

APPENDICES
OF ACTS AND DOCUMENTS

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HISTORICAL DOCUMENTS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 conclu-

sion, 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 approved 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, entituled, “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”; cassed 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 acknowledgment, 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 acknowledgment, 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 acknowledgment 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 vaikie 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 unrestored, 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 by 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 1839,¹ 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 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,—

¹Auchterarder Case, 1839

In the case of Auchtermuchty,² 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;³ 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,⁴ 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,⁵ 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,⁶ 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 the 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

²Moncrieff v. Maxton, Feb. 15, 1735.

³Cochrane v. Stoddart, June 26, 1751. Dick v. Carmichael, March 2, 1753. Forbes v. M'William, February 1762.

⁴Cochrane, November 19, 1748

⁵Hay v. Presbytery of Dunse, February 26, 1749.

⁶Lord Dundas v. Presbytery of Shetland, May 15, 1795.

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,⁷ 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 of glebe, and no place of worship, or any patrimonial right, connected herewith.⁸

By issuing a decree,⁹ 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 communicants¹⁰ 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,¹¹ 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 ordinances,¹² 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 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 damages¹³ 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,¹⁴ pending the discussion of a cause in the Church Courts as to the validity of his settlement therein.

⁷1st Lethendy Case.

⁸Stewarton Case.

⁹Marnoch Case.

¹⁰Daviot Case.

¹¹Stewarton Case.

¹²Strathbogie Case.

¹³2nd Auchterarder Case.

¹⁴Culsalmond Case.

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;¹⁵ in another, where a Presbytery was interdicted from proceeding in the trial of a minister accused of fraud and swindling;¹⁶ and in a third, where a Presbytery was interdicted from proceeding with a libel against a licentiate for drunkenness, obscenity; and profane swearing.¹⁷

By suspending Church censures,¹⁸ 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;¹⁹ 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,²⁰ 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.

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 advertent 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

¹⁵Cambusnethan Case.

¹⁶Stranraer Case.

¹⁷4th Lethendy Case.

¹⁸1st and 2nd Strathbogie Cases.

¹⁹3rd Strathbogie Case.

²⁰5th Strathbogie Case.

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,²¹ 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,²² 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 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

²¹4th Strathbogie Case.

²²3rd Auchterarder Case.

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 by 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 Courts 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, and 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.</p> <p>(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.</p> <p>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>