

**THE PRACTICE OF THE
FREE CHURCH OF
SCOTLAND
IN HER SEVERAL COURTS**

EIGHTH EDITION (REVISED)

Prepared and published at the direction of the General Assembly

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PREFACE

This book attempts to codify the procedures adopted by the Free Church of Scotland so as to achieve equity and as far as possible uniformity in the treatment of ecclesiastical matters. It is a description of practice and as such rests partly on what long experience in the application of Biblical norms has shown to be the most helpful procedures and partly on regulations passed from time to time by the General Assembly. Practice might almost be regarded as having the force of common law, but "The Practice" is a guide book and not a constitutional document. Controverted points of law and practice are settled only by judicial or legislative action.

What is fundamental to the constitution of the Free Church of Scotland is contained in the subordinate standards, chief among which is The Confession of Faith which states the doctrinal position of the Church. The description "subordinate" reminds us that the Church recognises the Scriptures of the Old and New Testaments as the supreme and ultimate rule of faith and life. These standards are therefore amenable to review and adjustment only in the light of Scripture. These standards exhibit the Church's understanding of the teaching of Scripture.

The main exponent of day to day procedures in the conduct of Church affairs are the various Acts of the General Assembly. Unlike what is fundamental to the constitution these can be changed and adjusted from time to time as experience and wisdom dictate.

The structure of the Free Church of Scotland is Presbyterian. There is no hierarchy but a conciliar arrangement allowing a gradation of ever enlarging bodies from local Kirk Sessions, through district Presbyteries, regional Synods and a national General Assembly. This ensures that matters of difficulty and dispute are referable from the smaller to the larger body. Within their own spheres the bodies specified have both regulative and disciplinary powers and are on that account described as the courts of the Church.

In relation to the State the Free Church of Scotland is committed to what is known as the establishment principle. Along with the propriety of the national recognition of the Christian Church this asserts that both Church and State exist by Divine appointment and as such have a duty of mutual respect, helpfulness and co-operation. Neither should intrude into the mandated sphere of the other but each should help the other. The interests of both are advanced when State law and Biblical principles are in harmony.

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CHAPTER I

THE KIRK SESSION: ITS CONSTITUTION, POWERS AND FUNCTIONS

Part I: Constitution

1. **Composition of Session:** In each duly organised congregation the minister along with a suitable number of elected elders referred to as Ruling Elders, constitute the Kirk Session. Ruling elders are elected for life, though their membership of a Kirk Session will terminate if they cease to be members of the congregation, or their resignation is accepted, or they are declared to have resigned through long absence from sessional meetings. Life-long tenure of the office of elder may be cancelled as the result of disciplinary procedure.

2. **New Congregation:** In the initial stages of organising a congregation the Presbytery may appoint the members of the Kirk Session, designating a minister as Moderator of Session and appointing elders from nearby congregations within the bounds as general assessors. As in a vacancy the minister so appointed is referred to as the interim moderator.

3.1 **Categories of Congregation:** Congregations are variously described according to Acts of the General Assembly by whom they are assigned to the care of a Presbytery. The great majority are duly sanctioned charges which, upon fulfilment of certain conditions, are entitled to the services of a minister as his sole charge. Others, which depend upon greater support from central funds have special designations. Those whose additional support comes from the Sustentation Fund are called Redevelopment Charges, or Special Arrangement charges, or District Charges, this last category involving grouping small units not

necessarily within the bounds of the same Presbytery under the care of one district minister. Those whose additional support comes from the Church Extension Committee, being mainly the result of fairly recent outreach work, are called Church Extension Charges.

3.2 The procedures for erecting and continuing to service those special category charges are liable to modification from time to time and it seems best to refer to the Acts presently in operation. The text of these will be published in the supplement to this volume.

3.3 **Consolidated Charges:** Among duly sanctioned charges there is a category designated consolidated charges. These result from the union or linkage of neighbouring congregations approved by the General Assembly. The mode of operation within these charges is determined by the Assembly at the time of their consolidation. In the case of linkage there is a plurality of Kirk Sessions and Deacons' Courts, while in a union only one Session and Deacons' Court remains. Where there is a plurality of Sessions, representation in the Presbytery is adjusted according to Act VIII, 1936.

4. **Preaching Stations:** Besides those noted above there are small groups meeting regularly for public worship and duly recognised by Presbytery as preaching stations. Though these are not sanctioned charges, it is nevertheless the responsibility of the Presbytery to arrange for the establishment of a Kirk Session to be responsible for the pastoral care of the station, with a minister of the Presbytery being appointed Moderator of the Kirk Session. Such a Kirk Session does not send representation to the Presbytery (Act XIII, 1863).

5. **Number of Elders:** It is the responsibility of the Kirk Session to determine when additions to its number are required by the general situation of the congregation and to oversee the election of as many as it deems necessary by the communicant membership of the congregation, in whom the right of election is vested.

6. **Qualifications for Eldership:** The qualifications required of Ruling Elders are the following:

They must be men in full communion with the Congregation.

Each of them must have attained the age of twenty-one years.

They must fit the description given in the New Testament of men qualified to exercise spiritual oversight as elders or bishops/overseers.

7. **Principles of Election:** In the election of elders two principles must be secured:

7.1 The persons elected must be adjudged by the Kirk Session to be fit for the office of the eldership.

7.2 They must have the support of the free election of a majority of the communicant membership.

8. Methods of Election: There is no single mandated method of electing Ruling Elders. Kirk Sessions exercise their discretion in determining which method will be most generally acceptable locally and occasion least tension and difficulty. The following are some of the methods which honour both the principles stated above. The order of listing is not significant.

8.1 The Kirk Session may call a meeting of the communicant membership of the congregation for the purpose of electing a specified number of new elders. At this meeting names will be proposed (moved and seconded) and upon subsequent voting those securing the required majority identified. From these the Kirk Session select the required number and ascertain their willingness to accept office.

8.2 The Kirk Session may, at a duly called meeting of the communicant membership, propose certain names to them and upon securing a majority agreement proceed to invite those named to accept office.

8.3 The Kirk Session may submit to the communicant membership a list of the names of all male communicants over the age of 21 and ask for the election of a specified number. From the number securing the support of a majority of the communicants the Kirk Session then select the names of those they deem most suitable.

8.4 The Kirk Session may submit to the communicants a list of those whom they deem suitable for office and ask for the election of all or of a specified number.

9. Eligibility as Elder: A person formerly ordained to the office of the eldership but who, for reasons not involving Church discipline, is not currently a member of a Kirk Session is regarded as retaining the status of an elder. He can become an elder of the congregation in which he holds membership if so elected by the communicants and approved by the Kirk Session.

An ordained Minister who, from any cause not involving Church censure, is without a pastoral charge, is eligible as a Ruling Elder in the Congregation to which he belongs. (With regard to Retired Ministers, see Act IV, 1991).

10. Convening Session Meeting: Kirk Sessions may be convened at any convenient time provided due notice is given to all members but only in special or urgent cases may meetings be held on the Lord's Day. Meetings are convened by the authority of the Moderator or at the direction of a superior court. The most common method of notifying members is by public pulpit intimation, but they may be notified individually. Except by special permission of the court concerned, no meeting of a Kirk Session may be convened at a time when the Presbytery or Synod of the bounds or the General Assembly is sitting.

11. Moderator of Session: The Minister of the congregation is Moderator of the Kirk Session and must preside at its meetings. He may, however, on certain Occasions deputise another Minister to preside in his place.

12. **Quorum:** Two members of Kirk Session, along with the Moderator, form a quorum to enable the meeting to proceed to business, but no business may be transacted if attendance falls below the quorum.

13. **Voting:** Decisions of Kirk Session may be agreed by general consensus of those present, or on the basis of motions, duly moved, seconded and carried.

14. **Powers of Moderator:** The Moderator may introduce any business to the Session and may address them regarding it, but he may not move or second a motion. He has also, in common with the other members, the right of dissent and complaint against any decision to the Presbytery, or Synod, or General Assembly. But he has no deliberative vote, although, in case of an equality, he has a casting vote.

15. **Interim Moderator and Assessors:** In the event of a vacancy in the pastoral office, a Minister, who is a Member of Presbytery, is appointed by the Presbytery to act as Moderator of Session; and in the event of there being no Ruling Elders, or only one, the Presbytery appoint one or more assessors from within their own bounds to act as Members of Session, until a new election of a Ruling Elder or of Ruling Elders shall have taken place.

16. **General Assessors:** Those appointed as assessors in the circumstances noted above are referred to as general assessors and their period of service in that capacity should be distinctly stated at the time of their appointment. The period may be extended by later decision of Presbytery. General Assessors have the same rights, responsibilities and privileges as elected members during the period of their appointment and their names should be included in the list of office-bearers in the Communion Roll of the Kirk Session.

17. **Special Assessors:** If a Kirk Session faces a problem of peculiar difficulty, it may request the Presbytery to augment its number by the appointment of special assessors. Such assessors sit as members of the court only when the specific matter occasioning difficulty is being discussed. Presbyteries, on their own responsibility, having knowledge of difficulty faced by a Kirk Session, may appoint assessors, either general or special.

18. **Session Clerk:** The Kirk Session appoints a Clerk, usually a member of the court, to write up minutes of meetings, attend to correspondence and take care of papers and books belonging to the Session. On appointment the Clerk should solemnly declare that he will faithfully discharge the duties assigned to him. In the absence of the Clerk, the Kirk Session appoints someone to act for him *pro tempore*, and this fact should be noted in the minutes. The temporary clerk should sign the minutes he has written as well as the regular clerk.

19. **Opening and Closing of Session:** All meetings of Kirk Session must be duly constituted, that is, opened with prayer. They must always also be closed with prayer. No minutes are deemed valid which do not state both that the Session

was duly constituted and that it was closed with prayer. Extracts of minutes are not valid unless it is clearly stated that the court was constituted, and they are certified as extracted by the Session Clerk.

20. **Approval of Minutes:** At the beginning of each meeting, the minutes of the previous meeting are read and the decision of the Kirk Session to approve or correct them should be duly minuted. The correction of minutes does not involve changing any decision or fact noted during the relative meeting. Review of minutes is concerned solely with the accuracy of the account of business transacted. As the Kirk Session usually meets in private, its minutes ought not to be circulated beforehand to members or retained by them if circulated at the meeting.

21. **Form of Minutes:** Minutes may be hand-written, typed or printed, and so as to secure neatness in the permanent record are usually presented in draft form. When the draft has been adjusted and approved, it should be signed by the Moderator and Clerk and subsequently transferred to the permanent record book. It is the responsibility of the Kirk Session to ensure that the permanent record accords precisely with the minute as approved. The permanent record should then be signed by the Moderator and Clerk. (See also this chapter, II.17.)

22. **Open meetings:** As noted above a Kirk Session usually meets in private, but it may meet in open court or with the congregation when business so demands. It may also invite the Deacons' Court to attend if their advice and assistance are required. Though present on such occasions, Deacons have no vote.

Part II: Powers and Functions of the Kirk Session

Kirk Sessions are appointed in accordance with clear Biblical principles, in particular in accordance with the following:

(1) The New Testament recommends the appointment of elders to exercise rule in each congregation though not all of them are ordained to full-time teaching and pastoral care.

(2) Indications in the Old Testament and in the organisation of the Jewish synagogue, taken along with apostolic references in the New Testament and the practice of the early Christian Church, point to the existence of a group of elders in each congregation to act with the minister in administering God's law within the congregation.

(3) The rule exercised is under God and accountable to him. No one has a right to exercise lordly authority over God's heritage. No court can supersede the direct authority of Christ's word over the consciences of individual members of His Church.

In the application of these principles to the case of Kirk Sessions, the following rules of practice have arisen:

1. **Relation to Minister:** The date of a minister's induction to a charge ought to be duly noted in the minutes of the Kirk Session. The minister, being directly accountable to the Presbytery which admitted him, is not under the jurisdiction of the Kirk Session; but if the Session deem him to be negligent as to his pastoral duties or in any other way at fault, it may, if brotherly counsel fail, petition the Presbytery on the matter. It is recognised that the minister is permitted a wide discretion in his efforts to reach out to all classes and conditions of people. Consonantly with this he has full use of Church and Hall buildings at his own discretion to further his ministry. This right however is strictly limited to use for religious, ecclesiastical or charitable purposes. For other uses the minister requires the agreement of the Deacons' Court. For their part, neither the Kirk Session nor the Deacons' Court can employ the buildings for any purpose without the minister's consent.

The Minister has a special responsibility for the conduct of public worship, and as praise is a significant part of worship the minister must be satisfied as to the fitness of the precentor. On this matter the Kirk Session also ought to be satisfied. Act XV, 1889 recommends that formal appointment should be ratified by the Kirk Session. In cases where a fee is paid to the Precentor this is the responsibility of the Deacons' Court.

2. **Congregational Meeting:** A congregational meeting which is to approve ecclesiastical Acts must be called by authority of the Kirk Session. This notice should be given two Sabbaths in advance with specification of the business to be transacted.

Samples of such acts are the election of a Vacancy Committee, election of a Minister, or approval of a plan to sell or acquire buildings. The annual business meeting of the Congregation which does not include such acts on its agenda does not require the authority of the Kirk Session (Act XXXII, 1976). Congregational meetings called by the Kirk Session should be duly minuted and engrossed in the Session Record.

3. **Procedure in Electing Elders:** The Kirk Session determine when it is expedient to have an election of Ruling Elders and what number is required.

It is the duty of the Session to deal in a scriptural manner with those chosen to office, in order to obtain their acceptance. This duty is discharged to a large extent through the Moderator, but it by no means belongs to him exclusively. If the consent of the person or persons elected is obtained, the Kirk Session appoints a day and hour for the ordination or admission, as the case may be, and directs an Edict to be issued and served to that effect, on a convenient Sabbath, at least seven free days before the time appointed for the meeting (Act V. 1912). It is the duty of the Session Clerk to prepare the Edict. It is the duty of the Minister to read it from the pulpit. The Edict contains a statement of the steps which have been taken and the result, and it adds an intimation that if any person has any objection to the

life or doctrine of the person or persons mentioned, that objection must be given in to the Session at the meeting of which the time and place are specified, with certification that, if no objection is then and there given in, the ordination or admission will be proceeded with on the day and at the hour appointed.

When the Kirk Session has met at the time specified in the Edict, it ascertains from the Minister that the Edict has been duly issued and served. The Session then directs that intimation be made that if there are any objections, the Session are now prepared to hear them. If any objections are given in, anyone making an objection is required to substantiate it forthwith as an objection to life or doctrine. If the objection appears, in the judgment of the Session, to be substantiated, it must decline to proceed with the ordination or admission, and must take the person objected to upon discipline. But if the Session finds that the objections are frivolous or unsupported by evidence, it is their duty to proceed with the ordination or admission as appointed.

The ordination or admission usually takes place on Sabbath in the presence of the Congregation, at the close of one of the diets of public worship. The Session having been previously constituted, the Moderator gives a narrative of the steps which have been taken and their result. Then he calls upon the elected person or persons to stand up, and puts certain questions required to be answered satisfactorily, in terms of Act XII, 1846. This done, they each sign the Formula in the presence of the Congregation, and then the Moderator, in the case of parties not previously ordained as Elders in any Congregation, sets them apart by special prayer to their office, and commends them to the grace of God, after which he formally admits them as members of the Kirk Session and to the spiritual rule of the Congregation, giving them, as do the other members present, the right hand of fellowship. It is not customary to have the imposition of hands as the prayer of ordination is offered. In the case of persons formerly ordained as Elders, when satisfactory answers to the mandated questions have been given and the Formula has been signed, the Moderator may admit them at once as members of Session, though this also is usually accompanied by prayer. The meeting of the Congregation is concluded by an exhortation from the Moderator, both to the newly admitted Elders and to the people. The names of the newly admitted Elders are added to the Roll of Session.

4. Duties of Elders: Each Ruling Elder is allowed to exercise a large measure of discretion in the discharge of his functions individually, with a view to the religious and moral interests of the people among whom he personally labours. But it is the duty and function of the Kirk Session collectively to make arrangements for the division of the Congregation into districts, and the assignment of these as fields of labour to the Ruling Elders individually. They are

empowered to regulate the exercise of all the functions belonging to Ruling Elders, in so far as the orderly working of these may require subdivision or co-operation. It is the duty of Ruling Elders to assist, in so far as they can, in visiting the sick, in rousing the careless, in instructing the young, in encouraging inquirers, in edifying and comforting believers, and generally in seeking after the fruits of the ministry. In so far as the performance of these duties can be rendered more efficient by systematic and combined arrangements, it is the function of the Kirk Session to make such arrangements. For example the General Assembly of 1983 approved a code of guidance for the operation of Sabbath Schools, recognising that "all Sabbath Schools are under the supervision of the Kirk Session" (Assembly Proceedings 1983, page 64).

It also lies with the Session to hold and appoint such meetings for prayer and reading of the Scriptures as they may judge fitted to advance the spiritual welfare of the people or to promote the efficient execution of the office of Ruling Elder, provided they do not thereby interfere with the course of action adopted by the Pastor for the discharge of his peculiar functions.

5. Failure to Perform Duties: It is the duty of the Kirk Session to ensure that each member duly fulfils the functions of his office and the particular duties assigned to him by the court within his capabilities and the time he can afford. Should he persistently fail in these after patient exhortation, the Kirk Session may request his resignation or initiate a process of suspension/deposition on the grounds of neglect of duty. There are special procedures included in Act I, 1990, for dealing with situations where an elder's temperament is deemed by the Presbytery to be the cause of a seriously unsatisfactory state of affairs in the congregation.

6. Election of Deacons: The Kirk Session determines when it is expedient to have an election of Deacons, and what number is required. The Kirk Session exercises precisely the same functions, with reference to the election and ordination or admission of Deacons, as in the case of Elders. The regulating law is to be found in Act X, 1864, and Act XIV, 1846, which last Act puts the procedure in the election and ordination of Deacons on precisely the same footing with that of Elders, the only difference being that, in the questions and answers at ordination, the reference to the particular duties of the office is specific.

7. Relationship with Deacons' Court: It is no part of the Kirk Session's function to review the decisions of the Deacons' Court. If the Kirk Session considers that the Deacons' Court has violated the Acts of Assembly or the Laws of the Church, the only remedy, besides friendly remonstrance, to which the Kirk Session can have recourse, is that of presenting a petition to the Presbytery.

8. Resignation of Deacons: No resignation of office by a Deacon is valid, unless addressed to the Kirk Session, who exercise the same power with reference

to Deacons as they do as to Elders, both in their admission to office, and in their removal from it (Assembly Proceedings 1845, page 172).

The Kirk Session may find that an Elder has ceased to be one of their number, or that a Deacon has ceased to be a member of the Deacons' Court, because he has ceased to be a member of the Congregation. It was held competent by the General Assembly in 1806 for a Kirk Session to find that an Elder has ceased to be one of their number because he was not resident in the parish and had failed to return within a period of twelve months to discharge the duties of his office. The General Assembly in 1850 declared that five Elders, having withdrawn from the Session of which they were members for more than a year, had ceased to be, and no longer were, members of the Session or Deacons' Court of the Congregation. The Kirk Session has power, in the exercise of discipline, to pronounce sentence of suspension or deposition against either an Elder or a Deacon, when it finds it necessary to do so, in accordance with the word of God, and with the rules of the Church.

9. Communicants' Roll: With a view to the spiritual oversight of a Congregation by a Kirk Session, it is necessary that an accurate roll of the members in full communion be kept by the Session Clerk among the Sessional documents. A copy of this roll, revised by the Kirk Session, and signed by the Moderator and Clerk, must be sent to the Presbytery of the bounds every year for attestation. In this copy of the Roll sent to the Presbytery, there ought to be no blanks in which new names could be added, and no names written or erasures, unless the same be duly noticed and attested by the Clerk's initials. The Kirk Session may revise or purge the roll at any period; but it is usual to do so at the time of the dispensation of the Lord's Supper. It is absolutely necessary that the roll so far revised or purged previously to every dispensation as to enable the Kirk Session to ascertain with accuracy who are entitled to be admitted to communion, as being already members of the Congregation, or who may stand in need of counsel or more formal process. It is the practice also to readjust the roll immediately after the celebration of the Communion so as to take account of changes which have then occurred. It is expressly required by Act IV, 1859, paragraph 9 that, before any steps be taken in the election of a Minister, the Kirk Session shall have a Roll of Communicants made up and attested, as containing the only list of those entitled to vote.

In revising the Communicants' Roll, the Kirk Session should assure themselves that all whose names are included are actually resident within their district and can therefore benefit from their pastoral care. Communicants known to be leaving the district for a year or more should be advised to apply for a certificate to entitle them to join the membership of their new congregation so that their names may be removed from the Roll of the congregation they leave. Those who

have been absent for a year should, where the address is known, be advised to apply for such a certificate and informed that failing such application their names will be removed from the Roll. It is not appropriate to retain on the Roll the names of members who have removed from the congregation. (See Assembly Proceedings 1978, page 76, paragraph 8.)

Special provision has, however, been made for members of the Church who are absent from their home congregations on the Church's overseas business. Their names may be retained on a "non-active" list attached to the Communion Roll of their home congregation. This list will be ignored for ecclesiastical purposes. During home-leave, the names of these members are temporarily transferred to the normal list (Act XXX, 1979).

10. **Admission to Ordinances:** Admission to the privileges of Baptism and the Lord's Supper is by authority of the Kirk Session who must be satisfied as to the fitness of applicants (whether as parents or on their own profession) as demonstrated by (1) a confession of faith in accordance with the word of God and the standards of the Church; (2) a life-style befitting the gospel as far as can be discerned; and (3) a competent knowledge of Biblical truth and of the nature and meaning of the sacraments.

There are two ways in which Kirk Sessions can satisfy themselves that these criteria are met.

The first is by receipt of a certificate from another Kirk Session testifying that the person named thereon has been a communicant member of their congregation and leaves in full communion and free, as far as the Session are aware, from all ground of legitimate censure. This document is called a disjunction certificate, and upon receiving it within a short time of its being issued the Kirk Session is bound to have the name given on the Certificate added to the Roll. On the other hand a Kirk Session is bound to grant such a certificate to anyone on their Roll who desires to leave the congregation and against whom there is no known cause of censure.

The second way in which the Session judge an application is that of examination and observation. This applies where applicants have not previously been in full communion with any congregation. Act X, 1885, requires a Session to satisfy themselves that those applying to be admitted as communicant members are already baptised. The examination does not involve any inquisitorial minuteness but depends to a large extent on the observation of the minister and elders and their assurance that there is, in the lives of the persons concerned, no observed inconsistency with the profession of faith being made. In that situation it is not competent for the Session to reject applicants merely on account of what the minister or any elder may conceive to be their state of mind unless the profession made or the knowledge demonstrated be defective. Usually the minister is entrusted

with the main examination of an applicant's faith and knowledge, but this does not prejudice the right and indeed the duty of elders to participate as may be helpful.

It is approved practice for the minister to exhort the applicants with respect to all the more hidden qualifications which the word of God requires, and of which they themselves alone can judge. It is held to be his function, as a faithful minister, to leave nothing unsaid which may help the anxious and sincere, or may strike the conscience of the careless or the self-righteous. It is the function of the Ruling Elders also to help in this department, as they may see cause.

The Kirk Session is entitled to regulate the mode for the distribution of Communion Cards or Tokens, according to their discretion.

In the case of visitors desiring to partake of the Lord's Supper it is proper that their communicant membership of another congregation be attested by a minister or elder or by letter.

11. **Baptism:** As noted the Kirk Session also authorise the administration of the sacrament of baptism when they are satisfied as to the Christian profession of those called upon to assume the solemn vows entailed. A Baptismal Roll should be carefully compiled and updated from time to time.

12. **Discipline:** A specially important function of the Kirk Session, is the exercise of discipline. This function belongs to the Kirk Session exclusively in the first instance, with respect to all members and adherents of their Congregation, except the Pastor, who is subject to the immediate jurisdiction of the Presbytery.

13. **Times of Worship:** It is the function of the Kirk Session, with concurrence of the Minister, to fix the times and hours of public worship on the Lord's day, to appoint Fast-days, and to authorise the administration of the Sacraments. But it is usual in the case of baptism, where one or both parents is in full communion, to leave the matter in the hands of the minister, who shall report it at the next meeting of the Session.

14. **Special Collections:** The Kirk Session are entitled to appoint special collections at the Church doors for local purposes affecting the cause of Christ or the interests of the Congregation, except for the temporal relief of poor members, or the education of the children or the poor, for which objects the Deacons' Court are expressly authorised by Act of Assembly to appoint collections.

15. **Representative Elder:** Every Kirk Session has a right and is bound to elect a Representative to the Presbytery and Provincial Synod of the bounds. The election is to be made within two calendar months after the ordinary meeting of Synod (except as shall be noted below) and the appointment is for twelve months but those elected continue to represent the Session until a new election has taken place. Should a Kirk Session not elect their representatives and notify the Presbytery Clerk before the first meeting of Presbytery after the Synod the clerk of Presbytery shall require Kirk Sessions to make the necessary election (Act IV, 1893).

Two special cases are to be noted:

(1) In the case of a charge newly recognised by the General Assembly the election should take place within one month of the newly granted status.

(2) In the case of a consolidated charge which has a plurality of Kirk Sessions, one elder will be elected, preferably by rotation of each Kirk Session to represent the whole charge (Act VIII, 1936).

Every such election must be duly minuted, and the minute must state that the person elected is an Acting Elder in the Congregation. In case of the death of the person elected a new election to cover the period must take place within one month.

If one of the Ruling Elders in any Kirk Session be chosen by a Presbytery to represent them in the General Assembly, that Kirk Session must certify, according to a form prescribed by Act of Assembly, that he is *bona fide* an Acting Elder in their Congregation, and that he has signed the Formula.

In the case of a vacancy and the Interim-Moderator failing to convene a Kirk Session to issue a certificate to an elder commissioned by the Presbytery to represent them in the General Assembly, it shall be competent for a quorum of members of Presbytery, being members of Assembly, to convene by permission of the Assembly and grant the necessary certificate so as to prevent a duly elected commissioner being deprived of his seat (Act XXXI, 1976).

According to Act XIII, 1863, the Elders of Preaching Stations have the full status of Elders, and are eligible to sit in the General Assembly as representatives of Presbyteries. But wherever such Elders are not connected with Kirk Sessions established in fully sanctioned Congregations, their certificates of being *bona fide* acting Elders must be given by the authority of the Presbytery of the bounds.

16. Order of Business: The usual and approved order of business in a Kirk Session is as follows:

- (1) The opening prayer, with which the Moderator constitutes the Session.
- (2) The taking down of the sederunt by the Clerk.
- (3) The reading and approval of the minutes of the last meeting.
- (4) Any business of immediate and peculiarly pressing urgency.
- (5) Matters left over at former meetings, in the order of their appearance in the minutes.
- (6) New cases of discipline.
- (7) Other business brought before the meeting, or naturally suggesting itself to the Session's attention.
- (8) Concluding Prayer.

17. Record of Business: It is the duty of the Kirk Session to see that their proceedings are accurately recorded by their Clerk. They are bound to watch over the permanent and approved Record of those proceedings and it should be clearly

annotated (e.g. by marginal notes) so that separate items of business may be easily identified. They are held responsible by the Presbytery for its being regularly and faithfully kept. Not only must the facts as to the constitution and regular closing of each meeting be correctly stated, as well as the approval of each preceding minute, but the names of all the members present must be recorded. There must be no blottings or interlinings in the Record. If anything is deleted, it must be marked on the margin, and any word or words omitted must be written on the margin, and attested there by the Clerk's initials. If typed or printed pages are pasted into the permanent record, the Moderator or Clerk should put his initials across the junction line of page and insert. Any erasure of the minutes can be made only by authority of the Presbytery who may call for the Record at any time. It is sent up from time to time for examination and attestation by that body. Every minute ought to be signed, both by the Moderator and the Clerk.

18. **Dissent:** Any member of a Kirk Session may enter his dissent from any part of their procedure which he conceives to be contrary to the Word of God, the Acts of Assembly, the received order of the Church, or the interests of Christ's cause. He may require his dissent to be marked in the Record. In order to be received, the dissent must be given in immediately when the judgment dissented from is pronounced, and consequently can be given in by those only who were present at the pronouncing of it. Absent members are not entitled to dissent. If a dissent has been given in at the proper time by one or more members of Session, there is no rule to prevent other members of Session who were present from intimating at the next meeting their adherence to that dissent. If reasons for the dissent be given in along with it, both the dissent and the reasons ought to be included in the minute of the meeting. If the dissent itself be duly given in, intimation may be also given that reasons for it will be added at a subsequent meeting, in which case it is competent to receive the reasons when produced, and also to answer them if the Kirk Session see cause. But the Kirk Session are not bound to enter those reasons in the Record. The right course is to appoint them to be kept in retentis, that is, to be preserved among the Sessional documents. A simple dissent as here described, whether with or without reasons, is not sufficient to enable the person dissenting to bring the matter under the review of a superior Court. The effect is only to save him from any censure that may arise out of the procedure, and from seeming to acquiesce in what he considers contrary to the mind of Christ.

19. **Dissent and Complaint:** A member of Kirk Session may not only enter his dissent from a judgment, but he may (as it is technically expressed) dissent and protest for leave to complain to the Presbytery. A dissent and complaint can be received only at the time when the judgment complained of is pronounced, and are incompetent at a subsequent meeting. Reasons of dissent and complaint must be

lodged with the Session Clerk within ten days from the date of the judgment and the protest. Copies of these reasons, with all the papers and extracts of minutes belonging to the case out of which the complaint has arisen, must be transmitted by the complainer(s) or clerk of Session to the Clerk of Presbytery. The copies, papers, and extracts must be all duly certified by the Session Clerk.

The effect of a Dissent and Complaint carried out in regular form is to bring the proceedings of the Kirk Session under the review of the Presbytery; and the complainer or complainers, and all parties in the case, as well as the majority of the Kirk Session, are thereby summoned to appear before the Presbytery. The giving in of a dissent and complaint has the effect of sisting (that is, suspending) the procedure of the Kirk Session in the matter to which the complaint relates, until either a final decision by the Presbytery, or Synod, or General Assembly be pronounced on the case, or the complaint be fallen from. A complaint may be fallen from at anytime, but it is always held to be fallen from if the reasons are not lodged with the Session-Clerk or Moderator within ten days.

20. Appeal: It is to be noted that the right of dissent and complaint belongs to those who sit as members of the Kirk Session, and the exercise of that right is their only way of seeking review of decisions which grieve their consciences.

Persons who appear before the Session, either on their own initiative or by citation are referred to as "parties at the bar". These may, on occasion, include some who usually sit as members of the Session. If such parties are aggrieved by the decisions of Session, their method of seeking review by the superior Courts is by way of appeal. Procedures in the prosecution of an appeal are exactly the same as those for dissent and complaint but the difference in technical terminology must be observed. It is the duty of the Session to inform people desirous of seeking review of their decisions of the correct method and terminology so that review will not be refused by the superior Court on the ground of confused terminology or incorrect procedure. In some cases matters may be brought under review by both dissent and complaint and appeal when members of the Session dissent and complain against the same decision as has provoked appeal from parties at the bar.

When an appeal against a decision of the Session is intimated, the Session consider whether or not it is frivolous.

An appeal which is not considered frivolous sists procedure until a final judgment be pronounced regarding it by a superior Court, or until it be fallen from, except in those instances in which the General Assembly may have otherwise provided by special act or instruction. Such an appeal always prevents, while it is pending, the final execution of sentence. Frivolous appeals may be disregarded, the right of the appellant to prosecute his appeal being always reserved. An appeal may be fallen from at any time, but is always held to be fallen from if the reasons for it are not lodged with the Session Clerk or Moderator within ten days from its date.

21. **Rescinding Decisions:** Rescinding or modifying decisions already agreed and duly minuted is not to be lightly undertaken. The General Assembly has directed, with special reference to Presbyteries, but enunciating a principle applicable also in Kirk Sessions, that such action can only be taken in the light of new evidence affecting the matter, or demonstration that the decision minuted has consequences at the time unforeseen, prejudicial to good order, equity or the interests of the court, and even then procedure must be by notice of motion. Those rescissory powers do not apply in judicial cases where corrective action requires the intervention of a superior court.

22. **Reference:** The Presbyterian structure is designed to secure that the larger Court will help the smaller. So, when a Kirk Session confronts an issue of peculiar difficulty in regard to the interpretation of Scripture or Church law, or the resolution of a difficulty, they may refer the matter, in whole or in part, to the Presbytery for advice. They must bear in mind, however, that recourse to the Presbytery for advice is not to be used as a means of evading their own responsibility, for if the Presbytery deem the reference unnecessary or improper they may refuse to entertain it and censure the Kirk Session.

Matters may be referred without comment or indication of the Kirk Session's tentative conclusions. This is called a reference simpliciter. Or they may be referred with a statement of the Session's views on the subject on which they wish Presbytery to advise. Whether the reference is simpliciter or with comment, it is important that all particulars are fully and clearly stated so that the reference can be fully understood. The Kirk Session instruct their clerk to do this. Those directly concerned in the reference, for instance the parties in a case, should be informed of its being made, since they should be in attendance before the Presbytery.

If the General Assembly meet before the next meeting of Presbytery, the reference may be made directly to the Assembly.

In certain situations, which will be noted later (V.III.2.28), Kirk Sessions are bound to refer to Presbytery.

23. **Citation:** In order to maintain good order in the congregation a Kirk Session may need to interview people. If the matter is such as is likely to be resolved by joint pastoral conversation with the person concerned, he may simply be invited to attend. If, however, the matter is more serious, for instance involving discipline of a member, or if the person concerned declines the invitation given, the recourse is to a formal summons issued by the Session. This summons is referred to technically as a citation and states both the requirement to attend the Session at a specified time and place and the reason for the requirement. Citations are of two kinds. One is a written statement which is delivered to the person named or to his home and the Kirk Session must have

written assurance that it has actually been delivered. The other is what is called a *citation apud acta*, that is, a verbal statement to the person cited when he is present at a meeting of the Kirk Session.

24. Petition to a Kirk Session: People connected with a congregation have freedom of access to the Kirk Session regarding any matter which affects their spiritual interests or those of the congregation, or the diffusion of the gospel in the district. To be received by the Session such matters must be stated in writing. Strict formality would require that they be presented in the form of a Petition, but Sessions usually accept a courteously framed letter as though it were a Petition. When the Session deal with the Petition those who have presented it become parties at the bar and so have the right, when the decision is announced, to appeal to the higher courts.

25. Petition of Session to Presbytery: It is competent for the Kirk Session themselves to petition the Presbytery, or Synod, or Assembly, with relation to any subject within the competency of the superior Court to which the petition is addressed, if the subject is not one which can come up by reference, appeal, or complaint.

26. Rights to Extracts: When people, aggrieved by decisions of a Kirk Session, wish to bring them under review of Presbytery by complaint and appeal, the Session must explain to them that they are entitled to such extracts from minutes of Kirk Session and to copies of such papers held by the Session as are necessary to bring their complaints and appeals fully before Presbytery and upon these being requested they must authorise their clerk to provide them. The intimation of complaint/appeal should be accompanied by a request for such papers and the fact of request must be duly minuted. The technical expression used in such a minute reads: *took instruments in the clerk's hands and craved extracts which were allowed*. "To take instruments" originally implied the tendering of a piece of money to the clerk, but this formality is seldom observed in present practice.

The Kirk Session, if they think fit, grant extracts to other parties besides complainers and appellants. But the Session Clerk is not at liberty, in any instance whatever, to give extracts without the sanction of the Kirk Session.

27. Relationships with other Sessions: One Kirk Session cannot interfere with or review the procedure of another Kirk Session. One Kirk Session may remonstrate with another Kirk Session in the spirit of the Gospel, or mutual explanations may be asked and given. But the only regular mode of redress for encroachment by one Kirk Session on the province of another, is for the Kirk Session who feel that their jurisdiction has been interfered with, to petition the Presbytery upon the subject. Such petition ought to be addressed to that Presbytery which has jurisdiction over the Kirk Session whose procedure is complained of.

SUPPLEMENT TO CHAPTER I

THE DEACONS' COURT: ITS CONSTITUTION, POWERS AND FUNCTIONS

Part I: Constitution

The New Testament warrants a distinction between the office of Elder on the one hand, and Deacon on the other. Whereas Elders are charged with the general and spiritual oversight of congregations, and in the case of those we designate "ministers", labour in word and doctrine, the Deacons' specific function relates to the temporal concerns of the Church. Though it is allowed that deacons may discharge their functions without having elders present at their meetings there are two considerations which underlie the accepted practice of minister and elders being in membership of the Deacons' Court. These are:

(1) The securing of maximum consultation between elders and deacons for the better total management of the congregation.

(2) Many congregations cannot supply from their own membership a sufficient number of Deacons to function separately from the eldership.

Act VII, 1846, therefore states "that it be competent for elders to be employed as deacons when a sufficient number of deacons cannot be had".

Though a degree of spiritual maturity is requisite for either office, the difference in function between elder and deacon implies that a man having the gifts needed for the diaconate may not thereby qualify to be an elder. Nor does fitness for the eldership require previous experience as a deacon.

The meeting of deacons is referred to as the Deacons' Court but this does not imply that this court is part of the legislative structure of the Church. In the Presbyterian system that structure comprises Kirk Sessions, Presbyteries, Synods, and General Assembly. The Deacons' Court is essentially a Board of Management and administration having the bounds of its authority prescribed by Church law. So long therefore as the Deacons' Court acts within its mandate its decisions are regarded as final, and no dissent and complaint is competent. A simple dissent is, however, competent.

In the application of the general principles stated the following rules of practice have emerged.

1. **Election of Deacons and Duration of Office:** Deacons are elected on the initiative of the Kirk Session by the communicant members of the congregation, honouring the same principles and following the same procedures as noted in the case of the election of elders. They hold office for life and remain members of the Deacons' Court until they cease to be members of the congregation, or their resignations are accepted, or they are held and declared to have resigned through long absence from meetings of the Court, or they have been deposed.

2. **Deacons: change of congregation:** A deacon who removes from one congregation to another can be admitted to the Deacons' Court of his new congregation only after due election by the communicant membership of his new congregation.

3. **Frequency of meetings:** The frequency of meetings of the Deacons' Court is determined by the volume of business to be transacted but regular meetings at, for instance, monthly intervals are desirable. The ordinary business of the Deacons' Court may not be transacted on the Lord's Day.

4. **Convening of Meeting:** The Deacons' Court is convened by intimation from the pulpit or by personal notice to the members, provided a reasonable time for attendance is allowed. The Court is called by authority of the minister (Assembly Proceedings 1865, page 151), or at the written request of any three members addressed to the minister or the clerk of the Deacons' Court if the congregation is vacant.

5. A Deacons' Court may not meet at the same time as the Presbytery or Synod of the bounds.

6. **Chairman of Meeting:** If present, the minister of the congregation presides at meetings of the Deacons' Court. But the court is allowed to meet in the absence of the minister provided it is called as noted above. In such cases the court appoints its chairman from among those present.

7. **Quorum:** Three members form the quorum of a Deacons' Court.

8. **Powers of Chairman:** The Chairman may introduce any business to the Deacons' Court, and may address them regarding it. He has only a casting vote.

9. **Treasurer(s) and Clerk:** The Deacons' Court are required to appoint one or more Treasurers and a Clerk.

10. **Congregational Accounts:** The congregational treasurer acts under the direction of the Deacons' Court and is required to keep accurate ledgers of funds received and payments made. The accounts should be audited annually by competent persons appointed by the Deacons' Court. The ledger of receipts and payments must be submitted annually to the Presbytery for attestation. Guidelines for treasurers will be included in the supplement to this volume.

11. **Freewill Offerings:** In many cases it is also found convenient to appoint a treasurer with responsibility to oversee the operation of the freewill offering system in the congregation. He should keep a register of all contributors and of the amounts given by each. He should be able also to supply deed of covenant forms and relevant information, to those desirous of having them and whose contributions and tax situation render this appropriate. The freewill offering treasurer should regularly report to the congregational treasurer and the Deacons' Court.

12. **Duties of Clerk:** The Clerk of the Deacons' Court is required to keep a separate Record for the Minutes of its procedure, and to take charge of such of its papers, books, and documents as are not intrusted to the custody of a Treasurer.

13. **Order of Business:** Every meeting of Deacons' Court is both opened and closed with prayer. The Minute must always bear at the outset that the Deacons' Court was constituted, and at the end that the meeting was closed with prayer. No Minute is valid without the mention of these particulars. No extract can be received which does not bear that the Deacons' Court was constituted, and which is not certified by the Clerk as having been extracted by him from the Records of the Court.

14. Before proceeding to other business, the Deacons' Court ought, at each meeting, to hear the Minutes of last sederunt read, and the judgment of the Deacons' Court, either approving of the Minutes or correcting them, ought to be recorded. That judgment refers only to correctness of the Minutes as a true account, and not to the merits of the business transacted.

15. **Nature of Meetings:** The meetings of Deacons' Court are not usually open to the public, or the Congregation; but the Deacons' Court may hold open meetings if they see special cause.

Part II: Powers and Functions of Deacons' Courts

1. **General powers of Court:** The Deacons' Court has the responsibility of discharging the material and financial business of the congregation. Though properties owned by the congregation are held by trustees duly elected (as will be noted later) their management and ongoing maintenance are in the care of the Deacons' Court. This court is also responsible for ingathering funds from the congregation and for the distribution of these and other funds accruing to them, among the projects for which they have been provided. Certain sums may be assigned at the discretion of the Deacons' Court in accordance with Acts of Assembly and the direction of Presbytery and Synod. Though not as relevant today as formerly, Act VII, 1846, reserves to the Deacons' Court the duty of making

provision for the poor of the congregation and for the education of the children of the poor.

2. The functions of the Deacons' Court may be more particularly outlined as follows:

2.1 No Power of Discipline: Being essentially a board of management the Deacons' Court does not exercise disciplinary functions even over its own members, this being within the competence of the Kirk Session by whose authority members are admitted, suspended, or deposed and to whom resignations should be addressed. It is the duty of the Kirk Session to inform the Deacons' Court of any changes in its membership and the extracts of minutes giving this information must be engrossed in the minutes of the Deacons' Court and its Roll revised accordingly.

2.2 Congregational Property: Though responsible for the management, repair and maintenance of all congregational properties and charged to raise funds for these purposes, the Deacons' Court are not entitled to grant the use of buildings for any purpose, without the consent of the Minister. Nor can it withhold the use of buildings for meetings of a strictly religious, ecclesiastical or charitable nature sanctioned by the minister. It is, however, within their competence to make such charge for these uses as will defray costs falling on the congregation. The minister's sanction notwithstanding, the Deacons' Court's approval must be given before buildings can be used for any purpose which is not of a strictly religious, ecclesiastical or charitable nature.

2.3 Church Officer and Fee to Precentor: If it is deemed necessary or desirable to employ a Beadle or Church Officer for the week to week management, cleaning and good upkeep of properties, it is the duty of the Deacons' Court to do this and to determine terms of employment and payment. If a fee is paid to the precentor, this is fixed by the Deacons' Court but the court does not appoint the precentor, this being a function of the minister after due consultation with the Kirk Session.

2.4 All collections intimated from the pulpit should be authorised by either the Deacons' Court or the Kirk Session.

2.5 Methods of raising funds for the maintenance of buildings are determined by the Deacons' Court. The old system of charging seat rents has fallen into decline and appears no longer acceptable.

2.6 Methods of Collecting Funds: It is the duty of the Deacons' Court to inform the congregation, and especially new arrivals, of the methods by which contributions to their various funds are ingathered. If the main method be by weekly freewill offering the Deacons' Court arranges for the distribution of the requisite envelopes. If house to house collections are appointed the Deacons'

Court specifies districts, appoints collectors and furnishes them with the required books.

2.7 Relationship with General Treasurer: The Deacons' Court informs the Church's General Treasurer of all relevant data respecting funds likely to be available to it so as to negotiate with the relevant central Committee with regard to the congregation's contribution to central funds. It is recommended that, when agreement has been reached regarding the amount to be remitted, the Deacons' Court authorise their treasurer to send at least one-twelfth of this sum each month to the General Treasurer.

2.8 If a congregational Association for the support of any special project be formed with the approval of the Kirk Session and Deacons' Court, the Association should appoint a treasurer who will be responsible to the Deacons' Court for the transmission of funds collected to the specified project

2.9 Local Expenses: Expenses incurred by the minister or, in the case of a vacancy, the interim-moderator, in the course of discharging pastoral care of the congregation should be met by the Deacons' Court. The General Assembly requires annual review of the amounts paid, "so that as far as possible pastoral expenses are not met from the personal income of the minister" (Act XV, 1983). In consolidated charges having a plurality of Deacons' Courts an agreement should be duly minuted in the relevant records of the proportion of expenses to be met by each. In the case of a vacancy this agreement should be arranged by the Interim-Moderator prior to a settlement.

2.10 Ministerial Supplement: In a special category of congregations (designated Group I) a supplement may be paid to the minister in addition to expenses. Group I congregations are defined as those contributing to central funds an amount equal to the minister's stipend plus a full share or more of the additional costs needed to meet the Church's general expenditure. This sum is calculated annually by the central Finance Committee. Where supplements are paid, they must be matched £1 for £1 in additional contribution to the central funds. The total supplement may not exceed 1/2 of the equal dividend. If payment of supplement results in increase of the National Insurance being paid by the General Treasurer, this increase must be refunded to him by the congregational treasurer.

2.11 Contributions for other purposes: If when agreed amounts to central funds, minister's expenses and supplement (if competent) have been paid, a surplus of unassigned funds remains it is the duty of the Deacons' Court to apply the surplus in fitting proportions to religious, ecclesiastical or benevolent objects.

2.12 The Deacons' Court are responsible for instructing each member as to the general duties of Deacons and as to particular assignments made to individuals.

2.13 **Order of Business:** The order of business is in general like that of the Kirk Session though the matters considered are different. At regular meetings, whether monthly or at longer intervals, the level of funds ingathered to meet obligations to central funds should have priority.

2.14 **Records:** The Deacons' Court must ensure that the record of its proceedings is properly maintained by the clerk, and that all account books are duly maintained by the treasurer(s).

2.15 **Petition against Deacons' Court:** Any member of a Congregation or of the Kirk Session may petition the Presbytery against the procedure of the Deacons' Court on the grounds that it has exceeded its powers or disregarded Acts of Assembly. It is competent also for the Presbytery to find that the Deacons' Court has exceeded its power or disregarded the Acts, upon the periodical examination of the Record. The Presbytery may, in either of these cases, require the procedure to be altered, or censure the Deacons' Court, according to the nature of the case. The Deacons' Court may appeal to the Superior Courts; so also may the petitioners against the Deacons' Court's procedure, if the Presbytery reject their Petition.

2.16 **Extracts:** The Deacons' Court is bound to furnish Extracts to parties concerned in its procedure, in the same manner as the Kirk Session.

2.17 **Review of Records:** The minute book of the Deacons' Court and duly audited treasurer's accounts must be submitted for review by Presbytery.

2.18 **Congregational Meeting:** After attestation by the Presbytery of the Record and Treasurer's account, a Congregational Meeting should be held, when the Deacons' Court shall present a report of their proceedings for the preceding year, give such information and explanation as may be asked for, and receive any suggestions which may be offered by the members of the Congregation for the consideration of the Court, with reference to the future distribution of the funds; the said Congregational Meeting shall be convened by intimation from the pulpit, and the Minister, if present, shall preside.

2.19 Meetings of the Congregation which do not require the Kirk Session's authority should be duly minuted and the minutes engrossed in the Record of the Deacons' Court.

3. **Model Trust Deed:** Most congregational properties are held in terms of a trust deed modelled on one drawn up in the 19th century relating to St. George's Free Church, Edinburgh. The essential feature of this is to ensure that ownership of the property will always be retained by the congregation of the Free Church of Scotland. Should a section, even a majority, of the congregation defect from the Free Church of Scotland they would lose right of ownership of the properties. With this safeguard the rights of ownership belong to the local congregation and are vested in elected trustees. Should the congregation wish to dispose of

properties held in terms of the Model Trust Deed, a Petition embodying that resolution and supported by the courts and membership of the congregation and by the Presbytery must be addressed to the General Assembly. If disposal of property is with a view to replacement the petition may be addressed to the Commission of Assembly.

The Committee which deals with applications for loans/grants for the upkeep of buildings deals more generously with applications relating to properties held in terms of the Model Trust Deed, than with others.

4. **Local Trustees:** Property belonging to a congregation must be held in the names of trustees elected by the congregation. For property held in terms of the Model Trust Deed only persons whose names appear on the Communion Roll of the congregation as duly attested by Presbytery have the right to vote in such an election. A congregational meeting to elect trustees must be intimated from the pulpit after the forenoon service and the intimation must specify the reason for which the meeting is called. At least ten days' notice of such a meeting must be given.

The duties of local trustees are to hold properties in trust and sign necessary documents connected with ownership or sale, when duly authorised. Duties of day to day management belong to the Deacons' Court.

Appendix: Finance Committees

1. When a congregation lacks a suitable number of male communicants who are fit and willing to act as Deacons and it is deemed inexpedient to have assessors from some distance managing the congregation's temporal affairs, recourse may be had to the appointment of a local Finance Committee. It is recognised that this is a temporary arrangement which should cease when a Deacons' Court can be duly elected, and that appointment to a finance committee does not imply holding office in the Church.

2. The Kirk Session should recommend to the congregation the membership of the finance committee on a year to year basis.

3. The Committee should conduct its business following the same procedural rules as apply to Deacons' Courts and in the enjoyment of the same immunity so long as they keep within the Church's regulations (Act XXX, 1976).

CHAPTER II

THE PRESBYTERY: ITS CONSTITUTION, POWERS AND FUNCTIONS

Part I: Constitution and Officials

1. **Biblical Foundations:** "The Scripture doth hold out a Presbytery in a Church". ("The Form of Presbyterian Church Government", Subordinate Standards).

1.1 Besides that of Deacon the New Testament recognises one other permanent office in the Church, that of elder or overseer/bishop. The titles elder and overseer appear interchangeable in New Testament usage. To the elder is assigned the task of rule or spiritual oversight of the people of God. Some elders also undertake the responsibility of regular public preaching and teaching and the administration of the sacraments and these are generally known as ministers or pastors. This distinction of function as between the ruling and the teaching elder is recognised by Paul in his advice to Timothy: "The elders who direct the affairs of the Church well are worthy of double honour especially those whose work is preaching and teaching" (1 Tim. 5:17).

1.2 Both common-sense and Biblical example require that those responsible for rule in the Church should meet together from time to time to consult, deliberate and take action to promote the interests of the Church. Moreover the New Testament gives distinct examples of congregations sufficiently close geographically being united under one presbyterial government. The New Testament also warrants recourse to the principle of representation where it is inappropriate or inconvenient for the whole ruling eldership in any region to convene.

1.3 The interests of equity, unity and order suggest that the small local body which rules in one congregation should be subject to the advice, supervision and

direction of the larger body which is representative of many congregations. In plain terms this means that a Kirk Session is subject to review by Presbytery just as Presbytery is subject to Provincial Synod and General Assembly.

2. Pivotal Position: Presbytery is often described as the radical court of the Church and the system of Church Government which stems from it is referred to as Presbyterian. Several facts underline the important position of Presbytery.

2.1 To Presbytery is assigned the responsibility of pastoral oversight of all congregations within a defined region. Provision for vacant congregations, intervention in cases of difficulty and general oversight of the ministry belong to Presbytery.

2.2 Presbyteries have a determining voice in the membership of General Assemblies, commissioners being appointed by them.

2.3 Presbyteries have a major responsibility in the assessment of candidates for the ministry.

2.4 Presbyteries have the responsibility of licensing candidates to preach the gospel and ordaining men to the office of the ministry.

2.5 Presbyteries are responsible for the pastoral counselling and formal discipline of ministers.

3. Membership.

3.1 The membership of a Presbytery comprises:

- (1) All ministers holding pastoral charges within the bounds;
- (2) Assistant ministers in pastoral charges within the bounds, appointed in terms of Act V, 1986;
- (3) Ministers retired from pastoral charges within the bounds in terms of Act I, 1981;
- (4) Ministers whose retirement involved their retaining status as senior ministers of charges within the bounds (Act VIII, 1862 now repealed);
- (5) Professors of Theology whose appointment by the General Assembly is to work within the bounds (see Part II of this chapter, A3.13);
- (6) Ordained ministers of this Church appointed as Hospital Chaplains within the bounds who are granted seats in Presbytery by the General Assembly;
- (7) Ordained ministers appointed as evangelists and assigned to a Presbytery by the General Assembly;
- (8) Ordained ministers who have been specifically granted seats in Presbyteries or who shall be in terms of Act XII, 1990;
- (9) A representative elder from each congregation within the bounds elected by a Kirk Session. In cases such as consolidated charges, where there is a plurality of Kirk Sessions, those Sessions will take turns in appointing the elder (see 3.2);
- (10) Elders elected by Presbytery in respect of each theological professor within the bounds;

- (11) General Assessors appointed by the Provincial Synod or the General Assembly. Assessors appointed to assist in a special task have membership only when Presbytery deals with that topic;
- (12) A Presbytery has the power to associate with itself *pro tempore* any ordained minister who is present at their meeting. The minister associated may take part in discussion but he has no right to introduce new matter or to vote on any issue.

3.2 A Kirk Session is bound to elect one of its number as its representative on Presbytery and Synod and to certify that he is actually serving as an elder in the congregation. This election must be made within two months of the statutory meeting of Synod, the date on the commission attesting this, except in the case of the death of the appointed elder or of his resignation of his commission, in which case the election must take place within one month of the death, resignation or removal. The commission from the Kirk Session entitles the elder to a seat in Presbytery and Synod during the time of its validity. Without a valid commission he cannot assume his seat. A commission may be received by Presbytery at ordinary meetings or at meetings *in hunc effectum* and *pro re nata* (see 9.1 and 2).

4. **Assessors:** Assessors, both general and special, may be appointed by the Provincial Synod or by the General Assembly to assist the Presbytery in a manner analogous to that in which the Presbytery may appoint assessors to assist a Kirk Session (see Chapter 1, Part 1.16 and 1.17). General assessors have full rights of voice and vote: special assessors have such rights only in connection with the particular items of business to help with which they have been appointed.

5. **Locality and Bounds:** Presbyteries have congregations within their care allocated by the General Assembly and these are all described as "within the bounds" of the presbytery. The usual place of meeting, described as "the seat" of Presbytery, is also designated by the Assembly but meetings may be held at any place within the bounds as Presbytery deems convenient.

It is within the competence of the General Assembly to erect new Presbyteries and to unite existing ones and to alter the bounds in such ways as may improve the efficiency of the Church.

6. **Presbytery of Foreign Missionaries:** When two or more ordained missionaries are resident at any Foreign Station where there is no independent, indigenous Church, it is competent for them, in subordination to the General Assembly, to form themselves into a Presbytery, there being always one Ruling Elder a member of such Presbytery for every Missionary or Minister who belongs to it.

7. **Quorum:** Three members of Presbytery form a quorum, two of them being ordained ministers.

8. **Frequency and Appointment of Ordinary Meetings:** The election of Representatives to the General Assembly necessitates at least two meetings in a year, but the incidence of business requires Presbyteries to meet much more frequently. It is competent for Presbyteries to adopt Standing Orders which will programme meetings at regular intervals without inhibiting liberty to appoint others as expedient. What is mandatory is that at each ordinary meeting Presbytery resolve when and where the next ordinary meeting shall be held and that this resolution be minuted and publicly announced. If these requirements are not observed the Presbytery is deemed to have become defunct and cannot function until revived in a constitutional manner. A Presbytery will also become defunct if at the time and place appointed a quorum of members does not assemble (see 10.3 below). In this case the names of those who have met will be noted in a subsequent minute and they will be free of any censure pronounced by Synod when the circumstances are reported to that Court. Except by special permission of the Superior Court concerned, a Presbytery may not meet while either the Provincial Synod or the General Assembly is sitting.

9. **Suspension/Adjournment.** A distinction is made between suspension and adjournment. Suspension merely indicates a break in proceedings which will resume at a later hour without the necessity of reconstituting the meeting. Adjournment signifies the closure of the meeting in due form.

10. **Types of Meetings:** Meetings held in consequence of a resolution to adjourn until a specified date when the normal business of Presbytery will be transacted are referred to as "ordinary meetings" or meetings for ordinary business. But besides those there are other categories of meeting described as follows:

10.1 **In Hunc Effectum meetings:** When a Presbytery wishes to meet to transact specified items of business and these only, it appoints a meeting *in hunc effectum*, that is, to effect this particular business. The induction of a minister to a charge is one of the items of business frequently carried out at an *in hunc effectum* meeting, but a Presbytery may assign any items of business which require extended study and discussion to such a meeting. The resolution appointing such a meeting and specifying its time and place and the item(s) of business to be transacted must be engrossed in the minutes of the immediately preceding ordinary meeting at which also public intimation of the *in hunc effectum* meeting must be made. The first item of business at the *in hunc effectum* meeting is the reading of the minute authorising it and specifying the agenda. No other business may be transacted.

10.2 **Pro re nata meetings:** This is an emergency meeting of Presbytery designed to deal with some matter of importance which has unexpectedly arisen between ordinary meetings. It is not a device for hastening the transaction of ordinary routine business. For example, requests for moderation in a call do not

justify the calling of a *pro re nata* meeting because Presbyteries, aware of vacancies within the bounds and the possibility of elections, should programme their meetings to ensure that no undue delay is imposed upon congregations wishing to request such action. *Pro re nata* meetings are designed to deal with situations unforeseen which require urgent action if the interests of the Church are to be safeguarded.

A *pro re nata* meeting may be called by the Moderator of Presbytery on his own initiative or as a consequence of a requisition addressed to him by members of Presbytery. The circular calling the meeting must be sent to every member of Presbytery in reasonable time before the date of meeting and must state the item of business requiring urgent attention. No other business may be transacted at the meeting. If the date of meeting be between the meeting of Synod and the first ordinary meeting of Presbytery thereafter, the Moderator of Presbytery must inform the Moderators of Kirk Sessions of the need to elect representative elders whose commissions can be received at the *pro re nata* meeting.

When the *pro re nata* meeting is held the Moderator must first of all explain his reasons for calling it and the Presbytery must pronounce judgment upon his conduct in doing so. Any member of Presbytery not present at the *pro re nata* meeting may at the next ordinary meeting raise the question of the propriety of calling the meeting or the manner in which it was called.

If the Moderator declines to act upon a requisition from members desiring a *pro re nata* meeting, the whole circumstances of the case may be raised at the next ordinary meeting of Presbytery.

It is not competent for a *pro re nata* meeting of Presbytery to appoint an *in hunc effectum* meeting. If the emergency business which necessitated the calling of the *pro re nata* meeting cannot be completed at one meeting and still cannot be delayed until the next ordinary meeting it would appear that the only course open is to call a further *pro re nata* meeting by citation *apud acta* and this eventuality, if foreseen, should be included in the original circular, failing which absent members would have to be notified individually.

10.3 Pro re nata to revive Presbytery: If a Presbytery becomes defunct as described in 8 above the following method is employed to enable it to function again.

Three or more members may address a requisition to the Moderator with which he is bound to comply, to call a meeting of all members of Presbytery for the sole purpose of naming a day on which the Presbytery shall meet and conduct ordinary business. At least ten days and not more than fifteen days notice must be given from the date of requisition to the date when members are to convene and their meeting is to be considered *pro re nata*. The necessity for such procedure must be explained to the next meeting of the Provincial Synod and the Presbytery may be censured if Synod is not satisfied with the explanation (Act XII, 1866).

11. Officials.

11.1 **Moderator:** When a new Presbytery is erected by Act of the General Assembly, that Act names the minister who is to preside at the constituting meeting. Once constituted the Presbytery immediately elects its Moderator who will hold office until the meeting of Presbytery following the statutory meeting of the Provincial Synod. Then, year by year, Presbytery elects one of its Ministers as Moderator, at the first ordinary meeting after a stated meeting of the Provincial Synod. The course usually followed is to appoint each Minister in succession, as the names stand on a Roll, which is made up according to seniority of Ordination. In the absence of the Moderator, the Minister who previously held the office takes the chair *pro tempore*, and failing him the senior Minister present does so. It is always in the power of the Presbytery to appoint a Minister to act as Moderator *pro tempore*, on any particular occasion. If a Minister takes the Chair temporarily, whether through ordinary rule or through special appointment, simply in consequence of the Moderator's absence, and the Moderator appears at any stage of the proceedings, he is required to take the chair immediately, and the temporary occupation of it ceases there and then.

In case of equality the Moderator has only a casting vote. He is not permitted to take part in any discussion while he occupies the chair, but he may ask leave to vacate the chair for the purpose of expressing his opinion. When this request is granted, the chair is occupied in the meantime as it would be in his absence.

It is the duty of the Moderator to preside in the devotional exercises of the Presbytery, to pronounce the blessing at the close of each Meeting, and to act for the Presbytery in keeping order, in announcing decisions, in administering rebukes and admonitions, in instructing parties at the bar, and in calling upon Members to state their views, to give their votes, or to discharge any functions which have been assigned to them. At the Ordination of a Minister, or at the licensing of a Probationer, the acting Moderator puts the appointed questions, offers up appropriate prayers, and delivers appropriate exhortations, unless otherwise arranged by the Presbytery.

11.2 **Clerk:** The Presbytery appoints one or more Clerks. The Clerk is usually a Member of Presbytery. He may be appointed for a fixed or indefinite period. On his appointment he solemnly promises to discharge the duties of the office with fidelity. It is the duty of the Clerk to compose regular Minutes of the Presbytery's procedure and to engross them in a permanent record, after they have been approved of by the Presbytery as correct. It is common practice for the Clerk to circulate typewritten copies of the Minutes to Members of Presbytery so that they need not be formally read when submitted for approval. It is also the duty of the Clerk to give such extracts to parties as the Presbytery have allowed, and to take charge of all the Presbytery's papers, books, and documents. In the absence of the

Clerk some one is appointed by the Presbytery to act as Clerk *pro tempore*. The fact of his appointment should be entered in the Minute, and the Minute should be signed both by him as Clerk *pro tempore* and by the regular Clerk. The Clerk is usually awarded an honorarium drawn from Presbytery funds.

113 **Officer:** The Presbytery may appoint an official to be in attendance at meetings and execute orders. At his appointment he should promise to perform the duties assigned with fidelity. He should be awarded an honorarium from Presbytery funds.

12. **Formal Opening and Closing:** Every meeting of Presbytery is opened and closed with prayer. Common practice is to open with praise, reading of Scripture and prayer. Every minute to be valid must state that the Presbytery was constituted and that it was closed with prayer. "Constituted" in this case means opened with prayer in the presence of a quorum of members. No extract of minute is valid and so receivable by any other body which does not state that the Presbytery was constituted. Topics referred to in the minute which are the subject of extracts must be approved before valid extracts can be given.

13. **Minutes:** Before proceeding to any other business, the Presbytery must, at each ordinary meeting, have the Minutes of the last ordinary meeting, and the Minutes of any intervening *in hunc effectum* or *pro re nata* meeting, submitted by the Clerk. The Presbytery must then either approve of these Minutes as submitted, or correct them and approve of them as corrected. They cannot afterwards be altered, except by the authority of a higher Court. The Minutes of any proceedings which have taken place when the Presbytery met in private are not of necessity read or approved of until the Presbytery are again in private at an ordinary meeting. The approval or correcting of the Minutes does not imply any power to alter what was done at the meeting. The only question is the correctness of the Minute as a true account of what was done. The Minute of each Meeting or Sederunt must, after it has been approved of and engrossed in the permanent Record, be signed by the Moderator and Clerk. Any person who has acted either as Moderator or Clerk during a portion of a Sederunt, ought to sign the Minute of that Sederunt, as Moderator or Clerk *pro tempore*, in addition to the signature of the other person occupying either office. The Sederunt of every Meeting (that is, the names of all the Members present) must be accurately recorded in the Minute.

14. **Openness of Presbytery:** The Presbytery is, by long-established practice, an open Court. It is held desirable that this Court should be open with respect to all ordinary matters that occupy their attention. But they have the power of closing their doors, and declaring their wish to meet in private, when they judge it more for edification. In case of their abusing this power, the abuse maybe corrected by the Synod or the General Assembly. It usually sits in private when dealing with cases of discipline that involve charges or proofs of scandal, if the publication of

those charges or proofs might be injurious to justice or purity. It is bound by Act of Assembly to meet in private when students are proposed for trial, and when the private trials of students are going on.

15. **Roll of Members:** It is necessary that an accurate Roll of the Members of Presbytery be kept by the Clerk as authorised by the Presbytery, and that it be corrected regularly on the occurrence of changes. The names of the Ministers ought to be in the order of ordination.

16. **Attendance:** Members of Presbytery are duty bound to attend all meetings of the court. When a member cannot attend he must send a note of apology and explanation to the Presbytery Clerk and Presbytery may sustain the apology.

Part II: Powers and Functions of the Presbytery

The functions of a Presbytery reflect its pivotal position in the ecclesiastical structure and may be categorised in respect of (A) original action, (B) review, and (C) relations to superior courts. In section D certain aspects of the conduct of business common to these areas of responsibility are discussed.

(A) Original Action

1. Responsibility for Candidates for the Ministry.

1.1 As noted in Part 1,2.3 and 2.4, Presbytery has a determining voice in the assessment of candidates for the ministry. Whilst there are no clear lines of distinction between the responsibilities of Kirk Sessions, Presbyteries and the Assembly's Training of the Ministry Committee in this matter some general distribution of functions has emerged in practice. The Kirk Session through which a candidate first applies is deemed to have fairly intimate knowledge of the candidate's spiritual experience, general demeanour and reputation and to be in a position to support or discourage his candidacy on that basis. The Presbytery, whilst to an extent dependent on the testimony of the Kirk Session, make specific examination as to the candidate's call to the ministry and his possession of the requisite gifts of personality, temperament and ability. The Training of the Ministry Committee are more directly concerned with the intellectual and academic promise of the candidate and with the known needs of the Church.

1.2 During the years of training for the ministry candidates are under the pastoral care of their Presbyteries and when they have entered on specifically theological studies are examined year by year by their Presbyteries in Scripture, theology and practical religion. Continuance of their candidacy depends on Presbytery being satisfied with the results of their examinations.

2. Licensing of Candidates: Though during the course of their training candidates for the ministry engage in public preaching from time to time they are not formally licensed to preach until they have completed the course of studies required by the Training of the Ministry Committee and have passed examinations, called "trials for licence", conducted by Presbytery. Those duly licensed, usually called Probationers, are eligible for calls to pastoral charges.

2.1 As the licensing of candidates for the ministry is of concern to the whole Church, all Presbyteries and Synods must be informed of the names of applicants for licence and of the Presbyteries to which they intend to apply. This is done on the initiative of the candidate who at the beginning of his last session of college studies informs the Training of the Ministry Committee and the Committee, in turn, informs Presbyteries and Synods. If no objection is received from any court by 30th April Presbyteries may proceed to trials for licence. The general scope and particular topics to be included in these trials are regulated by Act of Assembly, presently Act XIX, 1988.

2.2 It is the usual practice for the Presbytery to proceed toward the immediate licensing of a student to preach the Gospel at the same meeting at which it has been satisfied with his trials upon a conjunct view of them. After this final judgment in his favour has been arrived at, the Moderator proceeds, in the name of the Presbytery, to put the questions required by the Act of Assembly; and, satisfactory answers having been obtained, and the Formula having been signed, he, in the name and by authority of the Presbytery, solemnly licenses the student to preach the Gospel within the bounds of the Presbytery, and wherever else his lot may be cast in the course of God's Providence. Thereafter the Moderator addresses the newly-licensed preacher in suitable terms, and the Presbytery then engages in prayer, the Moderator conducting the devotions. At the conclusion of the procedure, the Moderator and other members give the right hand of fellowship to the Licentiate.

2.3 Register of Probationers: It is the duty of Presbytery clerks to notify the Clerk of Assembly of the name and address and date of licence of those newly licensed so that the details may be entered in the Register of Probationers. In terms of Act XXIX, 1988, names may remain on the Register for up to six years and if continuance on the Register is desired a Petition to this effect may be addressed to the General Assembly who may extend the period in the Register to a maximum of ten years. When a licensed preacher is ordained and inducted to a charge, the clerk of the ordaining Presbytery should notify the Clerk of Assembly so that the relevant names may be removed from the Register.

3. Care of Vacancies: A congregation becomes vacant through the resignation, retirement, death, removal to another charge or removal as the result of Presbytery action, of the minister. In this event the Presbytery has the

responsibility to ensure continuance of gospel ordinances and pastoral care and discipline, and to take measures, within the laws of the Church, to fill the vacancy.

3.1 Interim Moderator: One of the first actions of Presbytery upon the occurrence of a vacancy is the appointment of one of their ministers as interim-moderator of the Kirk Session of the vacant congregation. He is vested with the authority and executes all the functions of the stated pastor, except that it does not appear to be his duty to take any charge of convening the Deacons' Court, that duty being expressly assigned to the Clerk of the Deacons' Court during a vacancy in the pastoral office.

3.2 Declaration of Vacancy: It is the responsibility of Presbytery to have a congregation formally declared vacant upon the removal of a minister for any reason. This duty is usually assigned to the minister appointed as Interim Moderator and in making this appointment Presbytery usually takes account of any recommendation made by the relevant Kirk Session. By long-standing practice, if the vacancy is occasioned by the death of a minister, the members of Presbytery attending the funeral appoint a minister to declare the vacancy and they also arrange for the supply of the pulpit until the next meeting of Presbytery. They report these actions to Presbytery in due course.

3.3 Preliminaries to filling vacancy involving Presbytery.

3.3.1 When a congregation whose contribution to central funds is less than the normal stipend paid to ministers becomes vacant and its main building is not more than fifteen miles from the main building of another congregation, vacant or settled, the Presbytery is required to take all possible steps to bring about a linkage (Act XII, 1984).

3.3.2 Upon the occurrence of a vacancy the Presbytery should consider whether procurement of a settlement is likely to require recourse to special categorisation as a Redevelopment Charge or a Charge on Special Arrangements, or, through association with other congregational units, as the Charge of a District Minister. If such action seems necessary and desirable, the Presbytery will have to consult the Sustentation Committee and through it petition the General Assembly. If no such action is necessary, the Interim-Moderator will guide the vacant congregation in the steps necessary to filling the vacancy.

3.4 Preliminaries at Congregational Level: Soon after the congregation has been declared vacant the Kirk Session authorises the calling of a congregational meeting for two purposes

- (1) to complete a schedule to be submitted to the Sustentation Committee,
and
- (2) to elect a Vacancy Committee.

3.4.1 Relation to Sustentation Committee or other relevant Committee:

Until the Sustentation Committee agree to the arrangements proposed by the

congregation no minister can be called and assured of payment of stipend. The minimum pledge required by the Committee is a sum equal to the normal stipend. In the case of Church Extension charges agreement as to financial arrangements must be made with the Church Extension Committee. The actual conditions in these cases may vary from one case to another.

3.4.2 Vacancy Committee: No precise rules have been formulated with regard to the election of a vacancy committee or its procedures, but general experience suggests the following guidelines:

- (1) Elders and deacons are *ex officio* members of the vacancy committee.
- (2) Others may be elected to the Committee by the congregation (Act IV, 1859). Names may be suggested by the congregation and it is advisable that account be taken of the total number needed and of the appropriateness of including adherents on the Committee. The overriding aim is to secure that the full scope of legitimate congregational interest will be represented.
- (3) The business of the committee is to make arrangements for the pulpit to be supplied by ministers, probationers and divinity students deemed suitable to fill the vacancy in due course. Neither the invitation to preach nor its acceptance implies any commitment with regard to a possible call. Nor need the final choice be from those heard during the vacancy. The order in which preachers are heard has no greater significance than that of convenience.
It is strictly improper for any commitment to be given to or sought from divinity students who may happen to supply the pulpit during the vacancy.
- (4) That is no need for the observance of secrecy in regard to decisions of the Committee as these concern the congregation as a whole. As representatives of the congregation, Committee members should be encouraged to invite reaction and suggestions and to report these in Committee. What is strictly confidential is the free expression of opinion in Committee. Opinions expressed in confidence in Committee should not be publicly divulged.
- (5) When invited preachers have been heard and it seems that the congregation are ready to endeavour to fill the vacancy it is usual for the vacancy committee to agree upon a name to be recommended to the congregation. Obviously unanimity on this point in Committee is greatly to be desired but if this cannot be achieved there may be no alternative to asking the congregation to choose between two or even three names.
- (6) When the Vacancy Committee is ready to meet the congregation with their proposal(s) they request the Kirk Session to call a congregational meeting in order that they may do so.
- (7) Minutes: It is advisable that a Vacancy Committee appoint a clerk to keep minutes of all proceedings. These minutes should be kept in a separate record.

3.5 Election of Minister.

3.5.1 Procedure: The election and calling of a minister to be Pastor of a congregation belong, in the first instance, to communicant members of the congregation. The call must be approved and sustained by the Presbytery which must be satisfied that it is harmonious. If the call is an occasion of disharmony the Presbytery must endeavour to overcome this, failing which it must refer the matter to the Superior Courts for advice (Act IV, 1859).

At a congregational meeting duly authorised a member of the Vacancy Committee proposes for election as minister the name of the person agreed upon in Committee. If there is more than one recommendation other Committee members will also propose names. The congregation are not bound to accept the recommendation(s) of the Committee and opportunity to make other proposals should be given.

3.5.2 Eligibility: The following are qualified to be elected, called and admitted as Pastors of congregations or assistant ministers:

- (1) Persons who have been admitted to and have not lost the status of ministers of this Church, with certain exceptions as follows:
 - (a) Ministers placed under limitation by the General Assembly at the time of their ordination/admission;
 - (b) Ministers who have resigned from their charges and whose names have been placed on the Roll of Resigned Ministers (Act XIII, 1990). (Those who have resigned charges and are included in the Register of Ministers without Charge are eligible for Call);
 - (c) Ministers subject to a disciplinary process or under suspension as the result of such process;
- (2) Ministers of the Presbyterian Church of Eastern Australia in terms of a Federal Relations Act with that Church (Act I, 1952).
- (3) Ministers of the Presbyterian Church of Eastern Australia who have resigned their charges and secured inclusion in the Register of Ministers without Charge of this Church in terms of Act I, 1974.
- (4) Probationers of this Church, and those of the Presbyterian Church of Eastern Australia who fulfil the conditions of Act I, 1974.

3.6 Trials for Ordination: Before agreeing to ordain and induct Probationers, Presbyteries must require them to submit to and pass certain examinations usually referred to as "trials for ordination". The topics of examination are at the discretion of Presbytery and may be largely catechetical with special attention to Pastoral Theology (Act XIII, 1982).

3.7 Right of Election: The right of election and therefore of nomination is vested in the communicant membership of the congregation. Due attention is also given to views expressed by regular attenders in the congregation whose names are

not on the communion roll. They are also given opportunity to concur or not with the election.

3.8 Types of Call: If it is found that the congregation are cordial and wholehearted in their support of the nomination which has secured a majority in the election, a proposal may be made to request Presbytery to moderate in a closed call, that is, one in which the person elected is named. If there is some opposition but a majority in favour seems assured the proposal should be to request moderation in an open call. Moderation in an open call requires a new election in presence of the Presbytery. When resolved to request Presbytery to moderate in a call, the congregation appoint representative(s) along with the Interim-Moderator to bring their request before Presbytery.

3.9 Before Presbytery.

3.9.1 It is usual for the Interim Moderator of Session to make a report to the Presbytery respecting the condition of the congregation, the amount of their agreement as to the choice of a pastor, and their ripeness for calling one. If this report be unsatisfactory, or if the Presbytery have otherwise good reason to fear that a sufficiently harmonious call cannot be obtained, they shall hold a meeting with the congregation, and shall not proceed to moderate in a Call till they have exhausted all means for producing harmony, and, should these means prove unsuccessful, they shall refer the matter to the Superior Church courts for advice (Act IV, 1859).

3.9.2 Before agreeing to moderate in a Call Presbytery must be assured that financial arrangements have been agreed with the relevant Committee, usually the Sustentation Committee. Agreements made with the Sustentation Committee are valid for two years. If no settlement is achieved within that period a new schedule must be submitted and a new agreement reached.

3.10 Moderation in a Call.

3.10.1 When a Presbytery are prepare to moderate in a Call, they fix a day and hour for doing so. Notice of the day and hour and intended procedure must be given from the pulpit of the vacant congregation by someone appointed by the Presbytery for the purpose, seven days intervening between the notice and the day appointed. The Presbytery must moderate in a Call at large, except in cases in which clear intimation is given of an harmonious desire for a person named, when moderation in a closed call is competent. In either case it is the first duty of a Presbytery when convened to meet with the congregation to ascertain that the notice of the meeting was duly served and that a certified copy of the congregation's Communion Roll is before them. Then the Moderator (or Moderator pro tem.) conducts public worship and at its conclusion explains the object of the meeting and the procedure to be followed. Procedure is as follows:

- (1) **In an Open Call (Call at Large):** The clerk of Presbytery reads the Form of Call without specifying the person to whom it is to be addressed. The Moderator then invites the congregation to elect the person whose name will be inserted in the Form. This election is vested in the communicants named in the congregational roll and present at the meeting. The agreed name is then entered in the Form of Call and all qualified communicants are asked to subscribe it. Others, being regular attenders in the congregation and of sufficient maturity (generally interpreted as 16 years or older), are invited to sign a Form of Concurrence in the Call. When the Call and Concurrence have been signed by all present who wish to do so the Moderator attests it. Then the Presbytery must consider whether or not to sustain the Call.

If the Call has been subscribed by a large number of communicants on the Roll in proportion to the whole number and if no dissents have been given in the Presbytery sustain it in ordinary cases and it is usual to entrust the forms to the care of the Kirk Session for a limited period in order to the obtaining of additional signatures from eligible people not present at the meeting. If, however, there are dissents implying serious division in the congregation, the Call cannot be sustained unless signed by a majority of all members on the Communion Roll whether present or absent and even in that case the Presbytery may find it necessary to refer the matter to the Superior Courts (Act IV, 1859). No appeal sists procedure until a Presbytery has moderated in and sustained a Call (Act II, 1886).

- (2) **Closed Call:** This differs from the preceding in that the name of the minister to be called has already been agreed upon at a congregational meeting and in their edict the Presbytery have intimated to whom the Call will be addressed. It is therefore competent in this case for members of the congregation who cannot be present at the meeting to moderate in the Call to give written authority (a mandate) to persons who can attend to sign the Call or Concurrence on their behalf. The same rules as noted in connection with an Open Call apply to whether or not the Presbytery sustain the Call. But as absent members have had opportunity to sign by mandate it ought not to be necessary to leave the Call with the Kirk Session for further signatures. Nevertheless, this is frequently done and it would also seem proper to allow additional signatures by mandate.

3.10.2 **Call to Probationer or qualified Minister at large:** If the Call is sustained at the time when it has been moderated in, and if the person called is a Probationer or a qualified Minister without any fixed charge, and if he is present, the Call is put into his hands, and he is asked whether he accepts or not. If he is

absent, it is sent to him as soon as possible. Previously to forwarding the Call, the Presbytery may entrust it to the Kirk Session to procure additional signatures.

3.10.3 Dissents and Reasons for Objection: Dissents from a Call can be received only if they are given in immediately after the Call has been attested by the Moderator. If they are accompanied by reasons, they must be judged on by the Presbytery, either at that meeting or at a special adjourned meeting held for the purpose. The fullest opportunity must be given to the members on the roll for stating their objections of any kind. When the objections require special investigation, the consideration of them must be adjourned, and they must be considered at a subsequent meeting, to which all parties are summoned *apud acta*, that is, they are summoned through announcement made to them in open court by the Moderator or the Clerk before the business of moderating in the Call is closed.

If the objections do not affect the moral character or the orthodoxy of the Probationer or Minister to whom the Call is addressed, the Presbytery may judge of them, and come to a determination respecting their validity, after hearing all parties, and taking such evidence as they may procure or think needful, without adopting such formal procedure as is requisite when grave personal charges are brought forward. But when an objection made is seen to involve such a charge, that is, any charge affecting the orthodoxy or moral character of a Minister or Probationer, the Presbytery must insist upon the objectors either framing a libel and proceeding with it in the usual form, or abandoning the objection. Of course, if a *fama* were found by the Presbytery to prevail against the person called, it might be necessary to suspend procedure until they have disposed of it, even though no objectors should take the responsibility of framing a libel.

The Presbytery may decline to sustain the Call, either on the ground of the number of dissents without reasons, or on the ground of the weight due to the reasons or objections adduced. If any such judgment of the Presbytery be neither appealed from nor complained against in due form, or if the judgment be affirmed by the Superior Court, the whole proceedings as to the particular Call in question fall to the ground, and in these circumstances, a new election must take place involving a different minister.

3.10.4 Call to Probationer: If the Call is to a Probationer, the Presbytery must satisfy themselves with regard to his fitness for the work of the ministry. This is done by requiring the Probationer to undergo trials for ordination. Act XIII, 1982 states that it is within the competence of a Presbytery that sustains a Call to a probationer, if it so desires, to accept his Certificate of Licence as affording satisfaction with regard to academic requirements, knowledge of Scripture and grasp of Confessional doctrine; and to make trials for ordination largely catechetical, with special attention to Pastoral Theology, especially in cases where

the Presbytery that sustains a call is also the Presbytery that has recently licensed the probationer. Further the General Assembly enact that no Edict appointing ordination is to be authorised before such trials are sustained.

If, after these trials, the Probationer called is not found qualified, and the Presbytery decline to sustain the trials, they ought to frame their Minute so as to put the Superior Court in clear and full possession of the grounds on which their judgment proceeds, and to enable a person appealing or complaining to state with distinctness his reasons of appeal or complaint. These grounds must not involve any charge of heresy, because that, if alleged and maintained, can be proceeded with only by libel. If the judgment of a Presbytery declining to sustain trials for ordination be not appealed or complained against in due form, or if it be not reversed by the Superior Court after appeal or complaint, intimation must be made to the Congregation that the Probationer called has not been found qualified, and that a new election must take place.

3.10.5 Call to Ordained Minister: If the Call which is sustained and accepted of is to an ordained Minister eligible for Call, not having a fixed pastoral charge, and not being a Professor of Theology, no trials being required, and there being no other ecclesiastical impediment, the Presbytery may proceed without delay to appoint the day for the induction.

3.10.6 Call to Minister in another Presbytery: A sustained Call to a Minister holding a charge in another Presbytery is not sent to him but to the Clerk of the Presbytery of which he is a member. The judgment of his Presbytery, or of a Superior Court, in favour of his removal to the new charge must be obtained. To obtain this the Calling Presbytery and congregation have to follow certain procedures. These are:

- (1) The Calling Presbytery appoint one or more of their number to prosecute the Call, that is, to argue the case for the Call before the other Presbytery. The usual practice is that the interim-moderator and a member of the calling congregation's Kirk Session are appointed. But Act XXXIV, 1976, allows that if the calling congregation are prepared to forego their right of appeal in the event of an adverse judgment, they may be content to forward written reasons in support of the Call.
- (2) The Calling Presbytery draw up Reasons for Translation, or authorise those appointed to prosecute the Call (referred to as Commissioners) to do so. The Reasons are signed by the Commissioners, and together with relevant extract minute furnished by the Clerk of Presbytery, are forwarded to the Clerk of the other Presbytery.
- (3) The Commissioners appointed to prosecute the Call ascertain when the Presbytery of the called minister is to meet and dispose of the Call. The clerk

of that Presbytery notifies the minister and Kilt Session concerned and supplies a copy of the Reasons for Translation, but not the Call itself. The Kirk Session consults the congregation and proposes the case to be presented to the Presbytery on their behalf. If there is sufficient time for these matters to be dealt with before the next ordinary meeting of Presbytery, the Call may be disposed of at that meeting. If time does not allow of those preparatory activities, the Call will be tabled at the first ordinary meeting of Presbytery when a date for disposing of it will be decided and all concerned duly notified.

3.10.7 Disposal of Call: On the date at which the Presbytery have resolved to dispose of the Call, the Commissioners prosecuting it and those of the congregation resisting it are called to the Bar of Presbytery, and the procedure follows that of an appeal except that the minister called, not being at the Bar, may be heard at any stage if he so desires. Otherwise Commissioners prosecuting the Call are heard and then those representing the congregation resisting the Call, with a right of reply being granted to the Calling Commissioners. Questions may be asked of either party by members of Presbytery. Then the called minister is asked to declare his mind. After the Presbytery have engaged in prayer, they discuss the expediency of the translation, and in the light of that discussion resolve whether or not to place the Call in the hands of the minister concerned. Obviously two motions are competent, and the Presbytery must resolve between them. These are:

- (1) The Presbytery consider the translation expedient and agree to place the Call in the hands of Mr.....
- (2) The Presbytery consider the translation inexpedient and agree not to place the Call in the hands of Mr.....

If the first motion is agreed and there is no complaint or appeal, the Call is placed in the hands of the minister concerned. If he then accepts it, the Presbytery formally agrees to the translation and charge the minister concerned to await instruction from the Calling Presbytery.

If the second motion is agreed, the Call is not given to the minister concerned. This judgment is intimated to parties at the Bar, and those who prosecuted the Call may enter an appeal against it and present reasons then, or within ten days. In such cases it is usual to enter an appeal in the knowledge that it may be abandoned later if the Calling Presbytery and/or congregation so instruct.

Whatever the outcome Commissioners who have prosecuted a Call are bound to report the outcome to their Presbytery at its first ordinary meeting thereafter. If there is no impediment by way of appeal, the date of induction may then be fixed.

3.11 Procedure in Appeals

3.11.1, If there is an appeal or complaint intimated against a decision in favour of a Translation, the Presbytery which has agreed to the translation ought to instruct

their Clerk to intimate to the Calling Presbytery, through their Clerk, whether Reasons of Appeal of Complaint have been lodged in due time or not, and also to intimate to them immediately the fact of the appeal or complaint being otherwise fallen from, if that should occur at any period after the Reasons have been duly lodged. Pending the outcome of the appeal no date of induction may be fixed. But if it be certified to the Presbytery prosecuting the Call by the Clerk of the other Presbytery, that reasons of appeal or complaint have not been lodged in due time, or that the appeal or complaint has been subsequently fallen from, or if the Superior Court shall, in due form, have intimated or caused to be intimated to the Presbytery prosecuting the Call, that they have dismissed the appeal or complaint, and affirmed the sentence in favour of the Translation, then the Presbytery prosecuting the Call may fix a date for the induction.

3.11.2 If the decision of the called minister's Presbytery be adverse to his translation, it is usual, as has been noted, for the calling Commissioners to intimate an appeal. It is also open to the minister or any member of the Presbytery to complain against this decision. All these facts will be included in the report of the calling Commissioners to their Presbytery and the prosecution of their appeal or its abandonment will depend upon the decision of the Calling Presbytery and/or Congregation. If the Presbytery continue to prosecute that appeal, or if the Congregation calling continue to prosecute an appeal on their own part, or if any member of the other Presbytery continues to prosecute his dissent or complaint, no further step toward the filling of the vacancy can be taken until a decision has been obtained from the Superior Court. But if the Presbytery falls from its appeal, and if no other appeal and no complaint is prosecuted, or if the Superior Court intimate that they have affirmed the adverse decision, the Presbytery must intimate to the Congregation in due form the necessity of steps being taken for a new election.

3.12 **Call to Minister in same Presbytery:** If a sustained call is to an ordained Pastor of a charge within the bounds of the same Presbytery which has sustained the Call, the procedure is the same in principle with that adopted in the case already detailed. The complication of Commissioners from one Presbytery to another is avoided. In sustaining the Call, the Presbytery take care not to commit themselves to the propriety of the Translation. Due intimation is given to the Minister called, and to his present Congregation, as in the other case. Commissioners from both Congregations appear at the bar of the Presbytery on the appointed day, and matters proceed to a decision subject to the same rights of appeal or complaint as already noted.

3.13 **Call to a Professor:** If a sustained Call is to a Professor in the Church's Theological College, it should be brought in due form before the Presbytery within whose bounds the College is situated, presently the Presbytery of Edinburgh and Perth. Due notice should be given to all parties concerned (that is, the calling

congregation and Presbytery, the Training of the Ministry Committee and the College Senate). These should be given opportunity to appear and state their views, as in the case of an ordinary translation. Inasmuch as the appointment of a Professor is by Act of the General Assembly it would appear to be beyond the power of lesser courts to loose him from that appointment. The practice is therefore that Presbytery refers the matter with or without a recommendation to the General Assembly if no ordinary meeting of Synod intervenes. If an ordinary meeting of Synod intervenes the reference is to that Court which passes it on to the General Assembly.

3.14 Unduly Prolonged Vacancy: When a vacancy has endured for two years or longer and no action has been taken to secure a settlement, the Presbytery having oversight must confer with the congregation to encourage them to proceed to an election as soon as this can be harmoniously achieved (Act X, 1977).

3.15 First Edict: When a Presbytery fixes a date for the ordination and induction of a Probationer or the induction of an already ordained minister, it must give public notice of its intention to the congregation and the public generally. This is done by issuing an edict which is a formal document stating the date, time and place at which the Presbytery is to meet, certifying that if at the date mentioned no substantiated objection to the life or doctrine of the Probationer/Minister has been received the Presbytery will proceed to the ordination/induction. The Presbytery instruct that this edict be read at public worship on the Lord's Day in the congregation concerned. At least seven clear days must intervene between the reading of the edict and the meeting of Presbytery at which objection may be received.

3.16 Second Edict: At the time named in the first edict, the Presbytery, having been constituted, calls for what is designated "the return of the edict", an expression which implies a report that it has been duly served. If no objection which can be substantiated there and then has been received the Presbytery has a further edict proclaimed to the Congregation, three times. This edict is in similar terms to the first and tells that the Presbytery is now met and that objections if made must be substantiated instantly. In the case of a substantiated objection proceedings are arrested without the necessity of a libel at this stage. This, however, is a very rare occurrence. When no objections are given in or when they cannot be instantly proved, it is the duty of the Presbytery to proceed with the ordination/induction.

3.17 Ordination/Induction Service: The ordination/induction service begins with public worship conducted in the usual manner with sermon by the Moderator or Moderator *pro tempore*. At the conclusion of the worship service there is read a narrative of the proceedings followed in the filling of the vacancy. The minister-elect is then asked to stand and under reminder of Act V, 1932, to respond to the appointed questions and to sign the Formula in face of the Congregation. The answers having been satisfactory and the Formula having been

signed, the Pastor-elect, if a Probationer, kneels, and the Moderator, coming down from the pulpit, ordains him to the ministry with solemn prayer and imposition of hands. It is the practice for the Presbytery to invite other ministers of the Church present to join them in the act of laying on of hands. At the conclusion of the prayer the Moderator declares the ordinand ordained to the holy ministry and by use of a set form of words adjusted to the type of Congregation, inducts him to the charge and to a seat in the Presbytery and along with other members of Presbytery gives him the right hand of fellowship.

In the case of a previously ordained minister the same questions must be answered and the same Formula signed. That being done the Moderator leads in prayer before inducting the minister to the charge and to a seat in Presbytery.

After the induction brief addresses of counsel and encouragement are given in turn to the new minister and the Congregation. These addresses may be given by the Moderator or by others appointed by the Presbytery. The new minister's name is then added to the Roll of Presbytery. The service is then concluded with praise and prayer.

3.18 Notification: The Clerk of the Presbytery which has inducted a minister removed from another Presbytery should immediately inform the Clerk of that Presbytery that the induction has taken place. Until informed of this fact that Presbytery may not declare the minister's previous Congregation vacant.

4. Special Cases.

4.1 Missionaries: Ordination without reference to a particular pastoral charge, or without reference, at least, to some position or function held to be equivalent to that of a particular pastoral charge, is contrary to the practice of the Church. But it is not unusual for a Presbytery to be instructed by the General Assembly to take a Probationer on trials for ordination with a view to missionary service in some designated country. The current practice is for the newly ordained minister to be seconded to a Church in the country of service. If there should be no Church existing the ordination could still be with a view to missionary service. Though in strict procedure it is the duty of the Presbytery to satisfy itself with respect to the nature of the appointment, the position of the parties making it, the sphere of action proposed to be entered on, and the provision arranged or in prospect for the due support of the Minister or Missionary, after he has entered on it, it may be assumed that the General Assembly have been satisfied on these points by the Missions Board. So far as trials and the act of ordination are concerned, they must take the same steps as in ordinary cases. The serving of an edict in the usual manner is of course dispensed with. But consistency of principle would seem to require public notice of the Presbytery's intention to be duly given, that anyone may have sufficient opportunity to bring forward and substantiate an objection to the life or doctrine of the person proposed to be ordained.

4.2 Professors of Theology: Professors of Theology are appointed by the General Assembly and by their instruction inducted by the Presbytery within whose bounds the Church's college is located. Should a Probationer be appointed to a College Chair the Presbytery is required to subject him to trials for ordination with a view to ascertaining his fitness for the particular function to which he has been appointed. In these examinations due weight must be given to the fact of his appointment by the General Assembly (see Act V, 1852).

4.3 Appointment: The circumstances of a vacant congregation may be such as to prevent their receiving clearance from the Sustentation Fund Committee to call a minister in the regular way noted. But it may be possible after consultation between congregation, Presbytery and an Assembly Committee for the services of a minister to be obtained for a limited period of five years extendable if the progress of the Congregation so warrants. The following are situations that are met by appointment, the full details of procedure being noted in the Acts of Assembly indicated. In each case the procedures for induction comply as clearly as possible with these noted.

4.3.1 Redevelopment Charges: These are designated by the General Assembly on recommendation from the Sustentation Fund Committee who are empowered, in the event of a vacancy, and in agreement with the Presbytery of the bounds to appoint a person suitably gifted for the task of redevelopment to the pastoral oversight of the redevelopment charge (Act XXXIV, 1988).

This Act also envisages situations in which charges already settled may be designated redevelopment charges upon certain undertakings by the minister.

4.3.2 District Ministers: Arrangements have been approved by the General Assembly that allow a plurality of small congregational groups, not necessarily within the bounds of one Presbytery to have the services of a District Minister by appointment of the Sustentation Committee in agreement with the Presbyteries concerned. The details are listed in full in Act XIX, 1983, amended by Act XXV, 1989, to which reference should be made.

4.3.3 Church Extension Charges: These result from successful outreach work and reach the stage of being allowed the services of a minister when officially designated Church Extension Charges by the General Assembly on recommendation of the Church Extension Committee. The minister deemed fitted for the work is appointed, initially for five years on agreement of the Committee, the Presbytery of the bounds and a majority of the membership of the Congregation. Details are in Act XXVII, 1989.

4.3.4 Church Planting: In an effort to reach out to areas not served by the Free Church or by any church fully committed to Reformed standards, arrangements have been made whereby the Committee on Church Extension may support a minister for five years in carrying out evangelistic and church planting

work. The minister is inducted to the work by the nearest Presbytery at the request of the Committee, and the minister has a seat on that Presbytery (Act XXVIII, 1989).

4.3.5 Assistant Ministers: Certain Congregations may be granted the right to have an assistant minister whose appointment will be by the Presbytery after consultation with the Congregation and the processing of an invitation as though it were a Call. This appointment is for one year, renewable by Presbytery on application by the Kirk Session but having a maximum duration of three years. The assistant is ordained/inducted in the usual way and has a seat in Presbytery (Act V, 1986).

5. Retirement of Minister.

5.1 By long established tradition ministers were inducted to charges *ad vitam aut culpam*, that is, for life unless removed as the result of a disciplinary process. This tradition is still maintained in regard to ministerial status but no longer in regard to tenure of a particular charge. In some cases already noted, induction is for a specified period which may or may not be extended. By Acts of Assembly Professors were obliged to retire on 30th June following their 70th birthday (Act XV, 1966) and this obligation was extended to ministers in pastoral charges inducted subsequent to the passing of Act I, 1989. This Act fixed 30th September following the 70th birthday as the latest date for retirement. In all cases retirement is permissible on or after the 65th birthday.

5.2 A minister desiring to retire from his charge when he has attained the specified age must inform his Kirk Session of his intention to retire and have minuted in the Session Record an undertaking to resile from his rights in the courts of the Congregation. The application is processed through Kirk Session and Presbytery to the Church's Pensions Committee for award of pension in accordance with the scheme approved by the General Assembly. For their part the Presbytery in supporting this application must take note that the agreement to resile from rights in the congregational courts has been duly minuted by the Kirk Session. The application is then forwarded to the relevant Committee. After the specified retirement date the Congregation is declared vacant (Act I, 1981). Though now, in effect a minister emeritus, the minister retains a seat in Presbytery. All Ministers not having pastoral Charges are eligible as Ruling Elders in the Congregations to which they attach themselves as communicants. They may not, however, represent the Kirk Session in Presbytery or Synod nor may they be commissioned as elders to the General Assembly (Act IV, 1991).

6. Resignation of Ministers: A minister who wishes to resign his pastoral charge because of ill-health or other reason not affecting his conduct or doctrine must tender his resignation to his Presbytery. The Presbytery is bound to investigate the reasons for resignation and may appoint a Committee to do this in detail and, if appropriate endeavour to resolve difficulties which may have occasioned the

resolution to resign. If the desire to resign persists and the Presbytery have no knowledge of any circumstances or *fama* which might involve disciplinary action, and therefore could preclude acceptance of resignation, it must accept the resignation. In the meantime the Congregation will have been informed of their minister's action. Upon acceptance of the resignation the Presbytery will, by extract minute, inform the Principal Clerk of Assembly and instruct him to include the name of the resigned minister on the Roll of Resigned Ministers or on the Register of Ministers without Charge. The Congregation will be declared vacant

The normal procedure is for the name of the resigned Minister to be placed on the Roll of Resigned Ministers. Only when positive reasons conforming to Act XIII, 1990. can be adduced may the name be placed on the Register of Ministers without Charge. Ministers whose names are on the Register are available for Call, those on the Roll are not. Retention on the Register is for three years, extendable on cause shown for a further three years but no longer. Names on the Roll are retained indefinitely unless removed on grounds specified in the Act.

7. Absence from Charge: From almost the time of the Reformation it has been a rule of the Scottish Church that a minister should reside in the parish he serves and prolonged absence has been disallowed. In certain situations, however, it becomes necessary and acceptable that the minister be granted what is called leave of absence. Application for leave of absence must be made to the Presbytery who must be satisfied that arrangements for the pastoral care of the Congregation are adequate. The Presbytery must also be satisfied as to the reasons prior to granting leave of absence. Most frequently this leave is sought at the behest of an Assembly Committee to enable the minister to undertake work elsewhere on their behalf. But it is possible for the minister to request study leave, or leave to attend to some urgent family business. By a long-standing practice Presbyteries do not grant leave of absence for longer than six months in the first instance. Upon granting leave of absence Presbyteries appoint an interim-moderator of the Kirk Session which is temporarily bereft of its Moderator.

8. Sick Leave: Even during times of illness a minister is held to be responsible for the spiritual oversight of his Congregation and this involves, among other things, arranging pulpit supply. In present circumstances sickness allowances paid by the Department of Social Security contribute to the costs of these arrangements. Advice regarding actual procedures which may change from time to time is available from the Church's General Treasurer.

(Rules and procedures in longer-term illness which require intervention by Presbytery granting sick-leave and by the central Committee responsible for payment of stipend are presently being formulated).

Special procedures have been approved to deal with the situation involving mental illness on the part of the minister. These are detailed at length in Act I, 1936.

9. **Presbyterial Counselling:** It is held to be the duty of Presbyteries to deal with the members privately in a friendly manner with respect to their short-comings, so as to avert, by timely admonition, the necessity of more formal procedure at a future date. It is still held to be the duty of the brethren to stir one another up in the common faith.

10. **Breakdown of Relations:** A Presbytery may become aware that a Congregation within its bounds has fallen on troublous times indicated by marked fall-off in attendances at public worship, reduction in contributions to Church funds, alienation of office-bearers and such like. In these cases it is the duty of the Presbytery to take action to try to resolve difficulties and to restore harmony and the general health of the Congregation. As it makes these efforts Presbytery may become convinced that there is a breakdown in relations between minister and people, not involving moral delinquency of any sort, but due to certain incompatibilities of temperament. In that case and after prolonged effort to resolve the situation Presbytery may feel duty bound to sever the pastoral tie and loose the minister from his charge. The protracted procedures applicable in this situation are detailed in Act 1,1990.

11. **Discipline:** The Presbytery is responsible for the pastoral care of its ministers and when necessary this involves the application of disciplinary procedures which will be dealt with in a later chapter. Discipline can be exercised on a personal and informal level where that is appropriate and likely to have beneficial results. It may move to more serious levels involving censure, rebuke and even suspension or deposition according to the gravity of the case.

12. **Regular Helpers:** Although the Free Church of Scotland holds that ideally the functions of the pastoral office should be exercised only by those specially set apart, that is ordained to that office necessity has compelled the employment of others as regular preachers and shepherds of Congregations.

These were in earlier days known as Preachers or Catechists but now such help is given by Resident Lay Preachers. By an Act of General Assembly only men acceptable as elders in the Congregation may so function (Act X, 1981).

Besides those in full-time employment as noted above the Church maintains a list of people able and willing to supply pulpits from time to time and it is the responsibility of Presbyteries to recommend people for this list. Interim-moderators have the responsibility of procuring suitable men to supply the vacant pulpits for which they are responsible (Act XV, 1972).

13. **Preaching Stations:** A group of people may regularly meet together for public worship and their circumstance may be such that they need the intervention of a Presbytery to secure the regular and orderly maintenance of gospel preaching and the administration of the sacraments. In such a case Presbytery may recognise the meetings as a Preaching Station and either place the station under the care of a

neighbouring Kirk Session or appoint a minister and elders from Kirk Sessions within the bounds. The Preaching Station does not rank as a pastoral charge and those appointed to fulfil the duties of a Kirk Session do not appoint one of their number as Commissioner to Presbytery or Synod nor can they furnish the requisite certificate to an elder given a Commission to the General Assembly (see Act XIII, 1863).

14. **Sanctioning of Pastoral Charges:** In strict theory it is part of the function and within the competence of a Presbytery to recognise and sanction charges within their bounds that may call ministers. But the interests of the denomination as a whole and the general dependence on central funds necessitate that decisions to sanction charges shall be made only by the General Assembly, upon recommendation by Presbyteries. This was recognised as early as 1849 in a Class I Act.

15. **Special Diets of Worship:** Presbyteries have the right to instruct that special worship services be held in each congregation within the bounds when they deem that to be appropriate, for example, for special days of thanksgiving and days of prayer, and also for special collections for particular causes to be made. This right, however, should be sparingly exercised lest Presbytery be deemed to impinge on the responsibilities of Kirk Session, or to embarrass their relations with Superior Courts especially the General Assembly.

16. **Presbytery Expenses:** Long established practice has recognised the right of Presbyteries to require a reasonable contribution from each Deacons' Court to meet the expenses of Presbytery. Presbyteries usually agree upon an annual budget and assess what each Deacons' Court should contribute.

17. **Presbytery Committees:** Presbytery may appoint Committees at any time to give detailed consideration to certain items of business and to report to a subsequent meeting of Presbytery at which decisions will be agreed. In matters of urgency it is competent for a Presbytery to empower a Committee to resolve and act on its behalf. By recommendation of the General Assembly all Presbyteries should appoint a Committee with the responsibility of reflecting on the general strategy and possible actions for growth and extension within the Presbytery. Such a Committee is specifically involved in the initial stages of research and action leading to requests for the granting of Redevelopment status to any Congregation.

18. **Consultation with Assembly Committees:** Presbyteries are responsible to take pastoral superintendence of all Congregations within their bounds and this can from time to time lead to proposals to change the status of Congregations which in turn will require consultation with Assembly Committees. In view of this the Assembly has ordained that the Conveners and Vice-conveners of the Sustentation Committee and of the Church Extension Committee shall jointly confer with Presbyteries at least once every five years. Presbyteries are required to prepare outline proposals as a basis for discussion at these meetings (Act XXIV, 1989).

(B) Review

Each Presbytery is duty bound to ensure that all Kirk Sessions within the bounds discharge their functions in an acceptable manner. This is not done in an intrusive or inquisitorial fashion but in an orderly way as indicated in the procedures to be outlined in the following paragraphs.

1. **Kirk Session Records:** Once each year, usually in February, Kirk Sessions are required to submit their records for review by Presbytery. At the same time an updated copy of the Communion Roll duly certified by Moderator and Clerk is submitted. Besides this annual review Presbytery may, if due cause be shown, require records to be submitted at any time.

The interest of Presbytery in reviewing records is to ascertain that they are neatly and properly kept and are 'correct in form and substance'. This means that records are tidy and legible, that each topic dealt with is easily identified, by marginal reference in hand-written minutes or by an appropriate style in typed minutes, and that each minute has been signed by Moderator and Clerk. It means also that each minute shows that the court was duly constituted and closed with prayer, that all the topics dealt with were within the province of the Session, and that procedures were according to the laws of the Church. Correct in form and substance does not mean that Presbytery can alter the record of what actually took place in Kirk Session. It means simply that what took place was within legal proprieties.

If Presbytery finds that a decision by the Kirk Session was wrong in law, it may reverse the decision and do what it can to mitigate the consequences of the wrong decision. If procedures followed by Kirk Session and decisions made are, in the view of Presbytery, in breach of Church law, it may order the deletion of the relevant comments. But before pronouncing adverse judgment as noted here, Presbytery must summon the Kirk Session to its bar to be heard as a party with the right of appeal to Synod or General Assembly.

Where deletion of part of a Session minute is ordered it can be done by rendering the relevant part illegible or by excision of the passage. Obviously excision is required only if the offending passage is lengthy. In either case a marginal note must indicate how much has been deleted/excised and the decision of Presbytery must be entered in the Record.

2. **Deacons' Court Records:** These records are also subject to annual review by Presbytery. In this case Presbytery is concerned to note that records of financial transactions have been duly audited; that moneys have been properly allocated; and that the proceedings of the Deacons' Court have been in accordance with the laws of the Church. As in the case of Kirk Sessions, where Presbytery finds faults with the proceedings the Deacons' Court is summoned to the bar of

Presbytery before a formal decision is pronounced.

3. Petitions to Presbytery.

3.1 Members of the Church may bring matters of concern to the notice of Presbytery by means of Petition provided that:

- (1) the Presbytery is the court of primary reference, that is, the particulars referred to should not first have been brought before a Kirk Session;
- (2) the matter could not come before the Presbytery by way of complaint or appeal against a decision of a Kirk Session.

3.2 If the subject matter of the Petition is such as should in the first instance have been brought before a Kirk Session, but if the Petitioner alleges obstruction by the Kirk Session by their refusal to entertain his plea thus denying him right of access to Presbytery by appeal the Presbytery deal with it, summoning both the Petitioner and the Kirk Session to its bar.

3.3 When disputes or difficulties have arisen in a Congregation, which do not involve any serious personal charge, but which cannot be constitutionally adjusted by the Kirk Session in consequence of the Minister being concerned in them or from other causes, it is competent for any parties connected with the Congregation to petition the Presbytery on the subject. The Petition may ask for a Presbyterial visitation, or for any other method of interference by the Presbytery that may be competent and suitable. Before the Petition can be disposed of, all parties referred to in it, or affected by it, must be summoned, with due notice, to the bar, that they may be heard for their interests.

3.4 The constitutional method of bringing before the Church any question seriously affecting the character or the orthodoxy of a Minister or a Probationer is by a Petition to the Presbytery, unless such question be originated in the Presbytery itself, or in the Synod or General Assembly; or unless the parties otherwise raising it take upon themselves the responsibility of preparing and tabling a Libel for the consideration of the Presbytery. (See Chapter V Part IV.2.)

3.5 A Petition to the Presbytery is competent, either by the Kirk Session, or by the Deacons' court, or by any member of the Congregation, or by any person concerned about its prosperity, if the object aimed at is one which the Presbytery alone can accomplish, or which must be originated in the Presbytery. Under this head may be reckoned Petitions for the institution of Stations, for the sanctioning of Charges, for the creation of Kirk Sessions, and for the erection of Churches or Manses.

3.6 A Petition is competent which complains of any procedure in a Deacons' Court when the complaint is shown to be on the alleged ground that the procedure was *ultra vires*, or contrary to the Acts of Assembly.

3.7 As in the case of complaints and appeals so in the case of Petitions the person(s) originating the action are heard first at the bar of Presbytery and others

subsequently with a right of reply granted to the first party. When parties are removed from the bar they may not sit in the reviewing court even though otherwise members thereof but if the court is meeting in public they may continue to hear proceedings. The court discuss the issue raised and come to a decision. Parties are summoned again to the bar and the decision announced to them. They may acquiesce in the decision or not as conscience dictates. If they do not acquiesce they may appeal to the Superior Court.

Note: A Presbytery may reject any Petition, without calling or hearing parties, on the ground that it is unsuitably or disrespectfully worded, or, without hearing parties on the merits, on the ground that its prayer cannot be competently granted by the Presbytery.

4. Presbyterial Visitation.

4.1 In the discharge of its Pastoral responsibility for Congregations within the bounds a Presbytery is called upon to visit these Congregations from time to time. Visits may be rendered necessary by a Petition from a Kirk Session, Deacons' Court or others connected with a Congregation. Presbytery may also deem it necessary to visit a Congregation when apprised of situations that may otherwise develop in ways prejudicial to the Congregation or the Christian cause.

4.2 Apart from these special occasions Presbyteries are required by Act of Assembly to visit each Congregation within the bounds every five years. They must agree upon a rotation of visits and inform Synod of it and from year to year report progress on its accomplishment. Visits may be by the Presbytery as a whole or as represented by a Committee.

Meetings are to be held with the Minister, the Kirk Session, the Deacons' Court or Finance Committee and with the Congregation as a whole. Due notice of the meeting must be given to all concerned so that issues of importance may be discussed. The purpose is not to be inquisitorial but to find how Congregations and office-bearers may be helped by Presbytery. The General Assembly has recommended the use of set questionnaires, copies of which are available from the Church Offices. These questionnaires may be amended and modified as Presbyteries deem best. The details of Assembly recommendations are found on page 45 of Assembly Proceedings 1988.

5. Responsibility for Buildings: One of the items which must figure in a Presbytery's regular visitation of a Congregation is the state of Church and manse buildings. By Act XXXI¹, 1988, Deacons' Courts are charged to maintain their buildings in good order and to have them inspected by a qualified person so that a Buildings Return may be completed prior to each quinquennial visit. Grants from central funds will be refused if the Assembly Committee is not assured that a Buildings Return has been duly received by Presbytery.

¹ Error in original – see errata

6. Ministers' Expenses and Vacation: Congregations are expected to refund to their ministers expenses incurred in the discharge of pastoral duties. The items which figure in pastoral expenses as listed by Act of Assembly include: telephone, communion expenses, car and/or travelling expenses, a fair proportion of manse heating and lighting and the cost of one month's supply in respect of the minister's annual vacation.

In the case of a vacancy the Interim-moderator shall have refunded to him by the Congregation all travelling and other expenses incurred by him in discharging such duties on behalf of the Congregation as would normally fall to be undertaken by the minister if the charge were settled (Act XII, 1978 and Act IX, 1980).

7. References, Complaints and Appeals: It is the duty of the Presbytery to take into their consideration, at the first convenient opportunity, any case of Reference, Complaint, or Appeal, which has been duly transmitted to the Presbytery Clerk, with respect to the procedure of any Kirk Session within the bounds.

7.1 Reference

7.1.1 When a Kirk Session is unsure as to how it ought to proceed in regard to a matter brought before it, it may refer the matter to the Presbytery for its advice. Uncertainty may arise with regard to the interpretation of the law and practice of the Church, or from consideration of particular circumstances associated with a question. Reference to Presbytery is not designed to relieve a Kirk Session of its responsibility. It may indeed be censured by Presbytery if that court takes the view that the Kirk Session should have resolved the matter without recourse to the higher court.

7.1.2 A reference may be accompanied by observations or tentative recommendations by the Kirk Session or it may be passed on without comment (*simpliciter*).

7.1.3 When a Kirk Session resolve to refer a matter to Presbytery their decision may be challenged by one of their number who intimates a dissent and complaint, or if it be a matter affecting parties at the Bar they may appeal against the decision to refer. In any case the Kirk Session must forward extracts of minutes relating to their procedure and any other documents laid before them. The Kirk Session and any complainant or appellant are all then summoned as parties to the Bar of Presbytery.

7.1.4 When Presbytery meet to consider the matter, the Clerk of Presbytery reads the documents that have been transmitted in the case. Parties are then called, and the names of the persons who severally appear for each of the parties are minuted as so appearing. If any party having been duly cited does not appear when called, and no adequate cause for non-appearance is assigned, that party is held to have given up the cause, and unless the Presbytery find reason otherwise for an opposite course, a decision may be given against that party in absence.

7.1.5 In the case of an unopposed reference the Kirk Session is brought to the bar of Presbytery and its representative(s) are called upon to state the reference, that is, to explain the difficulty of the case as perceived by the Kirk Session. Having stated the case, they may be questioned by members of Presbytery.

7.1.6 Presbytery then resolve whether to sustain the reference or dismiss it, and dismissal may be accompanied by censure if the Presbytery see fit. If the reference is sustained, those members of Kirk Session who are members of Presbytery resume their seats in Presbytery.

7.1.7 The Presbytery then address themselves to the specific problem referred to them and resolve what advice should be given to the Kirk Session.

7.1.8 In the case of a reference against which a complaint or appeal has been raised the situation is more complicated. In such a case when parties are called to the Bar of Presbytery the complainant/appellant will be heard first, then the Kirk Session will state its case and the first speaker will reply. Members of Presbytery may ask questions and the Presbytery then resolve the issue as to the sustaining or dismissing of the reference. But it seems proper in this case that where the reference is sustained, the Kirk Session and the complainant should remain at the Bar and present their views on the merits. Presbytery will then come to a decision and inform parties at the Bar. Only so can all concerned preserve the right of bringing a judgment on the merits under review of a Superior Court in proper form.

7.2 Complaint and Appeals.

7.2.1 As in the case of reference the Presbytery usually hears one or two speakers for each party but when the case of two parties is perceived to be the same in substance they are dealt with as one party. The complainants or appellants are heard first and subsequently have a right of reply to the case presented by the Kirk Session. Questions may be asked by members of Presbytery. Parties are then removed from the Bar but none of them may assume a seat in Presbytery (Act III, 1973). The Presbytery deliberates and pronounces judgment.

7.2.2 The judgment may be expressed in such terms as the Presbytery thinks most suitable; but in every case of Appeal or Complaint, in which a judgment on the merits is pronounced by the Presbytery, the judgment must expressly sustain or dismiss the Appeal or Complaint, and must expressly reverse or affirm the judgment of the Kirk Session, whatever additional words or sentences the Presbyterial Deliverance may contain.

7.2.3 Parties are called in, and the judgment of the Presbytery is intimated to them.

7.2.4 If a party there and then, after hearing the intimation, acquiesce in the judgment, it is usual for him to intimate his acquiescence, and to have it minuted. If he does so in due form, he is entitled to extracts.

Note: The statements here made as to the hearing of the parties at the bar apply to the hearing of parties in cases of translation, *mutatis mutandis*. They apply also to the hearing of parties in Petitions.

(C) Relations to Superior Courts

Just as Kirk Sessions are under the oversight of Presbyteries so Presbyteries are under the oversight of Provincial Synods and the General Assembly and the same general principles apply in these relationships.

1. A Presbytery is not allowed on its own authority to change the basis of its membership, its name, its chief place of meeting (that is, its seat) or the charges within its bounds. To effect changes in these matters Presbytery must petition the General Assembly.

2. The Presbytery is required to submit its permanent Record Book for review by the Provincial Synod and the same principles apply in this review as in that exercised by Presbytery in relation to Kirk Sessions (see section B above). No alteration of minutes once approved can be made except by authority of a Superior Court.

3. **Decisions of Presbytery:** Presbytery decisions are of two kinds: judicial and non-judicial. Judicial decisions are those come to in regard to formal cases before Presbytery. Judicial decisions cannot be revised or rescinded by Presbytery but are subject to review by Superior Courts. In non-judicial proceedings decisions may be revised or rescinded only after careful consideration introduced by notice of motion and in the light of evidence affecting the matter or in the light of consequences which were unforeseen at the time of the decision and which are deemed prejudicial to good order, equity or the interests of the Court (Act XXXVI, 1976).

4. **Effect of Dissent.** When a Presbytery has come to a decision on any matter, any member of the Court who is present and has previously moved or supported a motion against the decision may enter a dissent provided this is done immediately on the pronouncement of the decision. If reasons are immediately announced they must be engrossed in the minute of that meeting. But if reasons are given in later they are not minuted but kept among Presbytery papers. Other members of Presbytery present at the time of the decision controverted who supported the objection made, may adhere to the dissent immediately, later in the meeting or at a subsequent meeting. The affect of such dissents is not only to clear the conscience of those making them but also to secure immunity from any adverse judgment on the matter by a Superior Court.

5. **Dissent and Complaint:** Any member of Presbytery who has, as in the case of dissent, previously objected to a proposal before Presbytery, may upon the proposal

being carried, announce his dissent and protest for leave to complain to the Superior Court. This may be the Provincial Synod or the General Assembly, whichever meets first. The rules for carrying through the dissent and complaint are the same as those obtaining between Kirk Session and Presbytery. Those complaining are entitled to such extracts as are required to bring their case before the Superior Court

6. **Appeals:** Parties at the Bar of Presbytery, aggrieved by its decisions may protest for leave to appeal to the Superior Court, Provincial Synod or General Assembly as the case maybe. The rules that apply are as noted in regard to appeals from decisions of Kirk Session to Presbytery. Appellants are entitled to extracts in the same way as complainants.

7. **Reference:** Presbyteries have a right of Reference to the Superior Court as have Kirk Sessions to Presbyteries and the same procedural rules apply. There are certain situations in which Presbyteries are required or authorised to refer to the Superior Court. These are:

(1) If, when serious division is apparent in a vacant congregation regarding the calling of a minister, the Presbytery cannot overcome the division, it is bound to refer the matter to the superior Church Courts for advice (Act IV, 1859);

(2) In connection with a Libel against a minister there are two special grounds which make reference to Superior Courts competent. These are listed in Acts IX and X, 1854 and dealt with in Chapter V of this book.

8. **Refusal of Complaint or Appeal:** If a Presbytery refuse to receive or record any Complaint or Appeal, it is open to the party to petition the Synod or Assembly with reference to such refusal.

9. **Interference:** One Presbytery cannot interfere with or review the procedure of another Presbytery. As in the case of Kirk Sessions, the only regular mode of redress for encroachment by one Presbytery on the province of another, is for the Presbytery which feels that its jurisdiction has been interfered with to petition the Synod, or, if no meeting of Synod intervene, the General Assembly. Of course such a Petition cannot be received by any Synod except the one which has jurisdiction over the Presbytery whose procedure is complained of.

10. **Petition to Superior Court:** It is competent for a Presbytery to petition the Synod or Assembly with regard to any subject within the competency of the Court to whom the Petition is addressed, if the subject be not one which can come up to that Court by Reference, Complaint, Appeal or Overture.

11. **Admission of Minister or Probationer:** Any Minister or Probationer belonging to any other Denomination who desires to be admitted as a Minister or Probationer of the Free Church, must apply, in the first instance, to the Free Church Presbytery within whose bounds he has taken up his residence. If he be

resident outwith the bounds of any Free Church Presbytery he may apply, in the first instance through any Presbytery of the Free Church. Presbyteries have a duty to interview candidates for admission and may require to devolve this duty upon others deemed suitable, if the candidate lives abroad. Presbyteries do not have powers of admission but must scrutinise the application schedule presented by the candidate and answer questions addressed to Presbyteries in the schedule and make such recommendation as they deem appropriate. These schedules are available upon application to the Clerk of the Admissions Committee and the completed schedules must be returned to him for processing through the Committee to the General Assembly, to whom the sole right of admission belongs.

12. **Assistant Ministers:** A congregation desirous of having an assistant minister must apply to the General Assembly through the Presbytery. Conditions which must be fulfilled before such applications can be entertained are detailed in Act V, 1986 to which reference has already been made.

13. **Recognition of Charges:** Applications for recognition as charges in any of the recognised categories must be made through Presbytery and the relevant Assembly Committee to the General Assembly.

14. **Collections:** It is the duty of Presbyteries to observe carefully all those instructions of the General Assembly which are consistent with the constitution of the Church, respecting the various collections and operations appointed or instituted by that Assembly, and carried out by means of its Committees or otherwise, for the furtherance of the Gospel at home and abroad, or for the welfare of the Church.

15. **Sale of Buildings:** All Petitions for authority to sell buildings which, by their title deeds have become the property of the Free Church of Scotland must be processed through the Presbytery to the Committee on Custody of Titles for submission to the General Assembly or its Commission.

Before recommending such applications Presbyteries must have before them the following extracts of minutes duly certified.

- (1) A minute of Deacons' Court proposing sale of property.
- (2) A minute of Kirk Session approving the proposals to sell and authorising the convening of a congregational meeting to consider the proposal.
- (3) A minute of the congregational meeting agreeing to the proposal to sell.
- (4) The text of the Petition. This should state clearly the reasons for sale and the desired use of the funds to be realised.

Presbyteries should be satisfied that the proposal is in the best interests of the congregation before transmitting all these documents together with their own extract minute of recommendation to the Custodier of Titles.

Subsequently the Committee on Custody of Titles scrutinises the Petition and supporting documents, obtains the advice of the Church's Law Agents with regard

to any restraints or barriers to sale contained in the titles. The Committee proposes a finding to the Assembly or its Commission before which the documents are laid. A representative of the Presbytery is expected to be present in the Court which finally disposes of the application so that he can answer questions.

Where property is being disposed of in order to provide replacement the Petition may be addressed to the Commission of Assembly. If there be no such intention the Petition must be addressed to the General Assembly.

In regard to properties which are not held in terms of the Model Trust Deed it is nevertheless desirable, and sometimes necessary, to follow the above procedures.

Petitions for sale of property addressed to the General Assembly must be in the hands of the Clerk of Assembly by 28th February. Petitions addressed to the Commission of Assembly must be in the Clerk's hands at least one month before the meeting of Commission.

16. Overtures: It is competent for any Presbytery to transmit what is called an Overture either to the Provincial Synod or to the General Assembly, with a view to induce the Superior Court to adopt any measure within its power. All Overtures and Returns to Overtures from Presbyteries must be sent to the Clerk of Assembly at least seven days before the meeting of Assembly.

17. Barrier Act. When the General Assembly contemplates legislation which will have a fundamental and lasting effect on the Church and specifically legislation affecting the constitution of the Church it must secure the agreement of Presbyteries in terms of the Barrier Act. (This is more fully explained in the chapter relating to the General Assembly). Upon receiving the Assembly's proposals which are sent in the form of an overture, Presbyteries must fix a day to consider these and come to a decision. This decision must be a simple approval or disapproval. A qualified or partial approval is regarded as a vote against. The decision must be reported to the Clerk of Assembly by a date instructed by him when sending down the overture.

18. Consultation with Presbyteries: Quite apart from topics which require action in terms of the Barrier Act, the General Assembly may desire to know the opinion of Presbyteries on any matter being considered. This may be done by direct communication from Assembly or through any of the Assembly's appointed Committees.

19. Appointment of Professors: Presbyteries have the responsibility of nominating ministers to fill vacancies in the College. They may nominate one or more for each vacancy and must transmit their nomination together with notes of the qualifications of those named to the Training of the Ministry Committee for onward processing to the General Assembly by whom appointments are made (Act VI, 1979).

20. Representatives to General Assembly.

20.1 Each year Presbyteries appoint Commissioners to the General Assembly comprising an equal number of ministers and elders. The number of Commissioners accords with a fixed proportion of the total number of Kirk Sessions, Professorial Chairs and such appointments as the Assembly have specified for the purpose within the bounds. The present regulating Act is Act 1, 1942, which aims as nearly as possible to secure that the number of ministers commissioned will equal one third of the number of Kirk Sessions, etc. in the Presbytery. An equal number of elders will also be commissioned.

20.2 On the basis of the relevant Act of Assembly, the Assembly Arrangements Committee determine in January of each year, the number of Commissioners to be appointed by each Presbytery. This is communicated to each Presbytery by the Clerk of Assembly and it is open to any of them to controvert the decision and if not subsequently satisfied by the Committee to appeal to the General Assembly.

20.3 Before electing Commissioners to the General Assembly Presbytery must record in the minute of a meeting held at least ten days before the election date a formal resolution to do so. It is required also that the date fixed for the election be no later than forty days before the meeting of the Assembly and no earlier than one month preceding the first of these forty days.

20.4 In principle, election of Commissioners is by free vote of the members of Presbytery so no private practical arrangements regarding rotation of appointments can be regarded as binding or referred to in the minutes of Presbytery. Ministers are elected only from within the membership of Presbytery, but an elder from any Kirk Session within the Free Church, who is believed to be an acting elder, may be elected. In respect of each elder elected, a certificate from his Kirk Session attesting that he is actually a member of the court must be forwarded to the Clerk of Assembly. It should be noted, however, that Professors in the Church's College and ministers not in pastoral charges, even if elders in local congregations, may not be elected as elders to represent a Presbytery in the General Assembly.

20.5 The election of Commissioners to the General Assembly is regarded as of such importance as to warrant its being given priority in the agenda of Presbytery.

20.6 If a minister or elder resigns his commission or dies prior to the meeting of the Assembly, Presbytery may make a new election provided this is done before the Assembly convene (Act II, 1885).

20.7 Printed Forms of Commission are furnished by the Clerk of Assembly to the Clerks of Presbyteries. They must be exactly filled up, and read over in the presence of the Presbytery. The Minutes of Presbytery must be so drawn up as to correspond to the Form.

20.8 The Commission to a Presbytery's Representatives, attested by the signatures of the Moderator and Clerk, ought to be sent to the Clerk of Assembly

as soon as convenient after the election has taken place and not later than one week before the day appointed for the meeting of Assembly.

21. **Presbytery Records:** Presbytery Records are liable to be called up by the Provincial Synod for revision and attestation, according to the law of the Church. They are generally required to be submitted to the Synod once a year.

22. **Abstract of Synod Proceedings:** An abstract of the proceedings of each Provincial Synod ought to be sent down to every Presbytery within its bounds as soon after its meeting as possible. This abstract must be read at the first Ordinary Meeting of Presbytery that occurs after its receipt, and the fact of its being read must be duly recorded.

(B) General Conduct of Business

1 **Order of Business:** The clerk of Presbytery usually prepares a tentative agenda which can be adjusted by Presbytery as it deems best. The following points are intended for guidance and are not mandatory.

1.1 The reading of minutes usually follows the calling of the Roll and matters referred to in the minutes are either taken up immediately after the approval of the minutes or included in the agenda at the most suitable points in relation to other business.

1.2 A degree of priority is usually given to items of business which require the attendance of people who are not members of Presbytery, so that they may not have to wait an undue time.

1.3 Consideration of Overtures addressed to a Superior Court should also figure early in the agenda.

1.4 Reports from Committees appointed by Presbytery should be given precedence over business initiated by private members of the Court.

1.5 As noted in 20(5), election of Commissioners to the General Assembly should be given first place on the agenda of Presbytery on the appointed date.

1.6 In the case of meetings *pro re nata* and *in hunc effectum* if there is a plurality of items on the agenda they are taken in the order indicated in the circular calling the meeting or the minute appointing it.

2. **Duties of Clerk:** It is the duty of the Clerk to prepare and timeously circulate before each meeting of Presbytery a note of the items of business to come before the meeting. The usual practice is that copies of the minutes of the previous meeting are circulated at the same time. The Presbytery is not bound to consider the items of business in the order proposed by the Clerk. The Moderator will call for each item according to the agreed order.

3. **Immediate Adjustment of Minute:** When a matter of serious conse-

quence has been disposed of, the minute recording it ought to be adjusted, read and approved before passing to the next item.

4. **Motions before Presbytery:** With a view to a Presbytery coming to a decision upon any question, a Member of Presbytery must make a motion on the subject.

4.1 Consideration of suggested new legislation should be on the basis of notice of motion duly intimated, In matters the decision on which must hinge on what is said by parties at the bar, no notice of motion can be given.

4.2 Motions submitted to Presbytery should be given to the clerk in writing. The person submitting a motion can speak to it, but if he fails to find a seconder the matter is abandoned without further discussion. Motions duly moved and seconded are open for discussion and may not be altered without leave of Presbytery. Nor may motions moved and seconded be withdrawn without leave of Presbytery. Amending or counter-motions duly moved and seconded may be put against motions before Presbytery.

4.3 Though strict procedure allows a member to speak only once during discussion of a motion and this rule is rigidly observed in the General Assembly, Presbyteries tend to relax this rule in their practice but there should be an understanding as to how frequently a member may speak with regard to any motion. Presbyteries always allow a member to speak in explanation of something he has already said which he deems to have been misunderstood. The member who introduces a motion is always accorded the right of reply but he may not introduce new matter into his reply which must confine itself strictly to matters already raised. After the reply, the discussion is closed and the vote is taken.

5. **Call to Order:** In the course of a discussion, any member has a right to call another to order, and, when this is done, the person speaking should stop till the question of order is determined. Any member (whether he has already spoken or not) can take part in the discussion of the point of order. It is convenient that the point of order be referred, in the first instance, to the Moderator, who may at once announce such an opinion on it as may manifestly without any vote, command general concurrence. But, if there is much division of opinion, the point must be determined by a vote.

6. **Voting:** In Presbytery votes are usually cast by show of hands though other methods such as calling the Roll are acceptable. Motions are identified for voting purposes as first motion, second motion, etc., or motion introduced by A.B. and motion introduced by C.D.

6.1 If it is desired to take the vote between two motions by Roll, the clerk or someone assisting, calls the names and notes for which motion support is indicated. The one securing a majority becomes the decision of the Presbytery.

6.2 When there are three motions, the usual practice is to follow the rule of the General Assembly's Standing Order, and to put the two amendments if mutually incompatible against each other in the first instance. The one which achieves a majority is then put against the original motion. If the amendments are compatible they will in turn be put against the original motion, that is, third versus first, and then second versus first. The final decision is announced and noted by the clerk.

6.3 On the same principle, any number of motions or amendments may be disposed of by putting the last, in the first instance, against the second last, and so determining which is to be put against the next in the reverse order. The question may thus always be reduced to a vote between the original motion and that amendment or motion, whether it be second, third, or fourth, or fifth, which has been preferred through successive votes, as the one to be placed in immediate competition with the original motion.

6.4 During the taking of a vote, the doors ought to be closed, so as to avoid all confusion by members going out or coming in.

7. **Extract Minutes:** The usual and approved means of communicating decisions of Presbytery to those whom they concern is by extract minutes.

7.1 Parties in cases before Presbyteries are entitled to extracts from the record, containing those parts of the minutes in which they are concerned. Both parties who acquiesce in a judgment and those who appeal against it are entitled to crave extracts and take instruments in the Clerk's hands.

7.2 Members of Court are similarly entitled to ask the Presbytery for extracts which must be granted, whether they dissent and protest for leave to complain or not.

7.3 Any person who can show any reasonable ground for the request may ask the Presbytery for extracts.

7.4 The Clerk is not at liberty to give extracts to any Member of Court or to any other party without the express leave of the Presbytery.

7.5 The Presbytery cannot refuse extracts to any one who requires them, to enable him to bring his case before the Superior Court.

7.6 The Presbytery is entitled to appoint fees to be paid to the Clerk for giving extracts.

7.7 There ought to be an agreement with the Clerk, in fixing his emoluments, as to the extent to which he is expected to give extracts without fee.

7.8 It is not usual to require any fees for extracts, when they are manifestly requisite to enable those who ask for them to bring their Appeals or Complaints before the Superior Courts, or to enable those who acquiesce in decisions to have the means of showing that these decisions have been in their favour.

7.9 Fees may be reasonably required when extracts are given without any manifest necessity. But this point must be determined by each Presbytery for itself.

CHAPTER III

PROVINCIAL SYNODS

Part I: Constitution and Officials

1. **Location:** The various Presbyteries of the Church are linked together in convenient regional groupings to form what are called Provincial Synods. At present the nine Presbyteries in Scotland are linked in groups of three to form three Synods: the Northern, the Western and the Southern.

2. **Membership:** The membership of each Synod comprises the combined membership of each Presbytery within their province. The Clerk of each Presbytery is required to submit a certified Roll of Presbytery membership to the Clerk of Synod so that the Roll of Synod may be accurately compiled. Each Kirk Session which commissions an elder to sit in Presbytery should in the same commission certify his election to sit also in Synod. Should a meeting of Synod precede one of Presbytery after the elder's appointment by Session, the Kirk Session commission should be tendered to and received by Synod.

3.1 **Corresponding Members:** A Synod also includes in its membership ministers and elders who have been commissioned by neighbouring or adjoining Synods to act as corresponding members. The Commissions appointing such members should be received and read when the Roll of Synod is being adjusted. Those corresponding members have full right of voice and vote in Synod. The validity of their Commissions depends upon the terms of appointment. If the Commission directs them to correspond with the Synod of X at their meeting on a specified day it has validity only for meetings on that day. If it adds "and at other meetings during the ensuing year", then corresponding members may sit in *pro re nata* meetings of Synod.

3.2 It is within the power of the General Assembly to specify the number of corresponding members a Synod may appoint to a neighbouring Synod. The usual practice is to appoint two, most commonly one minister and one elder.

4. **Assessors:** Membership of a Synod may be increased by the General Assembly by the appointment of general or special assessors. General assessors have full rights of voice and vote: special assessors have such rights only in connection with the particular items of business to help with which they have been appointed.

5. **Association:** A Synod has power to associate with it any minister who may be present but an associated member, whilst allowed to contribute to the discussion of matters before Synod, may not himself introduce new business or propose any motions. He has no vote.

6. **Fixing of locality:** Synods are erected by the General Assembly, and their bounds are specified and the number of Presbyteries within each declared. As already noted, at present there are three Presbyteries in each Synod in Scotland but the Synod of North America comprises two Presbyteries. At the time of erecting a new Synod or realigning the bounds and naming the Presbyteries included, the General Assembly fix the date, place and time of meeting. The date of the annual meeting of Synod is fixed by the General Assembly but discretion is allowed to Synod as to the place of meeting year by year. Synods therefore, unlike Presbyteries, do not ordinarily meet by adjournment but by appointment of the General Assembly. But if business requires a Synod to meet again before its next ordinary meeting it may meet by adjournment.

7. **Pro re nata meeting:** To deal with emergencies, Synod may be called to meet *pro re nata*. The Moderator may call this meeting on his own responsibility or in response to a requisition addressed to him by members of Synod, three of whom at least should be ministers. As in the case of Presbytery, the action of the Moderator in calling a *pro re nata* meeting must be approved by Synod before the business can be dealt with.

8. **Quorum:** Three members of Synod form a quorum provided two are ministers. The General Assembly of 1866 approved a form of minute relating to a meeting of Presbytery having a bare quorum, at which elders' certificates from Kirk Sessions were received (Act VII, 1866). It may be assumed that a minute in like terms is in order in the case of a Synod meeting in the same circumstances. The critical point is that elders' certificates may be received at such a meeting.

9. **Opening of Synod:** Each ordinary meeting of Synod is opened by the Moderator elected at the previous meeting. He conducts public worship, preaches a sermon, and at the close of the service announced that Synod will meet

thereafter. Synod is then formally constituted with prayer, provided a quorum of numbers is present.

10. **Adjustment of Roll:** The first act at an ordinary meeting is the adjustment of its Roll by reference to certified lists supplied by Presbytery Clerks, commissions from neighbouring Synods and, if appropriate, the receiving of elders' certificates. The Roll is then called to ascertain the sederunt, and courtesy suggests that the order in which Presbyteries are called rotates from year to year.

11. **Election of Moderator:** When the Roll has been adjusted and the sederunt noted, Synod proceeds to elect a new Moderator who will hold the office for the ensuing year and preside at the opening of the next ordinary meeting at which his successor will be appointed. Any ordained minister having a seat in a Presbytery within the bounds of Synod may be elected as Moderator. He presides at all meetings of Synod during his term of the office and his duties correspond to those of a Moderator of Presbytery.

12. **Clerk:** Each Synod appoints a clerk, usually from its own membership. The clerk may be appointed to serve indefinitely or from year to year. On appointment he is required to give an undertaking to fulfil the duties of the office with diligence and fidelity. His expenses and usually a modest honorarium are met from Synod funds. Synod funds are provided by each Presbytery which imposes on congregations within the bounds a fixed sum year by year for Presbytery and Synod expenses.

13. **Clerk's Duties:** The clerk's duties follow the same pattern as for Presbyteries. In recording minutes he must ensure that each minute testifies that the meeting was duly constituted and that it was closed with prayer. The omission of either of these details invalidates a minute.

14.1 **Minutes:** Before proceeding to ordinary business Synod may have minutes of the previous ordinary meeting read or a résumé of them, not for purposes of approval but as an aid to memory of what has been done. For actual adjustment and approval minutes of a first diet of Synod are read at a second diet and minutes of the final (usually the second) diet are read, adjusted and approved at the end of that diet. Minutes of a *pro re nata* meeting are submitted for adjustment and approval to the first diet of the next ordinary meeting. As in other courts where a matter of some delicacy has been discussed and a decision agreed, it is competent for Synod to adjust and approve that part of the minute immediately after a decision has been agreed.

14.2 Once minutes have been approved they cannot subsequently be altered except by authority of the General Assembly. Even then no alteration can relate to the accuracy of the account of business transacted. It can relate only to the competence of the Synod to deal with the business narrated or the correctness of

its procedure in doing so. That is to say, the Superior court is competent only to judge that minutes submitted to it are "correct in form and substance".

14.3 Minutes once approved and engrossed in the permanent Record must be signed by the Moderator and Clerk. A person who has acted as Moderator or Clerk *pro tempore* must also sign the minutes of the relevant diet.

15. **Openness of Court:** Synod is an open court but may meet in private if it deems this appropriate.

Part II: Powers and Functions

1. A Provincial Synod is mainly a court of Review. It may initiate action by agreeing to forward Overtures to the General Assembly, or by approving suggestions to facilitate its own business. But its main concern is to review matters brought before it from Presbyteries.

2. **Diets of Synod:** The nature of a Synod's work requires that each ordinary meeting comprise two diets. Synod can, of course, appoint additional diets if the volume of business so requires.

3. **Order of Business:** An Act of Assembly (Act XI, 1989) gave to Synods a degree of flexibility in arranging business, not hitherto enjoyed. As this is simply an enabling Act it may be best first to outline the procedures established by use and wont.

3.1 At the first diet after the Roll has been adjusted and Moderator and Clerk appointed, Synod proceeds to appoint a Committee on Bills and Overtures and Business. Most frequently this Committee comprises all members of Synod, the Moderator is Convener and the Clerk of Synod acts as clerk to the Committee.

3.1.1 The duty of the Committee on Bills, etc. is to examine all papers which it is proposed to pass into Synod. Overtures to be proposed should be presented to the Committee in proper form and the Committee agree to pass into Synod only if they are correct in form. The same responsibility relates to References, Complaints/Appeals, and Petitions. The Committee's concern is to ascertain that papers are in proper form. The Committee then make a list of items to be passed into Synod and recommend the order in which they should be taken. Decisions of the Committee with regard to the passing in of papers to Synod are subject to dissent and complaint or appeal to Synod.

3.1.2 The Committee on Bills and Overtures reports to Synod by submission of a minute of their proceedings. Synod may overrule decisions of the Committee both with regard to items to be admitted to Synod and with regard to the order of business proposed.

3.2 At the first diet Synod calls for the Records of the Presbyteries within its bounds. These should be laid on the table and small committees appointed to examine and report on them with particular reference to the Presbyteries' diligence in holding quinquennial visitations of congregations within their bounds.

3.3 At the first diet Synod usually appoints a Committee to prepare a Report on Deceased Ministers and Elders. This report like that relating to Records will be submitted to a subsequent diet of Synod.

3.4 When at its second diet Synod has received and adjusted the report on the Committee on Bills etc., the items of business listed are dealt with in the agreed order. When reports on specified topics have been received, Synod appoints members to submit reports the following year. Corresponding members to neighbouring Synods are also appointed at the second or subsequent diets of Synod.

4. **Alternative Arrangements:** The more flexible arrangements allowed by Act XI, 1989, are described in the Act as follows:

4.1 that Synods are permitted, if they so choose, to appoint annually a Standing Committee on business;

4.2 that such a Committee's responsibilities may include the following:
to examine Presbytery Records; to examine Presbytery programmes of Quinquennial Visitations; to prepare a report on deceased ministers and elders; to examine Bills, Overtures and Correspondence and to bring to the Synod a report on the business to be transacted; to report on changes in the ministerial membership of the Synod; to make recommendations re the personnel for the Standing Business Committee of Synod and in general to prepare routine business for the consideration of the Synod;

4.3 that in the appointment of this Committee the Synod will ensure that all the Presbyteries within the bounds of the Synod are represented.

5. Synods availing themselves of the provision of the foregoing Act are usually in a position to publicise the items of business to be discussed at an evening diet when topics of interest to the general membership of the Church are to be discussed.

6. **Rules for Discussion:** Rules for the discussion of business regularly before Synod are the same as those which apply in Presbytery.

7. **Review of Records:** The Record of Synod must be forwarded to the Clerk of Assembly to be laid by him before the Assembly for review in due course.

CHAPTER IV

THE GENERAL ASSEMBLY

Part I: Constitution and Officials of the General Assembly

1. **Temporary Character:** The General Assembly differs from the Inferior Church Courts in the circumstance that, as a body, it has no permanent existence. Whatever powers or functions belong to the General Assembly belong to it entirely as a representative and temporary body.

2. **Membership:** The General Assembly consists of an equal number of Ministers and Elders, commissioned annually by each recognised Presbytery of the Church. The exact number to be elected and commissioned by each Presbytery is fixed from time to time by Act of Assembly, with consent of a majority of Presbyteries.

3. **Principles for regulating membership:** Two principles, at least, are held to be permanently fixed in the constitution of the Free General Assembly, viz.: (1) that the number of Ruling Elders commissioned by each Presbytery shall be equal to the number of Ministers; and (2) that the proportion of representatives from each Presbytery be just and fair as compared with the representation from other Presbyteries.

4. The General Assembly through their Committee on Assembly Arrangements, furnish every Presbytery with adequate information as to its proportion of representation.

5. **Eligibility of representatives:** The practice of the Church makes it necessary that the Ministers commissioned to represent a Presbytery in the

Assembly must all be members of that Presbytery or assessors thereto. But a Presbytery may be represented by any Ruling Elder of the Church who is otherwise qualified whether he belongs to that Presbytery and is under its jurisdiction or not. This does not include professors or ministers not in pastoral charges who are members of a Kirk Session.

6. **Elder's Certificate:** Act XII, 1839, requires that no Ruling Elder shall be held qualified to represent a Presbytery in the General Assembly who is not *bona fide* an Acting Elder in the Congregation in which he holds office, and that, along with every Commission in favour of a Ruling Elder as Commissioner to the General Assembly, there be produced a certificate from the Kirk Session of his Congregation to the effect that he is *bona fide* an Acting Elder therein. Without this certificate no Ruling Elder is allowed to take his seat in the Assembly. It has since been enacted by Act IX, 1863, that there be added to this certificate the statement that the Ruling Elder "has signed the formula".

7. **Date and Duration of Meeting:** The Assembly's ordinary sittings at present commence on a Monday in the month of May not earlier than the 17th of that month, and not later than the 23rd and continue until Friday of that week. There is, nevertheless, no other authority for this practice except the determination of each preceding Assembly. Either the preceding Assembly, or the Church at large, through some adequate combination in an emergency, might resolve to have a General Assembly called at a different period in the year. On the same principle, the question as to the place of meeting is quite an open one each year, although considerations of convenience and propriety have, since the Revolution, prevailed in favour of Edinburgh as the settled locality for the ordinary meetings of Assembly.

8. **Opening of General Assembly:** The Commissioners elected by the several Presbyteries convene together for public worship, at 6 o'clock in the evening on the day appointed, in the hall set apart as the place of meeting for the Assembly. The Moderator of the last General Assembly officiates at this diet of worship, and after sermon announces that the General Assembly will be constituted immediately thereafter, and proceeds to constitute it by engaging in prayer.

9. **Moderator for opening meeting:** By long-established practice, the Moderator of the last Assembly, if his name appear in the list of Commissioners elected by his Presbytery, takes the chair as in the meantime Moderator of the Meeting of Commissioners now convened. If his name do not appear in that list, the Pastor, or Ordained Minister, though not a Pastor, who, being named among the elected Commissioners, has more recently filled the office of Moderator of the Assembly than any other elected Commissioner, is called to preside in the meantime.

10. **Constituting of Assembly:** The person acting as Moderator at the opening of the Assembly having constituted the meeting with prayer, the business proceeds

upon the assumption, in the meantime, that the Commissions from the Presbyteries are all in due form, and that all the Ministers and Elders named in those Commissions have been duly elected. In case, however, of any vote being taken previously to the examination of the Commissions by a Committee, it is always clearly understood that the result of the vote may possibly be altered through that examination.

11. **Roll of Assembly:** The old practice of reading the whole list of the Commissioners has been abandoned, and, as a printed list of them is in the hands of all the members, the attention of members is called to the list, and corrections are invited. This is done immediately after the Assembly has been constituted. The order in which the list is printed varies from year to year, the returns from each Synod being taken in order of rotation. The membership having been thus so far ascertained, the next business is the choice of a Moderator. That choice is absolutely free. Any member may propose any Pastor or Ordained Minister, though not a Pastor, as a candidate. But the office is so important that it is felt to be inexpedient to leave the nomination to it practically uncertain till the day of meeting. By an Act of Assembly (Act V, 1938) procedures have been adopted for nominating a Moderator-Designate who is given opportunity to prepare himself for the duties of the chair. This Act requires Conveners and Vice-conveners of Standing Committees under the chairmanship of the Moderator of the preceding Assembly, to nominate persons deemed suitable and to follow through enquiries as to the acquiescence of one of them. This name is then proposed to a subsequent joint meeting of Standing Committees for their approval. The proposal of this name, therefore, by the retiring Moderator, and the seconding of that proposal by some distinguished member of the House, have thus come to be a matter of course, except on very extraordinary occasions.

12. **Introduction of Moderator:** As soon as the Moderator has been elected, it is usual for the Clerk of Assembly, accompanied by one or two Senior Ministers and Elders, to go out of the House and announce to him his election. He then comes in, accompanied by these brethren, and the retiring Moderator having made the same announcement in a more formal manner, gives to him the right hand of fellowship, and vacates the Chair, which is immediately occupied by the elected Moderator. Under present arrangements (Act III, 1989) the Moderator delivers an address at the second sederunt of the Assembly.

13. **Standing Orders:** When the Moderator has been duly installed, it is usual for the Assembly to agree to a motion adopting the Standing Orders already printed and circulated to Commissioners. The Standing Orders are not therefore formally read.

14. **Assembly Clerks:** After the Standing Orders have been held as read, it has been customary to fill up any vacancy which may exist in any office of importance to the conduct of the business, such as that of Clerk, or assistant Clerk.

The Clerks, at their appointment, solemnly promise to discharge their duties faithfully. They have salaries paid out of the funds at the disposal of the Assembly.

15. **Assembly Officer:** The General Assembly also appoints an Officer who is directly responsible to the Assembly, and promises to perform his duties faithfully. He has a salary out of the funds at the disposal of the Assembly. During the sittings of the Assembly, he is usually authorised to employ several other temporary Officers, for whom payment is provided out of the same funds.

16. **Committees to expedite business:** After the filling up of vacancies in such offices as those now mentioned, the Assembly appoints Committees to expedite the business of the House. There are six such Committees. The personnel of the first two is the same, but they meet under different Conveners. The Committees are:

16.1 **Committee on Bills, Overtures, Petitions and Commissions.** This Committee is charged to examine and report on all papers to be passed into the Assembly. The Committee's concern is with the technical validity of the documents, that is, their formal propriety, and not with the merits of matters referred to in them. The Committee also report on Commissions from Presbyteries and certificates from Kirk Sessions where appropriate. This Committee normally meets only once.

16.2 **A Committee to arrange Business.** This Committee takes note of all papers to be passed into the Assembly and recommends an order of business to the Assembly. Though the Assembly are free to order their business as they deem fit, a uniform order is usually adopted from year to year. Should the Assembly not keep within a timetable already approved the Business Committee will meet to reschedule business.

16.3 **Committee to prepare a Loyal and Dutiful Address to the Sovereign.**

16.4 **A Committee to examine Synod and Committee Records.**

16.5 **A Committee on Printing the Acts of Assembly.** This Committee identifies such findings and decisions of Assembly as are of concern to the Church at large and may be described as Acts of Assembly.

16.6 **A Committee to prepare a minute on Deceased Ministers and Elders.**

These Committees all report in due course to the Assembly. They may meet, from time to time, between sittings of the Assembly until their work has been completed and their report prepared.

17. At present the Report of the Committee on Assembly Arrangements is also taken at the first session. With this exception only business of an urgent nature will be entertained before the adjournment.

18. **Second Day:** At the first session on the second day, as already noted, the Moderator delivers his address. Thereafter the Report of the Committee on Bills etc. is submitted. If there are appeals or complaints in regular form against any of

the findings of the Committee, whether as to the regularity of Commissions or as to the technical correctness of the form of documents, these are dealt with by the Assembly at this time. If it is found that the requisite certificate from a Kirk Session on behalf of a Ruling Elder is not forthcoming when the Commission is otherwise good, the usual deliverance is a declaration that the Ruling Elder referred to cannot take his seat until the omission is supplied, but that if the certificate shall afterwards be produced his name shall be added to the Roll.

19. **Devotional Exercises:** It is usual for the Assembly to spend the first hour of the second full day of Assembly in devotional exercises. These are conducted by the Moderator and by others under his direction.

20. **Standing Orders:** Anything further as to the order and conduct of business is regulated by the Standing Orders, with the exception of the practice followed at the last diet of the sittings.

21. **Last Diet:** At that diet, after other business has been concluded, the Assembly appoints a Commission, consisting of all the Ministers and Elders who are members of Assembly, and also of one additional Minister, who is named by the Moderator. Protestations are then called for, that is, an opportunity is given to anyone to protest that some decision of an inferior Court has become final, because some party has failed to prosecute his appeal or complaint. Thereafter, the time and place for the meeting of the next General Assembly are appointed. The Minutes of that whole day's Sederunts are read and disposed of, and the Moderator declares the Assembly dissolved, in the name of the Lord Jesus Christ, the sole Head and King of the Church, and leads the concluding devotions by carrying his audience with him to the throne of grace in prayer, by giving out and causing to be sung a portion of Psalm 122, and by pronouncing the apostolic benediction.

22. **Duties of Moderator:** The duties of the Moderator of the General Assembly, apart from the opening Address are the same in substance as those of the Moderator of a Presbytery or Provincial Synod. From the place assigned to him in the Assembly's Committees, and from the circumstance that he is always, if present, elected as Moderator of the Assembly's Commission, he is practically raised to a dignity which lasts during the whole interval between the close of one meeting of Assembly and the commencement of another. But, strictly, his office has no existence after the dissolution of that Assembly which chose him to be their Moderator. During the sittings of Assembly he may be requested or instructed, as its organ or representative, to act in various ways, which circumstances may require or suggest. In the absence of the Moderator it is usual for some Minister who has been Moderator of a previous Assembly, and who is a Member of the present one, to take the Chair. If any question comes before the Assembly in which the Presbytery or Synod of which the Moderator is a member are parties, he must

of necessity vacate the Chair, which is usually taken in the meantime by some former Moderator who is a member of the Court, but not a member of that particular Presbytery or Synod. Any further particulars respecting the duties of the Moderator may be gathered from the Standing Orders.

23. **Assembly Clerk:** The Clerk of the General Assembly has the same kind of functions and responsibilities as the Clerks of other Church Courts have. But since the Assembly is the Supreme Representative Court over a widely extended Church, in practice the Assembly Clerk's duties are more extensive. All needful documents ought to be sent to him to prepare cases and documents for the Assembly, to execute the Assembly's instructions, obtaining the approbation and signature of the Moderator, when requisite; to prepare Extracts of Deliverances for parties and Committees; to transmit them or issue them after they have been certified by him as Clerk, and to have the Minutes engrossed in a permanent Record. Books and documents belonging to the Assembly are entrusted to the custody of the Clerk. It lies with him to transact business with printers and publishers on the Assembly's behalf, and, subject to the instructions of Committees of Assembly, to arrange practically whatever is required for the convenience of the Assembly or its Commission, or for accomplishing its determinations.

24. **Assembly Officer:** The Officer of the Assembly is instructed from time to time in his duties by the Moderator or Clerk, or by any Committee of Assembly authorised to that effect, or by the Assembly itself in open Court.

25. **Allowances:** The allowance to the Moderator for his expenses, as well as the salaries to the Clerk and Officer, are proportioned to what the Assembly believes to be the amount of their respective work and obligations.

26. **Legal Adviser:** The General Assembly appoints a qualified lawyer as Agent and Legal Adviser, who takes advice of counsel when necessary, for the Church.

27. **Open Court:** The General Assembly is an open Court. But when the nature of any subject before it requires it to do so, it is accustomed to meet with closed doors.

28. **Quorum:** Strictly speaking, three Members, including two Ministers form a quorum of the General Assembly, although, of course, its business is never carried on with so small an attendance.

Part II: Powers and Functions of the General Assembly

1.1 **References, Complaints, Appeals and Petitions:** As a Court of Review, the General Assembly takes up and considers References, Complaints, Appeals

and Petitions on the same principles as regulate the procedure of Presbyteries and Synods. Any rules peculiar to the Assembly in this branch of its functions may be found in the Standing Orders. No question which belongs to the jurisdiction of any one of the inferior Courts can be determined by the Assembly until it has first been dealt with, to some extent at least, in the inferior Court, and unless it has been duly brought up by Reference, Complaint, Appeal or Petition. The Assembly may, indeed, originate any question which might have been originated in a Presbytery or Kirk Session. But, if it does so, the first step taken must be to remit it to that Presbytery or Kirk Session, unless on account of some extraordinary emergency there be sufficient ground for assisting or specially instructing the Presbytery or Kirk Session, or, on account of the Presbytery or Kirk Session being under discipline, for superseding it and appointing either Assessors or a Special Commission to act in its room.

1.2 Power to Summon: It is undoubtedly in the power of the Assembly, when it sees sufficient cause, to summon any Member or any Court of the Church to appear at its bar, or at the bar of its Commission. It may also send precise orders to particular Synods, Presbyteries and Kirk Sessions, prescribing the exact course of their procedure in special cases and giving instructions or prohibitions at its pleasure, provided it keep within the ecclesiastical laws and constitution. But the spirit of those laws and of that constitution evidently requires that such exercise of supreme authority be entered upon with great caution, and only when a clear necessity has arisen.

1.3 Records of Synod: As part of its duty in the Department of Review, the General Assembly examines the records of all Provincial Synods and pronounces judgments regarding them on the same principle as that which is followed out by Provincial Synods in the examination of the Records of Presbyteries.

1.4 Transmission of Papers: In all cases of Reference, Complaint, Appeal, or Petition, appropriate Extracts and other papers necessary must be presented to the Committee on Bills, accompanied by a letter or Petition to that Committee, requesting them to transmit the same to the Assembly. This letter or Petition should be signed by some party having interest, or by some person acting for such party.

2. Constituting Synods and Presbyteries: The General Assembly has the power of constituting new Synods and Presbyteries, and of dividing or altering old ones. The Assembly also fixes the times for the stated meetings of Synods, and determines the powers of Synods and Presbyteries as regards their places of meeting.

3. Overtures: The General Assembly receives, considers, and takes action upon Overtures from Synods, Presbyteries, or Members of the House. It sometimes, of its own accord, appoints a Committee to prepare and present an Overture.

3.1 Committee on Overtures: Overtures, not originating in the Assembly itself, must be presented to the Committee on Overtures, and by them transmitted to the Assembly, before they can be considered.

3.2 Contents and Consideration of Overtures: Overtures may contain suggestions as to procedure which the Assembly has entirely in its own power, such as the appointment of Committees, and the instructions to be given to them; representations to be made to Government or to other parties; deputations to be sent on Commissions for visiting parts of the Church; Pastoral Addresses; communications to be made to other churches; or special steps competent to the Assembly to be taken with reference to any matter of interest. In considering Overtures of this kind, the Assembly acts entirely by its own authority, and comes to such judgment or determination on the subject of them as it deems suitable. When an Overture has been taken up and read by the Clerk, it is usual to hear, in the first instance, some Member of Assembly who has been concerned in introducing it, whether in a Synod or Presbytery or otherwise. But no one is called as a party, and all Members of Assembly are equally entitled to vote upon the question raised.

3.3 New Laws: Overtures which suggest the enactment of an important new law to have more or less permanent effect or alteration of a law passed under the procedures of the Barrier Act, must be dealt with by those same procedures, an account of which follows.

4. Barrier Act: Although the General Assembly is invested with the power of regulating the whole action of the Church in its Synods, Presbyteries and Kirk Sessions, still it is not regarded as having any lordly or absolutely binding authority. It is expected to act ministerially under Christ, and to carry out such rules as appear to harmonise with His own instructions in His Word. Consistently with the principles of Presbyterian Government, all reasonable means ought to be taken for keeping the action of the Assembly in accordance with the general mind of the Church, inasmuch as all the Ministers and Ruling Elders are entitled and called upon to judge for themselves as to the mind of the Great Head of the Church. Still it is held that, as Christ requires good order to be maintained in His Church, it is needful for the Assembly to act legislatively as well as judicially. But a particular course of procedure has been devised for preventing any innovation, and for securing due deliberation and harmony in the enactment of new laws, and in the alteration of old ones. An Act (commonly called the Barrier Act) was passed in 1697 through which the course of procedure referred to has arisen.

4.1 When the General Assembly approves of a proposal for fresh legislation made in an Overture or Overtures transmitted to it through the Committee on Overtures, or prepared by another Committee, according to the Assembly's

instructions, it is not permitted to pass the proposal at once into a law that shall have permanent effect. It can only agree to transmit the same in the form of an Overture to the several Presbyteries of the Church for their opinion.

4.2 Each Presbytery, in giving its opinion, must either approve of the Overture simpliciter, and without alteration, or it will be held to disapprove of it.

4.3 The Clerk of Assembly is instructed to have the Returns from Presbyteries as to their approval or disapproval of Overtures printed in a tabulated form and put in due time into the hands of Members of the next General Assembly.

4.4 The next General Assembly appoints a Committee for the purpose of collating the Returns to the Overtures transmitted and reporting to that Assembly what the result appears to be.

4.5 If it appears that a majority of the Presbyteries have not approved simpliciter of any Overture transmitted, the General Assembly may either pass from the subject or re-transmit the Overture either in the same form as before or with alterations. But the Assembly has no power to pass it into a permanent law.

4.6 When it appears that a majority of Presbyteries have approved simpliciter of any Overture transmitted, the General Assembly, if it is of the same mind as the preceding Assembly, may pass that Overture into a Standing Law of the Church. But it is a mistake to suppose that there is any obligation on the Assembly to do so or that the matter is absolutely settled through the approval by a majority of Presbyteries. That approval is simply the necessary preliminary to make it competent for the Assembly to pass such an Act. But the new legislation is effected only by an Act of the General Assembly passed through its own free and independent voice.

4.7 **Interim Acts:** If the object of an Overture transmitted to Presbyteries appears to any General Assembly as of urgent practical importance, it is competent for that Assembly, while transmitting the Overture to Presbyteries, to pass it, at the same time, into what is called an Interim Act. Such an Act has force only till the meeting of the next Assembly.

4.8 The General Assembly may remit any subject to Presbyteries for their opinion apart from the terms of the Barrier Act, when it is not proposed to found any legislative change or declaration upon the returns.

5. **Declaratory Acts:** It is competent for the Assembly to pass Declaratory Acts. These are Acts which declare what the Assembly understands the law of the Church to be. Such an Act may be passed, without transmission to Presbyteries in terms of the Barrier Act, when it is generally agreed that the declaration is in accordance with the old law. But if there is much difference of opinion on the subject, and if the point enforced is new in any considerable measure to the existing Ministers and Ruling Elders, it has been held that before the passing of

such an Act an Overture on the subject ought to be transmitted to Presbyteries in terms of the Barrier Act.

6. **Consultation:** There are some subjects in which the Assembly takes action to which the Barrier Act cannot be strictly applied, such as the rules to be observed in the administration of important funds, but to which, in some cases, it has been found expedient to apply the substance of principle involved in that Act. In such cases, the same rigidity of interpretation is not applied in judging of the Returns from Presbyteries, which is exercised in what belongs to the proper legislation of the Church.

7. **Committees:** The General Assembly has inherently the same power of appointing Committees as belongs to a Synod or Presbytery. There is a difference in the case of the Assembly, arising from the circumstances in which it meets, and its peculiar functions.

This difference appears in the appointment of two entirely different classes of Committees.

7.1 **Committees to expedite business:** The first class consists of Committees such as those to expedite the Business of the House, which report to the Assembly which appointed them and whose remit is then exhausted (see I.16 above).

7.2 **Committees for the ensuing year:** The second class are Committees appointed by the Assembly to carry on its business in the year intervening between one Assembly and the opening of another. The designation and functions of these Committees regularly appointed are given in the Standing Orders of Assembly, but when it seems opportune the Assembly may appoint *ad hoc* Committees and specify when they should report to an Assembly or a Commission of Assembly.

8. **Appointment of Collections:** Though the present method of ingathering for the general work of the Church is by setting a target or suggested sum to each congregation, the General Assembly retains the power to appoint collections for special objects if it sees fit.

9. **Dissents:** After any judgment has been come to by the General Assembly, which has not been unanimous, a member who dissents from it has the same right of entering his dissent against it as he has in an inferior Court. This dissent, in order to be received, must be tendered immediately after the decision has been pronounced and before the Assembly proceeds to any other business. If the reasons for it be given along with it to the Clerk, in writing, they are entered upon the Minute. But if they are not given in till afterwards, they are not so entered, but are inserted in a separate Record of Dissents. When a dissent has been tendered by a member immediately after the pronouncement of the judgment dissented from, it is competent for any other member or members who were present when it was pronounced to intimate his or their adherence to the dissent at

any subsequent diet of the Assembly's sittings. But no one's adherence can be received who was not present.

10. **Effect of Dissent:** The General Assembly being the Supreme Court of the Church, there is no room for any other procedure against its decisions except that of dissent with reasons. There is no room for Complaint or Appeal. By dissenting with reasons a man keeps his conscience clear from the responsibility of what he does not approve of, and his appeal goes up to the Head of the Church on high.

11. **Method of Implementing Decisions:** The General Assembly sometimes take the whole business of intimating and executing its own judicial sentences into its own hands. Most frequently, however, it remits to the Presbytery or Kirk Session of the bounds to carry out its determinations.

12. **Extracts:** Parties in cases that have come before the General Assembly are entitled to Extracts, as in the Inferior Courts. The fact that the Assembly is supreme, and that thus there is no room for Appeal or Complaint, makes a difference as to the position of parties with reference to Extracts. But with a view to the execution of the Assembly's orders and the carrying out of its objects, there is a general necessity for Extracts containing its Deliverances. Such Extracts are largely required by Church Courts, Committees and individuals. Consequently the rule in practice has come to be more liberal as to the giving of Extracts by the Clerk of Assembly than it is as to the giving of them by the Clerks of Synods, Presbyteries, and Kirk Sessions. The Clerks of the Inferior Courts are not allowed to give Extracts without the special orders of those Courts. But it is understood that the Clerk of Assembly, without any formal instructions, gives Extracts of Deliverances to all parties who have any kind of interest in those Deliverances.

No fees are charged for Extracts given by the Clerk of the General Assembly.

13. **Expenses of Assembly:** The Committee on Assembly Arrangements prepares an annual budget and draws upon the central funds of the Church to meet the expenses of the Assembly. There is also a levy on congregations, fixed from time to time by the Committee as a contribution to Assembly expenses.

14. **Appointment of Professors:** The General Assembly appoint Theological Professors and lecturers, after receiving a Report from a Standing Committee.

15. **General Trustees:** The General Assembly appoint trustees to hold property and capital funds in the name of the Church. These are called General Trustees and are appointed from the ministers and elders of the Church. Not more than three ministers may serve as General Trustees at any one time. General Trustees appointed since 1979 must retire on reaching 70 years of age. Details of the functions of General Trustees are listed in Act II, 1979.

SUPPLEMENT TO CHAPTER IV

The Commission of Assembly

1. **Relative Position:** The Ordinary Commission is appointed by every General Assembly in the manner already explained. The long-continued practice of thus appointing it has made it appear like a fixed Court in the constitution of the Church. But it is not so, and its existence in any one year depends upon the passing of a special Act by the General Assembly.

1.1 **Quorum:** The Act requires a quorum of fifteen, eight of them being Ministers, to make a valid meeting of this Commission.

1.2 **Meetings:** Present practice is the appointment of two stated meetings of the Commission each year, usually on the first Wednesday of March and the first Wednesday of October but these dates may be altered by the Act of Assembly appointing the Commission.

1.3 **Extraordinary Meetings:** The Act empowers the Commission to meet oftener than at the stated diets, "when and where they shall think fit and convenient". But no private process can be determined by the Commission except at one or other of the stated diets. It has been usual for the Moderator of the last Assembly to give public notice that there is a desire for an extraordinary Meeting of Commission at a particular place and time, when that desire has been expressed to him. Obviously the Commission may meet upon an emergency in order to fulfil the instruction to see that the interests of the Church shall not be injured by any unexpected circumstance.

1.4 **Moderatorship:** When the Commission meets, it recognises no special position as belonging to the Moderator of the last Assembly, but, being empowered to choose its own Moderator, it proceeds to an election. It usually fixes upon the Moderator of last Assembly, if he is present.

1.5 **Force of a Decision:** What is determined at one diet as to private causes, cannot be altered at another diet, but continues in force, unless disapproved of by the next General Assembly.

1.6 **Implementation of Findings:** In the particular causes and matters referred to the Commission, its sentences are final. In judging of these causes and matters, it acts as the Assembly does. But it cannot execute its own sentences. If any one of them be disobeyed, the matter must lie over till the meeting of the next Assembly. Protests and complaints may be taken against sentences of the Commission, on the ground of their being ultra vires, or contrary to law, and the matter may be brought up to next Assembly. But no such process will justify

disobedience in the meantime. If the Commission appears to have exceeded its powers, the next Assembly may censure those who have concurred in the sentence or sentences involved. If it appears to have acted in any way contrary to the Acts or Constitution of the Church, the next Assembly may overthrow and reverse its procedure.

1.7 Initiation of Action: The Commission cannot take up any cause or matter which has not been specially referred to it by the General Assembly, except when anything of public interest occurs, which is of general concern to the whole Church. In this case, it is instructed to advert to the matter, and to see that the Church does not suffer or sustain any prejudice which it can prevent, as its members shall be answerable.

1.8 Record: The proceedings of the Commission must be carefully recorded, and the Record must be submitted to the Assembly for examination. The Clerk of Assembly is also Clerk to this Commission. The Commission is required to appoint at each of its Meetings a Committee to revise the Minutes of that Meeting, and when the Minutes have been revised, extracts can be given by the Clerk.

2. Special Commissions: From the account now given of the origin and constitution of the Ordinary Commission, it may be easily seen that, in the exercise of the same power by which the General Assembly appoints it and gives to it the functions which it exercises, the Assembly may appoint Special Commissions at its pleasure. Extraordinary difficulties in particular causes, and extraordinary emergencies in the state of the Church or the country, may justify, and have justified, the exercise of this power. But it ought not to be had recourse to lightly, and the employment of it ought to be jealously watched. For any method of procedure which in the smallest degree supersedes the ordinary action of the ecclesiastical constitution, appears dangerous, on Presbyterian principles, if it is carried at all beyond what the good of the Church demands.

3. Extracts: The Clerk of the Assembly is expected to act in the same way regarding Extracts in the case of the Ordinary Commission as he does in the case of the Assembly itself. Any questions as to Extracts in the case of Special Commissions must depend on the terms of their appointment.

CHAPTER V

DISCIPLINE

Part I: The Nature, Purpose and Scope of Discipline

1. **Scriptural Character:** Any institution or society which is to function effectively must be well ordered: it must have recognised means of correcting aberrations which threaten its integrity. This is true pre-eminently of the Church of Jesus Christ whose witness in the world depends so intimately on the godly behaviour of its members. If the membership of the Church constitute "an epistle of Christ, known and read by all men", care must be taken that what is exhibited is a life-style consistent with and authenticated by the word and example of Jesus Christ. Christians have a duty of mutual encouragement and watchfulness to ensure that the obedience of faith is maintained and that any whose conduct may bring reproach upon the name of Christ may be warned, corrected and recalled to conduct becoming the faith. The processes of warning, correction and restoration are what are usually described under the heading of discipline.

2. **Aims:** The ultimate and overriding aim of discipline is always the glory of God. The immediate aim as it concerns the Church is its own purity before God, that the Church have the purity and "chasteness" that belong to the Bride of Christ. As it concerns any person who may be the subject of Church discipline, the aim is evangelical, redemptive, restorative. In loyalty to Christ and in the spirit of love, effort is made to win the erring to repentance and to restore to the fellowship of the Church. So assurance of the continuing love of God is conveyed to the penitent, for there is no security in love which is morally indifferent, and there is no security in love which does not desire and seek the purifying of those to whom it is directed.

3. **Administration:** Discipline is part of the function of ministers and elders as those called to bear rule in the Church of Christ. It must be administered in the spirit of loving concern for the recovery of any that are "out of the way". Distress and sadness there may be, but there ought never to be a spirit of bitterness. Those who endeavour to apply discipline must always remember that the important thing is not the winning of an argument but the making safe of one who has become endangered and whose predicament also menaces the fellowship of the faithful. There is no place for a spirit of rivalry in any disciplinary process. That a spirit of meekness and fear should characterise those embarking on a disciplinary action the apostle emphasises: "Consider thyself also in the flesh". No-one dare indulge a "holier than thou" attitude. The hurt of one Christian is the hurt of all and directs all to the only effective Healer, our Lord Jesus Christ.

4. **With whom it deals:** Church discipline is concerned with those who belong to the Church as baptised or communicant members. Besides, the Church has a duty to all and specially to those in regular attendance at worship services, to testify "of righteousness, temperance and judgment to come", but this is not strictly within its disciplinary function.

5. **With what it deals:** Discipline is Biblically based and this implies that no action or conduct can be regarded as censurable unless it is so declared in Scripture. The consciences of people cannot be bound by anything but by the word of God who alone is Lord of the conscience. Nor does every breach of Biblical principle justify formal disciplinary action by the Church, for the purpose of discipline is not to pry into the privacy of each person and family. Only such misbehaviour as brings open reproach on the name and cause of Christ and occasions public scandal is to be matter of discipline. Public teaching and pastoral counselling will remind all concerned of the need to maintain godliness of life in private. Discipline is concerned with what obtrudes into public life.

6. **Private Conference:** The need of formal process may be obviated by private counselling by pastor and ruling elder where breach of Christian conduct has not been flagrant and has not become common knowledge to the prejudice of the Christian fellowship. This procedure accords with our Lord's counsel recorded in Matthew 18:15 and is often effective in disarming resentment and resistance and in winning the errant one to repentance and carefulness of conduct.

7. **Time Limit:** Inquisitorial procedure is further discouraged by recognition of a limit of time. To be effective discipline should be applied without undue delay and it is generally accepted that it is not helpful or edifying to initiate a case after the lapse of five years, unless the alleged misconduct was of a very flagrant nature or is being repeated. (See *The Form of Process* 1.4).

8. **Finality of Judgments:** Due regard must always be had to the delicacy and difficulty attending processes of discipline. Mishandled cases can cause more damage and scandal than the alleged misconduct which originated them. Church courts are liable to mistaken judgments but the principle must be acknowledged that once a final decision has been pronounced in proper form the case cannot be re-opened except on the presentation of new evidence of which the responsible Court was not aware. (In the case of courts under the General Assembly, the decision is final if it is not complained or appealed against). In the ultimate analysis judgment must be left to the Most High. In the human situation there are dangers of miscarriage either way, but when the case has been finalised the finality of jurisdiction for this present time has to be accepted.

9. **Different from civil procedure:** The difference between Church discipline and the judicial proceedings of the State is highlighted by the fact that the Church is concerned with the moral and spiritual well-being of its members. Act XXVIII, 1978 of the General Assembly draws attention to this. "It should be recognised that Church discipline is not precisely of the same order as civil, and the Church cannot therefore divest itself of the responsibility of ascertaining facts and their relevance. No proceedings or judgment of a civil (or criminal) court can be regarded as a substitute for due ecclesiastical process, though such judgments may help in determining whether a process is required. Church courts must form their own judgments independently of proceedings in other courts".

Part II: General Procedures Applicable in all Church Courts

1. **Jurisdiction:** When allegations of misconduct against a member of the Church arise the necessary enquiry and procedure must be undertaken by the Church court which has immediate pastoral responsibility for the person concerned. In most cases this is the Kirk Session of the congregation to which the member belongs. In the case of a minister it is the Presbytery of which he is a member or to which he is accountable by Act of Assembly, and in the case of a Probationer, the Presbytery to which he is responsible. If the alleged misconduct involves more than one person belonging to different congregations, the Kirk Sessions concerned must agree as to which will deal with the matter. The intervention of superior courts may be necessary if the Sessions cannot agree, but the time lapse involved in such cases could be prejudicial to the interests of good discipline. If one of the people against whom allegations are made is a minister, the Presbytery concerned must take up the case and in due course advise the Kirk Session having responsibility for the other person(s).

2. **Preliminary Action:** When information that seems to necessitate disciplinary action is brought before a Church court certain issues must first be settled:

- (1) Does the information conveyed allege conduct injurious to the Christian fellowship?
- (2) Has the information come from a reliable source?
- (3) Is this the court that should take action or should the information be passed to an inferior or superior court?

3. **Notification:** Once a Church court has decided that the information given to it requires formal action on its part it must, prior to discussing the substance of the case, notify everybody concerned and require them to attend a meeting of the court to be held at a specified time and place. In fixing time and place due regard must be had to the convenience of those required to attend. Among those who should be required to attend are not only the person(s) accused but those who make the accusation, those who may be deemed to bear witness to the allegation and any named by the accused person whom he is persuaded can bear witness on his behalf

4. **Rumour or Fama:** In some cases it is not possible to specify accusers at whose instance allegations are to be investigated. The court may be aware of public rumour detrimental to the good name of the Church involving someone under its pastoral care. It may decide that the vindication of truth and honour require it to act. Sometimes, the person concerned, having become aware of injurious rumours, may request investigation by the court in hope of vindicating his character. The investigation of rumour (or *fama* as it is called) is notoriously difficult because though rumour may be rife people may be unable or unwilling to bear relevant testimony. But the undoubted difficulty does not absolve the Church court from endeavouring to arrive at the truth.

5. **Citation:** The method by which Church courts require the attendance of people involved in a disciplinary process whether as accused, accusers or witnesses is called citation. There are two kinds of citation (Act XXVII, 1978).

- (1) One is delivered openly in the court to those involved who are present at the time when it is resolved to cite. This is known technically as a *citation apud acta* and the fact of it being pronounced should be duly minuted. This citation is peremptory and does not have to be repeated as all present are aware that it has been issued.
- (2) The other citation is a formal written summons requiring attendance at a Church court, and delivered to the person named or to his/her dwelling and the fact of its being so delivered duly certified. Such certification may be made by someone appointed by the court to deliver the citation or by use of Registered Mail or recorded delivery using the facility which involves official notice from the Post Office that delivery to the address

has been made. When the Court is ready to proceed with the case and has been satisfied that all citations have been duly delivered it calls all parties concerned before it.

6. **Second and Third Citation:** If a person duly cited in writing does not appear at the time and place specified, a second citation should be served in the same manner as the first and if the second citation proves fruitless a third should be issued.

7. **Contumacy:** It may be that a person duly cited, either *apud acta* or three times in writing, fails to appear or to give a satisfactory reason for non-appearance. In such a case he is liable to censure for contumacy. Contumacy is deliberate defiance of the authority of a Church court. If it occurs in a case before a Kirk Session, it requires reference to Presbytery owing to its gravity.

8. **Trial in Absence:** Though persistent failure to appear when duly cited makes an accused person liable to censure for contumacy, this non-appearance need not prevent the court considering the evidence before it and coming to a verdict on the original accusation.

9. **Initiation of Process:** A process of discipline is usually initiated when information alleging misconduct by someone under the direct care of the court is submitted and the person submitting the information is expected to formulate and present a charge of misconduct. But even if this person refuses to press the charge the court may decide that there is a case to answer and so formulate the charge itself. This is, in some respects, similar to the investigation of *a fama* noted above (4).

10. **Confession:** It may happen that a person who has knowledge that a charge of misconduct is to be brought against him or that *a fama* concerning him is about to be investigated, comes voluntarily to the court to confess to conduct offensive to Christian standards. On the other hand such a person may appear to demand that the court investigate *a fama* prejudicial to his good name.

11. When a person appears before the Court to make confession as noted above, the Court must carefully consider not only the nature and extent of the confession — whether or not it covers the total accusation — but also the state of mind of the person confessing. If what is confessed requires censure this should be tenderly and compassionately applied. If the court is persuaded of the penitence of the confessor, it may also ministerially in the name of Christ absolve the offender from the scandal of his sin (see III.2.27 below).

12. **Notice to Accused:** Before actually considering a charge of misconduct with a view to reaching a verdict the court must inform the person accused of the nature of the charge, of the evidence on which it is based, and of the witnesses who are to give testimony. This must be given in good time so that the person concerned has adequate time to prepare his defence and to give notice of witnesses whom he may wish to be cited by the court.

13. **Attendance of Witnesses:** It is obvious that courts of the Free Church of Scotland can only bring moral suasion to bear on people outside the Church to attend as witnesses. In the case of those who belong to the Church the Court can require their attendance under pain of being regarded as contumacious if three citations be refused.

14. **Objections as to Relevancy:** At the very commencement of formal proceedings and before any witnesses are heard the person accused may object to what is called the relevancy of the charge as stated. The essence of such an objection is the claim that the conduct referred to in the charge is not, in fact, in breach of a principle of Scripture.

15. **Competency of Witnesses:** The person accused may also at the initial stage object to the competency of witnesses. He may be able to demonstrate that some witnesses do not understand the charge, or are known to be prejudiced against him. If the court is not satisfied as to the reliability of witnesses cited, they should be dismissed.

15.1 **Criteria of Competency:** The basic requirements of competent witnesses are:

(1) Capacity: that they are able to understand the facts to which they bear testimony.

(2) Honesty: that they can be relied on to give objective testimony.

(3) Opportunity: that they were in a position to witness the facts they testify.

16. **Record of Testimony:** It is important that the testimony given by a witness and his responses to questions are accurately and fully written down and the account subsequently read and subscribed by him. To accomplish this the court may deem it necessary to appoint a competent person as assistant to the clerk. If a witness cannot write, this fact should be noted and the deposition signed by the Moderator.

17. **Taking of Proof:** Proceedings throughout must be orderly and allow each interested party to state their case fully. It should allow also for the cross-examination of witnesses. Witnesses are dismissed when their examination is finished.

18. **Determination of Decision:** When the Court has heard all the evidence submitted, it proceeds to review the whole case with a view to a decision. It is important that the decision be arrived at solely on the basis of evidence already heard. New evidence may not be introduced at this point. Before commencing this review the court temporarily dismisses parties and if the meeting is in private they must vacate the room. Parties who are otherwise members of the court must also withdraw at this stage. "Parties" includes accusers and accused and they are recalled to hear the judgment of the court.

19. **Dissents from Decision:** When the Court has come to a decision any member who has listened to the pleadings and whose conscience is aggrieved by

the decision may there and then register a dissent, or a dissent and complaint. Dissent and complaint will prevent the carrying out of the Court's judgment. Parties are then recalled and so informed and cited *apud acta* to appear before the Superior Court. There is no occasion for any further citation provided the fact of the citation *apud acta* is duly minuted.

20. **Dissent and Appeal from Decision:** When the judgment of the Court as announced to parties recalled it is competent for any one of them to register dissent and appeal to the Superior Court. Such appeal will prevent the carrying out of the judgment of the Court and parties will be cited *apud acta* to appear before the Superior Court.

21. **Guidance to Parties:** At all stages parties should be guided by the court as to correct procedure and their rights. When therefore judgment is announced with the information that a complaint has been lodged, parties should be informed of the possibility that the complaint may be abandoned. This may affect decision on their part to appeal.

Part III: Processes which are the responsibility of the Kirk Session

1. Procedures in Minor Cases.

1.1 **Initiation of Process:** It is normally the duty of the Kirk Session to initiate a process of discipline affecting the membership of the congregation apart from the minister. Membership includes baptised and communicant members who adhere to the congregation.

1.2 **Private Counsel:** As noted in 1.5 not every breach of Christian standards necessitates formal disciplinary action by the Kirk Session. Single acts of misdemeanour which are not in themselves or by attendant circumstances both excessively grave and public may best be dealt with by private counsel by minister or elder so as to elicit from the person concerned an acknowledgement of wrong, a confession of sorrow, and a promise to avoid repetition of the error. Among lapses that may be dealt with in this way are single occasions of alcohol or drug abuse, violation of the Lord's Day, theft and intemperate speech or behaviour. It still remains that circumstances may so aggravate single acts of the transgressions listed as to render more formal process appropriate and necessary.

1.3 **Admonition:** When with regard to the kind of transgressions listed above it is deemed fitting to cite a person to a meeting of Kirk Session, or when a person voluntarily presents himself before the Session admitting either guilt or the veracity of rumour alleging guilt, it is sufficient that he be formally admon-

ished or rebuked by the Moderator of Session. If the Session is persuaded that the person concerned is penitent and resolved to avoid such action in future, no suspension from sealing ordinances need be imposed.

1.4 Formal Process: If the Kirk Session have information of, or there is public rumour of, breaches of Christian behaviour of the type referred to in 1.2 above and the person concerned professes innocence when privately met by minister or elder, the Kirk Session must proceed to a formal process. This involves formulating distinctly the charge of misbehaviour. This, together with the names of witnesses and a note of any other documentary or material evidence to be considered, must be furnished to the person accused. He must also be cited to appear before the Session on a date which will allow time for him to prepare his defence and establish contact with witnesses whose testimony may be helpful to him. He may request the Kirk Session to cite these witnesses to appear.

1.5 Objections as to Relevancy: A person cited to answer such an accusation may object that what is laid to his charge is not, in fact, a breach of Biblical requirement. This is known as objection to the relevancy of the charge and obviously this objection must be given priority of consideration. If this objection is overruled, the case may proceed. Objection may then be raised as to the sufficiency of the evidence to establish the validity of the charge and this objection must be carefully considered. If the first objection is sustained the case must be dismissed. If the second objection is sustained the charge must be withdrawn. But if the Session is convinced of the relevancy of the charge and of the sufficiency of the evidence, they resolve how to deal with the person concerned. Usually in the case of these breaches of good order a rebuke by the Moderator suffices, but only if the Kirk Session is satisfied with regard to the penitence and promise of amendment on the part of the transgressor. In the stress of the moment this may not be forthcoming and the Session may allow time for reflection. But if after due reflection there is still no expression of sorrow or promise of amendment, the Session may suspend the person concerned from sealing ordinances.

1.6 Recurrence of Offence: If a person formally rebuked but not suspended from sealing ordinances under the procedures noted above appears to breach the profession and undertaking given, or is reported to have committed the same or a similar offence, he should be duly cited to appear before the Session when, if deemed guilty after due process, he must be suspended from sealing ordinances.

1.7 Condition of Restoration: It is not uncommon for a Session to put a limit of time upon a suspension from sealing ordinances. But restoration to privileges is not to be deemed automatic upon the expiry of the time indicated. Restoration is always to be based on the Session's conviction of the genuine repentance and amended life-style of those concerned.

1.8 **Time Limit:** The "five-year rule" referred to in 1.7 has special reference to the kind of misdemeanour dealt with thus far. In cases of a more heinous nature the Kirk Session must weigh very seriously the necessity or otherwise of initiating action.

2. Procedures in More Serious Cases.

2.1 **Necessity for Formal Process:** There are actions which, even in their single occurrence, if laid to the charge of a member of the Church, bring the Church of Christ into public disrepute. Most frequently they involve breaches of the seventh commandment. Such actions, when duly brought to the attention of the Kirk Session, necessitate formal process on its part. This does not prevent personal and private interview by the minister and/or elder as a first step. Such interview may indeed help to simplify formal procedures before the Kirk Session.

2.2 **Caution in Entertaining Accusations:** In the nature of the case accusations of overt breach of the seventh commandment are difficult to pursue when no child has been conceived. This fact obliges the Kirk Session to be very cautious about entertaining such accusations. There must be considerable *prima facie* circumstantial evidence and/or a very widespread public sense of scandal.

2.3 **Censurable Actions:** Whilst some forms of behaviour which occasion public opprobrium may not be in themselves blameworthy, they may be sufficiently imprudent and injudicious as to warrant private admonition. On the other hand some actions which fall short of actual sexual union, may be as offensive as illicit union, and therefore equally censurable.

2.4 **Awareness of Outcome:** The Kirk Session must bear in mind from the commencement of a process dealing with allegations of fornication or adultery, or actions equally censurable, that the outcome where guilt is deemed to have been established must be suspension of the guilty from sealing ordinances.

2.5 **Confession:** It may happen that persons who have engaged in illicit sexual union are so stricken in conscience that they voluntarily appear before the Kirk Session to confess their sin and seek absolution from the scandal. In such cases the Kirk Session may conclude that they have virtually already suspended themselves from sealing ordinances without formal sentence of the Session. In such cases the Kirk Session, in granting absolution, should consider whether suspension should there and then be terminated, or whether the maintenance of good order in the community requires that suspension be continued for a time.

2.6 **Ante-nuptial Fornication:** Voluntary appearance before the Kirk Session of the kind referred to in the preceding paragraph is most likely when the confession made is of ante-nuptial fornication. This, though a grievous violation of God's law, is less heinous than casual or promiscuous indulgence in sexual intercourse. In such cases the Kirk Session must take all the known circumstances into account and regulate the course of discipline by what they see to be required

for the good of the parties, the honour of Christ, the purity of the Christian fellowship and the edification of the Church. These considerations will determine the frequency of conference with those concerned, the method of applying rebuke — whether public or private — the duration of suspension and the time of pronouncing absolution and restoration of privilege.

2.7 Investigative Committee: When an accusation of moral misconduct is brought to the attention of the Kirk Session — either by a person or persons accusing, or by a known *fama* — they should make preliminary enquiry as to the facts before formulating a specific charge. This may be most effectively done by the appointment of a committee to interview people concerned and to make a preliminary assessment of the evidence. The committee should report to the Session the facts as made known to them so that the Session may decide whether to prepare a formal charge. Alternatively the Kirk Session may require the accuser(s) formally to specify the charge and detail the evidence.

2.8 Notice to Accused: If the Session resolve that there is a case to answer and are prepared to formulate a charge or entertain a charge formulated by others, they must proceed in terms of II.12 above by duly notifying the accused person of the charge, supplying a note of the evidence and the names of witnesses and citing the accused to appear in due course before the Session.

2.9 Objection to Relevance: Objection may be entered against the relevancy of the charge, and/or the sufficiency of the evidence, and this must be disposed of before further proceedings ensue (see III.1.5).

2.10 Rights of Accused: It is necessary to recognise that though in some cases people may so co-operate with the Kirk Session as not to require formal citation to ensure their appearance, no one can be censured for non-attendance unless a regular citation has been duly received. Similarly, though it may happen that evidence given to a Committee may be unchallenged by the person accused who may be willing to submit to the judgment of the Session, in any case of difficulty it is necessary to proceed according to strict rules of citation and examination. No member of the Church can be deprived of his privileges except by the establishment of his guilt with reference to a relevant charge proved by competent evidence before a competent Court and by means of a regular and fairly conducted trial.

2.11 Jurisdiction: Some charges of moral delinquency involve more than one person, for example, a charge of fornication or adultery, and in such cases it is proper to deal with both parties at the same time before the same Kirk Session. If one of the persons involved is a minister or probationer, the procedure indicated in II.1 applies.

2.12 Cases involving more than one Session: It is obvious that in cases involving a plurality of Kirk Sessions it is best that agreement be quickly reached between them as to which will deal with the case. By long-standing practice in the

case of fornication the Kirk Session which is responsible for the pastoral care of the woman deals with it. Where Kirk Sessions cannot agree as to which should be responsible for the disciplinary process they must each refer the case to the Presbytery and if necessary onwards to Synod and General Assembly, until the Court is reached which can issue directions to both Sessions. The delay involved in such procedures cannot but be prejudicial to the interests of all concerned and this underlines the importance of Kirk Sessions agreeing among themselves as to which Court is to entertain the case.

2.13 Citation: The Kirk Session which is to proceed with a case involving people from other congregations must inform the Sessions concerned and request them to cite their members to appear before it on a specified date. This procedure applies also to the citation of witnesses.

2.14 Examination of Absent Witnesses: When it is ascertained that a witness cannot attend, the following procedure is in order. The Session may appoint someone to interview the witness. This person will be accompanied by a member of Session and by the accused person or someone nominated by him. The testimony of the witness and the answers to questions put by those interviewing will then be recorded (duly attested in writing and or on tape) and this record will be considered by the Kirk Session when dealing with the case with a view to coming to a judgment.

2.15 Overseas Witnesses: If a witness cannot attend because of residence overseas the rules for procuring evidence should follow the general arrangement which obtains in the State Courts, of which a note is given in an appendix to this chapter.

2.16 Voluntary Confession: In any case where, prior to the birth of a child, one person voluntarily appears before the Kirk Session confessing to the sin of fornication and naming the partner, it is deemed best to delay formal proceedings until after the birth of a child. This procedure enables the Kirk Session to exercise great caution when investigating such a confession which is not in due course followed by a birth.

2.17 Naming of Father: It is required that a woman who confesses to have committed the sin of fornication or adultery with regard to the birth of her child, shall name the father that he may also be subject to the discipline of the Church. If the woman refuses to name the father she is deemed to be contumacious. If she claims not to know who the father is, the advice of Presbytery must be sought.

2.18 Assessment of Character and Evidence: In bringing an accusation against a man, a woman is required to furnish some *prima facie* evidence in support of her accusation, especially if the man denies the accusation. In such cases the character of the woman and the man is of great importance and must be duly considered by the Kirk Session.

2.19 Co-accused outwith Free Church: If a woman confessing guilt names as father a man who does not adhere to the Free Church of Scotland, the Kirk Session must endeavour to obtain confirmation of the fact from him, and this information should be given to the Kirk Session or ruling body of the congregation to which he belongs — if indeed he adheres to any Church fellowship. Only after a serious effort has been made to obtain confirmation of the woman's averment can the Kirk Session consider the propriety of absolving her from the scandal of her sin.

2.20 Oath of Purgation: In an extreme case a man who wishes to protect his innocence in face of an accusation may request to take a very solemn oath in presence of the Kirk Session. This is called the *Oath of Purgation* and is to be resorted to only in very serious circumstances and never without the authority of Presbytery. No court should press any person to take this oath: they should consent to a persistent request only after the solemnity of the act has been duly emphasised and recognised. (The suggested text of the oath appears in the *Form of Process* IV:7).

2.21 Recording of Documents and Evidence: When a formal trial before a Kirk Session is begun all documents admitted must be listed in the record and kept *in retentis*. The statements of witnesses and their answers to questions must also be recorded and kept *in retentis*. It is permissible and may be expedient for a Kirk Session to record these proceedings in a separate minute book but this action must be authenticated by reference in the ordinary minute book. The same rules apply to the keeping of the separate record as to the ordinary.

2.22 Objections to Admissibility: As noted in II.15 objection may be entered as to the admissibility and credibility of witnesses. The Session must consider such objections and either sustain or overrule them.

2.23 Cross-examination: An accused person has the right to cross-examine witnesses testifying against him, always subject to the Session's agreement as to the relevance of the questions in cross-examination.

2.24 Solemn Assurance: People giving evidence before a Kirk Session may be required to give a solemn assurance that they will speak the truth, that they have no malicious motive and are not knowingly biased. Such solemn assurance is accepted as equivalent to an oath, and all evidence received should be given on that understanding.

2.25 Censures: When a Kirk Session concludes that an accusation of improper conduct has been proved, they may come to a judgment as to the censure appropriate in the case. Censures vary in their gravity according to the nature of the offence committed. Four distinct types of censure are identified:

- (1) **Admonition** is the lightest form of censure and involves affectionate counselling against sin and exhortation to more careful and worthy conduct.

- (2) **Rebuke**, which is a more serious censure, may be administered before the Kirk Session or the congregation.
- (3) **Suspension from privileges**, that is, denial of access to the Lord's Supper and to the privilege of baptism of an offender's child, sometimes referred to as the Lesser Excommunication may be imposed for a stated time or indefinitely according to the disposition at the time of the person adjudged to be at fault. Even in the case of a fixed term of suspension, restoration to privileges is not automatic, but depends on the Session being persuaded that the offender is truly penitent.
- (4) **Excommunication** is the gravest censure and is applied only where the offender is deemed utterly recalcitrant and defiant. It is commonly referred to as the Greater Excommunication and involves the removal of the offender's name from the Communion Roll and the declaration that he/she is no longer a member of the Church of Christ. Yet even so, this censure is intended to awaken the conscience of the offender so that he/she in penitence may seek the mercy of God and in due time be restored to the fellowship of the Church of Christ. This censure cannot be pronounced on a Kirk Session's sole authority. It requires the authority of Presbytery (see *Form of Process* VIII).

2.26 Suspension from Office: While an accusation of improper conduct is being investigated by the Kirk Session it is held that the person concerned should not partake of Church privileges. An office-bearer charged with misconduct must relinquish the duties of office. Even in the earlier stages of investigation prior to the formulating of a charge, he should consider himself relieved from duty. This relinquishment of duty, though usually referred to as suspension from office, is not in fact a censure. It is merely recognition of what is appropriate in the circumstances.

2.27 Absolution and Restoration: When a Kirk Session deems it proper to restore to privileges a person deprived in accordance with its decision, it declares him to be absolved from the scandal of his sin. In pronouncing absolution the Church acts ministerially in the name of Christ. The Church does not arrogate to itself the power to forgive sins, this being a prerogative of God alone. But by the authority of Christ the Church gives assurance of His pardon to those who in true penitence seeks it from Him.

2.28 Reference to Presbytery: Before pronouncing judgment in cases of extreme gravity coming before them, a Kirk Session must refer them to the Presbytery for advice. In the past these cases included, incest, adultery, a third instance of fornication, flagrant heresy or schism, contumacy, a woman's professed ignorance of the paternity of her child and any case requiring pronouncement of the Greater Excommunication. In present circumstances there

should be included charges relating to homosexual behaviour, child abuse falling short of actual incest and serious marriage breakdowns. A request by any accused person to take the Oath of Purgation must also be referred to Presbytery.

2.29 Presbytery Instructions: All such references when resolved upon should be accompanied with a citation *apud acta* to bring all parties before the bar of Presbytery, but Presbytery should, in addition, notify parties which it may wish to appear. As Presbytery usually refers the matter back to the Kirk Session with instructions or with authority for the Session to proceed as it deems just and proper, failure of anyone to appear in obedience to the citation *apud acta* is usually overlooked. Cases referred back to a Kirk Session must be dealt with according to instructions given by Presbytery, or in default of instructions according to the procedures noted above.

2.30 Baptism of child of person under discipline: A request for the baptism of a child, one of whose parents is the subject of discipline, should be dealt with at the discretion of the Kirk Session. It may be possible to grant the request on the responsibility of the other parent, or of a sponsor adjudged suitable by the Kirk Session.

2.31 Fugitive from Discipline: If a person who is subject to a disciplinary process or is under suspension absconds he is deemed to be a fugitive from discipline and his name may be removed from the Communion Roll.

2.32 Dealing with Defiant: If a person in the course of a disciplinary process behaves in a disrespectful or defiant manner the Kirk Session may suspend the process until he is brought to a better frame of mind.

2.33 Lawyer as Friend: No lawyer is allowed access in that capacity to a meeting of Kirk Session dealing with a case of discipline. On the understanding that no payment of fee or expenses is involved the person whose conduct is being questioned may be allowed to have a friend sit with him but not to take part in the proceedings. In very special circumstances the Kirk Session may allow a friend to act for the person concerned.

2.34 Charges against an Office-Bearer: If an accusation of misconduct or a rumour to that effect concerning an Elder or Deacon is before the Kirk Session, a preliminary effort must be made to ascertain what weight should be accorded to it. This will involve interview by the minister and at least one elder of those making complaint or of those thought to have knowledge of the facts underlying a rumour. The office-bearer concerned should at an early stage be informed of the accusation and of the result of the preliminary enquiry. If he is able to demonstrate that the accusation is false or frivolous or that the rumour is groundless, the enquiry should be terminated. If he cannot do so and his explanations do not satisfy the Kirk Session, then formal procedure as indicated above must be initiated. At this stage the office-bearer will be relieved of the duties of his office. If after due procedure

the accusation or rumour is held to be well founded he may be suspended from Church privileges and this involves suspension from office, or he may be excommunicated and this involves deposition from office, or he may be suspended from office for a period without being deprived of Church privileges.

2.35 Degree of Publicity: It is within the discretion of the Kirk Session to determine what degree of publicity should be given to a judgement passed upon an office-bearer. The Session must take account of the degree of publicity attending the offence and assess what will contribute to general edification.

2.36 Reponement: Though it very rarely happens, it is allowable that a deposed office-bearer may be reinstated when there is evidence of genuine repentance and it is deemed that his reinstatement could best serve the interests of the congregation.

SUMMARY

This is merely a check list for procedures. It is not detailed and the section references are not exhaustive.

Where accusations or public rumour of misconduct are brought to the attention of the Kirk Session:

1. The minister and/or elder should interview the member concerned. If they are satisfied that there is no case to answer, the matter is terminated. If a minor misdemeanour is confessed, it may suffice to counsel the person concerned to more careful behaviour in future. If the case appears more serious, the person may be invited to meet the Kirk Session and there be admonished (see I.6; III.1.2).

2. If the information received indicates that there is serious public scandal, the soundness of the information must first be checked. The member concerned should be acquainted with the information, and if this leads to a confession of guilt he should be brought before the Kirk Session and a formal judgment pronounced (see II.2; III.1.3).

3. If the member concerned denies the allegations but the information received appears to support them, then all parties must be cited to appear before the Kirk Session. The alleged offender must be informed of the nature of the evidence and of the witnesses who will be called (see II.3; III.1.4).

4. The Kirk Session must formalise any charge and must be sure that the offence is censurable on Scriptural grounds (I.5; III.1.4).

5. Due time must be given for the appearance of parties. The accused person may require witnesses in his support to be cited by the court. When the case is being formally tried he may cross-examine witnesses (see II.12; III.2.23).

6. The Kirk Session, having heard all parties and considered all evidence, should come to such judgment as suits the gravity of the case (see III.2.25).

Part IV: Processes which are the Responsibility of the Presbytery

1. Review Procedures.

1.1 **Complaints and Appeals:** Presbytery must deal formally with cases of Complaint or Appeal from decisions of a Kirk Session. Parties should have been duly cited *apud acta* by the Kirk Session at the time when complaint or appeal is entered. Though it is the responsibility of complainants and appellants to secure the necessary extracts of minutes and forward them to the clerk of Presbytery with reasons attached, it is usually considered acceptable if all papers are transmitted by the clerk of Session to the clerk of Presbytery. This, however, does not relieve the complainants or appellants of the need to ensure that documents have been duly forwarded.

1.2 **Review of Procedures:** If the matter which has occasioned a complaint or appeal be one which would in due process come before Presbytery in any case, Presbytery need not critically review the actual procedure in Session except in so far as it may appear appropriate to censure the complainant and/or appellant.

1.3 **Authority of Session:** Presbytery is to have due regard to the proper authority of a Kirk Session in dealing with matters rightly within its jurisdiction, and should be very careful to avoid actions which might be deemed to prejudice or undermine the authority of the Kirk Session. Only when the interests of justice so dictate should Presbytery interfere with the actions of the Kirk Session.

1.4 **Correction of Errors:** Should a Presbytery in reviewing a case brought before it by complaint, appeal or reference, perceive errors of judgment on the part of the Kirk Session they should give clear instruction as to how these are to be corrected. If admonition of ministers and elders concerned is deemed appropriate, this may be done in private.

1.5 **Censure of Parties:** If a Complaint or Appeal is judged frivolous or is deemed to be evidence of a litigious spirit, Presbytery may direct the Kirk Session to censure those concerned, even in a case where the Appeal is sustained.

1.6 **Sisting of Procedure:** Whilst an Appeal or Complaint is pending in regular form before a higher Court the decision of the Kirk Session may not be put into effect.

1.7 **Matters necessarily referred to Presbytery:** A list has already been recorded III.2.28 of cases which must be referred by Kirk Session to Presbytery. In these cases, though a Presbytery is entitled to assume that parties have been cited *apud acta* and so should be present, it may be in the best interests of all concerned that Presbytery itself cite parties afresh to appear on a specified date, if Presbytery is resolved to carry the case through to a termination. This action is not necessary

if Presbytery resolves, as is usually deemed best, simply to give instructions to the Kirk Session as to how it should proceed. In this way the responsibility of the Kirk Session is fully acknowledged.

1.8 Removal of Censures: Censures imposed by a Kirk Session upon instruction by Presbytery cannot be removed by the Kirk Session except by authority of the Presbytery.

2. Processes Originating in Presbytery.

2.1 Responsibility for Ministers and Probationers: Ministers who are members of Presbytery are subject to the discipline of the Presbytery which is the court having primary jurisdiction over them. This rule applies also to resigned ministers resident within the bounds of the Presbytery (Act XIII, 1990). It applies also to Probationers resident within the bounds. Ministers who have resigned their charges and are resident outwith the bounds of any Presbytery of the Free Church of Scotland remain under the jurisdiction of the Presbytery within whose bounds they last resided (Act XVI, 1994).

2.2 Concern in Discipline: However distasteful and distressing it may be for a Presbytery to initiate a process against one of its ministers, the overriding consideration must be the honour of Christ and the purity of His Church. No serious allegation against a minister's conduct that breaches Biblical norms and impinges the good name of the Church, is to be overlooked.

2.3 Caution in Discipline: On the other hand, as by the very nature of his work a minister is vulnerable to accusations of misconduct, a Presbytery must exercise great care and prudence before itself originating or encouraging others to originate a formal process.

2.4 Allegations not necessarily requiring formal process: It may happen that allegations made to Presbytery against a minister do not relate to immoral conduct but to doctrinal pronouncements by him deemed to be unsound, or to practices that are deemed prejudicial to the good order and peace of the Church. In such cases the Presbytery must be careful to assess the knowledge and understanding and the known and avowed principles and motives of those who make the allegations, before taking any formal action. Obviously, early conference with the minister concerned is desirable, and he must be kept informed of all actions to be taken by Presbytery in the matter. In considering the allegations laid before it, Presbytery may conclude that: (1) though there appears to be some substance in the allegations they do not amount to charges relating to errors vitally prejudicial to the faith; (2) these minor errors do not appear to be stubbornly maintained or to be assiduously spread with a view to corrupt people; (3) nor indeed are the errors alleged being widely accepted and supported. If these are the conclusions of Presbytery their action must aim at calming and soothing the

passions aroused. Conferences may be arranged to achieve the renouncing of even minor errors, and the procurement of understanding and reconciliation where there has been a degree of alienation. The aim is to reclaim from error rather than to eject any from the fellowship. The advice of other Presbyteries may be sought and if the time-lapse involved will not exacerbate the situation reference may be made to Synod and General Assembly.

2.5 Presbyterial Visitation: Complaints against a minister brought to the notice of Presbytery may relate to a series of acts of negligence or other unsuitable actions, and be indicative of a breakdown in relations between minister and people. In such a case the Presbytery should arrange a visitation of the congregation concerned.

The visitation will aim to discover whether the matters complained of are of long-standing or of recent occurrence. If of long-standing, enquiry will be made as to why the matters are now being brought before Presbytery. Enquiry will also be made as to whether those aggrieved took opportunity to explain their grievances to the minister and whether they sought the advice and possible intervention of other ministers before formalising complaints to Presbytery, and the results of such personal actions will be considered. When all the information available has been duly weighed by Presbytery, it will endeavour by advice to minister and people, and even by rebuke of errors where discerned, to restore harmony and overcome any hindrances that may have arisen to the continuance of a profitable ministry of the Word in the congregation. Should such an outcome not be possible, and Presbytery be persuaded that though no formal charges can be laid against the minister there is a degree of incompatibility between minister and congregation that is unlikely to be overcome, it may proceed according to Act I, 1990.

2.6 Right to a Libel: What has been set out so far is what Presbyteries do by way of precognition, that is enquiry, before formalising a specific charge against a minister. This is to ensure that no formal proceedings are initiated rashly and all that properly can be done to avoid such action is done. Nevertheless, it has to be recognised that a minister who feels aggrieved by matters raised affecting him or by any investigation proposed by Presbytery has the right to demand that he be formally charged with offensive conduct before he will agree to discuss the matter with members of Presbytery. The formal charge is designated a Libel, the form of which is explained in 2.8 below. Though this is undoubtedly the minister's right, it is usually regarded as more becoming the spirit of the gospel that he is willing to hold frank discussion with members of Presbytery.

2.7 Libel in less serious cases: In view of the foregoing it can be seen that a formal Libel may be required even to deal with charges which, if proved, do not necessarily involve the imposition of high censure.

2.8 Libel: It has been established by long practice that no judicial process of a serious kind can be carried out against a Minister or a Probationer, except by the use of what is called a Libel. This is a document consisting of three parts, and forming a regular syllogism. The first, or major, proposition sets forth the nature of the alleged offence, declares its contrariety to the Word of God and the laws of the Church, and indicates the kind of consequences which ought to follow from it. The second, or minor, proposition asserts the guilt of the Minister or Probationer, specifies what are believed to be the leading facts involving guilt, and particularises time, place and other circumstances. This proposition may contain one or more counts of indictment. The third part connects the major and minor propositions together and thereby deduces the conclusion that the Minister or Probationer, as guilty of the offence mentioned in the major proposition, ought to be subjected to the consequences indicated provided the minor proposition be made good either by confession or by adequate evidence. It is of great importance that care be taken to frame the Libel with accuracy so as to avoid grounds for questioning its relevancy. It is required that in every case before a Libel is adopted it is submitted to the Law Agent of the Church (Act VI, 1912). A Libel must be signed by the party or parties prosecuting, and a list of witnesses and documents adduced in support of the charge embodied in it must be appended to it.

2.9 Grounds for proceeding to libel: There are three distinct grounds which justify or require a Presbytery to adopt or frame a Libel. Unless at least one of them is present the law of the Church forbids a Presbytery to initiate a formal process even to the extent of citing the minister concerned. The three grounds are:

- (1) A written and signed statement lodged by some person charging a minister with immoral conduct or heresy, providing some *prima facie* evidence and undertaking to frame a Libel;
- (2) The lodging of a Libel by some accuser who has been charged to do so under pain of being censured as a slanderer if he fail to do so;
- (3) The prevalence of a widespread rumour (*fama clamosa*) which lays Presbytery under an obligation to take action for its own vindication.

2.10 Necessary Preliminary Inquiries: In explanation of the foregoing paragraph the following should be noted:

- (1) Since a scandal against a Minister, once raised, cannot be easily wiped off, a Presbytery must exactly ponder by whose information and complaint it comes before them. And in judging the probability that would justify them in proceeding, they are called upon to weigh well the measure of credit due to the quarter from which an allegation of scandal proceeds.
- (2) If the raiser of a Complaint, being a Member of the Church, presses it upon them, representing that attention to it is requisite for the due exercise of

discipline, while he fails to satisfy them of its truth being reasonably probable, they must require him to declare that he undertakes to make it out under the pain of being himself censured as a slanderer. If he allow this declaration to be minuted, and put his hand to it, they are called upon to proceed.

- (3) Before beginning a process against a Minister or a Probationer on the ground of *a fama clamosa* involving serious scandal or manifest heresy, such as persistent opposition to the doctrine of the Confession of Faith, the Presbytery must be careful to inquire into the rise, occasion, broachers and grounds of such *a fama*.

2.11 Process against a Professor: Act IX, 1861 lays upon the General Assembly's Training of the Ministry Committee the special function of originating and prosecuting before the Church Courts any process required against a Professor in the Church's College for heresy or immorality. The rights competent to all parties according to the laws of the Church are at the same time reserved. This lays upon the Training of the Ministry Committee the duty of precognition and preliminary investigation prior to any decision respecting the presentation of a Libel to the relevant Presbytery.

2.12 Preliminary Examination: In all cases which may lead to a Libel, a careful preliminary examination of proposed witnesses is requisite by the party prosecuting in order that a charge incapable of proof may not be proceeded with.

2.13 Dealing with a view to Confession: If a Presbytery find that there is good ground for entertaining or framing a Libel against a Minister or Probationer subject to their jurisdiction, they ought in the first instance to deal with him so as to ascertain whether further steps in the process may not be superseded by his confession. They ought to do what they can, in the spirit of love and faithfulness, to bring him to a confession. He may either deny the charge or before committing himself at all by answering the inquiries of his brethren, he may think it necessary that the imputations against him be set forth distinctly in regular form. In either case the framing of a Libel becomes necessary.

2.14 Relevancy of a Libel: When a Presbytery has framed or resolved to entertain a Libel against a minister it must as a first step consider the relevancy of the Libel. The relevancy of a Libel includes two things:

- (1) Whether the major proposition is true or not, that is, whether the offence or offences referred to are truly a subject of Church censure inferring the indicated penalty according to the Word of God and the standards of the Church; and
- (2) Whether the conclusion is fairly deducible or not from the premises, that is, whether the facts specified in the minor proposition really amount to the offence or offences charged in the major proposition.

2.15 Notice of Meeting: The minister concerned is entitled to ten clear days' notice of the date on which the Presbytery is to consider the relevancy of a Libel. He should be duly cited to attend this meeting, and furnished with a copy of the Libel whose relevancy is to be considered.

2.16 Discussion of Relevance: On the date appointed Presbytery is to give careful consideration to the relevancy of the Libel and during the discussion of this question the minister concerned, though formally summoned, is not deemed to be a party at the Bar. He may therefore participate in the discussion and if aggrieved by the decision of Presbytery his remedy is not by Appeal but by Dissent and Complaint. This does not sist proceedings (see 2.21).

2.17 Serving of a Libel: If Presbytery adjudge the Libel to be relevant, it may then formally place it in the minister's hands as a Libel deemed relevant (see 2.23 below for action that may intervene before it is actually served). Once the resolution to serve the Libel as relevant has been agreed the minister concerned becomes a party at the Bar.

2.18 Suspension from Duty: Once a Presbytery has resolved to serve a Libel upon a minister, he immediately ceases to exercise the functions of his office, both ministerial and judicial, until the Libel has been finally disposed of. This cessation of duties is not a judicial censure and is without prejudice to the final outcome.

2.19 Probationers: The rule with regard to the Presbytery adjudging a Libel relevant before it may be served on an ordained minister does not apply in the case of Probationers. In such cases the Libel is first served and its relevancy considered thereafter, even when the Presbytery itself has framed the Libel.

2.20 Libel framed by other parties: When a Libel against a minister is prepared and prosecuted by any other party than the Presbytery, it must be presented to the Presbytery and can only be served by its authority. In this case its relevancy cannot be judicially considered until it has been served.

2.21 Sisting of Procedure: No Appeal or Dissent and Complaint at any stage of Presbyterial action in a case of charge or *fama* which involves a Libel, or may lead to the necessity of serving a Libel against a minister, has the effect of sisting procedure, until the Libel has both been served and found relevant (see Act IV, 1853).

2.22 Irrelevancy of Libel: If Presbytery judge a Libel to be irrelevant the whole proceedings fall to the ground, unless the decision regarding irrelevancy is brought before the superior Court by appeal, complaint or reference. If the intervention of the superior Court is required, it may correct the irrelevancy and return the process to the original court. If the decision of Presbytery, or in due course the Superior Court, is that only part of the Libel is irrelevant, the case may proceed with reference to the part which has been found relevant.

2.23 Fresh Dealing toward Confession: After a Libel against a Minister has been found relevant, the Presbytery ought to deal with him anew as to whether he is or is not prepared to confess the truth of the charge or charges. For every reasonable consideration ought to be urged in order to persuade a Christian Minister that, if an accusation against him be well-founded, it is his duty, both for his own sake and for the interests of the Christ's cause, to save his brethren or other parties the trouble of adducing proof against him either by witnesses or by documents. When the Presbytery are themselves the Libellers, this dealing may take place immediately after the Libel has been found relevant and before it has been actually served. In any other case it must be resorted to after the serving of the Libel and also after it has been found relevant. It may be carried on either at a private meeting of the Presbytery or by a Committee of their number appointed for the purpose.

2.24 Taking of Proof: If the accused Minister or Probationer persists in his denial of the charge or charges after the Libel has been found relevant, the Presbytery, if prepared to carry on the case without reference to the Superior Courts, must proceed to take the proof after hearing the Libel read over again and after hearing also any answers that may have been given in on the part of the Minister or Probationer. The same rules for the conduct of the trial apply as have been stated with reference to the action of Kirk Sessions in cases of discipline. The whole procedure must be carefully minuted. It is expedient that it should be kept in a separate Record lest from any cause a Superior Court should order the whole or any part of it to be deleted or destroyed. But it must be considered in the meantime as an integral part of the Presbytery's Minutes.

2.25 Reference to Superior Courts when Presbytery are prosecutors: When the Presbytery are prosecutors, and have adequate evidence before them that a Libel adopted by them as relevant has been served upon a Minister within their bounds, it is competent for them, if they see cause, to refer the case to the Superior Courts (that is to the Synod, if it meets before the Assembly, and otherwise to the Assembly) either on the ground that it does not appear expedient in the circumstances for the Presbytery to act both as prosecutors and judges, or on the ground that it does not appear expedient in the circumstances for the proof to be taken except in the presence of those who have the power of giving a final deliverance as to its effect.

2.26 Reference to Superior Courts when another party prosecutes: When the Libel is prosecuted not by the Presbytery, but by another party, and when, having had adequate evidence before them that the Libel has been duly served, the Presbytery have found it relevant, it is competent for them, if they see cause, to refer the case to the Synod or Assembly, on the ground that it does not appear

expedient in the circumstances for the proof to be taken except in the presence of those who have the power of giving a final deliverance as to its effect.

2.27 Deposition or Suspension after Confession: If a Minister or Probationer confesses himself guilty of any scandalous offence, such as flagrant or habitual intemperance, or of overtly violating the Seventh Commandment, it is the duty of the Presbytery to depose a Minister *instanter* from his office, or to deprive a Probationer *instanter* of his licence, and to deal with him otherwise as the ordinary discipline of the Church requires and as may be most for edification. A public confession in presence of the Congregation was originally required, though in many localities such a requirement may not be thought suitable in the existing circumstances of the Church and of society. Where an offence by a Minister has not been very flagrant or aggravated, suspension from office *sine die*, that is, indefinitely as to time, has sometimes been considered sufficient censure. But such a suspension is always accompanied by a sentence which looses the suspended Minister from his Pastoral Charge, so that, even if he is reponed to the status of a Minister, he is not restored to that Charge.

2.28 Execution of Sentences: In inflicting censures upon Ministers and Probationers, a Presbytery may either be called upon to execute its own judgments, when there is no appeal or complaint against them, or when they are confirmed by the Synod or Assembly, or be instructed to execute the judgments of the Synod or Assembly.

2.29 Minister not appearing: If an accused Minister, when duly cited, does not appear, and either leaves the locality, or shows himself otherwise contumacious, without any relevant excuse, the Presbytery are required to hold him as having confessed, and to depose and censure him *instanter* with the lesser excommunication. If, after some time, he does not return and subject himself to discipline, he may be proceeded against, so as to be censured with the greater excommunication, if the Presbytery see cause.**2.30 Public Citation:** The full citation of a Minister who does not obey an ordinary citation is a public citation from the pulpit of his Church.

2.31 Resignation does not stop Libel: A tendered resignation of his office by a Minister cannot stop procedure by libel against him, for no resignation can be accepted unless the Presbytery be satisfied that no charge of scandal or heresy can be reasonably brought against him.

2.32 Reponement: It is competent for a Minister to be reponed to his status, and for a Probationer to have his licence restored, upon professions of repentance which seem to be borne out by a course of consistent conduct. But great caution is requisite in entertaining the question of such reponement or restoration. A Minister may be reponed, or a Probationer's licence may be restored, either by the

Presbytery which pronounced the sentence of deposition or deprivation, or by the Presbytery having jurisdiction over him at the time when application is made for reponement or restoration.

SUMMARY

1. When allegations made against a Minister are brought before Presbytery, they should instigate preliminary enquiry as to the nature, seriousness and *prima facie* plausibility of the charges made and as to the standing of those likely to give evidence.

2. If the allegations are not of serious moral misconduct or blatant heresy, Presbytery should endeavour by interviews, conference and visitation of the congregation, to deal with the situation in such a way as to restore good relations.

3. If allegations are of a serious nature Presbytery are first of all to ascertain the response of the Minister concerned, as confession on his part, if appropriate, may obviate the need for formal trial.

4. If serious allegations are made and denied by the Minister concerned and evidence of which Presbytery are aware indicates that a formal process should be initiated a Libel must be framed, either by Presbytery or by those making the allegations. The form of the Libel should be approved by a competent law agent.

5. A Libel against a Minister must be first scrutinised with regard to its relevancy and only after being adjudged relevant may it be served. But a Libel against a Probationer is to be served before judgment on the relevancy is pronounced.

6. A copy of the Libel, a list of witnesses and a note of evidence must be supplied in good time to the Minister before the meeting to assess relevancy takes place. The Minister must be summoned to this meeting.

7. When a Libel has been adjudged relevant, a further opportunity should be given to the Minister to confess guilt and if this is rejected the Libel should be served and the Minister is thereby relieved of all duty. A date is then fixed for formal hearing of witnesses who must be duly cited.

8. On the appointed date parties are called to the Bar, their testimony recorded and the Presbytery come to their decision and announce it to parties at the Bar. They may acquiesce in the decision or appeal to the higher court.

Part V: Processes which are the Responsibility of the Provincial Synod

1. **Court of Review:** The Provincial Synod becomes involved in a process of discipline as a Court of Review by means of Appeal, Complaint or Reference from Presbytery.

2. **Evidence:** When acting as a Court of Review in a case of discipline a Synod does not have witnesses personally at its bar as is the situation in the court in which the case was initiated. It is dependent on the written records of the case supplied by the lower courts and on the pleadings of parties at its bar. If the written records are very voluminous, it may be necessary to have them printed and circulated to members of Synod and time given, by way of adjournment if appropriate, for members to study them.

3. **Correction of Irregularity:** If in the annual examination of a Presbytery's Record Synod becomes aware of irregularity in the proceedings of Presbytery, it must endeavour to correct the irregularity. This can be done by Synod simply reversing a judgment, or by reversing a judgment and instructing Presbytery how to proceed, or by drawing the Presbytery's attention to the matter as necessitating either investigation or further investigation than appears to have been given to it.

4. **Power to Initiate Enquiry:** Should Synod become aware of a scandal or *fama clamosa* before the court of primary reference has knowledge of it, it is its duty to inform the primary court so that it may initiate appropriate action. It is not competent for the Synod itself to initiate a formal process.

5. **Reference from Presbytery:** If a Presbytery refers a case to Synod in terms of Act IX or Act X, 1854, three courses are open to Synod. It may dismiss the reference and require the Presbytery to try the case; it may sustain the reference and resolve to try the case itself; or it may sustain the reference and refer the case to the General Assembly.

Part VI: Processes which are the Responsibility of the General Assembly or its Commission

1. **Court of Review:** Like Synod the General Assembly becomes involved in cases of discipline mainly as a court of review dealing with Appeal, Complaint, or Reference.

2. **Correction of Libel:** If the question of the relevancy of a libel against a minister is duly brought before the Assembly and the Assembly find that the libel is not relevant, they may, if they see fit, amend the libel and direct that the case be tried in Presbytery on the basis of the amended libel. (See Act VIII, 1854).

3. **Evidence:** In reviewing the judgment of Presbytery and Synod, the General Assembly are dependent on the written records of the case. They do not examine witnesses. The records must be printed and circulated to members of Assembly for their cognisance.

4. **Standing Orders:** Any procedure peculiar to the General Assembly is described in the Standing Orders adopted each year by the Assembly.

5. **Remission to Ordinary Commission:** It is within the power of the General Assembly to remit a case which they cannot themselves overtake to their ordinary Commission at one of its stated diets. The Commission is precluded from taking up a case which has not been specifically remitted to it by the Assembly. In dealing with any case the Commission must adhere to the Standing Orders

6. **Special Commission:** If a Reference is brought to the General Assembly in terms of Acts LX and X, 1854, the following courses of action are competent:

(1) the Assembly may sustain the Reference and try the case; (2) the Assembly may dismiss the Reference and direct the Presbytery to try the case; (3) the Assembly may sustain the Reference and return the case to Presbytery with special instructions; (4) the Assembly may appoint a Special Commission to try the case. The Special Commission will be required to report its deliverance either to the General Assembly or to the ordinary Commission at one of its stated diets. The ordinary Commission will then pronounce sentence and give directions to the Presbytery concerned.

7. **Nobile Officium:** Because the General Assembly is the Supreme Court, beyond which there is no ecclesiastical mode of appeal, it is competent for it to exercise what is called the *nobile officium*; that is to say, when a case is fairly before it, it may take such action regarding it as may appear most for the interests of truth and the cause of justice, provided it does not exceed the powers vested in it by the ecclesiastical constitution. At any stage of procedure brought constitutionally under its view, the Assembly may either give special instructions to a Presbytery, or appoint Assessors to assist them, or appoint a Special Commission to deal with a matter for the right conduct of which the Presbytery may be disabled by any peculiarity of circumstances. But, notwithstanding the general principle which would justify such interference by the Assembly in extraordinary emergencies, it is held that without an extraordinary emergency it requires special legislation to warrant any disturbance of the ordinary course of Discipline even by the authority of the Assembly.

8. **Review of Synod Records:** If in reviewing Synod records the General Assembly perceive that discipline has been neglected or irregularly administered, they may take such corrective action as they deem proper. They may give directions as to how errors in procedure can be corrected and order the excision of objectionable minutes.

9. **Matter forced on attention:** If any case of palpable scandal, heresy or contumacy be forced by circumstances upon the attention of the General Assembly before it has reached any inferior Court having jurisdiction over the party, the

Assembly may either remit such a case to the inferior Court or deal with it summarily by the direct exercise of their own authority.

10. **Execution of Sentences:** If a Libel involving a charge or charges of scandal or heresy is found proven by the General Assembly, the sentence following upon such a judgment, whether deposition, suspension *sine die*, or temporary suspension, or rebuke, or admonition, or deprivation of license, may either be pronounced by the Assembly, or be reserved for the action of the inferior Court in following out the Assembly's instructions.

SUPPLEMENT TO CHAPTER ON DISCIPLINE

Evidence of Persons unable to attend a Church Court [Act VIII² 1994]

1. A witness whose evidence is deemed likely to be material may not be able to attend the Church Court dealing with a case of discipline. Inability to attend may be due to illness, old age, or great distance, for example, residence overseas. Where illness is the cause of non-attendance, medical certification is required.

2.1 Where liability to attend is due to distance, evidence may be taken on Commission.

2.2 The relevant Court appoints a responsible person as its Commissioner to take the evidence of the witness in writing (possibly also with a tape-recording of the proceedings). This Commissioner is resident in the locality of the witness. Where distance precludes parties from being present at the Commission and so having opportunity to question and cross-question the witness, the following procedure is adopted:

(1) A list of numbered questions is prepared on behalf of the party who wishes the witness interviewed.

(2) This list is then submitted to the other party who prepares cross-questions to be put to the witness on his behalf. The preparation of this list of cross-questions cannot be postponed until the answers to the first list have been lodged.

(3) The list of cross-questions is then submitted to the first party and both parties try to agree the terms of both documents.

(4) The lists are then submitted to the clerk of the Court concerned and parties are duly cited to appear before the Court for the adjustment, if necessary, of the documents submitted and for their approval.

² Error in original – see errata

(5) The documents are then passed on to the appointed Commissioner who duly meets with the witness in a formal manner. At this meeting the Commissioner reads the questions separately to the witness and his replies to each question are numbered and recorded. The Commissioner may put further questions to the witness and require him to make such additions and explanations as he thinks necessary.

(6) The document recording the witness's answers and explanations should be read over by him or to him and duly signed by him.

(7) The documents are then returned to the clerk of the Court which authorised the Commission.

3.1 The foregoing is the best procedure which has been devised especially where the witness resides outside the United Kingdom. But these procedures, although satisfactory for obtaining certain types of evidence are a very inadequate and sometimes wholly unsuccessful expedient for testing the evidence of a witness whose credibility and reliability are likely to be serious issues. For interviewing a witness who though at a distance is within the United Kingdom a different procedure may therefore be adopted. This procedure dispenses with the preparation of written lists of questions and cross-questions and adopts what is called an "open Commission".

3.2 In an open Commission, the Commissioner effectively holds court at the location of the witness and parties attend and put questions as they would normally do and the Commissioner records the questions and answers in writing as given in the course of examination, cross-examination and re-examination, possibly with the support of a tape-recording of the proceedings. In his report of the evidence the Commissioner may remark upon the demeanour of the witness and his impressions as to credibility and reliability.

3.3 A circumstance to be noted is that at an early stage when proceedings are only being contemplated, a party may seek to obtain immediately the evidence of a witness where the evidence is in danger of being lost. The danger usually arises from the witness's old age or dangerous sickness, so that he is in danger of early death, or from the fact that he is obliged to go abroad. In that event the evidence is taken to lie *in retentis*, that is to be held back or laid aside until the proper time arrives for adducing it.

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APPENDICES

OF ACTS AND DOCUMENTS

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APPENDIX I

HISTORICAL DOCUMENTS

(1) Westminster Documents

ACT ANENT APPROBATION OF CONFESSION OF FAITH:

SESSION 23, AUGUST 27, 1647, ANTE MERIDIEM

A Confession of Faith for the Kirks of God in the three kingdoms, being the chiefest part of that uniformity in religion, which, by the Solemn League and Covenant, we are bound to endeavour; and there being accordingly a Confession of Faith agreed upon by the Assembly of Divines sitting at Westminster, with the assistance of Commissioners from the Kirk of Scotland; which Confession was sent from our Commissioners at London to the Commissioners of the Kirk met at Edinburgh in January last, and hath been in this Assembly twice publicly read over, examined, and considered; copies thereof being also printed, that it might be particularly perused by all the members of this Assembly, unto whom frequent intimation was publicly made to put in their doubts and objections, if they had any; and the said Confession being, upon due examination thereof, found by the Assembly to be most agreeable to the Word of God, and in nothing contrary to the received doctrine, worship, discipline, and government of this Kirk; and lastly, it being so necessary and so much longed for that the said Confession be, with all possible diligence and expedition, approved and established in both kingdoms, as a principal part of the intended uniformity in religion, and as a special means for the more effectual suppressing of the many dangerous errors and heresies of these times:

The General Assembly doth, therefore, after mature deliberation, Agree unto and Approve the said Confession, as to the truth of the matter, (judging it to be most orthodox, and grounded upon the Word of God;) and also as to the point of

uniformity, agreeing, for our part, that it be a common Confession of Faith for the three kingdoms. The Assembly doth also bless the Lord, and thankfully acknowledge his great mercy, in that so excellent a Confession of Faith is prepared, and thus far agreed upon in both kingdoms; which we look upon as a great strengthening of the true reformed religion against the common enemies thereof. But lest our intention and meaning be in some particulars misunderstood, it is hereby expressly declared and provided, that the not mentioning in this Confession the several sort of ecclesiastical officers and assemblies shall be no prejudice to the truth of Christ in these particulars to be expressed fully in the Directory of Government. It is further declared, that the Assembly understand some parts of the Second Article of the Thirty-One Chapter only of Kirks not settled or constituted in point of government; and that although in such kirks a synod of ministers and other fit persons may be called by the magistrate's authority and nomination, without any other call, to consult and advise with about matters of religion; and although likewise the ministers of Christ, without delegation from their churches, may of themselves, and by virtue of their office, meet together synodically in such kirks not yet constituted, yet neither of these ought to be done in kirks constituted and settled; it being always free to the magistrate to advise with synods of ministers and ruling elders, meeting upon delegation from their churches, either ordinarily, or being indicted by his authority occasionally and *pro re nata*, it being also free to assemble together synodically, as well *pro re nata* as at the ordinary times, upon delegation from the churches, by the intrinsical power received from Christ, as often as it is necessary for the good of the Church so to assemble, in case the magistrate, to the detriment of the Church, withhold or deny his consent; the necessity of occasional Assemblies being first remonstrated unto him by humble supplication.

ACT ANENT APPROBATION OF LARGER CATECHISM:

SESSION 10, JULY 20, 1648 POST MERIDIEM

The General Assembly, having exactly examined and seriously considered the Larger Catechism agreed upon by the Assembly of Divines sitting at Westminster, with assistance of Commissioners from this Kirk, copies thereof being printed and sent to Presbyteries for the more exact trial thereof, and public intimation being frequently made in this Assembly, that every one that had any doubts or objections upon it might put them in; do find, upon due examination thereof, that the said Catechism is agreeable to the Word of God, and in nothing contrary to the received doctrine, worship, discipline, and government of this Kirk a necessary part of the intended uniformity in religion, and a rich treasure for increasing knowledge among the people of God; and, therefore, the Assembly, as they bless the Lord that so excellent a Catechism is prepared, so they approve the same as a part of uniformity; agreeing, for their part, that it be a Common Catechism for the three kingdoms, and a Directory for catechising such as have made some proficiency in the knowledge of the grounds of religion.

**ACT ANENT APPROBATION OF SHORTER CATECHISM:
SESSION 19, JULY 28, 1648**

The General Assembly, having seriously considered the Shorter Catechism, agreed upon by the Assembly of Divines sitting at Westminster, with assistance of Commissioners from this Kirk, do find, upon due examination thereof that the said Catechism is agreeable to the Word of God, and in nothing contrary to the received doctrine, worship, discipline, and government of this Kirk, and, therefore, approve the said Shorter Catechism, as a part of the intended uniformity, to be a Directory for catechising such as are of weaker capacity.

**REFERENCE TO THE COMMISSION FOR PUBLIC AFFAIRS FOR
RE-EXAMINING THE PARAPHRASE OF THE PSALMS, AND EMITTING THE
SAME FOR PUBLIC USE: SESSION ULT., AUGUST 6, 1649**

The General Assembly having taken some view of the new Paraphrase of the Psalms in Meter, with the corrections and animadversions thereupon, sent from several persons and Presbyteries, and finding that they cannot overtake the review and examination of the whole in this Assembly, therefore, now after so much time, and so great pains about the correcting and examining thereof, from time to time, some years bygone, that the work may come now to some conclusion, they do ordain the Brethren appointed for perusing the same during the meeting of this Assembly, viz. Masters James Hamiltoun, John Smith, Hew Mackail, Robert Traill, George Hutcheson, and Robert Lowrie, after the dissolving of this Assembly, to go on in that work carefully, and to report their travels to the Commission of the General Assembly for public affairs, at their meeting at Edinburgh in November. And the said Commission, after perusal and re-examination thereof, is hereby authorized, with full power, to conclude and establish the Paraphrase, and to publish and emit the same for public use.

**ACT OF COMMISSION FOR ESTABLISHING AND AUTHORIZING THE
NEW PSALMS: 23 NOVEMBER 1649**

The Commission of the General Assembly having with great diligence considered the Paraphrase of the Psalms in Meter, sent from the Assembly of Divines in England by our Commissioners, whilst they were there, as it is corrected by former General Assemblies, Committees from them, and now at last by the Brethren deputed by the late Assembly for that purpose: And having exactly examined the same, do approve the said Paraphrase, as it is now compiled: And therefore, according to the power given them by the said Assembly, do appoint it to be printed and published for public use: Hereby authorizing the same to be the only Paraphrase, of the Psalms of David to be sung in the Kirk of Scotland; and discharging the old Paraphrase and any other than this new Paraphrase, to be made use of in any congregation or family after the first day of May in the year 1650; and for uniformity in this part of the Worship of God, do seriously recommend to Presbyteries to cause make public intimation of this Act, and take special care that the same be timeously put to execution, and duly observed.

(2) Claim, Declaration And Protest

ACT XIX, 1842: CLAIM, DECLARATION AND PROTEST,

ANENT THE ENCROACHMENTS OF THE COURT OF SESSION

The GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND, taking into consideration the solemn circumstances in which, in the inscrutable providence of God, this Church is now placed; and that, notwithstanding the securities for the Government thereof by General Assemblies, Synods, Presbyteries, and Kirk Sessions, and for the liberties, government, jurisdiction, discipline, rights, and privileges of the same, provided by the statutes of the realm, by the constitution of this country, as unalterably settled by the Treaty of Union, and by the oath, “inviolably to maintain and preserve” the same, required to be taken by each Sovereign at accession, as a condition precedent to the exercise of the royal authority; — which securities might well seem, and had long been thought, to place the said liberties, government, jurisdiction, discipline, rights, and privileges, of this Church, beyond the reach of danger or invasion; — these have been of late assailed by the very Court to which the Church was authorised to look for assistance and protection, to an extent that threatens their entire subversion, with all the grievous calamities to this Church and nation which would inevitably flow therefrom, — did and hereby do solemnly, and in reliance on the grace and power of the Most High, resolve and agree on the following Claim, Declaration, and Protest: That is to say:—

WHEREAS it is an essential doctrine of this Church, and a fundamental principle in its constitution, as set forth in the Confession of Faith thereof, in accordance with the Word and law of the most holy God, that “there is no other Head of the Church but the Lord Jesus Christ” (ch. xxv. sec.6); and that, while “God, the supreme Lord and King of all the world, hath ordained civil magistrates to be under him over the people, for his own glory, and the public good, and to this end hath armed them with the power of the sword” (ch. xxiii. sec 1); and while “it is the duty of people to pray for magistrates, to honour their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority for conscience’ sake”, “from which ecclesiastical persons are not exempted” (ch. xxiii. sec.4); and while the magistrate hath authority, and it is his duty, in the exercise of that power which alone is committed to him, namely, “the power of the sword”, or civil rule, as distinct from the “power of the keys”, or spiritual authority, expressly denied to him, to take order for the preservation of purity, peace, and unity in the Church, yet ‘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” (ch. xxx. sec 1); which government is ministerial, not lordly, and to be exercised in consonance with the laws of Christ, and with the liberties of his people:

AND WHEREAS, 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, thus

appointed by the Lord Jesus, in the hand of Church officers, distinct from the civil magistrate or supreme power of the State, and flowing directly from the Head of the Church to the office-bearers thereof, to the exclusion of the civil magistrate, comprehends, as the objects of it, the preaching of the Word, administration of the Sacraments, correction of manners, the admission of 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”, which, by the said Confession, is declared, in conformity with Scripture, to have been “committed” (ch. xxx. sec. 2) to Church officers, and which, as well as the preaching of the Word and the administration of the Sacraments, it is likewise thereby declared, that “the civil magistrate may not assume to himself” (ch. xxiii. sec. 3):

AND WHEREAS this jurisdiction and government, since it regards only spiritual condition, 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:

AND WHEREAS the above-mentioned essential doctrine and fundamental principle in the constitution of the Church, and the government and exclusive jurisdiction flowing therefrom, founded on God’s Word, and set forth in the Confession of Faith and other standards of this Church, have been, by diverse and repeated Acts of Parliament, recognised, ratified, and confirmed; — inasmuch as, —

First, The said Confession itself, containing the doctrine and principles above set forth, was “ratified and established, and voted and approven as the public and avowed Confession of this Church,” by the fifth Act of the second session of the first Parliament of King William and Queen Mary, entitled, “Act ratifying the Confession of Faith, and settling Presbyterian Church Government” (1690, c. 5): to which Act the said Confession is annexed, and with it incorporated in the statute law of this kingdom.

Second, By an Act passed in the first Parliament of King James VI., entitled, “Of admission of ministers: of laic patronages” (1567, c. 7), it is enacted and declared, “That the examination and admission of ministers within this realm be only in the power of the Kirk, now openly and publicly professed within the same”; and while the “presentation of laic patronages” was thereby “reserved to the just and ancient patrons,” it was provided, that, if the presentee of a patron should be refused to be admitted by the inferior ecclesiastical authorities, it should be lawful for the patron “to appeal to the General Assembly of the whole realm, by whom the cause being decided, shall take end as they decern and declare”.

Third, By an Act passed in the same first Parliament, and renewed in the sixth Parliament of the said King James VI., entitled, “Anent the jurisdiction of the Kirk” (1567, c. 12). *Fol. Edit*), the said Kirk is declared to have jurisdiction “in the preaching of the true Word of Jesus Christ, correction of manners, and administration of the holy sacraments” (1579, c. 69); and it is further declared “that

there be *no other jurisdiction ecclesiastical* acknowledged within this realm, other than that *which is and shall be within the same Kirk, or that flows therefrom, concerning the premises*"; which Act, and that last before mentioned, were ratified and approved by another Act passed in the year 1581, entitled, "Ratification of the liberty of the true Kirk of God and religion, with confirmation of the laws and Acts made to that effect of before" (1581, c. 99); which other Act, and all the separate Acts therein recited, were again revived, ratified, and confirmed by an Act of the twelfth Parliament of the said King James VI., entitled, "Ratification of the liberty of the true Kirk", etc. (1592, c. 116); which said Act (having been repealed in 1662) was revived, renewed and confirmed by the before-mentioned statute of King William and Queen Mary (1690, c. 5).

Fourth, The said Act of the twelfth Parliament of King James VI., ratified and approved the General Assemblies, Provincial Synods, Presbyteries, and Kirk-Sessions "appointed by the Kirk" (1592, c. 116), and "the whole jurisdiction and discipline of the same Kirk"; cased and annulled "all and whatsoever acts, laws, and statutes, made at any time before the day and date thereof, against the liberty of the true Kirk, jurisdiction and discipline thereof, as the same is used and exercised within this realm"; appointed presentations to benefices to be directed to Presbyteries, "with full power to give collation thereupon, and to put order to all matters and causes ecclesiastical within their bounds, according to the discipline of the Kirk, providing the foresaid Presbyteries be bound and astricted to receive and admit whatsoever qualified minister, presented by his Majesty or laic patrons" (the effect of which proviso and of the reservation in the Act of the first Parliament of King James VI., above mentioned (1567, c. 7), is hereinafter more fully adverted to); and further declared that the jurisdiction of the Sovereign and his Courts, as set forth in a previous Act (1584, c. 129), to extend over all persons his subjects, and "in all matters", should "noways be prejudicial nor derogate anything to the privilege that *God has given* to the spiritual office-bearers of the Kirk, concerning *heads of religion, matters of heresy, excommunication, collation, or deprivation of ministers, or any such like essential censures*, grounded and having warrant of the Word of God;" by which enactment, declaration, and acknowledgement, the State recognised and established as a fundamental principle of the constitution of the kingdom, that the jurisdiction of the Church in these matters was "given by God." to the office-bearers thereof, and was exclusive, and free from coercion by any tribunals holding power or authority from the State or supreme civil magistrate.

Fifth, The Parliament holden by King Charles II. (1662, c. 1), immediately on his restoration to the throne, while it repealed the above recited Act of the twelfth Parliament of King James, and other relative Acts (1592, c. 116), at the same time acknowledged the supreme and exclusive nature of the jurisdiction thereby recognised to be in the Church, describing the said Acts, as Acts "by which the sole and only power and jurisdiction within this Church *doth stand in the Church*, and in the general, provincial, and presbyterial assemblies and kirk-sessions", and as Acts, "which may be interpreted to have given any Church power,

jurisdiction, or government to the office-bearers of the Church, their respective meetings, other than that which acknowledgeth a dependence upon, and subordination to, the sovereign power of the King, as supreme”.

Sixth, The aforesaid Act of King William and Queen Mary (1690, c. 5),— on the narrative that their Majesties and the estates of Parliament conceived “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, and most conducive to true piety and godliness, and the establishing of peace and tranquillity within this realm,” —besides ratifying and establishing as aforesaid the Confession of Faith, did also “establish, ratify, and confirm the Presbyterian Church government and discipline; that is to say, the government of the Church by Kirk-Sessions, Presbyteries, Provincial Synods and General Assemblies, ratified and established by the 116 Act of James VI., Parliament 12, anno 1592, entitled, ‘Ratification of the liberty of the true Kirk’ etc. (1592, c. 116), and thereafter received by the general consent of this nation, to be the only government of Christ’s Church within this kingdom”, and revived and confirmed the said Act of King James VI.

AND WHEREAS, not only was the exclusive and ultimate jurisdiction of the Church Courts, in the government of the Church, and especially in the particular matters, spiritual and ecclesiastical, above mentioned, recognised, ratified and confirmed —thus necessarily implying the denial of power on the part of any secular tribunal, holding its authority from the Sovereign, to review the sentence of the Church Courts in regard to such matters, or coerce them in the exercise of such jurisdiction; — but all such power, and all claim on the part of the Sovereign to be considered supreme governor over the subjects of this kingdom of Scotland in causes *ecclesiastical and spiritual*, as he is in causes *civil and temporal*, was after a long continued struggle, finally and *expressly repudiated and cast out of the constitution* of Scotland, *as inconsistent with the Presbyterian Church government* established at the Revolution, and thereafter unalterably secured by the Treaty of Union with England; by the constitution of which latter kingdom, differing in this respect from that of Scotland, the Sovereign is recognised to be supreme governor, “*as well in all spiritual and ecclesiastical things and causes as temporal*”: Thus:—

First, The General Assembly having, in the year 1582, proceeded to inflict the censures of the Church upon Robert Montgomery, minister of Stirling, for seeking to force himself, under a presentation from the King, into the archbishopric of Glasgow, contrary to an act of the General Assembly discharging the office of Prelatic bishop in the Church, and for appealing to the secular tribunals against the infliction of Church censures by the Church Courts, and seeking to have these suspended and interdicted — and having deposed and excommunicated him, notwithstanding of an interdict pronounced by the Privy Council of Scotland, the then supreme secular court of the kingdom—having at the same time declared it to

be part of the subsisting discipline of the Church, that any ministers thereof who “should seek any way by the civil power to exempt and withdraw themselves from the jurisdiction of the Kirk, or procure, obtain or use any letters or charges, etc., to impair, hurt, or stay the said jurisdiction, discipline etc., or to make any appellation from the General Assembly to stop the discipline or order of the ecclesiastical policy or jurisdiction granted by God’s Word to the office-bearers within the said Kirk,” were liable to the highest censures of the Church; although their sentence of excommunication was declared by one of the Acts of Parliament of the year 1584, commonly called the “Black Acts”, to be void, yet ultimately the King and Privy Council abandoned their interference. Montgomery submitted to the Church Courts, and the statute of the twelfth Parliament of King James VI., already mentioned (1592, c. 116), cased and annulled “all and whatsoever acts, laws, and statutes made at any time before the day and date thereof, against the liberty of the true Kirk, jurisdiction and discipline thereof, as the same is used and exercised within this realm”; since which enactment, no similar interference with the discipline and censures of the Church was ever attempted till the year 1841.

Second, It having been declared by another of the “Black Acts” aforesaid (1584, c. 129), entitled, “An Act confirming the King’s Majesty’s royal power over all the estates and subjects within this realm”, that ‘his Highness, his heirs and successors, by themselves and their councils, are, and in time to come shall be, judges competent to all persons his Highness’ subjects, of whatsoever estate, degree, function, or condition that ever they be of, spiritual or temporal, *in all matters* wherein they or any of them, shall be apprehended, summoned, or charged to answer to such things as shall be inquired of them by our sovereign lord and his council”, it was, by the said before-mentioned Act of the twelfth Parliament of King James VI. (1592, c. 116), declared that the said Act last above-mentioned “shall noways be prejudicial, nor derogate any thing to the privilege that God has given to the spiritual office-bearers of the Kirk, concerning heads of religion, matters of heresy, excommunication, collation, or deprivation of ministers, or any such like essential censures, specially grounded and having warrant of the Word of God”.

Third, It having been enacted, on the establishment of Prelacy in 1612 (1612, c. 1), that every minister, at his admission, should swear obedience to the Sovereign as “the only lawful supreme governor of this realm, as well in matters spiritual and ecclesiastical as in things temporal”, the enactment to this effect was repealed on the restoration of the Presbyterian Church government (1640, c. 7).

Fourth, A like acknowledgement, that the Sovereign was “the only supreme governor of this kingdom over all persons and in all causes” (1661, c. 11), having been, on the second establishment of Prelacy consequent on the restoration of King Charles II., required as part of the ordinary oath of allegiance, and having been also inserted into the “Test Oath” (1681, c. 6), so tyrannically attempted to be forced on the subjects of this realm during the reigns of Charles II. and James II., and the same doctrine of the King’s supremacy in all causes, spiritual and ecclesiastical, as

well as temporal and civil, having farther been separately and specially declared by the first Act of the second Parliament of the said King Charles II. (1669, c. 1), entitled, “Act asserting his Majesty’s supremacy over all persons and in all causes ecclesiastical”, whereby it was “enacted, asserted, and declared, that his Majesty hath the supreme authority and supremacy over all persons, and in all causes ecclesiastical, within this kingdom” (Estates, 1689, c. 18), — the Estates of this kingdom, at the era of the Revolution, did set forth, as the second article of the “Grievances” of which they demanded redress under their “Claim of Right”, ‘That the first Act of Parliament 1669 is inconsistent with the establishment of Church government now desired, and ought to be abrogated”.

Fifth, In compliance with this claim, an Act was immediately thereafter passed (1690, c. 1), of which the tenor follows:— “Our Sovereign Lord and Lady the King and Queen’s Majesties, taking into their consideration that, by the second article of the Grievances presented to their Majesties by the estates of this kingdom, it is declared, that the first Act of the second Parliament of King Charles the Second, entitled, ‘Act asserting his Majesty’s supremacy over all persons and in all causes ecclesiastical’, is inconsistent with the establishment of the Church government now desired, and ought to be abrogated: Therefore their Majesties, with advice and consent of the estates of Parliament, do hereby abrogate, rescind, and annul the foresaid Act, and declares the same, in the whole heads, articles, and clauses thereof, to be of no force or effect in all time coming”. In accordance also therewith, the oath of allegiance above mentioned, requiring an acknowledgement of the King’s sovereignty “in *all* causes” (1689, c. 2), was done away, and that substituted which is now in use, simply requiring a promise to be “faithful, and bear true allegiance” to the sovereign; and all preceding laws and Acts of Parliament were rescinded, “in so far as they impose any other oaths of allegiance and supremacy, declarations and tests, excepting the oath *de fidei*”. By the which enactments any claim on the part of the Sovereigns of Scotland to be supreme rulers in spiritual and ecclesiastical, as well as in temporal and civil causes, or to possess any power, by themselves or their judges holding commission from them, to exercise jurisdiction in matters or causes spiritual and ecclesiastical, was repudiated and excluded from the constitution, as inconsistent with the Presbyterian Church government then established, and secured under the statutes then and subsequently passed, “to continue, without any alteration, to the people of this land, in all succeeding generations” (1706, c. 6).

AND WHEREAS, diverse civil rights and privileges were, by various statutes of the Parliament of Scotland, prior to the Union with England, secured to this Church, and certain civil consequences attached to the sentences of the Courts thereof, which were farther directed to be aided and made effectual by all magistrates, judges, and officers of the law; and in particular:— It was by an Act of the twelfth Parliament of King James VI, (1592, c. 117), enacted, ‘That all and whatsoever sentences of deprivation, either pronounced already, or that happens to be pronounced hereafter by the Presbytery, Synodal or

General Assemblies, against any parson or vicar within their jurisdiction, provided since his Highness' coronation, is, and shall be reputed in all judgments, a just cause to seclude the person before provided, and then deprived, from all profits, commodities, rents, and duties of the said parsonage and vicarage, or benefice of cure; and that either by way of action, exception, or reply; and that the said sentence of deprivation shall be a sufficient cause to make the said benefice to vaiké thereby”:

As also, by the fifth Act of the first Parliament of King William and Queen Mary (1690, c. 5), it was enacted, “that whatsoever minister, being convened before the said general meeting, and representatives of the Presbyterian ministers or elders, or the visitors to be appointed by them, shall either prove contumacious for not appearing, or be found guilty, and shall be therefor censured, whether by suspension or deposition, they shall, *ipso facto*, be suspended from or deprived of their stipends and benefices”

As also, by an Act passed in the fourth session of the first Parliament of King William and Queen Mary (1693, c. 22), entitled an “Act for settling the peace and quiet of the Church”, it was provided, that no minister should be admitted, unless he owned the Presbyterian Church government, as settled by the last recited Act, “to be the only government of this Church”; “and that he will submit thereto, and concur therewith, and never endeavour, directly or indirectly, the prejudice or subversion thereof”; and it was statute or ordained, “that the lords of their Majesties' Privy Council, and all other magistrates, judges, and officers of justice, give all due assistance for making the sentences and censures of the Church, and judicatories thereof, to be obeyed, or otherwise effectual as accords”:

As also, by an Act passed in the fifth session of the foresaid Parliament (1695, c. 22), entitled an “Act against intruding into churches without a legal call and admission thereto”, on the narrative, “that ministers and preachers, their intruding themselves into vacant churches, possessing of manses and benefices, and exercising any part of the ministerial function in parishes, without a legal call and admission to the said churches, is an high contempt of the law, and of a dangerous consequence, tending to perpetual schism”; such intrusion, without an orderly call from the heritors and elders — the right of presentation by patrons being at this time abolished — and “legal admission from the Presbytery”, was prohibited under certain penalties; and the Lords of the Privy Council were recommended to remove all who had so intruded, and “to take some effectual course for stopping and hindering those ministers who are, or shall be hereafter deposed by the judicatories of the present Established Church, from preaching or exercising any act of their ministerial function, which” (the said statute declares) “they cannot do after they are deposed, without a high contempt of the authority of the Church, and of the laws of the kingdom establishing the same”.

AND WHEREAS, at the Union between the two kingdoms, the Parliament of Scotland, being determined that the “true Protestant religion”, as then professed, “with the worship, discipline, and government of this Church, should be effectually and unalterably secured,” did, in their Act appointing commissioners to treat with

commissioners from the Parliament of England (1705, c. 4), as to an union of the kingdoms, provide “That the said commissioners shall not treat of or concerning any alteration of the worship, discipline, and government of the Church of this kingdom, as now by law established;” and did, by another Act, commonly called the Act of Security (1706, c. 6), and entitled, “Act for securing the Protestant religion and Presbyterian Church government”, “establish and confirm the said true Protestant religion, and the worship, discipline, and government of this Church, to continue without any alteration to the people of this land in all succeeding generations”; and did “for ever confirm the fifth Act of the first Parliament of King William and Queen Mary” (1690, c. 5), entitled, “Act ratifying the Confession of Faith, and settling Presbyterian Church government, *and the whole other Acts of Parliament relating thereto*”; and did “expressly provide and declare, That the foresaid true Protestant religion, contained in the above-mentioned Confession of Faith, with the form and purity of worship presently in use within this Church, and its Presbyterian Church government and discipline; — that is to say, the government of the Church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, all established by the foresaid Acts of Parliament, pursuant to the Claim of Right, shall remain and continue unalterable; and that the said Presbyterian government shall be the only government of the Church within the kingdom of Scotland”: And farther, “for the greater security of the same”, did, *inter alia*, enact, “That, after the decease of her present Majesty, the sovereign succeeding to her in the royal government of the kingdom of Great Britain, shall in all time coming, at his or her accession to the crown, swear and subscribe, That they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion, with the government, worship, discipline, rights and privileges of this Church as above established by the laws of this kingdom, in prosecution of the Claim of Right”; which said Act of Security, “with the establishment therein contained”, it was specially thereby enacted, “should be held and observed in all time coming as a fundamental and essential condition of any treaty or union to be concluded betwixt the two kingdoms, *without any alteration thereof or derogation thereto, in any sort, for ever*”: It being farther thereby provided, that “the said Act and settlement therein contained shall be insert and repeated in any Act of Parliament that shall pass for agreeing and concluding the foresaid treaty of union betwixt the two kingdoms; and that the same shall be therein expressly declared to be a fundamental and essential condition of the said treaty of union in all time coming”. In terms of which enactments, this Act of Security was inserted in the Treaty of Union between the two kingdoms, as a fundamental condition thereof, and was also inserted in the Act (1706, c. 7) of the Parliament of Scotland ratifying and approving of the said Treaty, and likewise in the corresponding Act of the Parliament of England, entitled, “An Act (5 Anne, c.8) for a Union of the two kingdoms of England and Scotland.”

AND WHEREAS, at the date of the said Treaty of Union, the right of patrons to present to churches stood abolished by statute, after the following manner, — viz., By the Act of King William and Queen Mary (1690, c.5), herein before mentioned, the Act of James VI, (1592, c. 116), also herein before mentioned, then standing totally repealed,

was only revived, subject to the express exception of “that part of it relating to patronages”, which consequently remained repealed and unrevived, and “which”, the Act 1690, c.5, farther bore, “is hereafter to be taken into consideration”. The part of the said Act thus left repealed and unrevived, was the provision, that Presbyteries “be bound and astricted to receive whatsoever qualified minister presented by his Majesty or laic patrons”, — a provision which, while it subsisted, was held to leave the Church free to proceed in the collation of ministers, “according to the discipline of the Kirk”; and non-compliance with which implied only a forfeiture of the fruits of the particular benefice, which it did by virtue of the immediately succeeding statute 1592, c. 117, where by it was enacted, that, “in case the Presbytery *refuses* to admit any *qualified* minister presented to them by the patron, it shall be lawful to the patron to retain the whole fruits of the benefice in his own hands”. This subject having accordingly been thereafter taken into consideration in the same session of Parliament, was definitely settled by an Act (1690, c.23), entitled, “Act concerning Patronages”, whereby the right of presentation by patrons was “annulled and made void”, and a right was vested in the heritors and elders of the respective parishes “to *name* and *propose* the person to the whole congregation, to be approven or disapproven by them”, the disapprovers giving in their reasons “to the effect the affair may be cognosced upon by the Presbytery of the bounds, at whose judgment, and by whose determination” (as is declared the said Act), “*the calling and entry* of a particular minister is to be ordered and concluded”:

AND WHEREAS, the said Act last mentioned formed apart of the settlement of the Presbyterian Church government effected at the Revolution, and was one of the “Acts relating thereto”, and to the statute 1690, c.5, specially confirmed and secured by the Act of Security and Treaty of Union; yet notwithstanding thereof, and of the said Treaty, the Parliament of Great Britain, by an Act passed in the 10th of Queen Anne (10 Anne, c.12), repealed the said Act, “in so far as relates to the presentation of ministers by heritors and others therein mentioned”, and restored to patrons the right of presentation, and enacted that Presbyteries should be “obliged to receive and admit in the same manner, such qualified person or persons, minister or ministers, as shall be presented by the respective patrons, as the persons or ministers presented before the making of this Act ought to have been admitted:”

AND WHEREAS, while this Church protested against the passing of the above-mentioned Act of Queen Anne, as “contrary to the constitution of the Church, so well secured by the late Treaty of Union, and solemnly ratified by Acts of Parliament in both kingdoms”, and for more than seventy years thereafter uninterruptedly sought for its repeal, she at the same time maintained, and practically exercised, without question or challenge from any quarter, the jurisdiction of her Courts to determine ultimately and exclusively, under what circumstances they would admit candidates into the office of the holy ministry, or constitute the pastoral relationship between minister and people, and generally, “to order and conclude the entry of particular ministers”:

AND WHEREAS, in particular, this Church required, as necessary to the admission of a minister to the charge of souls, that he should have received a call from the people

over whom he was to be appointed, and did not authorise or permit any one so to be admitted till such call had been sustained by the Church Courts, and did, before and subsequent to the passing of the said Act of Queen Anne, declare it to be 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), repeated by Act of Assembly in 1638, that no pastor be intruded upon any congregation contrary to the will of the people:

AND WHEREAS, in especial, this fundamental principle was, by the 14th Act of the General Assembly 1736 (c.14), re-declared, and directed to be attended to in the settlement of vacant parishes, but having been, after some time, disregarded in the administration of the Church, it was once more re-declared by the General Assembly 1834 (c.9), who established certain specific provisions and regulations for carrying it into effect in time to come:

AND WHEREAS, by a judgment pronounced by the House of Lords, in 1839³, it was, for the first time, declared to be illegal to refuse to take on trial, and to reject the presentee of a patron (although a layman, and merely a candidate for admission to the office of the ministry), in consideration of this fundamental principle of the church, and in respect of the dissent of the congregation; to the authority of which judgment, so far as disposing of civil interests, this Church implicitly bowed, by at once abandoning all claim to the *jus devolutum*, — to the benefice, for any pastor to be settled by her, — and to all other civil right or privilege which might otherwise have been competent to the Church or her Courts; and anxiously desirous, at the same time, of avoiding collision with the Civil Courts, she so far suspended the operation of the above-mentioned Act of Assembly, as to direct all cases, in which dissent should be lodged by a majority of the congregation, to be reported to the General Assembly, in the hope that a way might be opened up to her for reconciling with the civil rights declared by the House of Lords, adherence to the above-mentioned fundamental principle, which she could not violate or abandon, by admitting to the holy office of the ministry a party not having, in her conscientious judgment, a legitimate call thereto, or by intruding a pastor on a reclaiming congregation contrary to their will; and farther, addressed herself to the Government and the Legislature for such an alteration of the law (as for the first time now interpreted), touching the temporalities belonging to the Church (which alone she held the decision of the House of Lords to be capable of affecting or regulating), as might prevent a separation between the cure of souls and the benefice thereto attached:

AND WHEREAS, although during the century which elapsed after the passing of the said Act of Queen Anne, Presbyteries repeatedly rejected the presentees of patrons on grounds undoubtedly *ultra vires* of the Presbyteries, as having reference to the title of the patron or the validity of competing presentations, and which were held by the Court of Session to be contrary to law, and admitted others to the pastoral office in the parishes presented to, who had no presentation or legal title to the benefice, the said

³ Auchterarder Case

Court, even in such cases, never attempted or pretended to direct or coerce the Church Courts, in the exercise of their functions in regard to the collation of ministers, or other matters acknowledged by the State to have been conferred on the Church, nor by the State, but by God himself. On the contrary, they limited these decrees to the regulation and disposal of the temporalities which were derived from the State, and which, as the proper subjects of “actions civil”, were within the province assigned to the Court of Session, by the Constitution refusing to interfere with the peculiar functions and exclusive jurisdiction of the Courts of the Church. Thus,—

In the case of Auchtermuchty,⁴ where the Presbytery had wrongfully admitted another than the patron’s presentee, the Court found “That *the right to a stipend* is a civil right, and *therefore* that the Court have power to cognosce and determine upon the legality of the admission of ministers *in hunc effectum*, whether the *person admitted* shall have right to the *stipend* or not; and simply decided, that the patron was entitled to retain the stipend in his own hands.

So also, the same course was followed in the cases of Culross, Lanark, and Forbes;⁵ in reference to one of which (that of Lanark), the Government of the country, on behalf of the Crown, in which the patronage was vested, recognised the retention of stipend by the patron, as the only competent remedy for a wrongful refusal to admit his presentee; the Secretary of State having, in a letter to the Lord Advocate of Scotland (January 17, 1752), signified the pleasure of his Majesty, “directing and ordering his lordship to do every thing necessary and competent by law, for asserting and taking benefit in the present case of the said right and privilege of patrons by the law of Scotland to retain the fruits of the benefice in their own hands till their presentee be admitted”.

So farther, in the before-mentioned case of Culross,⁶ the Court refused, “as incompetent”, a bill of advocation presented to them by the patron, for the purpose of staying the admission by the Presbytery of another than his presentee.

So likewise, in the case of Dunse,⁷ the Court would not interfere in regard to a conclusion to prohibit the Presbytery “to moderate in a call at large, or settle any other man”, because “that was interfering with the power of ordination, or internal policy of the Church, with which the Lords thought they had nothing to do”.

And so, in the same manner, in the case of Unst,⁸ where the party concluded to have the Presbytery ordained to proceed to the presentee’s settlement as well as to have the validity of the presentation and the right to the stipend declared, the Court limited their decree to the civil matters of the presentation and stipend.

AND WHEREAS, pending the efforts of the Church to accomplish the desired alteration of the law, the Court of Session, — a tribunal instituted by special Act of Parliament for

⁴ Moncrieff v. Maxton, Feb 15, 1735

⁵ Cochrane v. Stoddart, June 26, 1751. Dick v. Carmichael, March 2, 1753. Forbes v. McWilliam, February 1762

⁶ Cochrane, November 19, 1748

⁷ Hay v. Presbytery of Shetland, May 15, 1795

⁸ Lord Dundas v. Presbytery of Shetland, May 15, 1795

specific and limited purpose of “doing and administration of justice in all *civil actions*” (1537, c.36), with judges appointed simply “to sit and decide upon all actions civil” (1532, c.1) — not confining themselves to the determination of “civil actions” — to the withholding of civil consequences from sentences of the Church Courts, which, in their judgment, were not warranted by the statutes recognising the jurisdiction of these Courts, — to the enforcing of the provision of the Act 1592, c.117, for retention of the fruits of the benefice in case of wrongful refusal to admit a presentee, or the giving of other civil redress for any civil injury held by them to have been wrongfully sustained in consequence thereof, — have, in numerous and repeated instances, stepped beyond the province allotted to them by the Constitution, and within which alone their decisions can be held to declare the law, or to have the force of law, deciding not only “actions civil”, but “causes spiritual and ecclesiastical,” — and that, too, even where these had no connection with the exercise of the right of patronage, — and have invaded the jurisdiction, and encroached upon the spiritual privileges of the Courts of this Church, in violation of the constitution of the country — in defiance of the statutes above mentioned, and in contempt of the laws of this kingdom: as for instance —

By interdicting Presbyteries of the Church from admitting to a pastoral charge,⁹ when about to be done irrespective of the civil benefice attached thereto, or even where there was no benefice — no right of patronage — no stipend — no manse or glebe, and no place of worship, or any patrimonial right, connected themwith.¹⁰

By issuing a decree,¹¹ requiring and ordaining a Church Court to take on trial and admit to the office of the holy ministry, in a particular charge, a probationer or unordained candidate for the ministry, and to intrude him also on the congregation, contrary to the will of the people; — both in this, and in the cases first mentioned, invading the Church’s exclusive jurisdiction in the admission of ministers, the preaching of the Word, and administration of Sacraments — recognised by statute to have been “given by God” directly to the Church, and to be beyond the limits of the secular jurisdiction.

By prohibiting the communicants¹² of the Church from intimating their dissent from a call proposed to be given to a candidate for the ministry to become their pastor.

By granting interdict against the establishment or additional ministers to meet the wants of an increasing population,¹³ as uninterruptedly practised from the Reformation to this day: against constituting a new kirk session in a parish, to exercise discipline; and against innovating on its existing state, “as regards pastoral superintendence, its kirk session, and jurisdiction and discipline thereto belonging”.

By interdicting the preaching of the gospel and administration of ordinances¹⁴ throughout a whole district, by any minister of the Church under authority of the Church Courts; thus assuming to themselves the regulation of the “preaching

⁹ 1st Lethendy Case

¹⁰ Stewarton Case

¹¹ Marnoch Case

¹² Daviot Case

¹³ Stewarton Case

¹⁴ Strathbogie Case

of the Word” and ‘administration of the Sacraments”, and at the same time invading the privilege, common to all the subjects of the realm, of having freedom to worship God according to their consciences, and under the guidance of the ministers of the communion to which they belong.

By holding the members of inferior Church judicatories liable in damages¹⁵ for refusing to break their ordination vows and oaths (sworn by them in compliance with the requirements of the statutes of the realm, and, in particular, of the Act of Security embodied in the Treaty of Union), by disobeying and setting at defiance the sentences, in matters spiritual and ecclesiastical, of their superior Church judicatories, to which, by the constitution of the Church and country, they are, in such matters, subordinate and subject, and which, by their said vows and oaths, they stand pledged to obey.

By interdicting the execution of the sentence of a Church judicatory, prohibiting a minister from preaching or administering ordinances within a particular parish,¹⁶ pending the discussion of a cause in the Church Courts as to the validity of his settlement therein.

By interdicting the General Assembly and inferior Church judicatories from inflicting Church censures; as in one case, where interdict was granted against the pronouncing of sentence of deposition upon a minister found guilty of theft, by a judgment acquiesced in by himself;¹⁷ in another, where a Presbytery was interdicted from proceeding in the trial of a minister accused of fraud and swindling¹⁸ and in a third, where a Presbytery was interdicted from proceeding with a libel against a licentiate for drunkenness, obscenity; and profane swearing.¹⁹

By suspending Church censures,²⁰ inflicted by the Church judicatories in the exercise of discipline (which, by special statute, all “judges and officers of justice” are ordered “to give due assistance” for making “to be obeyed, or otherwise effectual”), and so reponing ministers suspended from their office, to the power of preaching and administering ordinances; thus assuming to themselves the “power of the keys”.

By interdicting the execution of a sentence of deposition from the office of the holy ministry, pronounced by the General Assembly of the Church;²¹ thereby also usurping the “power of the keys”, and supporting deposed ministers in the exercise of ministerial functions; which is declared by special statute to be a “high contempt of the authority of the Church, and of the laws of the kingdom establishing the same”.

By assuming to judge of the right of individuals elected members of the General Assembly to sit therein,²² and interdicting them from taking their seats; thus interfering with the constitution of the Supreme Court of the Church, and violating her freedom in the holding of General Assemblies, secured to her by statute.

¹⁵ 2nd Auchterarder Case

¹⁶ Culsalmond Case

¹⁷ Cambusnethan Case

¹⁸ Stranraer Case

¹⁹ 4th Lethendy Case

²⁰ 1st & 2nd Strathbogie Cases

²¹ 3rd Strathbogie Case

²² 5th Strathbogie Case

By, in the greater number of instances above referred to, requiring the inferior judicatories of the Church to disobey the sentences, in matters spiritual and ecclesiastical, of the superior judicatories, to which, by the constitution in Church and State, they are subordinate and subject, and which, in compliance with the provisions of the statutes of the realm, their members have solemnly sworn to obey; — thus subverting “the government of the Church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies”, settled by statute and the Treaty of Union, as “the only government of the Church within the kingdom of Scotland”.

By all which acts, the said Court of Session, apparently not adverting to the oath taken by the Sovereign, from whom they hold their commissions, have exercised powers not conferred upon them by the Constitution, but by it excluded from the province of any secular tribunal, — have invaded the jurisdiction of the Courts of the Church — have subverted its government, — have illegally attempted to coerce Church Courts in the exercise of their purely spiritual functions, — have usurped the “power of the keys”, — have wrongfully acclaimed, as the subjects of their civil jurisdiction, to be regulated by their decrees, ordination of laymen to the office of the holy ministry, admission to the cure of souls, Church censures, the preaching of the Word, and the administration of the Sacraments, — and have employed the means intrusted to them for enforcing submission to their lawful authority, in compelling submission to that which they have usurped, — in opposition to the doctrines of God’s Word set forth in the Confession of Faith, as ratified by statute, — in violation of the Constitution, — in breach of the Treaty of Union, and in disregard of divers express enactments of the Legislature:

AND WHEREAS, farther encroachments are threatened on the government and discipline of the Church as by law established,²³ in actions now depending before the said Court, in which it is sought to have sentences of deposition from the office of the holy ministry reduced and set aside,²⁴ and minorities of inferior judicatories authorized to take on trial and admit to the office of the holy ministry, in disregard of, and in opposition to, the authority of the judicatories of which they are members, and of the superior judicatories to which they are subordinate and subject:

AND WHEREAS the government and discipline of Christ’s Church cannot be carried on according to his laws and the constitution of his Church, subject to the exercise, by any secular tribunal, of such powers as have been assumed by the said Court of Session:

AND WHEREAS this Church, highly valuing, as she has ever done, her connection on the terms contained in the statutes herein before recited, with the State, and her possession of the temporal benefits thereby secured to her for the advantage of the people, must, nevertheless, even at the risk and hazard of the loss of that connection and of these public benefits — deeply as she would deplore and deprecate such a

²³ 4th Strathbogie Case

²⁴ 3rd Auchterarder Case and 3rd Lethendy Case

result for herself and the nation — persevere in maintaining her liberties as a Church of Christ, and in carrying on the government thereof on her own constitutional principles, and must refuse to intrude ministers on her congregations, to obey the unlawful coercion attempted to be enforced against her in the exercise of her spiritual functions and jurisdiction, or to consent that her people be deprived of their rightful liberties:

THEREFORE, the General Assembly, while, as above set forth, they fully recognise the absolute jurisdiction of the Civil Courts in relation to all matters whatsoever of a civil nature, and especially in relation to all the temporalities conferred by the State upon the Church, and the civil consequences attached by law to the decisions, in matters spiritual, of the Church Courts, — DO, in name and on behalf of this Church, and of the nation and people of Scotland, and under the sanction of the several statutes, and the Treaty of Union herein before recited, claim, as of right, That she 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.

AND they DECLARE, that they cannot, in accordance with the Word of God, the authorized and ratified standards of this Church, and the dictates of their consciences, intrude ministers on reclaiming congregations, or carry on the government of Christ's Church, subject to the coercion attempted by the Court of Session as above set forth; and, that, at the risk and hazard of suffering the loss of the secular benefits conferred by the State, and the public advantages of an Establishment, they must as by God's grace they will, refuse so to do: for, highly as they estimate these, they cannot put them in competition with the inalienable liberties of a Church of Christ, which, alike by their duty and allegiance to their Head and King, and by their ordination vows, they are bound to maintain, "notwithstanding of whatsoever trouble or persecution may arise".

AND they PROTEST that all and whatsoever Acts of the Parliament of Great Britain, passed without the consent of this Church and nation, in alteration of or derogation to the aforesaid government, discipline, right, and privileges of this Church (which were not allowed to be treated of by the Commissioners for settling the terms of the union between the two kingdoms, but were secured by antecedent stipulation, provided to be inserted, and inserted in the Treaty of Union, as an unalterable and fundamental condition thereof, and so reserved from the cognizance and power of the federal Legislature created by the said Treaty), as also, all and whatsoever sentences of Courts in contravention of the same government, discipline, right, and privileges, are, and shall be, in themselves void and null, and of no legal force or effect; and that, while they will accord full submission to all such acts and sentences, in so far — though in so far only, — as these may regard civil rights and privileges, whatever may be their opinion of the justice or legality of the same, their said submission shall not be deemed an acquiescence therein, but that it shall be free to the members of this Church, or their

successors, at any time hereafter, when there shall be a prospect of obtaining justice, to claim the restitution of all such civil rights and privileges, and temporal benefits and endowments, as for the present they may be compelled to yield up, in order to preserve to their office-bearers the free exercise of their spiritual government and discipline, and to their people the liberties, of which respectively it has been attempted, so contrary to law and justice, to deprive them.

AND, FINALLY, the General Assembly call the Christian people of this kingdom, and all the Churches of the Reformation throughout the world, who hold the great doctrine of the sole Headship of the Lord Jesus over his Church, to witness, that it is for their adherence to that doctrine, as set forth in their Confession of Faith, and ratified by the laws of this kingdom, and for the maintenance by them of the jurisdiction of the office-bearers, and the freedom and privileges of the members of the Church from that doctrine flowing, that this Church is subjected to hardship, and that the rights so sacredly pledged and secured to her are put in peril; and 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 will 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.

(3) Protest

ACT I, 1843: PROTEST BY THOSE COMMISSIONERS TO THE GENERAL ASSEMBLY APPOINTED TO MEET ON 18TH MAY 1843, BY WHOM THIS ASSEMBLY WAS CONSTITUTED.

The Commissioners to the General Assembly of the Church of Scotland, appointed to have been holden this day, having met in St. Andrew's Church, the Ministers and Elders, Commissioners thereto, whose names are appended to the Protest then and there made, and hereinafter inserted, having withdrawn from that

place, and, having convened in a large Hall at Canonmills, in the presence of a great concourse of Ministers, Elders, and People, and having duly constituted themselves in the name of the Head of the Church, and appointed the Rev. Dr. Chalmers to be their Moderator, the Protest above-mentioned was produced and read, and thereafter ordered to be recorded as follows:—

We, the undersigned Ministers and Elders, chosen as Commissioners to the General Assembly of the Church of Scotland, indicted to meet this day, but precluded from holding the said Assembly by reason of the circumstances hereinafter set forth, in consequence of which a Free Assembly of the Church of Scotland, in accordance with the laws and constitution of the said Church, cannot at this time be holden,—

CONSIDERING that the Legislature, by their rejection of the Claim of Right adopted by the last General Assembly of the said Church, and their refusal to give redress and protection against the jurisdiction assumed, and the coercion of late repeatedly attempted to be exercised over the Courts of the Church in matters spiritual by the Civil Courts, have recognised and fixed the conditions of the Church Establishment, as henceforward to subsist in Scotland, to be such as these have been pronounced, and declared the said Civil Courts in their several recent decisions, in regard to matters spiritual and ecclesiastical, whereby it has been held, *inter alia*,—

1st, That the Courts of the Church by law established, and members thereof, are liable to be coerced by the Civil Courts in the exercise of their spiritual functions; and in particular, in the admission to the office of the holy ministry, and the constitution of the pastoral relation, and that they are subject to be compelled to intrude ministers on reclaiming congregations in opposition to the fundamental principles of the Church, and their views of the Word of God, and to the liberties of Christ's people.

2nd, That the said Civil Courts have power to interfere with and interdict the preaching of the gospel and administration of ordinances as authorised and enjoined by the Church Courts of the Establishment

3rd, That the said Civil Courts have power to suspend spiritual censures pronounced by the Church Courts of the Establishment against ministers and probationers of the Church, and to interdict their execution as to spiritual effects, functions, and privileges.

4th, That the said Civil Courts have power to reduce and set aside the sentences of the Church Courts of the Establishment, deposing ministers from the office of the holy ministry, and depriving probationers of their license to preach the gospel, with reference to the spiritual status, functions, and privileges, of such ministers and probationers, — restoring them to the spiritual office and status of which the Church Con had deprived them.

5th, That the said Civil Courts have power to determine on the right to sit as members of the supreme and other judicatories of the Church by law established, and to issue interdicts against sitting and voting therein, irrespective of the judgment and determination of the said judicatories.

6th, That the said Civil Courts have power to supersede the majority of a Church Court of the Establishment, in regard to the exercise of its spiritual functions as a Church Court, and to authorize the minority to exercise the said functions, in opposition to the Court itself, and to the superior judicatories of the Establishment.

7th, That the said Civil Courts have power to stay processes of discipline pending before Courts of the Church by law established, and to interdict such Courts from proceeding therein.

8th, That no pastor of a congregation can be admitted into the Church Courts of the Establishment, and allowed to rule, as well as to teach, agreeably to the institution of the office by the Head of the Church, nor to sit in any of the judicatories of the Church, inferior or supreme, — and that no additional provision can be made for the exercise of spiritual discipline among the members of the Church, though not affecting any patrimonial interests, and no alteration introduced in the state of pastoral superintendence and spiritual discipline in any parish, without the sanction of a Civil Court.

All which jurisdiction and power on the part of the said Civil Courts severally above specified, whatever proceeding may have given occasion to its exercise, is, in our opinion, in itself, inconsistent with Christian liberty, and with the authority which the Head of the Church hath conferred on the Church alone.

AND FURTHER CONSIDERING, that a General Assembly, composed, in accordance with the laws and fundamental principles of the Church, in part of commissioners themselves admitted without the sanction of the Civil Court, or chosen by Presbyteries composed in part of members not having that sanction, cannot be constituted as an Assembly of the Establishment without disregarding the law and the legal conditions of the same as now fixed and declared;

AND FURTHER CONSIDERING, that such commissioners as aforesaid would, as members of an Assembly of the Establishment, be liable to be interdicted from exercising their functions, and to be subjected to civil coercion at the instance of any individual having interest who might apply to the Civil Courts for that purpose;

AND FURTHER CONSIDERING, that civil coercion has already been in divers instances applied for and used, whereby certain commissioners returned to the Assembly this day appointed to have been holden, have been interdicted from claiming their seats, and from sitting and voting therein; and certain Presbyteries have been, by interdicts directed against their members, prevented from freely choosing commissioners to the said Assembly, whereby the freedom of such Assembly, and the liberty of election thereto, has been forcibly obstructed and taken away;

AND FURTHER CONSIDERING, that in these circumstances, a free Assembly of the Church of Scotland, by law established, cannot at this time be holden, and that an Assembly, in accordance with the fundamental principles of the Church, cannot be constituted in connection with the State without violating the conditions which must now, since the rejection by the Legislature of the Church's claim of right, be held to be the conditions of the Establishment;

AND CONSIDERING that, while heretofore, as members of Church judicatories ratified by law and recognised by the constitution of the kingdom, we held ourselves entitled and bound to exercise and maintain the jurisdiction vested in these judicatories with the sanction of the constitution, notwithstanding the decrees as to matters spiritual and ecclesiastical of the Civil Courts, because we could not see that the State had required submission thereto as a condition of the Establishment, but, on the contrary, were satisfied that the State, by the acts of the Parliament of Scotland, for ever and unalterably secured to this nation by the Treaty of Union, had repudiated any power in the Civil Courts to pronounce such decrees, we are now constrained to acknowledge it to be the mind and will of the State, as recently declared, that such submission should and does form a condition of the Establishment, and of the possession of the benefits thereof, and that as we cannot, without committing what we believe to be sin — in opposition to God's law — in disregard of the honour and authority of Christ's crown, and in violation of our own solemn vows, comply with this condition, we cannot in conscience continue connected with, and retain the benefits of, an Establishment to which such condition is attached.

WE, THEREFORE, the Ministers and Elders foresaid, on this, the first occasion since the rejection by the Legislature of the Church's claim of right, when the commissioners chosen from throughout the bounds of the Church to the General Assembly appointed to have been this day holden, are convened together, do protest, that the conditions foresaid, while we deem them contrary to and subversive of the settlement of church government effected at the Revolution, and solemnly guaranteed by the Act of Security and Treaty of Union, are also at variance with God's word, in opposition to the doctrines and fundamental principles of the Church of Scotland, inconsistent with the freedom essential to the right constitution of a Church of Christ, and incompatible with the government which He, as the Head of His Church, hath therein appointed distinct from the civil magistrate.

And we further PROTEST, that any Assembly constituted in submission to the conditions now declared to be law, and under the civil coercion which has been brought to bear on the election of commissioners to the Assembly this day appointed to have been holden, and on the commissioners chosen thereto, 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, 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.

(4) Judgments of the House of Lords

Bannatyne v. Overtoun

“It is ordered and adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of his Majesty the King assembled, that the said interlocutors complained of in the said appeal be, and the same are hereby, reversed. And it is further ordered that the cause be, and the same is hereby, remitted back to the Court of Session in Scotland, with a direction to declare (1) that the association or body of Christians calling themselves the United Free Church of Scotland has no right, title, or interest in any part of the whole lands, properties, sums of money, and others which stood vested, as at the 30th day of October 1900, in the Right Hon. John Campbell, Baron Overtoun, and others, as general trustees of the Free Church of Scotland; and (2) that the said appellants (pursuers), and those adhering to and lawfully associated with them, conform to the constitution of the Free Church of Scotland, are and lawfully represent the said Free Church of Scotland, and are entitled to have the whole of the said lands, property, and funds applied according to the terms of the Trusts upon which they are respectively held for behoof of

themselves and those so adhering to and associated with them and their successors, as constituting the true and lawful Free Church of Scotland; and that the defenders, the said Right Hon. John Campbell, Baron Overtoun, and others, as general trustees foresaid, or the defenders second enumerated, or those of the defenders in whose hands, or under whose control, the said lands, property, and funds may be for the time being, are bound to hold and apply the same (subject always to the Trusts aftermentioned) for behoof of the pursuers and those adhering to and associated with them as aforesaid, and subject to the lawful orders of the General Assembly of the said Free Church of Scotland, or its duly appointed Commission for the time being; and in particular that they are bound to denude themselves of the whole of said lands, property, and funds, in favour of such parties as may be nominated as general trustees by a General Assembly of the Free Church of Scotland, or its duly appointed Commission for the time being, but subject always to the trusts upon which the said lands, property, and funds were respectively held by the said defenders for behoof of the Free Church of Scotland as at 30th October 1900; and to do therein as shall be just and consistent with this judgment and direction: And it is further ordered that the respondents do pay, or cause to be paid, to the said appellants the costs of the action in the Court of Session, and also the costs incurred in respect of the said appeal to this House, the amount of the said last-mentioned costs to be certified by the Clerk of the Parliaments: And it is also further ordered that unless the costs, certified as aforesaid, shall be paid to the parties entitled to the same within one calendar month from the date of the certificate thereof, the Court of Session in Scotland, or the Lord Ordinary officiating on the Bills during the vacation, shall issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary”.

Macalister v. Young

“It is ordered and adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of his Majesty the King Assembled, that the said interlocutors complained of in the said appeal be, and the same are hereby, reversed. And it is further ordered that the said cause be, and the same is hereby, remitted back to the Court of Session in Scotland, with a direction to assoilzie the defenders from the conclusions of the action, and to do therein as shall be just and consistent with this judgment and direction; and it is further ordered that the respondents do pay, or cause to be paid, to the said appellants the costs of the action in the Court of Session, and also the costs incurred in respect of the said appeal to this House, the amount of such last-mentioned costs to be certified by the Clerk to the Parliaments; and it is also further ordered that unless the costs, certified as aforesaid, shall be paid to the parties entitled to the same within one calendar month from the date of the certificate thereof, the Court of Session in Scotland, or the Lord Ordinary officiating on the Bills during the vacation, shall issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary”.

(5) Churches (Scotland) Act, 1905
5 EDW. VII. Chap. 12

An Act to provide for the Settlement of certain Questions between the Free Church and the United Free Church in Scotland and to make certain amendments of the law with respect to the Church of Scotland [11th August 1905]

Whereas questions have arisen as to property between the Free Church and the United Free Church in Scotland and judgments have been given by the Courts in favour of the Free Church:

And whereas a Royal Commission appointed to inquire into the matter have reported that the Free Church are unable adequately to carry out all the trusts of the property, and that it is desirable to provide for the allocation thereof, provision being made for the equipment of the Free Church:

And whereas it is expedient to make provision for such allocation by means of the appointment of a Commission:

And whereas it is expedient to amend the law relating to the subscription of the Confession of Faith by Ministers of the Church of Scotland and others:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. — (1) The Commission established under this Act shall allocate between the Free Church and the United Free Church the property in question as defined by this Act in such manner as appears to the Commission fair and equitable, having regard to all the circumstances of the case, but subject to the provisions of this Act.

(2) The Commission in making their allocation of property under this Act, shall allocate congregational property to the Free Church in any case where they consider that out of those who in the opinion of the Commission were members or adherents of the congregation on the thirtieth day of October, nineteen hundred, and are at the commencement of this Act both resident in the district, and members or adherents of the Free Church or United Free Church congregation, at least one-third are members or adherents of the Free Church congregation; with power, however, to make special arrangements where several church buildings are situated in the same neighbourhood, and in any other cases which appear to them to require exceptional treatment; and

(3) The Commission in making their allocation of property under this Act shall, having regard to congregational contributions and other income of the Free Church, make adequate provision for the education of the students for the ministry of the Free Church, for the support, subject to payment of the usual annual contributions (if any) of aged and infirm ministers and of widows and orphans of ministers of that Church, for the support of the ministers of Free Church congregations to which congregational property has been allocated under this Act, for itinerant preachers, and for the general purposes of administration and management of that Church. The funds and property out of which provision may be made for each of the above-mentioned objects shall be

those set out in the second column of the First Schedule to this Act, opposite the description of the object in the first column of that schedule.

2. — (1) The Commission may make such orders as they may consider necessary for carrying into effect any allocation under this Act (including the modification of the Acts relating to the Widows' and Orphans' Fund), and may also, before that allocation is made, make interim orders having temporary effect as respects the property in question as defined by this Act. Any such orders shall have effect as if enacted in this Act, may be recorded in the Register of Sasines or other appropriate register, and shall not be chargeable with stamp duty.

(2) Subject to the provisions of this Act, the Commission, if they think fit, may order that any property (other than congregational property) allocated to either Church under this Act shall be burdened with such bond, or charge, in favour of the other Church or in favour of third parties who may advance money for the purposes of such bond or charge, as they direct. Any congregational property allocated to either Church shall be subject to any bonds, burdens, or debts thereon in respect thereof, and the Commissioners may charge upon the particular congregational property concerned any moneys expended since thirty-first October, nineteen hundred, on improvements of that property or in paying off debt incurred in respect of that property.

(3) The Free Church and the United Free Church respectively shall hold any property allocated to them under this Act for the purposes of and in accordance with their respective constitutions, and, in allocating to the United Free Church any property which is, at the commencement of this Act, appropriated to any special Church purposes, the Commission shall, so far as possible, provide by their orders that the property shall remain, in the hands of the United Free Church, appropriated to the same or similar purposes.

(4) Any proceedings in any court between the Free Church and the United Free Church as to any property in question as defined by this Act, and all diligence and execution in any such proceedings, shall, by virtue of this Act, be permanently sisted or stayed, and no such proceedings shall be instituted as respects any such property before that property has been allocated by the Commission under this Act.

(5) No court shall have power to review or interfere in any way with the orders or other proceedings of the Commission, but such orders or proceedings shall not prejudice or affect any rights, duties, and liabilities as regards any property in question as defined by this Act other than those of the Free Church and the United Free Church.

3. —(1) The Commission under this Act shall consist of five Commissioners to be appointed by His Majesty.

(2) If a vacancy occurs in the office of any Commissioner so appointed by reason of death, resignation, incapacity, or otherwise, His Majesty may appoint some other person to fill the vacancy, and so from time to time as occasion requires.

(3) The Commission may appoint and employ such Assistant Commissioners, officers, and persons, as they think necessary, and may remove any officer or person so appointed or employed.

(4) The salaries and remuneration of any persons so appointed or employed, and all expenses of the Commission incurred in the execution of this Act, shall be paid out of the property in question as defined by this Act, and the Commission may make any orders necessary for the purpose.

(5) The quorum of the Commission shall be three, and in case of an equal division of votes at any meeting of the Commission the person who is Chairman at that meeting shall have a second or casting vote. The procedure, place of meeting, and authentication of documents of the Commission, shall be regulated in such manner as the Commission determine.

(6) The Commission and any Assistant Commissioner appointed under this Act may examine witnesses on oath, and, for the enforcing the attendance of witnesses, after a tender of their expenses, the examination of witnesses, and the production of books and documents, shall have all such powers, rights, and privileges as are vested in any of His Majesty's courts of law.

(7) The powers of the Commission shall be in force until the first day of March nineteen hundred and six, but His Majesty may by Order in Council continue their powers for such further period as His Majesty thinks fit.

4. — (1) All property which, on the thirtieth day of October, nineteen hundred, was vested in or held by or on trust for, or was payable to or for behoof of, the Free Church, or was held for the purposes of any school, scheme, mission, or other special object of the said church, or, where any such property has been disposed of since that date, the proceeds of sale thereof or any investments representing the same, including any revenue or accumulations of any such property, proceeds of sale, or investments accruing since the said date, shall, notwithstanding anything that has taken place since said date, be deemed to be property in question within the meaning of this Act, subject in any case to any disbursements properly made since the said date (which are hereby declared to stand good), and any person held accountable for any such property, in accordance with an order of the Commission, shall account for the same accordingly.

(2) Such rights, duties, and liabilities (including the right of appointing representatives on bodies of trustees or other boards) as belonged or attached to the Free Church on the thirtieth day of October nineteen hundred shall be subject to allocation by the Commission in the same manner as the property in question within the meaning of this Act.

(3) Any legacies, bequests, or conveyances of property under testamentary writings made before the thirtieth day of October, nineteen hundred, by testators who died thereafter and before the commencement of this Act, in dispute between the Free Church and the United Free Church, shall be allocated to or apportioned between the Churches in such manner as the Commission deem fair and equitable, having regard to what seems to them to have been the intention of the testator, and the capacity of the Churches respectively to carry out any special trusts annexed to the legacy; and all proceedings in any court as regards any disputes between the two Churches in respect of such legacies shall be permanently sisted or stayed.

(4) In this section, the expression “property” includes property heritable and movable and all interests therein; and the expression “rights” includes powers, privileges, and immunities.

5. The formula of subscription to the Confession of Faith required from ministers and preachers of the Church of Scotland as by law established and from persons appointed to Chairs of Theology in the Scottish Universities and the Principal of Saint Mary’s College, Saint Andrews, respectively, shall be such as may be prescribed by Act of the General Assembly of the said Church with the consent of the majority of the presbyteries thereof. The formula at present in use in any case shall be required until a formula in lieu thereof is so prescribed.

6. — (1) In this Act the expression “the Free Church” means that the association or body of Christians known and designated as the Free Church of Scotland; and the expression “the United Free Church” means the association or body of Christians known and designated as the United Free Church of Scotland, and, unless the context otherwise requires, those expressions respectively include any court, congregation, or college of either Church, or any member thereof as such, or any person acting on behalf of such church, congregation, or college.

(2) The Acts mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule, both as originally enacted, and as incorporated, ratified, confirmed, or approved by any other Act.

(3) This Act may be cited as the Churches (Scotland) Act, 1905.

SCHEDULES

FIRST SCHEDULE

Object	Funds and Property
<p>1. Education of students of the Free Church.</p> <p>2. Support of aged and infirm ministers of the Free Church.</p> <p>3. Support of widows and orphans of ministers of the Free Church.</p> <p>4. (a) Support of ministers of Free Church congregations to which congregational property has been allocated under this act and of itinerant preachers. (b) General purposes of administration and management of the Free Church.</p>	<p>1. College endowments and bursary funds; college buildings.</p> <p>2. Aged and Infirm Ministers' Fund.</p> <p>3. Widows' and Orphans' Fund.</p> <p>4. Sustentation Fund; Home Missions Fund; Highlands and Islands Fund; any moneys which the Commission regard as applicable for these or similar purposes. So far as those funds or moneys are not sufficient, any further amount required for this object shall be provided by such bond or charge as the Commission may direct to be imposed on any land or buildings in Scotland allocated to the United Free Church other than congregational property, colleges, schools, and any land or buildings bequeathed or given for special purposes.</p>

**SECOND SCHEDULE
ENACTMENTS REPEALED**

Act	Title	Extent of Repeal
<p>An Act of the Parliament of Scotland passed in the year one thousand six hundred and ninety-three.</p>	<p>Act for settling the quiet and peace of the Church.</p>	<p>The words "the same to be the confession of his faith, and that he owns the doctrine contained to be the true doctrine which he will constantly adhere to, as"</p>
<p>An Act of the Parliament of Scotland passed in the year one thousand seven hundred and seven.</p>	<p>Act for securing the Protestant religion and Presbyterian Church government.</p>	<p>The words "do and shall acknowledge and profess and," and the words "as the confession of their faith;"</p>

APPENDIX II

ELECTION AND ADMISSION OF OFFICE-BEARERS

(1) General

ACT XIV, 1846: DECLARATORY ACT ANENT ELECTION OF OFFICE-BEARERS

The General Assembly declare, that it is not necessary or expedient at present to frame a minute and detailed directory for regulating the election of Office-bearers; that the Church should be satisfied with a recognition of general principles, and the adoption of one or two general rules; and that reliance should be placed, in the meantime, upon the spirit which seems generally to actuate both the judicatories and congregations of the Church, for avoiding the necessity of judicially determining some points on which a diversity of opinion might exist, and yet securing general harmony in the appointment of Office-bearers, and the peace and welfare of congregations.

The Assembly declare that the principle has been already recognised, and should be fully and fairly acted on, that “it appertaineth to the people, and to every several congregation”, that is, to the members of the congregation in full communion with the Church, “to elect their minister”; and they further declare, that it is a principle of Presbyterian Church Government, that the whole proceedings of a congregation connected with the appointment of a minister should be conducted under the Presbyterial superintendence, and that while this principle requires that the actual election and call of a minister by the congregation should take place in the presence and under the moderation of the Presbytery, or a Committee of that body, it likewise implies that no public meeting of a congregation should be held to take any steps

connected with the choice of a minister, unless some member of Presbytery be present to preside at it.

It is also declared, that Presbyteries, on whom devolves the duty of supplying the pulpit during the vacancy, ought to use their endeavour to secure to vacant congregations an opportunity of hearing such probationers as they may wish to hear; and the provision with regard to this in the Directory of 1649 should, as far as possible, be acted on. That provision is, “When any place of the ministry in a congregation is vacant, it is incumbent to the Presbytery, with all diligence, to send one of their number to preach to that congregation, who in his doctrine is to represent to them the necessity of providing the place with a qualified pastor, and to exhort them to fervent prayer and supplication to the Lord that He would send them a pastor according to His own heart: As also he is to signify that the Presbytery, out of their care of that flock, will send unto them preachers whom they may hear; and if they have a desire to hear any other, they will endeavour to procure them an hearing of that person or persons, upon the suit of the elders to the Presbytery”.

The General Assembly are of opinion, that the present circumstances and necessities of the Church greatly confirm the propriety of what is in itself a good rule, and well fitted to promote the peace and edification of congregations, viz., that, in general, a Presbytery should not proceed to moderate in a call until they have ground to believe that the congregation are, on the whole, very much of one mind as to the person whom they mean to choose. There is satisfactory evidence that this was the plan usually followed by the Church under the Revolution Settlement, as well as in earlier times. But this system can be expected to succeed, and to work well, only if the Church Courts act fairly upon the great principle, that “it appertaineth to the people, and to every several congregation to elect their ministers”, and, in the execution of the functions which undoubtedly belong to them, such as supplying the vacant pulpit, and moderating in a call, show a reasonable regard to the inclinations and convenience of congregations: and if congregations, on the other hand, are influenced in all the steps they take in regard to the choice of a minister, by a deep sense of the solemnity and importance of the duty they are called upon to discharge, by the habitual recollection that it is from Christ alone they can get duly qualified and useful pastors, and by a sincere determination that all things shall be “done decently and in order”, and that the utmost care shall be taken to avoid caballing, party spirit, and division. If congregations would proceed, in all the steps connected with the choice of a minister, under the influence of these convictions and resolutions, the Assembly confidently hope that elections would, in general, be harmonious, if not unanimous; that there would be no occasion for a formal vote, and that not only would useful and acceptable pastors be chosen, but that the members of congregations, instead of being alienated from each other by divisions and contentions, and all the evils of unholy partisanship, would, by their meetings together for prayer and consultation in regard to the choice of a pastor, be more closely united in the bonds of Christian affection.

With the foregoing statement of principles and general rules, the Assembly would express their earnest hope that these may be acted on by all parties, in such a spirit as

not only to render a directory unnecessary, but to promote the general peace of the Church, and the best interests of congregations.

It is finally declared, that the election of Elders and Deacons should be conducted upon the same general principles as the election of Ministers, subject to such modifications as the nature of the case, and the practice and circumstances of the congregation, may suggest.

The General Assembly appoint this Act to be read from the pulpit, on every occasion of the intimation of a vacancy in the pastoral charge.

ACT V, 1932: ACT ANENT REQUIREMENTS AT ORDINATIONS AND INDUCTIONS

The General Assembly enact and ordain that at Ordinations and Inductions the presiding Minister shall, prior to putting the appointed questions to the Ordinand make the following intimation, namely: “It is my duty to explain to you, and also to the Congregation here present, with reference to that part of the question which will be put to you as to ‘Purity of Worship as presently practised in this Church’ that, in 1910, the General Assembly reaffirmed the legislation of the Church as to uniformity in public worship going back to the year 1707; and that, in accordance with that legislation, it is the present practice of the Free Church to avoid the use in public worship of uninspired materials of praise as also of instrumental music. Such present practice determines the purity of worship to the maintenance of which the Ordinand pledges himself”

Questions and Formula for Ministers and other Office-bearers

ACT XII, 1846: ACT ANENT QUESTIONS AND FORMULA (AS AMENDED BY ACT II, 1874)

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 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 license 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.

(1) Elders and Deacons

Questions to be put before Ordination

1. Do you believe the Scriptures of the Old and New Testaments to be the Word of God, and the only rule of faith and manners?

2. Do you sincerely own and declare the Confession of Faith, approved by former General Assemblies of this Church, to be the confession of your faith; and do you own the doctrine therein contained to be the true doctrine, which you will constantly adhere to?

3. Do you own and acknowledge the Presbyterian Church Government of this Church, by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, to be the only government of this Church; and do you engage to submit thereto, concur therewith, and not to endeavour, directly or indirectly, the prejudice or subversion thereof?

4. Do you believe that the Lord Jesus Christ, as King and Head of the Church, has therein appointed a government in the hands of Church-officers, distinct from, and not subordinate in its own province to, civil government, and that the Civil Magistrate does not possess jurisdiction or authoritative control over the regulation of the affairs of Christ's Church; 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?

5. Do you promise to observe uniformity of worship and of the administration of all public ordinances within this Church, as the same are at present performed and allowed?

6. Do you accept the office of an Elder [Deacon] of this Congregation and promise, through grace, faithfully, diligently, and cheerfully, to discharge all the duties thereof?

(2) Probationers

Questions to be put to Probationers before they are Licensed to preach the Gospel

1. Do you believe the Scriptures of the Old and New Testaments to be the Word of God and the only rule of faith and manners?

2. Do you sincerely own and believe the whole doctrine of the Confession of Faith, approved by the General Assemblies of this Church, to be the truths of God, contained in the Scriptures of the Old and New Testaments; and do you own the whole doctrine therein contained as the confession of your faith?

3. Do you sincerely own the purity of worship presently authorized and practised in this Church, and also own the Presbyterian government and discipline; and are you persuaded that the said doctrine, worship, and discipline, and Church government, are founded upon the Holy Scriptures, and agreeable thereto?

4. Do you believe that the Lord Jesus Christ, as King and Head of the Church, has therein appointed a government in the hands of Church-officers, distinct from, and not subordinate in its own province to, civil government, and that the Civil Magistrate does not possess jurisdiction or authoritative control over the regulation of the affairs of Christ's Church; 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?

5. Do you promise that, through the grace of God, you will firmly and constantly adhere to, and in your station, to the utmost of your power, assert, maintain, and defend the said doctrine, worship, and discipline, and the government of this Church by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies?

6. Do you promise that in your practice you will conform yourself to the said worship, and submit yourself to the said discipline and government of this Church, and not endeavour, directly or indirectly, the prejudice or subversion of the same?

7. Do you promise that you shall follow no divisive courses from the doctrine, worship, discipline, and government of this Church?

8. Do you renounce all doctrines, tenets, or opinions whatsoever, contrary to, or inconsistent with, the said doctrine, worship, discipline, and government of this Church?

9. Do you promise that you shall subject yourself to the several judicatories of this Church? (Act II, 1874)

(3) Probationer after being called by a Congregation

Questions to be put to Probationers before Ordination (and also to a Minister already ordained at his admission to a Pastoral Charge)

1. Do you believe the Scriptures of the Old and New Testaments to be the Word of God, and the only rule of faith and manners?

2. Do you sincerely own and believe the whole doctrine contained in the Confession of Faith, approved by former General Assemblies of this Church, to be founded upon the Word of God; and do you acknowledge the same as the confession of your faith; and will you firmly and constantly adhere thereto, and to the utmost of your power assert, maintain, and defend the same, and the purity of worship as presently practised in this Church?

3. Do you disown all Popish, Arian, Socinian, Arminian, Erastian, and other doctrines, tenets, and opinions whatsoever, contrary to, and inconsistent with, the foresaid Confession of Faith?

4. Are you persuaded that the Presbyterian government and discipline of this Church are founded upon the Word of God, and agreeable thereto; and do you promise to submit to the said government and discipline, and to concur with the same, and not

to endeavour, directly or indirectly, the prejudice or subversion thereof, but to the utmost of your power, in your station, to maintain, support, and defend the said discipline and Presbyterian government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies?

5. Do you believe that the Lord Jesus Christ, as King and Head of the Church, has therein appointed a government in the hands of Church-officers, distinct from, and not subordinate in its own province to, civil government, and that the Civil Magistrate does not possess jurisdiction or authoritative control over the regulation of the affairs of Christ's Church; 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?

6. Do you promise to submit yourself willingly and humbly, in the spirit of meekness, unto the admonitions of the brethren of this Presbytery, and to be subject to them, and all other Presbyteries and superior judicatories of this Church, where God in His providence shall cast your lot; and that, according to your power, you shall maintain the unity and peace of this Church against error and schism, notwithstanding of whatsoever trouble or persecution may arise, and that you shall follow no divisive courses from the doctrine, worship, discipline, and government of this Church?

7. Are not zeal for the honour of God, love to Jesus Christ, and desire of saving souls, your great motives and chief inducements to enter into the function of the holy ministry, and not worldly designs and interests?

8. Have you used any undue methods, either by yourself or others, in procuring this call?

9. Do you engage, in the strength and grace of Jesus Christ, our Lord and Master, to rule well your own family, to live a holy and circumspect life, and faithfully, diligently, and cheerfully to discharge all the parts of the ministerial work, to the edification of the body of Christ?

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

(4) Formula

(To be subscribed by Probationers before receiving license, and by all Office-bearers at the time of their admission)

I, _____, do hereby declare, that I do sincerely own and believe the whole doctrine contained in the Confession of Faith, approved by former General Assemblies of this Church to be the truths of God; and I do own the same as the confession of my

faith; as likewise I do own the purity of worship presently authorized and practised in the Free Church of Scotland, and also the Presbyterian government and discipline thereof, which doctrine, worship and Church government, I am persuaded, are founded on the Word of God, and agreeable thereto: I also approve of the general principles respecting the jurisdiction of the Church, and her subjection to Christ as her only Head, which are contained in the Claim of Right and in the Protest referred to in the questions already put to me; and I promise that, through the grace of God, I shall firmly and constantly adhere to the same, and to the utmost of my power shall, in my station, assert, maintain, and defend the said doctrine, worship, discipline, and government of this Church, by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, together with the liberty and exclusive jurisdiction thereof; and that I shall, in my practice, conform myself to the said worship, and submit to the said discipline, government, and exclusive jurisdiction, and not endeavour, directly or indirectly, the prejudice or subversion of the same; and I promise that I shall follow no divisive course from the doctrine, worship, discipline, government, and exclusive jurisdiction of this Church, renouncing all doctrines, tenets, and opinions whatsoever, contrary to, or inconsistent with, the said doctrine, worship, discipline, government, or jurisdiction of the same.

(2) Elders and Deacons

ACT X, 1864: DECLARATORY ACT ANENT ELECTION OF ELDERS AND DEACONS

The General Assembly hereby declare, that the Act XIV, 1846, is now the law of the Church on the subject of the election of Elders and Deacons, and supersedes all previous legislation that is inconsistent with its declarations and provisions.

ACT X, 1842: ACT ANENT THE ELECTION OF ELDERS

1. That when a kirk-session shall have resolved upon an addition to the number of elders in the same, the minister shall publicly intimate from the pulpit, after divine service on the Lord's Day, that an appointment of additional elders has been resolved upon, and shall also intimate the number which is to be added; and he shall certify the whole male communicants of the congregation, that on the third Lord's Day thereafter, they shall give in lists of such members of the congregation, being communicants and of full age, as they would choose for the office of eldership, the number of names in each list being required to be as near as may be one-half more than the number of elders proposed, as, for instance, six when four elders are to be appointed; the session being at liberty, if they see fit, to suggest the names of such persons as they may deem meet for the office, for the consideration of the communicants; and the minister shall repeat

the intimation on the two following Lord's Days, giving such exhortation as he shall deem necessary.

2. That on the Lord's Day fixed for giving in the lists aforesaid, the said male communicants shall respectively give to the elder or elders of the congregation appointed to receive them their said lists, which shall be signed by the parties lodging them, and shall have been sealed up by them before being given in.

3. That if the number of elders proposed to be appointed be not an even number, that to be contained in the list shall be equal to it and one-half of the next immediate larger number, as, for instance, if the elders proposed to be appointed shall be five, the names to be given in shall be eight in each list.

4. That on the following Monday, the session shall meet in the Church with open doors, so that all members of the congregation who choose to attend may be present, and shall then and there open the sealed lists, and the names in each list shall be read aloud and recorded, with the number of votes given for each, and those having most votes, to the number required to be contained in the lists, shall be taken as the parties chosen, from among whom the elders are to be appointed.

5. That the session shall thereupon select, from among the parties chosen as aforesaid, the number resolved to be added to the session; being, however, always entitled, according to the laws of the Church, to judge of the qualifications and fitness for the office of the parties so chosen, and to reject such as they shall judge to be unqualified; and being also entitled, if they shall see cause, in the particular circumstances of any special case, to appoint to be elders the whole of the parties so chosen.

6. That when the parties so chosen and appointed shall have declared their willingness to accept the office of elder, their edict shall be served, and the other steps followed out towards their ordination, agreeably to the forms now in use, and according to the laws of the Church.

7. That in parishes which, by the intervention of lochs, ridges of hills, or the like, are separated into totally distinct districts; or when, from other circumstances, a division is considered necessary and proper, the session may, with consent and authority of the Presbytery, divide the parish into districts, and require a certain number of elders to be appointed for each district; and the choosing of elders of each district shall be by the male communicants residing in each district respectively, in the same manner as is herein before provided as to parishes.

Qualifications and Age

ACT IX, 1722: ACT AGAINST PROFANENESS, AND CONCERNING THE DUTY OF ELDERS AND DEACONS (PART)

The General Assembly do earnestly beseech, exhort, and require Elders and Deacons to be faithful in the discharge of their respective offices, tender and circumspect in their walk, and punctual in their attending upon ordinances, and strict in their observance of the Lord's Day, and in regularly keeping up the worship of God

in their families; and the General Assembly appoints the judicatures of the Church to take good heed, that none be admitted to or continued in these offices, but such as are found qualified, and do behave themselves as above required.

ACT X, 1816: ACT ANENT THE ORDINATION OF ELDERS

Hereafter no person shall be set apart to the office of an Elder, unless he hath attained the age of twenty-one years complete ... and unless he is a Communicant.

Elders and Kirk-Sessions at Preaching Stations

ACT XIII, 1863: DECLARATORY ACT ANENT PREACHING STATIONS, KIRK-SESSIONS THEREIN, AND POSITION OF ELDERS IN SUCH KIRK-SESSIONS

The General Assembly hereby declare that —

1. Preaching Stations are established under the authority of the Presbyteries of the bounds, and it remains with the same Presbyteries to arrange in regard to the appointment of Elders, and the establishment of Kirk-Sessions for local discipline and management in such stations, it being understood that a minister of the Presbytery shall act as the Moderator of every such Kirk-Session.

2. Such Kirk-Sessions cannot send representatives to Presbyteries until the Stations with which they are connected are erected into fully sanctioned charges, by the authority of the General Assembly.

3. Wherever the Presbytery deem it expedient, the Elders of such Stations may still be connected with regularly established Kirk-Sessions. They have the full status of Elders, and are eligible to sit in the General Assembly as representatives of Presbyteries; but in respect that such Stations have not yet a settled ministry, wherever such Elders are not connected with Kirk-Sessions established in fully sanctioned congregations, their certificates of being *bona fide* acting Elders must be given by the authority of the Presbytery of the bounds, in such manner as to the Presbytery may seem most expedient.

Elders and Deacons ceasing to hold their Offices

MINUTE OF ASSEMBLY, 29TH MAY, 1806

The General Assembly proceeded to consider the overture anent non-residing Elders. After reasoning, agreed without a vote to dismiss the overture as unnecessary, in respect that when a change of residence renders it impossible for an Elder to discharge the duties of a member of the Kirk-Session of that parish in which he formerly resided, it is competent for the Kirk-Session, and is in many parts of Scotland the usual practice, to find that if he does not, within the space of twelve months, return

to reside, he can no longer continue one of their number, and to intimate to him by letter that they have come to this resolution.

MINUTE OF ASSEMBLY, 27TH MAY 1850

The General Assembly declare that the appellants having withdrawn from the session of Free St. George's congregation, Paisley, for more than a year, have ceased to be, and no longer are, members of the Session or Deacons' Court of that congregation.

(3) Ministers

ACT IV (CLASS I), 1859²⁵ ACT ANENT THE ELECTION AND CALLING OF MINISTERS (AS AMENDED BY ACT II (CLASS I), 1888)

The General Assembly, with consent of a majority of Presbyteries, enact and ordain —

1. That when a vacancy has taken place in any Congregation, the Presbytery of the bounds shall, at its first meeting thereafter, appoint one of the ministers to preach in said Congregation, and to intimate the vacancy, and shall also appoint a Minister to be interim Moderator of the Kirk-Session of the vacant Congregation, and to preside at all congregational meetings that may be held during the vacancy. [See Act I, 1897].

2. That on intimating the vacancy, unless special grounds exist for delaying to fill it up, the minister shall call a meeting of the Congregation on an early day.

3. That a form of exhortation previously prepared by the General Assembly shall be read at this meeting, setting forth the duties and responsibilities in the election of a minister pertaining to all the parties concerned, namely, to the Congregation, to the Presbytery, and the person or persons put in nomination.

4. That unless the Congregation are prepared at this meeting to elect a minister, they shall nominate certain of their number, who, along with the office-bearers, shall be a Committee, for looking out for a suitable person or persons to be heard by the congregation, or a suitable person to be recommended to them as their pastor.

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6. That when the candidates have been heard, once or oftener, as may be arranged, a congregational meeting shall be held on an early day for the purpose of choosing one to be their pastor; and if it shall appear that the congregation are not prepared at this stage to elect any of them, the Committee, or a new Committee to be then named, consisting, as before, of the office-bearers, and such members of the congregation as may be named for the purpose, shall prepare a list of additional candidates, when the same steps as before shall be taken.

²⁵ 1849 mistakenly in print – see errata

7. That, when an election has taken place, the Presbytery shall proceed therein according to the laws of the Church, but when the circumstances are such that the Presbytery do not feel warranted to proceed immediately to moderate in a Call, they shall hold a meeting with the congregation, and shall not proceed to moderate in a Call till they have exhausted all means for producing harmony, and, should these means prove unsuccessful, they shall refer the matter to the Superior Church Courts for advice.

8. That when a division exists in the congregation, the Presbytery shall not sustain a Call unless it be subscribed by a majority of the whole members on the Communicants' Roll.

9. That before any steps are taken in an election of a Minister, the Kirk-Session shall have a roll of Communicants made up and attested; that the roll of Communicants so made up and attested, previously to the first congregational meeting at which a minister may be elected, shall, previously to any subsequent meeting for the election of a minister, be purged of all those who in the meantime have died, or have been disjoined from the Congregation by Certificate, and the names shall be added to the Roll of those who in the meantime have been admitted as Communicants in the Congregation; the roll thus made up to be duly attested by the Kirk-Session.

Address to Vacant Congregations

The Assembly of 1895 approved of the following amended Address, and instructed it to be distributed in Vacant Congregations:—

Dear Friends, — As a Congregation of the Free Church of Scotland you are entrusted with the responsibility of choosing a pastor to be over you in the Lord. It is a duty that each one owes to his Congregation and his Church, to take his proper part in this matter; it is a duty to himself to get in this way a directly personal interest in the pastor of his choice and in his ministrations. Having the best interests of all our Congregations at heart, we desire to address to you a few words in connection with this important matter, that may assist in giving your thoughts a right direction in regard to it, and may contribute, under the Divine blessing, to a happy and harmonious settlement.

We have reason to thank God for the measure of peace and good feeling which has characterised our congregational elections and settlements in time past. But there have not been wanting indications, from time to time, of a spirit of division rising up in Congregations, leading in some cases to actual separations. Where the real root of these evils is to be found it may be difficult in each particular case to determine. But there are weighty considerations, which, if attended to, might have the effect of inducing the Members of our Church always to bear and forbear with one another, and to be willing to accept the combined result of congregational opinion, rather than to insist on the attainment of their own particular desires.

We would ask you, therefore, in going forward to the election of a minister, to bear in mind:—

1. That it is a teacher and guide in spiritual things for yourselves and your families you are now called upon to choose. Such a man must stand in a direct personal relation with every one connected with the Congregation. He ought to be the friend and

counsellor of each one, young or old. He ought, therefore, as far as possible, to be the willing choice of every one, acceptable to each and welcomed by all. The Free Church represents a revolt against the intrusion of unwelcome ministers by outside parties. Shall we not belie our origin if either we are to have ministers, unwelcome to an important minority, imposed on them by mere force of numbers; or if a minority thwarts the desires of a majority for any but the weightiest reasons?

2. Your election of a minister is the act of a Christian Congregation, a body of people associated together for the furtherance of the religion of Christ in the locality in which they reside. It is not the act simply of the community at large, or of any artificial section of it, but of a distinctively religious body. It must be conducted therefore in a spirit worthy of the religion you profess, worthy of Christ in whose name you are associated, and in such a way as to foster rather than to injure Christian feeling, and to promote religious unity and brotherly love.

With these considerations in view, we ask you:—

1. To make the election of a minister a matter of earnest and repeated prayer, not only that you may be guided to the choice of a man who shall come among you as a true messenger of Christ to your souls, but that the election may be conducted in a spirit of brotherly kindness and forbearance, as befits professing followers of Christ.

2. To strive after that love that seeketh not its own — an unselfish spirit, willing that the preferences and judgments, and even the prejudices of others, should have the fullest and kindest consideration, and resolved that, whatever happens, you will not press your own opinion to the extent of breaking up the outward, or even the inward unity of the Congregation to which you belong.

If all are thoroughly in earnest in these matters, we confidently hope that, by the blessing of God, such a relation will be formed between pastor and people as shall make them real helpers the one of the other, and shall kindle such a spirit of unity and love in all our Congregations, that men shall know that we are true disciples of the Lord Jesus.

ACT X, 1977: ACT ANENT PRESBYTERIAL OVERSIGHT OF VACANCIES

The General Assembly being concerned for the well-being of vacant congregations, instruct Presbyteries to confer with congregations within their bounds, which having been vacant for two years or longer have taken no action to secure a settlement. Such conference should encourage the congregation to proceed to an election as soon as this can be harmoniously achieved.

FROM ACT IV (CLASS I), 1882: ANENT PROCEDURE AT CALLING AND SETTLEMENT OF MINISTERS

The General Assembly, with consent of a majority of Presbyteries, enact and ordain, That instead of ten days' *induciae*, as in times past, Presbyteries shall be allowed to meet for any purpose connected with the calling and settlement of ministers,

after seven clear days have passed from the Sabbath on which intimation of such a meeting is made to a congregation.

ACT X, 1846: ANENT THE MODERATING IN CALLS

The General Assembly did and hereby do appoint, that no Presbytery shall moderate in a Call to a Probationer or Minister who is not qualified to accept it according to the laws of the Church.

ACT VII, 1868: DECLARATORY ACT ANENT MODERATING IN CALLS

The General Assembly hereby find and declare that Presbyteries shall always moderate in a Call at large, except in cases of application for the moderation of a Call in which clear intimation is given of there being a thoroughly harmonious desire for the calling of a particular person named; in which cases Presbyteries may, if they see cause, appoint the moderation of a Call to that person only.

ACT III, 1879: DECLARATORY ACT ANENT VOTING BY MANDATE

Whereas doubts have arisen regarding the law and practice of this Church as to voting in the Election of Ministers and the signing of Calls, the General Assembly declare and enact that, at any meeting of a Congregation for the election of a Minister, no vote shall be allowed or recorded, unless the vote is *given by a Member of the Congregation who is personally present*; and that, when a Call at large is moderated in, it shall only be subscribed by those who personally adhibit their names; but that when a call is moderated in to an individual whose name is in the edict announcing the moderation, the Call may be subscribed on behalf of members not present when a Mandate authorising such subscription is produced.

**ACT II, 1886: ANENT SETTLING MINISTERS IN CASES
IN WHICH THE ACTION OF THE PRESBYTERY IS APPEALED AGAINST**

The General Assembly enact and declare, That an appeal shall sist procedure only after a Presbytery shall have moderated in and sustained a Call.

Translations

ACT VI (CLASS I), 1849: ACT ANENT TRANSLATIONS

The General Assembly, with consent of a majority of Presbyteries, enact and ordain as follows:

I. In all cases of translation, the Minister, whom it is proposed to translate, shall be heard on the subject, by the Presbytery and the superior courts, at any stage of the proceedings when he shall express a wish to that effect.

II. Immediately after the parties in a case of translation have been heard at the Bar of any Presbytery, the Minister whom it is proposed to translate shall be asked if he has any statement to make.

III. When parties have been heard, and an opportunity has been given to the Minister of declaring his views, the Presbytery shall consider and give judgment whether or not the translation sought for is expedient, and whether or not the Call ought to be presented to their brother for his acceptance.

IV. When the Presbytery or the Court of Review has finally decided that the Call should be put into the Minister's hands, and when the Minister has thereupon accepted the same, judgment shall be given by the said Presbytery or Court of Review, in the usual form, agreeing to the translation, and appointing the said Minister to await, in that matter, the orders of the Presbytery from within whose bounds the Call has come.

ACT XXXIV, 1976: ACT ANENT PROCEDURE IN PROSECUTION OF TRANSLATIONS

The General Assembly, having regard to the importance of procuring harmony and obviating difficulties connected with the calling of a minister, instruct that the procedures presently applicable be retained, with the exception that the appointment of one commissioner to prosecute should be deemed sufficient, or where the calling congregation is prepared to forego the right of appeal, the transmission of written reasons be regarded as sufficient by the Presbytery at whose bar the call is to be prosecuted, this without prejudice to the right of other interested parties to be represented.

ACT I (CLASS I), 1897: ANENT PROCEDURE IN VACANCIES

The General Assembly, with consent of a majority of Presbyteries, enact and ordain as follows:

1. When a Presbytery has sustained a Call to a Minister of a Free Church Congregation within Scotland, the Presbytery Clerk shall forthwith send intimation of the fact to the Clerk of the Presbytery to which the Minister belongs, who shall forward said intimation to the Minister, and also to the Clerk of his Kirk-Session; and this intimation shall be sufficient warrant for the Session taking steps to have the Office-bearers and Congregation represented at the first meeting of Presbytery at which the Call is laid on the table, so that it may, if desired, be finally disposed of at that meeting.

2. At the same meeting at which a Minister accepts a Call, Presbyteries may, if they see cause, appoint an Interim Moderator of Session, who shall be associated with the Minister until his translation, with a view to acting in all matters connected with the approaching vacancy, and shall subsequently take full charge as usual.

3. If this procedure be adopted, a Congregational Meeting shall be called as soon as possible after a Minister has accepted a Call, at which the Interim Moderator shall

preside, for the purpose of electing a Congregational Committee, and taking the usual initial steps towards choosing a Minister, but no election of a Minister shall take place until after the outgoing Minister is translated, and the vacancy declared in the usual way.

4. By arrangement with the outgoing Minister, the Congregation may then proceed at once to hear candidates, under the ordinary regulations.

The provisions of Act IV, 1859, in so far as they are inconsistent with the foregoing Regulations, are hereby repealed.

Assistantships

ACT V, 1986: ACT ANENT ASSISTANTSHIPS

The General Assembly having considered the feasibility and desirability in certain cases of having ordained assistantships appointed in certain congregations enact as follows:

1. The General Assembly reserve to themselves the right to judge of all applications which may be made by congregations for the appointment of an assistant minister under waiver of the conditions of Act III, 1851.

2. It shall be a condition of the Assembly's entertaining such an application that (1) the congregation concerned shall contribute to Central Funds an amount not less than three times the Equal Dividend and (2) the application shall be supported by the Presbytery within whose bounds the congregation is and the Presbytery shall formally make the appointment after due procedure.

3. Upon the granting of an application the Presbytery shall consult with the congregation concerned and process an invitation from them as though it were a Call and upon its acceptance make the requisite arrangements for the ordination/induction of the appointee to the assistantship and to a seat in the Presbytery.

4. The appointment shall, in the first instance, be for one year, renewable by the Presbytery on request from the Kirk Session, but shall not endure beyond three years.

5. At the date of expiry of the Assistant's appointment, he shall be placed on the Register of Ministers without Charge and be paid at the rate of the Equal Dividend for a period of 6 months from the date of the expiry of his appointment or until his induction to a charge, whichever is sooner.

6. The appointee shall be instructed by the minister who shall consult with the Kirk Session as regards the work to be undertaken by him.

7. The congregation shall provide accommodation, car expenses and other expenses as listed by Acts of Assembly, these expenses to be not less than 10% of Equal Dividend.

8. On granting an application the General Assembly shall declare the assistantship the equivalent of a Charge for the purposes of the Widows' & Orphans' Fund, Amending Order 1967, and the period of service shall count for pension purposes.

9. This Act supersedes Act XVI (Class II) 1984 which therefore now lapses.

APPENDIX III

PROPERTY AND TRUSTEES

(1) Property

FREE CHURCH MODEL TRUST DEED

ACT XVIII, 1844: ACT ANENT THE TRUST DEED

The General Assembly having called for the Report of a Committee appointed to consider the whole matter of the Trust Deed, the same was given in and read. The Assembly approve of the same, and enacted, and do hereby enact, in terms of said Report the tenor whereof follows, viz.:—

Your Committee have had several meetings, and deliberated very fully on the whole subject remitted to them, and they unanimously approve of, and recommend the Assembly to adopt, the third or intermediate plan recommended by the Special Commission of last Assembly, viz.:—

I. “That the property of each place of worship be vested in Trustees chosen by the congregation, to be held for the congregation, in communion with the Free Church, as attested to be so by the Moderator and Clerk of the General Assembly; that Church to be identified as in the Model Trust Deed; the management of the property to be in the Deacons’ Court — all, as nearly as possible, as under the first plan.

II. “That in the event of a certain proportion of the Ministers and Elders, members of the Church Courts, separating from the general body, and claiming still to be the true *bona fide* representatives of the original protesters of 1843, and to be carrying out the objects of the Protest more faithfully than the majority, then, whatever the Courts of Law may determine, as to which of the contending parties is to be held to be the Free Church, it shall be competent for each congregation, by a majority of its members in full

communion, to decide that question for itself, so far as the possession and use of their place of worship and other property are concerned, with or without compensation to the minority, — such compensation to be settled by arbitration”. It being understood that a disruption of the Church in the sense referred to in this extract shall consist only in the simultaneous separation, that is, the separation from the general body *at once*, or within a period not exceeding three months, of at least one-third of the ordained ministers of the Church, having the charge of congregations in Scotland; and that such separation shall take place only on the professed grounds stated in the said deliverance of the Commission of Assembly; and it being further understood that, in order to determine who are members of the congregation entitled to dispose of the property in such a case, a roll of all the members of the Church, in full communion, shall be kept in each congregation, and annually attested by the Presbytery of the bounds; and that all such members, and such only, shall be entitled to vote in regard to the disposal of the property as have had their names on said roll for at least twelve months previous to the separation of the said one-third of ministers from the general body.

James Begg, Convener

Model Trust-Disposition executed in conformity with the draft approved of by the General Assembly of the Free Church of Scotland, and by special reference to which it is recommended that all the churches and other property belonging to the congregations in connexion with said Church should be held:— WE, John Hamilton, Esq., Advocate; John Cadell, Esq., Advocate; John Murray, Esq., residing at Ainslie Place, Edinburgh; Robert Paul, Esq., Manager of the Commercial Bank of Scotland; James Smith, Esq., Builder in Edinburgh; and Thomas Thomson, Esq., Writer to the Signet a majority and more than a quorum of the Building Committee appointed by, and authorised to act for behoof of the Kirk Session and congregation of St. George’s Free Church of Edinburgh, and as such, having power and being authorised and required, in manner after mentioned, to grant the disposition after written of the subjects and others after described, CONSIDERING, that by disposition dated the 11th, 15th and 25th days of May, and 1st day of June, and 11th day of July, all in the year 1844, etc. (*here follows the narrative of the conveyance in favour of these parties, and of their title and authority to grant this deed, and that certain ministers and elders had separated from the Established Church of Scotland and now formed a body of Christians, known by the name of the Free Church of Scotland separate and distinct from the Established Church, — after which the inductive clause proceeds as follows:*) AND WHEREAS, in order to secure and invest the foresaid subjects and others, and buildings erected on the ground thereof, in connection with the said Free Church of Scotland, it has been agreed to convey the same to the parties after named and designed, as Trustees, in manner and to the effect following:

THEREFORE we, the said John Hamilton, etc., have Alienated and Disposed, as we do hereby Sell, Alienate, Dispose, Assign, Convey and Make Over, etc., heritably and irredeemably, to and in favour of the said John Cadell, Advocate (*here follow the names and designations of the Trustees, thirty-three in number*); Trustees for the

foresaid Congregation of St. George's Free Church of Edinburgh, belonging and adhering to the said body of Christians called the Free Church of Scotland, and presently worshipping in Edinburgh, under the pastoral charge of the Rev. Dr Robert Smith Candlish, and to such other person or persons as may, from time to time, be appointed, in virtue of the powers and provisions hereinafter contained, to act in the trust after specified and to the acceptors and survivors, and acceptor and survivor, and the heir of the last survivor of the said Trustees, whether herein named or to be appointed, as said is, the majority of accepting trustees, in life for the time, being always a quorum, and to the assignees and disponees of the said accepting Trustees, whether named or to be appointed as aforesaid, in life, for the time, or of their said quorum, ALL and WHOLE etc. *(Here follows a description of the subjects)*. BUT DECLARING that these presents are granted IN TRUST ALWAYS, for the ends, uses, and purposes, and with the powers, and with and under the conditions, provisions and declarations after specified: THAT IS TO SAY, in trust for the ends, uses, and purposes, and under the provisions and declarations following, viz.:— FIRST, UPON TRUST, That the Building or Place of Worship erected, or in the course of being erected, upon the ground hereby disposed, or any building or Place of Worship that may hereafter be built and be erected thereon, with the appurtenances thereof, shall in all time coming be used, occupied and enjoyed, as and for a Place of Religious Worship, by a Congregation of the said body of Christians called the Free Church of Scotland, or of any united body of Christians composed of them, and of such other body or bodies of Christians as the said Free Church of Scotland may, at any time, hereafter, associate with themselves, under the foresaid name of the Free Church of Scotland, or under whatever name or designation they may assume; and to be made use of by such Congregation, occupying and enjoying the same for the time being, in the way and manner in which, by the usages of the said body, or united body of Christians, Places of Religious Worship may be, or are in use to be, occupied and enjoyed; SECONDLY, UPON TRUST, That the said Trustees or Trustee acting for the time, shall, at all times, and from time to time, hereafter PERMIT and SUFFER to preach and expound the Holy Scriptures, and administer ordinances, and perform the usual acts of Religious Worship within the said Building or Place of Worship, erected or to be erected, as said is, such person or persons, and such person or persons only, as may or shall, from time to time, be authorized or appointed so to do, by the said body or united body of Christians, acting through the medium of its Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, or according to the form or forms in use with the said body, or united body, for the time: PROVIDING always, as it is hereby expressly PROVIDED and DECLARED, that no person or persons, even holding such authority and appointment, as aforesaid, nor any person or persons whatsoever, shall have any right or title to pursue the said Trustees or Trustee, acting under these presents for the time, in any Court of Law or Justice, for the purpose, or with the object and intent, either of obtaining such permission and sufferance as said is, or the continuance thereof, or of obtaining in any manner of way whatever, liberty or the continuance of liberty, to preach and expound the Holy Scriptures, or administer ordinances, or to do or perform

any act of Religious Worship or other act or thing, whatsoever, within the said Building or Place of Worship, erected, or to be erected, as said is, or with the object and intent of, in any way, controlling the said Trustees or Trustee, in reference to the use, occupation, management or 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 of the Commission of such Assembly, previously had, to such pursuit; of which consent, and concurrence, the only legal or admissible evidence shall be a written Certificate, under the hand of the Moderator and Clerk of the General Assembly of the said body or united body of Christians, or of their then immediately preceding General Assembly, or under the hand of the parties generally known, or understood, to hold those offices for the time being; which written Certificate shall be produced along with the summons, or other proceeding, commencing such pursuit, otherwise the same shall be utterly incompetent, void, and null, albeit such Certificate really may exist: DECLARING, as it is hereby expressly PROVIDED and DECLARED, that, in the event of any person or persons, even holding such authority or appointment, as aforesaid, or any person or persons whatsoever, pursuing the said Trustees, or Trustee, as aforesaid, unless with such express consent and concurrence as aforesaid, previously had to such pursuit, as said is, evidenced as aforesaid, such person, or persons shall, immediately on such pursuit being commenced, *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: AND PROVIDING, further, as it is hereby further expressly PROVIDED and DECLARED, that whensoever any person holding such authority or appointment, as said is, and enjoying the permission and sufferance foresaid, shall by a sentence of the said body, or united body of Christians, pronounced by one or other of its Presbyteries, Provincial Synods, or by its General Assembly, or Commission of such Assembly, for the time being, or in any other way, or manner, in use in such matters, for the time, by the said body, or united body of Christians, be deposed, or suspended, from office or cut off from the said body, or united body of Christians, or declared no longer a Minister thereof, his authority and appointment foresaid, shall, *ipso facto*, cease and determine, and the said Trustees, or Trustee acting for the time, shall not only be no longer bound, but be no longer entitled, to permit or suffer him to preach and expound the Holy Scriptures, or administer ordinances, or do or perform any act of Religious Worship, or other act or thing whatsoever, within the said Building, or Place of Worship, erected, or to be erected, as said is; and shall be bound and obliged to debar him therefrom, aye and so long as he remain deposed or suspended, or cut off as aforesaid: THIRDLY, UPON FURTHER TRUST, That the said Building, or Place of Worship, erected, or to be erected, as said is, and whole appurtenances thereof, and generally the whole subjects hereby disposed, shall be under the immediate charge and management (except always as regards the authority and appointment, and relative permission and sufferance, before mentioned) of the Elders and Deacons, or Elders acting as Deacons, for the time being, of the Congregation in the use, occupation, and enjoyment for the time, of such Building or Place of Worship, — such Elders and Deacons, or Elders

acting as Deacons, being always subject to such control, as shall, or may, be provided, from time to time, by the said body, or united body of Christians, through the medium of its Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, or in the way and manner generally in use in the said body, or united body, for the time: 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 said Trustees or Trustee, acting 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; of which consent and concurrence the only legal or admissible evidence shall be a written Certificate, under the hand of the Moderator and Clerk of the General Assembly of the said body, or united body of Christians, or of their then immediately preceding General Assembly, or under the hand of the parties generally known, or understood, to hold those offices, for the time being; which written Certificate shall be produced along with the summons, or other proceeding, commencing such action, suit, or proceeding; otherwise such action, suit, or proceeding shall be utterly incompetent, void and null, albeit such Certificate may really exist: 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: FOURTHLY, 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 or Place of Worship, and appurtenances thereof, and whole subjects hereby disposed, and in all matters and things connected therewith, to the regulation and direction of the General Assembly for the time being, of the said body, or united body of Christians, and shall be liable and bound to conform to, implement, and obey, all and every the Act, or Acts, of the General Assembly for the time being, of the said body, or united body of Christians, in reference thereto; and the Moderator and Clerk of the said General Assembly of the said body, or united body

of Christians, or the parties generally known, or understood, to hold those offices for the time, 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, or united body of Christians, or General Assembly thereof, in, or in any way connected with, the subjects hereby disposed, and Building, or Place of Worship, erected, or to be erected, thereon, and appurtenances thereof: DECLARING always, that a Certified Copy, under the hands of the Moderator and Clerk, of the said General Assembly for the time being, or of the then immediately preceding General Assembly of the said body, or united body of Christians, or of the parties generally known, or understood, to hold those offices, for the time, shall always be legal and admissible evidence, in all actions, matters, and things, arising under, or out of, these presents, of the terms of any Act or Deliverance of the General Assembly of the said body, or united body of Christians, or Commission thereof, pronounced, passed, or that may be passed or pronounced; and that a Certificate, under the hand of the Moderator and Clerk of the said Assembly for the time being, or of the parties generally known, or understood, to hold those offices for the time, attached to such Certified Copy, and bearing the date of such Act or Deliverance, and Certifying that the same is, either wholly, or in part, an existing Act of the said Assembly, or Commission thereof, shall always be legal and admissible evidence, in all actions, matters, and things, as aforesaid, of the date of such Act or Deliverance of the said Assembly, or Commission thereof, and of its being still, either wholly or in part, an existing Act or Deliverance as aforesaid: AND DECLARING, further, that a Certified Copy of any Act or Deliverance of any of the Synods or Presbyteries of the said body or united body, under the hands of the Moderator and Clerk of any such Synod or Presbytery respectively, or of the parties generally known and understood to hold those offices for the time, shall always be legal and admissible evidence in all actions, matters, or things arising under or out of these presents, of the terms and date of any Act or Deliverance pronounced by any such Synod or Presbytery respectively: FIFTHLY, It is hereby expressly PROVIDED and DECLARED, 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, in whatever Court, or Courts, of Law or Justice, 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 or Place of Worship, erected or to be erected, as said is, or any part thereof, or generally of the subjects hereby disposed, or any part thereof 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 of the said body, or united body of Christians, or the Commission of such Assembly, previously had, to such defence; of which consent and concurrence, the only legal or admissible evidence shall be a written Certificate, under the hand of the Moderator and Clerk of the General Assembly of the said body, or united body of Christians, or of their then immediately preceding General Assembly, or under

the hand of the parties generally known, or understood, to hold those offices for the time being which written Certificate shall be produced along with such defence, otherwise the same shall not be maintainable, but be incompetent, void, and null, albeit such Certificate may really exist: SIXTHLY, It is hereby further expressly PROVIDED and DECLARED, That the said Trustees, or Trustee, acting for the time, shall not have power to burden the said Building, or Place of Worship, or appurtenances thereof, or, generally, the subjects hereby disposed, or any part thereof, with any debts or sums of money, or to sell, alienate, or dispose the same, or any part thereof, unless for the purpose of providing another Place of Worship for behoof of the said body or united body of Christians, in a more suitable or convenient situation; and then only with the consent, first had and obtained, of the General Assembly for the time being, of the said body, or united body of Christians; of which consent the only legal and admissible evidence shall be a Certificate under the hand of the Moderator and Clerk of the General Assembly, for the time being, or of the then immediately preceding General Assembly, or under the hand of the parties generally known, or understood, to hold those offices for the time: PROVIDED ALWAYS, however, and DECLARING, that if, at any time, sufficient provision shall not be made by the Congregation in the use, occupation, and enjoyment of the said Building or Place of Worship, for the time being, or by the Deacons, or Elders acting as Deacons, thereof, for paying the due-duties, public and parochial burdens, premiums of insurance, and ordinary charges attendant on the property, for keeping the same in repair, or otherwise, then the said Trustees, or Trustee, acting for the time, themselves making provision therefor, and in that case only, shall be entitled, for their relief of their advances for the purposes above mentioned, or any of them, to sell and dispose of the said Building, or Place of Worship, and generally the whole subjects hereby disposed, or any part thereof, free from the whole conditions and purposes of this trust; they always accounting to the General Trustees appointed by the said General Assembly upon the 27th day of May 1844 years, to hold any property to be bequeathed or conveyed to them for behoof of the said Free Church, or of the said body, or united body of Christians, and to the acceptors of the said General Trustees, or their successors in office, for the balance of the price thereof, after replacing any sums advanced, or provided by them for the purpose foresaid, or any of them, and all expenses attendant on the sale; but the purchaser, or purchasers, having, as he or they are hereby expressly declared to have, no concern whatever with such accounting and the receipts of the Trustees, or Trustee, acting for the time, being always a sufficient discharge and exoneration to the purchaser, or purchasers, for payment of the price: BUT DECLARING always, as it is further hereby specially provided and declared, that in the event of such sale being considered necessary, an offer to sell the said subjects shall, in the first place, be made to the General Trustees foresaid, for payment of the sums which may have been expended by the said Trustees, and may be due to them as aforesaid: And the said General Trustees shall be entitled to purchase the said subjects for payment of the sums which may have been advanced by and may be due to the Trustees of the said Place of Worship, as aforesaid: And the said Trustees last mentioned, on receiving payment of the said sums, shall be bound and obliged to convey the said subjects to the said General Trustees accordingly:

SEVENTHLY, It is hereby also expressly PROVIDED and DECLARED, That it shall, at all times, be in the power of any Trustees, or Trustee, whether hereby named, or that may be appointed in virtue of the powers and provisions hereinafter contained, who may have acted in the said trust, to resign the Trusteeship; and that, in the event of any Trustees, or Trustee, whether named or to be appointed, as said is, ceasing to be members of the said body, or united body of Christians, then, and in that case, such Trustees, or Trustee, shall, *ipso facto*, cease to have any right to act under these presents, and the trust shall be thenceforward conducted by the other Trustees, as if such Trustees, or Trustee, ceasing as said is, were actually dead: EIGHTHLY, It is hereby further expressly PROVIDED and DECLARED, That it shall be, at all times, in the power of the Congregation in the use and occupation of the said Building, or Place of Worship for the time being, and such Congregation is hereby expressly empowered, from time to time, and as often as to it shall seem proper and expedient, to appoint, at a meeting called on ten free days' notice, given from the pulpit, immediately after Divine Service in the forenoon, such notice always specifying the object for which the Meeting is called, Additional Trustees to act under these presents, along with the Trustees who, at the date of such appointment, are surviving and acting and each and every Additional Trustee, so appointed, shall, by virtue of such appointment, be, *ipso facto*, instantly invested with the same right of property, and with all and every the same rights, powers, and privileges, as any individual Trustee who is actually named and designed in these presents, and infeft, or why may be infeft under the same; such Additional Trustee being, at the same time, always subject and liable, in the same way as such original Trustee, to the whole conditions, provisions, and declarations herein set forth: AND the said Trustees, or Trustee, acting for the time, shall on every occasion of such appointment of Additional Trustees, be bound and obliged to execute a formal Deed of Assumption of such Additional Trustees, containing a formal, and in all respects, complete conveyance of the subjects hereby disposed, in favour of such Additional Trustees and of themselves, and otherwise in terms of these presents; but such Additional Trustees shall, even before the execution of such conveyance, and immediately on their appointment, as said is, have the full right, power, and privilege, of acting in the trust in the same way as any individual Trustee actually named and designed in these presents, and infeft, or who may be infeft under the same:

NINTHLY, 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 bona fide*, the principles of the Protest of 18th May 1843, herein-before 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 anything herein to the contrary notwithstanding, it shall be competent to, and in the power of, a majority of the Congregation, in the use,

occupation, and enjoyment of the said Building or Place of Worship, for the time, to provide and declare, by a Deed of Declaration and Appointment under their hands, to that effect duly executed, that the ground hereby disposed, and Building or Place of Worship then upon the same, shall, from thenceforward, be held as in connexion 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, acting under these presents for the time, to convey and dispose the ground hereby disposed, and the Building, or Place of Worship, then upon the same, and whole appurtenances thereof, to any three or more Trustees in the said Deed of Declaration and Appointment named, to be held by such new Trustees, and their successors in trust as after mentioned; And, on such Deeds of Declaration and Appointment being executed as said is, the Trustees, or Trustee, acting under these presents for the time, shall be bound and obliged, as they are hereby bound and obliged, at the expense always of the receivers, and on being entirely freed and relieved of all pecuniary obligations then affecting the subjects hereby disposed, or Buildings thereon, or affecting them as Trustees, or Trustee, under these presents, or for or to which they, as such Trustees or Trustee, may be subject or liable, but no sooner or otherwise, to convey and dispose the ground hereby disposed, and the Building or Place of Worship, then upon the same, and whole appurtenances thereof, to the said new Trustees who shall be in the said Deed of Declaration and Appointment named, and their successors, in trust for the said persons, subscribers of the said Deed of Declaration and Appointment as a Congregation of the said body of Christians who shall have separated as aforesaid, and for the successors of such persons, forming such Congregation for the time being; such new Deed of Trust to be, *mutatis mutandis*, as nearly as possible in the terms and of the import of these presents, and to have for its object the placing the said Congregation of the said body of Christians who shall have separated as aforesaid, and the Minister of such Congregation, and the Elders and Deacons, and Elders acting as Deacons thereof, and the said body of Christians who shall have separated as aforesaid, and its Kirk-Sessions, Presbyteries, Provincial Synods, and General Assembly, and the said new Trustees themselves, in the same relation, respectively, to the ground hereby disposed, and Buildings thereon, and appurtenances thereof, and in the same relation to each other, in reference thereto, as was held before the granting of the said new Deed of Trust by the Congregation using, occupying, and enjoying the same in virtue of these presents, and the Minister of such former Congregation, and the Elders and Deacons, and Elders acting as Deacons thereof, and the said original body, or united body of Christians, and its Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, and the said Trustees, or Trustee, acting under these presents: TENTHLY, It is hereby expressly PROVIDED and DECLARED, That in the event of a Deed of Declaration and Appointment, and new Deed of Trust, being executed as aforesaid, the parties signing such Deed of Declaration and Appointment shall be subject and liable to pay and make — to the minority of the Congregation with whom they were previously connected, who did not sign the said Deed, and for behoof of the said body, or united body of Christians, with which also they were previously connected, a proportion of the net value of the subjects disposed by such new Deed of Trust,

corresponding to the number of such minority, as compared with the number of subscribers to the said Deed of Declaration and Appointment: ELEVENTHLY, It is hereby expressly PROVIDED and DECLARED, That no person shall be deemed or taken to be an ordained Minister, having charge of a Congregation of the said body, or united body of Christians, in the sense of these presents, unless his name shall appear in an Annual Roll or List of Ordained Ministers, having charges of Congregations belonging to the said body, or united body of Christians, to be annually attested by the Moderator and Clerk for the time of the General Assembly of the said body, or united body of Christians; and that no person shall be deemed or taken to be an ordained Minister, having charge as aforesaid, in the sense of these presents, any longer than his name shall continue to appear in the said Annual Rolls or Lists, attested as aforesaid: TWELTHLY, It is hereby further PROVIDED and DECLARED, That no person shall be deemed or taken to be a member of Congregation, in the sense of these presents, or shall be entitled to vote or act in any of the proceedings of the congregation, unless the name of such person shall appear in the Annual Roll or List of the members of the congregation, in the use, occupation, and enjoyment of the said Place of Worship, being in full communion with the said body or united body of Christians, to be annually attested by the Presbytery connected with the said body, or united body of Christians, of the bounds in which such Place of Worship is situated; and in the event of a disruption as aforesaid, no person shall be entitled to vote or subscribe in relation thereto unless the name of such person shall have appeared on said Roll, attested as aforesaid, for at least twelve calendar months next immediately preceding the public separation or disruption aforesaid; and that no person shall be deemed or taken to be a Member of Congregation in the sense of these presents, or shall be entitled to vote or act as aforesaid, any longer than his name shall continue to appear in the said Annual Rolls or Lists of Members of Congregation, attested as aforesaid: THIRTEENTHLY, It is hereby further PROVIDED and DECLARED, That these presents are granted, and the foresaid subjects and other disposed, with the servitudes and under the conditions and declarations following, viz., (*here follow certain conditions, Etc. which have reference exclusively to the ground of St. George's Free Church*).

[THEN FOLLOW Obligation to Infest. Procuratory of Resignation. Assigment to the Writs and Rents. Clause of Registration. Precept of Sasine, and other clauses in usual form.]

Dated 9th, 11th, and 12th, and recorded in the Books of Council and Session 13th November 1844.

**ACT V, 1967: ACT EFFECTING EMENDATIONS IN LEGISLATION
GOVERNING THE SALE OF CHURCH PROPERTY
(AMENDING ACT XVIII 1844; ACT VIII, 1863; ACT X, 1875; AND ACT IV 1889)**

The General Assembly give effect to the recommendations of the Church's Law Agents regarding sale of congregational property held in terms of the Model Trust Deed and amend the legislation governing the sale of property as follows:—

(a) Act XVIII, 1844, section six, shall be amended by the deletion of the words from the beginning of the section up to, and including, the second reference to “united body of Christians”, and the insertion in their place of the wording undernoted:

“It is hereby further expressly provided and declared, that the said Trustees, or Trustee, acting for the time, shall not have power to burden Congregational property, held in terms of this deed, or the Place of Worship, or appurtenances thereof, or, generally, the subjects hereby disposed, or any part thereof, with any debts or sums of money, or to sell, alienate or dispose the same or any part thereof, unless for the purpose of providing more suitable accommodation for behoof of the said body, or united body of Christians; and then only with the consent, first had and obtained, of the General Assembly, or its Commission, for the time being, of the said body or united body of Christians, of which consent the only legal and admissible evidence shall be a certificate under the hand of the Moderator, and/or, the Clerk of the General Assembly, for the time being, or of the then immediately preceding General Assembly, or under the hand of the parties or party, generally known, or understood, to hold such offices or office, for the time; and that only the General Assembly shall have power to authorise the sale of congregational property held in terms of the Model Trust Deed for any purpose other than the aforesaid, in special circumstances that may arise”.

(b) Act VIII, 1863, paragraph 1, shall be amended by the addition of the following:— “or provided the sale proposed is for the purpose of obtaining more suitable accommodation, that he may advise the Commission of Assembly, as the time of receiving the application may require”.

(c) Act X, 1875, shall be amended by inserting in the last line, following the words “General Assembly”, the words, “or its Commission”.

(d) Act IV, 1889, shall be amended to read:— “The General Assembly declare that no authority granted by them, or their Commission, for the sale or transference of Church Property shall be acted on, after the lapse of five years from its date, without a new application to the Assembly, or its Commission, in terms of Act VIII, 1863, as amended by the 1967 General Assembly”.

ACT VIII, 1863: ACT ANENT SALES AND TRANSFERENCE OF PROPERTY

The General Assembly hereby enact and ordain —

1. That all applications for sale or transfer of Church property shall proceed from the Deacons’ Court with concurrence of the Congregation, and shall have the sanction of the Presbytery of the bounds; and that all such applications, on being received by the Clerks of Assembly, shall be communicated to the Custodier of Title Deeds (or Committee charged with that matter), in order that he (or they) may be prepared to advise the Assembly or its Committee in reference to the application. {amended by Act V, 1967, above}

2. That when a property is to be sold, and the proceeds are forthwith to be applied to another property, to be substituted in lieu thereof, the Custodier of Titles (or Committee) shall be directed to see the transaction carried into effect, and also to see that the title-deeds of the new property are taken in the same terms as those of the old, or in terms of the model trust-deed.

3. When the proceeds of the property to be sold or transferred are not to be immediately applied, they shall be deposited or invested, in the meantime, in name of the General Treasurer of the Free Church, for behoof of the congregation.

ACT X, 1875: ACT ANENT SALES AND TRANSFERENCE OF PROPERTY

With reference to Act VIII of Assembly 1863, the General Assembly enact and ordain that in cases of Sales and Transference of Property, it shall be the duty of the Custodier of Titles to report annually to the General Assembly how far in each particular case the provisions of the said Act and the instructions of the General Assembly have been observed. (amended by Act V, 1967, above}

ACT II, 1968: ACT ANENT TITLES TO, AND SALE OF CONGREGATIONAL PROPERTY

The General Assembly note that certain Titles detailed in the Register are missing in whole or in part. They instruct the Committee to investigate the whereabouts of these documents so that, as far as possible, all essential documents may be held in the care of the Committee.

The General Assembly remind Congregations that, where the authority of the Assembly to the Sale of a property is required, any negotiations prior to the granting of such authority is *ultra vires*. The General Assembly warn Congregations that property should not be advertised for sale, nor should Missives of Sale be entered into, before the authority of the General Assembly, where required, has been obtained.

ACT II, 1962: ACT ANENT PROCEDURE IN SALES OF PROPERTY

The General Assembly direct that when Petitions for sale with proposed findings are included in the Committee's submissions to the Assembly or its Commission, the Presbytery concerned shall appoint one of their number to answer such questions bearing on the local situation as members of Assembly or Commission may propose.

ACT II, 1991: ACT ANENT OCCUPATION OF MANSES

The General Assembly endorse the principle that, in holding a charge, a minister is obliged to occupy the manse. They further ordain that authorisation for the sale of a manse on the grounds that a minister may wish to occupy his own house be refused.

(2) Trustees

ACT II, 1905: ACT ANENT TRUSTEES

Whereas in the action, Bannatyne, and Others, against Lord Overtoun, and Others, it was, on 22nd October 1904, found and declared by Interlocutor of the Second Division of

the Court of Session applying the Judgment of the House of Lords, as follows:— (1) That the association or body of Christians calling themselves the United Free Church of Scotland has no right, title, or interest in any part of the whole lands, properties, sums of money, and others which stood vested as at the 30th day of October 1900 in the Right Honourable John Campbell Baron Overtoun, and Others, general trustees of the Free Church of Scotland: And (2) that the appellants (pursuers) and those adhering to and lawfully associated with them, conform to the constitution of the Free Church of Scotland, are, and lawfully represent the said Free Church of Scotland, and are entitled to have the whole of said lands, property, and funds applied according to the terms of the trust upon which they are respectively held for behoof of themselves and those so adhering to, and associated with them and their successors, as constituting the true and lawful Free Church of Scotland, and that the defenders, the said Right Honourable John Campbell Baron Overtoun, and Others, as general trustees aforesaid, or the defenders second enumerated, or those of the defenders in whose hands, or under whose control the said lands, property, and funds, may be for the time being, are bound to hold and apply the same (subject always to the trusts aftermentioned) for behoof of the pursuers, and those adhering to, and associated with them as aforesaid, and subject to the lawful orders of the General Assembly of the said Free Church of Scotland or its duly appointed commission for the time being, and, in particular, that they are bound to denude themselves of the whole of said lands, property, and funds in favour of Major Robert Greig, Shortwoodend, Moffat Robert Reid, Esq., of Killellan, Campbeltown; James Coltart, Esq., Hawkhill, Bearsden, Glasgow; John MacDonald, Esq., 12 Rupert Street, Glasgow, Charles MacKessock, Esq., Wester Mains of Alves, Forres; John Pursell, Esq., Rhynd Lodge, Seafield, Leith (three being a quorum), as General Trustees of the Free Church of Scotland, and their successors in office, but subject always to the trusts upon which the said lands, property, and funds, were respectively held by the said defenders for behoof of the Free Church of Scotland as at 30th October 1900: And whereas in pursuance of said Interlocutor the said Right Honourable John Campbell Baron Overtoun, and others, as General Trustees aforesaid, did grant in favour of the said Major Robert Greig, Robert Reid, James Coltart, John MacDonald, Charles MacKessock, and John Pursell, as General Trustees foresaid, and their successors in office, a disposition of certain lands, property, and funds: And whereas doubts have been suggested as to the position as Trustees of the said Right Honourable John Campbell Baron Overtoun, and Others, and it is expedient that all such doubts should be settled: Therefore this Assembly enacts and declares that the said Right Honourable John Campbell Baron Overtoun, and Others, who acted as General Trustees of the Free Church of Scotland at said 30th October 1900, and who have since adhered to, and associated themselves with, the said United Free Church of Scotland, are no longer General Trustees acting under the authority of this Church; and the General Assembly hereby declares that the whole of said lands, property, and funds, which had been vested in the said Right Honourable John Campbell and Others, as aforesaid, at said date, and such further lands, property, and funds, as may have accrued to this Church, or any of its schemes from said 30th October 1900, or which may hereafter accrue to the same, are, and shall henceforth be held only by the said Major Robert Greig, Robert Reid, James Coltart,

John MacDonald, Charles MacKessock, and John Pursell, and their successors in office, as General Trustees, acting under the various relative Acts of Assembly of this Church, subject always to the trusts upon which said lands, property, and funds, were respectively held for behoof of the Free Church of Scotland, as at said 30th October 1900.

ACT II, 1979: ACT ANENT GENERAL TRUSTEES — GENERAL CONSOLIDATING ACT

1. The General Assembly receive and adopt the Report and thank the Committee especially the Convener.

2. The General Assembly in order to consolidate and update legislation anent the General Trustees enact as follows:—

APPOINTMENT OF TRUSTEES

3. The General Assembly direct that additional Trustees shall be elected as required on the recommendation of the existing Trustees, who shall submit nominations in their Annual Report to the Assembly. Nominees for election shall be ministers or elders of the Free Church of Scotland, and in appointing due regard shall be had to each nominee's experience of work on the Church's Standing Committees and any special business qualifications he may have. The number of ministers who are Trustees at any one time shall not exceed three.

GENERAL TRUSTEES NOMINEES

4. The General Assembly repeal Act IV, 1926 and substitute for it the following—

The General Assembly approve the continuance of the Company known as The Free Church of Scotland General Trustees Nominees, for the purpose of holding the Church's securities and investments, in terms of the Memorandum and Articles of Association, printed as an Appendix, following page 304 of 1926 Acts of Assembly, and authorise that, subject to Assembly legislation, such securities and investments may be held to the order of The Free Church of Scotland General Trustees Nominees through the Nominee Company of an investment adviser. The Assembly direct the General Trustees and others holding securities for behoof of the Church to transfer the same, where appropriate, to the Company.

TENURE OF OFFICE

5. The General Assembly direct that the General Trustees shall hold office in terms of Assembly legislation and such civil legislation as may be applicable for the time being to Trustees in Scotland, and, in the case of The Free Church of Scotland General Trustees Nominees, to Companies in Scotland. They shall continue in office as long as they remain ministers or elders of the Free Church of Scotland, or until their resignation has been accepted, or as long as civil legislation may permit, provided always that Trustees appointed after the close of 1979 General Assembly be required to retire on attaining the age of 70 years. Further, the General Assembly amend Act IX, 1949 by the addendum: This Act shall not apply in the case of Trustees who become members of the Free Church of Scotland General Trustees Nominees subsequent to the close of 1979 General Assembly.

FUNCTIONS

6. The General Assembly repeal the finding of 1852 General Assembly regarding money left or donated to Committees and substitute therefor the following:

7. The General Assembly direct the several Committees to whom money or securities may be left or donated, and the income to be applied to the work of the particular Committee, to invest the same not in their own names but in the names of the General Trustees or their Nominees, declaring that the General Treasurer is authorised to sign receipts of discharges for all such monies or donations in the name of the General Trustees or such Committees and to relieve the payers or donors thereof of any obligation to see to the application of such monies or donations. The Assembly instruct all Committees holding any property appropriated to general purposes to transfer the same as soon as circumstances will permit to the General Trustees; and the General Trustees shall lay before the Assembly each year a statement setting forth not only funds that have been invested in the course of the past year but also the whole funds under their control at that time.

8. The General Assembly, in accordance with the Churches (Scotland) Act 1905, Commission Order 661, affirm that the General Trustees shall hold any property bequeathed or conveyed to them for behoof of the Free Church of Scotland, and shall as regards the management and disposal of the said property, be subject to the direction of the General Assembly of the Free Church of Scotland for the time being, and shall subject to such legislation have power to sell, or otherwise dispose of or burden with debt the said property, provided always that any proceeds arising from the exercise of the said powers, or any of them, shall be held for and applied and appropriated to the Free Church of Scotland and that the purchasers from or lenders to the said Trustees shall not be entitled to enquire into, and shall have no responsibility in regard to the application of the money paid by them to the said Trustees.

9. The General Assembly empower the General Trustees, subject to Assembly legislation, to administer the funds and heritable property held by them for behoof of the Free Church of Scotland, and in particular authorise them to deal with and dispose of such applications for loans from capital held by them as may be transmitted to them through the Finance, Law and Advisory Committee.

10. The General Assembly direct the General Trustees to institute a register of all heritable properties held in their name; this register to contain all useful data as to location, condition and value; and to be brought up to date annually.

11. The General Assembly instruct the General Trustees to open and maintain a Let Property Account (Revenue and Capital) in respect of properties held by the Church and leased to tenants, such account to contain all relevant data.

12. The General Assembly further direct the General Trustees to prepare and maintain an up-to-date record of pictures, busts and objects of historic interest referred to in Churches (Scotland) Act 1905, Commission Order 1261, together with such pictures and objects as have since come or may come to be held by the Trustees as property of the Church and are presently located, or may be located within the Mound Buildings. The record shall specify the location of each item and note any change of location that may be made from time to time. The record shall also include reference to the Library of the Free Church College, as indicated in Order 1263 of the said

Commission, and subsequently augmented by donations or purchases of books. The General Assembly instruct the Senatus to inform the Trustees for the purposes of the record of each new donation of historic interest that may be made to the College, and the Senate shall consult with the Trustees regarding any proposal to dispose of any such object of interest located in the part of the Mound Buildings occupied by the College, or to dispose of any portion of the College Library.

13. The General Assembly repeal Act X, 1975, and substitute for it the following:—

(a) The General Trustees shall in regard to the retention, realisation, investment and management of the assets of the Church together with those Special Trusts where the General Assembly has appropriate authority (hereinafter called the Trust Estate) have full power to invest the assets of the Trust Estate or any part thereof in any of the Public Funds or Stocks or Government Securities of any Government or State or in Funds or Securities guaranteed by the Government of Great Britain or in the Debentures, Debenture Stock, Preference Stock or Ordinary Stock or Shares fully paid or otherwise of any Company, Corporation, Bank or Public Body in the United Kingdom or any other County or in any unit, sub-unit, or share in a Unit Trust Scheme, whether within the United Kingdom or abroad, as defined by Section 26(1) of the Prevention of Fraud (Investments) Act 1958 or any Statutory modification or re-enactment thereof or in the Bonds, Registered or Bearer, Debentures, Receipts, Obligations or Notes of any Company, Corporation, Community or Institution in the United Kingdom or in any other Country authorised to borrow or receive money on Debentures or Deposit or on real heritable security, or in the purchase of real or heritable property or in feu duties and pound annuals and perpetual pound rents secured over heritable or real property in the United Kingdom and to deposit the said assets with any Local Authority, Bank, Investment Company, Building Society or any other Company, Corporation, Community or Institution authorised to receive money on deposit

(b) The General Trustees shall have full power to appoint a recognised investment adviser to manage the investment of the Trust Estate or any part or parts thereof and to remunerate such investment adviser,

(c) The Investments of the Trust Estate, shall be held in name of The Free Church of Scotland General Trustees' Nominees or to its order by or through any Nominee Company of the appointed investment adviser;

(d) The General Trustees shall have full power to arrange for the investments representing the Trust Estate to be managed as an unauthorised unit trust or similar scheme providing for each beneficial interest therein to receive a share of the capital and income of the whole Trust Estate determined in an equitable manner;

(e) The General Trustees of the Free Church of Scotland and The Free Church of Scotland General Trustees' Nominees are hereby indemnified for all claims for loss sustained by the Trust Estate, through investments, as long as such investments are made within the authority conferred by this Ordinance.

(f) The Finding of the Commission of Assembly of 19th November 1947 is hereby repealed.

14. The General Assembly appoint a Standing Committee on Church Building Maintenance and Custody of Titles comprised of the personnel of the General Trustees along with the Clerks of Presbyteries which are not otherwise represented by the personnel of the Trustees, of which the Clerk of Assembly shall be Clerk.

They direct that the responsibility for negotiations with congregations regarding custody, use or transfer of titles be that of the Clerk of the Assembly as Clerk of the Committee on Church Buildings Maintenance and Custody of Titles to whom all correspondence on these topics is to be directed.

They further direct that the Committee on Church Buildings, Maintenance and Custody of Titles shall be concerned with legal aspects of tenure or ownership of congregational property, and in particular, the appointment and replacement of local Trustees.

15. The General Assembly draw the attention of local Trustees to the following requirements of the Model Trust Deed:—

(a) Congregational Trustees are accountable to the General Trustees for the balance of the proceeds of a sale of a church property for the relief of debt; and

(b) When such a sale is considered an offer shall be made in the first instance to the General Trustees.

16. The General Assembly approve that the General Trustees be *ex officio* members of the Finance, Law and Advisory Committee, which Committee shall be responsible for approving and directing the application of revenue in accordance with Assembly legislation. They instruct that all applications involving loans from capital be channelled through the Finance, Law and Advisory Committee, who shall transmit such applications with any appropriate comment to the General Trustees for consideration and disposal. They also instruct that with regard to surplus cash in hand (revenue or capital) the General Treasurer shall consult with the Convener of the Finance, Law and Advisory Committee, and, if so advised, shall transfer to the General Trustees for investment such sums as seem reasonable in the circumstances.

17. The General Assembly direct that the General Trustees shall meet as required to transact business other than business relating to the Trust Estate, and shall have power to appoint their own Chairman. Three shall be a quorum and the General Treasurer shall be Secretary. When required to transact business in connection with the Trust Estate the General Trustees shall meet in their capacity as the General Trustees Nominees' Company and only business relevant to the Trust Estate shall be transacted at such a meeting.

18. The General Assembly remind the General Trustees of their responsibility with regard to the maintenance of the Assembly Hall as laid down in Act X, 1978, and the extent of their obligation to provide housing for newly appointed Professors as set forth in Act XIX, 1978.

19. The General Assembly repeal (in addition to Finding of Assembly, 1st June 1852, Finding of Commission of Assembly, 19th November 1947, Acts, IV, 1926 and X, 1975, all mentioned heretofore), Findings 3,4 and 5, p.53. Acts 1978 and Act XIV, 1978, paragraphs. 2, 3, 4.

20. The General Assembly discharge the Committee.

APPENDIX IV

DISCIPLINE

(1) The Form of Process

ACT APPROVING A FORM OF PROCESS IN THE JUDICATORIES OF THE CHURCH WITH RELATION TO SCANDALS AND CENSURES: SESSION 11,

APRIL 18, 1707

The General Assembly having this day, and at several former diets, had read in their audience the overtures concerning a Form of Process in the judicatories of this Church with relation to Scandals and Censures, which were transmitted by the late General Assembly to the several Presbyteries for their judgment thereupon, and having maturely considered the said whole overtures, with the remarks and observations of Presbyteries made upon the same after full reasoning, both in Committees and open Assembly, upon the several particulars contained in the said Form of Process, the General Assembly did, by their votes, *nemine contradicente*, and hereby do, ratify and approve the foresaid Form of Process as now amended in the whole heads and articles thereof, and appoint and ordain the same to be observed and practised by the respective judicatories of this Church as an act and ordinance of Assembly, and as fixed binding rules and directions in the whole matters therein contained, except the seventh, eighth, and ninth paragraphs of the fourth chapter, and what concerns the pressing of the Oath of Purgation — as to which the General Assembly supersedes at this time to enjoin the observation thereof as positive standing rules; but they did, and hereby do, unanimously recommend to the several Presbyteries and other judicatories of the Church, that they regulate themselves according to the advice therein insinuated, as they shall find to tend most to edification; the tenor of which Form of Process follows.

CHAPTER I

Concerning Church Government, Discipline, Scandals and Censures in general

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

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

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

4. Nothing ought to be admitted by any Church judicature as the ground of a process for censure, but what hath been declared censurable by the word of God, or some act or universal custom of this National Church agreeable thereto; and the several judicatures of this Church ought to take timeous notice of all scandals: but it is judged, that if a scandal shall happen not to be noticed in order to censure for the space of five years, it should not be again revived, so as to enter in a process thereanent, unless it be of a heinous nature, or become again flagrant; but the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty.

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

6. If a person be charged with a scandal, who lives within the bounds of another parish, the kirk session of the parish where that person resides should be desired to cause cite that person to answer before the session in whose bounds the scandal

happened, and the same course is to be followed in such cases by the other judicatures of the Church, seeing, for order's sake, they should not presume to exercise their authority without their own bounds.

7. The minister of the word, holding an office above that of the ruling elder, cannot be liable to the censure of the kirk session, but to the superior judicatures of the Church.

CHAPTER II

Concerning the Entering of Processes, Citation of Parties and Witnesses, and taking Depositions, and anent Fugitives from Discipline

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

2. When any business is moved in a Church judicature, whether by information, petition, or otherwise, they are in the first place to consider whether the matter, in its circumstantial case, be proper for them to enter upon, and whether it be orderly brought in, and proper for them to cognosce and discuss it themselves, or prepare it for superior judicatures, and should endeavour to shorten their work as much as, with the edification of the Church, they can, especially as to the head of scandal; but still, on all occasions the office-bearers in the house of God are to show all prudent zeal against sin.

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

4. Sometimes it may be fit that the party be privately spoken to before any citation be given or process begun, for their better gaining; in which case the minister is to exercise his own discretion, and take the concurrence of elders and others with him. But if the party cited as above appear not, there ought to be a second, and then a third, citation given by the order of the sessions and presbyteries, either personally, or left at their dwelling-house, before the judicature declare the person contumacious, unless the party be cited to appear before a superior judicature by reference or

appeal, in which case there is not that need of so many citations before the superior judicature, the party having actually appeared before the inferior judicature; and being cited *apud acta* to appear before the superior, and the same marked in the minutes, or having being declared contumacious before the cause was brought before the superior judicature.

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

6. If the person do not appear on the third citation, or upon a citation *apud acta*, and no relevant excuse be adduced and verified, though in that case he be censurable for contumacy, yet it may be fit that the judicature proceed to take cognition, either by examining witnesses upon oath, or by other documents, of the verity of the scandals delated against him, before they censure him for contumacy.

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

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

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

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

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

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

13. If the party accused do before probation offer grounds of exculpation to be proven by witnesses, the moderator and clerk, if required, are to give warrant to cite the witnesses upon the party's charges, the relevancy of the offered exculpation being first considered and sustained by the judicatory; and if the exculpation be fully proven as to the substance of the scandal, all further proof of the libel and accusation must there sist, and the defender is to be assoilzied²⁶; and if the libel be special as to the time and place of a fact, and the accused more pregnantly allege and clearly prove *alibi*; but if the substance of the scandal be once sustained and deponed upon, there can be no place of exculpation, unless it be as to some extenuating or alleviating circumstances not contrary to, but consistent with, the depositions already taken.

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

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

16. If any person or persons under process for scandal abscond, they shall, after being called before the judicature and not compearing, be cited first from the pulpit of the parish where the process depends and where they reside; and if they do not thereupon appear before the judicature before whom the process depends, they are, by order of the presbytery, to be cited from the pulpits of all the kirks within their bounds to compear before the presbytery; and if they do not then compear, they are to be declared fugitive from the Church discipline, and the same intimate in all the kirks within the bounds of the presbytery, desiring, that if any know of the said fugitives, they may acquaint the minister or elder of the bounds thereof, and the presbytery are to sist there until they get further notice of these persons.

CHAPTER III

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

1. It may fall out that one single act of drunkenness or breach of the Lord's Day, disobedience to parents, or of swearing, cursing, scolding, fighting, lying, cheating, or stealing, may be clothed with such circumstances as may be a just ground of process immediately, and even bring the persons guilty under the censure of the lesser excommunication, and suspension from the benefit of the sealing ordinances, and require their appearance in presence of the congregation to be rebuked, before relaxation; but the weight of this is duly to be pondered, and Church

²⁶ discharged and not to be charged again on the grounds specified (Act XXVII, 1978)

judicatures, and members thereof, are to consider whether private admonition of the persons alleged and found guilty of the above scandals, if not clothed with such circumstances, or bringing them to the public, will tend most to edification, and proceed accordingly.

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

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

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

5. With respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftener than once before the congregation, the rules prescribed by 4th Act of General Assembly *anno* 1705, are to be followed.

6. If the guilty persons continue in this condition, or lie under the censure of the lesser excommunication a considerable time, and yet be found frequently relapsing in these vices they are censured for, it may be constructed such a degree of contumacy, and so aggravate the crime, as to found a process of the censure of the higher excommunication, which is to be inflicted, or not, as may tend most to the reclaiming of the guilty person, and edification of the Church.

CHAPTER IV

Concerning the Sin of Fornication, Adultery, and Scandalous Carriage tending thereto

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

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

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

4. If a married woman, whose husband hath been notourly absent for a considerable time beyond the ordinary time that women use to go with child, be found

with child, this also may give ground to a kirk session for a process against her; but in this case judicatures should be prudent in considering well all circumstances, and whether or not the person hath been always of entire fame before, as also how the public fame now runs.

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

6. Prudence may sometimes require that the person she nameth to be the father of the child be informed thereof, and spoken to privately, and if he deny the same, he is seriously to be dealt with to confess; but if he still deny, then the session is to cause cite him to appear before them.

7. In this process, when the delated father compeareth he is to be interrogate, and if he deny, he is to be confronted with the woman, and the presumptions as particularly held forth as possible; and all along there should be private treating with him, in all meekness, charity, and seriousness; and if after all this he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as suspicious frequenting her company, or being *solus cum solâ in loco suspecto*, or in suspect postures, and suchlike, which he cannot disprove to the satisfaction of the session, may so lay the guilt upon him, as to show him that there appears no other way of removing the scandal, but his appearance to be publicly rebuked therefor. If he will not submit himself to be rebuked as above, it perhaps may be more for edification that a true narrative of the case be laid before the congregation, and intimation given that there can be no further procedure in that matter, till God in his providence give further light, and to sist there at the time, than that an oath be pressed, and upon refusal proceed to the higher excommunication; but if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may (if they shall judge it for edification and removing of the scandal) allow the same, which may be to this purpose. "I, A.B., now under process before the presbytery of, for the sin of, alleged to be committed by me with C.D., and lying under that grievous slander, being repute as one guilty of that sin; I, for ending of the said process, and giving satisfaction to all good people, do declare before God and this, that I am innocent and free of the said sin of, or having carnal knowledge of the said C.D., and hereby call the great God, the judge and avenger of all falsehood, to be witness and judge against me in this matter, if I be guilty; and this I do by taking his blessed name in my mouth, and swearing by him, who is the great judge, punisher and avenger, as said is, and that in the sincerity of my heart, according to the truth of the matter and mine own conscience, as I shall answer to God in the last and great day, when I shall stand before him to answer for

all that I do in the flesh, and as I would partake of his glory, in heaven after this life is at an end”.

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

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

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

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

12. If a person doth voluntarily confess uncleanness, and if there be no child, and the case be brought to the kirk session, the session is to inquire what presumptions there are of the truth of the thing confessed, or what may have moved the person to make that confession, whether it floweth from disquietude of mind, or from sinister design, as when a man suing to a woman for marriage is denied, and for revenge, or for to obtain his desire, spreads the report that he hath been guilty with her, they are to be dealt with according as the presumptions upon search are found or not.

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

14. If there be need of witnesses, the directions formerly mentioned (Chapter II) are to be followed.

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

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

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

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

19. When a person is censured and absolved from his scandal in another congregation than where he lives, he is to bring a testimonial of his absolution, which is to be intimate to the congregation he lives in, if the scandal be also flagrant there; otherwise it will be sufficient to intimate the same to the session, and the same is to be done in the case of the profession of repentance, where there has been a sentence of the lesser excommunication.

CHAPTER V

Concerning Appeals from a Kirk Session to a Presbytery. etc.

1. All persons who judge themselves lesed by the procedure or sentence of a kirk session, may appeal to the presbytery, by declaring and protesting at passing of the sentence, and should thereupon, according to the 8th Act of the General Assembly, 1694, give in the appeal with the reasons thereof in writ, to the moderator or clerk of the session, within the space of ten days after the time of appealing, and procure extracts thereof, and present the same to the next meeting of the presbytery thereafter, if there be a competent time, at least ten days free betwixt the time of appealing and the meeting of the presbytery; and should then insist in the appeal, wherein, if the appellant fail, the appeal *ipso facto* falls, and becomes null, and the appellant is to be held as contumacious, and proceeded against accordingly by the kirk session.

2. When an appeal is brought from a kirk session to a presbytery, the presbytery is to consider whether the cause is of that nature as it behoveth at length

to come to the presbytery by the course of discipline, before the final determination thereof; as it be in a process of alleged adultery, or suchlike, then the presbytery, to save themselves time, may fall upon the consideration of the affair, without insisting much upon the *bene* or *male appellatum*, though it seem to be preposterously appealed.

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

4. If the presbytery do not sustain the appeal, and find there hath been some fault, passion, or culpable mistake, in the appellant, the presbytery is to inflict some censure, such as a reproof before the presbytery, or appoint an acknowledging of their precipitancy before their own session, or suchlike, on these appellers they find to have been malicious and litigious, thereby to prevent unnecessary appeals; and that besides remitting back to the session, to stand either to the censure of the session, if it be inflicted already, or to sist themselves during the process, if it be depending.

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

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

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

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

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

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

CHAPTER VI

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

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

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

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

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

5. It is thought more fit that the delinquents be appointed to remove the scandal in the congregation where the offence is most flagrant, especially if they reside there, rather than in the place where it was committed, if it be not public there, and that information of the removing thereof be made in other places, if the judicature shall find it needful.

6. When persons censured for these grosser scandals do apply to the kirk session for relaxation, they may both be privately conferred with, and likewise their

acknowledgements heard before the session; but they ought not to be brought before the congregation, in order to their absolution, nor absolved, but by advice and order of the presbytery.

CHAPTER VII

Concerning Processes against Ministers

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

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

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

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

5. If there shall be ground found to enter in a process against a minister, the presbytery should first consider the libel, then order him to be cited, and to get a full copy, with a list of the witnesses' names to be led for proving thereof, and a formal citation in writ is to be made either personally, or at his dwelling-house, bearing a competent time allowed to give in answer to the libel, and his just defence and objections against witnesses, at least ten free days before the day of compearance, and the citation should bear the date when given, and the names of the witnesses to the giving thereof; and the execution, bearing its date, with the names and designations of the witnesses, should be made in writ, and signed by the officer and witnesses; which being accordingly returned, he is to be called, and if he compear, the libel is to be read

unto him, and he is to be inquired if he has answers to give in to the libel, that they may be read and considered, in order to the discussing of the relevancy; and if the presbytery find the same, and that there is cause to insist, they are to endeavour to bring him to a confession, whereby he may most glorify God; and if he confess, and the matter confessed be of a scandalous nature, censurable in others, such as the sin of uncleanness, or some other gross scandal, the presbytery (whatever be the nature of his penitency, though to the conviction of all) are *instanter* to depose him *ab officio*, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence, by the public profession of his repentance.

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

7. If the minister accused do appear and deny the fact after the relevancy is found, the presbytery proceeding to probation, and to find the truth of the matter, all the circumstances are to be exactly canvassed, and the accused heard to object against the witnesses. As also, he should be allowed to be present at the examination, and modestly to cross-interrogate, and then the reputation of the witnesses and their hability²⁷ duly regarded, and the examination considered. If, after consideration of all these, the judicature shall find the scandal sufficiently proven, they are to proceed to censure, as advised in the case of confession.

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

9. If the libel and complaint brought against a minister be a multitude of smaller things laid together, as several acts of negligence, or other unsuitable actions, the presbytery in proceeding therein are to make a presbyterial visitation of that parish to which the minister belongs; and at the said visitation are first to see

²⁷ fitness (Act XXVII, 1978)

if any of these things now laid to the minister's charge were committed prior to the last presbyterial visitation of that parish, and whether they were then laid to his charge; and if they were not, it should be tried how they come to be laid to his charge now.

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

11. It should likewise in this case be inquired, whether any of the complainers did first in a prudent private way inform any of the neighbour ministers of some of these things committed by their minister, who is now challenged, before these offences came to be so many as to merit a public and solemn trial; and accordingly the presbytery is to judge.

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

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

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

CHAPTER VIII

Concerning Processes in order to the Censure of the Greater Excommunication

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

guilty of notour atrocious scandalous sins, to show the Church's abhorrence of such wickedness.

2. Even where there hath been a scandal delated, and contumacy following by not appearing, it should be considered whether any scandalous practice hath been proven or not; if not proven, then only the simple contumacy is to be proceeded against, for which it were hard to go a greater length than the lesser excommunication.

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

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

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

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

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

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

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

he would deal with the soul of the impenitent, and convince him of the evil of his ways.

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

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

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

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

14. And before the minister pronounce the sentence, he is to pray, and desire all the congregation to join with him therein, that God would grant repentance to the obstinate person, would graciously bless his own ordinance, and make the censure effectual, both to edify others, and to be a mean to reclaim the obstinate sinner.

15. Then, after prayer, the minister is with great gravity and authority to pronounce the censure, showing his warrant from our Lord's command, and the apostle Paul's direction, and recapitulating the presbytery's warrant in obedience thereunto, and resuming the scandalous and obstinate person's behaviour, whom he is to name. He, therefore, in the name and authority of our Lord and Master Jesus Christ, doth, *in verbis de praesenti* pronounce and declare him or her excommunicated, and shut out from the communion of the faithful, debarring that person from their privileges; and, in the words of the apostle, delivering that person over to Satan; which sentence is to be intimate according to the 9th Act of the Assembly, *anno* 1740.

16. If, after prayer, or before the censure be pronounced, the scandalous person do make any public signification of his repentance, and of his desire to have the censure stopped, the minister, upon apparent seriousness in the scandalous person, which he showeth to the congregation, may thereupon delay pronouncing the sentence,

till he report to the presbytery at their next meeting, who are then to deal with the scandalous person as they shall find cause.

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

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

CHAPTER IX

Concerning the Order of Proceeding to Absolution

1. If after excommunication the signs of repentance appear in the excommunicated person, such as godly sorrow for having incurred God's heavy displeasure by his sin, occasioned grief to his brethren, and justly provoked the Church to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God through Christ, and to reform his life and conversation, with a humble desire of recovering peace with God and his people, and to be restored to the favour of God and light of his countenance, through the blood of Jesus Christ, and to the communion of the Church; and the presbytery, upon his application, be satisfied therewith, and judge that he ought to be absolved, and thereupon give warrant for his absolution, he is to be brought before the congregation, and there also to make free confession of his sin, and sorrow for it, to call upon God for mercy in Christ, to seek to be restored to the communion of the Church, promising to God, through grace, new obedience, and more holy and circumspect walking as becomes the gospel; and that this appearance before the congregation be as often as church judicatures shall find may be for edification and trial of the professing penitent's sincerity; and being satisfied in this, then the minister and congregation are to praise God, who delighteth not in the death of a sinner, but rather that he should repent and live; as also for blessing the ordinance of excommunication, and making it effectual by his Spirit to the recovering of this offender, to magnify the mercy of God through Jesus Christ, in pardoning and receiving to his favour the most grievous offenders, whensoever they unfeignedly repent and forsake their sins. But before the minister proceed to absolution, he is to pray with the congregation to this effect:—
“That the Lord Jesus Christ, Prophet,

Priest, and King of his Church, who, with the preaching of the gospel, hath joined the power to bind and loose the sins of men; who hath also declared that whatsoever by his ministers is bound on earth shall be bound in heaven, and also that whatsoever is loosed by the same shall be loosed and absolved in heaven, would mercifully accept his creature N., whom Satan of long time hath holden in bondage, so that he not only drew him to iniquity, but also so hardened his heart that he despised all admonitions; for the which his sin and contempt the church was compelled to excommunicate him from the society of the faithful; but now seeing the Holy Spirit by His grace hath so prevailed, that he is returned and profeseth repentance toward God, and faith toward our Lord Jesus Christ, that it may please God by His Spirit and grace to make him a sincere and unfeigned penitent, and for the obedience of our Lord Jesus Christ unto death, so to accept of this poor believing and returning sinner, that his former disobedience be never laid to his charge, and that he may increase in all godliness, so that Satan in the end may be trodden under foot by the power of our Lord Jesus Christ, and God may be glorified, the Church edified, and the penitent saved in the day of the Lord”.

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

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

(2) Report of the Committee on the Form of Process given in to, and approved of by, the Assembly 1855

This Committee was appointed by the last General Assembly “to consider whether any further steps ought to be taken in the way of explaining the practical operation of the Form of Process as now altered, or consolidating into one Act the overtures converted by this and the previous General Assembly into standing laws of the Church, with instructions to report to next Assembly.”

The Committee, having considered the matter thus remitted to them, are of opinion that no immediate steps should be taken with a view to the consolidation of the overtures into one Act, but that, before the adoption of that course, more time should

be allowed for a careful estimate throughout the Church of the state of the law as now settled. On the other hand, the Committee think that, as the changes have been effected, not by one complete enactment, but by several separate Acts passed in successive years, it is desirable to bring under the view of our Church Courts, in a distinct and comprehensive manner, the nature of that order of procedure which results from the recent legislation. Ministers and elders must, of course, interpret that legislation for themselves, and, in case of difference of opinion, the Assembly will, of course, decide between the parties. But were the Assembly to authorise the transmission to the members of Presbyteries of copies of the present report, without, of course, interponing any special sanction to its suggestions, the Committee hope that these suggestions may be useful in affording assistance towards the interpretations of the Acts in the meantime, and towards maturing the judgment of the Church for any more authoritative explanation in the future.

I. In the first place, it is desirable that the Acts should be brought together before the eye, not in the order of their enactment, but in the order of their practical application.

In this view the recent legislation stands as follows:—

1. That, hereafter, in every case of charge or *fama* against Minister of this Church, which is of such a nature as may lead to the necessity of serving the accused party with a libel, no complaint or appeal shall have the effect of sisting procedure until a libel shall have been served and found relevant (Act IV, 1853).

2. That when a Presbytery are themselves libellers in a case of charge against a Minister of this Church, they shall, before serving the libel, summon the accused party in regular form to attend a meeting of Presbytery, at which it shall be proposed to consider the propriety of serving it, and they shall, at the same time, furnish him with a copy of it. That the meeting shall not be held for at least ten free days after the Minister shall have been summoned and been furnished with a copy of the libel. That, at that meeting, the Presbytery shall carefully consider the question of its relevancy; and that thereafter, if they serve it, they shall serve it as a libel which they have already judged to be relevant (Act V, 1853).

3. That, in every case in which a Presbytery shall have resolved to order a libel to be served upon a Minister of the Church, the accused Minister shall *ipso facto* cease to exercise the functions of his office, both ministerial and judicial, until the libel shall have been finally disposed of (Act VI, 1852).

4. That, hereafter, in every case in which a libel shall have been served against a Minister by a Presbytery as prosecutors, it shall be a competent ground on which the Presbytery, if they see fit, may refer the case to the Superior Courts, that it does not appear expedient, in the circumstances, for the Presbytery to act both as prosecutors and judges: that, in the event of any such reference having been duly brought under the consideration of the General Assembly, it shall be competent to the Assembly, if they see fit, to appoint a Special Commission to hear the evidence on both sides, and give a deliverance as to its effect; and that any Special Commission so appointed shall report their deliverance to the General Assembly, or to its ordinary

Commission at one of its stated diets (as the Assembly may direct), who shall pronounce such sentence, or issue such instructions to the Presbytery, as to them as may seem just (Act X, 1854).

5. That, hereafter, in every case in which a libel shall have been served against a minister and found relevant, it shall be a competent ground on which the Presbytery, if they see fit, may refer the case to the Superior Courts, that it does not appear expedient, in the circumstances, for the proof to be taken except in the presence of those who have the power of giving a final deliverance as to its effect: that, in the event of any such reference having been duly brought under the consideration of the General Assembly, it shall be competent to the Assembly, if they see fit, to appoint a Special Commission to hear the evidence on both sides, and give a deliverance as to its effect; and that any Special Commission so appointed shall report their deliverance to the General Assembly, or to its ordinary Commission at one of its stated diets (as the Assembly may direct), who shall pronounce such sentence, or issue such instructions to the Presbytery, as to them may seem just (Act IX, 1854).

6. That, hereafter, in the event of the General Assembly sustaining an appeal, or a dissent and complaint against the relevancy of a libel against a minister, it shall be competent for the Assembly, if they see fit, to correct the libel, and appoint the case to be tried with the amended libel (Act VIII, 1854).

II. It is desirable to point out the bearing of each of these enactments in its order upon the course of proceeding in connection with the old constitutional law of the Church.

1. It has been enacted that, in every case of charge or *fama* against a minister of this Church, which is of such a nature as may lead to the necessity of serving the accused party with a libel, no complaint or appeal shall have the effect of sisting procedure, until a libel shall have been served and found relevant.

The Committee consider that this arrangement applies to every case in which there is any serious allegation against a minister, such as, if established, may scripturally and constitutionally affect his character or standing; that it applies, in every such case, to all competent complaints or appeals which may be taken, up to the point when the process of serving the libel and the act of finding the libel relevant shall both have been completed, whether the act of finding the libel relevant shall have come before the process of serving it, as now provided for in the case of the Presbytery being themselves the prosecutors, or shall have come after it, according to the old and unchanged rule of procedure in the case of third parties having appeared as prosecutors.

The Committee are further of opinion, that although procedure can no longer be sisted by complaints or appeals during the stages referred to in this enactment, still every complaint or appeal, which would previously have been competent, may now be competently taken against each judgment of the Presbytery, and must go in regular course to the Provincial Synod, if its meeting take place before that of the General Assembly, and directly to the Assembly only when no meeting of the Synod shall intervene.

2. It has been enacted that, when a Presbytery are themselves the libellers, they shall, before serving the libel, summon the accused party in regular form to attend a meeting at which it shall be proposed to consider the propriety of serving it, and shall, at the same time, furnish him with a copy of it. That the meeting shall not be held for at least ten free days after the minister shall have been summoned and been furnished with a copy of the libel; that, at that meeting, the Presbytery shall carefully consider the question of its relevancy; and that thereafter, if they serve it, they shall serve it as a libel which they have already judged to be relevant.

The Committee consider that the expression “accused party” in this enactment must not be understood as constituting the minister a party at the bar of the Presbytery. For, by the supposition made, the Presbytery have not as yet resolved, even as prosecutors, that there is any relevant ground of charge against him. But an allegation has been made to his prejudice, and the Presbytery are about to consider the question as to whether it will be their duty or not to serve him with a libel; and in order that he may suffer no injustice, the Presbytery must specially summon him to attend their meeting in his place as a member, and must intimate to him definitely the form which the accusation, if they shall resolve to take it up and charge him with it, will assume in their hands.

The Committee consider that, if the Presbytery before serving the libel shall make any change upon the form in which it appeared in the copy with which the minister had been previously furnished, they must, before serving it, again furnish him with a copy and again summon him in the terms of this enactment

The Committee are of opinion that the expression *regular form*, employed in the first clause of this enactment, indicates that the Presbytery cannot competently proceed in absence of the minister, without repeating the process of summoning three times, according to the old practice.

The Committee further consider that the minister, or any other member of Court, may take a dissent and complaint against any judgment of the Presbytery, by which the libel is found in any respect relevant, or the reverse, whether that judgment be simply a resolution to serve or not to serve the libel, or a particular deliverance on any particular point raised. The Committee think that any such dissent or complaint must go to the Provincial Synod, if it meet before the General Assembly, but that it will not sist procedure until the Presbytery shall have evidence before them that the libel has been duly served.

3. It has been enacted that, when a Presbytery have resolved to order a libel to be served, the accused minister shall *ipso facto* cease to exercise his functions until the libel shall have been disposed of.

The Committee have to observe here, in the first place, that this rule has no application while the Presbytery are only considering the relevancy of a libel, which they are proposing themselves to serve as prosecutors, and before they have actually resolved to serve it. This observation illustrates the importance of what has been said, in relation to the previously considered enactment, as to the minister being not yet a party at the bar.

But the Committee have to observe, secondly, that the expression *resolved to order* in this enactment, shows that the minister becomes a party at the moment when the resolution to have the libel served has been come to. The Presbytery, therefore, must not wait, before acting upon the rule here laid down, until they shall have proof of the libel having been actually served, but must, in the face of all dissents and complaints, proceed at once to take charge of the minister's pulpit and congregation, according to the old law in cases of suspension.

4. It has been enacted that, after a libel shall have been served by a Presbytery, it shall be a competent ground on which the Presbytery may refer the case to the Superior Courts, that it does not appear expedient, in the circumstances, for the Presbytery to act both as prosecutors and judges.

The Committee consider that the Presbytery cannot competently adopt this procedure, until, at a meeting subsequent to that at which the resolution to order the libel to be served has been come to, they shall have competent evidence before them that the libel has been actually served in due form according to the old law.

The Committee consider that the expression *Superior Court* implies that the reference is to be made to the next Superior Court, as the case may be; the Synod, if it meet before the General Assembly, and the Assembly itself, if there be no previous meeting of Synod, and the Commission of Assembly only in the event of the Assembly having specially empowered that body to receive complaints or appeals in the particular case. The Committee think that if the reference go to the Synod, the Synod may take one of three courses. It may either differ from the Presbytery and dismiss the reference, requiring the Presbytery to try the case themselves; or, secondly, it may sustain the reference, and resolve itself to try the case; or, thirdly, it may sustain the reference, and refer the case on to the General Assembly.

As it is very desirable that the words of the Presbytery's deliverance in such a reference should be clear and exact, the Committee would suggest the following form:—

“It having been duly certified to the Presbytery that the libel against Mr A. B. has now been served in due form, and the matter being now ripe for further procedure, the Presbytery, after careful consideration, find that it does not appear expedient in the circumstances for them to act both as prosecutors and judges, and therefore, they hereby refer the case to the Free Provincial Synod of at their meeting in next (or, as the case may be, to the General Assembly, etc.)”.

The Committee are of opinion, that although a complaint or appeal would at this stage prevent the Presbytery from taking any other step, it should not be considered as preventing them from making the reference allowed by this enactment.

5. It has been enacted that a similar reference may be made, on the ground of its not appearing expedient for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect.

The Committee would observe, first of all, as to this enactment, that it applies, not only to the case in which the Presbytery are prosecutors, but also to that in which other parties are prosecutors, and that it takes for granted that in this last case the libel must

be served before it has been found relevant, and the relevancy judged of according to the old law.

The Committee would observe, secondly, that the form of reference for the Presbytery ought to be varied as follows, in the case in which the Presbytery are not the prosecutors:-

“The libel having now been found relevant, and the matter being now ripe for further procedure, the Presbytery, after careful consideration, find that it does not appear expedient, in the circumstances, for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect, and, therefore, the Presbytery hereby refer the case to the Free Provincial Synod of at their meeting in next (or, as the case may be, to the General Assembly, etc.)”.

The Committee would observe, thirdly, that this enactment furnishes a ground on which the Synod may also refer the case to the Assembly. The Synod, however, may do so on other competent grounds.

The remaining parts of these two last-mentioned enactments refer to the General Assembly’s own procedure, and the Committee think it unnecessary to make any remark upon them.

6. The same remark applies to the last enactment in order of application, by which it has been made competent for the Assembly to correct a libel, and to appoint the case to be tried with the amended libel.

It appears to the Committee that, for the present, they have sufficiently discharged their duty, in laying these suggestions before the Assembly.

ACT XIV, 1860: ACT ANENT REVISAL OF LIBELS WHEN A PRESBYTERY ARE THE LIBELLERS

The General Assembly, with consent of a majority of Presbyteries, enact and ordain:—

That when it is proposed in a Presbytery that they should themselves be the libellers, in case of charge against a minister of this Church, they shall not adopt any form of libel without having first submitted it for revision to the Legal Adviser of this Church.

ACT XV, 1860: ACT ANENT REVISAL OF LIBELS WHEN ANY PARTY OR PARTIES, OTHER THAN THE PRESBYTERY, ARE LIBELLERS

The General Assembly, with consent of a majority of Presbyteries, enact and ordain:—

That when a libel in case of charge against a minister of this Church shall be brought before a Presbytery by any party or parties, other than the Presbytery, the Presbytery shall not proceed to serve the said libel, or to consider its relevancy, until they have ascertained that the form of it has been submitted for revision to the Legal Adviser of this Church.

ACT II (CLASS I), 1883: ACT ANENT MODE OF TAKING EVIDENCE IN CHURCH COURTS

The General Assembly, with consent of a majority of Presbyteries, hereby declare and enact:—

That in all cases in which it is necessary to lead evidence before any Court or Special Commission of this Church, it shall be lawful for such Court or Special Commission to appoint, at the joint expense of the parties, a skilled Shorthand Writer to take down such evidence (who shall promise to make a faithful record); that he shall read over to each witness, at the close of his evidence, what he has taken down, that said witness may say whether he admits it to be correct, and that afterwards he shall write out in full the evidence so taken down by him, and certify the same as correct; and the Moderator or Chairman shall also attest the same; and the record of evidence thus attested shall be held as valid, and be proceeded upon as the evidence in the case; and further, it shall not be competent, prior to the closing of the proof, to record reasons for any complaint or complaints against any decision of the Court or Special Commission on the admissibility of evidence, but that, when the proof has been declared closed, such reasons may be recorded.

(3) Questions of Evidence, etc., that may be raised in the consideration of a Libel

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

1. Who are competent witnesses?

Many disqualifications formerly sustained are now abolished. The remaining may be classed under three heads.

(1) *Mental Incapacity*: Insane persons and idiots cannot of course be received. Children under twelve are not examined on oath, but they are admissible if they appear to be sensible of the duty of telling the truth, and even when so young as to be incapable of this, they are sometimes admitted, but must be corroborated by adults.

(2) *Relationship of Husband and Wife*: In criminal prosecutions neither spouse can give evidence for or against the other, unless he or she is the injured party.²⁸ All other relations are competent witnesses for or against each other. The effect of natural affection or bias is left for remark on credibility.

(3) *Undue Bias*—such as having been bribed or tutored as to what evidence to give, or cherishing malice and ill-will against the accused: These are still nominally grounds of disqualification, but in fact are rarely if ever sustained as objections to

²⁸ The law of Scotland in this matter has now been changed

competency. Very strong grounds of fact are required, otherwise a witness, favourable to the accused, might disqualify himself from giving evidence against him by admissions falling under these heads.

Agency is not now a disqualification, but the law-agent, or person acting as such, cannot be compelled to disclose what was committed to him in that character, unless he is adduced as a witness by his own client. This does not extend to the case of a confidential friend, or even spiritual adviser.

The character of a witness, however bad, does not disqualify; it affects his credibility only.

There is often a peculiar delicacy in the position of a member of presbytery on this head. Where the libel is at the instance of the Presbytery, they unite the functions of prosecutors and judges, unless they adopt the course allowed by Act X, 1854. But usually no member of Presbytery will be admissible as a witness unless he carefully abstains from all participation in preparing or judging of the cause. When, on the other hand, the libel is at the instance of a private party, the members of Presbytery are bound to confine themselves strictly to the judicial character, and assistance given by them to the preparation of the cause will disqualify them for taking part in the deliberations.

Leading questions (i.e. asking a witness “Did he do or say so and so?” in place of “What did he do or say?.”) are only allowed in the introductory part of the examination in chief, but when the witness shows hostility, reluctance, or forgetfulness, it is permitted to recall circumstances by leading questions; and such questions are always allowed in cross-examination.

A witness ought not to be in Court while previous witnesses are examined; but it is not now imperative to reject a witness on the ground of his having been so in Court. The Court may judge whether, in the circumstances, injustice could be done by his examination being allowed.

2. What is competent evidence?

The questions put must be more or less pertinent to the cause. A witness must depone not only to his knowledge, but to his cause of knowledge. He must likewise speak to what he himself knows, not to what he has heard. It must be particularly remarked, that it is not competent for a witness to tell what a third party may have told him. This is hearsay — not evidence — and such questions ought never to be permitted to be asked or answered, with the following exceptions. It is competent to ask a witness to speak to what he has heard said by a party deceased — or by the accused — or by any one in the presence of the accused — or to what was said at the time the act charged took place, if such observations formed part of the *res gesta* — or to a common rumour or *fama* in the neighbourhood.

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

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

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

The depositions or solemn declarations of witnesses are taken down in writing, and signed by them and the Moderator and Clerk.

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

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

The Presbytery, or any authorised Commission trying the case, must then declare the proof concluded, and proceed to consider its import.

APPENDIX V

SAMPLE MINUTES AND EXTRACTS

What follows are samples of how minutes of Church Courts should be recorded. What is mandatory is that the minutes state that the Court was duly constituted and closed with prayer, that the names of members present are given, and that all items of business dealt with and decisions made are recorded. The order of business may be adjusted to suit the convenience of the courts but the minutes should be written up in such a way that the various items are easily identified. When minutes are hand-written this has traditionally been achieved by marginal notes. Use of computers today may suggest heavy type at the beginning of each paragraph introducing new business.

A. Kirk Sessions and Deacons' Courts

(1) Minute of a Kirk Session Meeting

At.....and within the Session Room/
Vestry of the Free Church there
on.....19.. the Kirk Session
of..... met and was constituted.

Sederunt: Rev.....Moderator with Messrs..... andRuling
Elders. Apologies for absence were received from.....and duly noted.

Minister's Induction: The Session noted that Mr.....had been inducted as
minister of the congregation by the Presbytery of.....on.....and welcomed
him to his first meeting of the Kirk Session.

Minutes: The minutes of the meeting of Kirk Session held on.....were read,
adjusted, approved and signed by the Moderator and Clerk.

Clerk: The Kirk Session referred to the desire of Mr..... to be relieved of the duties of the clerkship which he had intimated at the last meeting. The Session, with great regret, acceded to his request, to be effective from the close of this meeting and thanked Mr.....cordially for the years of service he had rendered as clerk.

The Session then proceeded to appoint a new clerk. It was moved, seconded and unanimously agreed to request Mr.....to become clerk. Mr.....agreed to do so and promised to discharge the duties of the clerkship faithfully. His appointment was fixed to begin at the close of this meeting.

Elders' Districts: The Kirk Session considered this to be a suitable time for reviewing the allocation of districts to each of the elders so as to achieve the best possible pastoral oversight of the congregation. The congregation was duly divided into districts and the elders assigned to each were requested to visit the families within their districts and to report to a future meeting of Session with regard to any feature requiring special attention.

Need for Additional Elders: In the course of the review of district duties it became evident that pastoral oversight of the congregation would be greatly improved by the election of three new elders. The Session therefore agreed to take the necessary steps to have such an election by the communicant members of the congregation.

The minute might then continue in one of the following ways:

(a) It was then resolved to prepare a printed list of all male communicants of 21 years of age and over for circulation to those on the Communion Roll with the request that they indicate by a cross opposite the names (or, the request that they number the names in order of preference to show) those whom they wished to be elected as elders. The lists should be circulated by insert date and returns duly marked and signed should be given in to the clerk of session by insert date. The Kirk Session would meet to examine the returns on insert date.

(b) The Kirk Session resolved to submit to the communicant membership of the congregation the following list of eight names of male communicants deemed by the Session to be suitable for election as elders. It was agreed to request communicants to indicate their choice by placing a cross opposite the relevant names and to sign and return the form by insert date. It was further agreed that intimation of this should be made from the pulpit on insert date, and that the Kirk Session would meet to examine returns on insert date.

(c) The Kirk Session resolved to meet with the communicant membership of the congregation on insert date and to propose to them that Messrs.....be elected as elders of this congregation.

Election of Representative Elder: The Kirk Session noted that the Commission of Mr.....as Representative elder on the Presbytery of.....and Synod of..... had expired with the recent meeting of Synod and that a new election must be made within two months of Synod's meeting. It was therefore moved, seconded and agreed to that Mr.....should be elected to represent the Kirk Session in the Presbytery of.....and Synod of.....for the ensuing year. The Kirk Session testify that Mr.....is an acting member of this Session.

Notice of Motion to Rescind a Decision: Mr.....referred to a recent decision of the Kirk Session (Minute of *insert date*) to cease holding services of public worship in the village of.....He informed the Kirk Session that this decision was productive of consequences unforeseen at the time and he therefore gave notice that at the next meeting of Kirk Session he would propose the following motion: “The Kirk Session rescind their decision of *insert date* to cease holding services in the village of.....from *insert date* and to review the matter afresh with a view to overcoming difficulties which have arisen since the decision was made known.”

The meeting was then closed with prayer.

(2) Another Kirk Session Minute

At.....and within the Session Room/Vestry of the Free Church there on 19.. the Kirk Session of..... met and was constituted.

Sederunt: Rev , Moderator with Messrs and.....Ruling Elders. Apologies for absence were received from and duly noted.

Minutes: The minutes of the meeting held on were read, adjusted, approved and signed by the Moderator and Clerk.

Election of Elders: The Kirk Session examined the voting forms returned by communicant members and found that Messrs..... and.....had been chosen by a clear majority of the communicants. Messrs.....and.....had each been favoured by a majority but with the same number of votes given to each. In this case the Session deemed.....the more suitable and also approved the election of.....and..... It was agreed to ascertain the mind of each of the three chosen as to their acceptance of the office of elder. The minister was asked to interview all three. In the event that any should decline he should also interview Mr.....as the next in the list of those who had received a majority vote of the communicants.

[This above paragraph would be altered to accord with the alternatives given in Minute 1].

It was agreed that the Session should meet again on to arrange further action in the light of the responses of those elected.

Notice of Motion: The Session now referred to the notice of motion which had been given in at the last meeting. The motion as notified was duly moved and seconded in the following terms:

The Kirk Session rescind their decision of *insert date* to cease holding services in the village of.....from *insert date*, and to review the matter afresh with a view to overcoming difficulties which have arisen since the decision was made known. Mr.....informed the Session that the degree of local disappointment and distress occasioned by the decision of the Session was much greater than had been

anticipated. Moreover the availability of transport to the central Church was not as good as had been previously stated. The earlier decision should therefore be rescinded and the matter reviewed. The Session agreed to rescind their earlier decision and agreed also that a service of worship should be held in the village ofon a monthly basis instead of the fortnightly basis which had obtained in the past.

Application for Baptism: The Moderator informed the Session that he had been visited by Mr.....of *insert address* with a request that his infant should be baptised. The Moderator had examined Mr.....as to his knowledge of the meaning of the sacrament, and his conduct of family worship. He had found the responses satisfactory, and knew Mr and Mrs.....to be regular in their attendance at public worship. He had drawn their attention to the nature of the solemn commitments made on receiving baptism for their child and was satisfied with their responses. He recommended that the request be granted. The Session agreed to this.

The meeting was closed with prayer.

(3) Another Kirk Session Minute

At.....and within the Session Room/Vestry
of.....the Free Church there on 19.. the Kirk
Session of.....met and was constituted.

Sederunt: Rev....., Moderator, with Messrs.....and.....Ruling
Elders. Apologies for absence were received from.....and duly noted.

Minutes: The minutes of the meeting held on were read, adjusted, approved
and signed by the Moderator and Clerk.

New Elders: The Moderator informed the Kirk Session that Messrs.....
and..... and....., had all agreed to accept eldership in the congregation. It was
therefore agreed that ordination and induction of the new elders should take place
on.....after public worship. An edict should be served on the congregation
on..... intimating that the ordination and induction of
Messrs.....and....., and the induction of Mr.....who had already been
ordained an elder in another congregation would take place on the date specified unless
objection to the life or doctrine of any named was substantiated.

Appointment of Communion: The Session resolved that the sacrament of the Lord's
Supper should be observed in the congregation on *insert date*.

The meeting was closed with prayer.

(4) Another Kirk Session Minute

At and within the Session Room/Vestry of.....the Free Church there on.....19.. the Kirk Session of.....met and was constituted.

Sederunt: Rev....., Moderator, with Messrs and, Ruling Elders. Apologies for absence were received from Mr.....and duly noted.

Minutes: The minutes of the meeting held on.....were read, adjusted, approved and signed by the Moderator and Clerk.

Return of Edict: The Moderator intimated that he had duly served the Session's Edict relative to the ordination and induction of new elders. The Session arranged that a farther intimation be made at this point informing the congregation that they were now met to receive any objection which might be made to the life or doctrine of those proposed for eldership in the congregation. No objections were received and the Session agreed to proceed forthwith to the ordination and induction and met with the congregation for this purpose.

After sermon the Moderator explained to the congregation the steps which had been taken to have new elders and named those who had been chosen. He recalled that opportunity had been given by public edictal intimation, to any who might have objected to the life or doctrine of the persons named. As no objection had been intimated he was now prepared to proceed with the ordination and induction.

Messrs.....and.....were requested to stand and the questions appointed by the General Assembly were addressed to them and answered satisfactorily. Thereafter they each signed the formula in the presence of the congregation and the Moderator, with solemn prayer, ordained Messrs.....and.....to the eldership and inducted the said Mr.....to the Kirk Session of this congregation, giving to each along with the members of Session present, the right hand of fellowship. The Moderator then suitably addressed the new elders and the congregation. The names of the newly inducted elders were added to the Roll of Session.

The meeting was closed with prayer.

(5) Another Kirk Session Minute

At.....and within the Session Room/Vestry of the Free Church there on.....19.. the Kirk Session of.....met and was constituted.

Sederunt: Rev....., Moderator, with Messrs.....and....., Ruling Elders. Apologies for absence were received from Mr.....and duly noted.

Minutes: The minutes of the meeting held on.....were read, adjusted, approved and signed by the Moderator and Clerk.

New Communicants: The Moderator informed the Session that.....and.....had intimated to him a desire to be received as communicants for the first time. He had examined them as to their faith and knowledge and was satisfied as to their Christian behaviour. They were introduced to the Session, some questions were asked and satisfactorily answered and the Session agreed to their request and gave to each the right hand of fellowship.

The following were also introduced to the Session having tendered disjunction certificates from other congregations. They also were welcomed and given the right hand of fellowship by members of Session.

The Session remained open throughout the Communion season when the ministers assisting were Rev.....and Rev.....The cordial thanks of the Session were accorded to them.

The meeting was closed with prayer.

(6) Another Kirk Session Minute

At.....and within the Session Room/Vestry of.....the Free Church there on.....19.. the Kirk Session of.....met and was constituted.

Sederunt: Rev....., Moderator, with Messrsand....., Ruling Elders. Apologies for absence were received from Mr.....and duly noted.

Minutes: The minutes of the meeting held on.....were read, adjusted, approved and signed by the Moderator and Clerk.

Motion Re ... : Mr..... referred to a matter on which he thought the Kirk Session ought to take action. He moved in the following terms:.....and the motion was seconded. It was also moved and seconded that:.....

After discussion a vote was taken and the second motion was approved by a majority. From this decision Mr.....entered a simple dissent which was duly recorded. Mr.....intimated a dissent and craved leave to complain to the Presbytery of....., undertook to submit reasons within ten days and craved extracts which were granted. The Moderator and Mr.....were authorised to prepare answers to the Reasons to be submitted and to represent the Session at the bar of the Presbytery of.....

Discussion Re....: Mr.....drew the attention of the Session to.....and invited the Session to consider what action they should take in regard to it. The ensuing discussion showed that the Session were uncertain as to the legalities involved, or unable to decide how they should proceed. It was therefore resolved to refer the matter *simpliciter* to the Presbytery of.....requesting advice. The Moderator was appointed to state the reference.

Certificate to Members of Assembly: The Kirk Session were informed that the Presbytery ofhad commissioned Mr.....one of their number as a member

of the forthcoming General Assembly. The Session authorised the Moderator and the clerk to complete and sign the certificate provided testifying that Mr.....is an active member of their Session and that he has signed the formula.

The meeting was closed with prayer.

(7) Minute of Kirk Session appointing Congregational Meeting

At.....and within the Session Room/Vestry of..... the Free Church there on.....19..., the Kirk Session of.....met and was constituted.

Sederunt: Rev....., Moderator with Messrs.....and.....Ruling Elders. Apologies for absence were received from.....and duly noted.

Minutes: The minutes of the meeting held onwere read, adjusted approved and signed by the Moderator and Clerk.

Congregational Meeting: The Deacons' Court requested the Kirk Session to authorise the calling of a congregational meeting for the purpose of electing two local trustees, and to approve a Petition to the General Assembly requesting authority to sell the Church at.....

The Kirk Session approved of both requests and appointed the meeting with the congregation to be held in.....on.....at.....The Session directed that the congregation be informed by pulpit intimation that by Act of the General Assembly (Act XVIII, 1844) the right to elect trustees is vested exclusively in those listed on the congregational Communion Roll.

The meeting was closed with prayer.

(8) Minute of Meeting with the Congregation

At.....and within the Free Church there on.....19..., the Kirk Session of.....met with the Congregation according to appointment and was constituted.

Sederunt: Rev....., Moderator with Messrs.....and.....Ruling Elders. Apologies for absence were received from.....and duly noted.

The Moderator referred to the need to appoint local trustees and it was then moved and seconded that Mr.....and Mr.....be appointed. This was unanimously agreed to by the communicants present and listed in the Communion Roll.

Mr....., Deacon, introduced a Petition to the General Assembly requesting sale of the Church building at.....and explained the reasons for this request.

It was moved, seconded and agreed that the congregation approve the terms of the Petition.

The meeting was closed with prayer.

(9) Minute Relating to Proposed Retirement of Minister

At.....and within the Session Room/Vestry of..... the Free Church there on.....19... the Kirk Session of..... met and was constituted.

Sederunt: Rev.....Moderator with Messrs.....and.....Ruling Elders. Apologies for absence were received from.....and duly noted.

Minutes: The minutes of the meeting held on.....were read, adjusted approved and signed by the Moderator and Clerk.

Retirement of Minister: The Moderator informed the Kirk Session that he intended to retire from the pastorate with effect from 30th September following and in terms of Act I, 1989, he wished to apply for a Retirement Allowance. He undertook to resile from the membership of the Kirk Session and other congregational bodies upon his retirement and requested that the undertaking be duly minuted. The requisite form of Application to be forwarded to the central Pensions Committee via the Presbytery of.....was duly completed. The Kirk Session took opportunity to express to Rev.....their appreciation of his ministry and their sadness at its impending end. They wished him God's blessing in his retirement.

The meeting was closed with prayer.

(10) Edict to be served on Congregation prior to the Ordination and Induction of Elders

At.....the.....day of.....19... , the Kirk Session of the Free Church Congregation of.....having appointed an election of Elders to take place on.....and the Congregation, after due intimation, having made choice of Mr.....and Mr.....etc., and the Session having judged the aforesaid.....duly qualified for the office, and the said Mr.....etc. having intimated their [*or his*] acceptance of the office, the Kirk Session did, on the day of appoint the ordination and admission to the office of the Eldership of the said Mr..... [and, *if any persons or person chosen have been already ordained*, the induction of the said Mr.....], etc. to take place on Sabbath, the.....day of.....It is accordingly hereby intimated, that if any member of the Congregation have objections to state to the life or doctrine of the said Mr.....etc., he will have an opportunity of doing so at a meeting of Session to be held in.....on the.....day of.....

(11) Form of Commission to Elder as Representative in Presbytery and Synod

This is an extract from the minutes of the Kirk Session and reads:

At.....and within the Session Room/Vestry
of.....the Free Church there on
.....19..., the Kirk Session
of.....met and was constituted.

Inter Alia:

Election of Representative Elder: The Kirk Session noted that the commission of Mr.....as Representative elder on the Presbytery of.....and Synod of.....had expired with the recent meeting of Synod and that a new election must be made within two months of Synod's meeting. It was therefore moved, seconded and agreed to that Mr.....should be ejected to represent the Kirk Session in the Presbytery of.....and Synod of.....for the ensuing year. The Kirk Session testify that Mr.....is an acting member of this Session.

Extracted by

Clerk

(12) Extract to member who has intimated dissent and complaint.

At.....and within the Session Room/Vestry of
the Free Church there on.....19..., the Kirk
Session of.....met and was constituted.

Inter Alia:

Motion Re....: Mr.....referred to a matter on which he thought the Kirk Session ought to take action. He moved in the following terms and the motion was seconded. It was also moved and seconded that

After discussion a vote was taken and the second motion was approved by a majority. From this decision Mr.....entered a simple dissent which was duly recorded. Mr.....intimated a dissent and craved leave to complain to the Presbytery of....., undertook to submit reasons within ten days and craved extracts which were granted. The Moderator and Mr.....were authorised to prepare answers to the Reasons to be submitted and to represent the Session at the bar of the Presbytery of.....

Extracted by

Clerk

(13) Extract Re Reference to Presbytery

At.....and within the Session Room/Vestry
of.....the Free Church there
on.....,19.. the Kirk Session
of.....met and was constituted.

Inter Alia:

Discussion Re...: Mr.....drew the attention of the Session to.....and invited the Session to consider what action they should take in regard to it. The ensuing discussion showed that the Session were uncertain as to the legalities involved, or unable to decide how they should proceed. It was therefore resolved to refer the matter *simpliciter*, to the Presbytery of.....requesting advice. The Moderator was appointed to state the reference.

Extracted by

Clerk

(14) Petition to the Kirk Session

To the Moderator and other members of the Kirk Session of....., the Petition of the undersigned humbly shows that:

1. Whereas
2. Whereas
3. Whereas

Wherefore your Petitioners request that the Kirk Session take the foregoing into consideration and arrange that.....or do otherwise as seems best to the Kirk Session to meet this situation.

Signed.....[*names and designations and whether communicants or adherents*]

[The above is the formally correct way for people to bring a mater to the Kirk Session, but a courteously worded letter is usually accepted as though it were a Petition.]

**(15) Petition by the Kirk Session and/or others to Presbytery
with reference to the minister.**

To the Reverend the Presbytery of.....
[or To the Moderator and other members of the Presbytery of.....]

The Petition of the undersigned humbly shows that:

Out of concern for the good of the congregation of.....and for the well-being of the Church generally, we are constrained to draw the attention of your reverend Court to the following matters affecting the minister of the congregation:

- (a) Whereas
- (b) Whereas
- (c) Whereas

Wherefore, we humbly request the Presbytery to consider these facts and to take such action as it deems most appropriate.

Signed..... [*names, designation. noting whether elders, communicants or adherents*]

(16) Petition to Presbytery by persons who claim to have been refused a hearing by the Kirk Session

To the Reverend Presbytery of [*or. To the Moderator and other members of the Presbytery of.....*]

The Petition of the undersigned humbly shows that:

1. Your Petitioners duly brought certain matters [*specify*] to the attention of the Kirk Session of.....
2. That the Kirk Session came to a decision without summoning your Petitioners to the bar and thus deprived them of access to your Reverend Court by appeal.
3. That consequently your Petitioners seek the intervention of your Reverend Court in respect of the aforesaid matters and the decision of the Kirk Session of

Signed

(17) Minutes of the Deacons' Court

Minutes of the Deacons' Court follow the pattern given for the Kirk Session, as do extracts. The election of Deacons is processed by the Kirk Session and follows the pattern shown for the election of elders.

As the Deacons' Court may meet in the absence of the Moderator there is a variation in the opening part of the minute where that occurs. It may read:

At.....the day of..... the Deacons' Court of.....met.

Sederunt: Messrs....., and....., Elders and.....and.....,Deacons.

In the absence of the minister, Mr.....was called to the Chair and the meeting was duly constituted.

(18) Form of Petition to the General Assembly for Sale of Property

the Venerable the General Assembly of the Free Church of Scotland, indicted to meet in Edinburgh on 22nd May 19....., the Petition of the Deacons' Court of the Congregation of.....humbly shows:

1. Whereas the Church building at.....is in need of extensive repairs;
2. Whereas the building is now surplus to the requirements of the congregation;

Wherefore it is humbly requested that the General Assembly grant authority to sell the said building, and direct that the proceeds of sale be applied to the funds of the congregation, or do otherwise as in their wisdom they deem best. And your Petitioners will ever pray.

Signed Moderator.
 Clerk

This Petition should be accompanied by (1) extract minute of the Deacons' Court proposing the sale and requesting the Kirk Session to authorise the calling of a congregational meeting; (2) extract minute of the Kirk Session approving the sale and calling the congregational meeting; and (3) extract minute of the congregational meeting certifying approval by the congregation. The Petition and extracts are forwarded to the Presbytery and by the Presbytery sent on to the Custodier of Titles, with an extract minute of the Presbytery's decision.

B. Presbyteries

The general pattern of meetings of Presbytery follows that shown for Kirk Sessions. The minute shows that the Presbytery was duly constituted, notes the names of those present and then records the various items of business transacted in an orderly fashion. The minutes conclude with a statement indicating that the meeting was closed with prayer. It is not deemed necessary to provide a sample minute of a typical Presbytery meeting. The samples following will give indication of how minutes of *in hunc effectum* and *pro re nata* meetings should be introduced and of how various matters peculiar to the Presbytery may be recorded.

(1) Minute of Meeting in hunc effectum

At.....the.....day of.....19.,
the Free Presbytery of.....met *in hunc effectum*, and was constituted.

Sederunt:.....

The part of the Minute of the last Ordinary Meeting appointing the meeting was read and the Presbytery proceeded to deal with the matter(s) specified.

It was moved that.....,etc.

The meeting was closed with prayer.

(2) Minute of pro re nata meeting

At.....the.....day of.....19.,
the Free Presbytery of.....met *pro re nata* and was constituted.

Sederunt:.....

The circular addressed by the Moderator to members was read as follows.....

It was moved, seconded and agreed to that the Presbytery approve of the Moderator's action in calling this meeting.

Presbytery proceeded to deal with the matter referred to in the circular.

It was moved that..... etc.

The meeting was closed with prayer.

(3) Minute resolving to Moderate in a Call

Mr....., Interim Moderator of the vacant congregation at.....introduced Messrs.....and.....Commissioners appointed by the said Congregation to request the Presbytery to moderate in a call to a minister [*or* in a call to.....minister at.....]. In introducing the Commissioners the Interim-Moderator expressed confidence that if Presbytery should accede to the request a harmonious Call could be anticipated.

The Commissioners and others were heard and the Presbytery agreed to meet in..... at.....to moderate in a Call to a minister [*or* to Mr.....]. The Moderator of Presbytery [*or* Mr.....] was appointed to preach and preside on the occasion. The Interim-Moderator was charged to arrange that due edictal intimation be made in the congregation of.....on.....at both diets of public worship.

(4) Form of Edict announcing meeting to Moderate in a Call

In name and by appointment of the Free Presbytery of.....I hereby intimate that, in consequence of an application from this Congregation, the said Presbytery agree to meet within this Church on Thursday, the.....day of.....next at o'clock in the.....for the purpose of moderating in a Call for filling up the vacancy in this Congregation [*or, if the name be inserted, in a Call to Mr.....to be Minister of this Congregation*], the Rev.....to preach and preside on the occasion.

Certificate of Intimation

The above intimation was duly made by me.

.....Signature

.....Witness

.....Witness

(5) Form of Call and Concurrence

We, the undersigned Elders, Deacons, and Members of the Free Church Congregation at....., desirous of promoting the glory of God and the good of the Church, being destitute of a fixed pastor, and being assured, by good information and our own experience, of the ministerial abilities, piety, literature and prudence, as also of the suitableness to our capacities of the gifts of you, Mr.....preacher of the Gospel, have agreed to invite, call, and entreat, like as we, hereby do heartily invite, call, and entreat you to undertake the office of Pastor among us, and the charge of our souls; and further, upon your accepting this our Call, promise you all dutiful respect, encouragement, and obedience in the Lord.

In witness whereof, we sign this Call this.....day of.....one thousand nine hundred and.....years.

[Here follow the Signatures.]

Concurrence In Call by Adherents

We the Subscribers, ordinary hearers in the Free Church Congregation of....., hereby declare our hearty concurrence in the Call addressed by Members of the said Congregation to Mr.....to be their Pastor

[Here follow the Signatures.]

(6) Minute Declining Request to Moderate in a Call

Mr....., Interim Moderator of the vacant congregation at.....reported to the Presbytery that at a congregational meeting held on.....a majority of the

congregation had voted to request that a Call be addressed to Mr.....minister at [*or, in the case of an open call, to a Minister*], and Commissioners were present to make their request to the Presbytery.

Presbytery were informed that Messrs.....and.....were also present to resist the request and to ask Presbytery to delay moderation in a call as there was little prospect of harmony in the congregation.

Both parties were heard by the Presbytery and after discussion it was moved, seconded and agreed to that Presbytery decline to Moderate in a Call in view of the lack of harmony in the congregation on the matter. Presbytery appointed a committee consisting of Messrs.....Ministers and Messrs.....Elders to confer with the congregation with a view to restoring harmony. The Committee is to report to the Presbytery.

(7) Minute referring Case concerning a Call to Superior Court

The Committee appointed to confer with the Congregation regarding moderation in a Call reported that in their view there was, at this stage, little prospect of harmony in the Congregation in regard to a Call. Presbytery therefore resolved to refer and hereby do refer the matter to the Synod [*or, General Assembly*] in terms of Act IV, 1859.

7(a) Alternative to above

Inter Alia Messrs.....and.....appeared, representing the majority of the Congregation of....., also Messrs.....representing the minority of said Congregation.

Mr.....Interim Moderator of the Kirk Session and Congregation, made a statement. Parties were heard and removed. It was then moved and seconded that the Presbytery, finding that the want of harmony in the Congregation of.....still continues, resolve to refer, and hereby do refer, the case to the Synod/General Assembly in terms of Act IV, 1859.

Which motion was unanimously adopted.

Parties were called in and judgment intimated.

(8) Minute in Moderation of Closed Call

The minute calling this meeting was read. The Edict was returned attested as having been duly served.

Presbytery then met with the Congregation when the Moderator went to the pulpit, and preached from.....Public Worship being ended, the Moderator intimated that the Presbytery would now proceed to moderate in a Call for filling up the vacancy in this Congregation.

The Clerk read the form of Call addressed to Mr.....minister at.....
[or Probationer].

The Call was subscribed by.....communicants.....being by mandate
and.....adherents,being by mandate.

It was moved, seconded and agreed to that the Presbytery sustain the Call and the
Presbytery appointed Messrs.....and.....to prosecute the Call before the
Pesbytery of.....and any other competent judicatory of the Church. They were also
authorised to draw up Reasons for Translation and to forward them to the Presbytery
of.....

[If the Call is to a Probationer the minute may read as follows]:

It was moved, seconded and agreed to that the Presbytery sustain the Call.
Mr.....being in the building the Call was placed in his hands and he indicated
acceptance of it. Presbytery fixed.....as the date on which Mr.....should be
taken on trials for ordination, the subjects of these trials to be notified to him by the relevant
Committee of the Presbytery.

(9) Specimen of Mandate relevant in Closed Call

(a) Communicant.

I.....residing at.....being a communicant member of the congregation
of.....and being unable to attend the meeting appointed to moderate in a Call
to....., hereby authorise.....to sign on my behalf.

Signed.....

(b) Adherent

I.....residing at.....being a regular worshipper in the congregation
of.....and being unable to attend the meeting appointed to moderate in a Call
to.....hereby authorise.....to sign the concurrence in the Call on my behalf

Signed.....

(10) Minute re Moderation In Open Call

The Minute calling this meeting was read. The Edict was returned attested as having
been duly served.

Presbytery then met with the congregation when the Moderator preached
from.....Public Worship being ended, the Moderator intimated that the Presbytery
would now proceed to moderate in a Call for filling up the vacancy in this congregation.

The clerk then read the form of Call. It was then moved and seconded that the name of.....minister at.....be inserted in the Call.

It was also moved and seconded that the name of Mr.....be inserted in the Call.

On a vote being taken the first motion was declared carried, those who had voted for the second motion agreed to acquiesce in the decision of the majority and the name of Mr.....was inserted in the Call.

The Call was subscribed by.....communicants and.....adherents.

It was moved, seconded and agreed that the Presbytery sustain the Call, and that the Call be left in charge of the Kirk Session until.....for further signatures.

Messrs.....and.....were appointed to prosecute the Call before the Presbytery of.....and any other competent judicatory of the Church. They were also authorised to draw up Reasons for Translation and to forward them to the Presbytery of.....

(11) Minute Permitting Translation

Presbytery took up consideration of a Call from the Congregation of.....in the Presbytery ofto Mr.....minister at.....in this Presbytery Messrs.....and.....appeared as Commissioners from the Presbytery of.....and congregation of.....and Messrs.....and.....appeared for the Kirk Session and Congregation of.....

Reasons for translation had been submitted by the calling Commissioners and Reasons against were submitted by the Kirk Session of.....These were duly read and parties were heard in their interests, Mr.....was asked to state his mind with regard to the Call and stated that if the Call were placed in his hands he would accept it.

Parties then withdrew.

After discussion it was moved, seconded and agreed to that the translation is expedient and the Call should be placed in Mr.....'s hands. The Call was accordingly placed in his hands and Mr.....intimated his acceptance of it.

The Presbytery then resolved to loose Mr.....from his present charge with effect from the date of his induction to his new charge and directed him to await instruction from the Presbytery of.....as to the date and time of his induction. Presbytery also requested the Presbytery of.....to notify it when the induction had taken place.

Parties were recalled, the decisions of Presbytery intimated to them and they acquiesced in them and craved extracts which were allowed.

(12) Minute Resolving to Induct

There were produced and read Extracts from the Presbytery of.....agreeing to the translation of Mr.....to the congregation of.....in this Presbytery.

It was resolved to meet *in hunc effectum* in.....on.....
at.....for the purpose of inducting Mr.....to the pastoral charge
of.....Mr.....to preach and preside and an edict to be duly served on the
Congregation.

(13) Edict Prior to Ordination/Induction

The Free Church Presbytery of....., having resolved to proceed to the
Ordination and Induction [*or, in the case of a Minister, Induction*] of Mr....., who
has been duly called to be Minister of this Congregation [*and, in the case of a Probationer,*
whose trials have been sustained], did, and hereby do, issue their edict, giving notice to all
persons concerned, and especially to members of this Congregation, that if any of them have
anything to object to the life or doctrine of the said Mr.....they must substantiate the
objections to the satisfaction of the Presbytery at a meeting to be held in.....
on.....the.....day of....., at o'clock, with certification that if no
one offer any relevant objection, or unless relevant objections be proven *instanter*, the
Presbytery will then forthwith proceed to the ordination and induction [*or, in the case of a*
Minister, induction] of the said Mr.....to the office of the holy ministry, and admit
him to the pastoral charge of this Congregation.

Certificate showing that edict has been served

The above Edict was this day duly served by me.

Witness.....

Signed.....

Witness.....

(14) Minute of Induction

The Minute calling this meeting was read. The Edict was returned duly served.
Presbytery instructed Mr.....to make proclamation three times in the Church that if
any person had any objections to the life and doctrine of Mr.....Minister of the
Gospel, they might now meet with the Presbytery in the vestry/hall of the Church, and
substantiate the same.

Mr.....reported that he had made proclamation as ordered and that no-one had
appeared to object.

The Presbytery then met with the congregation when the Moderator preached from.....
Public Worship being ended the Moderator [*or clerk*] gave.....a brief narrative of
proceedings in the call to Mr....., and the Moderator addressed to him the questions
appointed to be put to Ministers on their induction to a pastoral charge, and he having
returned satisfactory answers to the same, and having signed the Formula in the presence of
the Congregation, the Moderator, in the name of the Presbytery, did then induct the said
Mr.....as Minister to the pastoral charge of.....Congregation, and the
brethren gave him the right hand of fellowship. Thereafter Mr.....

was suitably exhorted by the Moderator, who also, in appropriate terms, exhorted the Congregation. Public Worship being ended, the meeting was closed with prayer. the ordinances of Divine institution, and behave in other respects agreeable to their office. All which the Presbytery have hereby attested on proper information.

(15) Minutes re Overtures and Returns to Overtures and Remits

(a) *Minute of an Overture transmitted by a Presbytery. This must go in the form of an Extract, as follows:*

The Presbytery agreed to transmit the following overture to the ensuing General Assembly:— It is overtured by the Free Presbytery of.....to the ensuing General Assembly of the Free Church of Scotland, that they, etc. or that they do otherwise for this object what to their wisdom may seem best.

(b) *Minute of a Return to an Overture from the General Assembly under the Barrier Act. This must also be sent as an Extract, each Return on a separate sheet of paper, as follows:*

Presbytery took into consideration the Overture transmitted by the last General Assembly in the following terms: [*Here take in*]; and the Presbytery hereby approve *simpliciter* of the same [*or the Presbytery disapprove of the same*].

(c) *Minute of a Return to a Remit from the Assembly not under the Barrier Act. This should also come in the form of an Extract*

The Presbytery took into consideration the Remit of last General Assembly on the subject of....., and the Presbytery find that[*whatever their opinion may be, and however qualified*]

(16) Minutes Appointing Commissioners to the General Assembly

At.....the.....day of.....19.. years:- Which day the Free Church Presbytery of.....being duly convened in order to elect their representatives to the ensuing General Assembly, pursuant to a Resolution entered in their Minutes on the.....day of.....One thousand nine hundred and.....did, and hereby do, nominate and appoint.....Minister at....., and.....Minister at....., and.....Minister at....., with Messrs.....Ruling Elders, their Commissioners to the next General Assembly of the Free Church of Scotland, indicted to meet at Edinburgh the.....day of May next to come, or when and where it shall happen to sit, willing them to attend all the diets of the same, and there to consult, vote and determine in all matters that come before them, to the glory of God and the good of his Church, according to the Word of God, the Confession of Faith, and agreeable to the constitution of this Church, as they will be answerable; and that they report their diligence therein at their return therefrom. And the said Presbytery do hereby testify and declare, That all the ministers above named have signed the Formula. And further, That the said Elders are of unblemished character, circumspect in their walk, regular in giving attendance on

the ordinances of Divine institution, and behave in other respects agreeable to their office. All which the Presbytery have hereby attested on proper information.

(a) After-Election of a Minister

At.....the.....day of.....19.. years:- Which day the Free Church Presbytery of.....being duly convened, did, and hereby do, nominate and appoint in place of.....their Commissioner to the next General Assembly of the Free Church of Scotland; and do hereby testify and declare, that.....signed the Formula; which the Presbytery hereby attest upon proper information.

(b) After-Election of an Elder

At.....the.....day of.....19 .. years:- Which day the Free Church Presbytery of.....being duly convened, did, and hereby do, nominate and appoint in place of.....their Commissioner to the next General Assembly of the Free Church of Scotland; and do hereby testify and declare, that he is in all respects qualified in the same manner as the Commissioner in whose room he is chosen, which the Presbytery hereby attest upon proper information.

(17) Minutes relating to Application of the Act Anent Problem Ministries

(1) *Either (a)* The Committee which conducted a quinquennial visitation of the congregation of.....drew attention to some disturbing facts: (1) a noticeable diminution in the numbers attending public worship; (2) a considerable reduction in financial support; (3).....

The Committee recommended and the Presbytery agreed to make further enquiry into the situation. It was moved, seconded and agreed to that the following Committee be appointed to pursue this further enquiry, namely.....

The Committee were directed to meet with all interested parties and instructed to use what means they properly could to resolve any difficulties that might be perceived.

Or (b) The Presbytery were informed by letter signed by.....elder and.....communicant members of the congregation of.....of unsettlement in the congregation evidenced by (1) a noticeable diminution in the numbers attending public worship; (2) a considerable reduction in financial support; (3).....

It was moved, seconded and agreed to that the following Committee be appointed to pursue this further enquiry, namely.....

The Committee were directed to meet with all interested parties and instructed to use what means they properly could to resolve any difficulties that might be perceived.

(2) The Committee appointed to investigate matters reported to Presbytery in the following terms.

The Committee met on occasions and met independently with.....and.....They met also with.....who had recently left the congregation of.....and who

asserted that Mr.....'s cultural interests were contrary to the ethos of the locality and prejudicial to the work of the ministry there.

It became evident to the Committee that serious differences have arisen in the congregation which the Committee's efforts to counsel and exhort have failed to resolve. Committee members attempted to act as intermediaries between alienated brethren but to no avail.

With great sadness the Committee have to report that the attitude of the minister, Rev.....contributed to the rise of differences and tends now to exacerbate the situation. They have endeavoured to counsel him but there has been no noticeable change in his attitude. The Committee are persuaded that Mr.....'s conduct does not warrant disciplinary action. Differences are due to incompatibility of temperament and to difference regarding the exercise of Christian liberty.

The Committee recommend that the Presbytery note these observations, and convey them in full by extract minute to Mr.....

It was moved, seconded and agreed to that the Presbytery receive the report of the Committee and inform Mr.....by extract minute of the terms and notify him that the matter will be again dealt with at a meeting of Presbytery to be held on.....

(3) The Presbytery took up consideration of matters relative to the congregation of.....and the minister..... Mr.....made a statement on his own behalf referring to the extract minute he had received. He insisted that he was within his rights as a Christian in attending.....and indulging in other cultural interests.

After discussion, it was moved, seconded and agreed to that the Presbytery find that Mr.....'s indulgence in cultural interests means that the ends of the ministry are not being served and that the state of the congregation is therefore due mainly to factors personal to the minister. Presbytery therefore notify Mr.....that they will again review this matter in six months time (i.e. on.....) and unless they find the situation has improved Presbytery will recommend to the General Assembly that Mr.....'s pastoral tie will be dissolved.

From this finding Mr.....dissented and claimed leave to complain to the Synod of [or General Assembly] and craved extracts which were granted.

(4) The Presbytery in accordance with the decision recorded on.....again took up consideration of matters relating to the congregation of.....and Mr.....the minister. Presbytery noted that according to Act I, 1990 's complaint to the Superior Court did not prohibit further action.

Presbytery after due enquiry found that the situation in the congregation of.....had not improved. It was therefore moved, seconded and agreed to that Presbytery refer the matter to the forthcoming General Assembly with recommendations that Mr.....be loosed from the congregation of.....Mr.....was appointed to state the Reference.

From this decision Mr.....dissented and sought leave to complain to the General Assembly and craved extracts which were granted.

(The same sort of minutes would refer in the case where fault was deemed to lie with elders or communicant members. This might be the case when fault was also attributed to the minister).

C. Sample of Forms relevant to Cases of Discipline

Samples given in previous editions mainly instanced cases of fornication and adultery as the moral lapses (they described them as crimes) of which the Kirk Session should take notice with a view to formal discipline. They envisaged mainly a state of affairs in which people cited to appear before Church Courts were unlikely to refuse to do so. Whilst most of the samples given here describe strictly formal procedures, Kirk Sessions and other courts will, no doubt, assess the degree of formality necessary. As discipline aims at reclamation and restoration, it may be that in many cases more will be achieved by gentle and compassionate interviews between ministers and erring members than would be by strictly formal process.

(1) Specimen Minutes for the Kirk Session in Ordinary Discipline

(a) *Minute relating to a situation where less formal procedures have been followed*

The Moderator informed the Session that Miss.....had called on him and confessed to [*or, that, in the course of pastoral visitation he had spoken to.....and she had confessed to*] being guilty of the sin of fornication with.....The moderator had found.....greatly distressed and, in his view, genuinely penitent and had admonished her and counselled her as to future conduct. He had subsequently called on Mr.....[*or, had written to, or, had written to Mr.....and his minister*] and he had also confessed to the sin alleged and expressed penitence.

The Kirk Session agreed that it would be in the public interest of the congregation and the wider Church that.....and.....should not, in the meantime, partake of the Lord's Supper. Restoration to this privilege would be considered later in the light of factors relevant at the time.

A stricter and more formal process would become necessary if the man named in the sample above denied guilt or if there was no assurance of the penitence of either party. With minor adjustments the old forms are still applicable to strict process. They are reproduced below:

(b) *Minute in the case of a woman against whom a scandal has broken out, and who has been ordered by the Session to be summoned to appear before them to answer to a charge of fornication.*

It was reported by the Clerk, that, agreeably to the directions of the Session, A. B. had been duly summoned to appear before them this day; and the said A. B. having been called, appeared, and on the question being put whether she had been guilty of the sin of which she was accused, answered that she had. Being solemnly exhorted by the Moderator to speak the truth, and further interrogated, she declared that C. D., an unmarried man, belonging to this Congregation, had been guilty with her, and was the father of her child. The Session order the said C. D. to be summoned to appear before

them [*insert date*], to which meeting the woman was cited *apud acta*. After a suitable admonition she was dismissed for the present.

(c) Minute in the case of a woman who comes voluntarily forward to make confession

Appearing voluntarily, A .B., residing at.....in this parish, confessed that she had been guilty of the sin of fornication. Being solemnly exhorted, etc., *ut supra*

(d) Minute in the case in which the man accused by the woman belongs to a different Congregation

The Session instruct their Clerk to write to the Kirk Session of.....informing them of the accusation made against the said C.D., residing at [*insert residence*] and requesting them to cause him to be summoned to appear here on [*insert date*], that he may be confronted with.....* To this meeting the woman was cited *apud acta*, and, after a suitable exhortation, she was dismissed for the present.

* *When the place of the man's residence (which must be stated) is very distant, it is common to request the Kirk Session of his Congregation to call him before them, and to receive his declaration.*

The case may also occur of a confession by a woman when the man has disappeared and cannot be found it being doubtful whether he is alive. In such a case, after the exhaustion of reasonable inquiries, the woman's confession may be acted on.

(e) Minute of a meeting at which the man is summoned to appear

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

(f) Minute when the case is one of adultery, the man, or woman, or both, having been married persons.

[The Minute, after stating the acknowledgement of guilt on the part of the man accused, and the admonition of the parties by the Moderator, may run as follows:]

The Session, considering that this is a case of adultery, order their Clerk to transmit extracts to the next meeting of Presbytery, that their advice may be obtained.

The Minute may run in similar terms in the case of a third lapse into fornication, or in any other case in which it is also necessary to obtain the Presbytery's leave to proceed

(g) Minute in the event of a denial on the part of the man.

The question was put to him whether he had been guilty, etc. Whereupon he answered that he was not the father of A.B.'s child, and never had been guilty with her. A.B. was then asked whether she could adduce any evidence of the truth of the charge which she had brought against C.D. She answered that she could, and requested that the following

witnesses might be summoned, viz. E.F. and G.H. [*insert residence*]. C.D. also requested that L., M. and N. might be summoned as witnesses in his defence. The Session instruct their Clerk to cause the said persons to be cited to appear before them as witnesses in this case, on [*insert date*], to which meeting the parties were summoned *apud acta*.

(h) Form of Minute of meeting at which the Session proceed to probation

AB. and C.D. appeared, according to citation, both adhering to their former statements. The Clerk having reported that all the witnesses in this case had been duly summoned, the Session agreed to proceed with the proof.

E.F. being called, appeared and having solemnly undertaken to give evidence without malice or partiality, stated that, etc. [*And so on with the other witnesses*]

[*After the examination of whom, the deliverance of the Session on the evidence must be recorded*]

(I) Minute when the guilt of the man is not clearly established but that, in consequence of strong presumption against him he expresses a desire to take the Oath of Purgation.

C.D. still persisting in his declaration of innocence, expressed a desire to have the Oath of Purgation administered to him; whereupon the Session agreed to take the advice of the Reverend the Presbytery of....., and ordered the Clerk to transmit extracts.

(j) Minute after the Presbytery have allowed the Oath of Purgation:

The Presbytery having granted leave to the Session to administer the Oath of Purgation to C.D., charged by A.B. with the sin of.....and C.D., being now present, and having expressed the same desire that this oath should be administered to him, he took it accordingly in presence of the Session, whereupon the said C.D. was declared free from scandal, and restored to the privileges of the Church.

If the Presbytery determine that the oath shall be taken before the Congregation, the Minute must be varied accordingly

(k) Minute when guilt is not proved and the Oath of Purgation is not administered

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

(l) Minute when a case is concluded in so far as respects the truth of the charge made by the woman either by the confession of the man or the production of sufficient evidence against him; and when one or both parties come forward craving absolution and restoration to Church privileges which the Session agree to grant

A.B. and C.D. appeared, last mentioned in Minute of.....as having been guilty of the sin of fornication [*or, adultery*], craving absolution from scandal, and restoration to the privileges of the Church; and the said A.B. and C.D. having expressed their deep sorrow for the sin of which they had been guilty, and their resolution that henceforth,

through Divine grace, they will walk in newness of life, and endeavour to adorn the doctrine of God their Saviour, the Moderator, after a serious rebuke and solemn admonition, and after prayer, did, in name of the Session, absolve them from the scandal of their sin, and restore them to the privileges of the Church.

(m) Minute when the man accused does not belong to the Church and declines to appear and after all means for inducing him to do so have been exhausted

The Session, having exhausted all means without success to induce C.D. to appear in answer to the charge brought by A.B. against him, agree to accept of her confession as regards her own guilt.

(n) Minute in cases of antenuptial fornication

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

The above specimens refer to adultery or fornication. It is considered unnecessary to give forms of Minutes for all the sins of which a Session ought to take cognisance.

(o) Minute when a person incurs suspension from Church privileges (lesser excommunication)

In consideration, etc., the Session did, and hereby do, suspend the said C.D. from the privileges of the Church.

(p) Special Minutes required in the case of an Elder or Deacon.

(i) Minutes when a fama has arisen or a charge been brought against a Deacon

The Kirk Session taking into consideration the *fama* [or, the charge] brought under their notice, request the Moderator and Mr.....to communicate confidentially with Mr.....regarding the same, so as to ascertain whether further action by the Session may be necessary or not.

The Moderator reported in the case of Mr....., Deacon of this Congregation, that he was deeply grieved on account of his sin, and was ready to make acknowledgement to the Session in due form.

Mr.....Deacon of the Congregation, appeared and confessed himself guilty of.....

In suspending Mr.....from ordinances, the Kirk Session find that he is *ipso facto* suspended from the Deaconship *sine die* [or, in a case requiring it, the Kirk Session hereby depose him from the office of Deacon]. Intimation of this sentence was appointed to be given to the Deacons' Court.

(ii) Minutes when a fama or charge affecting moral character is brought against a Ruling Elder

(l) The Kirk Session took into consideration a *fama* [or, charge] which had come under their notice against Mr. F.G., a member of their own Court. Mr. G. being present,

declared that he was ready to give explanations on the subject, but would rather state them privately, in the first instance, to one or two of the members, and he retired accordingly from the meeting. The Session appoint the following members to confer with him in private, and to report, viz.

(2) [*Either later at that meeting or at a subsequent one*] Mr.....reported in the case of Mr.....that he and Mr.....had had a conversation with Mr.....which was not satisfactory. After deliberation, the Session agreed that the charge against him be drawn out in the following terms:.....The Session also instructed that the charge be sent to him with regular citation to attend and answer to it on [*insert date*].

(3) The Kirk Session, having fully considered the evidence, find the charge proven; and while suspending Mr.....from privileges, they at the same time resolve to depose him from the office of the Eldership.

They then engaged in prayer, the Moderator conducting the devotions, after which the Moderator, in name of the Session, solemnly pronounced the sentence of deposition.

Intimation of this sentence was appointed to be given to the Deacons' Court.

(2) Specimen Minutes for the Kirk Session in Cases of Alleged Heresy

(a) In a case involving an Elder or Deacon:

(i) The Kirk Session had before them a complaint signed by ... members of the congregation, as follows: [*Here take it in*]

The Session find that the allegations of this document, if well founded, involve the maintenance by T.D., an Elder [or, Deacon] in this congregation, of opinions contradictory to the Confession of Faith and the Word of God, and entirely inconsistent with the professions made through communion in the Free Church of Scotland. The Session accordingly resolve to inquire carefully into the two questions which must be decided in a case of this kind, viz., *first*, Whether such opinions have been maintained by T.D., and how or in what form have they been expressed; and *secondly*, Whether the expression of them by him amounts to a decided contradiction of the Confession of Faith. With the view of determining these questions, the Session appoint the Moderator, Mr.....and Mr.....a committee to make inquiry by conference with T.D., or otherwise, and to report.

(ii) The Kirk Session, after considering the Report of their Committee in the case of T.D., and taking into account the statements made by him in conference and letters, resolve to cite him to appear at their bar on [*insert date*], to answer to the charge of heresy, inasmuch as, etc. (iii) The Kirk Session, having conclusive evidence before them that T.D. has maintained and that he declines to repudiate these opinions, find that they are entirely contrary both to the Confession of Faith, and to the profession made by communion with this Church; and therefore declare that T.D. is no longer a member of the Free Church of Scotland, and order his name to be removed from the Roll of Communicants in the congregation of.....Further, the Kirk Session hereby depose him from the office of the Eldership [*or, Deaconship*] [*or, declare him to be no longer an Elder [or, Deacon].*]

(b) In a case involving a Communicant Member:

(i) The Kirk Session had before them a statement signed by ... members to the effect that.....a communicant member in this congregation, holds and propagates views that are directly contradictory to the doctrine of Scripture, namely that.....and that in doing so he is a divisive influence on the congregation. The Session agreed to notify Mr.....of the allegations made, and to cite him to appear before them on to answer them.

(ii) The Kirk Session referred to the allegation against....., and he duly appeared before them. In his evidence it became obvious that his views on vital matters do not accord with Scripture in that, for example.....The Session therefore declare that is no longer a member of the Free Church of Scotland, and order his name to be removed from the Roll of Communicants in the congregation.

(3)Forms of Citation

It is adequate for the Session to issue a citation in the following terms to be delivered either by a member of Session or by Registered Mail or by Recorded Delivery. Using such a method gives assurance that the document has been delivered to the residence of the person concerned

(a) Citation of Accused:

At.....and within the Session Room of the Free Church there on.....19., the Kirk Session of.....met and was constituted.

Inter Alia:

The Kirk Session resolved to cite.....to appear before them at.....on [insert date], to answer an accusation of.....which has been made against him. The Kirk Session therefore require you [insert full name] to appear before them at.....on [insert day] at [insert hour] with respect to the accusation made against you, viz:.....

Extracted from the Minutes of the Kirk Session by

.....(Clerk).

If the person cited as above appears and denies the accusation the Kirk Session may resolve to proceed to hear witnesses at a subsequent meeting The accused person will be cited apud acta to appear and an undertaking given to him that he will be duly notified of the names and addresses of witnesses and a summary of the evidence to be led. He will be requested to give the names and addresses of witnesses to be cited in his interest

(b)Citation of witnesses:

At.....and within the Session Room of the Free Church there on.....19., the Kirk Session of.....met and was constituted.

Inter Alia:

The Kirk Session having resolved to proceed to proof in the case of an accusation of.....against.....resolved to cite witnesses to give testimony to them.

The Kirk Session therefore require that you.....residing at.....named by.....appear before them at.....on.....at.....

Extracted from the Minutes of the Kirk Session by

..... (Clerk).

*(c) Extracts relating to Evidence of Persons unable to attend a Church Court
(Refer to Supplement to Chapter on Discipline)*

(i) It was reported to the Court that A.B. who had been cited as a witness in the case relating to.....was unable to attend due to illness and this fact was duly certified by medical practitioner. [*Or.* due to old age of which the Court had ample testimony].

It was therefore resolved to appoint.....as Commissioner to attend at the home of.....accompanied by parties to record the testimony of [*name witness*], to arrange for the questioning and cross-questioning and to submit a full record of this testimony, together with a report of the Commissioner, to this Court on.....

(ii) It was noted by the Court that C.D. who has been named as a witness in the case relating to.....is resident in South Africa [*or,* in.....at such a distance from this place as to make attendance at this Court impossible].

The Court resolved to appoint.....who is resident in.....to be their Commissioner to record the testimony of.....

The Court directed Mr.....at whose instance.....was named as a witness to prepare a numbered list of questions to be addressed to [*name witness*]. They directed that the list of questions be submitted to the clerk and by him furnished to the other party in the case for the submission of cross-questions. The Clerk was instructed to arrange for a subsequent meeting of both parties with a view to achieving agreement with regard to both lists of questions; the documents as agreed by both parties to be duly signed and retained by the Clerk for submission to this Court on.....The Clerk was also instructed to cite parties to appear for the adjustment of the lists by the Court.

(iii) The Clerk submitted lists of questions and cross-questions to be put to witnesses.....by their Commissioner. He reported that these lists had been considered by both parties and general agreement reached, but on a few points parties had agreed to accept the judgment of this Court. Other parties were present according to citation and their views as to adjustments of the lists of questions noted. The Court then adjusted the documents referred to and resolved to pass them to.....their appointed Commissioner with instructions as in Act VIII, 1994, and requesting that they be returned to this Court together with the Commissioner's report by.....

(d) Administration of Oath

If the court decides that evidence should be taken on oath, then the witness being before the Court, the oath administered is the following, the witness standing and

holding up his right hand: “I swear by Almighty God, and as I shall answer to God in the great day of judgment, that I will tell the truth, the whole truth, and nothing but the truth, so far as I know, or shall be asked”.

It is provided by the *Form of Process*, Chapter II.11., that the witnesses are solemnly to be purged of malice, bribe, or good deed done or to be done, and of partial counsel. In reference to this the following initial questions should be put to them:-

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

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

Have you any interest in the case?

(4) Specimen Minutes relevant to Presbyteries

(a) Minute of Presbytery appointing Committee of Inquiry in a case of fama against a Minister or Probationer

The Presbytery being alone, it was stated by a member of Court, that certain very unpleasant reports were prevailing in regard to the character of Mr A.B., preacher of the gospel within their bounds [*or*, their brother, Mr A.B., Minister of the Congregation at C.], whereupon the Presbytery, after due consideration of the same, appointed the following members, viz. E., F., G., and H., a committee to make further inquiry into the nature of the *fama* now prevailing against the said A.B., and to report to the Presbytery at their next meeting as to the procedure which it may be proper to adopt in this matter.

(b) Minute appointing Presbyterial Visitation

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

Seven free days must elapse between the intimation and the meeting of Presbytery.

(c) Minute when Petition against a Minister is presented

Mr L.M. appeared and presented a Petition signed by members/adherents of the Congregation of C., requesting that the Presbytery inquire into certain reports now prevalent in regard to Mr A.B., Minister of said Congregation [the particular crime alleged must be stated]. The Presbytery being alone, resolved, after due deliberation that the petition should lie on the table till their next ordinary meeting, then to be taken into consideration and [should the person accused be absent] they appointed their Clerk to give intimation thereof to the said Mr A.B.

(d) Minute when the Presbytery has resolved to serve a Libel upon a Minister in their own name

The Presbytery hereby approve generally of the form of libel prepared by their committee against Mr A.B., Minister at.....They resolve to consider its relevancy, and the propriety of serving it, at a meeting of Presbytery to be held at.....on the.....day of.....at o'clock. They hereby cite Mr.....*apud acta* [or, They hereby resolve to cite Mr.....in regular form to attend said meeting and instruct their clerk to transmit to him a copy of the proposed libel, and of the minute now agreed to regarding it in such time as to give him full ten days' notice, according to Act V, 1853]

(e) Minute when the Presbytery have considered the relevancy of a Libel against a Minister which they propose themselves to serve

The Presbytery took up the case of the libel against Mr A.B.

It was intimated that the instructions of last meeting had been complied with. Mr A.B. appeared in his place as a member of Court. The Presbytery took into consideration the proposed form of libel against Mr A.B.

It was moved and seconded that this form be found relevant as a libel.

It was also moved and seconded that it be found irrelevant.

On a vote being taken, the first motion was carried. The Presbytery accordingly resolve to serve the libel upon Mr A.B., as one which they have already found to be relevant. From this judgment Mr A.B. dissented, and protested for leave to complain to the Synod of.....promising etc.

In accordance with Act IV, 1853, the Presbytery order the libel to be now served in due form, notwithstanding the dissent and complaint, and find that Mr A.B. now ceases, *ipso facto*, to exercise the functions of his office.

(5) Minute, when it is certified to the Presbytery that the Libel has been served notwithstanding a Dissent and Complaint

The Presbytery finding that the libel, as a libel found to be relevant, has been served in due form upon Mr A.B., but that a dissent and protest for leave to complain have been duly recorded and acted on, hereby sist all further procedure in the case until a final decision on the relevancy shall have been pronounced by a superior Court.

(g) Minute when the Libel has been served without Dissent and Complaint, and the Presbytery desires to act under Act X, 1854

The Presbytery find that in this case it does not appear expedient for them, in the circumstances, to act both as prosecutors and judges, and therefore they hereby refer the case to the Synod of.....

(h) Minute when Libel given in by the Members of the Congregation

Mr L.M. appeared and presented a libel against Mr A.B., Minister of.....which was authenticated by the signature of the Moderator and Clerk, the tenor whereof follows [*here take it in*]. The Presbytery having considered said libel, order a

copy thereof, and of the list of witnesses annexed thereto, to be served on the said A.B., and resolve to cite him to appear before the Presbytery to answer the same at their next ordinary meeting, to be held on.....day of.....next, at.....o'clock; said citation to be made ten free days at least before said meeting.

(i) Minute of Meeting when accused Party appears, and the relevancy of the Libel is considered

The Clerk intimated that the citation of Mr AB. had been duly served, with a copy of the libel and list of witnesses. Mr A.B. had been duly summoned to appear before the Presbytery this day, to answer to the same. Mr A.B. being called, appeared. Mr L.M. attended on behalf of the libellers. The libel having been read over, the following defences were given in on the part of Mr A.B. [*here take them in*]. Parties were then heard on the relevancy of the libel, and were then removed. The Presbytery did, and hereby do, find the major proposition relevant. Parties being called in, this sentence was intimated to them. The Presbytery appoint their next meeting to be held at.....on the.....day of.....next, for the purpose of dealing with the said A.B. according to the form of process; or of resolving to proceed to the probation of said libel according to law, and of granting warrant for summoning the witnesses, for proving thereof, as they shall see cause; and they instruct their Clerk to give timely information of said meeting to Mr A.B., and that the Presbytery require that he appear personally [*or, Mr A.B., being present, was cited apud acta*].

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

(j) Minute when the Presbytery desires to act under Act IX, 1854

The Presbytery find that it does not appear expedient, in the circumstances, for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect, and they therefore hereby refer the case to the Synod of.....

(k) Minute of Presbytery resolving to try the Case themselves, and to take the Proof although they are the Prosecutors

The Presbytery do not judge it expedient to adopt the course allowed by Acts IX and X, 1854, and therefore resolve to proceed to take the proof

(l) Minute when Presbytery resolve to proceed to Probation

The Presbytery having resolved to proceed to a proof of the charges in the libel, appointed their next meeting to be held at.....,on the.....day of.....for this purpose, and they resolved to cite such witnesses in the list appended to said libel, as to the libellers may seem appropriate, to appear in said place, on that day, to give evidence in the cause, and they appoint their Clerk to issue their edict for that purpose. Parties were summoned *apud acta* to attend said meeting.

The witnesses are cited, and examined, in the same way as before [see Kirk Session].

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

(m) Form of Minute in case of Deposition

The Presbytery having had under their consideration the libel, at the instance of..... against Mr A.B., Minister of the Congregation at C., which set forth.....and the citation of the said A.B., his appearance, his answers to the said libel against him, the proof adduced; and having found the same relevant by the acts and practice of this Church, to infer deposition, as also the articles of the said complaint, sufficiently proved by the depositions of the witnesses, and other proof adduced, viz., that [*here narrate the charges found proven*], as the proof adduced bears. Therefore, the Presbytery did, by their vote, depose the said A.B., like as they hereby do, in the name of the Lord Jesus Christ, the alone King and Head of his Church, and by virtue of the power and authority committed by him to them, depose the said A.B. from the office of the holy ministry; prohibiting and discharging him to exercise the same, or any part thereof, in all time coming, under the pain of the highest censures of the Church.

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

Sentence of deposition must in all cases be reported to the General Assembly; and the Assembly alone can pronounce sentence of deposition on a Minister in his absence.

(n) Form of Deposition

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

If signs of penitence have been given, and the crime proved does not demand so severe a punishment as deposition, but still so much guilt has been proved as that some punishment is called for the court may suspend the accused from the exercise of his ministerial functions, and that either for a limited or unlimited period, as to the Presbytery may seem most proper in the circumstances of the case, and may declare the pastoral tie to be dissolved

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

(o) Minute in the case of Deprivation of Licence

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

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

(p) Citations

Citations follow the pattern indicated for Kirk Sessions.

(5) Specimen Minute for the Synod in the event of a Case coming before them under Acts IX and X, 1854

A reference in the case of libel against Mr A.B., was brought before the Synod from the Presbytery of....., under Act IX, 1854.

Parties were called, etc.

It was moved and seconded that the Synod dismiss the reference, and instruct the Presbytery to proceed with the case themselves.

It was also moved and seconded that the Synod sustain the reference.

On a vote being taken, the second motion carried.

The Synod accordingly sustain the reference.

Thereafter it was moved and seconded that the Synod proceed to try the case.

It was also moved and seconded that the Synod refer the case to the General Assembly.

On a vote being taken, the second motion cried.

The Synod accordingly refer the case to the General Assembly.

(6) Forms of Libel

It does not appear necessary to give samples relating to different offences as the same general form is relevant to all cases: (1) a statement of censurable offences described in Scripture; (2) an allegation that such things have been done by the accused person, with particular instances cited; (3) that this being so the person accused if found guilty is liable to censure in varying degrees up to deposition.

Mr A.B., Minister of the Free Church Congregation at X in the Presbytery of Z, you are indicted and accused at the instance of C.D., Moderator and E., F., G., and H. members of the Presbytery of Z:

That although by the Word of God and the laws, doctrines and discipline of the Free Church of Scotland, theft/drunkenness/fornication/heresy, is an offence of a heinous nature and severely censurable, yet it is true that you A.B. are guilty of such an offence inasmuch as [*here specify details*] of which the following persons and documents bear witness and this testimony will be used in evidence against you. The

documents referred to are in the hands of the Presbytery clerk and may be seen by you or copies furnished to you at your request.

You, A.B., are therefore to be tried before the Presbytery of Z and if the facts alleged be proved to the satisfaction of the Presbytery, you will be liable to such censure, not excluding deposition from the ministry, as may to the Presbytery seem appropriate.

Signed.....Moderator
.....Clerk

List of Witnesses and Documents

At the close of the libel follows the list of witnesses (which is to be regularly served on the accused, with a full copy of the libel) in this manner:-

“List of witnesses to be adduced against you, the said AR., for proving the foregoing libel:-

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

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

“There will also be produced as further proof of the foregoing libel:”

[Here mention Documents produced.]

The list of witnesses and documents ought to be authenticated by the signatures of the Moderator and Clerk of the Presbytery, and by that of the libeller, if he is a private party.

D. Forms of Extracts

(1) When Whole Minute is given

At.....and within the Session Room of the Free Church there on.....19., the Kirk Session of.....met and was constituted.

Sederunt: *[Insert in full.]*

[Insert full text of all business transacted at the meeting.]

Extracted from the Minutes of the Kirk Session by
..... (Clerk).

(2) Where only part given

At.....and within the Session Room of the Free Church there on.....19., the Kirk Session of.....met and was constituted.

Inter Alia:

[Here incorporate the minute of that part of the business relevant to the extract.]

Extracted from the Minutes of the Kirk Session by
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ERRATA

Page 59, paragraph 5, line 3. The reference should be to Act XXXI, 1988.

Page 114, subtitle to Supplement. The reference should be to Act VIII, 1994.

Page 157, (3) Ministers, title to Act. The reference should be to Act IV, 1859.