a lesson of circumspection to all who direct their views to the church.

#### 4. SOLEMN DEED OF THE PRESBYTERY.

If no bar has arisen in consequence of the edict, the presbytery proceeds, upon the day of which notice had been given, with a solemnity corresponding to the nature of the ministerial office, to complete the settlement of the presentee. After a sermon suited to the occasion, one of their number, who had been appointed to perform that service, does in their presence, and in face of the congregation, propose to the presentee the questions appointed by the 10th act of the General Assembly 1711 to be put to ministers at their ordination; and having obtained by his answers the declarations, promises, and engagements which that act requires, he proceeds to invest him with the full character of a minister of the gospel, conveying to him, by prayer, and imposition of the hands of the presbytery, all the powers implied in that character. He then, in name of the presbytery, receives and admits the person thus ordained, to be minister of the vacant parish; by which deed the presbytery, in execution of the office committed to them as a branch of the established church, constitute a connection between him and the inhabitants of that parish, which gives him a legal title to the emoluments provided by law for the person who officiates there, which, during its subsistence, renders him incapable of holding any other charge that has the cure of souls, and which, during his life, can be dissolved only by the act of the church, either accepting his resignation, or deposing him from the office of a minister, or translating him to a different charge.

If the person presented had been formerly ordained, it is not competent to repeat the act of ordination: But he is required by the presbytery to declare in face of the congregation, that he consents and adheres to the declarations, promises, and engagements implied in his answers to the questions which were put to him when he was ordained; and he is then received and admitted minister of the parish.

In this manner does the constitution of the church of Scotland preserve the rights of the church, of the patron, and of the people; and, from the union of the three, in the settlement of vacant parishes,



there is every security which the nature of the case admits, that no minister shall enter into this church who is deficient in essential qualifications, and who may not hope, by the blessing of God upon his assiduous labours, to render himself acceptable and useful to those over whom "the Holy Ghost hath made him an overseer."

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## LORD ABERDEEN'S BILL,

RESPECTING THE

### ADMISSION OF MINISTERS TO BENEFICES.

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6 & 7 VICTORIA, 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, (1567, c. 7,) entitled, "Admission of Ministers of Laick Patronages," it is statuted and ordained, that the Examination and Admission of Ministers within this Realm be only in the Power of the Kirk, now openlie and publicly professed within the samin, the Presentation of Laick Patronage alwaies reserved to just and auncient Patrones; and by an act passed in the Parliament of Scotland in the Year One thousand five hundred and ninety-two, (1592, c. 114,) entitled, "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 ourdour 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 Majisty 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, (10 Ann. c. 12.) intituled, "An Act to restore the Patrones 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 recieve and admit Persons presented to Benefices, was again recognized 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, (5 G. 1, c. 29.) 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 or Scotland, and for preventing delays in the supplying or filling up of vacant Churches in Scotland," it is also declared and enacted, that nothing herein contained shall prejudice or diminish the Rights of the Church, as the same now stands by Law established, as to the trying of the Qualities of any Person presented to any Church of 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 haveing Cure against whom or whose Settlement, in any such Parish or Benefice, there exists any just Cause of Exception.—It was 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.

I. 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.

Reasons and Objections to be determined by Presbytery or referred to superior Judicatory of the Church.—To what the Presbytery shall have regard in their Determination.—If the Presbytery support such objections, they shall issue a Deliverance to that effect, and Patron may make another Presentation.

II. That the Objections or Reasons aforesaid shall be fully considered and disposed of by the Presbytery by whom they are to be cognosed 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 the Charge, and 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 Calender 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 the 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.

If no good objections against Presentee, Presbytery shall (subject to Appeal) proceed to further Trial, and admit him if qualified.

III. That if the Presbytery or other Judicatory of the Church, after considering all the Objections aforesaid to the Presentee, and all the Reasons stated against his Settlement in that particular Parish, shall be satisfied, in the Discharge of their Functions, and in the Exercise of their Authority and Duty as Ministers of the Gospel, and as Office-bearers in the Church, that no good Objections against

the Individual, or no good Reason against his Settlement, has been stated as aforesaid, or that the Objections and Reasons stated are not truly founded in any Objection personal to the Presentee in regard to his Ministerial Gifts and Qualities, either in General or with reference to that particular Parish, or arise from causeless Prejudices, the said Presbytery or other Judicatory of the Church shall repel the same, and, subject to the Right of Appeal as herein-after provided, shall complete the further Trials and Examination of the Presentee, and, if found by them to be qualified for the Ministry in that Parish, shall admit and receive him into the Benefice as by Law provided.

No Presentee to be rejected unless Dissent or Dislike be founded upon Objections to be judged of by Presbytery, &c.

IV. 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.

Presentee, &c., may appeal, &c., to superior Judicatory of the Church from Deliverance of Presbytery

V. 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.

The Right of Presentees now in possession, not to be challenged although a former Presentee may have been rejected, under the Act of General Assembly of May, 1835.

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 of 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, (10 Ann. c. 12,) intituled, "An act to restore Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that Part of Great Britain called Scotland. And whereas in some Instances a Presentee has, in pursuance of the said Act of Assembly, and Regulations relative thereto, been rejected by a Presbytery because of the Dissents of Male Heads of Families Communicants, and a Presentation has thereafter been issued in favour of a second or subsequent Presentee, who has been settled in the same Benefice, and whose Settlement therein and Right thereto have not been questioned in any Court of Law. And whereas it is expedient that such Settlement in and Right to the Benefice should be secured and protected from future challenge, on the ground of the Incompetency of the Rejection of the first or prior Presentee. 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.

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## SUMMARY

OF

## SIR JAMES GRAHAM'S BILL.

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7 & 8 VICTORIA, CAP. 44.

*An Act to Facilitate the Disjoining or Dividing of Extensive or Populous Parishes, and the Erecting of New Parishes in Scotland.*

### I.—DIVISION OF PARISHES.

§ 1. Act anent plantation of Kirks and valuation of Teinds, 1707, ch. 9, repealed, in so far as that act requires the consent of three-fourths of the heritors in valuation to the augmentation. Consent of heritors holding major part of valuation to be sufficient.

§ 2. Largeness of the population to be a reason for the division, although the superficial measurement of the parish may not be too extensive.

§ 3. No objection to competency of action that majority of heritors did not express consent before the process was brought. Court of Session to order intimation to be given to heritors where consents have not been obtained, and such of them as shall not, within the time specified, judicially state their dissent, shall be held as consenting.

§ 4. Where it is shown to the satisfaction of the Court, that there is already built and in good repair a place of worship suitable for the church of the new parish, and capable of being appropriated to that purpose, and that those having right to the teinds out of which is to be paid not less than three-fourths of the additional stipends, to be modified by reason of such disjunction, have consented thereto, or have stated no objections after due intimation, the Court may allow process to proceed and give judgment, if there are sufficient reasons for so doing, although the heritors of a major part of the valuation (that is, the *amount of the valued rent*), of the parish to be divided, may not have consented.

§ 5. When any parish is divided and new parish erected, the patronage thereof to belong to patron of original parish; or if new parish disjoined from more than one parish, having different patrons, the patronage of the new parish shall belong to these patrons, and be exercised by them either jointly, or in a certain order of rotation, to be agreed on by them, or failing such agreement, as may be fixed by the Court, and set forth in the decree; provided always that such patron or patrons shall undertake to bear not less than one half of the stipend to be provided to the minister of the new 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 thereof shall belong to the person, if there be only one, or to the persons alternately, if there are not more than three, who shall bear the burden of the whole stipend, and to their heirs; and if the persons who bear the burden of such stipend shall exceed three in number, then the patronage shall be exercised by three trustees, or, in case of difference of opinion, by a majority of them, who shall be chosen for their respective lives in manner following:—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 the 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 building the church; and each vacancy to be supplied by another trustee, to be elected for life by the heritors and kirk-session of the parish. 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.

§ 6. Court of Session, if they see cause, shall declare that, notwithstanding such division, the original parish, and the several new or separate parishes erected within the bounds thereof, shall, in so far as regards the support and management of the poor, 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 relating to the support and management of the poor, and the session-clerk of the

original parishes shall, during his incumbency, act as clerk of said kirk-session.

§ 7. No division of any parish shall affect the existing law and practice as to the management of roads, or the levying of statute labour money, within the bounds of the original parish, unless the county or district trustees make an arrangement in reference to the altered circumstances consequent on such division.

## II.—DISJUNCTION AND ERECTION OF DISTRICTS INTO PARISHES QUOAD SACRA.

§ 8. When any person or persons shall have built or acquired and endowed, or undertaken to endow a church, it shall be competent for the Lords of Session, as Commissioners for the Plantation of Kirks, &c., on the application of such person or persons, where they do not exceed five in number, or of two-thirds of any ten of such persons, where they do not exceed five in number, and without any concurrence of heritors, to inquire into the circumstances, and to erect such church into a parish church, and to mark out and to designate a district to be attached thereto *quoad sacra*, and to disjoin such district from the parish or parishes to which the same belonged, and to erect such district into a parish *quoad sacra*; and the minister and elders of such parish shall enjoy the *status* and all the powers of a parish minister and elders of the Church of Scotland; intimation of such application being made in the Edinburgh Gazette, or in one or more Edinburgh newspapers, or in any other form which the Court may direct. The titles of the church must secure its inalienable connection with the Church of Scotland, and due provision be made for the future maintenance of the fabric of the Church.

## III.—ENDOWMENT FOR THE MINISTER OF THE NEW PARISH.

The stipend to be not less than £100 per annum, or seven chalders of oatmeal, calculated at the highest fiars, exclusive of communion elements, with a suitable manse and offices, or a stipend of not less than £120, or 8½ chalders of oatmeal, calculated as aforesaid, where there shall be no manse, and to be permanently provided and secured, and the title to such manse and offices to be inalienably secured for the minister of such parish, and due provision made for the future maintenance of the fabric; the right of presbyteries to present to vacant parishes, *jure devoluto*, to take place in regard to all parishes erected *quoad sacra*, in the same manner as in regard to other parishes.

§ 9. A portion not exceeding one tenth of the whole sittings, to be determined by the sheriff of the county, shall be set apart as free seats; and another portion, not exceeding one-fifth of the whole, shall be let at rents not exceeding a rate to be fixed by the presbytery of the bounds; and the remaining portion may be let in such manner as shall be agreed upon by the minister for the time, and the person or persons liable for the repair of the church, and for the stipend of the minister; or in case of their not agreeing, then in such manner as shall be determined by the sheriff. One pew shall be appropriated rent-free for the accommodation of the minister, and another for the officiating elders; and the seat rents may be applied in payment of the precentor, beadle, and other expenses not otherwise

provided for, and for the purpose of upholding the fabric of the church, manse, and offices, 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 secured for the minister; and it shall be lawful to make collections at the door of the church for any of these purposes. The sum received by any person liable to uphold the church, &c., shall not in any year exceed the sum expended in the same year, by reason of such liability.

#### IV.—SITES FOR CHURCHES AND SECURITY FOR ENDOWMENT.

§ 10. Heirs and heirs of entail, and trustees for such, if under legal disability, are authorised to grant ground for sites of church and manse, and a portion of land for churchyard and glebe, not exceeding in all four acres, to be set apart at the sight of the sheriff, or of some person to be appointed by him; and in so doing, any heir of entail shall not incur an irritancy, and any such trustees shall be indemnified. The land so set apart not to be within half a mile from the manor place, or to consist of any part of gardens and enclosures adjacent thereto, which have usually been in the natural possession of the proprietor, or have not been usually let for a period longer than seven years, when the heir in possession was of lawful age, and not under legal disability. No grant by any heir of entail in possession or by his trustee shall be effectual unless the next heir of lawful age, and not under legal disability, shall have consented thereto by letter or other writing, proved to the satisfaction of the sheriff. No trustee for persons under legal disability to make such grant without adequate consideration, in price or feu-duty, proved to the satisfaction of the sheriff before the ground is set apart.

§ 11. Heirs of entail in possession may burden lands lying within the district to be designated as the *quoad sacra* parish, and to give security over the same out of the free rents of such lands, of any sum not exceeding £3 per cent. on the amount thereof, on an average of the five preceding years; but not exceeding the yearly sum of £120, for the purpose of endowing, or contributing to the endowment of the new parish, and also to burden such lands, or give security over the same, for upholding the fabric of the church, manse, and offices, with an additional sum, which, however, is not to exceed in any one year £1 per cent. on the amount originally expended in building or purchasing and completing the church, or upon the estimated value thereof, when received as the church of the new parish; and £1 per cent. on the amount originally expended in building, or purchasing and completing the manse and offices, or on the estimated value thereof; and in so doing, such heir of entail shall not incur any irritancy, and such securities shall be as valid as if the lands had not been entailed. No such security to be effectual unless the next heir not under legal disability shall have consented thereto by letter or other writing, and if the next heir of entail shall not be an heir of the body of the heir in possession, who intends to create such burden, then such heir in possession shall, three months at least before creating the same, give notice of his intention in writing to the heir next entitled to succeed after the heirs of his own body, if within Great Britain or Ireland, and if not, to his nearest male relation by the father, of lawful age, or to his known factor or attorney; and



before any such security shall be created, evidence shall be produced to the satisfaction of the Court of Session that such consent, and such notice, when 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 of burdening the entailed estate shall be exercised to the extent proposed.

#### V.—GAELIC CONGREGATIONS IN LOWLAND PARISHES.

§ 12. Authority is given to make provision for the spiritual wants of persons natives of the Highlands and Islands, resident in the low country, and in large towns, who do not sufficiently understand the English language, by appointing religious instruction to be communicated to them, and the ordinances of religion to be dispensed among them in the *Gaelic* language.

§ 13. When a separate church shall have been erected for any such *Gaelic* congregation, and a permanent endowment secured, either from teinds or otherwise, to the satisfaction of the Court of Session, such church and congregation may be erected into a separate parish, although the members thereof may be scattered, and no territorial district assigned to such parish exclusively, and the ministers and elders of such parish to have the same *status* and powers as ministers and elders of the Church of Scotland. The ministers and elders of such *Gaelic* congregation not authorised to exercise pastoral superintendence and discipline over persons who are not either members of such *Gaelic* congregation, or the families of such members, or resident within the territorial district, if any, which may be assigned to such parish exclusively.

#### VI.—HIGHLAND CHURCHES ERECTED AND ENDOWED UNDER ACTS 4 GEO. IV. CH. 79, AND 5 GEO. IV. CH. 90.

§ 14. On 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 for the benefit of which such place of worship has been provided, or of Her Majesty's Advocate for Scotland, the Court of Session, acting as Commissioners for the Plantation of Kirks, &c., are authorised to disjoin such district from the parish or parishes to which the same belonged, and to erect such district into a parish *quoad sacra*. In such case, the place of worship already built may be appointed the church, and the dwelling-house and appurtenances already provided, to be the dwelling-house, &c., of the minister of the new parish, and the provisions in the said two acts for keeping the church, &c., in repair, and for payment of a stipend of £120 per annum to the minister, to be held sufficient to meet the provisions in the present act for these purposes; and the minister and elders of such parish to enjoy the *status* and all the powers of a parish minister, and elders of the Church of Scotland.

§ 15. If in any case in which a place of worship has been built and a district set apart under the provisions of the said two acts, application shall be made to the 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 Court

shall give effect to such application, it shall be competent for the Court to appoint the place of worship already erected to be the church, and the dwelling-house already erected for the minister to be the manse of such new parish, and the Commissioners under the said act shall thereupon cease to hold the same, and the provision contained in the said acts for upholding such place of worship and dwelling in repair shall cease, 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 Court shall compute as stipends the sum paid by authority of said acts to the minister in such district, which sum shall be continued to be paid to the minister of such newly erected parish. The right of the Crown to nominate and appoint the minister to such church and district shall remain entire, notwithstanding the erection thereof into a separate parish.

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§ 16. The acts 50 Geo. III. ch. 84, and 5 Geo. IV. ch. 72, for augmenting parochial stipends, not to extend to parishes to be erected under the present act.

## TRANSLATION OF LATIN PHRASES.

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36.	Item - - - - -	-	Also.
38.	pro re nata - - - - -	-	For a special object.
39.	Τὸ γίνεσθαι - - - - -	-	What is becoming.
47.	ad perpetuam rei memoriam	-	For the perpetual remembrance of the thing.
49.	inter alia - - - - -	-	Among others.
70.	Imprimis - - - - -	-	In the first place.
82.	insignia magistratus - - -	-	The ensigns of magistracy.
128.	potestas ordinis. Potestas jurisdictionis - - - - -	-	The power of order. The power of jurisdiction.
138.	Τὸ γίνεσθαι - - - - -	-	What is becoming.
139.	Διάκονος - - - - -	-	A deacon.
144.	Ἐπισκοπος - - - - -	-	An overseer.
148.	curam animarum - - - - -	-	The cure of souls.
156.	apud acta - - - - -	-	In the procedure.
158.	alibi - - - - -	-	In another place—elsewhere.
161.	solus cum solo in loco suspecto	-	Alone with her, alone in a suspected place.
163.	ex debito - - - - -	-	Of duty and debt.
164.	ipso facto - - - - -	-	By that very fact.
...	bene or male appellatum	-	Well or ill called.
166.	apud acta - - - - -	-	In the procedure.
167.	fama clamosa - - - - -	-	A clamorous report.
168.	instante. Ab officio - - -	-	Instantly. From office.
173.	in verbis de presenti - - -	-	In words of a present party.
180.	Vide - - - - -	-	See.
181.	Jus Devolutum - - - - -	-	A devolved right.
182.	tanquam jure devoluto. Sub finem - - - - -	-	As by devolved right. At the end.
...	Concilii Antiocheni - - - -	-	The council of Antioch.
183.	Summa Juris Canonici - - -	-	The sum of canon law.
...	Patronum faciunt Dos Ædificatio Fundus - - - - -	-	The gift, building, (and) the ground make the patron.
187.	Vide Quæ. - - - - -	-	See question.
190.	Concil. Neocæsar - - - - -	-	The new Cæsarian council.
193.	Præbrii. Cls. - - - - -	-	The clerk of the Presbytery.
...	apud acta - - - - -	-	In the procedure.
196.	multa impediunt matrimonium contrahendum, quæ non dirimunt contractum - - - - -	-	Many things hinder matrimony being contracted which do not destroy the contract.
198.	ad futuram rei memoriam	-	For remembrance of the thing in time to come.
201.	ad aperturum libri - - - - -	-	At the opening of the book.
203.	Nota—brevitatis causa - - -	-	Note. For the sake of brevity.
...	Vide § seq - - - - -	-	See § following.
207.	cæteris paribus - - - - -	-	Other things being equal.

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212.	mutatis mutandis	-	-	The things charged being changed (that is, the circumstances being altered).
213.	non liquet. Ex officio	-	-	Does not appear. From his office.
214.	de fideli	-	-	Concerning faithful (administration).
215.	apparitores	-	-	Officers.
...	magistratum ministri, qui eorum jussa exequuntur—quia præsto sunt, obsequunturque magistratibus	-	-	The servants of magistrates, who execute their orders—because they are at hand, and obey the magistrates.
228.	per vires	-	-	By turns.
239.	ne quid detrimenti caperet ecclesia	-	-	That the church sustain no injury.
248.	nihil hic deest	-	-	Nothing here is wanting.
256.	Catechumeni	-	-	Catechumen.
257.	Perfecti	-	-	Perfect.
269.	per famam clamorosa	-	-	By clamorous report.
276.	Fama clamosa publica et frequens	-	-	A public and frequent clamorous report.
281.	sub fin.	-	-	At the end.
282.	matrimonium	-	-	Marriage.
283.	nam non datur affinitas affinitatis	-	-	For the affinity of affinity is not given.
...	De Matrimonio	-	-	Concerning marriage.
...	durante furore	-	-	During their madness.
...	nisi malitia suppleat ætatem	-	-	Unless wickedness makes up the deficiency of age.
...	necessitate præcepti, sed non necessitate medii	-	-	By necessity of the command, but not by necessity of the intervention.
286.	Mathæus de Raptu	-	-	Matthew on rape.
288.	Concil. Carthagin.	-	-	The council of Carthage.
304.	pro rata	-	-	In proportion.
306.	Lexicon Juridicum	-	-	Law dictionary.
310.	quoad modum probandi	-	-	As to the manner of proof.
...	in ipsis corporibus	-	-	In the bodies (substances) themselves.
311.	in ecclesia constituenda	-	-	In constituting the church.
...	in ecclesia constituta	-	-	In a constituted church.
314.	ut supra	-	-	As above.
...	crimen mere ecclesiasticum	-	-	A crime merely ecclesiastical.
...	prima instantia	-	-	In the first instance.
320.	altare contra altare	-	-	Altar against altar.
321.	jure divino	-	-	By divine right.
323.	de praxi	-	-	In practice.
329.	crimen utriusque fori	-	-	A crime of both courts.
...	per se	-	-	By itself.
330.	quo casu	-	-	In which case.
...	a nævo, clavo, vel impetigine naturali	-	-	From a natural blemish, whitlow, or ringworm.
...	malum minatum et damnum secutum	-	-	Evil threatened and danger consequent.
...	crimen in suo genere	-	-	A crime in itself.
...	inter causam et effectum	-	-	Between cause and effect.
...	sibi imputant	-	-	They blame themselves.
...	per defamationem	-	-	By report.

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331.	hic non semper requiritur ut constet de corpore delicti -	It is not here requisite that the commission of the crime be apparent.
...	in animo - - - -	In the mind.
...	socii criminis - - - -	Companions in crime.
...	cum nota - - - -	With a mark.
332.	constat de corpore delicti, de modo delinquendi, et inimicitiiis prævis - - - -	It is apparent concerning the commission of the crime, the mode of punishment, and former enmities.
333.	toties quoties - - - -	Every time.
338.	calumniandi animus - - - -	The intention to calumniate.
339.	injuriandi animus - - - -	The intention to injure.
...	injuria est delictum quo quid ad contumeliam vel dolorem alterius admittitur - - - -	An injury is a crime by which anything is admitted to the reproach or grief of another.
...	dictum vel factum alterius famam vel dignitatem minuens - - - -	A word or deed lessening the fame or dignity of another.
...	justa et non affectata ira - - - -	Just and not affected anger.
...	libelli famosi - - - -	Notorious libels.
343.	supina ignorantia - - - -	Careless ignorance.
...	Homicidium necessarium - - - -	A necessary homicide.
...	Inculpata tutela, or Moderamen inculpatae tutelae - - - -	Blameless defence, or the moderation of blameless defence.
...	antequam sit in actu proximo occidendi - - - -	Before he be in the act next to killing.
344.	in actu proximo offendendi - - - -	In the last act of offence.
...	culpa levissima - - - -	The lightest fault.
344.	culpa levis - - - -	A light fault.
...	culpa lata—dolose—in civilibus—in criminalibus - - - -	A great fault—craftily—in civil matters—in criminal matters.
...	culpa lata nunquam æquiparatur, &c. - - - -	A great fault is never equalled to deceit, when the discussion is concerning a painful punishment of the body.
...	Homicidium culposum - - - -	Blameable homicide.
...	aberat animus occidendi - - - -	The intention to kill was absent.
...	Versatur in illicito - - - -	Is engaged in an illegal affair.
346.	in linea recta - - - -	In the right line.
347.	foetus fuit animatus - - - -	The foetus was alive.
...	ad alterius thorum - - - -	To the bed of another.
349.	eo ipso. Medium peccati - - - -	By this. The means [middle] of the sin.
350.	infra legum observantiam - - - -	Beneath the observation of the laws.
...	poena ordinaria - - - -	An ordinary punishment.
...	concubitus soluti cum soluta et impudica - - - -	Loose copulations with a loose and immodest woman.
354.	inter ebrios—ebriosos. - - - -	Intoxicated—drunkards.
358.	usque ad sententiam - - - -	Up to the sentence or doom.
359.	crimen utriusque fori - - - -	A crime in both courts.
...	crimen falsi. Falsitas - - - -	Crime of falsehood. Falsehood.
360.	de Crim. improba de Mendicitate - - - -	Concerning crimes of wicked mendicinity.
...	Codex de validis Mendicantibus - - - -	The codex concerning sturdy beggars.

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360.	per diem - - - - -	By the day.
361.	eorum arte - - - - -	By their art.
..	et quorum pars magna fui -	And of whom I was a great part.
...	ope et concilio. Complices.	By aid and counsel. Accomplices. A
	Leno - - - - -	pimp.
368.	inscribere in crimen - - -	To bind one's self to underly the crime.
...	ex levibus conjecturis. Fama	From light conjectures. A public
	publica clamosa et frequens -	crying, and frequent report.
...	inscribere in crimen - - -	To underly the crime.
369.	ex debito - - - - -	Of debt.
373.	solus eum sola in loco suspecto	Alone with a solitary woman in a
		suspected place.
374.	per comparisonem literarum	By comparison of letters.
...	dolus malus - - - - -	Evil craft.
375.	ad tollendum scandalum et ad	To take away scandal and to discover
	erundam veritatem. Cum	the truth. With a mark.
	nota - - - - -	
376.	initialia testimoniorum. Soluti	The beginnings of evidenece. Free.
...	obstativa. Singularitas admi-	Hindrances. A singularity which is
	nieulativa - - - - -	an adminicle.
...	singularitas diversificativa.	A singularity which is different.
...	facti permanentis - - - - -	An abiding fact.
...	sed notorium non indiget pro-	A notoriety requires not proof.
	batione - - - - -	
...	facti transeuntis - - - - -	A current fact.
379.	ubi malitia supplet aetatem -	Where malice supplies (the deficiency
		of) age.
380.	militia spiritualis - - - - -	Spiritual soldiery.
382.	omni exceptiones majores -	Beyond all exception (that is so bad).
...	Ambitus. Crimen mere eccle-	Unlawful proeuring. A crime merely
	siasticum - - - - -	ecclesiastical.
...	in communi forma - - - - -	In common form.
390.	ab officio et beneficio - - -	From the office and the benefice.
391.	hinc inde - - - - -	Hence—thence.
394.	ad quem. A quo. Firmatur	To whom. From whom. The decret
	sententia. - - - - -	is affirmed.
395.	et gradatim - - - - -	And by degrees.
399.	in extremis - - - - -	At the gates of death.
400.	sinus ecclesiae semper patet -	The bosom of the church is always
		open.
...	interdictum - - - - -	Interdict.
401.	severissima disciplina et ulti-	The severest discipline and last thun-
	mum fulmen ecclesiae -	derbolt of the church.
402.	tit. prae. - - - - -	Preceding title.
437.	quoad sacra - - - - -	Concerning sacred things.
...	status - - - - -	Status.
439.	quoad omnia - - - - -	Concerning all.

The reader will perceive (in going over the work) that a few Latin extracts have been omitted in this appendix, but the translating of them would be attended with little benefit, and the passing over them does not in the least interfere with the sense.









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