With the kind regards

of the Author

Edinburgh

July 15

1877

MEMORIAL

WITH THE

OPINIONS OF EMINENT COUNSEL

IN REGARD TO THE

CONSTITUTION OF THE FREE CHURCH OF SCOTLAND,

AND REMARKS ON

OUR PRESENT STATE AND PROSPECTS.

BY

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PREFACE.

THE object of this publication is to demonstrate that the principle of National Religion is embedded in the Constitution of the Free Church of Scotland. In consequence of the new Voluntary agitation which has arisen amongst us, it is necessary to vindicate the consistency of those who resist this agitation, and claim to represent the principles of 1843. True Free Churchmen are, from their very profession, bound to be the strenuous advocates of national religion; they are bound to resist all proved abuses; but they never will be found resisting measures of necessary reform in the Established Church, agreeing with so-called "Liberationists," or sympathising with the atheistic maxim that civil government has only to do with "the outward and secular affairs" of nations. But how can men who accept of office in our Free Churches be kept to the maintenance of their professed principles? This is a question of the most serious import, and yet is little considered.

The principles of the Free Church of Scotland were adopted with the utmost deliberation, and are embodied in our Constitution, as this publication demonstrates, in language of the utmost clearness. Every office-bearer swears that he will maintain them; and yet in a single generation they are, so far as we can see, by many office-bearers virtually and practically rejected. How is this to be prevented or rectified?

We have been familiar with the corruptions of Established Churches, and the difficulty of rectifying them. A new, unexpected, and equally great difficulty, however, plainly exists in Nonconformist Churches, and we should like to hear a simple and practical solution of this difficulty, if that be possible. Under the plea of spiritual independence—a very good plea, if scripturally stated and lawfully used—majorities in Dissenting Churches seem now to claim the right of diverting property from its intended purpose, of trampling on their own constitutions, and setting minorities at defiance. This has been the great vice of certain Nonconformist Churches. It is a matter that must soon engage very serious attention, and the materials here supplied will illustrate the nature of the evil in the case of the Free Church of Scotland.

In looking calmly over the past and present, we cannot fail to see that the Free Church has suffered very seriously in character and influence by the departure of some of her leading men and their followers from first principles. The great mass of the people and a number of ministers are still uncorrupted by the so-called "progress," but real "backsliding," of recent years. But had our whole Church remained steadfast and united in maintaining the principles of 1843, our position would have been at present one of commanding influence for good. The late erratic movements of a considerable number have been as shortsighted and inconsistent with enlightened policy, as with sound scriptural principle.

For the preliminary matter contained in this volume, the Author alone is responsible. But the Memorial and Opinions herewith published deserve most careful attention on the part of all who really desire to understand the History and Constitution of the Free Church of Scotland. Now that Scotland is being frankly dealt with, for the first time for generations, by a wise and patriotic Government, as a Presbyterian country, it is well to know exactly where we all stand. No attempt is likely to be made now to compel us to become

Voluntaries. Circumstances are being entirely changed, and new questions are evidently opening up. It is earnestly to be desired that our Church, without haste, prejudice, or compromise, may have grace to deal with all such questions in the wise, Christian, and patriotic spirit of Knox, Melville, Henderson, and Chalmers.

It may be added, that besides the Memorial now published, a supplementary Memorial was prepared in regard to the actual details of the course to be taken in 1873 if the plan of Mutual Eligibility had been finally adopted by the Assembly. It is not thought necessary to publish that other Memorial at present, but in regard to it, and the course of procedure to be adopted, the most valuable advice was obtained from William Watson, Esq., Advocate, the present Solicitor-General. Our best thanks were also due to our able law-agent, John Welsh, Esq., of the firm of Keegan & Welsh. Providentially, a most painful contest was rendered unnecessary; and one result of this publication will be to preserve, in a convenient form, a record of the principal facts.

EDINBURGH, 50 GEORGE SQUARE,
September 1874.

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THE STATE OF THE QUESTION.

THE attitude of nations and their rulers towards true religion and the Church of Christ is a matter of paramount importance. "Be wise now therefore, O ye kings; be instructed, ye judges of the earth; serve the Lord with fear." Concerning the Church of Christ it is said, "The nation and kingdom that will not serve Thee shall perish; those nations shall be utterly wasted." The importance of this was clearly acknowledged by John Knox in the first Confession of Faith of the Scottish Church, as follows:—

"Moreover, to kings, princes, rulers, and magistrates, we affirm that chiefly and most principally the conservation and purgation of the religion appertains, so that not only they are appointed for civil policy, but also for maintenance of the true religion, and for suppressing of idolatry and superstition whatsoever, as in David, Jehoshaphat,

Hezekiah, and Josiah, and others highly commended for their zeal, in that case may be espied."

The same vital principle has been strongly maintained during all our subsequent ecclesiastical history. Although in the covenanting struggle the essential right of the people to serve Christ as the only King in Sion, and to defend their religious liberties even unto blood, necessarily became prominent, the truth of the universal supremacy of Christ and His Word underlay the whole contest. The liberty of the Church Courts and people to serve Christ according to His word was, under the name of "spiritual independence," specially contended for also, and forced into prominence during the Ten Years' Conflict, in consequence of an attempt to overbear the Church Courts and people by means of the Patronage Law. But that conflict itself was connected with an anti-Voluntary struggle, and would have had no meaning—in truth, would have been absurd—if the Church had seen it to be a duty to abandon the advantages of a Church Establishment and all union between Church and State. From the Moderator's

chair of the first Free General Assembly, on the day of the Disruption, Dr Chalmers accordingly dispelled all doubt on this subject by exclaiming—"We hold that every part and every function of a commonwealth should be leavened with Christianity, and that every functionary, from the highest to the lowest, should in their respective spheres do all that in them lies to countenance and uphold it. That is to say, though we quit the Establishment, we go out on the Establishment principle—we quit a vitiated Establishment, but would rejoice in returning to a pure one. To express it otherwise—we are the advocates for a national recognition and national support of religion—and WE ARE NOT VOLUNTARIES."

The principle of national religion is therefore embedded in the Constitution of the Free Church of Scotland. This is as certain as any fact can be. Of this, all who took part in the Disruption struggle, or who know anything of its history, cannot fail to be aware. Apart from the strong declarations of Dr Chalmers to this effect from the chair of the first As-

sembly of the Free Church, there is other evidence of the most conclusive kind. The Protest laid on the table of the General Assembly by Dr Welsh in 1843, previous to the Disruption, contains the following passage: "While firmly asserting the RIGHT and DUTY of the civil magistrate *to maintain and support an establishment of religion in accordance with God's Word, and reserving to ourselves and our successors to strive, by all lawful means as opportunity shall in God's good providence be offered, to secure the performance of this duty* agreeably to the Scriptures, and in implement of the statutes of the kingdom of Scotland, and *the obligations of the Treaty of Union* as understood by us and our ancestors." This is sufficiently explicit, but the same document also affirms that "the Claim, Declaration, and Protest of the General Assembly, which convened at Edinburgh in May 1842, as the act of a free and lawful Assembly of the said Church, shall be holden AS SETTING FORTH THE TRUE CONSTITUTION OF THE SAID CHURCH." Now, what does this "Claim, Declaration, and Protest" say on this subject? The conclusion

of it is as follows, and nothing can be less ambiguous—"They especially invite all the office-bearers and members of this Church, who are willing to suffer for their allegiance to their adorable King and Head, to stand by the Church and by each other in defence of the doctrine aforesaid, and of the liberties and privileges whether of office-bearers or people which rest upon it; and to unite in supplication to Almighty God, that He would be pleased to *turn the hearts of the rulers of this kingdom to keep unbroken the faith pledged to this Church in former days by statutes and solemn treaty, and the obligations come under to God himself to preserve and maintain the government and discipline of this Church in accordance with His Word;* or otherwise, that He would give strength to this Church—office-bearers and people—to endure resignedly the loss of the temporal benefits of an Establishment, and the personal sufferings and sacrifices to which they may be called, and would also inspire them with zeal and energy to promote the advancement of His Son's kingdom in whatever condition it may be His will to place them;

AND THAT IN HIS OWN GOOD TIME HE WOULD RESTORE TO THEM THESE BENEFITS, THE FRUITS OF THE STRUGGLES AND SUFFERINGS OF THEIR FATHERS IN TIMES PAST IN THE SAME CAUSE, and thereafter give them grace to employ them more effectually than hitherto they have done for the manifestation of His glory." All this of course is inconsistent with Voluntaryism. But those who remember the circumstances cannot fail to be aware that nothing else would have been satisfactory to the people, or would have expressed the mind of those who took part in the Disruption struggle. It is only after a generation has passed away that some leading men, who have apparently changed their own ground, and a number of young ministers who were not honoured to take part in the Disruption struggle, or to sacrifice anything for the principles of the Reformed Church of Scotland, are apparently seeking to shift the Free Church of Scotland from her original basis, and to identify her with the unscriptural and revolutionary principles of modern dissent. Fortunately the original documents remain, and cannot be altered. How men can recon-

cile to themselves the propriety of attempting, by whatsoever means, to alter or ignore a Constitution which they have sworn to maintain, and which was made only yesterday, is another question. It affords a striking illustration of the instability of human things, and not least of disestablished churches, and raises a most serious question yet to be settled. But the truth of God and the God of truth are unchangeable; and in so far as the property of Nonconformist Churches is concerned, there is a civil law which, if appealed to, will doubtless keep that property to its original destination.

The main object of this publication is to lay before the Church and the world a Memorial, with Opinions of distinguished Counsel, in regard to the true Principles of the Free Church of Scotland on the subject of Church Establishments. If any Opinions were obtained on the other side we shall be glad to see them. This publication is expedient in connection with the completion of the legislation which, by the Divine blessing, prevented our Church from being rent asunder in 1873, and

it has become essential also in consequence of the new and somewhat violent agitation which has recently arisen for the overthrow of the existing Establishments, and in which some Free Churchmen are taking a zealous, although, as we think, an inconsistent, part. The meaning of legal opinions is not that lawyers are to settle the principles of our Church, except in regard to property. They are not to determine their Scriptural truth or spiritual bearings; but in all questions of property the civil power is supreme. In the matter of property the Free Church is only a trustee, and it is important to know definitely what are the conditions of the trust, what the principles have been—maintained in 1843, embodied in the Constitution of the Church, contended for since, and in connection with which all our property has been collected. If a change is to be made in our principles, we must begin at the beginning. If our Church is to be altered without universal consent, all our arrangements must be commenced on a new footing, leaving the existing property to those who are still prepared and determined to stand on the old ground.

No questions of the nature indicated did arise, or could possibly have arisen, for many years after the Disruption—indeed, until the mass of the Disruption fathers had gone to their rest. These men had fought with the greatest eagerness against Voluntaryism, as in effect leading to national atheism. They had claimed to be the true descendants of Knox, Melville, Henderson, and Carstairs, who were all unhesitating supporters of Church Establishments. With them the Free Church of Scotland was simply "the Church of Scotlandfree."

A great change, however, arose in connection with the Union negotiations, whether as cause or effect. These were begun in 1863, coupled with a professed determination to carry them on with "due" regard, which was explained to mean "absolute" regard to the principles of the Free Church of Scotland. It soon appeared, however, that very different views were entertained by leading men as to the objects to be aimed at, and the issue of ten years' protracted conferences, after several ruptures and much conflict and confusion, was simply to develop a scheme according to which

the Free Church was to abandon her distinctive principles—for it was proved that if she abandoned one she must abandon both—and sink to the level of the United Presbyterians, who glory in proclaiming that they are on principle the enemies of all Established Churches. The last shape which this contest took was an attempt to establish an absolute and unqualified mutual eligibility of ministers between the United Presbyterian, Reformed Presbyterian, and Free Churches, of course on the assumption that their principles were identical. This, however, was strongly resisted, and the assumption on which it rested strenuously denied; and had this project been pressed, it would have ended in a complete rupture of the Free Church in 1873. Indeed, when the Assembly of 1873 met, nothing else than a break-up was anticipated, and all necessary preparations were made accordingly. The crisis, however, in the good providence of God, was averted by a proposal made by Dr Candlish, which proved satisfactory to all parties. This proposal embodied a clear admission of the principles of the Free Church

on the subject of national religion. The result of it was effectually to qualify the eligibility and admission of ministers from other Churches by the express condition that they should previously receive, in every case of a proposed call, distinct information of the peculiar principles of the Free Church, and should clearly assent to these before their settlement. The form which the arrangement took was not what we anticipated or desired. We were anxious that the Mutual Eligibility Scheme should cease, along with all attempts to unite incongruous elements. Failing this, we desired that the Overture on Mutual Eligibility should be suspended until the new overture by which it was to be effectually qualified had also passed, not merely as an interim Act, but as part of the permanent law of the Church under the Barrier Act, and therefore we guarded ourselves on this subject by a protest. At the same time, we could not deny that the substance of our demand was conceded—and if confirmed, as was promised, conceded permanently—although somewhat in a cumbrous way, and therefore we most cor-

dially united in giving thanks to God, who had so wonderfully interposed for our deliverance. This qualification of the Mutual Eligibility Overture has now become part of the permanent law of the Church, having been adopted by an overwhelming number of Presbyteries, viz., 71 out of the 76, no Presbytery having objected to the overture, although five did not report. It is as follows :—

"The General Assembly, with consent of Presbyteries, enact and ordain, That in every case of induction into any spiritual office or function in this Church, the person to be inducted shall sign the formula prescribed in Act XII. 1846, intituled, *Act anent Questions and Formula*, during public worship on the day of induction, immediately after giving satisfactory answers to the questions appointed in said Act to be put to him; and that in every case of a minister being proposed to be called who belongs to another branch of the Church of Christ, if the Presbytery find the call regular and sufficient so far as the congregation is concerned, they shall adjourn to meet on a subsequent day, not sooner than a fortnight, nor later than four weeks thereafter, except when the call is to a minister in the Colonies, in which case the period of adjournment may be prolonged; and shall transmit to the minister proposed, to be

called an extract of that finding, together with a copy of the said Act XII. 1846, as hereinafter amended, INCLUDING THE PREAMBLE (see p. 23)—AS WELL AS THE ENACTING PART, as also a copy of the present finding of the Assembly in full, embracing the Act of Assembly, Class I. No. 3, of date Thursday, 29th May 1873, passing the Mutual Eligibility Overture into a standing law, with relative declaration in full, and also a copy of this Act, informing him that if no communication is sent beyond a simple acknowledgment of their receipt, *the Presbytery will then, upon the assumption that no difficulty exists on his part as regards the said documents*, proceed in the case according to the laws of the Church. And at the diet for the induction of any minister thus called, the Presbytery shall, before the induction service, record the fact that the provisions of the Act have been duly complied with.

"The Assembly also, with consent aforesaid, rescind the last clause of section 9 in the second head of the said Act XII. 1846, as being superseded by the provision now enacted, anent the time and manner of signing the formula."

Apart from the conservation of our Free Church principles, thus secured, there are several advantages in this new arrangement, even as compared with the previous system. The subscribing of the Formula

"during public worship on the day of induction" is a decided improvement upon the previous method. It not only makes sure that the thing shall be done, but it lets the people clearly understand the condition on which their minister has been settled amongst them; viz., his open avowal, by word and writing, of Free Church principles. There has been too little in Scotland of an admission that the settlement of a minister over a congregation implies a mutual engagement—an engagement of support and encouragement in the Lord on the part of the people, and an engagement to maintain fixed principles and to discharge understood duty on the part of the minister. That this is implied is certain, but it has not hitherto been very clearly brought out. In America we have seen this exhibited distinctly at a settlement, by an open questioning of the congregation as well as of the minister. It is not so here. Now we certainly secure an approximation to a better system by making the minister not only give "satisfactory answers to the questions appointed in said Act," but in the presence of the congregation also to sign the Formula "dur-

ing public worship" on the day of his induction. It is also of advantage that in accepting ministers from other Churches, we are not now called upon to express any approbation of everything in the constitutions of the Churches themselves from which they come. We accept of the men simply as units, and solely on the ground of their personal character and acceptance of the principles of our own Church. By agreeing to our principles, moreover, they accept of the "doctrine of the Confession of Faith" as "the confession of their faith," including, of course, the doctrine of national religion as clearly taught especially in the twenty-third chapter. To make this clear, moreover, they are now called upon to adhere to "the preamble" of the Act 1846, anent Questions and Formula, "as well as the enacting part," said preamble being as follows, and in both its parts inconsistent with theoretic Voluntaryism: "The General Assembly, in passing this Act, think it right to declare, that while the Church *firmly maintains the same scriptural principles as to the duties of nations and their rulers in reference*

to true religion and the Church of Christ for which she has hitherto contended, she disclaims intolerant or persecuting principles, and does not regard her Confession of Faith, or any portion thereof when fairly interpreted, as favouring intolerance or persecution, or consider that her office-bearers by subscribing it profess any principles inconsistent with liberty of conscience and the right of private judgment." Nothing could be more distinct than this. It not only explains and re-affirms the principles of our Church, but refers to her past contendings, which were, undoubtedly, both against Voluntaryism and Erastianism, as explanatory of what is meant. This does not bind Free Church ministers or other office-bearers to anything new. It is merely an assertion of that which we had from the beginning; but it excludes men, possessed of honour and honesty, from the ministry of our Church who are not prepared to assent to the principle of national religion as thus defined and maintained in the Church of Scotland since the Reformation. Of course, it implies that ministers already within our Church are bound to no less, in the way of

principles, than those whom it may be proposed thus to admit; and it, at the same time, discards the idea that the Confession of Faith, "fairly interpreted," teaches, or may be supposed to teach, intolerant or persecuting principles.

Another kindred question, not referred to in 1873, and depending on other principles, has since been incidentally raised, and may yet give rise to debate. The Church legislation of 1873 was intended to afford a definition of the terms upon which ministers could enter the Free Church. The men who are prepared to assent to the principles to which we have referred, of course simply become Free Church ministers, and enter our Church as such, to whatever denomination they may have previously belonged. But whilst this is a clear definition of the way in which men may enter our Church, the question still remains, how can they leave it? Some mystery has been attempted to be thrown over this by the appearance of United Presbyterian commissioners in the Free Presbytery of Glasgow, pleading for the removal of a Free

Church minister. This, however, is a very different matter, and what took place in the case of Mr Thom by no means settles the question raised. The case broke down, and the question will probably be tried in another way. But if it had proceeded, the real point would undoubtedly have emerged, and could only have been settled by reference to another question, viz., Has the Free Church authority to send away any of her ministers from her communion? or, in other words, to hand over any of her ministers by ecclesiastical authority to the United Presbyterian Church, or to any other body? Has the Church power to send a minister out of her communion by her inherent authority, with or without his consent? We say, with or without his consent; for if the matter is to be pleaded by "parties," except by courtesy, and treated in the ordinary way, by ecclesiastical authority, this is implied. Can the Church, in the supposed case, do more than allow the minister to go? We can translate a minister from one church to another within our own borders by Church authority, with or without his consent; but can we deal in the same way with

one of our ministers called to the English, Irish, United Presbyterian, Reformed Presbyterian, or Colonial Churches? Can we authoritatively remove him out of the Church? The question only requires to be asked to prove the absurdity of such an idea. The thing cannot be done. There is no law permitting it, and any attempt to make such a law would be resisted to the uttermost. Whatever formalities, therefore, may be adopted or tolerated in the way of courtesy in connection with the proposed calling of our ministers by other Churches, the result must ultimately in all such cases resolve itself simply into the will of the individual minister himself. It is dutiful and necessary that the Church Courts should be informed of what is contemplated, and if this is done by deputation, we see no objection to it as a fair mark of respect. If a minister wishes to go to another Church, the Church Courts may, if they see cause, let him go, and declare his church vacant. Beyond this their power does not and cannot extend.

The state of the matter is therefore this: A minister may enter the Free Church on clearly

avowing her principles. He may leave the Free Church on his own responsibility, although the Church cannot possibly possess any authority to separate him from her communion so long as he is free from Church censure. But no minister can enter without at the threshold professing our distinctive principles in regard to national religion, as embodied in our standards and Disruption documents.

Here, however, a very important and difficult question arises: How can Nonconformist Churches be kept to the maintenance of their own principles? This is a question which at one time we should not have thought of asking, although we might have been warned that it was not an unnecessary one by the lapse of so many English Presbyterians into Socinianism, so many Scotch Seceders into Voluntaryism, and of a large body of the Irish Presbyterians into Arianism. It is now a question of very considerable importance, and our experience during recent years proves that it is one of no small difficulty. The constant appeals to "overwhelming majorities," in opposition to the principles of our Church, seem to prove that in the estimation of some even the funda-

mental principles of the Church may be subverted by mere numbers. The undoubted fact that we have a Constitution, which no power of numbers can alter, seems to be disregarded, if not denied, by some, and spiritual independence seems to be Confounded with a right to do whatsoever we please. If we are to act as if we had no Constitution, and thus to be still the "servants of men," our position is surely incapable of vindication. Presbyterianism is a scriptural system, and can only be worked satisfactorily on scriptural and high-toned principles.

As early as 1847, speculations were put forth in certain quarters as to the propriety of changing the general policy of our Church in the direction of Voluntaryism. In the same year—the very year of his lamented death—Dr Chalmers uttered a number of emphatic testimonies in favour of adhering strictly to our original ground. "We rejoice," said he, "in the testimony of the Free Church for the principle of a National Establishment, and most sincerely do we hope that she never will fall away from it. . . . Sorely aggrieved as

she has been by our rulers, she will neither underrate the importance of their friendship, nor yet the solemn obligation which lies upon them to care for the religion of the people, and to provide, within their sphere, for this best and highest interest of the commonwealth." In the same year, the celebrated Hugh Miller also wrote strongly in condemnation of the same proposed policy. He said, amongst other things—

"Whether right or wrong in my convictions, I am at least thoroughly convinced that it would have the effect, if acted upon, of placing the great Protestant front of the empire in a fatally false position, and would, besides, be peculiarly injurious to the Free Church. . . . We have, I think, direct evidence that, though the war against Popery is, in its effects on those who prosecute it, an eminently safe war, the war against Establishments is not. Never, at least, was the Church more spiritual than when she was warring against Popery; never did any Church, in any controversy, become more secular than the Voluntaries of Scotland when warring against Establishments. . . . The war against Popery would be strictly constitutional; the war against Establishments would not: it would of necessity endanger, with the assailed institutions, not a few precious remnants of the Revolution Settlement, in which no class have a larger stake than we. And it is,

besides, a grave question whether the Free Church would not lose immensely more, by forfeiting the esteem of all solid men hostile to a position so revolutionary, than she could possibly gain through any consequent accession to the number of her allies from the ranks of the restless and the dissatisfied. . . . Such a war . . . would justly lay our Church open, if waged ere the present generation had passed away, to a charge of gross and suspicious inconsistency."

After this we had a period of rest. But, as we have seen, the same scheme was lately renewed with fresh energy, and is apparently not yet abandoned. All this raises a serious question about Nonconformist Churches. Our Church claims to be emphatically free, but majorities are not always scrupulous, and how shall we secure adherence to our Constitution? No doubt our Church is sound in theory, and has clearly defined principles; but in practice we are manifestly shifting our ground, and the growth of this evil has been seen and deplored by independent and intelligent men for a number of years. That it was about to land us in an unsound scheme of Education, and in 1873 in actual rupture, by the persistent proposal that we should abandon our Disruption principles

and amalgamate with an avowedly Voluntary Church, in opposition to the remonstrances of a large number of the ministers and the petitions and memorials of 123,000 of the people of our Church, is now part of our public history.

Some may be anxious to know what redress we could have obtained, even in that extreme case, if matters had been forced to an issue. Some coolly told us that we had no alternative but to abandon our principles, or abandon our property—that, after sacrificing our all at the Disruption in connection with the proceedings of the State, we must now submit again to the same ordeal at the hands of our own brethren, who, to use the graphic language of one of themselves, having laid down their all for the sake of their testimony, were about to end by laying down the testimony itself. This, however, was far from being the case. The difficulty did not lie, as many supposed, in the clause of the Model Deed in regard to the secession of one-third of the ministers. That can only apply, and was only intended to apply, to matters of detail, otherwise it must be supposed that more than two-thirds of our ministers could not only alter the fundamental

principles of our Constitution, but carry our Church and property, for example, over to Popery. The difficulty lay rather in the overwhelming power given by the Model Deed to the General Assembly. It was well that the matter was not driven to an issue, but this difficulty would have been met by the orderly establishment of a new General Assembly, holding and avowing the precise principles of the Disruption. In that case, the question would at once have been raised, Which was the true General Assembly of the Free Church of Scotland, entitled to administer its temporal affairs? If matters are ever driven to a serious issue, not by mere speeches, however offensive these are, but by an overt act of a majority of our Church directly embracing Voluntaryism, and if the position is seriously and wisely contested, it is not difficult to anticipate the probable result. But surely it is hard that we should be forced even to contemplate such an issue. The solemn vows taken by the office-bearers of a Christian Church ought to ensure their implicit maintenance of fundamental principles; and if at

any time they change their minds, they surely ought at once—if they cannot persuade the whole body to change—to leave the communion. The opposite course is most objectionable, and a fruitful parent of strife within, and infidelity without. We may apply to this too common evil at present the solemn words of Scripture : "And one shall say unto him, What are these wounds in thine hands ? Then he shall answer, Those with which I was wounded in the house of my friends." It is sad indeed if at any time the morality of the market-place rises higher than the morality of the Church.

Many are apt to exclaim—But would you in any case appeal to the Civil Courts to decide such a question as, Which is the true Free Church ? The answer is—Of course we would, in self-defence, if actually driven to it, but only for the one purpose of deciding the matter of property. All property is avowedly under the control of the State and its courts, and we are to render to Cæsar the things which are Cæsar's, as well as unto God the things which are God's. As Free Church-

men, we should, as at the Disruption, decide our course of action by the Word of God, and irrespective of all temporal considerations; but we should feel it to be most unfair that a great mass of property should be diverted from its original object, and devoted to a purpose which the testators, many of whom have now passed away, would have abhorred. Some of us feel that we should never have built our churches and manses, to some of which we are large, if not the largest contributors, if we had ever thought of these being turned over to Voluntaryism. So much of this false play, however, has been carried on with impunity in Scotland, in other Dissenting Churches, that we should like to see a case fairly tried upon this clear and broad issue, although we trust that such a proceeding may be unnecessary in our own Church. Meantime, it is well to lay before the Church the result of our investigations in view of a probable crisis. The Memorial now published embodies a full and candid statement of our case, apart from all heat and excitement. The questions have no reference to minorities or majorities, but to

those great principles of the Constitution by which all are equally bound to abide, as in the case of any other human partnership. It will be seen that the eminent lawyers whose opinions are herewith published are unanimous in holding (1) that the Free Church has a Constitution which can be pleaded, as in the Cardross case it was pleaded, in a civil court; (2) that the Establishment principle is embodied in that Constitution; (3) that this cannot be made an open question; and (4) that no majority, however great, can alter this against the will of any minority, however small.

Of course, other questions of detail are not so clear; and two of these eminent men represent that the scheme of Mutual Eligibility might not be deemed inconsistent with our Constitution, since in being admitted men must profess to hold, although untruly, the Establishment principle. The difficulty arose from *declaring eligible* to our highest offices men not connected with our Church, and not previously holding, but repudiating, our principles. Civil judges might be trusted, we should think, to decide satisfactorily such a question according to its broad and essential merits.

The technical point thus raised is not without some plausibility, although it does not affect the moral aspects of the question. It may be well that we look at it now with calmness, and state our impressions in regard to its ecclesiastical and legal bearings. Apart from other questions, there are certain things in all Churches which manifestly form part of the ground of their separate existence, which may be called the vital principles of their constitutions, and which therefore cannot be altered without a revolution—the abandonment of which, in truth, implies a dissolution of these particular Churches as previously existing. This, amongst other things, is without doubt the case with the Establishment principle in the Free Church, whether we consider the doctrines of her Standards, or the fact that she did not join the United Presbyterian Church at the Disruption, but deliberately and intentionally declared herself a Church, opposed to Voluntaryism, and based on the Claim of Rights—viz., a claim to all the rights and privileges of the Establishment; and that, till recently, she most carefully and strenuously maintained this position in form

as well as in substance. Now, what was recently proposed? It will not be seriously maintained, that although the Constitution cannot be altered directly, it may be altered indirectly, and by a side-wind, or that a United Presbyterian minister, previously an avowed Voluntary, and still an avowed Voluntary, was expected, by the mere technical act of being admitted into the Free Church, to be changed quite unintentionally, as by magic, into a sound defender of Church Establishments. This cannot be gravely argued. No such change was indeed contemplated. On the contrary, the whole transaction was to have proceeded on the assumption that there was no difference in principle, or none of any importance, between the Churches, and the forms of admission were not expected to make any change whatever on the principles of the men admitted. Instead of these forms being intended thereafter to afford any effective safeguard to ecclesiastical peculiarities, or being any longer a tribute to the distinctive principles of the Churches respectively, the authoritative interchange of ministers, without any previous avowal of change,

might justly be held to imply—could not, indeed, reasonably imply anything else than that all distinctions had vanished by some strange process, and that a man could now walk from one of these Churches to the other without changing his principles at all.

This plan indeed followed the avowal that there was "no bar" in principle to a complete incorporation of the Churches. It was a clear departure, at the same time, from all the rules which are enforced in every other human society. Such a thing, so far as we know, was never before done, and would not be tolerated in any other department of human life. A man must join a body before being eligible to office therein. A man might be an eminent lawyer, for example, and yet, until he is actually admitted into the Faculty of Advocates, he could not be elected Dean of Faculty. A man must be a physician or surgeon respectively before he can be elected President of the Faculty of Physicians or Surgeons. It will not do in either case, or in any analogous case, to say that he may be elected first and become qualified afterwards. Such a theory

would not be tolerated in any other profession or society, and why should it be in the Free Church? Here men were to be declared eligible to the highest offices in the Free Church without previously becoming members of it, or holding its principles. From the beginning of Christianity, we are not aware that such a theory was ever before seriously propounded, and certainly it was never before propounded in Scotland.

Previously, the Free Church had made the most anxious provisions for having her distinctive principles avowed by her office-bearers before their admission to office. There are Acts of Assembly enjoining the Professors to call the attention of their students to these principles once at least every session; providing that the Protest should be inserted at the commencement of the Records of every Presbytery as the "ground and warrant" of all their proceedings; that these documents should also be printed along with the other Standards of doctrinal belief. A Catechism also was prepared and sanctioned by the Assembly for the use of the young, in which the principles of

these documents are clearly set forth. In order that ministers and probationers should have correct views of these principles, they were required to acknowledge them as setting forth correctly their individual views and beliefs, and this after due examination. This strictness upon these points was imported from the Established Church, an Act of the General Assembly of which, in 1782, sets forth that such provisions are necessary to avoid "the danger that ariseth to this Church and to the souls of the people by licensing any to preach the Gospel who are not duly qualified according to the rules laid down in Scripture."

The Free Church all along previously subjected ministers seeking admission to her communion from other denominations not identical with her own, and before they were declared qualified to receive calls, to careful tests, for the purpose of ascertaining that they really held her distinctive principles, and of receiving an explanation of the reasons which induced them to seek admission into the Free Church. By the law 1850, which it was proposed to alter, it was enacted—an enactment

which was intended certainly to apply to the United Presbyterians—"that if there is a diversity of principle between the Free Church of Scotland and the applicant's former denomination or Church, what account does the applicant give of the change of his views?" and also, "Is the applicant well acquainted with the events and controversies which led to the Disruption between the Church and State in 1843? and are the Presbytery satisfied of his adherence to the principles maintained by the Church *at that period?*"

These provisions are remarkable in many ways. They prove conclusively that in 1850 the principles of the Free Church were unchanged; that there was no intention at that time, on the part of the Free Church, to declare qualified to receive a call any minister who did not first avow her principles as understood in 1843. But what were the principles of the Free Church in 1843? We need not say they were entirely opposed to Voluntaryism.

What was the reason for abolishing, therefore, these requirements? Had the United Presbyterians as a body adopted Free Church

principles? This is not alleged. Could any reasonable interpretation be put upon this proposed transaction, especially as read in connection with previous events, except that it was the purpose to throw down all existing safeguards against Voluntaryism and other United Presbyterian views? No other reasonable construction could possibly be put upon it. If the United Presbyterians were really, and not merely in form, to become Free Churchmen, no change of the law was necessary.

The Overture in question was designed to supersede all precautions, and to declare that the previous rules were not to be applicable to ministers of the United Presbyterian Church, who were to be callable at once, and, if called by Free Church congregations, were to be ordained and admitted on the same footing as ministers duly qualified in our own Church, or in other Churches whose principles were the same as those held by the Free Church. There was to have been an immediate and formal removal of all the existing safeguards in connection with the eligibility or callableness of United Presbyterian ministers; so that not only without pre-

viously avowing Free Church principles, but whilst avowing the very opposite, they were all by one sweeping enactment to be placed on the same level with the ministers and probationers of the Free Church. This would have been an undoing of all the careful provisions which had been made during the previous years for securing to the members and adherents of the Free Church a thorough knowledge and appreciation of her distinctive principles. It would have been the eligibility as public teachers of men who were not required to be members of the Church, or to hold or profess her principles —in short, a tacit abandonment of the Protest and Claim of Rights, an admission that there was no further need for the testimony of the Free Church on the subject of the duties of nations and their rulers, as such, towards Christian truth and the Church of Christ, and that it was immaterial whether these principles were maintained or exchanged for those of Voluntaryism. The result of this arrangement would have been, as a Judge has expressed it in another case, that the members of the Free Church would become members of a United

Church, in which the ministers and office-bearers would not be qualified in the manner deemed essential by the separate body to which they now belong; and that, so far as regards the material point of Church Establishments, which has all along been deemed essential as a test on the qualification of ministers, probationers, and office-bearers, the doctrines and system of the Free Church will cease to exist.

It is quite unnecessary to prove that this scheme of Mutual Eligibility contained in it all the objectionable features of the previous schemes of Union. This was very fully and frequently done, and it was proved, besides, that the scheme was fraught with two additional elements of evil. It was union without a basis, and union in opposition, not only to the immemorial practice of the Church, but of all human societies—viz., that men must avow the principles of a body, and be in connection with that body, before they can be eligible to office therein. By the unanimous Act of the Assembly 1799, c. 5, which was appointed to be inserted in the Records of every Presbytery, and which was tacitly confirmed by the Act of Assem-

bly 1842, c. 9, it is declared to be "agreeable to the constitution, the laws, and the decisions of this Church," that no man shall receive a call to any charge who is not a licentiate or minister of the Church in full standing; and the Presbyteries are enjoined, "if a call or presentation shall at any time be laid before them to any one not so qualified, instantly to pronounce a sentence refusing to sustain such presentation or call, and declaring it null and void." This Act has not been repealed, and ought to have been repealed as a necessary precursor to the new legislation, even if that legislation had been competent in itself. It could only be repealed after being sent to Presbyteries under the Barrier Act, for by the Act 1736, Sess. 8, it is provided as follows:—

"The General Assembly appoints and enacts—That no Acts rescissory of any standing Acts of the General Assembly be passed, until such Acts rescissory be first transmitted to the several Presbyteries of this Church, and their general opinion had for rescinding the same."

Since the Disruption, none have been declared qualified to receive calls except ministers

or probationers of the Free Church, or ministers from Churches connected with the Free Church, on the ground of expressly avowing her principles — Churches which would have been incorporated with her had they been situated in Scotland. The ministers of the United Presbyterian Church, like ministers of other Churches holding avowedly different views from the Free Church, have been always admitted only after confessing a change of opinion, and satisfying the Presbyteries and the Assembly that they understood and had adopted the principles all along held by the Free Church, and specially contended for in 1843. Adherence to this rule is evidently essential to a maintenance of the Constitution of the Church. And yet it was proposed entirely to set it aside in favour of a principle never previously adopted in the case of any properly organised association, civil or ecclesiastical—viz., that men should be held eligible to the highest offices in a body, not only without joining it or avowing its principles, but whilst openly disavowing them. Taken in connection with the whole

Union movement, the "no-bar" declaration of the Assembly 1867, and the subsequent proceedings in the direction of wholesale incorporation with the United Presbyterians, on the ground of making the distinctive principles of the Free Church "open questions," this plan could only be regarded as an attempt to accomplish piecemeal, and by a side-wind, what it was deemed inexpedient to consummate directly. The principle of such a scheme, if admitted, might have led afterwards to a declaration of eligibility to Free Church pulpits on the widest possible scale, and on the part of men holding the most heretical views. If an after-profession could have made all right in the case of men repudiating our distinctive principles, why might we not declare all other sects—Socinians, or Romish priests—eligible to calls? Three bodies of professing Christians, moreover, in the same country, after declaring their ministers mutually eligible, could not possibly, without manifest schism, have remained without full incorporation. The scheme in this aspect of it was only the Union question, therefore, in another form.

It may be added, that for the Free Church, after the sweeping United Presbyterian Manifesto in regard to Disestablishment, to declare *all* the ministers of that Church eligible to her ministry would have been a very flagrant departure from the principles of 1843.

A great constitutional question was involved in the Mutual Eligibility scheme of Union as proposed,—supposing that it could have been successful in virtually obliterating the Establishment principle from the creed of the Free Church,—and this both in ecclesiastical and civil law. When men join together in a Nonconformist Church, upon clear and recorded principles, can any majority, in opposition to a protesting minority, rightfully change or abandon those principles, either directly or by any process leading to the same result, without dissolving the association? This question is of vast importance, not only in itself, but because of the speculations abroad as to the removal of all Established Churches. If the Established Churches are ever removed, what security are Churches in a non-established condition to have for their liberty and the

maintenance of their principles? If a mere majority in the Church Courts may change the very fundamental principles of their constitutions, where is their security? The proposed change was a very marked and flagrant one, touching as it did the very ground of the original separate existence of the Free Church, and therefore raised this question with much emphasis. But still greater changes were supposable, and might no doubt have been carried out with impunity, if the right to make such changes had been admitted. Were even partnerships in business liable to change at the mere will of a majority, all such agreements between man and man would become impossible. More sacred ought surely to be the constitutional arrangements of Churches. Unestablished Presbyterianism would become impossible unless some fixed and unalterable elements were understood to exist in ecclesiastical constitutions. But even supposing a right of change were admitted to exist, without the dissolution of the body, what is to be said about the accumulated property of Churches? Experience proves that Non-

established Churches may accumulate vast masses of property. This property is undoubtedly given on the assumption that the fundamental principles of the body shall remain unchanged. Many of the men who gave the money have departed this life, leaving their property to be guarded by the Civil Law. The destination of all other property after men are dead is jealously watched and guarded by that law. And are we to suppose seriously that a mere majority in the Church Courts may do what can be done nowhere else? may not only make the most sweeping changes, no matter under what plausible pretexts, but at the same time by the same means turn over the whole property of the Church from the purposes for which the testators left it, to purposes which they would have strongly disapproved? This surely would be to place the Church above the State, even in the matter of property, and to introduce an ecclesiastical despotism which might ultimately lead to the most serious consequences. And yet all this was undoubtedly implied in the course proposed, and in the supposition

that it could have been sanctioned by the civil law. We never had the least apprehension that such a result would have taken place if the debate had unfortunately been forced to an issue, and we trust that, as a constitutional and legal question, the matter is now finally set at rest.

Some may say that theoretic Voluntaryism has scarcely an existence in the Free Church, that all that is said in connection with the proposed overthrow of the Established Churches is said on the ground of mere expediency. We are not quite sure of this, but be it so. This is no reason for giving defective representations of our principles—concealing the fact in motions made in the General Assembly, that we do hold the Establishment principle —resisting those reforms in the Established Church which at one time we would have hailed —acting with Liberationists who regard all connection between Church and State as absolutely sinful, and finding that there is "no bar" in the way of an actual incorporation with avowed and rampant Voluntaries. Bailie Craig, of Kilmarnock, was ordered to be sum-

marily deposed by the same Assembly which passed the Veto Act, simply because he had presided at a Voluntary meeting.

No doubt, some who profess to hold the Establishment principle allege that it is a mere abstraction which can never lead to any practical issue, and that, therefore, it may be abandoned or made an open question. When we think of how it is connected with the glory of Christ as "King of kings, and Lord of lords," it is strange that any one should entertain this view, and equally strange that any observing and intelligent man should imagine that we have nearly seen the end of all Establishments. This is a mere dream and delusion, even in so far as the existing Establishments are concerned. In truth, those Establishments of late have been greatly strengthened by the incoherent denunciations and unscrupulous schemes of modern Dissenters. Our duty is to seek their reform, not their destruction. But even if it were otherwise, a number of other vital questions are inseparably bound up with the maintenance of the Establishment principle. Voluntaryism being a

denial of the moral nature and obligations of States, leads directly to national atheism. It confounds the State with "the world," forgetting that civil government is a Divine ordinance, and that the civil magistrate is a "minister of God" unto the people for good. It is questionable whether Popery itself more directly robs Christ of His glory—the glory of having "all power in heaven and on earth." It sets aside the true theory of free and scriptural government. Upon pretence of great spirituality, it will have nothing to do with the State, and yet it will enter into the most unworthy alliances, and adopt the most unscrupulous means to accomplish its ends. It is a most revolutionary principle, and would set aside all that is sacred in our present national arrangements—for example, the Protestantism of the Throne—the opening of Parliament with prayer—the maintenance of the purity of the text of Scripture—the sacredness of the Sabbath, and the laws of marriage—oaths in courts of justice,—and, above all, the Scriptural education of the young. If the Establishment principle is given up, — or

short of this, if we are to make light of the obligations of national religion, the most serious consequences would undoubtedly follow. In this point of view, instead of its being a small question with which we are dealing, or one of little importance, it is probably the largest question that can be raised, and enters more deeply than any other into all the relations of social life. This is not a mere theory. The doctrine of the United Presbyterian Church, to the effect that civil government has only to do with the outward and secular affairs of communities, goes all this length. The Voluntaries of America, where there is no Established Church, are fiercely contending for the extirpation of all revealed religion and morality from the action of the State: whilst a great association has been established there, whose objects are embodied in the following declaration:—

"We labour to secure such amendments to the constitution of the United States, as will suitably express our national recognition of Almighty God as the author of national existence, and the source of all power and authority in civil government; of Jesus Christ as the ruler of nations, and of the

Bible as the fountain of law, and the supreme rule for the conduct of nations."

The strong feeling, however, on the part of many is, that Dissenting Churches are necessarily more free than Churches recognised and established by the State—indeed, that the only real security for spiritual independence is an entire separation of Church and State. Now, we do not in the least undervalue the vast importance of toleration, nor would we on any account, or for any consideration, sacrifice the true spiritual independence of the Church of Christ. This ought to be maintained at all hazards. But it is a misunderstanding to suppose either that there can be an entire separation of Church and State, or that the civil government has truly recognised the spiritual independence of Non-established Churches. Such Churches are recognised simply as Voluntary associations of individuals bound by contract, which contract the civil courts claim the absolute right of expounding and enforcing. States may enslave Churches, and Churches may connive at their own bondage ; but if the arrangement is otherwise unobjectionable, the best way of

securing spiritual freedom, as all our ancestors maintained, is to get the State to recognise the creed and jurisdiction of the Church, and to shut out its own courts from interfering with spiritual acts and decisions.

That we have correctly stated the position of all Non-established Churches in the estimation of our civil authorities can be fully proved.

In an interesting volume, recently published by "Longmans, London, 1874," and containing an account of the "O'Keeffe Trial," the position and rights of unestablished Churches is discussed, amongst other things. Mr Justice Barry (p. 16) says, "Lord Romilly lays down the law as to Voluntary Churches." He then quotes the following, amongst other statements, by Lord Romilly :—

"The rule by which the courts are bound is this—If any number of persons, either in England or in any of its dependencies, associate themselves together, professing to follow a particular religion, not being the religion of the State, the court must, when applied to, inquire into what the doctrine and discipline of that religion are, and must then enforce obedience to them accordingly. Thus

if they be Presbyterians, or Independents, or Wesleyans, or Baptists, or the like, the court ascertains, as a matter of fact, upon proper evidence, what the doctrines, ordinances, and rules are by which the particular sect of religionists is bound, and enforces obedience to them accordingly. It is needless to cite authorities to establish this proposition. The books abound with decisions on the subject, all of the same character," &c.

The Lord Chief-Justice (p. 85) says :—

"The rules and regulations of a Voluntary Church may be called 'laws' by way of courtesy or convenience, but they can have no force or acceptance here but as the terms of a contract, and the court could take no notice of them even as such, unless to enforce some civil right, or redress some civil wrong, and can regard them as binding so far only as they are consistent with the laws of the land."

Speaking again of the state of all the Churches of Ireland under the non-established system, he (pp. 570-71) says :—

"All Churches in Ireland were now upon a footing of perfect equality, and occupied a position similar to that of Colonial Churches. The rights and privileges and obligations of bishops and other officials did not now subsist by law, but were based upon contract, and were to be ascer-

tained simply by the law ordinarily applied to cases of contract."

This, of course, reduces the theory of Christian Churches to one of mere human arrangement, and ignores the idea of discipline as flowing from Christ, or resting on any higher authority than the contract of a Mason Lodge, or other ordinary secular association. It virtually places the civil judges above the courts of all Non-established Churches, so far as the civil law is concerned.

Before referring to the recent cases in Scotland in which the position and legal rights of Nonconformist Churches have been dealt with in our civil courts, it may be well to refer to the fallacy which exists in many minds on the whole subject. Men who have never seriously considered the question, or who do not penetrate below the surface, are ready to say, "We get nothing, and we wish nothing, from the State, and therefore it is out of the question that we should be subjected to any State supervision or control." There is a confusion of ideas here. We may get no State endowment, and we must discharge purely

spiritual duties as individuals and Churches at all hazards; but there are two things overlooked. It is not true that we are or can be entirely separated from the power of the State. The Church of Christ is *in* though not *of* the world. We do not refer to any special public advantages, to exemptions from tolls and taxation, but we all have ecclesiastical property, manses, churches, and sometimes endowments. The right to all these is protected by the State, and if injustice in regard to them be attempted, the civil courts are open for our protection. We do not say that this gives the State any right to control our spiritual acts. But neither, if the State acted properly, do the endowments of the Established Church furnish any ground for Erastian interference. This we are perfectly prepared to prove. The serious difficulty, however, does not lie here. There are points of contact between the action of Churches and of States which tend to promote collision, unless the matter is amicably adjusted and regulated by a clear and understood agreement. Character and status are, in one sense of the word, civil rights, and in another

sense they are the very matters with which Churches meddle in every case of discipline. For Churches therefore to say, "We get nothing from the State, and therefore civil government has nothing to do with us," scarcely touches the real practical difficulty. Neither is it any solution of the problem to say, "Civil courts will not meddle or even look at the proceedings of Churches, except where some civil right is involved." It is quite possible in every case that may be raised to allege civil interests, and in every case of discipline it is as easy as possible to complain of the invasion of civil rights. If men were disposed to be litigious, there might thus be endless questions raised; and we are persuaded that we are exempted from this, not on the ground of any abstract theory, as many imagine, but mainly because of the strength of public opinion, especially in Scotland, formed in better times, and by men who better understood this subject. The theory of "contract," indeed, now held by the civil courts as the only ground on which they tolerate the exercise of discipline in Non-established Churches,

is very confused and unsatisfactory, and might be so worked as to end in sheer persecution, or to prostrate, if this were permitted, the Churches at the feet of the State.

That this is no visionary speculation will be manifest to any one who will study the subject with care, and especially the two recent cases in which this matter was pretty fully discussed, viz., the Cardross Case, which began in 1859, and the case of Forbes *v.* Eden, which began in 1865. In the first of these cases, Mr M'Millan demanded, not that his manse, &c., should be retained, but that the sentences of the General Assembly of the Free Church should, by the power of the civil court, be "reduced, retreated, rescinded, cassed, annulled, decerned, and declared by decree of our said Lords to have been from the beginning, to be now and in all time coming, null and void, and of no avail, force, strength, or effect in judgment or outwith the same in all time coming, and the pursuer restored and reponed thereagainst *in integrum*." The Court did not shrink from this portentous issue. They were quite prepared to face it; and when the Free Church pleaded

that "the sentences complained of being spiritual acts, done in the ordinary course of discipline by a Christian Church, tolerated and protected by law, it is not competent for the civil court to reduce them, and the actions should therefore be dismissed," the Lord Ordinary repelled this objection, and his judgment was unanimously affirmed by the Court. It has been alleged that the Court ultimately resiled from this position. We are not aware that any good evidence can be produced of this. The case broke down upon a technical ground as to the proper parties to be called as defenders; the matter ended in some confusion, and what the issue might have ultimately been, had the case proceeded, no one can tell. The Free Church, of course, would have disregarded at all hazards any attempt thus to reverse her spiritual sentences, whilst in all temporal questions readily submitting to the civil courts. But it is significant to find that, in the subsequent case of Forbes *v.* Eden, the Lord Chancellor fully endorsed the legality of the action of the Court of Session in the Cardross Case. He said (Session Cases, Series III. vol. v. p. 47)—

"The case of M'Millan *v.* The General Assembly of the Free Church of Scotland (23 Dunlop) was frequently relied upon in the course of the argument, and the opinions of the Judges were referred to on both sides. The appellant urged it as a strong authority in his favour, because it was there held that sentences of suspension and deposition pronounced by the General Assembly of the Free Church of Scotland, a voluntary religious association, against one of its ministers, were properly the subject of an action of reduction and damages, on the allegation that such sentences had been irregularly pronounced, in excess of their powers, and in violation of the conditions which regulated the proceedings of the association amongst themselves, and which were alleged to form a contract amongst the members of the association. But it must be observed that in that case there were actual sentences of suspension and deposition, from which the loss of the pursuer's emoluments as minister of the Free Church of Cardross followed as a consequence."

The Lord Chancellor adds, in reference to Mr Forbes:—

"The appellant in this case has not been disturbed either in his charge of the congregation at Burntisland, or in his legal position as a minister of the Scotch Episcopal Church. If he had been, *though in this latter respect only*, I should have considered, with the Lord Justice-Clerk, that 'the

possession of a particular status—meaning by that term the capacity to perform certain functions or to hold certain offices—is a thing which the law will recognise as a patrimonial interest, and that no one can be deprived of its possession by the unauthorised or illegal act of another without having a legal remedy.' "

No one can fail to see that this implies the annihilation of the spiritual province, coupled with a claim of the most Erastian nature—a claim of right to review, and, if the civil judges think proper, to reverse the most sacred acts of Non-established Church Courts.

The case of Forbes *v.* Eden (1865), differed in some important respects from the Cardross Case. It was an action raised by the Rev. George H. Forbes, Episcopalian minister at Burntisland, against the Right Rev. Robert Eden, D.D., and other members of the General Synod of the Scottish Episcopal Church, concluding—

"(1.) For reduction of certain canons enacted by the Synod, which altered the canons in force when the pursuer was ordained; (2.) for declarator that it was *ultra vires* of the Synod to enact these, and that he was entitled to celebrate divine

service according to the former canons; and (3.) for damages for injury done to him through his bishop refusing to license a curate engaged by the pursuer, who would not subscribe the new canons." —(See Cases Decided in the Court of Session, Third Series, vol. iv. pp. 143–76.)

It is unnecessary to refer to the minute particulars of this case; but, on the face of it, the civil courts were asked to adjudicate authoritatively on questions essentially spiritual, although alleged to have had a necessary connection with temporal consequences. The case was ultimately rejected, mainly on the ground that the temporal results had not occurred, and were chiefly, if not wholly, problematical. Unlike Mr M'Millan, Mr Forbes had not been deposed or deprived of any civil right, and the alterations in the canons complained of were alterations made, it would seem, in accordance with a power in the Synod secured by the "contract" of the denomination. But apart from all this, how did the Court treat the demand of Mr Forbes? Did they reject the idea that they could deal authoritatively with the most spiritual proceedings

of Non-established Churches as incompetent? On the contrary, describing the action, the Lord Justice-Clerk says :—

"His complaint against them is, that in making certain alterations on the code of canons they have violated the constitution of the religious body to which both parties belong, and have thus committed a breach of contract.

"He alleges, further, that he cannot conscientiously obey or conform to the new law and the altered code; and as by that altered code itself he is taken bound to do so under heavy penalties, including degradation from the office, functions, and character of a clergyman, he has a material interest, personal and patrimonial, to challenge the legality of the alterations complained of, and to seek the protection of the law against their enforcement.

"To the general relevancy of such an action it does not appear to me that any good objection can be stated.

"If a society, whether for secular or religious purposes, is bound together by articles of constitution, and an attempt is made to alter any fundamental article of the constitution, the general rule of law undoubtedly is, that a majority *may be restrained, on the application of the minority, from carrying the alteration into effect.*"

His Lordship distinguishes between Non-conformist and Established Churches thus :—

"The position of a minister or clergyman in a Dissenting communion differs no doubt from that of a minister of the Established Church, and from that of a member of any of the law or medical corporations, *inasmuch as he has no legal or recognised status.*"

The opinion concludes thus :—

"It is unnecessary to say anything in detail of the conclusions of the summons. The sole grounds of action being, for the reasons which I have stated, irrelevant, according to my opinion, I am necessarily led to the same conclusion with the Lord Ordinary, and am for adhering to his interlocutor."

In giving his opinion on the case, Lord Neaves, manifesting, as the Lord Justice-Clerk also did, much historical knowledge and learning, reserves his opinion on the vital question, to which we are now referring, as follows:—

"Clerical orders conferred by a Non-established Church may have little or no civil effect in this part of the island; but they may possibly confer benefits elsewhere, which may entitle the pursuer

to have them preserved by the interference of a civil court."

Again :—

"This being the case, the question is, whether the alteration made by the canons of 1863 as to the relative position of these offices was *ultra vires* or contrary to contract. On this point it seems almost sufficient to refer to the 21st canon of 1838, which is the same also as the corresponding canon of 1811. It is there set forth as the right of the Church at large, and of every national Church in particular, 'to ordain, change, and abolish ceremonies or rites of the Church ordained only by man's authority.'"

His Lordship concludes :—

"Upon the whole, being clearly of opinion that the pursuer here has not shown any excess of powers, or any breach of contract, I am for adhering to the Lord Ordinary's interlocutor."

In all the Courts certain Judges, no doubt, made strong statements to the effect that it was only in so far as civil rights were concerned that they would review ecclesiastical sentences. We know that in the case of Dr Warren, deposed by the Wesleyan body, the Lord Chancellor declined to interfere, but not because Non-established Churches have their inherent

power recognised by law—not because it is incompetent for the civil court to meddle directly with their most sacred proceedings. You will search for such a theory in vain. Non-established Churches claim to have spiritual power from Christ, and will maintain this at all hazards, but the State does not sanction this claim. The judgment in the case of Forbes *v.* Eden did not proceed on this ground; whilst the theory that Non-established Churches exist only as ordinary societies established by "contract," implies that the civil courts, which must interpret all contracts, have a paramount jurisdiction over them, and may deal with their most sacred affairs. Their rights are not recognised by statute, and therefore the civil courts, whilst using words of grace and courtesy, and sometimes declining to interfere, claim a right of unlimited supervision.

When the case of Forbes *v.* Eden reached the House of Lords, the judgment of the Court of Session was affirmed, but the right to deal with spiritual sentences was not disavowed. The judgment was given against Mr Forbes only on the merits. The Lord Chancellor took

the ground that no damage had been sustained, but was only apprehended. His Lordship said (p. 47) :—

"If it had not been for the petitory conclusion of the summons, I think there might have been a plea to the relevancy of the action upon the claim for reduction of the enactments in the code of canons of 1863. Supposing the appellant to have really suffered damage by reason of the code of 1863, it would have been open to the Court to consider whether the General Synod had authority to make the canons from which this injury had arisen."

Lord Colonsay, whose views on the Cardross Case are so well known, on the present occasion said :—

"A court of law will not interfere with the rules of a voluntary association unless it be necessary to do so in order to protect some civil right or interest which is said to be infringed by their operation. Least of all will it enter into questions of disputed doctrine when it is not necessary to do so in reference to civil interests.

"In the present case no objection is taken to the jurisdiction of the Court, for this plain reason, that the appellant has by the shape of his action, coupled with his allegations against the proceedings of the Synod as affecting his civil rights and

interests, entitled himself to have the judgment of the Court on those civil rights and interests; and the conclusion for reduction which the summons contains was not an inapt conclusion in reference to such demand, because it might be pleaded against a mere petitory action that those rules stood in the way, and that, until they were set aside, it was incompetent to the Court to go into the question which would have been raised by the petitory action. The meaning of that part of the summons which seeks for reduction, therefore, is that, in so far as those rules can be pleaded against the demand for redress in reference to his civil interests, they are complained of and assailed in the summons" (p. 54).

The whole matter, therefore, resolves itself into this: Unestablished Churches are tolerated, and, in ordinary circumstances, will not be meddled with, but they have no recognised jurisdiction,—their rights are not secured by any statute,—they are regarded simply as voluntary associations, having, to use the language lately employed by a subordinate Judge, no "public privileges higher than or different from any other body of persons associated for a common object, be it trivial or important, temporal or spiritual. . . . The circumstance

that a number of people agree to form themselves into a society for the promotion of religion, and to call it a Church, in no respect differences them in a question such as the present from any other body of persons who associate themselves for a non-religious but lawful purpose. No such community has any 'jurisdiction' in the ordinary sense of the word." This can scarcely be regarded as a very satisfactory state of matters, and may yet lead to the most serious complications. But this is the theory which some, without due consideration, extol as all but perfect, or at least as much better than an amicable agreement ratified by statute between Church and State.

No doubt some are ready to say, "Might not the State agree in general to declare the spiritual independence of all Churches, and thus to make an entire separation between the temporal and the spiritual provinces?" But how is this to be done, even if the State were willing? Is the State formally to sanction all organisations which call themselves Churches, and any proceedings they may choose to adopt? The impossibility of this is clear. On the other

hand, if the magistrate is to discriminate, as we hold he must, to maintain his own position and discharge his own duty, a definite understanding is necessary in regard to the spiritual province. We are under the impression that these vague speculations only indicate a want of thought, and that some, to avoid the evil of Erastianism, are ready unconsciously to fall into the opposite error of Popery, and to claim not only the right to obey the Lord Jesus Christ as speaking in His Word, but to do whatever they please without challenge from any quarter, under the name of spiritual independence. This was never the doctrine of the Church of Scotland, and this phrase has been a good deal misapplied. The old mode of expression is much better: a government established by the Lord Jesus in the hand of church officers, "distinct from the civil magistrate." There is a great tendency at present, on pretence of "progress," to reject lawful authority, and even to disregard unquestionable obligations, notwithstanding great professed esteem for the "contract" as opposed to the "established" system. We are not sure what the "contract" on the part of

the United Presbyterians would be held to be if a serious question were to arise. The old contract of the Seceders was, that they were to "appeal to the first free, faithful, and reforming General Assembly." We presume this has been superseded; but what precisely has been substituted it might be difficult to say. But we know what is held to be the "contract" of the Free Church. At a meeting of the Commission of the Assembly, held in January 1860, specially called to consider the Cardross Case, a carefully-prepared report was submitted, from which the following is an extract:—

"Now it is important to observe that there were produced in the civil court by the defender (*i.e.*, the Free Church) at the very outset of these actions the foresaid several documents—(1.) The Claim of Rights; (2.) The Protest; (3.) The Deed of Demission; (4.) The Formula or Vow signed by the pursuer. These several documents form what has been called by Mr M'Millan the Contract. *In reality they form, in conjunction with the Confession of Faith, and other standards to which the foresaid documents refer, the Constitution of the Free Church of Scotland,* to which its members and office-bearers are held to have given their

adherence by the simple fact of becoming members of that Church."

Dr Candlish, in speaking of the Cardross Case at the same meeting of Commission, said—

"The question reserved is, What is the constitution or the contract between Mr M'Millan and us? . . . . What more evidence can be given as to what our Constitution is? *We put in our Claim of Rights—we put in our Deed of Demission —we put in our Formula*," *&c.*

Now if this be our contract, upon the strength of which every Free Church minister holds his position, and is entitled to administer discipline, is it not binding upon office-bearers as well as upon the people? This "contract" is entirely opposed to Voluntaryism; and if one or more members of a Free Church congregation were to demand from the civil court, on the ground of breach of contract, that their minister, having avowed Voluntary principles, should be found no longer entitled to live in his manse or to preach in his church, we should like to know what would be the result?

Exceptional circumstances require exceptional remedies; and if either Free Church or Established Church ministers wish to avoid the raising of disagreeable questions, we would strongly advise them to abide honestly by their ordination engagements.

Whilst both theories, however, are at present considerably abused, and may be made instrumental, under a better arrangement, for the vindication of truth and the punishment of inconsistency, it would be very hard to prove that, other things being equal, the mere toleration of Non-established Churches under the theory of "contract" affords a better security, or anything like so good a security, for the liberty of the Church as the formal sanction of its creed and jurisdiction by Parliament, and the formal shutting out of the civil courts from meddling with the decisions of the Courts of the Church. This was the old theory of Scotland, and it certainly proved and illustrated the wisdom of our ancestors, although it was rendered inoperative, or rather it was rendered mischievous and intolerable, by the unconstitutional and infamous Act of

Queen Anne. The right of unlimited interference, on the ground of contract, on the other hand, might lead to mischievous interference at all times, and to the most dangerous extent, with our spiritual proceedings.

This is a very different theory from that of the Confession of Faith, which, fortunately, is still part and parcel of the law of the land—viz., "The Lord Jesus as King and Head of His Church hath therein appointed a government in the hand of church officers distinct from the civil magistrate." This doctrine constitutes the true liberty of the Church, which, apart from the Act of Queen Anne, would have remained inviolate in the Established Church of Scotland to this day. The Act of Queen Anne really made the difference by introducing an incompatible civil right into the very heart of the sanctuary. Some attempt to deny this, but it was most clearly understood at the time of the Disruption. The circular, signed by thirty-two leading ministers, calling the convocation together, in November 1842, was six months after the Claim of Rights had been adopted. Out of this convocation

the Disruption sprang, and yet this circular, in view of the whole circumstances, brings the matter to this precise point.

"However alarming," said this circular, "the late decision of the House of Lords undoubtedly is—being indeed, if not remedied by the Legislature, subversive of the Church's essential liberties; still, it is satisfactory to observe that in the published speeches delivered on the occasion of pronouncing that decision [by Lords Brougham, Campbell, Cottenham, and Lyndhurst], not one attempt is made to dispose of the great constitutional argument on which the Church of Scotland rests her undoubted right to spiritual independence. For aught then said, her Claim of Rights, adopted and set forth by the last General Assembly, remains entire and unanswerable. There is not one of the Acts of Parliament which that document lays before us, and by which the absolute supremacy of our courts in things spiritual was unalterably secured,—there is not one of these acts at all mentioned, or in the least adverted to, by any of the noble and learned Lords who spoke on the late memorable occasion. If unanimous in the adverse sentence which was then pronounced, they seem not less to have been unanimous in the silence wherewith they pass over one and all of the statutes which recognise and secure the absolute and exclusive jurisdiction of the ecclesiastical courts in things spiritual. THE JUDGMENT

PROCEEDS ON A SINGLE SENTENCE IN A STATUTE OF COMPARATIVELY MODERN DATE [the Act of Queen Anne restoring Patronage], without the slightest reference being had to the numerous, solemn, and fundamental laws of the kingdom, recognising in the most ample and unqualified terms the rights and immunities of the Church. And without entering into the legal merits or demerits of the judgment, its undoubted effect is to place us in a position where we may represent with all deference to the Legislature, that *the specific statute rested upon* by the civil courts has now, for the first time, and in opposition to all former opinions, been so construed as *to place it in direct conflict with the constitution unalterably secured to the National Church of this country.* We can, therefore, present this alternative to the Legislature, and crave their own decision upon it—whether they will destroy the constitution of the Church, or *remodel this particular statute*, which has been made to conflict against it; and so long as we have the faith of treaties and of coronation oaths for our securities, we may hope that the Legislature will yet respect the privilege assigned sacredly and inviolably to our Church, and which *both at the Revolution and at the Union of the kingdoms were declared to belong to her without any alteration for ever.*"—(*Free Church Magazine*, second series, vol. ii., pp. 3, 4.)

Apart from other questions which must still

be raised in connection with the present state of our ecclesiastical affairs, the Act of Queen Anne and the Act of Lord Aberdeen are now swept from the statute-book, and the recognition of the creed and discipline of the Church in settling ministers stands clear as at first. The present excellent Lord Advocate, in adverting recently to this aspect of the question in the House of Commons, is reported to have taken this ground. He said—

"The decision in the Auchterarder case, which led to the proceedings that ultimately resulted in the Disruption of 1843, proceeded upon the terms of the Act of 1592, revived by the Act of Queen Anne, which obliged and astricted the Presbytery to take on trial any presentee alleged to be qualified. The refusal of the Presbytery to take such a presentee on trial, in consequence of the passing of the Veto Act, was held to violate the civil rights of the patron and presentee as recognised in these Acts, and therefore the civil courts held themselves entitled to interfere with the action of the Church courts. But such a state of things cannot again be after the present bill is passed, because the express enactments of these Acts are repealed. In cases since 1843 the civil courts have certainly distinctly recognised the final and exclusive jurisdiction of the Church courts within their own province. I will

not weary the House by referring at any length to these cases, but I quote a very few words from the opinions of the judges in some of them. In the case of Sturrock *versus* Greig, in 1849, Lord Medwyn, speaking of the two jurisdictions, ecclesiastical and civil, said, 'Whenever the matter clearly falls within the proper province of the Church court, its proceedings cannot be questioned in a civil court.' In the case of Lockhart *v.* the Presbytery of Deer, in 1851, Lord President Boyle said—'We, the Court of Session, have just as little right to interfere with the proceedings of the Church courts in matters of ecclesiastical discipline as we have to interfere with the proceedings of the Court of Justiciary.' In the same case, Lord Ivory, speaking of the Auchterarder and Strathbogie cases, said—'I am bound to hold that these cases were rightly decided; but what was the ground on which the Court interposed? It was not because they thought themselves entitled to interfere with the proper ecclesiastical jurisdiction of the Church courts, but because they held that the Ecclesiastical courts were going out of their province, and were touching matters which were properly questions of civil right.' The latest case of all was Wight *versus* the Presbytery of Dunkeld, in 1870, in which the Lord Justice-Clerk (Moncreiff) said—'Within their spiritual province, the Church courts are as supreme as we are within the civil, and as this is a matter relating to the discipline of the Church, and solely

within the cognisance of the Church courts, I think we have no power whatever to interfere.' Lord Benholme said—'The whole constitution of the Assembly appears to me to render them independent, within their own jurisdiction, of any interference at the instance of the Court of Session.' This being the unquestioned law of the land, and the bill already providing that in all these matters relating to the appointment of ministers touched by it, the final and exclusive jurisdiction of the Church courts should be fully recognised, I do not think it necessary to insert in the bill an assertion of the final and exclusive jurisdiction of the Church courts in regard to matters which are not touched by it."

It is remarkable that in the Assembly 1841 Dr Cunningham argued, in regard to the operation of the Act of Queen Anne, and the necessity for its absolute repeal, precisely as the Lord Advocate does now after its abolition. Dr Cunningham held that the Patronage Act had introduced a civil right into the Church, and thus furnished a pretext for all the invasions of the Court of Session; and he clearly refuted the allegation, still repeated, that Patronage was not the main cause of all the difficulties which ended in the Disruption of 1843.

"There is a clause," said he, "in my motion which asserts that patronage is the cause of the difficulties in which the Church is at present involved. Now I do not mean that it was directly in consequence of what the Church was doing in connection with patronage that these difficulties have arisen. They arose in consequence of our maintaining the great principle that no man should be intruded into a congregation contrary to the will of the people—a principle that was well worth contending for, well worthy of the Church to spend and be spent in maintaining. It is in consequence of our asserting that principle that our difficulties have arisen. But it is true, likewise, that the decision of the Court of Session is founded on the infamous and detestable Act of Queen Anne. (Great cheering.) It is on that law that all our difficulties are based. Some tell us that we should only ask for a modification of this Act—such a modification as would prevent it from ever again serving as an instrument of such oppression. This, I take it, is a short-sighted view. Our opponents do not pretend to find a direct warrant for their proceedings in the Act of Anne. They only find it in that Act in so far as it constitutes a civil right. They are, they tell us, the guardians of civil rights, and as they see no other very obvious way of enforcing this right, they resort to the tyrannical and oppressive measures of which we complain. But if the Act of Anne be the foundation, real or alleged, of all

these proceedings, does that not give us the best ground for maintaining that the Church ought to come to the conclusion that there will be no peace till that Act is removed out of the way? We hold ourselves imperatively called upon to tell the State its whole duty, which is to get this accursed thing removed, to get this element of civil right which has been introduced into the Lord's house for ever expelled. This is the substance of our position, that patronage is a plant which our Heavenly Father hath not planted, and which must therefore be rooted out." — (*Blue Book*, 1841.)

In the discussion on the report of the Non-intrusion Committee in the same year, 1841, Dr Cunningham made a remarkable statement bearing upon another allegation sometimes repeated at present—viz., that Parliament ought to overturn the judgments which led to the Disruption. Speaking of the Bill of the Duke of Argyll, he said :—

"It would put an end to the oppressions of the civil court, and leave the ministers of the Church to go about the employments of the ministry in peace. Dr Hill asked them if it would settle the case of Marnoch and Auchterarder. No, it would not settle these cases; but would the repeal of the veto settle them? (Cheers.) According to

the views of Dr Hill and his friends, there was no way of settling these cases but by sanctioning the revolting atrocity at Marnoch, and forcing in Mr Young upon the reclaiming parish of Auchterarder. No; the Bill of the Duke of Argyll could not settle these cases, *but it would prevent all such cases in time to come;* and these cases, however painful and annoying they might in the meantime be, they would yet get over."

From this extract it is quite clear that Dr Cunningham recognised the distinction between the legislative and judicial functions of the Government. Except in revolutionary times Parliament does not overturn or disallow the decisions of the Judges of the land, but simply alters the law upon which these judgments are founded, so that they may not occur again. This has been effectually done in the present case. The whole foundation of the two judgments in the Auchterarder Case—the only judgments carried to the highest court of appeal—has been swept away by the Duke of Richmond's Bill; and the jurisdiction of the Established Church, with the rights of the people in the settlement of ministers, is clearly recognised. Thus the exception which had

been introduced in a way so offensive by Queen Anne's Act to the noble doctrine of the Confession of Faith, in regard to the spiritual government "distinct from the civil magistrate," is now swept away, and the liberty of the Church in this matter of settling ministers, as in others, distinctly acknowledged. If it is said that this is done by Parliament, and therefore is Erastian, the answer is, that Parliament only undoes its own evil legislation. The same power which raised the difficulty could alone remove it. It only does its duty when it removes it, and any one objecting to the recent statute on this ground might easily raise similar objections to all the ecclesiastical legislation of the past, to the Act 1592, or the Act 1690. A rather novel idea in regard to the spiritual independence of Churches has, no doubt, lately arisen in certain quarters. It began at first with those who, before the Disruption, were quite willing that the Act of Queen Anne should remain, but who insisted that, notwithstanding this toleration of a civil right in the ecclesiastical province, the Parliament should declare that the

Church might do whatsoever it pleased. No doubt they intended to confine their action only to spiritual things, and they would not have disputed the right of the magistrate to resume his temporal gifts in special cases of collision. But the whole scheme was confused and impracticable. They did not see that the simpler plan was to remove the temporal right altogether from the spiritual province, so that such collisions might never occur. Since then, this idea, as is generally the case with erroneous ideas, seems to have been exaggerated to the effect that, as no Government will declare the right of Churches to do as they please, there ought to be, or at least there can be, no Church Establishment on lawful terms. All this arises very much again from a confusion of ideas. We have proved that in temporal matters no unestablished Church will be allowed to do what it pleases if it pleases wrong, any more than an established one. On the other hand, the line between things civil and things ecclesiastical is sufficiently broad and palpable, and after all that has been said, the doctrine of co-ordinate jurisdiction, asserted by the more

sober disruptionists and anti-patronage men, is not only thoroughly defensible if the jurisdictions are not confused by such a statute as Queen Anne's Act, but it is the doctrine of Scripture and of the Confession of Faith, and therefore of the Constitution of Scotland, and is capable of being worked most harmoniously in practice.

But a most important question still remains —What is to be the future result of the recent legislation upon the Presbyterians of Scotland? He would be a rash man who would speak dogmatically on this subject, although we may well anticipate the best. We are strongly persuaded that the recent legislation has been right in itself, and that it is highly acceptable to the great mass of the Scotch people. It is the very kind of legislation which Dr Chalmers himself ultimately regarded as essential. In the Assembly 1841 he said—

"Were I a Conservative Prime Minister—and I use the term not in its party, but in its good and general meaning, as expressive of that policy which were the best conservator of public order and of all our institutions—I should deem it a masterstroke of sound and able statesmanship to give the

people of Scotland the election of their ministers, believing, as I do, that whatever may be the semblance, there is not one common point of practical or substantial analogy between a democracy in the Church and a democracy in the Commonwealth, when guarded, as our Church is, by her orthodox standards, and administered by a soundly-educated clergy."

This is exactly what a "Conservative Prime Minister" has done. For the first time for 300 years, the Scotch Presbyterians may be said to be left to the management of their own affairs; and as the very credit of their system is at stake, an immense responsibility rests on all who have any influence in guiding public opinion, and especially in regulating ecclesiastical affairs. It ought to be a matter of earnest prayer that all may be animated by a Christian and patriotic spirit, and guided by heavenly wisdom, in a matter so important. Anything like mere sectarian objects and narrow views ought to be laid aside, as unworthy of our noble country, our grand forefathers, and the living representatives of Knox and Chalmers. Much will, under God, depend on the wisdom with which the new regulations in

regard to the election of parochial ministers are framed, and the spirit of right principle in which a Bill so excellent in itself is worked. All who wish well to Scotland must desire that the leaders of the Established Church, in particular, may know the responsibility under which they act. As to union, it is much more easy to make breaches than to heal them, and time only will tell the result of the recent measure. The great barrier is removed, but there are still difficulties on both sides of various kinds, to which it is unnecessary here more specially to refer, and any attempt to force a reunion, not resting on intelligent conviction, would only end in evil. There are theoretical and practical questions yet to be dealt with. It is to be hoped that they will be dealt with in a wise and Christian spirit, since every true and enlightened patriot must desire to see the long-scattered Presbyterians of Scotland again gathered into one upon a basis of truth and liberty. At the same time, complete amalgamation, though desirable, cannot be forced, nor is it absolutely necessary to a large measure of practical unity of action.

But some still urge that the only way of uniting the Presbyterians of Scotland is to make the Establishment principle an open question, and to sweep away all the existing Church Establishments. Of all the delusions afloat, this is probably the greatest. It is a poor compliment to the ministers of the Established Church to suppose that they would abandon their sworn principles and unite with Voluntaries and revolutionists, if only their temporal rights were abolished —especially if abolished at the instance of the very men who are professing to seek union with them. The scheme is far from feasible. We, who have no connection with the Establishment, hold as firmly as ever the duty of national religion as part of divine truth. Voluntaryism is a thing of yesterday, and instead of being an element of union, it has been the great dividing element amongst the Presbyterians of Scotland since the beginning of the century. A union would be purchased too dearly at the expense of adopting a novel, unscriptural, and revolutionary principle, which might ulti-

mately overthrow both Church and State. On the other hand, it has been found quite practicable in our colonies to have a union of all the Presbyterians upon the old basis, and the most eager Voluntaries have not only seen their way to join this union, but to share, without reluctance, in the gifts of the State. We cannot doubt that it would be so in this country if all other real obstacles of principle and practice were removed out of the way. A union on the old basis is the thing to be sought, and a union of all sound Presbyterians. This is the true balm for the wounds of Scotland, if it could only be obtained. The sectarian and inconsistent theory of union which has been so eagerly pressed, has only issued in dividing congregations and ministers, lowering the status of the Free Church, and turning our Assemblies into scenes of disorder. Had the Free Church stood firmly on the old ground, she would have occupied a noble position at present, and might have had much influence in not only bringing about a union worth living to witness, but a better state of things than we or our fathers have seen since

the Reformation. All our sacrifices and efforts might thus have proved still more prominently of the greatest permanent advantage to Scotland. We trust the great object which as Christian patriots we seek may yet be accomplished by the combined wisdom and unsectarian feeling of the true men of the kingdom. We must not reject the experience of the past in favour of dangerous, untried, and unsatisfactory modern theories. All experience combines to prove that the scriptural principles of our Reformers are of imperishable importance; and that the joint and harmonious action of Church and State, as ordinances equally divine, is essential to the solid and permanent good of the nation. Of course we must on no account sacrifice essential principles; but this is quite as true in regard to Voluntaryism as to Erastianism.

The experience alike of the past and present is eloquent in lessons. No machinery can grapple successfully with the social evils of our country, and break up the heathen masses of our large cities, but the old parochial system, extended and adapted to present circumstances. It is surely alarming, in

addition to intemperance and other clamant evils, to hear of 500,000 human beings consigned to heathenism in Scotland, whilst we are talking coolly of removing a portion of the existing Christian machinery, and turning the money to secular purposes. Instead of this, not only do we need all the money, but more money, and a higher average of ministers, men of more power and energy, with a comprehensive union of Presbyterians and a reconstructed ecclesiastical system upon the old basis, in order that our country may rise to its former, or even to a higher, eminence. Scotchmen are still great in all parts of the world. In connection with the old parochial system, it was said not only that the highest fruits of intelligence and Christian principle were by the Divine blessing realised, but that "the taverners complained that their trade was gone, the people were become so sober." Very much has, no doubt, been done by voluntary contributions and by the efforts of Nonconformist Churches, for which we cannot be too thankful to God, but all has not been done that is urgently necessary. We are neither supplying ministers in sufficient numbers for the growing

population, nor of sufficient quality, nor are we supporting them adequately. Many ministers are worse paid than colliers, and the quality of those that serve at the altar is not being elevated. They cannot live as they ought, or make any provision for their families. Let any one read the First Book of Discipline, and see the noble ideas of Knox in regard to the kind of provision due to the ministers of God, and he will see what an amazing contrast it presents to the hunger-bitten system which at present so widely exists. Amidst the rapid rise in the incomes of all other classes of society, the ministry is apt to sink and be neglected, and already we feel this evil amidst our many divisions and crude speculations. On the other hand, were it possible to have, on the old basis, a true union of Presbyterians—a redivision of parishes—a breaking up of all the masses of heathenism into manageable districts under due supervision—a minimum stipend to our ministers of £300 or £400 a year, with a manse—were we to have the poor and the education of the country managed gratuitously as formerly, by Christian agency instead of by

a costly army of comparatively inefficient functionaries, the greatest good would result to all classes, and we are confident that an immense pecuniary saving would be effected. How far all this is practicable, of course, remains to be seen. It depends, under God, very much on the wisdom of our people, and the reasonable and Christian spirit of those who guide the counsels of churches. We do not despair, especially when we see the great stumbling-blocks and roots of mischief of the past removed; and we trust all classes of Presbyterian ministers will, as time advances, be, by the Divine blessing, equal to the occasion.

There are other powerful considerations in favour of unity amongst the Presbyterians of Scotland. The sons of Knox and the Covenanters ought ever to be foremost in the great struggles of the world for truth and liberty. It has not been so of late. Whilst we have been torn asunder by interference from without and unnecessary debates within, the great enemies of all our Churches have been making the most strenuous efforts and the most portentous progress. Atheism of the most undisguised type is now boldly appearing in high

places. Romanism is openly "compassing sea and land" to make proselytes, and boasting that she expects soon to regain her former tyrannical supremacy in Britain. The intolerant disciples of Laud in England, from whom our ancestors suffered so much, are again manifesting the old spirit, and even seeking disestablishment with a view to dominion. Amidst all this, Scotland is bound not to be neutral, leaving her brethren in England and elsewhere to fight comparatively unaided. She should seek, as of old, to stand in the very front of the battle. This might be one of the most blessed results, not only to the world, but to our own generations yet unborn, of a true union amongst ourselves.

Were the objects at which we have hinted accomplished on sound principles, it would be a glorious day for Scotland. It would, in the language of Dr Chalmers, "light up a jubilee" throughout the land. Meantime, let right principles be held fast by those who see their importance, and let wise measures be promoted, unawed by opposition and undeterred by any difficulties. Let us, in humble dependence on the Divine strength and bless-

ing, do what we can for God and truth, acting zealously, as we have opportunity, both in our beloved Scotland and throughout the world. The position of Scotland is very peculiar. After being torn and rent by civil and religious debates for centuries, we have now a state of comparative peace, whilst upwards of 80 per cent. of the population are still understood to be Presbyterians, holding a Confession of Faith which has never been formally altered. On the other hand, with much poverty, crime, and heathenism in certain quarters, we have much wealth and Christian liberality in others, more true liberty than has been enjoyed in the land since the days of Knox, and a scheme of education which, although still deficient in its higher departments, bids fair, if wisely managed, to realise the noblest conceptions of our great Reformer. What we want now is high Christian patriotism, unity in the truth, and such a diffusion of saving knowledge and living Christianity as shall reach to the lowest depths of society, and extend to the utmost limits of the kingdom; and this, too, not only for ourselves, but for a still higher object, viz., that we may take a

worthy part in the greatest of all work, the entire Christianisation of the world. For such great and glorious blessings we must look earnestly to Him who alone doeth marvellous things, and with whom is the residue of the Spirit. "O Lord, revive Thy work in the midst of the years, in the midst of the years make known; in wrath remember mercy." "Make us glad according to the days wherein thou hast afflicted us, and the years wherein we have seen evil." "They that shall be of thee shall build the old waste places, thou shalt raise up the foundations of many generations, and thou shalt be called The Repairer of the breach, The Restorer of paths to dwell in."

P.S.—The following Memorial was prepared by men who, acting together, combined legal knowledge with an acquaintance with the history and principles of our Church. Other necessary documents were also prepared in contemplation of a Disruption, which was thought inevitable, but these were, by the gracious interposition of God, rendered unnecessary. They may perhaps see the light at some future time.

MEMORIAL TO COUNSEL.

ACCOMPANYING this Memorial there are sent to Counsel—

(1) A volume containing the Standards of the Free Church of Scotland, published by authority of the General Assembly, as set forth in Act c. ix. 1851. This Act is printed in this volume as a preface; after which the Confession of Faith and Catechisms are given; and the other authoritative documents are placed in the Appendix.

(2) Acts of the Free Church Assembly for 1843 and 1851.

(3) Catechism of the Constitution of the Free Church, sanctioned by the General Assembly of 1847.

(4) Rules and Forms of Procedure of the United Presbyterian Church.

(5) Summary of the Principles of said Church.

(6) Statement by the Committee of the Synod of the United Presbyterian Church, of the

grounds which justify and demand prosecution of the Disestablishment and Disendowment of the Established Churches of England and Scotland.

Disputes have lately occurred in the Free Church of Scotland, arising out of certain proposals for the Union of that Church with the United Presbyterian Church. Those in favour of such a Union have been obliged, in the meantime, to abandon the proposals as originally made, and to seek to effect their object in another way—viz., by what is called "The Scheme for the Mutual Eligibility of Ministers of the Free Church, the United Presbyterian Church, and the Reformed Presbyterian Church." As some of them deny that this scheme is designed to accomplish this object, the scheme itself must be looked at strictly on its own merits, and irrespective of any such supposed object. That Counsel may understand the exact position of matters, it is needful to narrate briefly the proceedings in regard to the proposed Union out of which this scheme sprang.

I.

Narrative of negotiations anent Union.—When the Free Church General Assembly met in 1863, certain overtures were laid on its table in favour

of the Union of the Non-established Presbyterian Churches in Scotland, and also a letter from the Synod of the United Presbyterian Church, intimating that a committee had been appointed by that Church for a similar purpose, and proposing a conference. On these overtures and that letter being read and considered by the Assembly, they agreed to the following motion:—"That the General Assembly, cordially approving of the object contemplated in the overtures, and recognising the duty, especially in present circumstances, of aiming at its accomplishment by all suitable means *consistent with a due regard to the principles of this Church*, unanimously resolve to appoint a committee to take into consideration the whole subject of union among the Non-established Churches in Scotland, and in particular, the General Assembly authorise the committee to confer with the Committee on Union, recently appointed by the Synod of the United Presbyterian Church, as well as with representatives of any of the other Churches named or indicated in the overtures, should occasion or opportunity of doing so arise; and the Assembly appoint the committee to report upon the whole subject to the General Assembly of next year." It will be observed that this resolution was passed, subject to "a due regard to the principles of the Free Church."

The attention of the Union Committees of the

Free Church and United Presbyterian Churches at their early conferences was directed to the obtaining of information as to the Standards and Constitutions of the two Churches; and the result of these inquiries was embodied in a Report, setting forth at length the various documents and standards which formed the Constitutions of the two Churches, to which report reference is made below (pages 137–140 hereof).

After obtaining this information, the Committees of the two Churches mapped out their work, and distributed into several heads those matters which required to be considered and discussed. (This scheme, it may be here stated, to save after explanation, was termed the "Programme.") The first head of this programme was —"The extent to which the two Churches agree on the province of the Civil Magistrate in relation to Religion, and the Christian Church." The other heads of the programme need not be noticed, as no questions on these points are to be referred to hereafter in this Memorial.

The Committee then proceeded to consider the first head of the programme, and presented an interim report to the General Assembly of 1864, which was adopted; and the Assembly also reappointed the Committee with its former instructions. In 1864–65 the Free Church Union Committee also conferred with Committees which had

been appointed by the Reformed Presbyterian Church and the English Presbyterian Church; but it may be well here to state that the questions to be submitted to Counsel for opinion relate only to the difference between the Free Church and the United Presbyterian Church.

The Free Church Committee on Union, so re-appointed, reported their proceedings to the next Assembly, 1865; and on the adoption of their report, were again re-appointed. They were again re-appointed by the General Assembly of 1866, with this in addition, that the report was ordered to be sent down to the Presbyteries of the Church for consideration; and if so disposed, they were instructed to send up suggestions to the Union Committee as to points on which they might want more information. A large number of Presbyteries did send up such suggestions—a few did not. After perusing these, the Union Committees of all the negotiating Churches went again over the first head of the programme carefully, and drew up this Report:—

I. *Report on first head of programme.*—Certain Articles of Agreement held by the Committees in common.

. . . . . .

II. 1. Distinctive Articles by the Free Church and English Presbyterian Church Committees,

which were :—"*As an act of national homage to Christ, the Civil Magistrate ought, when necessary and expedient, to afford aid from the national resources to the cause of Christ*, provided always that in doing so, while reserving full control over his own gift, he abstain from all authoritative interference in the internal government of the Church. But it must always be a question to be judged of according to times and circumstances, whether or not such aid ought to be given by the Civil Magistrate, as well as whether or not it ought to be accepted; and the question must, in every instance, be decided by each of the two parties judging for itself, on its own responsibility."

2. Distinctive Articles by the United Presbyterian Church Committee, which were :—"*That it is not competent to the Civil Magistrate to give legislative sanction to any creed, in the way of setting up a civil establishment of religion*, nor is it within his province to provide for the expense of the ministrations of religion out of the national resources; that Jesus Christ, as sole King and Head of His Church, has enjoined upon His people to provide for maintaining and extending it by free-will offerings; *that this being the ordinance of Christ, it excludes state aid for these purposes*, and that adherence to it is the true safeguard of the Church's independence. Moreover, though uniformity of opinion with respect to civil establish-

ments of religion is not a term of communion in the United Presbyterian Church, yet the views on this subject, held and universally acted upon, are opposed to these institutions."

(This article was afterwards, in a general way, acquiesced in by the United Presbyterian Synod.)

3. Distinctive Articles of the Reformed Presbyterian Church. . . . .

III. Statement as to the relation of the several negotiating Churches to the existing Church established in Scotland. . . . .

Resolutions thereanent.—When this report of the Union Committee was taken up in the Assembly of 1867, there was much discussion on the question, and a motion and two amendments were submitted to the House. The motion was:—"That the General Assembly approve of the report, and express their grateful satisfaction with the large measure of agreement under the First Head of the Programme, as well as with the reiterated assurance of entire agreement under the Second Head. Further, the General Assembly being more than ever impressed with the duty and importance of aiming at a cordial union among all the dis-established branches of the Church of Scotland, re-appoint the Committee with the former instructions. And being of

opinion, as at present advised, that, as regards the *First* Head of the Programme, considered in itself, THERE APPEARS TO BE NO BAR TO THE UNION CONTEMPLATED, the General Assembly, while reserving final judgment on the whole case, and every part thereof, direct the Committee to give their earnest attention to the other heads of the Programme, especially those which deal with the worship, government, and discipline of the Church, and with those important practical questions which relate to property and finance." The following amendments were also brought forward :—1. "That the Assembly, in receiving the report laid on the table by the Committee on Union with other Churches, approve of the diligence of the Committee, and re-appoint it with its former instructions. The Assembly at the same time—considering the immature state of the question, the overtures now on the table, and the fact that whilst only one-third of the ministers of this Church are entitled to be present in the Assembly, the people of the Church at large have never been consulted in regard to this matter at all—reserve their judgment on any part of the Programme till the Union Committee shall have completed its work, by bringing up a report on all the heads of the Programme, with definite proposals, and the grounds on which they rest, so that the General Assembly and the Church may have the

whole subject before them." 2. "That the General Assembly approve of the report, and express their satisfaction with the increased and large measure of agreement under the First Head of the Programme, as well as with the amount of harmony under the Second Head. The General Assembly continue to be deeply impressed with the duty and importance of aiming at the union of all the disestablished Churches of Scotland, and reappoint the Committee, with former instructions. And they direct their Committee to use all diligence in prosecuting the conferences on all the subjects to be embraced, with a view to a final report, which shall contain the conclusions arrived at, with the grounds on which they rest, so that the General Assembly may be in circumstances to submit the whole question in a satisfactory form to the Church at large." There being three motions, the House divided between the second motion and the third. The third was carried by 90 to 65. The third motion was then put against the first motion. The division was as follows:— For 1st, 346; for 3d, 120; majority for 1st motion, 226.

Dr Begg then rose and said,—"Moderator, I wish to lay on the table of the General Assembly the following protest:—'We, the subscribers, for ourselves, and on behalf of all others who may adhere, do hereby protest against the resolution

now adopted by this Assembly, and that on the following, among other grounds:—1st, Because the resolution, as adopted, implies an abandonment and subversion of an admittedly constitutional principle of the Free Church of Scotland. 2d, Because the resolution, as adopted, is *ultra vires* of this Assembly. For these and other reasons, we protest, that we and all other office-bearers and members of the Church shall not be committed by the said resolution to any action that may be taken thereupon, and shall be at liberty to oppose all such action by every competent means. (Signed) James Begg, D.D.; Peter Denny; John Forbes, D.D.; James Galbraith; James Gibson, D.D.; Robert M'Corkle, minister; James Julius Wood, D.D.; D. Thorburn, M.A.; Robert Gault, minister; William Balfour, minister; John M'Millan, elder; Patrick Borrowman, minister; A. Macbride, minister; John Irving, elder; D. Crighton, elder; Alexander Cameron, minister; D. Macdonald, elder; Wm. Moffat, minister." The Assembly appointed this protest, with reasons, to be kept *in retentis*. The following dissent, with reasons, was also given in and read, and ordered to be inserted in the Minutes:—"We, the undersigned, for ourselves, and on behalf of all others who may adhere to us, dissent against the resolution now adopted by this Assembly, for the following amongst other reasons:—1st, Because the resolution, as

adopted, implies an abandonment and subversion of an undoubtedly constitutional principle of the Free Church of Scotland. 2d, Because the resolution, as adopted, is *ultra vires* of this Assembly. (Signed) James Begg, D.D.; James Gibson, D.D.; John Irving, elder; James Julius Wood, D.D.; Robert Gault, minister; Thomas Gardiner, minister." To this dissent Mr Borrowman, minister at Glencairn, and Mr M'Corkle, minister at St Ninian's, intimated their adherence. The following dissent was also given in and read:—"We dissent, because we deem the resolution come to by the Assembly as fitted to hinder instead of furthering the proper union of the Churches. (Signed) William Nixon, Thomas Main, James Stark, Alex. Ferguson, Thomas Hislop, John Fraser." Dr J. J. Wood, Dr Begg, Dr Gibson, Mr Nixon, Mr Main, and Captain Shepherd, then resigned their places as members of the Union Committee. A number of members afterwards adhered to the above protest and dissents.

EFFECT OF THE RESOLUTION.

The object of the resolution so adopted was chiefly, it will be seen, to declare that there was under the First Head of the Programme *no bar* to Union, which meant either that the Churches held the same views on the questions embraced under

it, or else that the amount of the difference between them thereon was so little as to be of no moment.

Proposal for Union on the basis of Westminster Standards.—From May 1867 to May 1870 the Union Committee continued its labours, and, in that latter year, suggested in their report that the General Assembly should consider the question of a Union of the negotiating Churches, on the basis of the Westminster Standards, "as at present accepted by the said Churches." The General Assembly adopted this suggestion to the extent of sending it down for the consideration of Presbyteries, directing them to send up their opinions thereon. They did so: but these returns were of a very conflicting kind. When these and the Union Committee's Annual Report were considered, the General Assembly (1871), seeing that undoubtedly great opposition prevailed against an immediate incorporating Union of the negotiating Churches, determined to abandon any proposals in that direction in the meantime, and instructed the Union Committee to direct their attention for the present "to those measures which may seem best fitted to draw the negotiating Churches into closer and more friendly relations to one another, to encourage and facilitate their cordial co-operation."

II.

Report anent Mutual Eligibility.—In compliance

with these instructions, the Union Committee reported to the General Assembly of 1872, that they had taken up and considered these three subjects:—1. The training of ministers in the various churches; 2. The mutual and reciprocal eligibility of ministers of fixed charges in any one of the negotiating Churches to fixed charges in any of the others; and 3. Co-operation in Home and Foreign Missions.

To the second of these only it is needful to call the attention of Counsel. On it the Union Committee thus reported:—

"In connection with this subject, the Joint Sub-Committee (of the Union Committee) entered into a careful inquiry as to the state of the existing law and practice in the several negotiating Churches with reference to the admission of ministers from other Churches. The results of this inquiry will be found in the appendix to this report. It may be necessary here only to say, that the law in all the Churches upon this point is substantially the same. Into none of them can a minister be admitted from any other Church without having his application reported to and sanctioned by the Supreme Court of the Church into which he seeks admission. In the Free Church this whole matter is regulated by Act 8 of the General Assembly of 1850; but in that Act it is expressly provided that its provisions 'shall not apply to the ministers

belonging to the Presbyterian Churches in England and Ireland, and in the Colonies, with which the Free Church is in connection, so far as regards cases of orderly translation from charges in the said Churches to charges in the Free Church.' As the result and consequence of these exemptions in favour of the Churches above named, the Free Church has recognised ever since 1850 the eligibility of the ministers of the said Churches in the sense and to the effect of sanctioning the orderly calling, and translating of ministers of charges in any of these Churches to charges in the Free Church, on the footing of their signing the Free Church formula." They then proceed to recommend their proposal.

To make the proposal of the Mutual Eligibility of Free Church and United Presbyterians more clear, the following illustration may be submitted for Counsel's consideration :—

Would it be competent in any fully organised and constituted Insurance Company or Railway Company to declare that certain individuals, who had not in the usual way qualified themselves for holding office in these companies by becoming shareholders to the required extent or amount, were eligible to hold office in these companies? It must be noticed that the mere election of a man as chairman of a Railway or Insurance Company, and his accepting office and declaring his willing-

ness to discharge the duties of the chairman, would not make him a member of the company, unless he had a share of sufficient amount.

Resolutions thereanent.—When the report from which the above extracts have been taken was considered and discussed by the General Assembly of 1872, a motion approving generally of it, and in particular, of the recommendation as to the mutual eligibility of ministers of the United Presbyterian and Reformed Presbyterian Churches to be called to charges in the Free Church, was submitted and carried by a majority of 197. From this motion the following extract, which is all that bears on the question submitted to the Counsel, is taken :—"The General Assembly having received the Report of the Union Committee, together with the relative overtures and memorials, approve generally of the report, and resolve as follows :—1. That the proposal with reference to the mutual eligibility of ministers in settled charges is a measure specially calculated to promote the ends for which the Committee was appointed last year, and being in harmony with the relations which this Church already sustains towards sister Presbyterian Churches, both at home and in the Colonies, is one that ought to be adopted, and they accordingly direct an overture to be prepared and sent down to Presbyteries, under the Barrier Act, adding the United Presby-

terian and Reformed Presbyterian Churches to those specified in the Act 1850 as holding this relation."

Before this motion was taken up, the following protest was laid on the table:—"We the undersigned members of this General Assembly of the Free Church of Scotland, commissioned to consult and determine in all matters that come before us to the glory of God and the good of His Church, according to the Word of God and Confession of Faith, and agreeably to the constitution of this Church, hereby protest—That whereas the eligibility to the ministry of this Church of all ministers of other Churches who have been examined, and given satisfactory evidence of having adopted Free Church principles, is provided for in the Act of Assembly 1850, c. 8; whereas the ministers of certain Churches are excepted from the operation of this Act on the ground of the identity of principle of their Church with ours; and whereas the proposal announced in the motion to approve of the Report of the Union Committee is to the effect of admitting ministers into our Church who neither belong to the excepted Churches, nor are required to give any evidence, as at present, of their holding the principles of this Church; and whereas this involves the subversion of the constitution of the Free Church of Scotland,—we, the undersigned, do therefore protest that we shall

be considered as taking part in the discussion of this proposal only on the understanding that we do not admit that it is competent to this Assembly thus to alter the constitution of the Church, or to send down to Presbyteries an overture designed to accomplish this object."

Three amendments to the motion as tabled were submitted to the House, the terms of the first of which were, in so far as relates to the question submitted to Counsel—"That as regards the admission of ministers from other Churches, which have not been previously found by this Church to hold her distinctive principles, the General Assembly adhere to the rule already provided for this purpose by the existing law of the Church (Act 1850, c. 8), in requiring an ascertained and consistent avowal of her principles by all ministers before their entrance into office."

From the decision arrived at in favour of the motion by the General Assembly, the following dissent was tabled:—

"The undersigned dissent from this judgment for the following amongst other reasons:—

"1. Because this judgment, and the report on which it is based, are inconsistent with the understanding upon which the Union Committee was reappointed at last Assembly, viz., that it was reappointed solely to devise measures of co-operation, whereas the proposal and judgment in question not

only imply incorporation, but in the most dangerous form, viz., piecemeal incorporation without a basis.

"2. Because this judgment implies that this Church, so far as the Assembly is concerned, sanctions the formulæ of each of the other negotiating Churches as equally sound and satisfactory with our own, whereas the result of the previous investigations has been to find that the U.P. formula is loose and unsatisfactory, that matters of doctrine require to be explained, and that views are held in that Church on the subject of national religion—most painfully illustrated of late in connection with the discussions on national education—diametrically opposed to any *scriptural* view of the Headship of the Lord Jesus Christ over nations, and to all the principles which have been held by the Church of Scotland since the days of Knox.

"3. Because the course proposed, and so far sanctioned, of admitting ministers upon subscribing a formula without previously giving any evidence of their intelligent adherence to the principles involved in that formula, is unprecedented and perilous in the extreme. If individual ministers from either of the other negotiating Churches wish to join the Free Church of Scotland, a way is amply provided at present for this purpose in the existing legislation of the Church (Act 1850, c.

8). The finding of the Assembly, therefore, is quite unnecessary, if all that is intended is merely to admit men holding *bonâ fide* Free Church principles into the ministry of our Church. If anything else, or different from this, is implied, the proposal is manifestly objectionable, and the abolition of the existing legislation, which is absolutely necessary to guard the principles of the Church, can only have the effect of substituting a deceptive and hollow form of outward conformity for the intelligent and consistent avowal of adherence to Free Church principles, which is at present required.

"4. Because the judgment proceeds on the most latitudinarian principles, and seems to intimate that Churches may at once sanction the most inconsistent views as equally sound, and make light of doctrines of the greatest importance, however scriptural and long maintained as such by the Church, for the sake of outward union.

"5. Because the adoption of such a sweeping change as this judgment involves, without consulting the people of the Free Church, who are so deeply interested, is utterly inconsistent with any just view of Christian liberty, and is fitted to bring the greatest discredit on disestablished Churches, as bodies in connection with which and with whose principles there is no stability or security."

There was also laid on the table of the Assembly a protest against this judgment, in similar terms, which was ordered to be kept *in retentis*, subscribed by a large number of ministers and elders.

To the other amendments it is not needful that reference be made.

In terms of the above motion the General Assembly sent down, under the Barrier Act, the following overture :—

Overture anent Mutual Eligibility.—"The General Assembly, with consent of a majority of Presbyteries, enact and ordain that clause 6 of Act VIII. 1850, shall be amended and stand as follows, viz : The provisions of this Act shall not apply to ministers belonging to the Presbyterian Churches in England and Ireland, and in the colonies, with which this Church is in connection, nor to ministers belonging to the United Presbyterian and Reformed Presbyterian Churches, so far as regards cases of orderly translations from charges in the said Churches to charges in this Church ; and that the rest of the said clause shall remain unaltered."

Act 1850, *c.* 8.—The Act of 1850 referred to is as follows :—

"I. No minister or probationer of another denomination or Church shall be received to the standing of a minister or probationer of this

Church without an unqualified subscription of the formula.

"II. No minister or probationer of another denomination or Church shall be received to the standing of a minister or probationer of this Church without the authority of the General Assembly.

"III. Every application to be received to the standing of a minister or probationer of this Church shall be made to the Presbytery within whose bounds the applicant has his ordinary residence.

"IV. Every Presbytery to which an application to be received as aforesaid shall be made shall transmit to the General Assembly their answers to the following queries, or, if the applicant is a probationer, their answers to such of the queries as relate to a probationer's case."

The queries, so far as important to the questions submitted to Counsel in this Memorial, are—

11. What reasons does the applicant assign for his desire to be received into the Free Church of Scotland?

12. If there is a diversity of principle between the Free Church of Scotland and the applicant's former denomination or Church, what account does the applicant give of the change in his views?

13. Is the applicant well acquainted with the events and controversies which led to the Disruption between this Church and the State in 1843, and are the Presbytery satisfied of his adherence to the principles maintained by the Church at that period?

"V. The ministers and probationers who may be received from other denominations or Churches to the standing respectively of ministers and probationers of this Church, shall continue without any fixed charge, and without being capable of receiving a call, serving as preachers under the direction of the Presbyteries of the Church, and according to the regulations made from time to time by the Home Mission Committee, for the period of one year after the General Assembly have given authority to receive them.

"VI. The provisions of this Act shall not apply to ministers belonging to the Presbyterian Churches in England and Ireland, and in the colonies, with which this Church is in connection, so far as regards cases of orderly translation from charges in the said Churches to charges in this Church; neither shall the provisions of this Act apply to those ministers of the said Presbyterian Churches who may have been licenced to preach the gospel by Presbyteries of this Church.

"VII. Act VIII. Assembly 1846 anent the

admission of ministers from other Churches, is hereby repealed."

Counsel are here referred to Appendix C, page 233, for the law of the Church of Scotland (passed in 1799), against sustaining a call to any who were not ministers or licentiates of the Church of Scotland; and their attention is directed to its bearing on the above proposal.

Barrier Act.—It may be well here to explain the meaning of the Barrier Act, under the provisions of which the above overture was sent down to the Presbyteries.

By an Act of Assembly (1697, c. 9), in order to prevent all hasty and rash legislation, and to legislate in accordance with the general mind of the Church, as ascertained by the votes of the Presbyteries, it was enacted that "before any General Assembly of this Church shall pass any Acts, which are to be binding rules and constitutions to the Church, the same Acts be first proposed as overtures to the Assembly, and being by them passed as such, be remitted to the consideration of the several Presbyteries of this Church, and their opinions and consent reported by their Commissioners to the next General Assembly following, who may then pass the same in Acts if the more general opinion of the Church thus had agreed thereunto."

When a majority of the Presbyteries approve

simpliciter of the overture, it may be passed into a standing law of the Church, but there is no obligation on the Assembly to do so unless it sees fit.

III.

Constitution of Free Church.—Having now narrated shortly the history of the Union movement, and indicated what the proposal regarding the Mutual Eligibility of Free Church and United Presbyterian ministers is, it will be necessary to state what is and has been the teaching of the two Churches on the subject of the first head of the programme; and to enable this to be done it will be needful to indicate what the Subordinate Standards of these two Churches are.

To determine exactly the Subordinate Standards of the Free Church, the simplest way will be to indicate briefly the circumstances which led to its formation.

For a considerable number of years previous to 1842, many belonging to the Established Church of Scotland believed that the Civil Courts of the country were interfering with and encroaching on the jurisdiction of the Church in matters spiritual; and at the General Assembly of that year, a Claim, Declaration, and Protest was adopted, setting forth the interference and encroachment of which the Church complained, and seeking redress from the

Queen and Parliament.—(A copy of this deed will be found at page 1 of the Appendix to the volume of "Free Church Standards," which accompanies this Memorial.)

This deed began with a notice of the solemn circumstances in which the Church was placed, and showing that the "liberties, government, jurisdiction, discipline, right, and privileges," which it was thought were so well defined and secured to her, as to be certain to be enforced by the Civil Court, had been assailed by parties holding opposing views, and supported by the Civil Court. Hence the General Assembly resolved on making a Claim, Declaration, and Protest, of what it considered its rights and privileges. The Claim of Right then went on to state that it was an essential doctrine of the Church of Scotland, and a principle of the Confession of Faith, that "there is no other Head of the Church but the Lord Jesus Christ," and that, according to the said Confession, and to the other standards of the Church, and agreeably to the Word of God, this government of the Church was appointed by the Lord Jesus to be "in the hand of Church officers, distinct from the Civil Magistrate" or supreme power of the State, and comprehended as the objects of it, the preaching of the word, administration of the sacraments, correction of manners, the admission of the office-bearers of the Church

to their offices, their suspension and deprivation therefrom, the infliction and removal of Church censures, and generally the whole "power of the keys."

Further, "this jurisdiction and government, since it regards only spiritual conditions, rights, and privileges, doth not interfere with the jurisdiction of secular tribunals, whose determinations as to all temporalities conferred by the State upon the Church, and as to all civil consequences attached by law to the decisions of Church Courts in matters spiritual, this Church hath ever admitted, and doth admit to be exclusive and ultimate, as she hath ever given and inculcated implicit obedience thereto."

The Claim of Right then proceeded to show that the above were essential doctrines and fundamental principles of the Constitution of the Church, and were recognised by many Acts of Parliament, to which reference is then made. It further set forth, that by certain other Acts of Parliament it was enacted that the Church was to be aided by the magistrates, judges, and officers of the law, in enforcing its jurisdiction, and the tenor of these is also given.

The Claim of Right further declared that at the Union it was expressly provided that the Constitution and powers of the Established Church of Scotland were to remain unaltered, and that Act

was therefore inserted in the Act of the English Parliament for the Union of the two kingdoms. It then declared that although the Act of Queen Anne restoring patronage was in violation of the Treaty of the Union, yet it did not infringe on the right of congregations to assent to, or dissent from, ministers presented by patrons; and then narrated the opposition which the restoration of patronage received from the Church, and further asserted that it was a fundamental principle in the Church's Constitution that no pastor be intruded upon any congregation contrary to the will of the people, and that this principle was recognised by the 14th Act of the General Assembly of 1736, and re-declared by the 9th Act of the General Assembly of 1834. It then showed how the decision in the House of Lords on the Auchterarder Case (1839) was beyond the powers of the Civil Court as far as regards the spiritual jurisdiction of the Church, but that the Church was willing to recognise that decision as binding in *matters civil*, and that this had been the course followed by the Civil Court in a number of cases then quoted.

THEREFORE the General Assembly claimed that, while acknowledging the jurisdiction of the Court of Session in civil matters, the Church "shall freely possess and enjoy her liberties, government, discipline, rights, and privileges according to law,

especially for the defence of the spiritual liberties of her people, and that she shall be protected therein from the foresaid unconstitutional and illegal encroachments of the said Court of Session, and her people secured in their Christian and constitutional rights and liberties."

The General Assembly finally call the Christian people of the kingdom, &c., to witness for what they are called to suffer, and for what they are willing and ready to resign connection with the Established Church, and to "*Unite in supplication to Almighty God that He would be pleased to turn the hearts of the rulers of this kingdom to keep unbroken the faith pledged to this Church in former days by statutes and solemn treaty*, and the obligations come under to God himself to preserve and maintain the government and discipline of this Church in accordance with His Word; or otherwise, that He would give strength to this Church —office-bearers and people—to *endure resignedly the loss of the temporal benefits of an Establishment*, and the personal sufferings and sacrifices to which they may be called, and would also inspire them with zeal and energy to promote the advancement of His Son's kingdom in whatever condition it may be His will to place them; *and that in His good time* HE WOULD RESTORE TO THEM THESE BENEFITS, THE FRUITS OF THE STRUGGLES AND SUFFERINGS OF THEIR FATHERS in times past in

the same cause, and thereafter give them grace to employ them more effectually than hitherto they have done for the manifestation of His glory."

This Claim, Declaration, and Protest was forwarded to the Queen, and was also discussed in Parliament, but without good result. It was refused, and in consequence, when the Commissioners to the General Assembly of 1843 met in St Andrew's Church, Edinburgh, on the 18th May 1843, and were about to be constituted in the usual way into a General Assembly, Dr Welsh, Moderator of the General Assembly of 1842, said, "Fathers and brethren, according to the usual form of procedure, this is the time for making up the roll. But in consequence of certain proceedings affecting our rights and privileges—proceedings which have been sanctioned by her Majesty's Government, and by the Legislature of the country, and more especially in respect that there has been an infringement on the liberties of our Constitution, so that we could not now constitute this Court without a violation of the terms of the Union between Church and State in this land as now authoritatively declared, I must protest against our proceeding further. The reasons that have led me to come to this conclusion are fully set forth in the document which I hold in my hand, and which, with permission of the House, I shall

now proceed to read"—(This will be found at page 19 of Free Church Standards—Appendix.) Counsel are referred to this document as showing specially the encroachments which the Assembly believed to be made on the Church's spiritual rights.

These Commissioners therefore protested, that after the rejection of their Claim of Right, they deemed the conditions declared by the State as those on which they must remain in the Established Church contrary to the Revolution Settlement of the Church, and inconsistent with the recognition of Christ as Head of the Church; that any Assembly so constituted, and under the coercion which had been brought to bear on the election of Commissioners to it, "is not, and shall not be, deemed a lawful and free Assembly of the Church of Scotland, according to the original and fundamental principles thereof. And that the Claim, Declaration, and Protest of the General Assembly, which convened at Edinburgh in May 1842, as the act of a free and lawful Assembly of the said Church, *shall be holden as setting forth the true constitution of the said Church;* and that the said Claim, along with the laws of the Church now subsisting, shall in nowise be affected by whatsoever acts and proceedings of any Assembly constituted under the conditions now declared to be

the law, and in submission to the coercion now imposed on the Establishment."

"And finally," they protest that "while *firmly asserting the right and duty of the civil magistrate to maintain and support an establishment of religion in accordance with God's Word, and reserving to ourselves and our successors to strive by all lawful means, as opportunity shall in God's good providence be offered, to secure the performance of this duty*, agreeably to the Scriptures, and in implement of the statutes of the kingdom of Scotland, and the obligations of the Treaty of Union, as understood by us and our ancestors; but acknowledging that we do not hold ourselves at liberty to retain the benefits of the Establishment, while we cannot comply with the conditions now to be deemed thereto attached; we protest that in the circumstances in which we are placed, it is and shall be lawful for us, and such other Commissioners chosen to the Assembly appointed to have been this day holden as may concur with us, to withdraw to a separate place of meeting, for the purpose of taking steps for ourselves and all who adhere to us—maintaining with us the Confession of Faith and Standards of the Church of Scotland, AS HERETOFORE UNDERSTOOD—for separating in an orderly way from the Establishment, and thereupon adopting such measures as may be competent to us, in humble dependence on God's grace, and

the aid of the Holy Spirit, for the advancement of His glory, the extension of the gospel of our Lord and Saviour, and the administration of the affairs of Christ's house according to His Holy Word; and we do now for the purpose foresaid withdraw accordingly, humbly and solemnly acknowledging the hand of the Lord in the things which have come upon us, because of our manifold sins, and the sins of this Church and nation, but at the same time with an assured conviction that *we are not responsible for any consequences that may follow from this our enforced separation from an Establishment which we loved and prized*, through interference with conscience, the dishonour done to Christ's crown, and the rejection of His sole and supreme authority as King in His Church."

A brief *resumé* of those circumstances out of which the Free Church rose will be found in the narrative of the Free Church Model Deed, for which see p. 377 of the Acts of Assembly, 1851, sent herewith.

The Commissioners to the General Assembly of the Church of Scotland having met, as above seen (in St Andrew's Church, Edinburgh), the ministers and elders who adhered to and signed the said Protest, after worship, and reading said Protest, withdrew and convened in a large hall at Canonmills. There they constituted themselves, in the

name of the Great Head of the Church into a General Assembly, and chose Dr Chalmers as Moderator, who then delivered an address which, *inter alia*, set forth the position which those who had now formed themselves into the Free Church of Scotland meant to take up. He said :—

"Beware of compromising another of your doctrines or articles of faith, and in the defence of which the Church of Scotland did lately signalise herself, even the authority of Christ over the kings and governments of earth, and the counterpart duty of these governments to uphold religion in the world,—beware, we say, of making any compromise or surrender of this your other principle. . . . This may be termed a less principle than the other, *i.e.*, spiritual independence. . . . . But let us not forget what the Bible says of those who break even the least of the commandments, that they shall be called the least in the kingdom of heaven. The men who stand opposed to us on this second question might . . . be reposing on the like precious foundation with ourselves. They might be men with whom we differ, and yet with whom we can agree to differ. They might be coadjutors in the great work of evangelising the people of our land.

"But we shall not, even for their friendship, violate the entireness of our principles, or make surrender of the very least of them.

"To be more plain, let me be more particular. The Voluntaries mistake us, if they conceive us to be Voluntaries. We hold by the duty of Government to give of their resources and their means for the maintenance of a gospel ministry in the land; and we pray that their eyes may be opened, so that they may learn how to acquit themselves as the protectors of the Church, and not as its corrupters or its tyrants. We pray that the sin of Uzziah, into which they have fallen, may be forgiven them, and that those days of light and blessedness may speedily arrive, when 'kings shall be the nursing-fathers, and queens the nursing-mothers' of our Zion. In a word, we hold that every part and every function of a commonwealth should be leavened with Christianity; and that every functionary, from the highest to the lowest, should in their respective spheres do all that in them lies to countenance and uphold it. That is to say, though we quit the Establishment, we go out on the Establishment principle—we quit a vitiated Establishment, but would rejoice in returning to a pure one. To express it otherwise, WE ARE THE ADVOCATES FOR A NATIONAL RECOGNITION AND NATIONAL SUPPORT OF RELIGION, AND WE ARE NOT VOLUNTARIES."

After some formalities, the first Act which this General Assembly passed, was one ordering the said Protest to be recorded in their minutes, which

was accordingly done. (See p. 19 of Appendix to "Free Church Standards.") Their second Act was in the following terms:—That "the ministers and elders now convened and constituted, considering the momentous nature of the subjects as to which they will be called upon to deliberate, and that a large body of ministers and elders from every quarter of the Church, who have declared their adherence to the Protest this day taken, are at present in Edinburgh, did and hereby do assume as members, to consult, vote, and determine in all matters to come before them, to the glory of God and the good of this Church, all ministers who have so declared their adherence, and one adhering elder from each session, to be selected where not nominated by their brethren, under direction of the Committee to be appointed for making up the roll." (Page 10 of Acts of Assembly, 1843.)

Constitution of Free Church.—It was afterwards unanimously agreed, that a Committee be appointed to consider the proper course for effecting and completing a separation from the Establishment on the part of the protesting ministers and elders, and all who adhered to them, and demitting their status, rights, and emoluments held in virtue thereof. This Committee reported on the form of "An Act of Separation and Deed of Demission by Ministers and Elders adhering to the Protest," the

substance of which was as follows:—That for the reasons stated in the Protest, and in the Claim of Right, those who signed the said Protest abdicated and renounced their status and privileges as ministers and elders of the Establishment, declaring that they did not thereby abandon or impair their right as ministers of Christ's gospel, and otherwise; and that they were and should be free to exercise government and discipline in their several judicatories separate from the Establishment, "according to God's Word and the CONSTITUTION AND STANDARDS OF THE CHURCH OF SCOTLAND AS HERETOFORE UNDERSTOOD." And then they reserved their rights under the Widows' Fund, and otherwise. This deed was dated at Edinburgh, 23d May 1843, and is recorded in the Books of Council and Session, June 8, 1843. (See page 23 of App. to "Free Church Standards.")

Similar deeds were subscribed by those ministers and elders not then in Edinburgh, and by probationers who separated from the Established Church. (See p. 30 of App. to "Free Church Standards.")

By a section of the 19th Act of this same Free Church Assembly, it is enacted, in terms of the following recommendation made to the Assembly by one of their Committees, that "the Assembly should further enjoin the several Presbyteries to record the Protest taken on the 18th of May, together with the Act of Separation and Deed of Demission,

at the beginning of their Presbytery books, as the *ground* and *warrant* of their proceedings." [Act XIX., 1843, Head III., sect. 3., p. 45.]

It is submitted that in these early "actings and proceedings" of the first General Assembly of the Free Church of Scotland, the BASIS OF THE CONSTITUTION must be sought. [A copy of the Acts of Assembly for that year (1843) accompanying this Memorial is referred to generally, as showing what was done at that Assembly.] And if this is so, it would appear that the said Protest of 1843 must be taken as the first of a series of deeds forming the Constitution of the Free Church; and this, not only from the character of the deed itself, but from the tenor of the above-quoted Section of the Act XIX. of the first Free Church Assembly.

But that the Free Church has *other* deeds or standards is found from the last paragraph of the said Protest of 1843, where those who sign it claim a right to "withdraw to a separate place of meeting for the purpose of taking steps for ourselves, and all who adhere to us—maintaining with us THE CONFESSION OF FAITH AND STANDARDS OF THE CHURCH OF SCOTLAND AS HERETOFORE UNDERSTOOD—for SEPARATING IN AN ORDERLY WAY FROM THE ESTABLISHMENT." This throws us back, of course, on the Constitution of the Established Church, and those who founded the Free Church held (as stated in the said Protest, and in the Claim of

Right of 1842) that the Standards of the Established Church were—

I. The Westminster Confession of Faith as approved by the General Assembly of 1647. [A copy of this will be found at page 7 of the "Free Church Standards."]—II. The First and Second Books of Discipline, [that these were so held appears from the Claim of Right—though in the Auchterarder Case (16 S. 666), it was held that they were not part of the Church's Constitution.] And, III. The whole Acts of the Church of Scotland before 1843 (as the Free Church claimed to be the Church of Scotland Free), excepting so far as these have been since altered, modified, or repealed. The only modification your Memorialists deem it needful to notice is that which was made in the Act "Anent Questions to be put, and the Formula to be subscribed by Office-bearers on their admission to office." These were prescribed by 1711, c. x.; but of course certain of these questions became, by the fact of the Free Church being a non-established Church, irrelevant, and hence some alteration had to be made thereon. This was done in an interim way by certain Acts of the General Assemblies of 1844 and 1845, by the last of which Assemblies an overture was sent down to Presbyteries under the Barrier Act, and it the General Assembly of 1846 passed into a law, the preamble of which, after setting forth the reason of the

change introduced, went on to declare as follows :— "And the General Assembly, in passing this Act, think it right to declare that, while the Church FIRMLY MAINTAINS THE SAME SCRIPTURAL PRINCIPLES AS TO THE DUTIES OF NATIONS AND THEIR RULERS, FOR WHICH IN REFERENCE TO TRUE RELIGION AND THE CHURCH OF CHRIST, SHE HAS HITHERTO CONTENDED, she disclaims intolerant or persecuting principles, and does not regard her Confession of Faith, or any portion thereof, when fairly interpreted, as favouring intolerance or persecution, or consider that her office-bearers, by subscribing it, profess any principles inconsistent with liberty of conscience and the right of private judgment."—(*Acts of Free Assembly*, 1846, c. xii.)

The part of the preamble here quoted never passed the Barrier Act, and is merely declaratory. (The questions and the formula were simply altered so as to be in keeping with the Free Church being non-established, but in no way else were altered from the questions used in and by the Church of Scotland before 1843.)

At a meeting of the Commission of the Assembly, held in January 1860, specially called to consider the CARDROSS Case, a carefully-prepared report was submitted, from which the following is an extract:—"Now it is important to observe that there were produced in the Civil Court by the defender (*i.e.*, the Free Church) at the very out-

set of these actions the foresaid several documents—

"1. The Claim of Rights.

"2. The Protest.

"3. The Deed of Demission.

"4. The Formula or Vow signed by the pursuer.

"These several documents form what has been called by Mr M'Millan the Contract. *In reality they form, in conjunction with the Confession of Faith and other standards to which the foresaid documents refer, the Constitution of the Free Church of Scotland*, to which its members and office-bearers are held to have given their adherence by the simple fact of becoming members of that Church."

Dr Candlish, in speaking of the Cardross Case at the same meeting of Commission, said—

"The question reserved is, What is the constitution or the contract between Mr M'Millan and us? . . . . . What more evidence can be given as to what our constitution is? *We put in our Claim of Rights—we put in our Deed of Demission—we put in our Formula—we put in all the documents that constitute really our profession as the Free Church of Scotland, and in that same way show what the terms of our constitution are*, and what Mr M'Millan's obligation under that constitution is. We have no more information to give—we have no more evidence to lead—we have nothing more to say whatever on that point."

Further, it may be noted that the said Union Committee of the Free Church, in their report to the General Assembly of 1864, state that a committee, consisting of members of the Free Church and United Presbyterian Church Union Committees, appointed to draw up a report on the documents which are of authority in the two Churches, and served to define their positions and principles, specified the documents of authority in the Free Church to be—

"I. Subordinate Standards binding upon the consciences of ministers and other office-bearers, viz.—

"1. The Formula appointed to be subscribed by probationers before receiving licence, and by all office-bearers at the time of their admission, together with the questions appointed to be put to the same parties, at ordination and admission.

"2. The Westminster Confession of Faith, as explained by the Acts of Assembly 1647 and 1846. . . . .

"3. The Claim of Rights and Protest of 1843, with respect to their general principles, &c., according to the terms used in the Formula.

"II. Documents adopted by the Church at former times, and still more or less illustrative generally of her position and principles, viz., 1. The First Book of Discipline; 2. The Second Book of Discipline; 3. As Directories for Catechising—

the Larger and Shorter Catechisms; 4. Documents bearing on the Discipline of the Church, viz., the Form of Process and the Acts of the Free Church Assemblies 1853 and 1854 thereanent."

It appears, then, that the deeds in which the Constitution of the Free Church is to be sought are—

I. The Westminster Confession, as explained by the Acts of 1647 and 1846, c. 12.—[For the Act of 1647, see page 13 "Free Church Standards." The Act of 1846 is above given. See also page 37 of "Free Church Standards. App."]

II. First and Second Books of Discipline.

III. Claim of Rights of 1842.

IV. The Act of Separation.

V. The Protest of 1843.

VI. Deed of Demission.

VII. The Questions and Formula above noticed.

VIII. Acts of Assembly of Church of Scotland.

It may be noticed that in the case M'Millan *v.* the Free Church (commonly cited as the Cardross Case, 22 D. 290, 23 D. 1314, and 24 D. 1282), the third, fourth, fifth, and seventh of these deeds were founded on, and it has been shown that the third refers to and endorses the first and second.

IV.

Principle of Free Church anent the Civil Magistrate.—Having now stated what your Memorialists submit to be the Constitution of the Free Church, the attention of Counsel is directed to the principle which she holds in regard to the power of the civil magistrate, as appearing, *first*, from her Standards; and, *second*, in her actings and proceedings.

a. In her STANDARDS—

I. In the Westminster Confession—

1.—C. 20, § 4. "And because the powers which God hath ordained, and the liberty which Christ hath purchased, are not intended by God to destroy, but mutually to uphold and preserve one another; they who, upon pretence of Christian liberty, shall oppose any lawful power, or the lawful exercise of it, whether it be civil or ecclesiastical, resist the ordinance of God. And for their publishing of such opinions, or maintaining of such practices, as are contrary to the light of nature, or to the known principles of Christianity, whether concerning faith, worship, or conversation; or to the power of godliness; or such erroneous opinions or practices, as either in their own nature, or in the manner of publishing or maintaining them, are destructive to the external peace and order which Christ hath established in

the Church; they may lawfully be called to account, and proceeded against by the censures of the Church, and by the power of the civil magistrate."

2.—C. 23, § 3. "The civil magistrate may not assume to himself the administration of the word and sacraments, or the power of the keys of the kingdom of heaven: yet he hath authority, and it is his duty, to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly SETTLED, administered, and observed. For the better effecting whereof he hath power to call synods, to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God."

3.—C. 31, § 3. "It belongeth to synods and councils ministerially to determine controversies of faith and cases of conscience; to set down rules and directions for the better ordering of the publick worship of God, and government of His Church; to receive complaints in cases of maladministration, and authoritatively to determine the same: which decrees and determinations, if consonant to the Word of God, are to be received with reverence and submission, not only for their

agreement with the Word, but also for the power whereby they are made, as being an ordinance of God, appointed thereunto in His Word."

Though these quotations are made, Counsel is referred to the whole chapters particularly.

As it has been urged that the Establishment principle—that the national recognition of religion is not in the Confession of Faith—it may be well here to refer to this.

(1.) The following statements are referred to *in support* of its being in the Confession:—

Argument from word "Settled." — The argument, deduced from the above extracts, and specially from the use of the word "settled" in the second of the above extracts from the Westminster Confession, is submitted to the consideration of Counsel, and any statements made in the said argument apparently expressive of an opinion are so submitted, and Counsel will judge of their value:—

From these passages it appears that the magistrate, not intruding within the sacred circle that pertains to the Church, is nevertheless not to look on either unconcerned or inactive; but is to take measures for the preservation of unity and peace, for the keeping pure and entire that truth of God which the Church hath determined out of His Word, for suppressing all blasphemies and heresies contrary to that truth, and reforming all corrup-

tions and abuses in worship and discipline, contrary to the rules which the Church has set down; and to take measures for all the ordinances of God, which the Church has determined, being duly *settled*, administered, and observed; that is, *settled by the State*, *administered by the Church*, *and observed by the people.* For these ends he hath power to call Synods, that is, not merely the general power of summoning all his subjects, but power to call Synods for religious objects, to complain to those Synods of heresies in doctrine which have come under his notice, of corruptions in worship or abuses in discipline, or of the ordinances not being duly administered in the Church. Those complaints the magistrate has authority to present; but it does not belong to him to suppress the evil directly by taking the decision into his own hands, for "it belongs to the Synod to receive complaints of mal-administration and authoritatively to determine the same." For these ends the supreme power in the State not only has authority, but has a "duty," to summon the Supreme Synod of the Church, as often as such evils come before the State in such a form as to demand a public remedy.

The power assigned to the magistrate in the 23d chapter has not any limitation put upon it by the Act of the Scottish Assembly approving the Confession of Faith. The limitation in that Act,

referring to the 31st chapter, has no bearing even inferentially on the calling of a regularly-constituted Synod by the magistrate as often as he thinks fit; but refers exclusively to Synods meeting without delegation from their churches, and to nothing else whatever. If a Church is not yet ecclesiastically constituted, ministers may meet in Synod without delegation; or, if it is either not ecclesiastically constituted or not legally settled, the magistrate may both call the Synod and may name its members, as was done in the Westminster Assembly. This, which the above Act calls the power of the magistrate's "nomination," and this alone, ceases as soon as a Church is settled or established; but his power of calling a regular Synod through its own channels, at any time and for any cause, remains untouched.

1. Now it is urged that the whole article in the 23d chapter proceeds on the clear supposition of an Established Church. Church Establishment was never called in question amongst the Westminster Divines. Each of them was admitted by a solemn vow as member of an Assembly, *which was summoned by Parliament for the declared purpose of establishing a Scriptural Church.* Except on the basis of an Established Church, with an established creed, established worship, established government and discipline, the whole of the article has no reasonably intelligible sense.

2. The civil establishment of religion is not an *inference* from the third section of the 23d chapter of our Confession of Faith.

Definition of word "Settle."—The opposite conclusion must rest only on the circumstance that the word "established" is not employed in the sentence, "the civil magistrate hath authority, and it is his duty to take order that all the ordinances of God be duly settled, administered, and observed;" for if it had been, there could have been no controversy. Establishment is said to be "outside the Confession," because its framers have not employed the word "established," but the equivalent, interchangeable, and slightly stronger word "settled." If the denial of the doctrine of establishment is to be founded on the mere absence of the word, the doctrine of the Trinity may be denied because the word "Trinity" is not found in the body of the Confession. Settled is one of the commonest of all ecclesiastical terms, and its meaning "established by law," or "fixed by legal and ecclesiastical sanctions," is everywhere recognised by our ecclesiastical writers without the occurrence of a doubt in their mind. The most accurate of them all, Dr M'Crie, habitually uses it, as he does three times in the following paragraph:—

"In the Secession Testimony, this reformation is considered as public and national, and carried on, advanced, and *settled* by the civil and

ecclesiastical powers, acting in their proper place. They viewed the reformation and public *settlement* of religion as a great national concern, in which the commonwealth as well as the Church was deeply interested. Accordingly, they approve and commemorate the public measures and laws of the State for advancing and *settling* the Presbyterian religion, as well as those of the Church." A foot-note is added with this quotation: 'The doctrine, worship, discipline, and government, received and approved by the Assemblies of the Church *ratified and established by our Reforming Parliaments.*'

Whatever is approved by the Church and ratified by the State is, in ecclesiastical language, 'settled.' A full settlement includes both, but nothing is 'settled' that is not ratified by legal sanction.

Although 'settle' is used in various senses *now* where 'establish' could not be used—in the *sixteenth* century there were very few cases in which the words might not be interchanged. In *that* century, however, the term 'settle' seldom or never occurs in the documents of the Church, or of the State concerning the Church, but always the term 'establish.' For although both Calderwood and Row sometimes use 'settle' in their transcription of old documents, on referring to the documents themselves it will be found that it is 'establish' in the original, these writers being

evidently unconscious of making any alteration in substituting the one for the other. But in the beginning of the *seventeenth* century the translators of the Bible employed both words in one sentence, and (probably referring to their origin) they deliberately used 'settle' as the stronger of the two, in the climax, 'stablish, strengthen, settle you;' for the word translated stablish is in the Greek 'confirm,' while that translated settle is 'found,' or fix on a foundation. After this the two words are employed indiscriminately in ecclesiastical and legal acts, with a tendency to prefer 'settle,' as if accounted the stronger and more definite of the two; while 'establish' is habitually used when reference is made to the Parliamentary Acts of the previous century, as in the National Confession of 1638. 'Settled' is also, in the seventeenth century, often interchanged with 'secured,' that is, made certain by legal securities.

There is, indeed, a kindred meaning which might be ascribed to 'settle' here, namely, fixed legally in the way of endowments, or endowed. But this is inadmissible for three reasons: First, because although 'settled' occasionally means 'endowed' in good authors, it never means simply 'endowed' (whatever may be implied) in ecclesiastical documents, or in legal documents on things ecclesiastical; second, it is often used in a manner which

excludes endowment, as when Church Government is settled; and third, in the present instance the sense 'endowed' would be quite unsuitable, for among the ordinances of God are government and discipline, which cannot be endowed. Endowment is in the Confession by inference; because the inference is neither immediately manifest, nor is it certain by an absolute, but only by a conditional necessity. Establishment is both woven through the entire structure of the passage, and is expressed in one definite word; but endowment is neither, and the whole makes a clear and definite sense without it. But it is implied in the two words 'settled' and 'administered,' because these two together involve not only the setting up but the keeping up of the ordinances, and for this they must of necessity be supported. Yet for this end a government endowment is not an absolute but only a conditional necessity; being necessary only in those cases in which the free-will offerings of the people are not sufficient for the maintenance of the Gospel in every part of the Government's dominion, which, however, is apt to be the case universally.

Counsel will judge whether any meaning can be assigned to the word 'settle,' that will support or consist with the view that the established principle is not in the above passage. It has been said that it may mean 'arranged;' but 'settled' never

means arranged, but always fixed. If it is said to mean fixed, but not fixed legally—then how fixed, or by whom? To say that all the ordinances of God shall be fixed has no meaning, unless you say how or by whom. To say that they are fixed legally is a definite sense; just as 'administered' has the definite meaning of being dispensed by ministers, so 'settled' has the definite meaning of being fixed by law. If it is said it may mean fixed by the Church, it is answered settled does not mean fixed by the Church; that is never included in the received meaning of the word, but is a mere inference, or rather a mere arbitrary addition. It is also quite untenable *here*, because it is the magistrate that is to take order that the ordinances be settled; and if any alteration is to come at all, it must be made fixed by the magistrate, which is the same as by legal sanction.

But, further, 'settled' cannot mean fixed by the Church, because the Church settles nothing; according to the Westminster Confession and the ecclesiastical language of the period, it is beyond the power and province of the Church to settle anything whatever. In making this assertion, the whole years from 1638 to 1650, beginning with the year so memorable in Scotland, and continuing till after the close of the Westminster Assembly, are taken. Now, in the formal docu-

ments of Church and State, the Church 'agrees, admits, allows, approves, authorises, enacts, ratifies, appoints, ordains, constitutes, judges, decerns, decrees, declares,' but she never settles. Twice in the title of Acts, the Church is said to 'establish;' the Assembly established the Directory for worship, and the Commission of Assembly established the metrical Psalms. But the Church is never said to 'settle' anything, not even to settle a 'difference,' far less all the ordinances of God. Three things more she is said to do; she 'determines, concludes, fixes.' She hath authority to 'determine controversies, cases of conscience, differences,' and to determine the worship of God, with discipline, government, and creed, but not to settle them. She hath authority also 'to handle and conclude matters ecclesiastical,' not to settle them. Further, when she ordains ministers, she fixes them in a charge; but she never settles them except there be first a legal sanction given. A 'fixed' minister is an expression very often used by the Westminster divines for the minister of what they called a 'fixed congregation' or regular charge, in distinction from a minister ordained without a charge; but he is never called a 'settled' minister except his ordination is legally sanctioned.

This constant usage is not affected by a single instance found, in an Act of the Assembly, 'anent

the planting of schools in landward parishes,' in which the Assembly 'giveth direction for the *settling* of schools in every landward parish, and providing of men able for the teaching of the youth,' because the Presbytery is there acting as the Established Church of the land, and according to the powers conferred on it by law; or in the Assembly's own words, 'according to the laudable Acts, both of Kirk and Parliament made before, that every parish should have a reader and a school.' The usage here exactly corresponds to that in the English Act of the Lords and Commons establishing Presbytery, in which congregational elderships are said to be settled; yet the Act only gives order for the settling of Presbyteries, and ordains that the Presbyteries 'when settled, shall have power to constitute congregational elderships;' but the Act of the Presbytery is then sufficient also to settle these elderships, because their Act has been legally authorised by the State.

Evidence as to use of word "settle."—George Gillespie, so accurate in his language, writes to Scotland in 1646, 'we are pressing that the Parliament may *settle* the rule according to the advice of the Assembly;' and the Act of the Scottish Parliament abolishing patronage in 1649, concludes by 'seriously recommending unto the next General Assembly clearly to determine the

same (*i.e.*, the interests of congregations and Presbyteries), and to condescend upon a certain standing way for being a *settled* rule therein for all times coming.' In 1648 the English Parliament passed an Act 'to *settle* the possession of the parsonages, tithes, and profits on such ministers as have been placed *by authority of Parliament*,' and giving directions for the disposal of the parsonages and tithes in those parishes 'wherein no ministers are *settled* to receive them.' In the CXI. Propositions a settled Church means a legally established Church in the following sentence: 'Ordinarily, and by common or known law and right in *settled* Churches, if a man have recourse to the magistrate to complain.' It is the same in the Act of the Assembly approving the Confession of Faith, where 'Kirks constituted and settled' are Churches constituted ecclesiastically and settled legally. In King Charles I.'s Message to the Parliament he earnestly desires that 'the government of the Church may be *settled* as it was in the reigns of Queen Elizabeth and King James, with full liberty for the ease of their consciences who will not communicate in that service *established by law*.' The fifth of the Propositions to His Majesty by the Lords and Commons assembled in Parliament is, that 'Reformation of religion according to the Covenant be *settled* by Act of Parliament in such manner as both Houses have

agreed or shall agree upon after consultation had with the divines.' In Scotland two years later (1648) Baillie says, 'Our meetings were long in private for a state of a question; we required peremptorily to stand to our former principles and Covenant.—To have religion *settled* first; and the King not to be restored till he had given security by his oath to consent to an Act of Parliament for enjoining the Covenant in all his dominions, and *settling* religion according to the Covenant.' Gillespie in his formal speech before the Assembly, reporting the results of the Westminster Assembly, said—'Ye know the Directory for worship is *settled* long ago by the Parliaments of both kingdoms.' Both the English and Scotch Acts of Parliament establish the Directory without any mention of settling; Gillespie informs the Assembly that they both 'settled' it; and yet because Gillespie and the others employed the same word in our Confession, it is now said that there is 'nothing like establishment in it.'

Attention must be directed particularly to some of the documents immediately connected with the Westminster Assembly and the Confession of Faith. And first let it be remembered that the Westminster divines were expressly summoned by the English Parliament to assist them in doing what they here declare the magistrate should see that it be done—namely, settling the ordinances of

religion. The Act which summoned them to meet is entitled, 'An Ordinance of the Lords and Commons assembled in Parliament for the calling of an Assembly of learned and godly divines, and others, to be consulted with by the Parliament for the *settling* of the Government and the Liturgy of the Church of England, and for vindicating and clearing the doctrine of the said Church.' And it states: 'Whereas it hath been declared and resolved by the Lords and Commons assembled in Parliament that the present Church-government by Archbishops, &c., is evil, and therefore they are resolved that the same shall be taken away, and that such a government shall be *settled* in the Church as may be most agreeable to God's holy Word.'

The divines were summoned to assist and advise the Parliament in 'settling' the Liturgy, and the Act of Parliament afterwards for securing that object runs in these terms—'The Lords and Commons assembled in Parliament have consulted with the pious and learned divines called together for that purpose, and do judge it necessary that the Book of Common Prayer be abolished, and the Directory for the Public Worship of God be *established*.'

Previously to this, and soon after the convocation of the Assembly, the Lords and Commons had passed an ordinance, 'That the Assembly of

divines and others do forthwith confer and treat among themselves of such a discipline and government as may be most agreeable to God's holy Word, to be *settled in* this Church, instead and in place of the present Church-government by Archbishops,' &c.

The Church-government is both determined and constituted exclusively by the Church, but in this and all other Acts, both of Parliament and Assembly, it is settled *in* the Church by the State. About three years after the meeting of the Assembly, the Commons passed a declaration clearing themselves from rumours and aspersions for want of the present *settling* of Church-government, and stating—'We have so fully declared for a Presbyterial government, spent so much time, taken so much pains for the *settling* of it, that it must seem very strange if any sober and modest man shall entertain a thought that we shall *settle* no government in the Church—(and alleging causes why) the government hath not long since been *established*.'

This ordinance of the Lords and Commons was passed in January 1647; in December the Confession of Faith, finished, but without Scripture proofs, had been presented to Parliament, and five hundred copies had been printed. The Confession, with the Scriptural proofs added, was laid before Parliament in April, when six hundred copies

were ordered to be printed for the use of both Houses, and of the Assembly. With the printed Confession in their hands, containing this clause, that 'the civil magistrate hath authority, and it is his duty to take order that all the ordinances of God be settled,' the Lords and Commons passed the ordinance which they entitled, 'Classical Presbyteries and Congregational Elderships shall be settled,' declaring their resolution 'speedily to settle the Presbyterial Government,' and ordaining measures for that end. The troubled state of the times delayed the execution of this ordinance, but in October the Lords and Commons had a conference, in which they established Presbyterial Government for a period. The votes of the Lords were—'That the King be desired to give his sanction to such Acts as shall be presented to him for *settling* the Presbyterian government for three years.' And the vote of the Commons, using the interchangeable word, was—'That the Presbyterian government be *established* till the end of next Session of Parliament' (which was to be a year after that date). That is, the Lords and Commons, with the Confession of Faith printed and in their hands (which the Lords passed unreservedly on the following March, and the Commons passed without any stricture on the 23d Chapter), with this Confession and this word 'settled' in their hands, they first resolved con-

jointly to 'settle the Presbyterial Government;' next in their separate Houses the Lords voted that it should be 'settled,' and the Commons voted that it should be 'established;' and then they conferred and sanctioned these votes as an Act of Parliament. Considering these facts, it is submitted that by 'settling the ordinances of God' the Westminster divines, the House of Lords, and the House of Commons, did unanimously mean establishing them by law, or by the united sanction of Church and State.

The next proof is from the words of the Westminster divines themselves, from their formal deliverances in the Assembly. The term 'settle' is employed once in the Confession of Faith, twice in the earlier form of Church Government, and once in the later form. In the first form of Government there is this article—'In extraordinary cases something extraordinary may be done until a *settled* order may be had, yet keeping as near as possibly may be to the rule, 2 Chron. xxix. 34, 35, 36; 2 Chron. xxx. 2, 3, 4, 5. There is at this time, as we humbly conceive, an extraordinary occasion for a way of ordination for the present supply of ministers.' That 'settled' in this passage means established is evident, because there was at the time no Church Government established, Episcopacy having been abolished with nothing else as yet in its room; they were

waiting until a settled or established order 'might be had;' and the intermediate rule to which they refer makes the civil sanction very prominent. The rule consists only of texts, but the texts are not marginal, but are the substance of the Assembly's determination. The following words form part of it:—'And the thing pleased the King and all the congregation. So they established a decree to make proclamation throughout all Israel, from Beersheba even to Dan, that they should come to keep the Passover unto the Lord God of Israel at Jerusalem.' This first form of government was sent to Parliament by the Assembly as their 'Humble advice to Parliament for the ordination of ministers, and *settling* the Presbyterian government.' The enlarged form of Church Government, prepared later, contains these words—'It belongeth unto classical Presbyteries to admonish or to censure ministers . . . . for depriving or speaking reproachfully against the wholesome orders *by authority settled* in the Church . . . . to examine, ordain, and admit ministers according to the advice formerly sent up to the Honourable Houses of Parliament.' The wholesome orders are said to have been 'settled,' not by the Church but in the Church, and settled by authority. The word 'authority' is often used, and when unqualified never means Church authority, but Civil

authority, or perhaps occasionally the Civil and Ecclesiastical combined. A fourth, and in so far as ascertained, the only remaining instance in which the Assembly employ the word 'settle,' occurs in the following sentence of the Solemn League and Covenant: 'The happiness of a blessed peace between these kingdoms hath been lately concluded and *settled* by both Parliaments,' that is, legally established by the highest Civil authorities in the two nations. The Westminster divines, then, in both their forms of Government, employ 'settle' as their only word to express the Civil establishment of religion; and they were far too careful in their use of terms to alter its sense in their Confession of Faith.

Let us turn to the Revolution Settlement. In the year 1689 the Scottish Estates resolved that 'they will continue undissolved until they *settle* and secure the Protestant religion.' King William wrote to them, 'It lies on you to enter on such consultations as are most probable to *settle* you on sure and lasting foundations. . . . We having nothing so much before our eyes as the glory of God and the *establishment* of the Reformed religion.' 'And the King and Queen's Majesties do declare that they with advice and consent of the Estates of Parliament will *settle* by law that Church Government which is most agreeable to the inclination of the people.' The

Act of 1690 employs the word 'establish' eight times over to ratify by law the Confession of Faith, and the Government and Discipline of the Presbyterian Church; yet it is not 'establish,' but 'settle,' both in its title and opening as follows—'Act ratifying the Confession of Faith and *settling* Presbyterian Church Government; Our Sovereign Lord and Lady, the King and Queen's Majesties and three Estates of Parliament consider it to be their bounden duty after the great deliverance that God hath lately wrought for this Church and Kingdom, in the first place to *settle* and secure therein the true Protestant religion according to the truth of God's Word as it hath of a long time been professed within this land; as also the Government of Christ's Church within this nation agreeable to the Word of God.' The Confession of Faith was read before the King and Queen and Parliament; and however they might take for granted the correctness of its doctrinal statements without special scrutiny, they were sure to listen with the closest attention to every one of the few words concerning the civil magistrate; and hearing it read that it was the 'magistrate's duty to take order that all the ordinances of God shall be settled,' they employ this word in the title and in the opening of their Act, and declare that they are determined to 'settle' the Protestant religion and the Presbyterian government.

If they had not been assured that 'settle' in the Confession means 'established,' they never would have used the word in that sense in establishing the Confession. In these and accompanying Acts the word 'settled' is employed fifteen times, always in the sense of fixing by law, and frequently interchanged with 'establish' as a convertible term.

It matters not at all for this end whether the texts in the Confession which are used to support the doctrine are well or ill chosen, nor even whether they are true portions of the ancient Scriptures, which none will venture to question. The single point of inquiry is if the meaning of the texts is sufficiently plain to prove the meaning of the controverted letter of the Confession.

Arguments from Scripture-proofs.—Now the texts are numerous, and clear, anent the example of kings establishing the worship of the true God by all the authority and power that existed in the nation. Take out of these texts all that is typical, ceremonial, Mosaic, local, and incidental, and there remains this one element in them all: The worship of the true God set up by the whole civil and ecclesiastical power of the nation. It is not priests alone, or priests and people, but kings, Artaxerxes, David, Josiah, with counsellors, captains, and every leader, with the priests, and with the whole collective power of the nation,

establishing all the ordinances of God. The framers, therefore, of the Confession beyond all controversy designed to express civil sanction to religious ordinances in this article; they thought they had expressed it, for they selected these texts to prove what they had written; and the word they inserted in the letter of the article more especially to express that meaning was the fittest, strongest, best-authorised, and most received word in the English language for that purpose.

More evidence as to the use of the word "Settle."—In 1649 the Scottish Estates of Parliament, in their instructions to the Commission to Charles II., say, 'The sooner his Majesty begins to *settle* religion and peace, and upon these grounds claims the right of his government before Democracy or any new model of government be *settled* or take root, it will be more easy to maintain monarchical government than to repeal and cast out any other form of government after it is once *established;* and as his Majesty's joining in the Covenant with God and His people for *settling* religion is the surest foundation of a well-grounded peace, so it will certainly be the best and most effectual way to establish his throne in righteousness.' The Commissioners repair to him at the Hague, and set before him what they term 'the best means of *settling* religion and establishing the throne.' Charles replies, 'I will maintain, confirm, and

defend the government ecclesiastic and civil of Scotland as it is *settled* by law and the ancient known laws of that kingdom;' and they in return 'bless God that your Majesty answers us you will maintain, confirm, and defend the ecclesiastic government of Scotland as it is *settled* by law.'

In the ecclesiastical and Parliamentary Acts of those twelve years, including such documents as the Scottish National Covenant, the Solemn League and Covenant, and the Directories for Public Worship and Church Government, the word is never employed in any other sense whatever than as fixed by legal sanction; not ecclesiastically; but what is more remarkable, considering the common and various use of the word in those days, not in any sense that does not include the legal element. Sometimes, though rarely, the sense appears at first to be general, as in the 'settling of truth and peace;' but that means truth and peace both established by national sanctions, and the full expression is 'truth and peace settled on a firm foundation for future generations.' Passing over the Acts of Parliament which refer to matters merely civil, as opening a sphere both too wide and less relevant, such as the Acts 'settling the Admiralty, settling the Militia, settling the Courts of Justice,' in which the legal sense constantly occurs and no other, and limiting the inquiry either to Acts of Assembly or Acts of

State connected with religion; in those twelve years, the word 'settled, it is found, is used 117 times in the sense of fixed by law, necessarily in that sense in nearly all these cases, and naturally in them all; and is not found once occurring in any other meaning whatever. At the Revolution period it is found 15 times in the same sense, making 134 times in all.

b. The various actions and declarations of the Free Church thereanent, pp. 173–177 hereof.

(2) In support of this principle *not* being recognised, Counsel are referred to the following cases :—

1. Craigdallie *v.* Davidson, No. 1 (see p. 217 hereof).

2. First and second Campbelton Cases, Nos. 2 & 3 (see p. 217 hereof).

3. To the assertion that although the Free Church adopted *all* the principles of the Church of Scotland, yet not this, as this never was a term of communion in the Established Church.

If this principle, it is submitted, is in the Confession, the Free Church holds it, as her ministers have taken the "WHOLE doctrine" thereof. For the second of the questions put to ministers at ordination asks—

"Do you sincerely own and believe the WHOLE doctrine contained in the Confession of Faith?" and in signing the Formula he says—

"I do sincerely own and believe the WHOLE doctrine contained in the Confession of Faith" (see pp. 39 and 40 of App. to Standards).

In whatever way this question is decided, it is to be observed that the other constitutional documents of the Free Church expressly declare and imply her adherence to the principle of an ecclesiastical Establishment.

II. *Claim of Rights*, 1842.—In the Claim of Rights of 1842, as fully stated in the passages above quoted from that deed (p. 125), and to which reference is made (see also page 1 of App. to Standards).

III. *Protest*, 1843.—In the Protest of 1843, as fully shown in the passages above quoted therefrom (p. 128), and to which reference is made (see also page 19 of App. to Standards).

IV. *Second Book of Discipline.*—In the Second Book of Discipline, chap. 1, entitled, "Of the Kirk and Policy thereof in general, and wherein it is different from the Civil Policy":—

"This power and policy ecclesiastical is different and distinct in their own nature from that power and policy which is called civil power, and appertaineth to the civil government of the commonwealth. Albeit they be both of God, and tend to one end, if they be rightly used: viz., to advance the glory of God, and to have godly and good subjects.

"It is proper to kings, princes, and magistrates to be called lords and dominators over their subjects whom they govern civilly; but it is proper to Christ only to be called Lord and Master in the spiritual government of the Kirk; and all others that bear office therein ought not to usurp dominion therein, nor be called lords, but only ministers, disciples, and servants; for it is Christ's proper office to command and rule His Kirk universally, and every particular Kirk, through His Spirit and Word by the ministry of men.

"The civil power should command the spiritual to exercise and to do their office according to the Word of God: the spiritual rulers should require the Christian magistrate to minister justice and punish vice, and to maintain the liberty and quietness of the Kirk within their bounds.

"The magistrate neither ought to preach, minister the sacraments, nor execute the censures of the Kirk, nor yet prescribe any rule how it should be done; but command the ministers to observe the rule commanded in the Word, and punish the transgressors by civil means.

"The magistrate ought to assist, maintain, and fortify the jurisdiction of the Kirk. The ministers should assist their princes in all things agreeable to the Word."

Chapter 10, "Of the Office of a Christian Magistrate in the Kirk."—"Although all the

members of the Kirk be holden every one in their vocation, and according thereto, to advance the kingdom of Jesus Christ so far as lies in their power, yet chiefly Christian princes and other magistrates are holden to do the same. For they are called in the Scripture nourishers of the Kirk, forsomuch as by them it is, or at least ought to be, maintained, fostered, upholden, and defended against all that would procure the hurt thereof. So it pertains to the office of a Christian magistrate to assist and fortify the godly proceedings of the Kirk in all behalfs, and, namely, to see that the public estate and ministry thereof be maintained and sustained as it appertains according to God's Word.

"To see that the Kirk be not invaded nor hurt by false teachers and hirelings.

"To assist and maintain the discipline of the Kirk, and punish them civilly that will not obey the censure of the same without confounding always the one jurisdiction with the other.

"To see that sufficient provision be made for the ministry.

"To make laws and constitutions agreeable to God's Word for advancement of the Kirk, and policy thereof, without usurping anything that pertains to the civil sword."

V. *Larger Catechism.*—In the Larger Catechism, prepared by the same Assembly that made the

Confession, and therefore which may be safely held to illustrate its principles (see p. 272 of "Free Church Standards"):—

Q. 191. "*What do we pray for in the second petition?*"

A. "In the second petition (which is, *Thy kingdom come*), acknowledging ourselves and all mankind to be by nature under the dominion of sin and Satan, we pray that the kingdom of sin and Satan may be destroyed, the gospel propagated throughout the world, the Jews called, the fulness of the Gentiles brought in; the Church furnished with all gospel-officers and ordinances, purged from corruption, *countenanced and maintained by the civil magistrate:* that the ordinances of Christ may be purely dispensed, and made effectual to the converting of those that are yet in their sins, and the confirming, comforting, and building up of those that are already converted: that Christ would rule in our hearts here, and hasten the time of His second coming, and our reigning with Him for ever: and that He would be pleased so to exercise the kingdom of His power in all the world, as may best conduce to these ends."

Gillespie's CXI. Propositions.—In the CXI. propositions of George Gillespie, a leading member of the Westminster Assembly, which were prepared for the purpose of illustrating the principles of the

Confession in regard to the duty of civil magistrates, the following statements are made:—

95. "Christian magistrates and princes embracing Christ, and sincerely giving their names to Him, do not only serve Him as men, but also use their office to His glory and the good of the Church; they defend, stand for, and take care to propagate the true faith and godliness; they afford places of habitation to the Church, and furnish necessary helps and supports, turn away injuries done to it, restrain false religion, and cherish, underprop, and defend the rights and liberties of the Church; *so far they are from diminishing, changing, or restraining those rights, for so the condition of the Church were in that respect worse, and the liberty thereof more cut short, under the Christian Magistrate than under the infidel or heathen.*"

96. "Wherefore seeing these nursing fathers, favourers and defenders, can do nothing against the truth, but for the truth, nor have any right against the gospel, but for the gospel; and their power in respect of the Church whereof they bear the care, being not privative or destructive, but cumulative and auxiliary, thereby it is sufficiently clear that they ought to cherish, and, by their authority, ought to establish the ecclesiastical discipline; but yet not with implicit faith or blind obedience,—for the Reformed Churches do not deny to any of the faithful, much less to the

Magistrate, the judgment of Christian prudence and discretion concerning those things which are decreed or determined by the Church."

V.

Actings and proceedings of the Free Church thereanent.

In confirmation of this being an acknowledged principle of the Free Church, the following actings and proceedings may be adduced :—

(1.) From the time of the Reformation, no theoretical difficulties existed on the subject of the First Head of the Programme. At the end, however, of the last and in the commencement of this century, theoretical objections to all Church Establishments began to be maintained amongst certain Seceders. These at first did not excite much general attention; but about forty years ago the question was very seriously raised. Still the doctrine of Church Establishments was unanimously maintained within the Establishment, especially by leading men now in the Free Church. In the year 1834, the subject came before the General Assembly—that is, nine years before the Disruption,—and was disposed of as follows :—

"The General Assembly had transmitted to them by their Committee on Bills a reference for advice or decision from the Presbytery of Irvine, concerning the conduct of Hugh Craig, Esq., an

elder of the High Kirk of Kilmarnock, and a member of the Presbytery of Irvine, who had officiated at a meeting in Kilmarnock on the 26th March last, when a petition to Government was agreed to, praying for the separation of Church and State, and who afterwards avowed and defended his conduct in the kirk session and Presbytery. The General Assembly having heard the reference, instruct the Presbytery of Irvine to call Mr Hugh Craig before them at the meeting which shall succeed their next ordinary meeting, and if they find that he persists in the sentiments which he has expressed in the kirk session of Kilmarnock and Presbytery of Irvine, that they depose him *instanter* from the office of a ruling elder of this Church."—*Proceedings of Assembly*, 1834, p. 55.

This sentence was accordingly duly executed, as the following minute will prove:—

"*Irvine, 5th August* 1834.—Which day the Presbytery of Irvine met and was constituted, Mr Urquhart, moderator,—

"*Inter alia*, Execution of Summons on Hugh Craig, Esquire, was returned by the officer, duly certified, and the report of the committee appointed to converse with Mr Craig received and read, &c.

"Mr Craig being present, was then asked by the Presbytery whether he still adhered to the

sentiments expressed by him in the kirk session, in the Presbytery, and to the committee, when he distinctly answered that he did. It was then moved and unanimously agreed to that Mr Craig be now denuded of his status as an elder of this Church, in terms of the deliverance of the General Assembly, and he was deposed accordingly. Intimation of which deposition was ordered to be given to the session of the High Church, Kilmarnock. Against which sentence Mr Craig protested, and appealed to the next meeting of the Synod of Glasgow and Ayr, promised to lodge reasons, took instruments, and craved extracts."—*Extracted from the Records of the Presbytery of Irvine* by JOHN BRYCE, *Pres. Clerk.*

The case was afterwards appealed to the Synod of Glasgow and Ayr, but the *Scottish Guardian* tells us that the judgment was "summarily affirmed."

This case afterwards came before the Assembly of 1835, which dismissed Mr Craig's appeal, and subsequently before the House of Commons, which disregarded his complaint.

This case surely determines that what is called the Voluntary principle found no place in the Church of Scotland, and that the maintenance of the contrary principle, that is, of the Establishment principle, was obligatory on all her office-bearers.

(2.) *Act anent Union with Seceders.*—Again, in the year 1839,—that is, still prior to the Disruption,—an Act of Assembly (which had previously gone through the Barrier Act) was passed, entitled, "Act anent the Union with Seceders," which contains the following preamble:—"Whereas proposals have been made by the Associate Synod for a re-union with the Church of Scotland, and a considerable number of overtures have been sent at the same time to the General Assembly, by Synods, and Presbyteries of the Church favourable to that object, and since it has been ascertained by a Committee of the General Assembly that the course of study required for a long time past of students in Divinity in connection with the said Synod is quite satisfactory, and that their ministers and elders do firmly adhere to the Westminster Confession of Faith, the Larger and Shorter Catechisms, and other standards of our Church; and whereas the members of the Associate Synod *do heartily concur with us in holding the great principle of an Ecclesiastical Establishment, and the duty of acknowledging God in our national as well as our individual capacity*," &c. It is submitted that this extract, taken in connection with the test of the Barrier Act, not only shows how universally the Establishment principle was then held in the Church, but also that its recognition was an absolute condition before any union

with her could be formed. As the Free Church claims to be the Church of Scotland Free, she adopted all her acts, laws, and proceedings, and this *inter alia.*

As very full reference has been made to those Acts of the Church (all of which show that the Church held this principle between 1839 and 1846), there is no necessity for noticing them here again, except to quote the following extracts from two Pastoral Letters.

(3.) *Pastoral Address, April* 1843.—On the 25th of April 1843, being a month before the Disruption, a Pastoral Address was issued "by authority of the Special Commission of the General Assembly," and subscribed by Dr Gordon as Moderator, which contains a declaration of the principles held by those who afterwards formed the Disruption Church. The following is an extract from this document:—"The authority which Christ claims as King of Zion in His own spiritual kingdom, He demands as Prince of the kings of the earth that they shall sacredly respect and recognise (Ps. ii. 10-12). In this character He acknowledges them as kings, and confirms their secular dominion. The very fact of His being their Prince gives new stability and a new sanction to their thrones. Civil government, by whomsoever wielded, is ratified by Him as the ordinance of God, which the Son of God, as King,

controls and overrules, and which, in the very act of overruling it, He establishes anew (Prov. viii. 15; Rom. xiii. 1-7; Titus iii. 1; 1 Pet. ii. 13-17).

"On the other hand, as Prince of the kings of the earth, He requires them to acknowledge Him and to own His spiritual supremacy. He lays the civil magistrate under a solemn obligation, as well in the regulation of the ordinary civil affairs of His magistracy, as in His dealing with matters spiritual and such as affect religion and the Church of the living God.

"In his ordinary civil administration the civil magistrate, owning Christ as the King of kings, and Prince of the kings of the earth, is bound to have respect to His laws and to aim at the advancement of His glory. The spirit of Christianity ought to pervade all the political institutions and all the public transactions of His kingdom, and whatever is done should be sanctioned by the Word of God and by prayer (Ps. lxxxii. 3; lxxxv. 2; 2 Sam. xxiii. 3).

"But in addition, the Christian magistrate, as one of the kings of the earth of whom Christ is Prince, is to interest himself directly in the affairs of Christ's kingdom, and to act as the guardian of religion in the land. In that capacity he has many important functions to discharge in reference to the Church, and he has authority as the minis-

ter of God for good to take measures for preserving peace and order in the Church, for reforming abuses and remedying grievances, for guarding purity of doctrine and discipline, and for supplying the means of grace in efficiency and abundance through the ministrations of the Church to the people under his dominion (Isa. xlix. 23; 2 Kings xviii. 4; 2 Chron. xix. 8; John xviii. 37, xix. 2)."

(4.) The following is from the Pastoral Letter adopted on 30th May 1843:—

Pastoral Letter, May 1843.—"Long was it the peculiar distinction and high glory of the Established Church of Scotland to maintain the sole Headship of the Lord Jesus Christ, His exclusive sovereignty in the Church, which is His kingdom and house. It was ever held by her, indeed, that the Church and the State being equally ordinances of God, and having certain common objects connected with His glory and the social welfare, might and ought to unite in a joint acknowledgment of Christ, and in the employment of the means and resources belonging to them respectively for the advancement of His cause. But while the Church in this manner might lend her services to the State, and the State give its support to the Church, it was ever held as a fundamental principle that each still remained, and ought under all circumstances to remain, supreme in its own sphere, and in-

dependent of the other. On the one hand, the Church having received her powers of internal spiritual government directly from her Divine Head, it was held that she must herself at all times exercise the whole of it under a sacred and inviolable responsibility to Him alone, so as to have no power to fetter herself, by a connection with the State or otherwise, in the exercise of her spiritual functions; and in like manner in regard to the State, the same was held to be true on the same grounds, and to the very same extent, in reference to its secular sovereignty. It was maintained that as the spiritual liberties of the Church bequeathed to her by her Divine Head were entirely beyond the control of the State, so, upon the other hand, the State held directly and exclusively from God, and was entitled and bound to exercise under its responsibility to Him alone its entire secular sovereignty, including therein whatever it was *competent for or binding upon the State to do about sacred things or in relation to the Church—as, for example, endowing and establishing the Church, and fixing the terms and conditions of that Establishment.*"--(P. 51, Acts of Free Church Assembly, 1843.)

(5.) *Preamble to Act*, 1846, *c.* 12.—In 1846, the Free Church, in altering the Formula, as above noticed, declared her unaltered attachment to her old principles, as the preamble actually adopted

by the Assembly 1846 shows :—"And the General Assembly, in passing this Act, think it right to declare that, while the Church FIRMLY MAINTAINS THE SAME SCRIPTURAL PRINCIPLES AS TO THE DUTIES OF NATIONS AND THEIR RULERS IN REFERENCE TO TRUE RELIGION AND THE CHURCH OF CHRIST, FOR WHICH SHE HAS HITHERTO CONTENDED, she disclaims intolerant or persecuting principles, and does not regard her Confession of Faith, or any portion thereof, when fairly interpreted, as favouring intolerance or persecution, or consider that her office-bearers, by subscribing it, profess any principles inconsistent with liberty of conscience and the right of private judgment."—*Acts of Free Assembly*, 1846, c. xii.

This preamble confirms the position your memorialists seek to maintain—that the Free Church always held the Confession in its integrity—and that it contained a recognition of and declaration regarding the duty of nations and their rulers to true religion and the Church of Christ.

(6.) *Catechism*, 1847.—In the year 1847, the General Assembly of the Free Church approved of what is called the "Constitutional Catechism of the Free Church of Scotland," prepared by a committee of which the Rev. Andrew Gray of Perth was convener. The Act of Assembly to this effect is as follows :—"The General Assembly having resumed consideration of the overtures on

the principles of the Church, and of the report of the Committee thereanent, and being deeply sensible of the importance of instructing the people of this Church, and especially the young, in the great principles which she has been called to maintain; having also had their attention called to the Catechism on the principles and constitution of this Church, issued in December 1845 by authority of the Publication Committee, and since that time circulated with large acceptance in the land, and being satisfied with its soundness as well as its suitableness to the purpose intended, *approved generally of the same as containing a valuable summary of this Church's history and exhibition of her distinctive principles from the beginning of the Reformation to the present time*, and earnestly recommend its general use. And the Assembly authorise the Publication Committee to superintend the issue of any new edition of the Catechism that may be prepared, and to report upon it to the next General Assembly; and waiving the further consideration of the other matters referred to in the overtures and the report as aforesaid, the Assembly *appoint this Act to be read from all the pulpits* on such early Sabbath as may be agreed upon, at one or other of the ordinary diets of worship, on which occasion ministers are *enjoined to preach to their people on the doctrine of the Head-*

ship of the Lord Jesus Christ AS HELD BY THIS CHURCH *according to God's Word*, as well as the peculiar responsibility of the Church and of all her faithful people in regard to it" (Act XIX. 1847). It will be seen from this extract, that the Free Church traced her descent at this time as previously to the "beginning of the Reformation." The following are extracts from this Catechism:—

"*Q.* 22. What do you mean when you say that Christ is Head over the nations?

"*A.* That the nations are subjected to Him for the benefit of His Church.

"*Q.* 23. What duty devolves upon nations in consequence of this?

"*A.* They are bound to own their subjection to Christ, to recognise His voice speaking to them and to the Church in the Scriptures, to take care that their legislation be not opposed to His will, to abstain from the support or encouragement of religious error, *to have respect to the interests thereof in the administration of their affairs, and to employ their power and resources in such a way as shall best contribute to its successful progress within their territory* and throughout the world (Ps. ii. 7–12; Ex. v. 2; Isa. lx. 9, 10, 12; Jonah iii. 5–10; Ps. lxxii. 10, 11, 17; Ezra vi. 22, vii. 27; Neh. xiii. 15–22; Isa. xlix. 23).

"*Q.* 27. Is not this a principle which held true as regards the Jewish people alone?

"*A.* Not so. It appears to be a principle *which applies to public bodies universally, be they ancient or modern, civil or ecclesiastical* (Gen. xv. 16; Ex. xiii. 19, xvii. 8–16; Isa. xiv. 21; Jer. ii. 2–7, xxv. 12; Dan. viii. 23; Amos i. 11, 12; Rev. i. 4, 5; xviii. 24; xix. 1, 2)."

(7.) *Act* 1851, *c.* ix. *anent Union of Original Seceders.*—In 1851, a portion of the Synod of Original Seceders joined the Free Church, but this was done only upon a distinct avowal of their belief in the principle of a Church Establishment; and in connection with that event an Act and Declaration of much importance was adopted by the General Assembly, and put on record, from which the following is an extract:—"*Holding firmly to the last, as she holds still, and through God's grace will ever hold, that it is the duty of civil rulers to recognise the truth of God according to His Word, and to promote and support the kingdom of Christ,* without assuming any jurisdiction in it or any power over it; and deeply sensible, moreover, of the advantages resulting to the community at large, and *especially to its more destitute portions, from the public endowment* of pastoral charges among them, this Church could not contemplate without anxiety and alarm the prospect of losing for herself important means of general usefulness," &c. (For this Act, see preface to "Free Church Standards," p. v.) [See here Appendix A.]

(8.) *Resolutions*, 1853.—In 1853, the General Assembly passed the following series of resolutions in regard to the principles of the Free Church, viz. :—

"1. That this Church maintains *unaltered and uncompromised the principles set forth in the Claim, Declaration, and Protest of* 1842, *and the Protest of* 1843, *relative to the lawfulness and obligation of a scriptural alliance between the Church of Christ and the State*, and the conditions upon which such an alliance ought to be regulated, as well as also the position which, in the maintenance of these principles, the Church was called upon to take in 1842 and 1843, as a Church protesting against invasions of her just and constitutional rights, and demanding redress for the wrongs thus inflicted.

"2. That while in pursuance of the righteous protest and demand aforesaid, it is 'free to the members of this Church, or their successors at any time,' as the Claim of Rights asserts, 'when there shall be a prospect of obtaining justice, to claim restitution of all such civil rights and privileges and temporal benefits as' they 'were then compelled to yield up', there is not any present call to take any such step in that direction, as would imply renewed negotiations with statesmen, or renewed application to the legislature.

"3. That it is the duty of the Church, *all*

the more on this account, to adopt measures for keeping before the minds of the people, and especially of the rising generation, the principles which this Church holds, and the position which she occupies as the Free Protesting Church of Scotland.

"4. That a committee be appointed to draw up a popular summary, in the narrative form, of the principles and contendings of the Church of Scotland from the earliest times to the present, adapted to the purpose indicated in the previous resolution, and to report progress to next General Assembly, with power to the same committee to take such other steps as they may deem right, for diffusing information and awaking an interest in regard to this whole matter."

(9.) *Act* 1859, *c.* ix.—In 1859 the Assembly adopted another means for keeping before the minds of the people the principles of the Disruption, viz., to have an annual sermon in all the churches on the subject. The following is the Act of the Assembly 1859 (Act IX.) :—

"The General Assembly resolve that on the Sabbath immediately before each meeting of the General Assembly, or on such other Sabbath as the General Assembly may appoint, *every minister shall direct the special attention of his people to the facts and principles of the Disruption in* 1843, and that a collection shall be made on said Sabbath,

which shall be devoted to the increase of the stipends of the Ante-Disruption ministers whose whole stipends, including supplements, do not amount to £200 a-year, *as a testimony to the great principles they contended and suffered for.*"

(10.) *Declaratory Act*, 1860, *c.* xi.—In 1860 the General Assembly passed a Declaratory Act anent the trials of students, from which the following is an extract:—"No Presbytery shall receive any student upon trial unless they are satisfied that he is of good report, sound in his principles, pious, sober, grave, and prudent in his behaviour, of a peaceable disposition, *and that he holds the principles of this Church as to* the independence of the Church *and the duties of nations and their rulers in reference to true religion and the Church of Christ;*" and it is added, for the purpose of securing better observance of this Act, that amongst other things "a copy *shall be transmitted to each professor of divinity in the Colleges of the Free Church, and that the said Professors shall read the same in their respective halls once at least during every session, and at such times as they have reason to expect the attendance of the greatest number of students for that session.*"

Now these passages from the Standards of the Free Church, and those actings and proceedings which have been above quoted, indicate, it is submitted, the teaching of the Free Church on

the subject of the first head of the programme; especially that she *held* a DEFINITE belief thereon.

VI.

Constitution of United Presbyterian Church.—Such being the teaching of the Free Church in her Standards on the first head of the programme, and her actings in asserting it, your memorialists would now turn Counsel's attention to the teaching of the United Presbyterian Church on the same point, as contained in her Standards. What the Standards (or Constitution) of the United Presbyterian Church are, will be found from the Report of the Joint Committees of the two Union Committees, above referred to, viz., that the Subordinate Standards of this Church are:—1. "Basis of Union between the United Secession and Relief Churches, as adopted by these Churches at the date of their Union, 1847. 2. The Westminster Confession of Faith, and the Larger and Shorter Catechisms, as referred to in the second article of the Basis beforementioned, and subject to the qualifications thereinstated, viz., that the United Presbyterian Church does not approve 'of anything in these documents which teaches, or may be supposed to teach, compulsory or persecuting and intolerant principles in religion.' 3. Certain other documents which, though not

Subordinate Standards, are presented in the Report as of authority in the United Presbyterian Church, and as serving to define its position and principles. These documents are:—1. Rules and Forms of Procedure in the Church Courts of the United Presbyterian Church, comprising, among other things, Formulas for the Ordination and Admission of Office-bearers, and for the Licensing of Probationers. 2. A Summary of Principles of the United Presbyterian Church."

Now, having seen what are the Subordinate Standards of the United Presbyterian Church,—Counsel's attention is directed to her teaching on the first head of the programme, as this appears, first, from her Standards; and second, in her actings.

I. In her STANDARDS.

In the "Basis of Union," adopted 13th May 1847, the second article adopts the Westminster Confession of Faith, and the Larger and Shorter Catechisms, as "the Confession and Catechisms" of this (*i.e.*, the United Presbyterian) Church;" and as containing "the authorised exhibition of the sense in which we understand the Holy Scriptures, it being always understood that we do not approve of anything in these documents which teaches, or may be supposed to teach, compulsory or persecuting and intolerant principles in religion."

This is also the substance of the second question put to ministers and elders at ordination, and preachers at licence, in the United Presbyterian Church.

The passages to which this reservation is *understood* to apply mainly, are those passages quoted above (pp. 145–6 and 176) to prove that in the Westminster Confession of Faith, and the Larger Catechism, as held by the Free Church, the Establishment principle is taught.

Thus the United Presbyterian Church disclaims anything in these documents which "teaches, or may be supposed to teach, compulsory principles in religion." Now, what does this reference to "compulsory" mean but this—that they deny the Establishment principle? It is submitted that "compulsory" means any legislative action, or any national aid given to the Church of Christ. This saving clause is, therefore, an express provision and enactment by the United Presbyterian Church in favour of Voluntaryism, and is quite opposed to the teaching of the Free Church on the duty of nations and their rulers to true religion and the Church of Christ.

II. Actings of the United Presbyterian Church in regard to this question of the Civil Magistrate.

It is well known that all along the United Presbyterian Church has been understood to hold

Voluntary views, and hence that Church has always opposed the national recognition of religion, and of the Church of Christ.

In discussing, in October 1847, the question to be put to probationers, &c., at ordination, &c., the Synod was divided in opinion on the terms in which the last clause of the question should stand: one motion proposing that it should be as it now stands; another that it should be in these words:—"It being understood that you are not called on to recognise the power of the Civil Magistrate in matters of religion." —P. 64, United Presbyterian Synod Proceedings, 1847.

This was the form in which the Committee charged with drawing up the questions proposed it should stand.

On May 14, 1848, the Synod adopted four resolutions on the subject of National Education; the first is as follows:—

"That it is not within the province of civil government to provide for the religious instruction of the subject; and that this department of the education of the young belongs exclusively to the parent and the Church." P. 15. Same re-affirmed May 1850, p. 263. 1851, p. 335. 1854, p. 511. 1865, p. 162. 1866, p. 289.

On May 25, 1865, the Synod called for Report of Committee appointed at eleventh sederunt to

draft resolutions on the subject of the Edinburgh Annuity Tax. . . . . The resolutions, with additional clause inserted, were adopted by the Synod. The first is as follows :—

"That a law which imposes a tax for the support of religion is not only impolitic and unjust, but opposed to the law of Christ, which forbids the employment of force for the propagation or support of religion" (p. 156).

On May 19, 1868, Dr James Taylor, Convener of the Committee appointed at their previous sederunt on the question of National Education and the Disestablishment of the Irish Church, gave in their report. In terms of its recommendation, the Synod unanimously adopted certain resolutions. The first is as follows :—

"That inasmuch as this Synod is of opinion that all Civil Establishments of religion are contrary to the Word of God, unjust and injurious to the cause of Christianity, it regards with special satisfaction the efforts now made to disestablish and disendow the Established Church of Ireland." —Proceedings 1868, p. 583.

Actings of United Presbyterian Church in regard to Civil Magistrate.—Memorials to her Majesty's Government from the Synod in 1867, and to the House of Commons from their Education Committee in 1867, and to the Lord Advocate in 1868, reaffirmed the resolution of 1847.

The United Presbyterian Synod objected at various times to the appointment of a Fast-day by the Government, and in a memorial thereon we find them saying:—"But your memorialists conscientiously . . . . . strongly object to recognise an authority on the part of the Crown to order such acts of worship, as implying a supremacy over the Church, or a power of dictating to her judicatories or members a universal observance of such Acts, under the pain of violating a command of the Sovereign, or a menace of the displeasure of God."—Proceedings 1858, p. 187.

The statement by the United Presbyterian Committee on Disestablishment sent herewith may be referred to in confirmation of these being their views.

Although quite unauthoritative, but as indicating the mind of the United Presbyterian Church, a few statements by some of her ministers may be given as showing that they hold Voluntaryism, and proving what is the meaning of the passages in the Confession of Faith on this question as held by ministers in the United Presbyterian Church. [See Appendix B.]

Result of Examination of the Constitution of these two Churches.—The result then of the detailed consideration of the Constitutions of these two Churches is this—that of the Standards which they hold in common (the Westminster Con-

fession)—the Free Church accepts the WHOLE, and "*declares that she does not regard her Confession of Faith, or any portion thereof, when fairly interpreted, as favouring intolerance or persecution*"—while the United Presbyterian Church virtually declares that the Confession does teach such doctrines, by the "allowance" granted to all her ministers and elders—that in accepting office, they do so on the understanding that they "are not required to approve of anything" in said Confession, "which teaches, or may be supposed to teach, compulsory or persecuting and intolerant principles in religion." These two Churches are thus, by their very Constitutions, opposed to each other in what they both consider a most important doctrine. If the Confession says nothing on the question of the duty of nations and their rulers towards true religion and to the Church of Christ (as some Free Churchmen argue), why does the United Presbyterian Church qualify her subscription thereto?

Fact of separation from Voluntary Churches from 1843, *onwards.*—At the Disruption in 1843, it will be noticed there was no attempt made to provide for the admission of Voluntaries, or for any lowering of the testimony of the Church on the Establishment principle. And this was, it has been seen, very emphatically stated by Dr Chalmers at the constituting of the Assembly.

At the Disruption, also, there was no proposal to unite with those Churches which now form the United Presbyterian Church, just on the ground of this difference in regard to the Civil Magistrate. The non-admissibility of Voluntaries into the Free Church, and the impossibility of union with any Church holding or tolerating Voluntary principles, are thus points which the Constitution of the Free Church meant to decide, and to declare in the same way and by the same documents as excluded Erastians and Erastian Churches.

It may also here be noticed, that not only the fact of the Free Church not at once joining with the other Voluntary Churches in the land, but her keeping separate for twenty years, without entertaining any proposal to do so, is strong evidence in favour of there being a radical difference between the two Churches, especially when during all these twenty years there scarcely was any official interchange, even of courtesies, between the two Churches.

In confirmation of this position, in Craigie *v.* Marshall, January 25, 1850, 12 D. 523, Lord Moncreiff says—"This entire separation as a matter of fact of the Secession Church from the Relief, which had subsisted from the very foundation of the Relief, was surely sufficient to presume that there was some essential difference

between them. It was not even like the case of the Burghers and Anti-Burghers, who were both branches of the same Original Secession. The Relief was perfectly different—the founders of it having left the Established Church (not admitting themselves to be seceders from it) at a much later period, and hitherto, during two-thirds of a century, had not entered into any connection with the Secession Church. Now, I ask this question —There being such a marked separation between the United Secession Church and the extensive body of the Relief, were the members of the Kirkintilloch congregation, when a union between these two bodies was proposed, bound even to inquire what the religious tenets or ecclesiastical opinions of the Relief Church were, so as to know how far they agreed with their own, or how far they differed from them? I apprehend they were not; and that it was enough for enabling them to determine whether to consent, or to refuse to consent to the Union, that the Relief was an entirely different and separate Church of Dissenters, with whom the Secession Church had hitherto had no connection. That there had been a difference between them and the Secession, and that there was still a difference which had hitherto been sufficient to keep them distinct from one another, under different Constitutions, was, in my opinion, sufficient to regulate the judgment of a particular

congregation, and to entitle them to withhold their consent to any such union."

VII.

Bearing of Proposed Overture.—Having thus indicated at some length what the proposal for the mutual eligibility of ministers of these two Churches is, and what are their Subordinate Standards, let us direct attention to three points which will bring out the whole bearing of the proposed change:—

1. In whose favour this change is to be made.
2. What is intended to be accomplished by it.
3. What it involves.

A question has been raised as to whether the wording of the proposed Act is not defective. This might possibly be best treated as a preliminary question; but your memorialists postpone stating it until afterwards, as it will then be understood more easily.

I. *In whose favour the change is to be made.*—It is a change in favour of the ministers of the United Presbyterian and Reformed Presbyterian Churches, who are in fixed charges.

II. *What the change is to accomplish.*—The change intended to be accomplished is this: At present, if a Free Church congregation should desire to call a minister of these Churches, he could not be translated *directly*, but must comply with the pro-

visions of the above-recited Act of 1850. It is proposed now to allow ministers of either of these Churches, being in fixed charges, when called to a charge in the Free Church, to be translated *directly*, without complying with the requirements of that Act; and to effect this, it is proposed to place the ministers of these two Churches on the same footing as ministers of the English and Irish and certain Colonial Presbyterian Churches, who are eligible to be so called, and when called, at once translated to any charge in the Free Church without going through the formalities prescribed by the Act 1850.

Reason of exceptions in 6th provision of Act 1850, *c.* 8.—Now the reason of the exception in favour of the English and Irish Presbyterian Churches is apparent, when it is stated, that at the time the Act 1850 was passed, these Churches had the same standards and held the same principles as the Free Church, and so the fact of being a minister in any of them was guarantee sufficient of his holding Free Church principles, and his being therefore eligible for a charge in the Free Church.

There is no Act, at present a law of the Free Church, declaring this oneness of these Churches with the Free Church, but it is submitted there was such a law at one time; and your memorialists would refer to certain Acts and proceedings of the

Free Church which show this. In the Assembly of 1844, when the Free Church began to legislate about the admission of ministers from other Churches, an overture was adopted to be sent down under the Barrier Act to Presbyteries, and was passed as an "Interim Act," which declared —"That ministers of those Churches, with respect to whose Standards and course of education the General Assembly shall have been satisfied, and who are prepared to subscribe the Formula, may not only officiate in the pulpits of this Church, but shall be eligible to ministerial charges on the call of these congregations under provision of producing Presbyterial certificates." And this Interim Act proceeded to set forth that "The General Assembly in transmitting this overture, declare that they are already satisfied that the provision of this Act may be applied to the Presbyterian Churches of Ireland and England, to the Synod of Original Seceders, and the Synod of Reformed Presbyterians in Scotland."

This overture was not passed into an "Act" by the next Assembly (1845), as they adopted a new overture on the subject, which differed slightly from the previous one and the Interim Act. By the 3d provision of this Act it is declared, "That ministers of the Presbyterian Church in England and Ireland, and in the Colonies, with which this Church is in connection, may not only

officiate in the pulpits of this Church, but shall be eligible to ministerial charges on the call of these congregations," on producing certificates.

The above Interim Act was passed into a law by the Assembly of 1846, and was in force till 1850, when it was repealed by the Act above recited. Pp. 143, 144—1, 2, 3 hereof.

These Acts themselves might be held good evidence of the Free Church being satisfied with the Standards and doctrine of the English and Irish Presbyterian Churches and Colonial Churches, and also of there being "a connection" between them. And of this there is further proof in these Churches sending yearly deputations to the Supreme Courts of the Free Church, and receiving deputations from her. But further, we find the Free Church, in 1844, not only expressing her interest in and sympathy for the English Presbyterian Church, but declaring her "cordial willingness to maintain the relations and discharge the duty of a SISTER Church to the Presbyterian Church in England, and her readiness to afford them every assistance. . . . ." And in the Assembly of 1845 (at Edinburgh), in the resolution adopted by the Assembly after hearing the English Presbyterian deputation, your memorialists find that not only do they express their interest in that Church, but enjoin any of our ministers who may be asked to aid the English Presbyterians by special service in

their Theological College for a few weeks, to comply with the request; and "in the event of a call to the Theological Chair being given to any of the ministers of this Church, authorise the Commission to consider and finally dispose of the case."

We thus find that the Free Church in 1844, 1845, and 1846, did by authoritative Acts, now no doubt repealed, declare a certain kind of "connection" to subsist between her and the English and Irish Presbyterian Churches above named; and that this, and their oneness in principle and doctrine and constitution, was the ground and reason of her declaring ministers of these Churches eligible to hold Free Church charges. It is not needful to go into the relation of the Free Church and the Colonial Churches, the connection between which in 1850 was very intimate and close.

But no such connection has ever been maintained between the United Presbyterian Church and the Free Church, no deputations having ever been exchanged by them. And yet although *no connection whatever* has so existed, it is proposed to declare the ministers of that Church eligible to charges in the Free Church, and that without their being asked any of those questions prescribed by the 1850 Act, above quoted.

III. *What is involved in the proposed change.*—What does this change involve?

Does this proposed change not virtually effect an alteration in the Constitution of the Free Church?

(1.) It has been shown that the Free Church and United Presbyterian Churches hold different views on the question of the Civil Magistrate and his jurisdiction. Now does not the simple declaration by the Free Church that United Presbyterian ministers are eligible to be called to charges in her Church, knowing that this difference in doctrine exists between the two Churches, imply a change in what the Free Church holds thereon? Does it not in effect say—the principles of both Churches are identical?

It was because the Free Church and the English and Irish Presbyterian Churches were at *one* on *all* questions of doctrine and belief that their ministers were declared eligible to be called to charges in the Free Church. But when ministers of a Church which is *not* identical in doctrine, &c., with the Free Church, are declared to be so eligible, is not this an admission, to which by the proposed Act legislative sanction is given, of the Free Church having so far altered her standards as to make them identical, or nearly so, with the standards of the United Presbyterian Church: and hence make her ministers eligible to Free Church pulpits?

(2.) But this is not all. In the General Assembly of 1867 a Resolution was adopted, declaring that,

so far as then advised, there was "no bar" to union between the Free Church and the United Presbyterian Church. And the present overture is really based on the Resolution of that Assembly, and on the findings of the Union Committee from 1867 and onwards, all of which were to the effect of declaring that the Free Church and United Presbyterian Churches, if not identical in doctrine, were so on all essential points. For, although in spite of the Resolution of 1867, the Assembly was obliged to abandon the proposal for Union of the negotiating Churches, on the basis of the Westminster Standards, "as presently accepted by the negotiating Churches," this overture must, it is submitted, be viewed as the issue and expression of these various motions carried annually under *protests* of strong and important minorities. And as these findings of the Union Committee and those Resolutions of the General Assemblies of 1867, 1868, 1869, 1870, and 1871, all allowed, or were intended to allow, or did in effect allow, or may be held to have allowed, a new and more relaxed interpretation of the Confession of Faith and other standards of the Free Church, this new scheme of the Mutual Eligibility of the Ministers of these Churches must be regarded as assuming, or giving liberty to assume, *the new and more relaxed interpretation of the Free Church Standards above noted;* and that thus those who are called from the

United Presbyterian Church to the Free Church may interpret these standards in a way different from that in which they were understood before the Union discussions began, and in a way consonant with the findings of the Union Committee and the Resolutions of the General Assemblies of late years.

This overture therefore gives, it is submitted, legislative sanction (1) to the declaration that there is "no bar" to union between the United Presbyterian and Free Churches, or that they are identical in doctrine, &c., and (2) to the relaxed interpretation of the Free Church Standards above referred to.

It is right here to state, that it is believed that according to the laws of the Free Church, a United Presbyterian minister translated in accordance with this new Act would have, before his induction, to answer the questions usually put to ministers at the time of their induction, and which are to be found at page 39 of the Appendix to the copy of the Standards which accompanies this memorial. The second question asks if he acknowledges the Confession of Faith as the confession of his faith; and the second clause of the fifth question, is as follows:—"And do you approve of the general principles embodied in the Claim, Declaration, and Protest adopted by the General Assembly of the Church of Scotland in 1842, and in the Protest of Ministers and Elders, Commissioners from

Presbyteries to the General Assembly, read in presence of the Royal Commissioner on 18th May 1843, as declaring the views which are sanctioned by the Word of God and the Standards of this Church, with respect to the spirituality and freedom of the Church of Christ, and her subjection to Him as her only Head, and to His Word as her only Standard?" Ministers at induction are not asked if they will subscribe to the Standards of the Free Church in accordance with their answers to these questions, as preachers at ordination are, as Counsel will see from the ninth question, page 38 of the above Standards. And thus a question, and a very important one, comes to be discussed. If a United Presbyterian minister is called by any Free Church congregation (supposing this overture is passed), if the Free Church Presbytery sustains the call, and goes and pleads before the United Presbyterian Presbytery that the United Presbyterian minister should be loosed from his charge, and translated to the Free Church charge, and if the Free Church Presbytery succeeds, and then proceeds to "induct" the United Presbyterian minister to the Free Church charge, will the United Presbyterian minister require to *sign* the Formula? He will have to answer the questions above referred to (page 39 of Standards); but he is not asked if he is "willing to subscribe to those things" as probationers are. (See question 9, page 38.)

After merely asking the questions, the Presbytery will proceed to induct; but *ere* this, the United Presbyterian minister will not of necessity have signed the Formula. Of course, in the case of a Free Church minister being so translated, or of the case of a minister belonging to one of these Churches identified with her, there is no question of this kind, for he has previously signed the Formula. (A Student must subscribe the Formula at the time he is licensed.) A United Presbyterian minister, however, does not require to sign *any* Formula; and never the Free Church one. Would he have to subscribe the Free Church Formula *after* induction?

VIII.

Law of Subscription in the Free Church.—This requires us to state the Law of Subscription in the Free Church, which is based on the Law of the Church of Scotland.

The Scottish Parliament ratified the Confession of Faith in May and June 1690. The General Assembly met in October, and "after mature deliberation" approved of an overture which it declared "to have the force and strength of an Act and ordinance of Assembly," to the following effect:—

"For retaining soundness and unity of doctrine, it is judged necessary that all probationers

licensed to preach, all entrants into the ministry, and all other ministers and elders received into communion with us in Church Government, be obliged to subscribe their approbation of the Confession of Faith, approven by former General Assemblies of this Church, and ratified in the second session of the current Parliament; and that this be recommended to the diligence of the several Presbyteries, and they appointed to record their diligence thereanent in their respective registers."

Difficulties arose between the Church and the State on the question of Subscription to the Formula, and at last these were ended by the Parliament passing an Act in 1693, requiring subscription. And the General Assembly of 1694 carrying out that Act, by their Act XI. prescribed a new Formula, to be signed by those who might be received into ministerial communion: "As also the General Assembly require all Presbyteries and Synods, in thus admitting or receiving any to ministerial communion, that they oblige them to take and subscribe the above acknowledgment," and "by ordaining well qualified expectants, who shall be bound at their entry to subscribe the said Confession of Faith, with the acknowledgment above expressed."

This was the law until 1711, when a considerable change was introduced. The Assembly that year passed an Act which *inter alia in the*

preamble sets forth—"And the General Assembly judging it fit that the same method should be followed in all Presbyteries as to the questions put to and engagements taken of probationers when licensed, and ministers when ordained or admitted, and that probationers and ministers should not only give sufficient proof of their piety, literature, and other good qualifications for the ministry, but also come under engagements to adhere to the doctrine, worship, discipline, and government of this Church: do therefore enact and appoint that the following questions be put to all such as pass trials in order to be licensed, as also to such as shall be ordained ministers, or admitted to any ministerial charge or parish, and that they shall subscribe the Formula after set down, before they be licensed, ordained, or admitted respectively; and the General Assembly hereby strictly prohibits and discharges the licensing, ordaining, or admitting of any who shall not give satisfying answers to these questions, and subscribe the Formula hereto subjoined."

There were urged against the legality of this Act in after years two objections—(1), its variation from the Formula of 1694, enacted in virtue of the Act of Parliament 1693; and (2), the want of power in the Assembly to make this innovation without consent of a majority of Presbyteries.

The former objection may be good still, as regards the Established Church; but it could not, possibly, be good as to the Free Church, for the Free Church would not perhaps consider that the General Assembly, 1711, exceeded its powers in so acting. The latter objection has been partially obviated, as "a more distinct and comprehensive Act anent licensing probationers was first introduced in the year 1740, 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 of 1782" (Hill, Comprehensive View, p. 68). This Act merely prescribes to probationers the questions and Formula of 1711, so that the stipulation and subscription of that year, so far as relates to probationers, have been fully sanctioned by the Church acting through the Barrier Act. And although it is doubtful if the questions and Formula of 1711, applicable to ministers, ever passed the Barrier Act, yet as we have seen, as every minister had first to be a probationer, it was of little importance, he having had at license to give and subscribe an unqualified assent to the Confession of Faith.

The Act of 1711 continued to be acted on alone until May 1844 (except as regards probationers, as above seen), when the Free Church General Assembly adopted an overture to be sent down to

Presbyteries, altering it, on account of the changes in the outward state of the Church,—at the same time passing the overture into an "Interim Act." The General Assembly of 1845 did not proceed, however, to pass that overture into a standing Act, but of new sent the overture down to Presbyteries, again passing it as an Interim Act. When the Assembly of 1846 took up the question, they enacted a law in terms of the overture. But at the same time they slightly altered the wording of the preamble as sent down to Presbyteries, and added one or two clauses thereto, and prescribed also a Formula, none of which passed the Barrier Act. There is subjoined the preamble to the overture sent down in 1845, and the preamble to the Act of 1846. Wherein the 1846 preamble is the same as that of 1845, it is here printed in CAPITALS; wherein the 1846 preamble differs from the 1845 preamble, in *italics;* wherein there is new matter in the 1846 preamble, in ordinary letters.

Whereas it has become necessary, in consequence of what has lately taken place in the outward condition of the Church, to amend the Formula, which was in use, to be signed by the office-bearers of the Church, the General Assembly agree to transmit to Presbyteries the

WHEREAS IT HAS BECOME NECESSARY, IN CONSEQUENCE OF *the late change* IN THE OUTWARD CONDITION OF THE CHURCH, TO AMEND THE *Questions and* FORMULA *to be used at the licensing of Probationers and the ordination of Deacons, Elders, and Ministers respectively,* THE

following questions, (these will be found at p. 3 of Free Church Standards), as an overture for their opinion; and the Assembly further pass the same as an Interim Act.

General Assembly, with consent of a majority of Presbyteries, enact and ordain that the following shall be the questions so to be used; and considering that the Formula to this Act subjoined embodies the substance of the answers to the said Questions, the Assembly appoint the same to be subscribed by all Probationers of the Church before receiving licence to preach the Gospel, and by all office-bearers at the time of their admission; and the General Assembly, in passing this Act, think it right to declare that while the Church firmly maintains the same Scriptural principles as to the duties of nations and their rulers in reference to true religion and the Church of Christ, for which she has hitherto contended, she disclaims intolerant or persecuting principles, and does not regard her Confession of Faith, or any portion thereof when fairly interpreted, as favouring intolerance or persecution, or consider that her office-bearers by subscribing it, profess any principles inconsistent with liberty of conscience and the right of private judgment.

It thus appears that the Act 1711, whether the Assembly had power to pass it or not, or whether they did pass it in a formal manner, was from that date until 1844 the recognised law of the Church in the matter, and except as altered, amended, or repealed by the Acts 1782 or 1846, is still, in fact, recognised as in force. And the question of course comes to be, whether or not its being so recognised for one hundred and sixty years does not make it of prescriptive authority, both to give its own provisions force, and repeal former Acts. These are all the laws of the Free Church on the subject.

Holding that the Act of 1711 is the oldest law on the subject in force, although that be only from prescription, how far was it amended by the Act of 1846?

A preliminary question arises. How much of the preamble are we to hold as law? We have seen how much actually passed through the Barrier Act. Is that all that we must hold as law? or are we to hold the first clause, although it was slightly altered from the preamble to the overture as law? Much depends on this. The Act 1711 is not repealed: only those clauses inconsistent with the Act of 1846 are superseded. All else of the 1711 Act stands: and the question how much or how little has been amended, depends on this preliminary question.

1. If we are to hold the words of the preamble, which are really law, to end at "amend," the Act of 1846 does not say anything about the occasions on which the Formula is to be subscribed; and therefore would the Act of 1711 still apply to such cases?

2. If we hold the preamble down to "used," as law, then does not the preamble of the 1846 Act "amend" the Act of 1711 in regard to the *occasions* on which the Formula is to be subscribed? And does it not, from mentioning *only* "licensing" and "ordination," and saying nothing more, nothing about its being signed at "*induction*," at once "amend" the Act of 1711 in this respect, and, while repealing it, only re-enact it partially?

3. No doubt, in the part of the preamble which did not pass the Barrier Act, it is said that the "Formula" is "appointed" to be subscribed by all probationers of the Church before receiving licence, and by all office-bearers at the time of their admission. But does admission mean "admission" on translation, or "admission" at first to office?

Apart from those alterations made on the preamble of the Act 1711 by that of 1846, the only other alteration is found in the new questions appointed to be put to Ministers, Elders, Deacons,

and Probationers (see p. 37 of Standards). The Formula did not pass the Barrier Act.

Now the question is—Does there appear to be, in the Acts or regulations anent subscription of the Formula, anything requiring a minister already ordained by the United Presbyterian Church to subscribe the Free Church Formula, if he was under the proposed new law inducted into a Free Church charge?

If the Act 1711 is still in force as to subscription, the United Presbyterian minister would apparently require to sign at induction. But if the Act 1846 "amended" *this* portion of the 1711 Act, and the whole of the first clause of the preamble to it (the Act 1846) is to be held as law, then apparently the United Presbyterian minister would not require to sign.

The Manual of Free Church Procedure, although an unauthoritative document, thus states the practice at inductions. "Thereafter he signs the Formula, if he has not done so at a previous stage" (p. 49, Ch. II. Part II. Div. I. Sec. 33); previous stage "being probably a previous stage of the 'induction' proceedings."

Wording of the Overture.—The technical or clerical error to which reference was above made, is this: Will the 6th provision of the Act 1850, c. 8, as amended by the above overture (p. 120 hereof) authorise the translation of ministers from the

United Presbyterian Church, or Reformed Presbyterian, even if passed into an Act by next General Assembly?

The new overture or Act seeks to put the United Presbyterian Church under the operation of the above Act. That Act assumes previous connection or identity between the Churches whose ministers, in cases of orderly translations, are declared eligible to charges in the Free Church. And your memorialists have shown that a certain connection *did* exist (see pp. 198–201). Now this new overture does not declare United Presbyterian ministers admissible, but merely states that, if admitted at all, the respective provisions of the Act of 1850 are not to apply to them. United Presbyterian ministers, from the beginning of the Free Church, were considered ineligible for a call, and no Act has been passed for removing that non-admissibility. This, it is submitted, cannot be removed by an Act which merely declares that if called they are not to be subject to certain inquiries, but which does not declare them admissible, or recognise them as such. Unless it be held that before the above Act VIII. of 1850, *any* minister of *any* denomination might claim admittance to the Free Church, and that this Act excludes all such as did not comply with its provisions, except those mentioned in the 6th provision thereof, no Presbytery would

seem authorised to sustain a call to a United Presbyterian minister.

It has been urged that the objection above stated, in regard to the wording of the overture now before Presbyteries, is also good as regards the sixth provision of the Act of 1850, even as it stands, and that therefore there is no law of the Free Church authorising the translation of ministers from the English, and Irish, and Colonial Presbyterian Churches to charges in the Free Church. This is based on the fact that there is no Act now in force declaring ministers of these Churches eligible. And since there is none, and since the sixth provision of the 1850 Act does not declare them so, but only declares that certain provisions of that Act are not to apply to ministers of those Churches, when translated, they are not therefore declared eligible. It is submitted that the fact that the Assembly did once, though only by an Interim Act, recognise the admissibility of ministers of these Churches, and declared their satisfaction with the principles and education of the ministers of these Churches, is sufficient proof of there having been "*a connection* between them." There is no doubt that the Act of 1846 acknowledged their admissibility, although that was repealed by the Act of 1850 (the Act of 1846 did not apply to translations).

Your memorialists, and many others, are opposed

to this new scheme for the Mutual Eligibility of ministers of the Free and United Presbyterian Churches, and are anxious to obtain Counsel's opinion as to whether or not this scheme does not involve a change of principle on the part of the Free Church. Your memorialists would respectfully call the attention of Counsel to the following cases (among others) bearing on the points involved.

Cases.—1. Davidson *v.* Aikman, 27 July 1805, 13 F. C. 481; M. 14, 584.

Remitted 16 June 1813, 1 Dow's Reports 1.

Affirmed 21 July 1820—2 Bligh 529. Reported as Craigdallie *v.* Davidson, H. L. 16 June 1813; 5 Paton's App. 719, and 21 July 1820, 6 Paton's App. 618.

2. Galbraith *v.* Smith, 10 March 1837, 15 S. 808, 12 F. C. 735. (Campbeltown Case No. 1.)
3. Smith *v.* Galbraith, 6 June 1839, 14 F. C. 979, 5 D. 665. (Campbelton Case No. 2.)
4. Craigie *v.* Marshall, 25 Jan. 1850, 12 D. 523; 22 Jur. 154. (Kirkintilloch Case.)
5. Cairncross *v.* Meek, 28 May 1858, 20 D. 995; 30 Jur. 611. (Carnoustie Case.)

Affirmed 9 August 1860, 22 D. (H. L.) 15, 3 Macqueen 827; 32 Jur. 711.

6. Couper *v.* Burn, 2 Dec. 1850, 22 D. 120; 32 Jur. 46. (Thurso Case.)
7. M'Millan *v.* Free Church, 23 Dec. 1859, 22 D. 290; 32 Jur. 117. (Cardross Case No. 1.)
8. M'Millan *v.* Free Church, 19 July 1861, 23 D. 1314; 33 Jur. 665. (Cardross Case No. 2.)

9. M'Millan *v.* Free Church, 9 July 1862, 24 D. 1282; 34 Jur. 621. (Cardross Case No. 3.)
10. M'Millan *v.* Free Church, 20 July 1864, 2 Macph. 1444. (Cardross Case No. 4.)
11. Forbes *v.* Eden, 8 Dec. 1865, 4 Macph. 143; 38 Jur. 98.
    Affirmed 11 April 1867, 5 Macph. (H. L.) 36; 39 Jur. 411.
12. Attorney General *v.* Pearson. (1.) Case: Merivale's Chancery Reports III. 353, 1817. (2.) Case: Simon's Chancery Reports VII. 290, 1835.
13. Broome *v.* Summers, 11 Simons 352, 1840.
14. Attorney General *v.* Shore, 9 Clark & Finnely, 355, 1842. (Lady Hewley's Charities.)
15. Attorney General *v.* Gould, 28 Beavans 485, 1860.
16. Attorney General *v.* Ethridge, 11 Weekly Reporter 199, 1862.
17. Ward *v.* Hipwell, 3 Gifford 547, 1862.
18. Attorney General *v.* Oust, 13 Law Times, New Series 235.
19. Dill *v.* Watson, Jones' Exchequer Reports, II. 48. (Clough Case.)
20. Attorney General (Ireland) *v.* Miller. Chancery Court of Ireland, 1855.

Notes on Cases.—It seems to have been settled in various cases—*e.g.*, Cardross case and Forbes *v.* Eden (1), that no Civil Court will look at any case arising out of any action or deed of a Church Court, whether that be spiritual or governmental, unless an *actual* loss of some civil right has taken place, and can be instructed. (2.) That the Civil Court, when satisfied that such has

taken place, will judge the Church as an Association or Society, and require it to produce its Constitution or Articles of Agreement, and it will then consider the question of patrimonial loss. (3.) That they will award the property to those adhering to the principles for which it was given, even though a minority—See Davidson, No. 1; Kirkintilloch Case, No. 4; Thurso Case, No. 6; Attorney-General *v.* Pearson, No. 12; Hewley's Charities, No. 14. 5. That the divergence must be in an essential point, see 2 Campbelton, No. 3; Thurso Case, No. 6; Forbes, No. 11; Attorney-General *v.* Gould, No. 16; Attorney-General *v.* Oust, No. 18; Dill *v.* Watson, No. 19; Attorney-General of Ireland *v.* Miller.

Your memorialists have an interest of great value in the property held by the Free Church, and hence they can instruct a case which the Civil Court will look at.

Model Trust Deed.—The property in which they are interested is of two kinds—

I. Those Churches and other heritable buildings held in trust by certain trustees under what is called the "Model Trust Deed of the Free Church."

By this deed the Churches belonging to the Free Church are vested in certain Trustees for the following purposes *inter alia.*

(1.) p. 381. They hold the building for the

use of a congregation belonging to the Free Church of Scotland, or any body associated therewith: according to the usages of that body.

(2.) p. 382. That these Trustees shall permit such and such only who are authorised so to do by the said Free Church, acting through her constituted Courts: but none such should have the right to sue said Trustees for the purpose of obtaining or maintaining his right to the use of said Church, except with consent of the Assembly or its Commission: and under declaration that if it be so, he thereby lost his whole rights under the said Trust Deed, and if deposed or suspended, he was to be debarred the use thereof.

(3.) p. 382. The management of it was to be under the Kirk Session and Deacons Courts for the time being, who were to be subject to the Church Judicatories. "Declaring always, as it is hereby expressly provided and declared, that it shall not be in the power of the said Deacons or Elders, or any of them, or of any or all of the individual members of the congregation in the use, occupation, and enjoyment for the time being of the said building or place of worship and appurtenances thereof, or of any or all of said parties, either to maintain themselves in any use, possession, occupation, or enjoyment of the same, as against the said Trustees or Trustee acting for the time, or to institute against the Trustees or

Trustee as being for the time any action, suit, or proceeding, before any Court of Law or Justice, for the purpose either of obtaining or maintaining such possession, use, occupation, or enjoyment, or of controlling in any way the said Trustees or Trustee in reference to the use, possession, occupation, or enjoyment, or management, and disposal of such building or place of worship, unless with the express consent and concurrence of the General Assembly of the said body or united body of Christians, or Commission of such Assembly previously had. . . . Declaring, as it is hereby expressly provided and declared, that in the event of any Elders and Deacons, or Elders or Deacons one or more, or members or member of any congregation as aforesaid, or all or any of them, instituting against the said Trustees or Trustee any action, suit, or proceeding as aforesaid for the purposes foresaid or any of them, unless with such express consent and concurrence as aforesaid previously had, as said is evidenced as aforesaid, such party or parties instituting said action, suit, or proceeding as aforesaid, shall immediately on the same being instituted *ipso facto*, forfeit and lose all and every right, title, and interest, and claim, and demand of whatever description under these presents, and shall from thenceforward cease to have any concern therewith or interest therein."

(4.) p. 383. "Upon further trust, that the said

Trustees or Trustee acting for the time shall at all times be subject in the management and disposal of the said building . . . . and in all matters and things connected therewith to the regulation and direction of the General Assembly . . . . and shall be liable and bound to conform to, implement and obey all and every the Act or Acts of the General Assembly . . . . in reference thereto; and the Moderator and Clerk of the said General Assembly . . . . shall at all times have full power and sufficient status and right and interest to pursue or defend any action or actions in whatever Court or Courts of Law or Justice for the enforcement, maintenance, or protection of the rights, interests, or privileges of the said body . . . . in, or in any connected with, the subjects hereby disponed.'

(5.) p. 383. "That the said Trustees or Trustee acting for the time shall always have full power and liberty to raise, prosecute, and follow forth whatever action, suit, or proceeding they may think proper . . . . for the purpose, or with the intent and object of excluding any party or parties whatsoever from all or any use, possession, occupation, or enjoyment of the building . . . . and that no party or parties whatsoever shall have any right or title whatsoever to defend such action, suit, or proceeding, either in virtue of these presents, or otherwise, unless with the express consent

and concurrence as aforesaid of the General Assembly . . . . previously had to such defence."

(9.) p. 384. "It is hereby specially provided and declared, that if at any time hereafter one-third of the whole ordained ministers having the charge of congregations of the said body or united body of Christians, or any larger number of the said ordained ministers having charges as aforesaid, shall simultaneously, or within a consecutive period, not exceeding three calendar months, not only publicly separate from the said body or united body of Christians, but at the same time publicly claim and profess to hold truly and in *bonâ fide* the principles of the Protest of 18th May 1843, hereinbefore recited; and to be carrying out the objects of the said Protest more faithfully than the majority of the ministers of the said body or united body of Christians; and shall unite in forming one body of Christians, having Kirk Sessions, Presbyteries, Provincial Synods, and a General Assembly, then and in that case, and in anything herein to the contrary notwithstanding, it shall be competent to and in the power of a majority of the congregation in the use . . . . of said building . . . . for the time being, to provide and declare by a deed of declaration and appointment under their hands . . . . that the ground hereby disponed and building . . . .

then upon the same shall from henceforward be held as in connection with the body of Christians adhering to the ministers who shall have separated as aforesaid, and for this purpose to require and appoint the said Trustees or Trustee . . . . to convey and dispone the ground hereby disponed, and building place of worship then upon the same . . . . to any three or more Trustees in the said deed of declaration or appointment named to be held by such new Trustees and their successors in Trust as after-mentioned." (Here follows a declaration as to the new terms of the new deed) . . . .

(A copy of the Model Trust-Deed will be found at page 377 of the Acts of Assembly for 1851, which accompanies this memorial.)

II. *Funds.*—Certain funds which were "bequeathed" to the Free Church of Scotland, but by direction of the General Assembly are vested in trustees, who are "to hold any property which may be bequeathed or conveyed to them for behoof of the Free Church." These bequests are generally made in the following terms:—

"I leave and bequeath the sum of pounds to 'The Free Church Ministers' Widows' and Orphans' Fund, and I appoint the same to be paid at the first term of Whitsunday or Martinmas after my death."

QUERIES.

I. Has the Free Church of Scotland a Constitution, which will be recognised by the Civil Courts, in the determination of the rights of property thereto belonging? and what is that Constitution?

II. Is the Establishment Principle—that is, the national recognition and encouragement of religion and the Church of Christ, by the State as such, part of that Constitution?

III. Has the Church power by a majority, however large, to alter its Constitution (in the present instance in the face of a large and protesting minority in the Church Courts)?

IV. Does Counsel consider the United Presbyterian Constitution—which makes the Establishment Principle an open question—to be at variance with that of the Free Church?

V. Is the Overture referred to at page 120 of the above Memorial inconsistent with the Constitution of the Free Church? and particularly with the maintenance of the Establishment principle?

VI. Does Counsel consider that if the said 6th provision of the Act of 1850, c. 8, is amended, as it is proposed to be (see Overture p. 120 hereof), it will not only *declare* that the provisions of the said Act are not to apply to United Presbyterian

or Reformed Presbyterian Ministers, "in cases of orderly transactions," from charges in either of these Churches to charges in the Free Church, but also *enact* their eligibility and admissibility and *enact* and *authorise* their translations?

VII. If Counsel answer query V. in the affirmative, what are the remedies open to those who object to the said Overture being passed into an Act?

VIII. Counsel are requested to state anything which may appear to them worthy of consideration of their memorialists.

APPENDIX.

A. (See p. 184.)

THE precise present question, On what terms should United Presbyterian ministers be admitted into the Free Church, was raised in 1853—seven years after the making of our Free Church Formula—in the case of Dr Marshall of Kirkintilloch, who applied to be admitted as a Free Church minister. Although he was quite prepared at that time to make admissions, both in regard to the lawfulness of government recognition of religion, and even, in certain circumstances, of government endowment of religion, which the present United Presbyterians entirely repudiate, his application was sternly refused on the ground that he did not, with sufficient fulness, avow Free Church principles.

DR SMYTH TO DR MARSHALL.

Glasgow, January 25th, 1853.

MY DEAR SIR,—The Committee regret that at our recent conference there must have been some misapprehension on the part of the brethren present as to your supposed agreement with them in reference to the duty of the Civil Magistrate towards the Church. They understood you to admit that, in certain circumstances, it might be his duty to *endow the Church.* In your answer to Dr Buchanan, you mean to limit this obligation to the endow-

ment of regimental or other chaplains, and exceptional cases not otherwise provided for.

Allow me, my dear sir, in the name of the Committee, to observe, that if the brethren had supposed that such was the whole extent of your concessions on the subject of endowments, they would not have expressed, as they did, their satisfaction with your views when met in conference.

Our belief is that the State is *bound*, where it is necessary and practicable, to endow the Church of the living God, withholding at the same time all pecuniary support from bodies which teach doctrines opposed to the Word of God. We greatly fear *that in this part of our testimony* you do not see "eye to eye" with us; but we shall be delighted to find that we have misapprehended your meaning. It is our earnest desire that there should be no misapprehension on *either side* as to the principles we hold, and you will readily perceive that the utmost explicitness is a *sine qua non* towards arriving at a satisfactory conclusion.

Anything short of this *full agreement* in regard to our distinctive principles as the Free Church of Scotland would amount to a *mere nominal* union, hurtful to both parties.—I am, &c., JOHN SMYTH, *Convener.*

P.S.—All the members of committee were present yesterday, and were of one mind.

DR MARSHALL TO DR SMYTH.

Kirkintilloch, 9th February 1853.

MY DEAR SIR,—While holding that civil rulers are thus bound to employ their influence for the advancement of religion—protecting Christians in the exercise of all their religious rights and privileges—and lending such aid and

countenance to the truth as may seem best calculated to ensure its speedy and general acceptance by the community, she yet denies that they may prescribe a creed to their subjects, or attempt to make them religious by dint of coercive power; and in like manner, while holding *that they ought to endow the Church* where *it is necessary and practicable*, she yet does not hold it to be necessary, in the present circumstances of this country, nor does she hold it to be practicable in any case, when it would involve the smallest interference with the rights of conscience, the liberties of the Christian people, the spiritual functions of ecclesiastical office-bearers, or the sovereign prerogatives of the Lord Jesus Christ.

If I have read the Standards of the Free Church aright, these four propositions contain her creed on the subject of the relations between the Church and the State. To *all these propositions I find that I can assent*, without asking myself whether any change has taken place in my own views, or in the views of those with whom I propose to be united. As to the matter of endowments more particularly referred to by you, I trust enough has been said on that subject in the last proposition. The question, I presume, either with the Free Church or with me, is, in present circumstances, very much of an abstract nature.

I have only to add that I am, my dear sir, with much esteem, yours sincerely, AND. MARSHALL.

Rev. Dr Smyth.

DR SMYTH TO DR MARSHALL.

Glasgow, May 5, 1853.

MY DEAR SIR,—Your previous communication, which I read to the brethren last night, *foreclosed* (*as you no doubt anticipated*) *the hope of our coming together* as fellow-

labourers in the *Free Church.* You still hold decidedly the *Voluntary principle.* We are *as decidedly opposed to it.*

Whether our respective views ought to be so far subjects of mutual forbearance as not to hinder ecclesiastical incorporation is a large and complex question deserving of very minute and earnest consideration. In present circumstances, it is obvious that *we are not at liberty to modify our testimony* as the *Free Church*, in order to extend our fellowship with esteemed fathers and brethren who maintain what we believe to be *not* in accordance with *our Standards.*

I am extremely sorry that our correspondence should *meanwhile* terminate in this way, having indulged the hope that your sentiments had undergone (even although you might not be fully conscious of it) a very decided change in regard to the union of the Church with the State.—I am ever, my dear sir, most truly yours, JOHN SMYTH.

B. (See p. 193.)

Dr J. B. Johnston, in a discussion in the Glasgow Presbytery in October 1868, says :—

"In the United Presbyterian Church there has been great liberty enjoyed respecting the right and duty of the magistrate. We have expressly declared in the Formula that, in adhering to the Confession of Faith, we are not to be held as approving of that which 'teaches, or is supposed to teach, compulsory or persecuting and intolerant principles in religion,' and there are some among us who think that, in the 3d section of the 23d chapter, such principles are taught, and that some other portions are not free of the

taint. There are some of us who hold that persecution is involved in the very idea of an Established Church, and in the employment of force to any extent in maintaining or propagating religion.

"But while our terms are such as to permit the most out-and-out Voluntary to be a minister or member, there is nothing in these terms which shuts out a person who holds the theory of an Establishment—there is nothing to prevent a man holding the 23d chapter in its entirety. Perhaps it would be well if this chapter were expunged altogether, instead of retaining it in its present degraded position —(hear, hear)—some of us looking on it as so much waste paper, and others regarding it with respect. But one thing is obvious — viz., that stricter terms must not be imposed, and there is greater danger of this than is perhaps supposed. . . . The members of the Union Committee are persons whom I most cordially esteem, and among them are some of the most acute and conscientious men of the Church; but I cannot help thinking that, in the preparing of these articles on the first head of the programme, both the articles of agreement and the distinctive principles, they made a mistake. It is quite well known, although the secrets of the committee have been remarkably well kept, that on the second head—that referring to doctrine—a paper was prepared by the Free Church Committee, and that it was suggested that either the United Presbyterian Committee should accept that document as the exponent of their views, or should themselves prepare a document which might more accurately express the views held by the denomination. Our Committee resisted this proposal, and said that if there was to be a Confession of Faith, they would rather take the old Westminster Confession than a new Edinburgh or Glasgow one. Now, why did they not act on the same principle in regard

to the first head of the programme—that regarding the power of the magistrate in religion?—why did they not content themselves with quoting the 23d chapter of the Westminster Confession, and that part of the Formula, by which the authority of every clause of it is annulled, and by which the whole subject of the magistrate's power *circa sacra* is set aside? The 23d chapter is no more binding on my conscience than is Dr Gibson's pamphlet."

Dr Harper, the convener of the Union Committee, says—

"We are not required to approve of anything in the Westminster Confession, or in the Larger or Shorter Catechism, that teaches, or is supposed to teach, compulsory or intolerant principles in religion. This affords us ample protection, and therefore, under the warrant of this reservation clause, no man commits himself—no man can be supposed to commit himself, as a member or minister of this Church—to the intolerant or persecuting principles which are held in some parts of the Confession. If any person were to bring the Confession to me and say, 'Is this your Confession of Faith?' I would open up the 23d chapter and say, 'No, that is not my or my Church's Confession; we are not called upon to receive anything which teaches intolerant or persecuting principles of religion. I believe and profess all the other chapters contained in the Confession, unless there may be expressions bearing the same import, although they do not stand out so prominently as those in the 23d chapter.' It is with these expressions so qualified or expunged that I hold the Confession applies to my faith. I say expunged, not with erasion of the pen or excision by the scissors, but expunged by being expressly exhibited in this way, that I am not required to approve of anything in these Standards that teaches intolerant principles. The shelter here in this

respect is as broad as any man can desire. I have been a minister for nearly half a century, and I never met a case where a man who proposed entering into membership, or eldership, or the ministry, had the slightest difficulty of the kind to which the overture refers. Let any man put his finger on an expression or statement in the Confession and say, 'I do not approve of that; it seems to me to give to the magistrate a power he is not entitled to exercise,' and you are not entitled to approve of it. Nay, more; if you say that it may be supposed to teach such principles, you are not entitled to approve of it in that way."

C. (See p. 123.)

The attention of Counsel is directed to the following extract from an Act of the General Assembly of the Church of Scotland, and to its bearing on the questions submitted for their opinion :—

Excerpt from Declaratory Act, 1799, *chap.* v.

"The Assembly enact and declare, that it is agreeable to the constitution, the laws, and the decisions of this Church, that no probationer, who has obtained a licence without the bounds of this Church, or who has not obtained a licence from some Presbytery of this Church; and no ordained person, who did not obtain his licence from a Presbytery of this Church, or who, either by going without the bounds of the Church to obtain ordination, although he was not called to a particular congregation in another country, or by any other part of his conduct, has forfeited the licence which he had obtained, shall be held qualified to accept of a presentation, or a call, to any parish in this Church, or to any chapel-of-ease connected therewith; and the General

Assembly do hereby enjoin all the Presbyteries of this Church, if a presentation or a call to any such probationer, or ordained person as is described in this Act, shall at any time be *given in to them, instantly to pronounce a sentence, refusing to sustain such presentation or call, and declaring it null or void.*"

The other part of the above Act (not here quoted) forbade ministers of the Church of Scotland holding ministerial communion with ministers of other Churches. This portion of the Act (1799, c. v.) was rescinded by the Act 1842, chap. ix., which is as follows:—"The General Assembly, having considered the overture for rescinding the fifth Act of the General Assembly, 1799, did, and hereby do, rescind that part of the fifth Act of the Assembly of 1799, which discharges and prohibits, under pain of such censures as the judicatories of the Church may see cause to inflict, all the ministers of the Church, and the ministers of all chapels-of-ease connected therewith, from employing to preach, upon any occasion, or to dispense any of the other ordinances of the Gospel, within any congregation under the jurisdiction of this Church, persons who are not qualified, according to the laws of the Church, to accept of a presentation, and from holding ministerial communion in any other manner with such persons; while, at the same time, the Assembly enjoins upon all ministers of this Church to guard against holding ministerial communion with men who are not duly ordained and sound in the faith."

Counsel will notice that the Act of 1842, c. ix., did not repeal the part of the Act 1799, c. v., above quoted; but they will consider how far it has been superseded or modified by the Act 1850, c. viii., page 120 hereof.

OPINION OF COUNSEL.

No. I.

OPINION ON (PRINTED) MEMORIAL FOR THE DEFENCE ASSOCIATION OF THE FREE CHURCH OF SCOTLAND.

By JOHN MILLAR, Esq. (now Lord Craighill).

1. The Free Church of Scotland has a constitution which will be recognised by the Civil Court in the determination of the rights of property thereto belonging; and that constitution is embodied in the Standards of the Church, printed in the volume issued by authority of the General Assembly, as set forth in Act 9, 1851. The principle upon which the answer to the present query depends appears to me to have been fixed by the earliest of the cases, and to be recognised by the subsequent cases cited in the Memorial.

2. The Establishment principle, that is, the national recognition and encouragement of religion and the Church of Christ by the State as such,

is part of the constitution of the Free Church of Scotland. This view is supported by all the Standards of the Church, and every one of these is unambiguous in its testimony.

3. A majority of the Free Church, however large, may not lawfully alter the constitution of the Church in the face of a protesting minority of its members. The constitution is a contract or compact; and there being no provision that its fundamental conditions may be changed by consent of a specified proportion, these can be altered or abrogated only by the agreement, express or implied, of the whole Church.

4. Assuming that the constitution of the United Presbyterian Church makes the Establishment principle an open question, that constitution is at variance with the constitution of the Free Church of Scotland.

5. On the assumption upon which the immediately preceding query has been answered, the Overture referred to at page 8 of the Memorial must be considered inconsistent with the constitution of the Free Church, and particularly with the Establishment principle which is part and parcel of that constitution; there not being any provision or even any expression in said Overture, directly or by reasonable implication, limiting its operation to cases of orderly translations from charges in the United Presbyterian Church in which

the ministers to be translated adhere to the Establishment principle.

6. If the provision of the Act of 1850, c. 8, shall be altered as proposed, it practically will enact the eligibility and admissibility of United Presbyterian or Reformed Presbyterian ministers "in cases of orderly translations" from charges in either of these Churches to charges in the Free Church, and consequently will authorise such translations.

7 and 8. Consideration of ulterior questions is meantime postponed; but once the course to be pursued in the event of the Overture referred to being adopted by a majority of the Assembly of the Free Church, shall be resolved on, the measures to be taken for the vindication and protection of the rights of those represented by the Memorialists ought to be determined and prepared with the least possible delay.

The opinion of

JOHN MILLAR.

3 AINSLIE PLACE, 15*th April* 1873.

No. II.

OPINION IN ANSWER TO QUERIES RELATING TO PROCEEDINGS IN THE FREE CHURCH OF SCOTLAND.

By EDWARD S. GORDON, Esq. (now the Lord Advocate).

1 and 2. The Free Church of Scotland has a constitution which will be inquired into and recognised by the Civil Courts, in so far as necessary, for the determination of the rights of property belonging to that Church. That constitution is founded upon and includes within it, *inter alia*, the principles embodied in the Westminster Confession of Faith, and in the other formal declarations and deeds of the Church prior and subsequent to May 1843; and in particular the principle of an "Ecclesiastical Establishment," or that it is "the right and duty of the Civil Magistrate to maintain and support an Establishment of Religion in accordance with God's Word."

3. The Free Church has not power by a majority, however large, to alter its constitution, and especially in the face of a protesting minority of its Representative Members in the General Assembly. The constitution, which is the contract upon which

the association of the adherents of that Church was founded, in the absence of any provision that alterations can be made on the *constitution* by a specified or any majority, can be altered only with the consent of all the Representative Members of the Free Church in the General Assembly.

4. If it be held that the constitution of the United Presbyterian Church is opposed to the principles of the Free Church in reference to "the right and duty of the Civil Magistrate to maintain and support an Establishment of religion in accordance with God's Word;" or even if it be held that the United Presbyterian Church regards that principle as an open question—that is—that it is immaterial whether it be held or be not held by its office-bearers — the constitution of the United Presbyterian Church is at variance with that of the Free Church.

5. This question is specially important, and therefore requires to be answered at greater length.

The Act of the General Assembly of the Church of Scotland 1799, which was passed unanimously, and ordered to be engrossed in the Records of the respective Presbyteries, is *declaratory* of the *constitution* and law prior to its date, and called a "Declaratory Act." It sets forth "that it is *agreeable to the constitution, the laws*, and the decisions of this Church," that "no ordained person who did not obtain his licence from a

Presbytery of this Church," "shall be held qualified to accept of a presentation or a call to any parish in this Church, or to any chapel-of-ease connected therewith; and the General Assembly do hereby enjoin all the Presbyteries of this Church, if a presentation or a call to any such probationer or ordained person, as is described in this Act, shall at any time be given to them, instantly to pronounce a sentence refusing to sustain such presentation or call, and declaring it null and void." This Declaratory Act, in so far as not altered, is binding upon the Free Church. In 1850, the General Assembly enacted some new regulations relating to the application of the principle of the Act of 1799. The Act 1850, provides *inter alia* (1.) that no minister of another denomination shall be received to the standing of a minister of the Free Church "without an unqualified subscription of the Formula." (2.) That he shall not be received to the standing of a minister of the Free Church "without the authority of the General Assembly." (3.) That the original application for admission "be made to the Presbytery within whose bounds the applicant has his ordinary residence." (4.) That the Presbytery shall transmit to the General Assembly answers to certain queries as to the reasons why the applicant desires to be received into the Free Church; and if there is a diversity

of principle between the Free Church and the applicant's former denomination or Church, what account he gives of the change of his views; and whether the Presbytery are satisfied of his adherence to the principles maintained by the Free Church at the Disruption: and farther, it is enacted that after the General Assembly have given authority for the admission of the applicant to the Free Church, he shall continue without any fixed charge, and "without being capable of receiving a call" for the period of a year. The Act of 1850 repeals a prior Act of 1846 which related to the same matter, but it does not repeal the Act 1799. I therefore consider that the Act of 1850 by its *sixth* section does not operate to the effect of preventing the declarations of the Act of 1799, in regard to the "non-eligibility" of ministers, even of any of the denominations or Churches mentioned in that section; although there is probably little reason to doubt that it was intended to do so.

But even assuming that the Act of 1850 does operate to the effect of rendering a minister of any of the Churches mentioned in section *six* eligible to a call to a charge in the Free Church, it is to be kept in view (1.) that the Act of 1850 was passed in respect of the unanimous vote of the General Assembly; and (2.) that it proceeds upon the declaration that the Free Church was

"in connection" with these Churches, that is, the Churches mentioned in the sixth section. The question then arises, has the Free Church Assembly power to go beyond the principles of the Act of 1799 and Act 1850, and by a *majority* to repeal the provisions of the Declaratory Act of 1799, so as to extend the provisions of the Act of 1850 to ministers of a Church with which it is *not* "in connection," and which is opposed to or does not recognise one of the leading principles of the Free Church constitution? I think they had not such power.

First.—If the non-eligibility of the ministers of other Churches to receive a call to a parish, or chapel of the Free Church, is part of the "constitution" and "laws" of the Church as declared by the Act of 1799, that part of the constitution cannot legally be altered by a mere majority of the General Assembly, and in the face of a protesting minority of the Assembly; and any such attempted alteration is a violation of and departure from the constitution of the Free Church, which is binding upon and must be given effect to by the members of the Church and by the Civil Court, in all questions relating to the property of the Church. The alteration of that constitution intended by the Act of 1850, even if effectually carried out, cannot be founded upon by those supporting the alteration proposed in 1872; be-

cause, as already stated, the former was unanimously agreed to, and related to the ministers of Churches stated to be "in connection" with the Free Church.

But apart from the question whether the non-eligibility of ministers of other Churches as declared in the Act 1799, can be considered as part of the constitution of the Free Church, another question arises, whether the alteration of the Act of 1799 proposed by the Overture of 1872 is not also a violation of the constitution of the Church? This appears to depend upon whether, in the case of a minister of another Church not in connection with the Free Church, and especially of a Church not holding the same principles as the Free Church, who may receive a call from a Free Church congregation, sufficient guarantees are provided by the Overture, that the minister so called cannot be admitted as a minister in any congregation of the Free Church, until he has recognised and accepted the principles and constitution of the Free Church, including its declarations in favour of the right and duty of the Civil Magistrate in matters of religion, as declared by the Standards of the Free Church. The Overture certainly has not made direct provision to this effect, which might have in the opinion of some the effect of removing their objections to the Overture. It may, however, be said that provision is made indirectly to this effect

by the terms of the Act of Assembly, 1 June 1846; but I do not find that it applies to ordained ministers from other Churches admitted to the Free Church—indeed such ministers were not admitted at the date of that Act except after special examination by the Presbytery, and authority granted by the General Assembly; while the Act of 1850 declared, and the Overture of 1872 proposes to declare, that *the provisions of the Act of* 1850, including the *first* (viz., that "no minister or probationer of another denomination or Church shall be received to the standing of a minister or probationer of this Church without an unqualified subscription of the Formula"), *shall not apply* to ministers belonging to the Presbyterian Churches in England and Ireland and the Colonies, *with which this Church is in connection* (nor to ministers belonging to the United Presbyterian and Reformed Presbyterian Churches), the last two Churches being those *proposed* to be inserted by the Overture of 1872. The result therefore is, so far as I understand the Act of 1850 and the proposed amendment of 1872, that by the first provision of the Act of 1850 and the proposed addition of 1872, even the subscription of the Formula is not required. This is apart from the difficulties raised in the Memorial as to the legality and construction of the Act of 1846.

I have thought it right to be minute in explain-

ing the views upon which I proceed, in case I may have made any mistake as to the facts of the case; and if I have done so, I shall be glad to reconsider my opinion. But holding these views, the opinion which I at present entertain is that the Overture of 1872 is inconsistent with the constitution of the Free Church; and particularly with the maintenance of the Establishment principle.

6. 7. and 8. I understand that answers to these questions are not at present required.

The opinion of

EDWARD S. GORDON.

18*th April* 1873.

No. III.

OPINION ON PRINTED MEMORIAL FOR MEMBERS OF THE FREE CHURCH DEFENCE ASSOCIATION.

By ANDREW R. CLARK, Esq., (now Dean of Faculty), and J. B. BALFOUR, Esq.

1. We are of opinion that the Free Church of Scotland has a constitution which would be recognised by the Civil Courts in determining disputed questions of right to property belonging to that Church. That constitution is, in our judgment, contained in the Westminster Confession as explained by the Acts of 1647 and 846, c. 2—the first and second Books of Discipline—the Claim of Rights of 1842—the Act of Separation—the Protest of 1843—the Deed of Demission—the Questions and Formula referred to in the Memorial, and the Acts of Assembly of the Church of Scotland. In giving the opinion that the Books of Discipline form part of the constitution, we are not leaving out of view the decision in the Auchterarder Case. Even assuming that

decision to settle finally that the Books of Discipline do not form part of the constitution of the Established Church, this does not conclude the question whether they do or do not form part of the constitution of the Free Church: and having regard to the position taken up with reference to the Auchterarder Case, by the persons who afterwards associated themselves as members of the Free Church, and to the terms of the documents of 1842 and 1843 above mentioned, and especially to the statement in the Claim, Declaration, and Protest of 1842, that it is "a fundamental principle of the Church, as set forth in her Authorised Standards, and particularly in the second Book of Discipline (Ch. III. Sec. 5)," &c.,—we think the Books of Discipline must be held to form parts of the constitution of the Free Church.

2. We answer this question in the affirmative.

3. We are of opinion that the Church has no power by a majority, however large, to alter its constitution in any essential or fundamental point, which, as we have already stated, we consider the Establishment principle to be.

4. We consider the constitution of the United Presbyterian Church to be at variance with that of the Free Church, whether the United Presbyterian constitution be taken as negativing the Establishment principle, or as leaving the accept-

ance or rejection of that principle an open question. Any one who does not hold the Establishment principle, rejects in our opinion an essential part of the constitution of the Free Church.

5. If the effect of an Act of Assembly in terms of the Overture, would necessarily, or upon a sound construction, be to admit persons not holding the Establishment principle to the *status* of ministers of the Free Church, we are of opinion that the passing of the Act would be a violation of the constitution of the Free Church, as being destructive of the maintenance of the Establishment principle. It appears to us, however, that a Court of Law would not hold this to be the effect of an Act in terms of the Overture, but that such an Act would be construed as only warranting the admission of United Presbyterian ministers to the *status* of inducted ministers of the Free Church conditionally, upon their declaring their adherence to the principles of the Free Church including the Establishment principle, and if we be right in this view, the passing of the Act would not, in our opinion, be a violation of the Free Church constitution. The Act would not by its own force admit all ministers of the United Presbyterian Church to the standing of ministers of the Free Church, nor would it have any application to the case of probationers. It would simply place ministers having fixed charges

in the United Presbyterian Church in the position already occupied by ministers having fixed charges in the Churches mentioned in sect. 6 of the Act of 1850, C.S., by which section it is declared that "the provisions of this Act shall not apply to ministers belonging to the Presbyterian Churches in England and Ireland and in the Colonies, with which this Church is in connection, *so far as regards cases of orderly translation from charges in the said Churches to charges in this Church.*" In other words the section makes ministers of these Churches capable of being transferred from charges in their own Churches to charges in the Free Church upon the same conditions, and subject to the same regulations as apply to the translation of a Free Church minister from one charge to another charge within the Church. Now, such a minister upon being so transferred would, as appears from the Memorial, require to answer the questions printed on page 39 of the Appendix to the Free Church Standards, and also to sign the Formula printed on page 40, unless the Act of 1711 is altered by the Act of 1846, to the effect of rendering such signing of the Formula unnecessary, which we do not think it is. And so we understand that the following passage in the Report of the Union Committee, in regard to ministers of the Churches mentioned in section 6 of the Act of 1850, is correct:—"As the result and consequence

of these exemptions in favour of the Churches above named, the Free Church has recognised ever since 1850 the eligibility of the ministers of the said Churches in the sense, and to the effect, of sanctioning the orderly calling or translating of ministers of charges in any of these Churches, to charges in the Free Church on the footing of their signing the Free Church Formula." But if this be so, ministers of the United Presbyterian Church, made by an Act in terms of the Overture eligible for translation to charges within the Free Church, would, upon being inducted, require to answer the Questions and sign the Formula, or at least to answer the Questions without signing the Formula, and they would by doing both or either of these things, express their adherence to the constitution and principles of the Free Church, including the Establishment principle. It does not appear to us that the Questions could honestly be answered, or the Formula honestly be signed by any person putting such a construction upon them, or the documents to which they refer, as would not involve an admission and acceptance of the Establishment principle.

If these views be well founded, an Act in terms of the Overture would not lead to persons being placed in pastoral charges in the Free Church who did not accept the Establishment principle, but only to a postponement of the stage of proceed-

ings at which the adherence to that principle would be avowed, and this would not in our judgment be a violation of the constitution of the Church, but only an alteration of a regulation or rule of procedure. Now, in regard to matters of procedure, very large powers are vested in the Church acting through its Supreme Court.

6. We think the objection suggested to the terms of the Overture is too critical, and that an Act in terms of the Overture would enact the elegibility or admissibility of United Presbyterian ministers to charges in the Free Church, and authorise their translation to such charges, subject to the conditions explained in our last answer.

7. If, contrary to the views above expressed, an Act in terms of the Overture would involve a violation of the constitution of the Free Church, the proper remedy would, in our opinion, be to take steps for reducing the Act, or for preventing it from being carried into execution. Assuming the Act to be a violation of the constitution of the Church, and therefore illegal, we think that any minister of the Church would be entitled to reduce it; but having regard to the judicial opinions in the case of *Forbes* ver. *Eden*, we consider that the interest of a lay member would be too slender and remote to give him a title to sue a reduction. It is, however, to be kept in view that

a minister of the Church instituting an action to reduce the Act, would probably be deposed, and if deposed his title to sue the action would fall, unless he could establish to the satisfaction of the Civil Court that his deposition was illegal. Now it appears to us to be a very serious question, whether he could succeed in establishing this. In the ordinary case the Civil Courts would not inquire into the validity of a deposition, the power to depose being vested in the Supreme Court of the Church, but it is not impossible that they might do so in the case supposed, as in that case the purpose of the deposition would be to prevent the minister from vindicating a just right.

This question, however, would demand fuller consideration upon more detailed information than we now have before us.

With respect to the other remedy of stopping the execution of the Act, we think that any member of a congregation, to the pastoral charge of which a United Presbyterian minister was proposed to be inducted, would, assuming the Act to be a violation of the constitution, be entitled by interdict to prevent the induction.

And as regards the Sustentation Fund, we consider that any minister having right to participate in the Fund, would, subject to the risk of deposition above explained, be entitled to obtain an interdict against the *ex hypothesi* illegally inducted

United Presbyterian Minister participating in the Fund, and that probably any subscriber to the Fund would be entitled to use the like remedy. It does not appear to us that it would be a sufficient answer to such a subscriber, to offer him back his subscription money with the view of cutting down his title to sue. His money with the rest of the Fund is held upon trust purposes, the lawful execution of which he is, in our judgment, entitled to enforce.

If the persons objecting to the Act separated themselves from the existing Free Church, and claimed to be the true representatives of the Church as existing prior to the passing of the Act, they would require to institute proceedings for enforcing their claim to the property of the Church, and then the Civil Courts would require to determine (1) whether the passing of the Act afforded a proper ground for the separation, and (2) which of the two bodies was the one entitled to the property. The leaning of our present opinion is, that the Court would probably hold the passing of the *ex hypothesi* illegal Act not to be a sufficient ground of separation—the proper remedy, in our judgment, being either to reduce the Act or to stop its execution. As regards the second question, the persons separating would encounter great difficulties from the existing Church being in possession of the property; but,

assuming the Act to be illegal, and the separation to be held justifiable, the Court might not improbably hold that the persons who separated, as being those who adhered to the true principles of the Church, were entitled to the property.

8. We have no further observations to offer.

The opinion of

AND. R. CLARK.
J. B. BALFOUR.

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