

H. L. (E.) purpose by the tolls he is entitled to levy and on his ceasing to avail himself of his right to collect tolls under the patent.

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3. That if he is not able to collect enough to keep the locks in repair and he collects no tolls his obligations to keep the locks in repair also cease, although technically his patent might have to be cancelled to make his position legally invulnerable.

4. That the insufficiency of the tolls appears to be established, but if it is doubtful an inquiry should be directed.

5. That similar observations apply to the stanch.

6. That both Farwell J.'s judgment and the order of the Court should be varied in accordance with these views.

7. That as each party has claimed too much, each should bear his own costs here and below.

That is the order I should propose, but the order of the House will of course be that proposed by my noble and learned friend Lord Macnaghten. I will, however, add the remark that it is obvious that in any view of the case if the Ouse is to be maintained as a public navigable river a special Act of Parliament must be obtained.

Judgment of Farwell J. and order of the Court of Appeal reversed; respondents' cross-appeal and action dismissed with costs both here and below: cause remitted to the Chancery Division.

Lords' Journals, August 5, 1904.

Solicitors: Batten, Proffitt & Scott; Peacock & Goddard, for J. Percy Maule, Huntingdon.

[HOUSE OF LORDS.]

GENERAL ASSEMBLY OF FREE } CHURCH OF SCOTLAND AND OTHERS }	APPELLANTS;	H. L. (Sc.)
AND		1904
LORD OVERTOUN AND OTHERS . . .	RESPONDENTS.	Aug. 1.
MACALISTER AND OTHERS	APPELLANTS;	
AND		
YOUNG AND OTHERS	RESPONDENTS.	

Trust—Church—Identity—Fundamental Doctrines—Limits to Power of Union.

The identity of a religious community described as a Church consists in the identity of its doctrines, creeds, confessions, formularies, and tests.

The bond of union of a Christian association may contain a power in some recognised body to control, alter, or modify the tenets or principles at one time professed by the association; but the existence of such a power must be proved.

The denomination of Christians which called itself the Free Church of Scotland was founded in 1843. It consisted of ministers and laity who seceded from the Established Church of Scotland, but who professed to carry with them the doctrine and system of the Established Church, only freeing themselves by secession from what they regarded as interference by the State in matters spiritual. Two main fundamental doctrines which the appellants, the minority of the Free Church, asserted that the seceders in 1843 carried with them and issued in their Claim, Declaration, and Protest to their supporters and benefactors in that year to stand for all time were the Establishment principle, and the unqualified acceptance of the Westminster Confession of Faith, and they further asserted that these doctrines were part of the constitution of the Church and could not be altered. In 1843 and subsequent years the response to the appeal for funds was most bountiful, and the Free Church was endowed by the liberality of its members, the property being secured under what was called a "Model Trust Deed." For many years efforts had been made to bring about a union between the Free Church and the United Presbyterian Church, also seceders from the Established Church, but a Church pledged to disestablishment. In 1900 Acts of Assembly were passed by the majority of the Free Church and unanimously by the United Presbyterian Church for union, under the name of the United Free Church, and the Free Church property was conveyed to new trustees for behoof of the new Church. The United Presbyterian Church was opposed to the Establishment principle, and did not maintain

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the Westminster Confession of Faith in its entirety. The Act of Union left ministers and laymen free to hold opinions as regards the Establishment principle and the predestination doctrine (in the Westminster Confession) as they pleased. The respondents contended that the Free Church had full power to change its doctrines so long as its identity was preserved. The appellants, a very small minority of the Free Church, objected to the union, maintaining that the Free Church had no power to change its original doctrines, or to unite with a body which did not confess those doctrines, and they complained of a breach of trust inasmuch as the property of the Free Church was no longer being used for behoof of that Church. And they brought this action in the name of the General Assembly of the Free Church, asking substantially for a declarator that they, as representing the Free Church, were entitled to the property:—

Held, reversing the decision of the Second Division of the Court of Session (Lords Macnaghten and Lindley dissenting), that the Establishment principle and the Westminster Confession were distinctive tenets of the Free Church; that the Free Church had no power, where property was concerned, to alter or vary the doctrine of the Church; that there was no true union, as the United Free Church had not preserved its identity with the Free Church, not having the same distinctive tenets; and that the appellants were entitled to hold for behoof of the Free Church the property held by the Free Church before the union in 1900.

By Lord Macnaghten: (1.) That the Free Church when it came into existence claimed the power of altering and amending its Confession of Faith, and accordingly could declare the Establishment principle an open question, and could relax the stringency of the formula required from ministers and others; (2.) that provision for expansion and development was part and parcel of the original trust under which the Free Church funds had been collected, and that there had been no breach of trust.

By Lord Lindley: That any interpretation of the Scripture or of the subordinate standards *bonâ fide* adopted by the General Assembly of the Free Church, and held by them better to express the doctrine intended to be expressed by the language used in the Confession, was not beyond the power of the Free Church, and that there was no breach of trust.

APPEALS against decisions of the Second Division of the Court of Session, Scotland. (1)

The appellants in the first appeal were office-bearers and certain members of the General Assembly of the Free Church who remained in the Free Church at the union (mentioned below) with the United Presbyterian Church in 1900; and, secondly, the members of a committee empowered by the said Assembly to sue on its behalf.

The action was brought against three sets of defendants,

(1) (1902) 4 F. 1083.

who were the respondents: (1.) the old general trustees of the Free Church before the union—that is to say, those who held the General Church property before 1900; (2.) certain persons claiming to be general trustees after the union for the United Free Church, and as such claiming to hold for behoof of the said Church the whole property of the Free Church so far as vested in the general trustees of that Church in October, 1900; (3.) the Moderator, office-bearers, and members of the General Assembly of the United Free Church and its Commissioners.

These appeals arose out of the union between the Free Church of Scotland and the United Presbyterian Church in 1900. These Churches were both Presbyterian Churches, neither of them were connected with the State, and under the union the Churches were united under the name of the United Free Church of Scotland. In the Free Church the union was approved and passed by a majority of 643 against 27 in the Free Church Assembly—the Supreme Court of the Church—on October 30, 1900. In the United Presbyterian Church the union was agreed to unanimously. A small number of ministers (24 out of 1100) and a larger number of laymen—that is, office-bearers and members, most of them resident in the Highlands—disapproved of the union and refused to enter the United Free Church. They were the appellants and pursuers in the first appeal, and they claimed that they and those who adhered to them alone represented the Free Church of Scotland, and were alone entitled to the whole funds and property of the Free Church which were held for behoof of the Church by its general trustees, who were the respondents in the action, namely, Lord Overtoun and others. The first appeal was concerned solely with the property of the Church as a whole.

Upon the formation of the union large majorities of the congregations adhered to the minority in the Assembly and desired to continue the worship in their churches in connection with the Free Church, and they refused to surrender these churches to the United Free Church. Thereupon the General Assembly of the United Free Church and its Moderator

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brought actions against the ministers and others to oust these ministers, &c., and obtain possession of the churches. Of these actions at least five had been raised in the Court of Session, and four were decided on the same date as the first appeal. An appeal to this House was taken in one of these four actions, which was the second appeal (1), the appellants being the Rev. D. M. Macalister and others (defenders), and the respondents (pursuers), R. Young and J. Harvie, acting trustees, in whom the Free Buccleuch and Greyfriars Church, Edinburgh, was vested, and also the Moderator of the General Assembly for the time being. The action related to the Free Buccleuch and Greyfriars Church, which, prior to the alleged union, belonged to the Free Church. The appellants disapproved of the union, and were not members of the United Free Church, but they had continued to retain possession of the Church and refused to recognise the right of the respondents. The respondents alleged that under the Model Trust Deed the property was not held by the congregation as a congregation, but was held by the trustees for it only as a congregation of the Free Church or any united body of Christians; and they contended that if the action of the Free Church in entering into the union was valid it followed that the property in question was held for behoof of the United Free Church and subject to the regulations and directions of its General Assembly. The appellants denied that they became subject to the ecclesiastical jurisdiction of the Edinburgh Presbytery of the United Free Church, and insisted that its jurisdiction was void and ineffectual; and that the only ground put forward to exclude them from possession of the congregational buildings occupied by them was their refusal to depart from the principles and standards hereto consistently professed by them in common with the whole Church, or to enter into a union which they regarded as destructive of the identity of the Church to which they had so long belonged. In the first appeal the property consisted of real estate of considerable value and of personalty amounting to over 1,000,000*l.*, which were the results of gifts or bequests or the product of collections devoted to the promotion in one

(1) See *United Free Church v. M'Iver*, (1902) 4 F. 1117.

form or another of the work of the Free Church as associated in 1843. The appellants sought declaratory conclusions:—

(1.) That all property vested as at October 30, 1900, in the general trustees of the Free Church appointed under various Acts of Assembly of that Church were vested in and held by them for behoof of the Free Church, and that no part thereof could be lawfully diverted to the use of any other association of Christians not maintaining the whole fundamental principles embodied in the constitution of the Free Church without the consent of the said Church, or, at least, without the unanimous assent of the members of a lawfully convened General Assembly of the Church.

(2.) That the United Free Church was as an association associated under a constitution which did not embody nor provide for maintaining intact the whole principles which were fundamental in the constitution of the Free Church.

(3.) That the United Free Church had no right, title or interest in any part of the property in question.

(4.) That former members of the Free Church of Scotland who had adhered to the United Free Church had thereby lost all beneficial right to such property saving only indefeasible vested interests.

(5.) That the respondents vested in the said property could not lawfully apply the same for behoof of the United Free Church or its members.

(6.) That the appellants and those adhering to and lawfully associated with them lawfully represented the Free Church of Scotland, and were entitled to have the whole lands, property, and funds applied according to the terms of the trusts upon which they were respectively held for behoof of themselves and those adhering to and associated with them as constituting the true and lawful Free Church of Scotland; and that the respondents under whose control the said lands, &c., might be for the time being were bound to hold and apply the same for behoof of the appellants and their foresaid, and subject to the lawful orders of the General Assembly of the Free Church, and to denude themselves of the whole of the said lands, &c., in favour of the general trustees nominated by said General

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Assembly or its Commission, subject always to the trusts upon which the said lands, &c., were held for behoof of the Free Church of Scotland as at October 30, 1900. Alternatively to these declaratory conclusions, declarator was sought that the appellants and those adhering to them by declining to adhere to the association known as the United Free Church of Scotland, and by electing to maintain themselves in separation therefrom as an association or body of Christians under the name and distinctive principles of the Free Church of Scotland, had not lost or forfeited any rights which they had at or prior to October 30, 1900, in the said lands, property, and funds, but were entitled to the use and enjoyment thereof (subject to the trusts affecting the same) either by themselves or along with such of the respondents as being formerly members of the Free Church had associated themselves as members of the United Free Church, or others having right thereto or therein, and that in such proportion and upon such conditions as might be determined in the course of the process. The appellants also asked for interdict, and if necessary for reduction of the pretended Acts passed by the Free Church and the United Free Church on October 30 and 31, 1900.

It is necessary to give some historical facts. Queen Mary of Scotland succeeded as an infant in 1542, and during her minority the first movement for reformation commenced. This was for some time under the control of the persons called the Lords of Convention. In 1557 the first Convention was signed, and in 1560 Knox's Confession was adopted by the Estates of Parliament. (1) The Confession attributed to John Knox was included in the Act of 1560. In the same year Papal jurisdiction was abolished (2), and all statutes favouring idolatry and superstition rescinded. (3) Then the

(1) See Appx. A, p. 723.

(2) Act, 1560, c. 2 (Thomson ii. 534): "Thairfoir hes statute and ordainit that the bischope of Rome hais na Jurisdiction nor autoritie within this realme in tymes cuming: and that nane of our saidis soveranis subjectis of this realme sute or desire

in ony tyme heireftir title or ryte be the said bischope of Rome or his seit to ony thing within this realme under the panis of barratrye. . . ."

(3) 1560, c. 3 (Thomson ii. 535): "The thre Estaitis of Parliament hes annullit and declarit all sik actis maid in tymes bipast not aggreing with

Mass was prohibited. (1) Knox's Confession was the Confession of the Church down to 1647, when the Westminster Confession was adopted. In 1563 (c. 8), although no Church was yet established, ministers were endowed (2), and so early as 1561 the ministers were put into possession of incomes (Acts 1567, c. 10; 3 Thomson's Acts, 24). In 1567 Queen Mary resigned in favour of her son James, and in that year, owing to doubts as to the validity of the previous Acts (Mary being absent at that date from the kingdom), the Scottish Parliament passed several important Acts, in which James confirmed the Act abolishing Popery (1567, c. 3), and rescinded all Acts favouring idolatry, and repeated the Confession of Faith (1567, c. 4). (3)

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Goddis word and now contrair to the confessioun of oure fayth according to the said word publist in this parliament to be of nane avale force nor effect. . . ."

(1) 1560, c. 4 (Thomson ii. 535): "And presentlie notwithstanding the reformatioun already maid according to Goddis word yet not the less thair is sum of the same papis kirk that stubburnlie perseveris in thair wickit Idolatrie Sayand Mess and baptizand conforme to the papis kirk prophanand thair throw the sacramentis foirsaidis in quiet and secreit places Regardand thair throw nather God nor his holie word Thairfoir it is statute and ordanit in this present parliament that na maner of person or personis in any tymes cuming administrat ony of the sacramentis foirsaidis secreitlie or in ony uther maner of way bot thai that are admittit and havand power to that effect and that na maner of person nor personis say mess nor yit heir mess nor be present thairat under the pane of confiscatioun of all thair guidis movable and unmovable and puneising of their bodeis at the discretioniou of the magistrat. . . ."

(2) Act 1563, c. 8 (Thomson ii. 539): "That thay that ar appointit

or to be appointit to serve and minister at ony kirk within this Realme have the principall mans of the persoun or Vicar or samekill thairof as salbe fundin sufficient for staking" (namely, accommodating) "of thame to the effect that thay may the better await upon the charge appointit and to be appointit to thame quidder the saidis gleibis be set in few or tak of befoir or not or that ane ressonabill and sufficient hous be biggit to thame besyde the Kirk be the Persoun or Vicar or uthers havand the saidis mans in few or langtakkis. . . ."

(3) 1567, c. 4 (Thomson iii. 14):—"Anent the annulling of the actis of Parliament maid aganis Goddis Word, and maintenance of idolatrie in ony tymes bypast.

"And for eschewing of sic inconvenientis in tyme cuming, the thre Estaitis of Parliament hes annullit and declarit all sic actis maid in tymes by past, not aggreing with Godis word and now contrare to the Confessioun of faith according to the said worde publist in this Parliament to be of nane availl, force nor effect. . . . the contravenaris of the samin act in ony time heirafter to be puneist according to the Lawis, Of the quihilk

H. L. (Sc.) Then in 1567 (c. 6) (1) the Church was established; and the next Act (c. 7) (2) defined the jurisdiction of the Church. Then followed the Coronation Oath, 1567 (c. 8.) (3) In the same year was passed an Act bearing on the jurisdiction of the Church. (3) In 1572 (c. 3) an Act was passed which required subscription to the Confession, and gave the Church jurisdiction as a Church Court (3), and another sanctioned Church excommunications—1572 (c. 14) (3)—and afforded a civil sanction to the Church's Censure Acts, 1572, cc. 4 and 14. (3)

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Confessioun of the faith the tennour followis.

"The Confessioun of the Faith and doctrine belevit and professit be the Protestantis of the Realme of Scotland, exhibitit to the Estatis of the same in Parliament and by thair public votis autorisit as a doctrine groundit upon the infallibill word of God." (Then follows the Confession of Faith of 1560 in articulate chapters.)

"Thir actis and articklis ar red in the face of Parliament and ratifyit be the thre Estatis at Edinburgh the sevintene day of August the yeir of God 1560 yeiris."

(1) 1567, c. 6 (Thomson, iii. 23):—"Anent the trew and haly kirk and of thame that ar declarit not to be of the samin.

"Item forsamekle as the ministeris of the blissit Evangell of Jesus Christ quhome God of his mercie hes now rasit up amangis us or heirefter sall rais aggreing with thame that now levis in doctrine and administratioun of the sacramentis and the pepill of this Realme that professis Christ as he now is offerit in his Evangell and do communicat with the haly sacramentis (as in the reformit kirkis of this Realme ar publictly administrat) according to the confessioun of the faith. Our soverane Lord with advise

of my Lord Regent and the thre estatis of this present Parliament hes declarit and declaris the foirsaid Kirk to be the onlie trew and haly Kirk of Jesus Christ within this Realme and decernis and declaris that all and sindrie quba outhir gainsayis the word of the Evangell ressavit and apprevit as the heidis of the confessioun of faith professit in Parliament of befor in the yeir of God 1560 yeiris as alswa specifyit in the Actis of this Parliament mair particularlie dois expres and now ratifyit and apprevit in this present Parliament or that refusis the participatioun of the haly sacramentis as thay ar now ministrat to be na memberis of the said Kirk within this Realme now presently professit, swa lang as they keip thame selfis sa devydit fra the societie of Christis body."

(2) Act 1567, c. 7 (Thomson, iii. 23):—

"Anent the admissioun of thame that salbe presentit to benefices, havand cure of ministrie.

"Item it is statute and ordanit . . . that the examination and admissioun of Ministeris within this Realme be only in power of the Kirk, now oppinlie and publickly professit within the samin. The presentatioun of lawit patronageis always reservit to the just and ancient patronis. . . ."

(3) See Appx. C, p. 727.

In 1579, c. 6 re-enacted the Act 1567, c. 6, which established the true and only Kirk; this was merely done because of a printer's error in the earlier Act. During the above-mentioned twenty years there were communications between the Church and the State; and about 1579 the Church prepared what was termed the "Second Book of Discipline" (1), some parts of which entered the Act of 1692. The Black Acts (1584, c. 2, c. 5), followed. The King came of age in 1587; there followed Act 1587, c. 2 (2), which again ratified his previous Acts concerning the liberty of the Kirk. Up to 1592 Presbytery and Episcopacy had been going hand in hand in the Church, but in that year Presbytery was established as the form of religion in Scotland—1592, c. 8. (3) The next Act (1592,

(1) See Appx. D, p. 727.

(2) Act 1587, c. 2 (Thomson, iii. 429):—

"Ratificatioun of the libertie of the Kirk of God."

(3) Act 1592, c. 8 (Thomson, iii. 541):—

"Act for abolisheing of the actis contrair the trew religioun.

". . . this present Act ratifies and apprevit all liberties privileges immunities and fredomes quhatsumevir gevin and grantit be his hienes his regentis in his name or any of his predecessoris to the trew and hally Kirk presentlie establisht within this realme and declairit in the first act of his hienes Parliament the tuintie day of October the yeir of God 1579 [c. 6, and 1581, c. 1]. . . . and all uthir actis of parliament maid sensyne in favouris of the trew Kirk AND SICLYK Ratifies and apprevit the general assemblies appoyntit be the said Kirk And declairis that it salbe lauchfull to the Kirk and ministrie everilk yeir at the leist and ofter *pro re nata* as occasioun and necessitie sall require To hald and keip generall assemblies Providing that the kingis Majestie or his com-

missioner with thame to be appoyntit be his hienes be present at ilk general assemblies befor the dissolving thair of nominat and appoint tyme and place quhen and quhair the nixt generall assemble salbe haldin. . . . AND ALS ratifies and apprevit the sinodall and provinciall assemblies To be haldin be the said kirk and ministrie twyiss ilk yeir as they haif bene and are presentlie in use to do within every province of this realme AND RATIFEIS and apprevit the presbyteries and particulare sessionis appointit be the said kirk with the haill jurisdiction and discipline of the same kirk agreit upoun be his majestie in conference had be his hienes with certane of the ministrie convenit to that effect Off the quhilkis articles the tennour followis *Materis to be Intreatit in Provinciall Assemblies* Thir assemblies are constitute for wechtie materis necessary to be intreatit be mutual consent and assistance of brethrene within the province as neid requyris This assemble hes power to handle order and redress all thingis omittit or done amiss in the particulare assemblies. *It hes* power to depose the office beraris of that province for gude and just

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H. L. (Sc.) c. 9) (1) conferred civil sanction upon sentences of deprivation. James succeeded to the crown of England in 1603, and, there

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caussis desserving deprivation And generallie thir Assemblies hes the haill power of the particular elder-schippis quhairof thay ar collectit. *Materis to be Intreatit in the Presbyteries* The Power of the Presbyteries is to give diligent labouris in the boundis committit to their chairge. That the kirkes be kept in gude ordour To enquire diligentlie of nauchtie and ungodly personis and to travell to bring thame in the way agane be admonitioun or threatening of Goddis Jugementis or be correctioun. *It Appertenis* to the elderschip to tak heid that the word of God be puirliche preachit within their boundis the sacramentis richtlie ministrat the discipline intertenyit And the ecclesiasticall guidis uncorruptlie distributit *It belangis* to this kynd of assemblies To caus the ordinances maid be the assembleis, provincialis, nationallis and generallis to be kept and put in execution *To mak* constitutionis qlkis concernis *To πρῆρον* in the kirk for decent ordour . . . *It hes* power to excommunicat the obstinat, formall proces being led and dew intervall of tymes observit. ANENT PARTICULARE KIRKIS Gif they be lauchfullie rewlit be sufficient ministeris and sessioun thay haif power and jurisdiction in thair awin congregatioun in matteris ecclesiasticall and decernis and declairis the saidis assembleis presbyteries and sessiounes, jurisdiction and discipline thair of foirsaid to be in all tymes cuming maist just gude and godlie in the self Notwithstanding of quhatsumever statutes actis cannon civile or municipale laves maid in the contrair to the qlkis and every ane of thame thir presentis sall mak expres derogation." Then the Act proceeded

to recite certain Acts: "Item the Kingis Majestie and Estaittis foirsaidis declaris that the secund act of the parliament haldin at Edinburgh the xvij day of May the yeir of God J^mv^o lxxxiiij yeirs" (one of the Black Acts) "sall na wayes be prejudiciall nor dirogat any thing to the privilege tha God has gevin to the spirituall office beraris in the kirk concerning headis of religioun materis of heresie excommunicatioun, collatioun or deprivation of ministeris or ony sic essentiall censoris speciall groundit and havand warrant of the word of God Item oure said Soverane Lord and Estaittis of Parliament foirsaidis abrogatis cassis and annullis the xx act of the same parliament haldin at Edinburgh the said yeir J^mv^o lxxxiiij yeiris granting commissioun to bishoppis and utheris Judges constitute in ecclesiasticall caussis to ressave his hienes presentatioun to benefices To give collatioun thairupon and to put ordour in all caussis ecclesiasticall qlk his Majestie and estaittis foirsaidis declairis to be expyrit in the self and to be null in tyme cuming and of nane avaiill force nor effect And therefor ordanis all presentatiounis to benefices to be direct to the particular presbyteries in all tyme coming with full power to thame to give collatiounis thairupon and to put ordour to all materis and caussis ecclesiasticall within their boundis according to the discipline of the Kirk PROVIDING the foirsaidis presbyteries be bund and astrictit to ressave and admitt quhatsumever qualifiet minister presentit be his Majestie or uther laic patrounes."

(1) Act 1592, c. 9 (Thomson, iii. 542):—

"Anent depositioun of unqualifiet

being a debate between the two Parliaments as to the union of the Crowns, an Act was passed in 1604 with a special provision. (1) On James's arrival in England he reverted to his Episcopalian leanings, and down to 1638 there was the Episcopalian inter-lude, during which James and Charles respectively attempted to restore the Episcopacy to Scotland; however, in 1638 the Scottish nation uprose against Episcopacy and Charles's demand for Royal supremacy.

Between 1638 and 1647 important events occurred, which resulted in the appointment of the Westminster Assembly and in the adoption of what was popularly called the Westminster Confession. (2) The Confession had been framed by an Assembly of Divines at Westminster between 1643 and 1647. It was intended to be the Confession of Faith in all Churches; but in 1647 it was abandoned by the King's actions.

On December 8, 1638 (the Act of the Assembly at Glasgow), declared Episcopacy to be abjured; Act, August 27, 1647, approved of the Confession of Faith; Acts of Assembly approved of the larger and shorter catechisms; and Act, October 29, 1690, ordained the subscribing of the Confession of Faith. In 1661 the Restoration took place; and in 1689, c. 28, the Revolution Settlement.

In 1689 (3) a claim of right was presented to King William

personis frome thair functionis and beneficis."

"And that the said sentence of deprivation salbe ane sufficient cause to mak the said benefice to vaik thairby And the said sentence being extractit and presentit to the patroun The said patroun salbe bund to present ane qualifiet persone of new to the kirk within the space of sex monethis thairefter."

(1) Act 1604, c. 2 (Thomson, iv. 264):—

"Act in favouris of the Kirk."

"That the commissionaris votat and electit in this present Parliament for treating upoun the union betuix the Realmes of Scotland and England sall have na power be vertue of thair said

Commissioun of the date of thir presentis To treat confer deliberat nor do anything that in ony maner of way may be hurtfull or prejudiciall to the Religioun presentlie professit in Scotland actis of parliament maid in favouris of the samyn religioun and discipline establissed and observit for Intertennement and preservation thair of."

(2) See Appx. E, p. 730.

(3) Act 1689, c. 28 (Thomson, ix.

38):—

"The Declaration of the Estates of the Kingdom of Scotland containing the Claim of Right and the offer of the Crowne to the King and Queen of England.

"Whereas King James the seventh

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H. L. (Sc.) and Queen Mary. The Act 1689, c. 28, was termed in the Church the Reformation from Episcopacy.

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Thomson's Acts, ix. p. 117, shew that on May 23, 1690, it was ordered "That the clerke Register cause transcrive a just double of the Westminster Printed Confession of Faith to be brought in and presented in Parliament the next Dyet." Then on May 26 "The Confession of Faith underwritten was this day produced, read, and considered word by word in presence of their Majesties High Commissioners and the Estates of Parliament, and being voted and approven was ordained to be recorded in the bookes of Parliament, of the which Confession of Faith the tenor follows." Then followed the Westminster Confession of Faith. Then the Act 1690, c. 7 (1), followed, and ratified the Westminster Confession. (2) By the Act 1690, c. 53, patronage was abolished (2); and in 1697 the "Barrier" Act passed. (3)

being a profest papist did assume the Regall power, and acted as King without ever takeing the oath required by law, whereby the King, at his access to the government is obliged to swear, To maintain the protestant religion and to rule the people according to the laudable lawes: and Did by the advyce of wicked and evill Counsellers, Invade the fundamentall Constitution of this Kingdome And altered it from a legall limited Monarchy, to an Arbitrary Despotick power and in a publick proclamation, asserted an absolute power to cass annul and dissable all the lawes, particularly arraigning the lawes Establishing the protestant religion and did Exerce that power to the subversion of the protestant Religion, and to the violation of the lawes and liberties of the Kingdome. . . .

"All which are utterly and directly contrairy to the knowne lawes, statutes and freedomes of this realme."

[It then referred to Prince William of Orange.]

"In order to such an Establishment,

as that their religion lawes and liberties might not be again in danger of being subverted, And the saids Estates being now assembled in a full and free representative of this nation, Takeing to their most serious consideratione, the best meanes for attaining the ends aforesaid Do In the first place, as their ancestors in the like cases have usually done for the vindicating and asserting their antient rights and liberties, DECLARE THAT By the law of this Kingdome no papist can be King or Queen.

"That Prelacy and the superiority of any office in the church, above presbyters is, and hath been a great and insupportable greivance and trouble to this nation, and contrary to the Inclinationes of the generality of the people ever since the reformation (they haveing reformed from popery by presbyters) and therefore ought to be abolished."

(1) See Appx. F, p. 735.

(2) See Appx. F, p. 736.

(3) See Appx. G, p. 736.

The appellants maintained that the provision in the Act 1693, c. 38 (1), with regard to the subscription to the Confession of Faith was and is incumbent on the Established Church, and continued to be accepted by the Free Church up to the union in question, but after the union there was no longer the obligation on a United Free Church minister to declare the same to be the confession of his faith, or to own the doctrine therein contained to be the true doctrine which he would constantly adhere to.

The Church having been established at the Revolutionary Settlement, then at the union of the Crowns the Act of 1703 was passed ratifying and approving the laws for establishing, maintaining, and preserving the true reformed Protestant religion. (2) Then came the treaty with England, 1705, c. 50 (3), and the Act of 1707, c. 6 (4), for securing the Protestant religion.

(1) See Appx. F, p. 736.

(2) Act 1703, c. 2 (Thomson, xi. 104), "Act for securing the true Protestant Religion and Presbyterian Government," ratifies and approves the laws for "establishing maintaining and preserveing the true reformed Protestant Religion and the true Church of Christ as at present owned and settled within this Kingdom as likeways for establishing ratefieving and confirming Presbyterian Church Government and Discipline Ratifies Approves and Confirms the fifth Act" (1690) "of the Second Session of King William and Queen Mary's Parliament Intituled Act Rati-fieving the Confession of Faith and Settling Presbyterian Church Govern-ment in the haill heads clauses and articles thereof. . . ."

(3) Act 1705, c. 50 (Thomson, xi. 295), provided "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."

(4) Act 1707, c. 6 (Thomson, xi. 402):—
"Act for Securing the Protestant Religion and Presbyterian Church Government.

"Our Sovereign Lady and the Estates of Parliament considering that by the late Act of Parliament for a treaty with England for an Union of both kingdoms It is provided that the Commissioners for that Treaty should not treat of or concerning any alteration of the Worship Discipline and Government of the Church of this Kingdom as now by Law Established which Treaty being now reported to the Parliament, and it being reasonable and necessary that the true Protestant Religion as presently professed within this kingdome with the Worship Discipline and Government of this Church should be effectually and unalterably secured, Therefore Her Majesty with advice and consent of the said Estates of Parliament Doth hereby Establish and Confirm the said true Protestant Religion and the Worship Discipline

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In the next Act—1707, c. 7 (Thomson, xi. 406)—the Treaty of Union was ratified and approved, and the Treaty of Union re-enacted and embodied in it the provisions with regard to the established religion in Scotland. In the Act of 1711 (c. xxi.) of the British Parliament the right of patronage was restored. Patronage had in 1690 been abolished; but on the narrative that its abolition had not proved satisfactory Parliament in 1711 restored patronage. That was the state under which the question of disruption began in 1833. Patronage existed originally; then in 1690 it was abolished, and a modified form of popular call to the minister given—namely, to the heritors or landed proprietors who paid the tithe with the elders; and then in 1711 patronage was re-established.

In 1833 what may be called the progressive party in the Church passed an Act of Assembly declaring that the ministers of the parliamentary churches—namely, churches which were erected in the Highlands and outlying districts under certain

and Government of this Church to continue without any alteration to the people of this land in all succeeding generations. . . .” [It confirms the Act 1690.] “Provides and Declares that the foresaid true Protestant Religion contained in the above mentioned Confession of Faith with the form and purity of worship presently in use within this Church and its Presbyterian Church Government and Discipline, that is to say the Government of the Church by Kirk Sessions Presbyteries Provincial Synods and General Assemblies all established by the foresaid Acts of Parliament pursuant to the Claim of Right shall remain and continue unalterable, And that the said Presbyterian Government shall be the only government of the Church within the Kingdom of Scotland And further for the greater security of the foresaid Protestant Religion and of the Worship Discipline and Government of this Church

as above established Her Majesty with advice and consent foresaid Statutes and Ordains” [It has already been ordained that the subscription to the Confession of Faith shall be made by all ministers, and it was ordained that it shall also be made by all University principals, professors, and masters connected therewith.] “As also that before or at their admissions they . . . shall subscribe to the foresaid Confession of Faith as the confession of their faith and that they will practise and conform themselves to the worship presently in use in this Church and submit themselves to the Government and Discipline thereof. . . . As also that this Act of Parliament and settlement therein contained shall be insert and repeated in any Act of Parliament that shall pass for agreeing and concluding the foresaid Treaty or Union betwixt the two Kingdoms. . . .”

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public statutes—should have seats in the Church Courts; another Act provided in the same way not merely for the ministers occupying seats in the Assembly, but in the case of chapels of ease, allocated to them parochial bounds. There was a resolution of the Church in 1838 relating to its independent jurisdiction. (1) Then came the material Act which started the litigation which ensued. It was called the Veto Act, 1835. (2)

The constitution of the Free Church commenced with the document headed, Claim, Declaration, and Protest against encroachments of the Court of Session General Assembly, 1842. (3) It is a document of the majority in the Established Church (about 3 to 2). The majority afterwards became the Free Church. The majority in 1842 in favour of the claim of right was 241 against 111. The pastoral address (referred to below) was signed as Moderator by Dr. Gordon, one of the Free Church leaders; and the claim of right was moved by Dr. Chalmers, seconded by Dr. Gordon, and spoken to by Mr. Murray Dunlop, the three leaders of the Free Church party, who afterwards went out from the Established Church. The

(1) See Lord Macnaghten's opinion, p. 632.

(2) *May 29, 1835 (Veto Act). Act on the Calling of Ministers*:—“The General Assembly declare, That it is a fundamental law of this Church that no pastor shall be intruded on any congregation contrary to the will of the people; and, in order that this principle may be carried into full effect, the General Assembly, with the consent of a majority of the Presbyteries of this Church, do declare, enact, and ordain, That it shall be an instruction to Presbyteries that if, at the moderating in a call to a vacant pastoral charge, the major part of the male heads of families, members of the vacant congregation, and in full communion with the Church, shall disapprove of the person in whose favour the call is proposed to be

moderated in, such disapproval shall be deemed sufficient ground for the Presbytery rejecting such person, and that he shall be rejected accordingly, and due notice thereof forthwith given to all concerned; but that, if the major part of the said heads of families shall not disapprove of such person to be their pastor, the Presbytery shall proceed with the settlement according to the rules of the Church: And farther declare, that no person shall be held to be entitled to disapprove as aforesaid who shall refuse, if required, solemnly to declare, in presence of the Presbytery, that he is actuated by no factious or malicious motive, but solely by a conscientious regard to the spiritual interests of himself or the congregation.”

(3) See Appx. G, p. 737.

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 “Claim, Declaration, and Protest” was adopted by the seceders, and adopted in the Deed of Demission.

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A section of the Established Church held that it was their spiritual function to supervise the relation between the pastor and his people, and they considered this relation could only be properly established, not by imposing ministers from outside upon the congregation (namely, patronage), but by the voluntary call by the congregation to the minister. Accordingly the majority passed the Veto Act, which brought them into sharp contest with the patrons and gave rise to the *Auchterarder Case* (1), which came up to this House, and which determined that by their Veto Act the Established Church had attempted to override the Act of Parliament.

On April 25, 1843, a few days before the disruption, there was a pastoral address by a special committee of the Assembly. It was for the purpose of calling upon ministers and congregations to set apart a day of humiliation and prayer in reference to the approaching crisis. (2) On May 18, 1843, there was

(1) (1838) 16 S. 661; (1839) Macl. & R. 220.

(2) Pastoral Address issued by authority of the Special Commission of the General Assembly of the Church of Scotland in terms of their deliverance of the 21st of March last. [After referring to the ordinary civil administration it proceeds:—]

“But in addition, the Christian magistrate, as one of the kings of the earth of whom Christ is Prince, is to interest himself directly in the affairs of Christ’s Kingdom, and to act as the guardian of religion in the land. In that capacity he has many important functions to discharge in reference to the Church; and he has authority, as the minister of God for good, to take measures for preserving peace and order in the Church,—for reforming abuses and remedying grievances,—for guarding purity of

doctrine and discipline, and for supplying the means of grace, in efficiency and abundance, through the ministrations of the Church, to the people under his dominion.” “But it now appears that an entirely different construction is put upon the terms of the Church’s establishment by the civil authorities of this kingdom, and that she is not only to be prevented from giving effect to her fundamental principle, ‘That no pastor be intruded into any parish contrary to the will of the congregation,’ but is to be held subject to the interference of the civil courts, in the exercise of her most sacred spiritual functions connected with the preaching of the Word, the administration of sacraments, the correction of manners, and other matters expressly specified in the statutes of the realm as exclusively under her control.”

passed the Protestant disruption, the first express document of the Free Church. (1)

On May 20, 1843, there was a minute by which it was agreed by the Assembly “that a communication be addressed in the name of this Assembly to the members and friends of the Church throughout the land giving a brief account of the proceedings of Thursday last (May 18), together with a list of the protesting Commissioners, ministers, and elders.” (2)

It was further agreed that the account of these proceedings should contain the address delivered by the Moderator, Dr. Chalmers, at the opening of the Assembly. The appellants maintained that the ministers and elders separating from the Established Church had not yet carried with them the body of the Church, and that the communication was in the nature of the prospectus of the new association. (3)

That was followed by a resolution of the Assembly, May 22. (4)

(1) See Appendix G, p. 741.

(2) “The Assembly again convened in terms of yesterday’s adjournment, and being constituted with devotional exercises by the Moderator, the minutes of last diet were read:—

“It was agreed that a ‘communication’ be addressed in the name of this Assembly to the members and friends of the Church throughout the land giving a brief account of the proceedings of Thursday last together with a list of the Protesting Commissioners, ministers, and elders; and also of the ministers who have concurred in the Protest; and that the clerks, with the assistance of Mr. Jaffray, be instructed to prepare and publish the communication with the least possible delay. It was farther agreed that the accounts of these proceedings should contain the address delivered by the Moderator at the opening of this Assembly.”

(3) “Affectionate Representation of the Free Church of Scotland, 1843. Issued by direction of the General Assembly of May 20, 1843.

“Dearly beloved in the Lord.” [Then is set forth what has taken place. Then comes the address of the Moderator, Dr. Chalmers—that is the address delivered by the Moderator at the opening of the Assembly:] “Doctor Chalmers addressed the Assembly as follows”—See the opinion of the Earl of Halsbury L.C., post, at p. 618.

(4) “That this Assembly approve of the report.” “and following out the Claim, Declaration, and Protest,” “do now, for themselves and all who adhere to them, separate from the Establishment; protesting that, in doctrine, polity, and discipline, they truly represent the Church of their fathers, whose testimony in behalf of the Crown Rights of the Redeemer as King in Zion, and Prince of the Kings of the Earth, they firmly purpose at all hazards, and at whatever sacrifice, still to maintain; and protesting that henceforward they are not, and shall not be, subject in any respect to the ecclesiastical Judicatures presently established by law in Scotland, but

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that they are and shall be free to perform their functions as pastors and elders towards their respective congregations" (and they reappoint a committee) "with instructions to prepare the draft of an Act and Deed to be adopted and subscribed at as early a period as possible during the subsequent sittings of this Assembly renouncing and demitting the status, rights, and privileges held by virtue of the Establishment, the said draft to be reported."

(1) "ACT OF SEPARATION AND DEED OF DEMISSION BY MINISTERS.

"GENERAL ASSEMBLY, 1843-4.

"23rd May, 1843.

"The General Assembly having approved of and adopted the draft of an Act and Deed to be subscribed by Ministers adhering to the Protest, renouncing and demitting their status, rights, and privileges, held by virtue of the Establishment, and the said Act and Deed having thereafter been extended in due and proper form, and subscribed by the parties, was ordered to be recorded.

"The Ministers and Elders subscribing the Protest made on Thursday, the 18th of this instant May, at the meeting of the Commissioners chosen to the General Assembly appointed to have been that day holden, against the freedom and lawfulness of any Assembly which might then be constituted, and against the subversion recently effected in the constitution of the Church of Scotland, together with the ministers and elders adhering to the said Protest,

in this their General Assembly convened, did, in prosecution of the said Protest, and of the Claim of Right adopted by the General Assembly which met at Edinburgh in May 1842 years, and on the grounds therein set forth, and hereby do, for themselves, and all who adhere to them, separate from, and abandon the present subsisting Ecclesiastical Establishment in Scotland, and did, and hereby do, abdicate and renounce the status and privileges derived to them, or any of them, as parochial ministers or elders, from the said Establishment, through its connection with the State, and all rights and emoluments pertaining to them, or any of them, by virtue thereof: Declaring, that they hereby in no degree abandon or impair the rights belonging to them as ministers of Christ's gospel, and pastors and elders of particular congregations, to perform freely and fully the functions of their offices towards their respective congregations, or such portions thereof as may adhere to them; and that they are and shall be free to exercise government and discipline in their several judicatories, separate from the Establishment, according to God's Word, and the Constitution and Standards of the Church of Scotland, as heretofore understood; and that henceforth they are not, and shall not be, subject in any respect to the ecclesiastical judicatories established in Scotland by law; Reserving always the rights and benefits accruing to them, or any of them, under the provisions of the statutes respecting the Ministers' Widows' Fund: And farther

The Assembly further enjoined the several presbyteries to record the protest and deed of demission at the beginning of their presbytery books as the ground and warrant of their proceedings. On this the appellants relied as founding the Free Church. The Act of the Assembly, May 30, 1843, appointed a day of thanksgiving. (1) There followed addresses of sympathy from other religious voluntary bodies not established, many of them from England, and they all welcomed the action of the Free Church as an assertion of their own voluntary principles; but the Free Church carefully disabused them of this idea.

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declaring, that this present act shall noways be held as a renunciation on the part of such of the ministers foresaid as are ministers of churches built by private contribution, and not provided or endowed by the State, of any rights which may be found to belong to them, or their congregations, in regard to the same, by virtue of the intentions and destination of the contributors to the erection of the said churches, or otherwise according to law; all which are fully reserved to the ministers foresaid and their congregations: And farther, the said ministers and elders, in this, their General Assembly convened, while they refuse to acknowledge the supreme ecclesiastical judicatory established by law in Scotland, and now holding its sittings in Edinburgh, to be a free Assembly of the Church of Scotland, or a lawful Assembly of the said Church, according to the true and original constitution thereof, and disclaim its authority as to matters spiritual, yet in respect of the recognition given to it by the State, and the powers, in consequence of such recognition, belonging to it, with reference to the temporalities of the Establishment, and the rights derived thereto from the State, hereby appoint a duplicate of this Act to be
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subscribed by their Moderator, and also by the several ministers, members of this Assembly, now present in Edinburgh, for their individual interests, to be transmitted to the clerk of the said ecclesiastical judicatory by law established, for the purpose of certiorating them that the benefices held by such of the said ministers, or others adhering to this Assembly, as were incumbents of benefices, are now vacant; and the said parties consent that the said benefices shall be dealt with as such: And they authorize the Rev. Thomas Pitcairn, and the Rev. Patrick Clason, conjunct clerks to this their General Assembly, to subscribe the joinings of the several sheets hereof: And they consent to the registration hereof in the Books of Council and Session, or others competent, therein to remain for preservation; and for that purpose constitute," &c.

(1) Act of the General Assembly of the Free Church of Scotland, dated May 30, 1843, appointing a day of thanksgiving, and pastoral address therein referred to.

Pastoral address: "Long was it the peculiar distinction and high glory of the Established Church of Scotland to maintain the sole Headship of the Lord Jesus Christ, His exclusive

H. L. (Sc.) On November 27, 1843, a minute was passed by the special Commissioners respecting the vesting of Church property—that is, Church sites. It contained a form of feu charter. That was the first trust, but it was only of a temporary

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sovereignty in the Church, which is His kingdom and house. It was ever held by her, indeed, that the Church and the State, being equally ordinances of God, and having certain common objects, connected with His glory and the social welfare, might and ought to unite in a joint acknowledgment of Christ, and in the employment of the means and resources belonging to them respectively, for the advancement of His cause. But while the Church in this manner might lend her services to the State, and the State give its support to the Church, it was ever held as a fundamental principle that each still remained, and ought under all circumstances to remain, supreme in its own sphere, and independent of the other. On the one hand, the Church having received her powers of internal spiritual government directly from her Divine Head, it was held that she must herself at all times exercise the whole of it, under a sacred and inviolable responsibility to Him alone, so as to have no power to fetter herself, by a connection with the State or otherwise, in the exercise of her spiritual functions. And in like manner in regard to the State, the same was held to be true, on the same grounds, and to the very same extent, in reference to its secular sovereignty. It was maintained that, as the spiritual liberties of the Church, bequeathed to her by her Divine Head, were entirely beyond the control of the State, so, upon the other hand, the State held directly and exclusively from God, and was entitled and bound to exercise, under its responsibility to Him alone, its entire secular sovereignty, including

therein whatever it was competent for, or binding upon, the State to do about sacred things, or in relation to the Church, as, for example, endowing and establishing the Church, and fixing the terms and conditions of that establishment.

“But these simple and broad principles, beloved brethren, on the refusal by the Legislature of the Church’s ‘Claim of Right,’ agreed to by the General Assembly of 1842, left us no alternative but either to cast off our duty to our only King and Head, or to resign our position as an establishment. For the decisions of the Supreme Civil Courts had annexed conditions to that position, to which, had they been proposed to the Church at the time of her first entering into it, she could not lawfully have consented—conditions subversive of the distinct spiritual government established by Christ in His Church, subversive of the essential liberties of His redeemed people, subversive of the constitutional rights of the Church of Scotland as fixed by the Revolution Settlement, and solemnly guaranteed by the Act of Security and the Treaty of Union between the kingdoms. Fully acknowledging, however, the competency of the Legislature, under its responsibility to God alone, to fix the conditions of her establishment, the Church presented to the State her ‘Claim of Right’ to be protected in her sacred liberties, against what she deemed the oppressive and unconstitutional encroachments of the Civil Courts. Her claim was expressly and deliberately refused.”

character, and was followed on May 27, 1844 (1), by the proceedings which led up to the more elaborate Model Trust

(1) May 27, 1844. “The General Assembly did again convene, and being constituted with devotional exercises, the minutes of last diet were read and approved of. The Assembly having called for the report of the Committee appointed to consider the whole matter of the trust deed, the same was given in and read by Mr. Begg, the convener. The General Assembly approve of and adopt the report, and remit to the law committee to prepare a deed in conformity with the principles thereof, and to report to the commission either at its stated meeting in August, or at a special meeting to be called for the purpose, with power to issue the deed and to recommend its adoption to the several congregations of the Church.” [Act XVIII., 1844, anent the Model Trust Deed.] “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. (1.) 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. (2.) That in the event of a certain proportion of the Ministers and Elders,

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members of the Church Courts, separating from the general body, and claiming still to be the true bonâ fide representatives of the original protestors 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.” [A roll of the members in full communion was to be kept, these members only being entitled to vote.] September 11, 1844: “The Commission having called for the report of the Law Committee relative to the Trust Deed, Mr. Dunlop, Convener of the Committee, submitted a draft of the proposed Deed, which, having been considered, was unanimously approved of, and recommended for adoption to the several congregations of the Church. The Commission

H. L. (Sc.) Deed. The minute was that the General Assembly, having called for the report of the committee appointed to consider the whole matter of the trust deed, approved of the report, and remitted it to the Law Committee to prepare a deed in conformity with the principles thereof, with power to issue the deed and recommend it to the several congregations of the Church. Then there was an Act anent the Model Trust in 1844. The Commission having called for the report of the Law Committee relative to the trust deed (1), Mr. Dunlop, convener of the committee, submitted a draft of the proposed deed, which was unanimously approved and recommended for adoption to the several congregations of the Church.

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The appellants also contended that the deed was unquestionably a conveyancer's deed, and that its narrative, which was full of historical inaccuracies, could not in any way be held to affect the constitution of the Church. But the property of the churches was conveyed under the deed, although some congregations did not choose to precisely follow the Model Trust Deed but framed deeds of their own; though the majority of the property was held upon titles which imported the terms of the Model Trust Deed.

In 1846 there was an Act anent question and formula. (2)

returned their cordial thanks to Mr. Dunlop and the Committee for the manner in which they have discharged the duty committed to them, and particularly to John Clerk Brodie, Esq., W.S., by whom principally the Deed was framed. The Commission farther direct the Moderator to communicate their thanks to Andrew Rutherford, Esq., M.P., for the very efficient assistance."

(1) See Appx. H, p. 743.

(2) See post, p. 598, and Act of the Assembly of 1711 of the Established Church of Scotland, enacting the formula to be signed:—

"LICENSING PROBATIONERS.—*Questions put to Probationers before they are licensed to preach the Gospel.*

"1. Do you believe the Scriptures

of the Old and New Testaments to be the Word of God, and the only rule of faith and manners?

"2. Do you sincerely own and believe the whole doctrine of the Confession of Faith, approved by the General Assemblies of this National Church, and ratified by law in the year 1690, and frequently confirmed by divers Acts of Parliament since that time, to be the truths of God contained in the Scriptures of the Old and New Testaments; and do you own the whole doctrine therein contained as the confession of your faith?

"3. Do you sincerely own the purity of worship presently authorised and practised in this church, and asserted in the fifteenth Act of the General Assembly, 1707, entitled

In the Act of 1851, xv. (1), the Free Church defined their standards. In 1853 there was a proposal by some members

'Act against Innovations in the Worship of God,' and also own presbyterian government and discipline now so happily established in this church: and are you persuaded that the said doctrine, worship, discipline, and church government, are founded upon the Holy Scriptures and agreeable thereto?

"4. Do you promise that, through the grace of God, you will firmly and constantly adhere to, and in your station to the utmost of your power assert, maintain, and defend the said doctrine, worship, and discipline, and the government of this Church by kirk-sessions, presbyteries, provincial synods, and general assemblies?

"5. Do you promise that in your practice you will conform yourself to the said worship, and submit yourself to the said discipline and government of this Church, and shall never endeavour, directly or indirectly, the prejudice or subversion of the same?

"6. Do you promise that you shall follow no divisive courses from the present establishment in this Church?

"7. Do you renounce all doctrines, tenets, or opinions whatsoever, contrary to or inconsistent with the said doctrine, worship, discipline, and government of this Church?

"8. Do you promise that you shall subject yourself to the several judicatories of this Church? Are you willing to subscribe to those things?

"Formula to be signed by Probationers.

"I, _____, do hereby declare, that I do sincerely own and believe the whole doctrine contained in the Confession of Faith approved by the General Assemblies of this National Church, and ratified by law in the year 1690, and frequently confirmed

by divers Acts of Parliament since that time, to be the truths of God; and I do own the same as the confession of my faith; as likewise, I do own the purity of worship presently authorized and practised in this Church, and also the presbyterian government and discipline now so happily established therein, which doctrine, worship, and church government, I am persuaded, are founded on the Word of God, and agreeable thereto; and I promise that, through the grace of God, I shall firmly and constantly adhere to the same; and to the utmost of my power shall in my station assert, maintain and defend the said doctrine, worship, discipline and government of this Church, by kirk-sessions, presbyteries, provincial synods, and general assemblies; and that I shall, in my practice, conform myself to the said worship, and submit to the said discipline and government, and never endeavour, directly or indirectly, the prejudice or subversion of the same; and I promise that I shall follow no divisive course from the present establishment of this Church, renouncing all doctrines, tenets, and opinions whatsoever, contrary to, or inconsistent with, the said doctrine, worship, discipline, or government of this Church."

The Free Church formulas were the same, except that they left out the phrases, "Ratified by law in the year 1690," and "Now settled by law," but the same questions are put to proposed ministers [see post, p. 598], and the formula to be signed by the person ordained contained this: "And I promise through the Grace of God I shall firmly and constantly adhere to the same and to the utmost of my power."

(1) See Appx. I, p. 748.

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to the Church recommending the issue of a statement of the principles of the Church (1); and a similar movement in 1857.

In 1847 the United Presbyterian Church was formed, composed of the relief Church which went out in 1761 on the abuse of patronage, and the United Secession, 1733. The basis of the union of these two Churches was adopted in May, 1847 (2); and in 1848 they framed rules and formularies. (3)

There was a movement amongst certain members of the Free Church for union with the United Presbyterian Church, and a joint committee was appointed, who made a report. (4) A second report was made in 1866. In 1867 a further report giving articles of agreement, and restrictive articles under the

(1) "Act VII., 1853, anent the principles of the Church.

"The General Assembly having resumed the consideration of the overtures on the Principles of the Church, did, and hereby do, resolve as follows:—

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

"2. That while, in pursuance of the righteous protest and demand aforesaid, it is 'free to the members of this Church, or their successors, at any time,' as the Claim of Right asserts, 'when there shall be a pros-

pect of obtaining justice, to claim restitution of all such civil rights and privileges, and temporal benefits and endowments as' they 'were then compelled to yield up,'—there is not any present call to take any such step in that direction, as would imply renewed negotiations with statesmen or renewed application to the legislature.

"3. That it is the duty of the Church, all the more on this account, to adopt measures for keeping before the minds of the people, and especially of the rising generation, the principles which this Church holds, and the position which she occupies as the Free Protestant Church of Scotland.

"4. That the Committee be appointed to draw up a popular summary, in the narrative form, of the principles and contentings of the Church of Scotland from the earliest times to the present, adapted to the purpose indicated in the previous resolution, and to report progress to the next General Assembly."

(2) See Appx. J, p. 752.

(3) See Appx. K, p. 753.

(4) See Appx. L, p. 754.

heading the "Civil Magistrate" was made (1); but the committee failed to agree. In 1870 the Synod of the United Presbyterian Church considered an overture proposing a revision of the Church's Confession and Catechisms, with a view to remove the statements not approved in the basis of union. The Synod rejected the overture. (2) As part of the consecutive circumstances, in 1879 the Synod of the United Presbyterian Church passed a Declaratory Act (3) shewing the position then taken as

(1) "2. STATEMENTS—DISTINCTIVE ARTICLES.

"By the Free Church and English Presbyterian Church Committees.

"As an act of national homage to Christ, the civil magistrate ought, when necessary and expedient, to afford aid from the national resources to the cause of Christ, provided always that in doing so, while reserving full control over his own gift, he abstain from all authoritative interference in the internal government of the Church. . . ."

"By the United Presbyterian Church Committee.

"That it is not competent to the civil magistrate to give legislative sanction to any creed in the way of setting up a civil establishment of religion, nor is it within his province to provide for the expense of the ministrations of religion out of the national resources. . . ." [For the remainder, see Lord Alverstone's opinion, post, p. 715.]

(2) The overture was read. The Synod then proceeded to give judgment on the subject of the overture, and, after reasoning, it was moved and seconded—"That, forasmuch as the interpretation of the terms of the Basis is regulated by the terms of the formula of October, 1847, declaring that office-bearers of the Church are not required to approve of anything in the subordinate standards that teaches or is supposed to teach compulsory or persecuting and intolerant principles in religion, thereby securing full liberty of opinion with reference to civil establishments of religion, the Synod dismiss the overture as uncalled for and inexpedient."

(3) "DECLARATORY ACT, adopted by Synod, May, 1879.

"1. That in regard to the doctrine of redemption as taught in the Standards,

and in consistency therewith, the love of God to all mankind, His gift of His Son to be the propitiation for the sins of the whole world, and the free offer of salvation to men without distinction on the ground of Christ's perfect sacrifice, are matters which have been and continue to be regarded by this Church as vital in the system of Gospel truth, and to which due prominence ought ever to be given.

"2. That the doctrine of the divine decrees, including the doctrine of election to eternal life, is held in connection and harmony with the truth that God is not willing that any should perish but that all should come to repentance, and that He has provided a salvation sufficient for all, adapted to all, and offered to all in the Gospel; and also with the responsibility of every man for his dealing with the

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free and unrestricted offer of eternal life. . . .

"4. That while none are saved except through the mediation of Christ, and by the grace of His Holy Spirit, who worketh when, and where, and how it pleaseth Him; while the duty of sending the Gospel to the heathen, who are sunk in ignorance, sin, and misery, is clear and imperative; and while the outward and ordinary means of salvation for those capable of being called by the Word are the ordinances of the Gospel: in accepting the Standards, it is not required to be held that any who die in infancy are lost, or that God may not extend His grace to any who are without the pale of ordinary means, as it may seem good in His sight.

"5. That in regard to the doctrine of the Civil Magistrate, and his authority and duty in the sphere of religion, as taught in the Standards, this Church holds that the Lord Jesus Christ is the only King and Head of the Church, and 'Head over all things to the Church, which is His body'; disapproves of all compulsory or persecuting and intolerant principles in religion; and declares, as hitherto, that she does not require approval of anything in her Standards that teaches, or may be supposed to teach, such principles.

"6. That Christ has laid it as a permanent and universal obligation upon His Church, at once to maintain her own ordinances, and to 'preach the Gospel to every creature'; and has ordained that His people provide by their freewill offerings for the fulfilment of this obligation.

"7. That, in accordance with the

practice hitherto observed in this Church, liberty of opinion is allowed on such points in the Standards, not entering into the substance of the faith, as the interpretation of the 'six days' in the Mosaic account of the creation: the Church guarding against the abuse of this liberty to the injury of its unity and peace.

"The following question of the Formula contains the terms in which the Subordinate Standards are accepted by the office-bearers of the Church:— 'Do you acknowledge the Westminster Confession of Faith and the Larger and Shorter Catechisms as an exhibition of the sense in which you understand the Holy Scriptures, this acknowledgment being made in view of the explanations contained in the Declaratory Act of Synod thereanent?'"

(1) "EXCERPTS from SYNOD PAPERS,
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"REPORT OF COMMITTEE ON DISESTABLISHMENT AND DISENDOWMENT.

"The question of Disestablishment during 1896 and 1897, although in present political circumstances not capable of being successfully dealt with in Parliament, has yet been kept before the minds of the public by the action of its opponents no less than by that of its supporters.

"Advantage has been taken of the present political situation by State Church supporters to endeavour to push through Parliament" (certain measures).

"It has been the aim of the Synod's Committee to bring the Voluntary Principles of the Church to bear on

certain advances to bring them into line with the United Presbyterian Church. Ministers of one Church could become

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the various public questions that have emerged since last meeting of Synod. . . .

"XVI. JUBILEE OF UNITED PRESBYTERIAN CHURCH.

"The Synod's Committee issued in March to ministers and Synod elders *Tract XXV.*, prepared by the Convener, viewing the Jubilee of the United Presbyterian Church in the light of its Historical Testimony as to the Proper Relations between the Church and the State. It was also sent to Free and Established Church ministers. . . .

"XIX. PROPOSED MOTION OF COMMITTEE.

"In conclusion the Committee recommends that the Synod resolve in the following or like terms:—

[The following words are repeated in the Synod's own language in adopting the report.]

"7th May, 1897.

"The Synod called for the Report of the Committee on Disestablishment and Disendowment, which was presented by Mr. Benjamin Martin, Convener. Mr. Martin was heard, and concluded with the following motion, namely:—

"That the Synod, having heard the Report, approves generally of the action of the Committee in upholding the Church's testimony on the proper relations between the Church and the State, and in favour of religious equality by Disestablishment and Disendowment; instructs the Committee to embrace all fit opportunities of making its Voluntary principles known throughout the Church and

the community; and authorizes it to support such Disestablishment Bill or Resolution in Parliament as shall give effect to these principles, and to oppose, in accordance with former Synodical decisions, new legislation to strengthen the Established Church.

"The Synod further recommends ministers, elders, and members to assist in their several localities in diffusing a knowledge of the voluntary principles of the Church, and in promoting legislation for the Disestablishment and Disendowment of the Established Church of Scotland.

"The motion was seconded, and unanimously adopted."

Tract XXV. was called "The Jubilee of the United Presbyterian Church in the light of its Historical Testimony as to the Proper Relationship between the Church and the State," and said: "The United Presbyterian Church maintains as one of its most distinctive principles that it is not the province of the State to establish and endow the Christian Church."

"This principle as now defined in Voluntaryism was not professed by the founders of the secession and relief churches. But the Ecclesiastical position they assumed, and their principle of spiritual independence which led them to take up that position, contained the germ of Voluntaryism, and ultimately made it easy and inevitable for their successors to develop the clearer and fuller theory now held as to the unscripturalness and injustice of the civil establishment of religion."

"The United Presbyterian Church, thus looking back to the testimony of its various branches on the relations of Church and State during

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ministers of the other; but the Free Church so worded their Mutual Eligibility Act, 1874 (1), that it compelled any minister of the United Presbyterian Church joining the Free Church to adopt the position of the Free Church. In 1875 also over-

the last 164 years, consistently lifts up on this its Jubilee its distinctive witness against civil establishments of religion, and demands in the name of every justice that the Established Churches in England and Scotland should be disestablished and disendowed."

"The Synod, having heard the Report" (that is, on this disestablishment and disendowment), "approves the action of the Committee in upholding the Church's testimony on the proper relations of Church and State, and in support of religious Equality by Disestablishment and Disendowment."

(1) "XXV.—ACT anent signing of the FORMULA.

"1st June, 1874.

"The General Assembly, with consent of Presbyteries, enact and ordain: [Note.—This Act had been passed as an interim Act by the General Assembly of the preceding year on 29th May, 1873.] That in every case of induction into any spiritual office or function in this Church, the person to be inducted shall sign the Formula prescribed in Act XII., 1846, intituled, 'Act anent Questions and Formula,' during public worship on the day of induction, immediately after giving satisfactory answers to the questions appointed in said Act to be put to him; and that in every case of a minister being proposed to be called who belongs to another branch of the Church of Christ, if the Presbytery

find the call regular and sufficient so far as the congregation is concerned, they shall adjourn to meet on a subsequent day, not sooner than a fortnight nor later than four weeks thereafter, except when the call is to a minister in the Colonies, in which case the adjournment may be prolonged; and shall transmit to the minister proposed to be called an extract of that finding, together with a copy of the said Act XII., 1846, as hereinafter amended, including the preamble as well as the enacting part, as also a copy of the present finding of the Assembly in full, embracing the Act of Assembly, Class I. 4, of date Thursday, 29th May, 1873, passing the Mutual Eligibility Overture into a law, with relative declaration in full, and also a copy of this Act, informing him that if no communication is sent beyond a simple acknowledgment of their receipt, the Presbytery will then, upon the assumption that no difficulty exists on his part as regards the said documents, proceed in the case according to the laws of the Church. And at the diet for the induction of any minister thus called, the Presbytery shall, before the induction service, record the fact that the provisions of this Act have been duly complied with.

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

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tures were made. (1) Then, thirteen years after the Declaratory Act of the United Presbyterian Church, the Free Church in 1892 (2) passed a Declaratory Act, which the appellants con-

(1) "XXVI.—ACT anent UNION with REFORMED PRESBYTERIAN CHURCH.

"27th May, 1875.

"The General Assembly having considered the Report of the Committee on Union with the Reformed Presbyterian Church, and the Extract Minute of the Synod of that Church on the subject, approve generally of the Report, and record their thanks to the Committee and the interim Convener.

"The General Assembly declare their great gratification and thorough satisfaction with the result of the conferences and with the course now taken by the Synod. They welcome with cordiality the prospect of the proposed Union on the terms suggested. They declare their high esteem for the ministers and elders and members of a Church which has for so long a period testified for Scriptural truth, and they appoint a Committee, to be afterwards named, to prepare an Overture with a view to the contemplated Union which may be submitted to a future diet of this Assembly, and, if approved of, transmitted to Presbyteries for their consideration in terms of the Barrier Act."

"XXVII.—OVERTURE transmitted to PRESBYTERIES for their Opinion anent UNION with REFORMED PRESBYTERIAN CHURCH.

"The Assembly agree to transmit to Presbyteries in terms of the Barrier Act the following Overture, viz. :—

"Whereas further, it appears that the Synod are willing to accept without reserve the existing Formula of

the Free Church of Scotland, on the understanding that the Act of Assembly, 27th August, 1647 [the Act by which the General Assembly accepted the Westminster Confession], and the Preamble to the Act XII. of Assembly 1846 are held to be in force as interpreting the said Formula, and also to allow the name of the United Church to be the Free Church of Scotland, so as to involve no change by this Church in that respect."

(2) "ACT (DECLARATORY ACT) anent CONFESSION OF FAITH.

"(No. 8 of Class II.)

"26th May, 1892. Sess. 13.

"Whereas it is expedient to remove difficulties and scruples which have been felt by some in reference to the declaration of belief required from persons who receive licence or are admitted to office in this Church, the General Assembly, with consent of Presbyteries, declare as follows:—

"That, in holding and teaching, according to the Confession, the Divine purpose of grace towards those who are saved, and the execution of that purpose in time, this Church most earnestly proclaims, as standing in the forefront of the revelation of Grace, the love of God—Father, Son, and Holy Spirit—to sinners of mankind, manifested especially in the Father's gift of the Son to be the Saviour of the world, in the coming of the Son to offer Himself a Propitiation for sin, and in the striving of the Holy Spirit with men to bring them to repentance.

"That this Church also holds that all who hear the Gospel are warranted

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and required to believe to the saving of their souls; and that in the case of such as do not believe, but perish in their sins, the issue is due to their own rejection of the Gospel call. That this Church does not teach, and does not regard the Confession as teaching, the foreordination of men to death irrespective of their own sin.

"That it is the duty of those who believe, and one end of their calling by God, to make known the Gospel to all men everywhere for the obedience of faith. And that while the Gospel is the ordinary means of salvation for those to whom it is made known, yet it does not follow, nor is the Confession to be held as teaching, that any who die in infancy are lost, or that God may not extend His mercy, for Christ's sake, and by His Holy Spirit, to those who are beyond the reach of these means, as it may seem good to Him, according to the riches of His grace.

"That, in holding and teaching, according to the Confession of Faith, the corruption of man's whole nature as fallen, this Church also maintains that there remain tokens of his greatness as created in the image of God; that he possesses a knowledge of God and of duty; that he is responsible for compliance with the moral law and with the Gospel; and that, although unable without the aid of the Holy Spirit to return to God, he is yet capable of affections and actions which in themselves are virtuous and praiseworthy.

"That this Church disclaims in-

tolerant or persecuting principles, and does not consider her office-bearers, in subscribing the Confession, committed to any principles inconsistent with liberty of conscience and the right of private judgment.

"That while diversity of opinion is recognised in this Church on such points in the Confession as do not enter into the substance of the Reformed Faith therein set forth, the Church retains full authority to determine, in any case which may arise, what points fall within this description, and thus to guard against any abuse of this liberty to the detriment of sound doctrine, or to the injury of her unity and peace."

(1) "XXXIII.—ACT ANENT DECLARATORY ACT 1892 ON CONFESSIO OF FAITH.

"29th May 1894.

"Whereas the Declaratory Act 1892 was passed to remove difficulties and scruples which had been felt by some in reference to the declaration of belief required from persons who receive licence, or are admitted to office in this Church, the Assembly hereby declare that the statements of doctrine contained in the said Act are not thereby imposed upon any of the Church's office-bearers as part of the standards of the Church; but that those who are licensed or ordained to office in this Church, in answering the questions and subscribing the formula, are entitled to do so in view of the said Declaratory Act."

Church commenced their union campaign—every step being resisted by the minority—by issuing an overture (1) for the consideration of the presbyteries. Then there followed on October 31, 1900, the Uniting Act. (2) The previous day an Act had been passed by the General Assembly of the Free Church dealing with property (3), and which the action was raised to set aside. Then followed the Act of the United Free Church appointing the united body of trustees to hold the property. Neither of the formularies of the two uniting Churches was accepted by the other; therefore an Act was passed providing a new formula. (4) On the union being

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(1) See Appx. M, p. 756.

(2) The same thing over again as the overture, with the declarations appended to it by both parties.

(3) "ACT of the GENERAL ASSEMBLY of the FREE CHURCH OF SCOTLAND, dated 30th October 1900.

"Whereas a Union of the Free Church of Scotland and of the United Presbyterian Church, under the name of the United Free Church of Scotland, is in contemplation and is about to be consummated:

"And whereas in the event of the proposed union being carried out, it is necessary and expedient in the interest of the said Free Church of Scotland and the said United Free Church of Scotland, and for facilitating the administration and work of the said United Free Church of Scotland, and of the various institutions connected with and forming the same, that it be enacted, ordained, and declared, as the General Assembly, in virtue of the powers belonging to them under the rules and regulations of the said Free Church of Scotland, or otherwise belonging or competent to them, hereby specially Enact, Ordain, and Declare that the United Free Church of Scotland is and shall

be the successor in office of the said Free Church of Scotland . . . and further that the whole property belonging to the Free Church of Scotland, or in which the said Free Church is interested, presently vested in, or in any way held by the said Free Church of Scotland . . . shall belong to the United Free Church of Scotland, and shall be vested in, and held for behoof of the United Free Church of Scotland" . . . (and its officials and so forth).

(4) "ACT ANENT QUESTIONS and FORMULA (No. 2 of Class I.) 31st October 1900. Sess. 1.

"The General Assembly, in accordance with the terms of the Uniting Act, enact and ordain that the following Questions and Formula, considered and agreed upon by the Inferior Courts of the two Churches, shall be the Questions and Formula to be used at the Ordination and Induction of Ministers and Office-Bearers in the United Free Church:—

"PREAMBLE AND QUESTIONS AT THE LICENSING OF PROBATIONERS.

"PREAMBLE.

"(To be publicly read when the Questions are put.)

"It is hereby declared, that the following Questions are put in view

H. L. (Sc.) carried, the minority, who had all along protested, brought these actions. In the first appeal the first five articles of the condescendence merely gave the history of the immediate cause of disruption in 1843.

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Cond. 6. It set forth (inter alia) that the signatories, for the reasons stated in the Claim of Right, Declaration, and Protest of May 18, 1842, and Protest of May 30, 1843, should "be free to exercise government and discipline in their several judicatories, separate from the Establishment, according to God's Word, and the Constitution and Standards of the Church of Scotland, as heretofore understood."

Cond. 7. "By the 19th Act of the said Assembly of 1843 . . . the several Presbyteries of the Free Church were enjoined to record the Protest taken on May 18 of that year, together with

of Act 1647 (1), approving of the Confession of Faith; Act XII. 1846 (2), of the Free Church of Scotland; Declaratory Act, 1879 (3), of the United Presbyterian Church; and Act XII. 1892 (4), with relative Act of 1894, of the Free Church; and that probationers are entitled to take advantage of any of these Acts.

"It is hereby also declared, that the documents referred to in Question No. 4, and there named for brevity the Claim of Right of 1842, the Protest of 1843, and the Basis of Union of 1847, are respectively the 'Claim, Declaration, and Protest adopted by the General Assembly of the Church of Scotland in 1842,' and the Protest of Ministers and Elders, Commissioners from Presbyteries to the General Assembly, read in presence of the Royal Commissioner, on 18th May 1843, and the 'Basis of Union adopted by the Synod of the United Presbyterian Church on 13th May 1847.'

(1) See Appx. E, p. 730.
(2) Post, p. 598.

"QUESTIONS.

"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 life?

"2. Do you sincerely own and believe the Doctrine of this Church, set forth in the Confession of Faith approved by Acts of General Synods and Assemblies; do you acknowledge the said doctrine as expressing the sense in which you understand the Holy Scriptures; and will you constantly maintain and defend the same, and the purity of worship in accordance therewith?

"3. Do you disown all Popish, Arian, Socinian, Arminian, Erastian, and other doctrines, tenets, and opinions whatsoever, contrary to and inconsistent with the said doctrine of this Church?" [It contained six more clauses, which it is not necessary to give.]

(3) Ante, p. 539.
(4) Ante, pp. 543-4.

the Act of Separation and Deed of Demission "as the ground and warrant of their proceedings."

Cond. 8. "In consequence of the Disruption from the Establishment of the ministers and members who constituted themselves the Free Church of Scotland, and in accordance with the grounds and reasons of such Disruption, as set forth in the foresaid constituting documents of said Free Church, it was found necessary to amend the Questions and Formula formerly in use by the Established Church of Scotland at the licensing of probationers, and the ordination of deacons, elders, and ministers respectively, and accordingly, on July 1, 1846, the General Assembly of the Free Church, by Act 1846, cap. 12, readjusted the Questions and Formula of the Established Church so as to adapt them to the position which the Free Church had taken up, and to embody the profession of her ministers and office-bearers . . ."

Cond. 9. "Further, on 31st May, 1851, the General Assembly of the Free Church, by Act of Assembly 1851, cap. 9, sanctioned the publication of a volume containing the subordinate standards and other authoritative documents of the said Church, and adopted an Act and Declaration relative thereto. . . . The said subordinate standards were those of the Church of Scotland, viz., the Confession of Faith, the Larger and Shorter Catechisms, and the Directory for Public Worship and form of Church Government agreed upon by the Assembly of Divines at Westminster in 1643. The said Act of Assembly and Act and Declaration incorporated therein were merely declaratory and not enacting, and the provisions of the Barrier Act, referred to in answer, were not applicable thereto. They were in entire accordance with the origin and construction of the Free Church, and accordingly recognised the said Confession of Faith as the test of their profession to be imposed by subscription upon her ministers and elders."

Cond. 10. "The said Free Church of Scotland is a voluntary association or body of Christians associated together under a definite contract involving the maintenance of definite principles. That contract is constituted by the foresaid Claim of Right, Declaration, and Protest of 1842, Protest of 1843, and

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Act of Separation and Deed of Demission of 1843, and the Acts of Assembly of the Church of Scotland, in so far as not modified thereby. The foresaid contemporaneous documents, viz., the Act of Assembly of 1846, cap. 12, and the Questions and Formula thereby sanctioned, and the Act of Assembly of 1851, cap. 9, are in accord therewith and expository thereof. Said constituting documents recognise as an essential principle of the Free Church the assertion of the duty of the State 'to maintain and support an establishment of religion in accordance with God's Word,' and as an essential standard of her belief, the Westminster Confession."

Cond. 11. "The contract of association or constitution of the said Free Church of Scotland under which it was first associated contains no provision for any alteration" by a majority.

Cond. 12 set forth that the Church had from time to time acquired property: "Said contract of association or contract or constitution does not provide for or admit of any majority of the members of the Free Church of Scotland thereby constituted diverting the said property from the uses of said Church to the uses of any other Christian association of Christians, and particularly to the uses of any such church or association holding principles and standards of belief differing from those of the said Free Church of Scotland as originally constituted. The individual pursuers became members, ministers, or office-bearers of the said Free Church of Scotland under and in reliance upon its constitution as hereinbefore defined."

Cond. 13. The Establishment principle was defined: "The said principle formed an essential principle of the Free Church of Scotland, and its maintenance was one of the main reasons for the formation of that Church as a separate association or body of Christians, distinct and apart from those who professed themselves to be 'voluntaries.' There were several such associations of seceders from the Established Church of Scotland in existence at the time of the Disruption of 1843, holding views practically identical with those of the founders of the Free Church in matters of doctrine and as to the encroachments of the civil courts, but differing from them as regarded

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the duty above referred to. In regard to this, these bodies were 'voluntaries' in the sense of holding such action of the State to be unlawful. The foundation of the Free Church was a protest against the position of such churches on the one hand, just as it was against the encroachments of the civil power on the other."

Cond. 14 set out that from about 1864 a party favouring union with the United Presbyterian Church arose.

Cond. 15. "In 1897 the United Presbyterian Synod's Committee upon Disestablishment and Disendowment issued, as an official statement of the position of that Church, a tract (No. 25), entitled 'The Jubilee of the United Presbyterian Church in the light of its historical testimony as to the proper relations between the Church and State, 1897,' which commences with the affirmation that 'The United Presbyterian Church maintains as one of its most distinctive principles that it is not the province of the State to establish and endow the Christian Church.' After a narrative expounding the history of the testimony of the constituent elements of the United Presbyterian Church and of that Church itself on the question, the tract enunciates as the conclusion arrived at that, 'To minimise the value of the voluntary principles of the United Presbyterian Church as of late adoption and not essential to its testimony, is to deny the facts of history, and to refuse to see in them the natural and necessary growth of the earlier contentings of the Fathers.' In reporting to the Synod of 1897 the said committee stated (inter alia) that 'It has been the aim of the Synod's Committee to bring the voluntary principles of the Church to bear on the various public questions that have emerged since the last meeting of Synod.' And the Synod, at its meeting of 7th May, 1897, approved of the committee's action in upholding the Church's testimony on the proper relations between Church and State, and instructed it to take all fit opportunities of making its voluntary principles throughout the Church and the community, and authorized it to support such parliamentary action as should give effect to these principles. At the same time the Synod renewed 'the testimony of 1847 of the United Presbyterian

H. L. (Sc.) Church, constantly maintained,' 'that it is not within the province of civil government to provide for the religious instruction of the subject, and that this department of the education of the young belongs exclusively to the parents and the churches.' The said tract (No. 25), Report of Committee and Resolutions of Synod correctly express the conception of the United Presbyterian Synod itself of the position of that Church towards the Establishment. Similar resolutions had been previously passed by the Synods of (inter alia) 1848, 1850, 1851, 1854, 1865, and 1866; and resolutions to the like effect were adopted at the Synods of 1898, 1899, and May, 1900"

Cond. 16. "The principles of the United Presbyterian Church are also in other important respects at variance with those of the Free Church of Scotland, and in particular as after mentioned in the qualified acceptance as its standard of the Westminster Confession of Faith."

Cond. 17. "For a considerable time all efforts in the direction of Union failed, by reason of the objections of those who adhered with loyalty to the distinctive principles of the two Churches respectively. In the Free Church these efforts were met with determined opposition by a large body of ministers and elders who had been leaders in the Disruption movement of 1843, and who maintained that such Union would involve defection from the distinctive testimony and principles of the Free Church, and who were prepared, and known to be prepared, to carry their resistance to the utmost length. Consequently the negotiations for Union were in 1871 for the time being abandoned. It was only after these leaders had passed away that the party adhering to the Church's principles of 1843 was overborne by a younger generation of clergy and elders, who had revived and carried on the negotiations for an incorporating Union of the Free Church with the United Presbyterian Church, which ultimately resulted in the pretended Acts after mentioned."

Conds. 18 and 19 contain statements practically to this effect. There was also set forth that in 1873 and 1874 there were passed by the Free Church of Scotland Acts for the purpose of

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making mutually eligible ministers of the United Presbyterian Church and ministers of the Free Church, that is, to make eligible for a charge a minister then holding a position in the United Presbyterian Church.

Cond. 20: "It was not till 1891 that any farther step towards the proposed Union with the United Presbyterian Church was made. This took the form of a measure which was introduced into the General Assembly of the Free Church in that year, and was in 1892, though only under protest, passed into the Act of Assembly, 1892, No. 8 of Class II., in which the Assembly, claiming for the first time the authority to determine what points in the Confession of Faith entered and what points did not enter into the substance of the Reformed Faith, proceeded to qualify the Confession of Faith as therein set forth, and reserved to itself authority to make such further qualifications as should be deemed proper. The said Act was termed the Declaratory Act, 1892; there was also passed under protest the Act 1894, c. 9, an Act anent the Declaratory Act, 1892, on the Confession of Faith. By said last-mentioned Act it was, with a view to minimise the apparent effect of the Declaratory Act, provided that the statements of doctrine contained in said Declaratory Act, 1892, were not imposed on the Church's office-bearers as part of the standards of the Church, but that those who were licensed or ordained to office in the Church should thereby be entitled to accept the Questions and Formula of the Free Church in view of the said Declaratory Act, that is, to accept and subscribe the same under reservation. The Act of 1894 had not been transmitted under the Barrier Act, presumably because of its declaratory character. These Acts were necessary to bring the Free Church into line with the United Presbyterian Church, with a view to the proposed Union, and constituted a grave defection from the principles of the Free Church as originally constituted."

Cond. 21: "By the Basis of Union of the United Presbyterian Church, adopted at its constitution in 1847, it was declared Head 2: 'That the Westminster Confession of Faith and the Larger and Shorter Catechisms are the Confession and Catechisms of this Church, and contain the Authorized Exhibition

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H. L. (Sc.) of the sense in which we understand the Holy Scriptures, it being always understood that we do not approve of anything in these documents which teaches, or may be supposed to teach, compulsory or persecuting and intolerant principles in religion. But in May, 1879, the Synod of the United Presbyterian Church had adopted a Declaratory Act whereby they modified these standards as therein set forth, and further modified the formula to be accepted by the office-bearers of the Church, to the effect of making the modifications of the Declaratory Act not merely permissive but compulsory, in that the subscriber was called on to acknowledge the Westminster Confession of Faith and the Larger and Shorter Catechisms, not as an exhibition of the sense in which he understood the Holy Scriptures, but as such exhibition only when qualified by the explanations contained in said Declaratory Act."

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Cond. 22 referred to the Declaratory Act of 1892, when negotiations for union were reopened, and averred: "The General Assembly of the Free Church had no power in itself to pass an Act of Union with any other Church, and particularly an Act of Union which involved a departure from the essential and distinctive principles of the Free Church as originally constituted and from its standards of faith, and which created and constituted a new and independent Church or association of Christians distinct from the Free Church of Scotland."

Conds. 23 to 28 narrated the proceedings of 1900.

Cond. 29 shewed that a new formula for ministers was necessary, and that was passed.

Cond. 29: "The said pretended Act of Union had been preceded by communications between committees pretending to represent both Churches. These committees, after communicating to one another the existing doctrinal standards, rules, and methods of their respective Churches, had reported that 'it appeared that in regard to doctrine, government, discipline, and worship therein set forth, a remarkable and happy agreement obtained between them,' and this statement was accepted by the majority of the General Assembly of the Free Church. This alleged agreement was only rendered possible by the fore-said qualifications in 1892 of the Questions and Formula of the

Free Church, and by the still farther qualification to be after mentioned. As precedent to said pretended Act of Union, such farther qualification had been agreed upon as stated in said pretended Act of Union by the committees representing the Free Church and the United Presbyterian Church of Scotland respectively, and had been approved by a majority of the General Assembly and by the General Synod of these Churches respectively as embodied in the 'Questions and Formula to be used at ordination and induction in said United Church.' Accordingly said pretended Act of Union was, on the alleged consummation of said Union, followed by an Act anent Questions and Formula of the General Assembly of the United Free Church of Scotland, passed on 31st October, 1900, being Act of Assembly, 1900, cap. 2. Said Act enacted and ordained that the Questions and Formula therein embodied should be 'the Questions and Formula to be used at the ordination and induction of ministers and office-bearers in the United Free Church.' Each set of questions was prefaced by a preamble, which it was made obligatory should be read before the questions are put, and which declared that the questions are put in particular in view of the Declaratory Act, 1879, of the United Presbyterian Church, and Act XII. 1892, with relative Act of 1894, of the Free Church, and that probationers, ministers, and elders, as the case may be, are entitled to avail themselves of any of these Acts. But the questions themselves imported a wider deviation from the standards of the Free Church of Scotland than did either the Declaratory Act, 1879, of the United Presbyterian Church or the Declaratory Acts, 1892 and 1894, of the Free Church of Scotland. In place of the question in the Formula of 1846: Question 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 the Church?' there was substituted the following: 'Do you sincerely own and believe the doctrine of

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this Church set forth in the Confession of Faith approved by Acts of General Synods and Assemblies; do you acknowledge the said doctrine as expressing the sense in which you understand the Holy Scriptures; and will you constantly maintain and defend the same, and the purity of worship in accordance therewith? The said Act anent Questions and Formula was thus a farther and essential departure from the fundamental standards of doctrine of the Free Church of Scotland as constituted in 1843, and imported an abandonment of the Westminster Confession of Faith and a substitution therefor of the doctrine of the United Church, whatever for the time that doctrine might be held to be, set forth in the Confession of Faith. Said doctrine, which had already been rendered indefinite by the said Declaratory Acts of 1892 and 1894, was thus rendered still more indefinite by the adoption of said Act anent Questions and Formula, and is subject to be again qualified by farther Declaratory Acts of the United Church. The absence of finality in such a standard is accentuated by the terms of the first of the declarations adopted as relative to the Act of Union of 31st October, 1900. The said qualification of the Questions and Formula in the above vital manner was an abandonment by the Unionist members of the Free Church of Scotland of the Westminster Confession as the fundamental standard in doctrine of their Church, and such abandonment was essential to any Union with the United Presbyterian Church "

Cond. 30 narrated the appointment of new trustees.

Conds. 31 and 32 stated that the proceedings for the union were null and void.

Conds. 33 to 41 gave the actings of the minority, claiming that they had continued the Free Church, and that they had a good title to sue.

Conds. 42 to 45 gave reasons for the action, and a statement in regard to the property of the Free Church.

Then in 1900, the day before the union, the Assembly of the Free Church passed an Act transferring the moneys and property to new trusts, which was the Act complained of.

Then in the statement of facts for the respondents (defenders)

statement 1 alleged that "for some years prior to 1843 differences of opinion existed within the Church of Scotland as to the nature and extent of the separate jurisdiction of the Church in matters spiritual," and it narrated the separation.

Statement 2 (see above, condescendence 13) alleged: "The said alleged principle referred to by the pursuers in condescendence 13 was not a fundamental or integral principle in the constitution of the Free Church, and it has not at any time formed part of the doctrines, articles of faith, tenets, creed, or contract binding upon ministers or other office-bearers or members of the Free Church of Scotland. The said Free Church as soon as possible after 1843 modified its constitution as a Church separate from the State, and settled the conditions which should be binding on its ministers and other office-bearers. This was done by an Act of the General Assembly in 1846, viz. Act XII., 1846. The Church therein adopted certain questions to be put to, and a certain formula to be subscribed by, office-bearers on their admission to office. The said questions and formula were adopted ad interim in 1844 and 1845, and in 1846 said Act was passed by the General Assembly, entitled 'Act anent Questions and Formula,' which having received the consent of the majority of Presbyteries in terms of the Barrier Act hereinafter referred to, became a law of the Church. The said Act and the questions and formula are founded on. The only new question added to those in use in the Church of Scotland previous to 1843 was the 5th question. The declaration in the preamble of said Act as to the Church disclaiming intolerant principles, &c., was not part of the Act as it received the approval of Presbyteries under the Barrier Act. It was added by the General Assembly in passing the Act, and was not therefore at that time made (as it subsequently was) binding as a law of the Church. The only documents incorporated into the said Act of 1846 and made binding on ministers and office-bearers of the Church are the Scriptures, the Confession of Faith, the Claim of Right, and the Protest, but the two latter only in so far as concerns their general principles with respect to one point, namely, the spirituality and freedom of the Church. No other articles or conditions

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or agreements were required to be accepted or assented to, and on subscribing the above formula ministers of the Church became entitled to the status and emoluments of office and to share in and beneficially enjoy the property of the Church. In particular, ministers were not required as a condition of office and of receiving the emoluments of office in the Church or of beneficial enjoyment of the property of the Church to declare their acceptance of a doctrine or principle that it is the right and duty of the civil magistrate to maintain and support an Establishment of Religion. Office-bearers other than ministers were likewise not required to accept the said alleged principle. Private members of the Church were not required to subscribe the above formula or any formula, or to make any profession on the subject. The Confession of Faith does not contain or set forth the said alleged principle in respect to the right and duty of the civil magistrate in regard to Establishments of Religion as an article of faith or doctrine or belief. It teaches that nations and their rulers are bound to own the authority of Christian truth, but the Free Church has always held that the teaching of the Confession in this matter is to be read and understood in harmony with the principle (which the Confession also teaches) that the Christian Church has an independent government and jurisdiction in matters spiritual, distinct from the civil magistrate, and also in harmony with the view that the Confession is not to be accepted as favouring intolerance or persecution or interfering with liberty of conscience. The alleged principle as to the right and duty of the civil magistrate to maintain and support an Establishment of Religion has always been in the Free Church an open question in regard to which liberty of opinion has been permitted and exercised, and as to which wide differences of opinion have all along prevailed. The most widely accepted opinion in the Free Church has been that the duty of the civil magistrate to own the authority of Christian truth is generally most properly discharged in the modern state in other ways than by setting up a Civil Establishment of Religion, and that the supporting and maintaining of such an Establishment is merely a particular application of the general principle as to the civil magis-

trate's duty in regard to religion—an application which may be expedient or inexpedient according to circumstances."

Statement 3: "The Free Church as a voluntary association of persons united together for religious purposes possessed from the beginning the right at common law to control and regulate its own affairs, and, if it saw fit, to change its own doctrines or tenets by virtue of its legislative power inherent in the General Assembly—its Supreme Court—acting by a majority of its members. Further, the Church of Scotland had claimed such right even when in statutory connection with the State, and the Free Church, inasmuch as it claimed to be the historic Church of Scotland, continued after 1843 to exercise said right as a Church separate from the State in terms of the Barrier Act (Act 1697, c. 9). Said Act provides: [It gave part of the Act.] According to the view which the Free Church has always taken of this Act, it contemplated that the Church might competently make 'alterations or innovations' in doctrine, worship, discipline, or government, and provided means whereby such changes should be carried out only after deliberate procedure, and after full opportunity had been given to the whole Church to express its opinion. When the procedure set forth in the Act had been adopted, an Act of Assembly passed with the approval of a majority of the Presbyteries of the Church became a 'binding Rule and Constitution of the Church.' On the other hand, no Act of Assembly which had not so obtained the approval of a majority of Presbyteries was 'a binding Rule and Constitution' of the Church. Prior to the passing of the Barrier Act, the supreme legislative power to innovate upon doctrine, worship, &c., resided in the General Assembly acting by a majority of the members of any single General Assembly. Previous General Assemblies had made fundamental changes in doctrine, &c., by votes of a single Assembly. An illustration of this is the adoption by the Assembly of 1647 of the Westminster Confession of Faith, subject to the declarations in the Act of 1647 (which were never acknowledged by Parliament) as the binding creed of the Church in place of its former Confession. The Barrier Act was a limitation and regulation of the hitherto unlimited powers

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of any single Assembly to make changes in doctrine, worship, discipline, or government of the Church. The Established Church repeatedly exercised its legislative powers under the Barrier Act. Instances of this are the Declaratory Act as to Parliamentary Churches, 25th May, 1833; Declaratory Act as to Chapels of Ease, 31st May, 1834, admitting into its own body the pastors of 200 non-parochial congregations; Act, 1st June, 1835, putting an end to the appointment of ministers against the veto of a majority of the people, although such appointments had been submitted to for 120 years or thereby under the Statute of Queen Anne, 1711; Act, 25th May, 1839, anent reunion with Seceders, including in its own body the ministers and members of the Original Secession Church. By this and other Acts the Church had changed and modified its own 'doctrine or worship or discipline or government.' It claimed to exercise the right to do so in virtue of its own independent spiritual jurisdiction and without restraint from the State, even when the Church was in statutory connection with the State. The Civil Courts refused to acknowledge such rights in the Church, as being inconsistent with the conditions of Establishment, and the Free Church was constituted in order that as a Church apart from and not in alliance with the State it might freely enjoy such rights. Accordingly, at various times since 1843, it has modified its doctrine, worship, discipline, and government as it saw fit, by proceedings taken in conformity with the Barrier Act, and the Acts so passed became laws binding on the whole Church, affecting and controlling both the members of the Church and the property vested in or belonging to it. The Act XII., 1846, above referred to, is one of these."

On August 9, 1901, the Lord Ordinary (Lord Low) dismissed the actions. (1) And on July 4, 1902, the Second Division of the Court of Session recalled the Lord Ordinary's interlocutor in so far as it dismissed the actions, and in lieu thereof assoilzied the respondents from the conclusions thereof. In the view taken by the Lord Ordinary, the Lord Justice-Clerk, and Lord Trayner, the only doctrines which would appear to be funda-

(1) 4 F. 1083, 1117.

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mental were not those which gave the Church its individuality, but those that were common to it and other Presbyterian or like Christian Churches. Lord Young regarded nothing as unalterable.

The appeal was heard first on November 24, 26, 27, 30; December 1, 3, 4, 7, 1903, before the Earl of Halsbury L.C., and Lords Macnaghten, Shand, Davey, Robertson, and Lindley.

The House took time for consideration.

On March 8, 1904, Lord Shand died, and the appeal was ordered to be reheard; and was reheard on June 9, 10, 13, 14, 16, 17, 20, 21, 23, 1904, before the Earl of Halsbury L.C., and Lords Macnaghten, Davey, James of Hereford, Robertson, Lindley, and Alverstone C.J.

FIRST HEARING.

Henry Johnston, K.C., and *Roberton Christie* (both of the Scottish Bar), were heard for the appellants.

Asher, D.F., and *Haldane, K.C.* (with them *Guthrie, K.C.*, and *Orr*) (all of the Scottish Bar except the second), were heard for the respondents.

[It is not necessary to give their first arguments, as their second arguments on the rehearing covered and amplified their first.]

SECOND HEARING.

Henry Johnston, K.C., and *Salvesen, K.C.* (with them *Roberton Christie*), for the appellants. The two appeals fall to be argued together. The major appeal dealt entirely with the property which belonged to the Free Church as a whole. The minor appeal dealt with congregational property, i.e., with property which belonged to particular congregations of the Free Church. This second appeal was a test case, being one of five different cases brought in the Courts below to try the question of right to congregational property.

The practical question to be solved on the appeals is whether it is the right of the majority of the Free Church to unite with another body, namely, the United Presbyterian

H. L. (Sc.) Church, against the will of the minority of the Free Church, and to carry with them into the new body formed by their union both the Church and the congregational property. It may be well to explain at the outset that the term "voluntary," as used in the documents to be referred to, does not bear the meaning which it would in the same relation in England. The word "voluntary" in the ordinary sense means a Church maintained by voluntary contributions; but in this controversy it had always meant "independent of State aid" and not merely refusing State aid, but resenting State aid, and holding it to be illegal.

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The first ground on which the appellants maintain that the majority of the Free Church has departed from the original Free Church constitution is, that whereas the Free Church according to its original constitution maintained the duty of the State to establish and endow the Church, or the Establishment principle, that majority has abandoned this principle by amalgamating with a Church, the United Presbyterian Church, which was founded in support of Voluntarism in the technical sense above explained. The second ground on which the appellants maintain that the majority has departed from the original Free Church constitution is, that whereas the Free Church had adopted without qualification as its creed the Westminster Confession of Faith, the majority of the Free Church, with a view to their union with the United Presbyterian Church, and in their Act of Union with that Church, have qualified and in fact discarded as their creed the Westminster Confession. The respondents, on the other hand, maintain that the Establishment principle was not a fundamental or essential principle of the Free Church constitution—that though non-essential they have not abandoned it in their union with the United Presbyterians, and that they have not discarded but merely interpreted the Westminster Confession. But, further, they maintain that the Free Church as it existed from 1843 to 1900 had, as a Church independent of State aid and State control, absolute legislative power to alter anything in its doctrine, discipline, and government. Therefore, for the appellants to succeed, they must shew, first, that the above two

principles were essential elements in the constitution of the Free Church in 1843; secondly, that in the union they have been departed from; and, thirdly, that the Free Church of Scotland had not either inherently as a Church, or in consequence of any terms of its constitution, any power to alter that which was an essential of its constitution as an independent body. There is no question that the appellants, though members of the Free Church as it existed in 1900, have maintained with unbroken continuity the original principles and organization of that Church, and, though a much-diminished body, are still the Free Church of Scotland as founded in 1843. Put in another form, the question is whether the majority have power to compel the minority to follow them into the union under pain of loss of all interest in the Church's general and congregational property, and under pain of being treated as seceders.

The constitution of an independent Church based on distinctive principles once fixed cannot be altered unless there is a provision for alteration contained and machinery for altering provided in its original constitution. No such provision in machinery was contained in the constitution of the Free Church. The respondents contend that an absolute power resided in the Free Church to alter at common law its doctrines in virtue of the legislative power inherent in their General Assembly. There is no such right at common law. It may be conceded that the church has power to make by-laws to regulate its own internal affairs, but it has no power to change doctrine or essential principle. The Free Church claims to be the true Church of Scotland as it stood by law established in 1843, but rejecting the State interference in spiritualibus and all its consequences, which had been upheld by the Civil Courts in the ten years' conflict of 1833 to 1843, and therefore "Free"—Free in rejecting the vitiated Establishment supported by the Civil Courts and the Legislature of that date, but equally free to return to a purified Establishment.

The law of the case is to be found authoritatively laid down by the House of Lords in *Craigdallie v. Aikman* (1), relating

(1) (1820) 1 Dow, 1, 15, 16; 2 Bli. 529, 535; 21 R. R. 107.

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to the affairs of a congregation of the "Secession" Church of 1733, the earliest organized Church which had seceded from the Established Church of Scotland. Craigdallie, the appellant, represented the senior minister, adhered to by a majority of money contributors to the church edifice and property, but who were a minority of the congregation. They maintained adherence to original principles, and in doing so revolted from the General Assembly of the Church. The respondents represented the minority of the money contributors but the majority of the congregation, and they adhered to the General Synod or governing body of their Church. The question was which was entitled to the church property. The Court of Session, November 16, 1803, held in favour of Craigdallie, the appellant, and the majority in point of pecuniary interest; but on a rehearing, February 1, 1804, they changed their view and gave the judgment for the respondents as adhering to the General Synod. This House held on appeal that the principle on which the case had to be decided was neither on a comparison of money contributions, nor on adherence to the General Synod, but on adherence to original principles. Lord Eldon said: "Independent of any other consideration then, the extreme difficulty, if not impossibility, of applying these interlocutors as they stood, rendered it highly desirable that the matter should be reviewed. But if the judges below still adhered to the principle, it was this principle, that because in 1737 a society then agreeing in their religious opinions adhered to a presbytery or Synod then holding the same opinions with themselves, the property belonging to that society should be held on trust, not for those who adhered to their original principles, but in trust for those who adhered indeed to the Synod but who did not adhere to their original principles; that was a proposition very difficult to be maintained in law. But if the Court below should still adhere to that principle, then the objection arose, How could the principle be applied in practice? It was true the Court could not take notice of religious opinions, with a view to decide whether they were right or wrong, but it might notice them as facts pointing out the ownership of property. With respect to the doctrine of

English law on this subject, if property was given in trust for A., B., C., &c., forming a congregation for religious worship, if the instrument provided for the case of a schism then the Court would act upon it; but if there was no such provision in the instrument and the congregation happened to divide, he did not find that the law of England would execute the trust for a religious society at the expense of a forfeiture of their property by the cestuis que trust for adhering to the opinions and principles in which the congregation had originally united. He found no case which authorized him to say that the Court would enforce such a trust, not for those who adhered to the original principles of the society, but merely with a reference to the majority, and much less if those who changed their opinions instead of being a majority did not form one in ten of those who had originally contributed, which was the principle here. He had met with no case that would enable him to say that the adherents to the original opinions should under such circumstances for that adherence forfeit their right. If it was distinctly intended that the Synod should direct the use of the property that ought to have been matter of contract, and then the Court might act upon it; but there must be evidence of such a contract, and here he could find none."

The case went back to the Court of Session; but the ultimate decision did not alter the law which has been consistently followed since, that adherence to original principles must be the test whenever you come to a question raised as to property held in trust for a body such as the congregation in that case, and the law cannot be different when dealing, not with congregational property, but with general Church property. In *Attorney-General v. Pearson* (1) the decision in Craigdallie was followed: see also *Attorney-General v. Shore*. (2)

To understand how the disruption in 1843 took place, the statutory history of the Established Church must first be considered, and then what was the real question which caused

(1) (1817) 3 Mer. 353, 417, 419; 17 R. R. 100.

(2) (1833-6) 7 Sim. 309, 311.

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H. L. (Sc.) 1904 the disruption, namely, the matter in litigation during the ten years which preceded the disruption. [The learned counsel then gave the statutory history given above.]

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The consideration of the historical position of the Established Church in 1843 as deduced from the Acts of Parliament themselves is essential in order to determine what were the rights which the Free Church carried with them from the Established Church into their position of freedom. The Statutes of Queen Mary, 1560, 1567 (1), shew how the original Confession of Faith was adopted. A creed is drawn at the request of the Estates of Parliament in 1560 which is credited to Knox, and popularly known as "Knox's Confession" or the "Scots Confession," and the whole articles are printed in the Act. The creed precedes the Church. Popery in all its forms is abolished in 1560. Ministers in 1563 (2) have manses or parsonages; and as early as 1561 they had incomes assigned to them (Act of 1567, c. 10, proceeding on a minute by the Privy Council, namely, the Second Council, No. 2, November 22, 1561, 2 Thomson's Acts, 606). In consequence of doubt as to the validity of Acts passed when Queen Mary was not within the kingdom, on her abdication and the succession of her infant son James the Marian Acts are re-enacted in 1567 (3), accepting the Confession as fixed. The Act of 1567 (c. 6) (4) for the first time established the Church. Then by the coronation oath the true religion is to be maintained, "religion" meaning "creed" or "confession." In 1567 the jurisdiction of the Church is defined, but confined to preaching correction of manners, namely, discipline, and administration of the sacraments. Then a religious test by subscription to the Confession is required, and a power of deprivation is included which first recognised the Church as a judicatory or court (though not a legislature), with power to deprive of office those who did not adopt, maintain, and subscribe to the Confession. Then in 1572 an Act (c. 14) gives power to the Civil Courts to enforce deprivation by the Church by depriving

(1) See Appx. A, p. 723.

(2) Ante, p. 521.

(3) Ante, p. 522.

(4) Ante, p. 522.

the delinquent of any civil rights in the benefice. About 1579 the Church did prepare and present to the Crown for approval what was called the "Second Book of Discipline." Certain parts of it only were adopted and embodied in the Act of 1592 (1), which Act had always been considered as the charter of Presbyterianism, it being the first legislative recognition of the Presbyterian system. If the Free Church had inherent legislative power, they had it from the Established Church. But so far the Established Church had none, and only a limited judicial power. King James, shortly after his arrival in England in 1603, reverted to Episcopacy. From 1633 to Charles I.'s death there was the struggle of the Revolution. The Westminster Confession of Faith had been framed by the Assembly of Divines at Westminster, and adopted, not by the General Assembly merely, but on its solicitation by Parliament in 1647. Thomson's Acts, May 23, 1690, again shewed that in the Revolution Settlement it was ordered that a double copy of the Westminster Confession be presented to Parliament, that on May 26 the Confession was read word for word, and that the Act of 1690 (c. 7) (2) ratified the Confession and settled in Scotland the Presbyterian Church government. The Act of 1693 (c. 8) ratified the Act of 1690, and ordained that no person shall be admitted a minister unless he subscribe the Confession of Faith ratified in the 5th Act of the second session of that Parliament, declaring the same to be the confession of his faith, and that he owns the doctrine therein contained to be the true doctrine. That provision respecting subscription to the Confession was incumbent upon the Established Church, and was incumbent on it in 1843, and continued to be accepted by the Free Church up to the date of the union in 1900; but, as the appellants will shew, it is not so now. [The learned counsel then referred to the Acts of Queen Anne, 1703, ratifying the true form of religion, Act 1707 (Treaty of Union), and Act 1711, 1 Anne, c. 12, restoring right of patronage.] That was the statutory history of the Established Church down to 1833, when various Acts of its Assembly, then dominated by the majority for the time, who afterwards formed

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(1) Ante, p. 523.

(2) See Appx. F, p. 735.

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the Free Church, were passed, which caused the ten years' litigation which preceded the disruption of 1843 and formation of the Free Church. Thus in 1833 the Assembly of the Established Church passed an Act declaring that ministers of parliamentary churches—that is, churches non-parochial erected in the Highlands—should have seats in the Church Courts. The next Act the respondents rely on as an Act of legislation is the Act of Assembly of 1834, which provided in the same way, not merely for ministers of chapels of ease occupying seats in the Assembly, but in the case of those chapels of ease for allocating to them parochial bounds carved out of the parishes in which they were situated and those adjacent.

Then came the "Veto Act of 1835," which really started the litigation (1), embodying the principle which has been termed "non-intrusion," and aiming to confer a veto on the congregation in the appointment of ministers to parochial charges.

The *Auchterarder Case* (2) arose in consequence of this Veto Act. That case arose in these circumstances. A majority of the Established Church held that it was the spiritual function of the congregation to form for themselves the pastoral relation between their minister and his flock, and they considered that that relation could only be properly formed, not by imposing ministers from outside upon the congregation, but by the voluntary "call" of the congregation to the ministers. Accordingly this majority passed the Veto Act, which at once brought the patrons up in arms. The Earl of Kinnoull and his presentee opposed the presbytery's attempt to override the patron's presentation. The Court of Session by a majority and this House unanimously determined that by the Veto Act the Established Church had attempted to override the Act of Parliament as to patronage, and that the patron's presentee must be accepted unless there were from members of the congregation reasoned objections, and not merely an unreasoned veto. That was one of the many cases which during these ten years agitated the Church.

(1) Ante, p. 529.

(2) 16 S. 661; Macl. & Rob. 220.

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The proceedings of 1842 and 1843, which formed the written constitution of the Free Church, founded in their preamble not only on the statutory history of the Established Church, but also of the Church's attempts during the previous ten years to establish the principle of non-intrusion. The spiritual independence of which so much was heard was in 1843 no more than the independence of the Church of State or judicial interference in the formation of the pastoral tie and suchlike. It was no assertion of general independent legislative power to alter the essentials of its constitution and its creed or to change its form of Church government, which was what the claim of the United Free Church truly amounted to. Without knowing the history of the Established Church and the cause of the disruption, the true meaning of the constitution of the Free Church cannot be arrived at. The respondents try to stretch the terms of these constitutional documents by divorcing them from the circumstances under which they were used. The "Claim, Declaration, and Protest" anent the encroachments of the Court of Session adopted by the General Assembly in 1842 (1) was a document of the Established Church, because the Established Church was then one and undivided, and was not disrupted until 1843; and, that being so, it could not be expected that a document by the Established Church would put forward as essential and fundamental the Establishment principle. The document necessarily assumes the principle that is sharply contrasted: there is the power of the "Keys" (that is, the right of internal government and discipline, including the right to determine the relation between the pastor and his congregation and everything connected with selection, admission, and induction of the minister) and the power of the "Sword," or the civil power as wielded by the Civil Courts. There is nothing in that whole document bearing on legislative power. In the Claim, Declaration, and Protest the Established Church said: "The above-mentioned essential doctrine and fundamental principle in the constitution of the Church." One has to ask what is the above-mentioned essential doctrine. Apparently it is that there resides in the Church a spiritual jurisdiction independent of

(1) See Appx. G, p. 737.

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the Civil Courts, but a spiritual jurisdiction carefully limited and defined, namely, the power of the Keys. Accordingly that document refers to a series of Acts of Parliament, which are the Acts in which the various gradual definitions of the jurisdiction of the Church are found, beginning with the first one, which placed the examination and admission of ministers in the hands of the Church, emphasizing the one which most fully defined the jurisdiction of the Church, but at the same time confining it to preaching, administration of sacraments, and correction of manners or discipline. The Protest was drawn up in 1842 by the majority, five to two, it may be, of the Established Church. That majority became the Free Church. It is written indeed by the majority, and so with a Free Church pen, and it was taken with them into the Free Church and there adopted as the first constitutional document of that Church. Now admittedly it mentions the Second Book of Discipline as a standard of the Church. The appellants must take the statement in the Protest as they find it, but they traverse it. The Second Book of Discipline never was a standard, although the majority asserted it as a standard. But the appellants are not alarmed at any reference to the Second Book of Discipline, even if it were a standard, as its terms cannot be raised into that general wide assertion of spiritual independence and right to legislate which the respondents seek to find in it. There is no support for that contention in the Second Book of Discipline. The Establishment principle is not only implied in the Protest, but made part of it by reference to the Confession of Faith. The Establishment principle was to be found deeply embedded, as might be supposed, in the Confession of Faith, and particularly under the head "of the Civil Magistrate," chap. 23, arts. 2, 3. (1)

These shew that the Confession of Faith recognised, not merely the authority, but, what is more important still, the duty of the civil magistrate—by which is understood the Government, in the widest sense—to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that blasphemies and heresies be suppressed, that corruption and abuses in worship and discipline

(1) See Appx. E, p. 733.

be prevented or reformed, and all the ordinances of God duly settled, administered, and observed. That imposes the duty on the Government of at least establishing the Church. Referring again to the Protest of 1843 (to be immediately dealt with), at the end it claims 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 "corporeal benefits and endowments" which they for the present had been compelled to yield up. Now that cannot be read as anything but adopting for their Church as one of its fundamental tenets the Establishment principle.

In the pastoral address, dated April 25, 1843, by the special commission of the General Assembly, a few days before the actual disruption, a passage (1), after referring to the ordinary civil administration, goes on: "But, in addition, the Christian magistrate" . . . "In that capacity he has many important functions" (inter alia) "For supplying the means of Grace." That contains not merely the Establishment, but the endowment principle. Then there is the "Protest of 1843" (May 18, 1843) (2), the first express document of the Free Church other than documents adopted. The Assembly adopted the Protest. That document clearly laid down as the constitution of this new Church what was set forth as the constitution of the Established Church in the document of 1842. The Protest of 1843 in its concluding paragraphs clearly set forth the Establishment principle: "and finally, while firmly asserting the right and duty" (the word "duty" is important) "of the civil magistrate to maintain and support in accordance with God's Word." The Protest further accepts the Confession of Faith as the standard of doctrine or creed of the Church. There can be no question that the Confession of Faith referred to is the Westminster Confession. On this point the communication addressed by order of the Assembly (May 20, 1843) to the members and friends of the Church is equally emphatic. The actings of May 18 were the acts of the majority of the former Assembly. They were the actings of those ministers and elders who separated from that Assembly. They had not yet carried

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(1) Pastoral Address, ante, p. 530.

(2) See Appx. G, p. 741.

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with them the body of the Church. This communication was, therefore, of the nature of a prospectus of the association addressed to the Church at large for the purpose of drawing adherents to the disrupting ministers and elders. In the address Dr. Chalmers's speech to the Assembly was incorporated. Of course, his words were spoken in his individual capacity as Moderator; but when they were inserted by the founders of the Free Church in this document addressed by them to the Church at large they became by adoption the utterances of the Church. Then on May 22 there is a resolution of the Assembly resolving the course to be taken (1): "That this Assembly do now for themselves and all who adhere to them separate from the Establishment, protesting that in doctrine, polity, and discipline they truly represent the Church of their Fathers"—that is, the Established Church; and they reappoint a committee with instructions to prepare the draft of an Act and deed "to be adopted and subscribed renouncing and demitting the State's rights and privileges held by virtue of the Establishment." That deed is called "An Act of Separation and Deed of Demission by Ministers." In that deed they declare that they "in no degree abandon or impair the rights belonging to them," "and that they are and shall be free to exercise government and discipline in their several judicatories separate from the Establishment, according to God's Word and the constitution and standards of the Church of Scotland as heretofore understood." There is also a similar deed of demission applicable to the eldership slightly differently worded. The Act of the Assembly dated May 30, 1843, was important, as enjoining the several presbyteries to record the Protest of 1843 and deed of demission at the beginning of their presbytery books, making more emphatic what was to be the constitution of the Church which they thus founded. The definition of what are the spiritual functions of the Church is to be found in the "Claim, Declaration, and Protest" of 1842. At the same time that document asserts the duty of the State to maintain and support the Establishment, and accepts as the standard of belief the Westminster Confession. The Lord Ordinary relied on the

(1) Ante, p. 531.

model trust deed (1); but its narrative, evidently drafted by a lawyer a year or two after the Free Church was already constituted, cannot in any sense be held to affect the constitution of the Church. It is full of inaccuracies historically. It was adopted by a committee, and came into general use. But it was never formally approved by the Assembly, although what might be called an adoption took place in 1851, when the Assembly instructed "That the model trust deed be printed and sent down with the Acts of this year." One of the inaccuracies in the narrative is that the Church of the Reformation adopted as standards the two books of discipline.

The respondents contended, and their contention was approved by the Lord Ordinary, that because the Free Church chose to insert in their model trust deed a provision for the contingency of union with such other body, or bodies, of Christians as the said "Free Church of Scotland may at any time hereafter associate with themselves," a power for union with other Churches was a part of their constitution, and that such union might take place irrespective of identity in essential principle. No doubt the Free Church as a body of beneficiaries, under deeds taken in this form, could unite with other associations; but the latter must come in under the Free Church constitution and adopt that constitution, and could not impose their own upon the Free Church. Now the Establishment principle was an essential doctrine of the Free Church. Had it not been so, there was no reason why they should not at once have gone over to one or other of the "voluntary" bodies already existing in Scotland. But the disestablishment principle was the doctrine of the United Presbyterian Church. Union can only follow on identity of principle. In their defences the respondents rely on the deed of 1846, "The Act anent Questions and Formula" (2), to be addressed to ministers on ordination, &c., as if it embodied the Church's constitution. The appellants demur to that. The constitution of the Church was fixed three years earlier, and this deed was only necessary in order to adapt the questions and formula required of ministers in the Established Church to the altered

(1) See Appx. H, p. 743.

(2) See post, p. 598.

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H. L. (Sc.) position of the Free Church. The only alteration in the questions put to elders in the Free Church was that the Free Church formula omitted the words "ratified by law in the year 1690," and they omit the phrase "now settled by law;" but they do put this: "Do you sincerely own and declare the Confession of Faith" "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?" When you examine the new formula of 1900 (1), which was adopted as part of the union proceedings to be used by the United Church, you will find a very different thing, and affording a marked contrast with the formula of the Established Church and the Free Church. (2) The contrast was between the use of the term "the foresaid Confession of Faith," which is "to be the Confession of your Faith" in the Established Church and in the Free Church, and the use of the term "the doctrine of this Church" in the United Church. The Act and "Declaration anent publication of the Subordinate Standards," 1851 (3), bears emphatically upon the Establishment principle, as well as upon the question what are the standards or creed. That document, which may be looked at on the principle of contemporaneous exposition, declared to be the standards of the Free Church, not anything which existed before the Westminster Assembly, nor any modification of the work of that body, but the Westminster Confession itself, and the subordinate standards which were provided by the Westminster Assembly. Accordingly; whatever may historically be the history of the Books of Discipline, they do not come within the ambit of the standards of the Free Church as there defined. Now what constituted the United Presbyterian Church? The component elements of the United Presbyterian Church were the "Relief Church," which went out from the Establishment in 1761. Although the Relief Church adhered to the doctrine, discipline, and government of the Established Church, there is no doubt that it had, by the time the Free Church came into existence, made large advances towards Voluntaryism: see

(1) Ante, p. 545.

(2) Ante, p. 536.

(3) See Appx. I, p. 748.

Smith v. Galbraith. (1) The other element of the United Presbyterian Church was the "United Secession," made up of certain parts of the Secession Church of 1733, which also had adopted voluntary views. The union of the above two Churches took place in 1847 under the name of the United Presbyterian Church. That was three years after the foundation of the Free Church. At that date there must have been some difference between these Churches and the Free Church; otherwise, why did they not in 1847 unite with the Free Church? The Basis of Union of the United Presbyterian Church, its rules of procedure and its formula, are dated 1848. (2) This document cannot be read without coming to the conclusion that that Church is a voluntary Church; and, secondly, that its constitution is not a fixed constitution, but one capable of modification and alteration. Then we come to the negotiations for union in 1864. (3) As to Establishment, the two bodies, the Free and the United Presbyterian, could only express identity of views up to a certain point. It was admitted in the report on union of 1864 (3) that there was a distinct difference of view on the question of the Establishment between the two Churches, the one still holding the Establishment principle, and the other rejecting it. Nor can one read the proceedings of the United Presbyterian Synod in 1870 (4) without seeing that the object of the overture was to get rid from their Basis of Union of anything which could imply approval of the Establishment principle. Bringing down the negotiation for union to its eve, there were reports of the United Presbyterian Church Committee on the questions of disestablishment and disendowment (5) in 1897, and following years down to 1900, all of them adopted by the Synod, pledging that Church to a Disestablishment propaganda. The Synod of the United Presbyterian Church not only approved of the report, but instructed its committee "to embrace all fit opportunities of making its voluntary principles known throughout the Church and the community, and authorized it

(1) 15 S. 808; 5 D. 565.

(2) See Appx. K, p. 753.

(3) See Appx. L, p. 754.

(4) Ante, p. 539.

(5) Ante, p. 540.

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to support such Disestablishment Bill or resolution in Parliament." The appellants submit that the original Free Church constitutional documents of 1842-3 demonstrate that the Establishment principle was a distinctive principle of the Free Church in its origin, and therefore that adherence to it was one of the conditions of the trust upon which the property in question was held. Secondly, the appellants contend that it is equally beyond dispute that the Establishment principle was not a principle of the United Presbyterian Church, and consequently that it could not be a principle of the United Free Church.

Then as to the matter of doctrine, there has been a clear departure in the union from the Confession of Faith as the standard of doctrine. In 1843 the Free Church started with maintaining as the creed of the Church the Confession of Faith and the standards of the Church of Scotland "as hitherto understood." These words "hitherto understood" in the final paragraph of the Protest of 1843 had reference to the exposition contained in the previous parts of the Protest and of the Claim and Declaration of 1842. In 1844 there was a report as to admission of ministers and probationers from other Churches. The General Assembly remit to a committee to consider what alterations or additions might be required in the Established Church formula, and following on that the formula was passed. (1)

The Act of the General Assembly, May 30, 1846, enacted "that no minister of any denomination shall be admitted to a ministerial charge in this Church without an unqualified subscription of the formula"—that is, the minister to be received must approve the whole doctrine of the Confession of Faith. Then there was the Mutual Eligibility Act of 1873, and the relative Act anent the subscribing of the formula of 1874. These embodied a compromise between two parties in the Church. What was imposed on a United Presbyterian minister coming into the Free Church was the formula of the Free Church, with notice of what the Free Church principles were, and if he made no objection he was held to have accepted them.

(1) Act 12, 1846; post, p. 598

In the United Presbyterian Church a change had taken place in 1879. There was then passed a Declaratory Act which modified the Confession of Faith. (1) Contrast that with the Confession of Faith, and it will be seen how the latter is altered by this Declaratory Act.

The Declaratory Act, 1879, set out that "The doctrine of the Divine decrees, including the doctrine of election to eternal life"—that is, the doctrine of chap. 10 and head 4 of the Confession (2)—"is held in connection and harmony with the truth that God is not willing that any should perish, but that all should come to repentance, and that He has provided a salvation sufficient for all, adapted to all, and offered to all in the Gospel, and also with the responsibility of every man for his dealing with the free and unrestricted offer of eternal life."

Now that is not an interpretation, but is an absolute contradiction of the doctrine of chap. 10 of the Confession. Then the heads 3 and 4 are equally contradictory of head 3 of the Confession of Faith. Then, reading between the lines of head 5, it is seen to be a disapproval of State Establishment of religion, and head 6 is a clear statement of Voluntaryism, while head 7 practically supersedes the Confession by individual opinion. The result of the Declaratory Act of 1879 is to write out of the Confession of Faith the doctrine of predestination which is set forth in chaps. 3 and 10, and to read out of the section with reference to the duty of the civil magistrate the duty of the State to establish and provide for the Church. There was a similar Declaratory Act of the Free Church in 1892, evidently passed to bring it into line with the United Presbyterian Church with an eye to union. (3) That Act the appellants complain of, for it, too, was contradictory of and a practical rescission of chaps. 3 and 10 of the Westminster Confession. There were pretty numerous dissents against the passing of this Declaratory Act. The appellants represent the dissenting minority. The result was that the Declaratory Act of 1892 was qualified by the Act of 1894. (4)

It is asserted that by remaining in the Free Church after

(1) Ante, p. 539.

(2) See Appx. E, p. 730.

(3) Ante, p. 543.

(4) Ante, p. 544.

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the passing of these Acts the minority, now represented by the appellants, accepted them, and can now take no exception. But there was no call on them to leave the Church as well as protest. The time to take action was when something was done which touched property, and every step was resisted from 1896, when the respondents commenced their union campaign.

But the terms of the union documents themselves are most markedly condemnatory of the union. The respondents may call it an incorporating union; it is no such thing: it is a pure working agreement—a pooling of their funds. Further, it contains no definite constitution. The two Churches cannot come together without carefully providing by the resolution annexed to these Acts of Union that they shall have liberty from time to time to alter anything that may be deemed constitutional at will. The first document to be considered is the overture regarding union. (1) Then follows the Uniting Act itself. (2) The most careful examination of these will not disclose such terms of union as will result in a new homogeneous body with a defined constitution. The two so-called uniting bodies are practically each left to its own way, freed from the restrictions of its former constitution, but not brought under any new one, only making common cause in certain practical directions, and holding to a certain extent a common purse. That is not a state of matters into which the majority of the Free Church are entitled to drag the minority. Perhaps the abandonment of the old Free Church standard of doctrine is most marked. To its original constitution the Westminster Confession as a creed was essential. On the basis of this Uniting Act each of the uniting bodies may declare in the matter of doctrine what they like. The result is that the General Assembly of the United Church is but a joint committee of the two Churches appointed to administer the affairs of both, and therefore (inter alia) to apply Free Church Property to the uses of the United Presbyterian Church. The attempted union results, therefore, in a clear diversion of the Free Church property and funds. At every stage of these proceedings protests, dissents, and amendments were moved. There was no acquiescence. The

(1) Ante, p. 543

(2) Ante, p. 545.

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matter of union is well illustrated by what had to be enacted in natural sequence, e.g., the Acts substituting officials, appointing trustees, and vesting property. All these were as ineffectual to divest property as they were necessary to attempt it. Further, as might be expected, neither Church accepted the other's formula, and a new one is passed on October 31, 1900 (1), with a preamble quite different from the previous preamble of the Free Church. But the important difference is the excision of any reference to the scriptural principle of the duty of the Civil Rules, and the substitution of the doctrine of this Church for that of the Confession of Faith. That alone is enough to shew that this so-called United Free Church is not the Free Church, and is not a body the conditions of whose association are the conditions upon which, in 1843, the Free Church left the Establishment, and on which the trusts of property were constituted.

The respondents contend that there was an inherent right to legislate vested in their Assembly, empowering it to alter doctrine and constitutional principle. They could not maintain this absolutely, and yet they never would, and probably never could, suggest any intelligent or rational limitation. Enough has been already said to shew that the Westminster Confession was a basis, and an essential basis, of the Free Church at its foundation. The belief of a Christian Church must be founded in general upon Holy Scripture; but what differentiates one sect or church from another is their accepted and crystallized definition of what they hold those Scriptures to contain—in other words their creed, such as in the Free Church case was the Westminster Confession: see *Dill v. Watson*. (2) If an association of Christians adopt any one creed as the basis of their association, no one can cut and carve upon it without altering the foundation upon which that body has been associated. Unless power to alter is provided, or there is inherent power to alter, alteration cannot be effected against the wish of a dissentient minority. Now there was no express power to alter; neither was there any inherent or implied power to alter. The respondents contend that

(1) Ante, p. 545.

(2) (1836) 2 Jones Rep. (Ir. Ex.) 48.

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there is a common law right to alter doctrines by virtue of the legislative power inherent in the General Assembly acting through the majority of Assembly. They found upon Lord Cranworth's opinion in *Forbes v. Eden* (1); but the important distinction between the circumstances of that case and this was that the canons of the Episcopal Church had a passage empowering alteration: see Lord Chelmsford's opinion. Lord Cranworth's language is wider than his real meaning; all he really meant was that there was a power to make by-laws. But his Lordship's language cannot be stretched to support an unfettered and absolute legislative power to alter, not merely the incidentals of rule and order, but the foundation of the association. His judgment does not mean or infer inherent power to legislate in the wide and independent sense the respondents attributed to it. And Lord Eldon in *Craigdallie's Case* (2) guards himself by saying, if a religious body had made provision for alteration, that must be considered. In this case, if there was an inherent power to alter, it must be derived from the Church of Scotland, the true representative of which the Free Church claimed to be. But this was negated by the statutory history of that Church from 1560 right on to the union of the Crowns. As the Free Church took the constitution of the Church of Scotland as its constitution, you must necessarily look back to what that constitution was. Now the Acts 1560 and 1567 (defining jurisdiction), 1561 (power to deal with ministers maintaining doctrines contrary to the articles of Confession—the power of excommunication), and 1592 (presbytery first organised), and the many others which have been referred to, all dealt with matters of order and discipline, and there was no suggestion in any one of them of reposing in the Church judicatories any legislative power. The very term "judicatories," always applied in the statutes and since to the Assemblies major and minor of the Church, is itself suggestive. Then the Act of 1690 settled the creed, and throws one back on the Act of 1592 as defining what the position of the Church was: see the Acts 1693 and 1707, c. 6. There were

(1) (1867) L. R. 1 H. L., Sc. 568, 582.

(2) 1 Dow, 1, 16; 2 Bli. 529; 21 R. R. 107.

four points at issue—the "Protestant Religion" (i.e., the creed), the "Worship," the "Discipline," and the "Government." The first was fixed; the latter was then provided for. There is no justification, therefore, from the statutory history of the Church of Scotland as it existed prior to 1843 for inferring that the Church had, according to its constitution as fixed by parliamentary action, the slightest inherent legislative power to vary anything which was fundamental to that Church as a Church. It had power, no doubt, to regulate and order its general affairs by canons or by-laws, but not to alter doctrine or anything else fundamental. Could it, for instance, alter its form of government from Presbyterian to Episcopalian?

Next, the respondents found on the Barrier Act of 1697 (1), and maintain that that Act was an assertion of the right to innovate in doctrine, worship, discipline, and government. The Barrier Act was not an Act of Parliament, but only of the General Assembly. That Assembly had been instrumental in obtaining the Acts of 1690 and 1693 ratifying the Confession of Faith and fixing the Presbyterian Church government as the only government of Christ's Church within this kingdom. Is it conceivable that four years afterwards the very same Assembly should be found asserting for itself a power, irrespective of the Crown and Parliament, to throw these statutes to the winds, and to alter both creed and government? And as the Barrier Act was preceded by the Acts of 1690 and 1693, so it was shortly followed by the Act of 1707, when the union of the Crowns was accomplished on the express basis of maintaining intact the religion, worship, discipline, and government of the Church of Scotland already unalterably secured. If there is a difficulty in ascertaining the scope of an Act, the title can be looked at (2) to shew what was in the mind of those who passed it. Here the title is "For Preventing of Innovations," not for enabling of innovations. Then the question was, Does the adjective "sudden" apply to "alteration or innovation or other prejudice"—does it apply to them all, or only to "alteration"? The appellants maintain that the

(1) See Appx. G, p. 736.

(2) *Fenton v. Thorley & Co.*, [1903] A. C. 443, per Lord Macnaghten.

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H. L. (Sc.) word "sudden" only applies to the word "alteration." In 1904 the original document in manuscript there is a comma after the word "alteration." The Act contemplated that the common sense of the Church, when it had a year to think, would be sufficient to protect the Church against any innovation. But what was the Act directed to? Only the making of binding rules and constitutions—that is, regulations or by-laws. In laying down how these were to be adopted, the Church was really providing that in their adoption there should be a safeguard against any accidental or attempted alteration or innovation. There is no word in the whole Act which enables the Church to do anything. It is a limiting or preventative Act; and the Church's history for the 136 years which followed its passing down to 1833, when the ten years' conflict commenced, proves that the respondents' contention is wrong, for in all the Acts of Assembly of the Church of Scotland there is no one single Act to which the respondents can point as supporting their contention by shewing alteration or innovations affected by use of the forms of the Barrier Act. If there was this assertion of legislative power, where is the limitation of it except as a matter of procedure? The respondents must claim the power to alter and innovate, not merely doctrine, worship, and discipline, but government, and that they could under the Barrier Act turn the Presbyterian Church into an Episcopalian Church, or even a Mahomedan one. If they are right, the Church could abolish the Barrier Act itself to-morrow, and claim to alter and innovate without even its restrictive procedure. The respondents rely again on post-disruption examples of innovation under the Barrier Act—for instance, the changing the formula in 1846. But that was not an act of alteration or innovation. It was the logical sequence of disruption adopting the formula of the Established Church to the situation created by the disruption. Nor can the respondents rely on the union with the Secession Church in 1852, for the Secession Church de plano accepted the position of the Free Church. In that union there was no departure from doctrine or principle on the part of the Free Church. It may be here pointed out that the Established principle was of

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the essence and very root of all the various Secession Churches at their origin. They only became Voluntaries after a long course of years. The respondents also rely on the Mutual Eligibility Acts of 1873 and 1874, allowing ministers of the United Presbyterian Church to become ministers of the Free Church. But the concession was carefully guarded, in that the said ministers had to accept the position of the Free Church. They can also place no reliance on the union with the Reformed Presbyterians in 1876, for the latter accepted without reserve the existing formula of the Free Church. The respondents further, feeling that their claim of inherent legislative power must have some limit, suggest as a condition or limitation of it that alterations or innovations made must not be inconsistent with the "identity of the Church." But it is asked, What defines the identity of the Church? Is it not the identity of the doctrines it professes? They also rely on the point that the Church first adopted of its own accord in 1560 Knox's Confession, and maintain that what it adopted it can change or discard. But their history is wholly fallacious. It is quite clear from the statutes that it was the State which adopted the creed. There was then no Church. The creed of the nation preceded the Church of the nation. In the Act of 1560 everything was done by the State.

Then as to the alleged adoption in 1578 as one of its standards of what is called the "Second Book of Discipline." (1) There is no doubt that book had its origin between 1578 and 1581 as the work of a committee of the Assembly of those days. In the Claim, Declaration, and Protest of 1842 there is the only important reference to it as a standard, and founding on its support of the position that a minister must receive a call from the congregation before he can be admitted to a cure of souls. But that is an incidental reference only to the book, and though it refers to it as one of the authorized standards, where these standards of the Church are deliberated and enumerated in 1851 (2), the Second Book of Discipline is not included. Now the Second Book of Discipline never was a standard of the Established Church. The

(1) See Appx. D, p. 727.

(2) See Appx. I, p. 748.

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Church submitted the Second Book of Discipline to the Legislature for approval, and none of the powers which were claimed by it for the Church were ratified by Parliament except those specially set forth in the Act of 1592, which Act adopted certain passages from the Second Book of Discipline and rejected the rest. The history of the book is made clear from the Acts of Assembly set out in the "Book of the Universall Kirke." That was the general Church, as distinguished from particular churches. It was a long time before the Assembly became strictly an Assembly of the Church; in the earlier years barons and members of the Estates of Parliament as well as ministers attended. Then it was the practice to send up for consideration to the Crown and Parliament certain articles to be considered and passed into Acts—bills, in fact, submitted for Acts dealing with Church interests. It must be admitted, therefore, that at that period the Church did not set up as having any legislative power, but considered matters, and then sent them up to be dealt with by Parliament. And this book was just one of those things which was sent up for consideration, and a portion of which—a very small portion—was adopted, to the exclusion of the rest: *Adoptio unius exclusio alterius*. The Act of 1690 only re-enacts the Act of 1592. From the heading of the Second Book of Discipline, as printed in the edition produced by the respondents, one might suppose it was adopted by both the Acts of 1592 and 1690; but that is quite erroneous. Of the excerpts from the Second Book of Discipline the respondents chiefly found on chap. 7, s. 8 (1): "they," i.e., the Assemblies of the Church, "have power also to abdicate and abolish all statutes and ordinances concerning ecclesiastical matters." But s. 2 says Assemblies are of four sorts: "For other are they of particular Kirkis and congregationis ane or ma" (that is Kirk Sessions or presbyteries), "ather of ane province" (that is a Synod), "other of ane haill nation" (that is the General Assembly), "or of all and diverse nationis professing ane Jesus Chryst" (that is Ecumenical Synods); and what follows is general of all these, and not confined to the General Assembly alone. It therefore

(1) See Appx. D, p. 727.

cannot be said that s. 8 imports an assertion of legislative power on the part of the Assembly when you find it has reference to Kirk Sessions as well as General Assemblies. It is quite true that they are (s. 6) to keep the religion and doctrine in purity, to keep comeliness and good order in the Church, that they may make rules and constitutions appertaining to the good behaviour of the members, and that power is asserted for them to abrogate all statutes and ordinances concerning ecclesiastical matters that are found noisome or unprofitable, or agree not with the time, or are abused by the people. But the whole purview shews that regulations or by-laws only were in the minds of the writers, and that they had no idea of asserting a right to legislate upon all matters fundamental to the Church's constitution. See also an emphatic assertion, not only of the duty of the State to establish, but also to endow the Church in chap. 10, arts. 1, 2, 5, and a sharp distinction drawn between what falls under the power of the Sword and what under the power of the Keys in s. 7. The Second Book of Discipline was in fact simply a book of ecclesiastical polity, parts only of which were adopted by the Act of 1592, but it never was a part of the Church's constitution. However, there is one portion of it which the disruption members in 1842, and the Free Church in 1843, did declare to be in their conception a part of the constitution, namely, the principle of non-intrusion enunciated in chap. 3, s. 5. It is for the respondents to define "as heretofore understood." They do define it, by saying that it was part of the constitution of the Church that no minister should be intruded upon the congregation. That had no effect at the time, because patronage survived for nearly 300 years after 1578. Disregarding history, the Free Church assert that they understood that to be part of the constitution of the Church. That understanding they certainly carried into the constitution of the Free Church. But how does that support their assertion of legislative power? It is further true that Acts of the Assembly in 1638 and the three or four following years were couched in legislative language. But the country was in chaos; Parliament and the Assembly in revolt; the country in fact governed by the

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Assembly and not by Parliament. From the usurpations of such an Assembly you cannot deduce constitutional rights unless by subsequent adoption these usurpations become constitutional. The situation was this: in 1618 King James promulgated his five articles of Perth. These articles tried to introduce popish, or at least episcopal, rites and ceremonies, and first roused the country. Then Charles I. brought about what is called the Second Reformation by issuing his canons and constitutions ecclesiastical, but more particularly by the endeavour to impose on Scotland "Laud's Service Book." These Acts of the prerogative roused Scotland. There were certain committees called the "Tables," which committees practically, in conjunction with the Assembly, governed Scotland for ten years. In February, 1638, the Covenanters swore to the National Covenant, and in the end of that year the first General Assembly that had met for many years was called, and passed all the Acts the respondents rely on. But then it must be remembered that a few months after the Covenanters were in arms against the King. Charles found himself unable to oppose them, and instead he, in 1639, made a treaty with them. Though they legislate in words in their Assembly, by virtue of that treaty they at once go to the King for a ratification in Parliament of all they had attempted to do: see the book called "The Acts of the General Assembly of the Church of Scotland," pp. 9, 21, 36. One term of the treaty was that a lawful General Assembly should be held; and it was held in 1639—an Assembly on a very different footing from the rebellious Assembly of 1638: see the "Act containing the Causes and Remedies of the Bygone Evils" (1); see also Lord Justice-Clerk Inglis in *Forbes v. Eden*. (2) The independent position assumed by Parliament during the same time is shewn by a reference to their Acts. (3) Again, the respondents found on the adoption of the Westminster Confession in 1649 as a recognition of legislative power. But all that is done

(1) Acts of the General Assembly, 601, 602; 6 Thomson's Acts, 150, 270, 271, 276; Husband's Collection of Printed Orders, 1646, p. 208.

(2) (1865) 4 M. 143, 156.

(3) 5 Thomson's Acts, 593, 599,

must be read in the light of the history of the period. Although the Assembly adopt the Westminster Confession in terms ex facie absoluto, their Act is at once submitted to Parliament for ratification; it is the parliamentary action which is effectual. (1) These two episodes in the history of Scotland do not establish anything like a legislative power in the General Assembly of the Church. Then we come to actings of the Church in 1833 to 1843, the ten years of ferment which initiated the disruption. The Acts of these years were Acts of internal regulation which hardly deserve the name of legislation. Nevertheless in passing them the Assembly incidentally interfered with civil rights depending on statute, and so stepped beyond its power. So little were they regarded as Acts of legislation that the provisions of the Barrier Act, about which so much has been heard, were not observed except in the case of the Veto Act of 1835. They were treated merely as Declaratory Acts, and not as in any way altering doctrine, discipline, or government. The Veto Act which immediately caused the disruption was "An Act on the Calling of Ministers." (2) This did pass the Barrier Act. Even this could hardly be called legislation, for it merely amounted to the laying down by the Church for the Church of the method by which ministers were to be admitted to the charge of congregations. To the Church had been committed by statute the examination and admission of ministers. What it did by the Veto Act would have been quite within its function, if it had not proceeded on lines which injuriously affected civil rights protected by statute. What it did is no ground for saying that the Church had legislative power. The disruption documents of 1842 and 1843 make it perfectly plain what was meant by the words "as heretofore understood." They must be read with reference to the non-intrusion struggle which preceded, and the issue of which caused the disruption. What the Church was then striving for they styled in the Claim and Protest of 1842 and 1843 spiritual independence—the independence of the Church in matters spiritual. But this assertion of spiritual independence was, when the surrounding history is reviewed, clearly seen to be

(1) 6 Thomson's Acts, 161.

(2) Ante, p. 529.

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the assertion of the right of the Church uncontrolled by the Civil Courts in spite of patronage to regulate the calling and induction of its own ministers. It amounted to nothing further. Lastly, this judgment cannot stand in the face of the Kirkintilloch case (*Craigie v. Marshall* (1)) and the Thurso case (*Couper v. Burn*. (2)) These are direct authorities, so far as the Supreme Court is concerned, in favour of the appellants.

It is difficult to imagine that the Barrier Act was intended to give the Church the liberty of altering the Confession of Faith, or of altering the Presbyterian Church government, having in view that in 1690, 1693, 1703, and 1707 these were solemnly ratified and established. Further, the statutes provided machinery which made it absolutely impossible—at all events clearly in the views of any Assembly—to alter the Confession of Faith. Great light is thrown on what were the essential doctrines of the Church by seeing what were the declarations made by those who entered it as to what in their view was fundamental, and both the Established Church and the Free Church provided machinery by which they secured that the creed of the Church and the form of Church government should be unalterable in all time coming.

The Declaratory Act of 1892 (3) of the Free Church was really passed for the purpose of enabling people who could not conscientiously subscribe the Confession of Faith to enter the Church, and there is a great similarity between the objects of the Declaratory Act of the United Presbyterian Church, for there were men of the modern school of theology who felt it difficult to become office-bearers in the Free Church when the Free Church required a rigid adherence to the Confession of Faith in all its parts. In fact, the contract of union allowed each party to it to entertain their own views about theological subjects. The whole creed might be ultimately reduced to a few propositions. Under the Apostles' Creed you could have a Christian Church, but not a Calvinistic Church. The union threw the whole of the Free Church religion loose, and the

(1) (1850) 12 D. 523, 559.

(2) (1859) 22 D. 120.

(3) Ante, p. 543.

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elders and congregation might be compelled to admit to ministrations and sustain out of the trust funds persons who held views diametrically opposed to the Confession of Faith.

Asher, D.F., and Haldane, K.C. (with them *Guthrie, K.C., and Orr*), (all of the Scottish Bar except the second), for the respondents. The question is whether the property which belonged to the Free Church in 1900 now belongs to the appellants or to the respondents. Now the property (see condescendence 46) was not given upon any specific trust beyond what is implied from the fact that it was given to the Free Church. Then what is to be determined is, What were the conditions and limitations under which the Free Church held the property, and have they, in effecting a union with the Presbyterian Church, so infringed these conditions and limitations as to forfeit all right to the property? The person giving the money in effect said, "I give it to the Church, and in giving it to the Church I delegate it to the Church to deal with it according to the whole scope of the Church's power; I put no limitation on the Church, and I do not in giving it to the Church say it is to be subject to any specific restriction." If it can be shewn that the Church had power to do so, they can spend it as they please—that is, if its constitution includes a power to alter the particular destination of the property. What is said is that the union has caused the Free Church to be no longer the Free Church in the sense of holding the property which belonged to the Free Church, on the ground that by the union the Free Church has renounced what is called the Establishment principle, and that it has also effected a change in its doctrines; and the contention is that both acts were beyond its powers. The respondents' answer is that neither has been done in fact; and even if they have been done in fact both are within the powers of the Free Church. There is nothing which can be termed a "form" of constitution of the Free Church, and accordingly a "form" has to be discovered from the circumstances under which the disruption took place, and a consideration of the documents which were written and exchanged at that time,

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along with other circumstances as to what were the rules which bound the Free Church with reference to the administration of its property. Now the circumstances under which the party which became the Free Church left the Establishment are of vital importance. Their view of their own position was that they had become the "Church of Scotland Free"; that they were not a new Church, but had shaken off the fetters of Establishment; that they carried with them all the standards of the Church, with the difference that, being no longer connected with the State, they dropped the statutes as they were no longer a State Church and took the standards of the Church of Scotland, as they expressly stated, "as heretofore understood"; and that they entirely dropped the Confession of Faith as having any statutory status in the Church. They said, "We take the Confession of Faith subject to certain qualifications which we declare we hereby attach to them." The words "as heretofore understood" lie at the root of the case. The Free Church party when in the Established Church always maintained, in opposition to the moderate party, that the Church did not owe its existence to the State, that the Church had adopted the original Confession of Faith as a Church, and that the statutes which had been passed from time to time recognising the Establishment by their terms left the Church absolutely free in spiritual matters. The moderate and opposite side contended (and their contention was upheld by the law) that the statutes defined what were the rights of the Church, and that whenever any question arose in regard to the title of the Church to do a particular thing, then that had to be determined by an examination of the public statutes which had established the Church. There was that opposite current of thought running through the Church for a long period of time. In short, one view was that the Church was a Church by its own inherent power as a member of the Body of Christ, and the other that the Church was an institution sanctioned by law; established by statutes, and the limits of its power determined by the construction of the statutes. It was that which led to the disruption, the immediate cause being the Chapel Act, May 31, 1834, and the

Veto Act, May 29, 1835. The majority asserted the right on the part of the people of every congregation to reject a presentee, and that majority (afterwards the Free Church) claimed that view upon the ground that it necessarily followed from Christ being the Head of the Church, and there being no civil power in the Church apart from Him. That the Church had the power within itself of regulating matters of that kind, and that the civil law could not interfere. That was the attitude of the party who became the Free Church, and that is the basis upon which they established their Church. Another document, the resolution of May 23, 1838 (1), throws light on their attitude. That formulated in the Assembly the Free Church party position as absolute spiritual independence, and that the acceptance of that would be laid upon every person, ministers, office-bearers, and members of the Church. The above documents laid the train for all the cases which followed, and when the decision was against the majority they said, "Very well, it now being declared that the law is different from what we contend, we cannot remain in the Establishment, and accordingly we leave it for the purpose of becoming a Church free"—that is to say, free to carry out the principles for which they had contended. The chief cases were as follows: The first Auchterarder case (*Earl of Kinnoull v. Presbytery of Auchterarder*) (2); the second Auchterarder case (*Earl of Kinnoull v. Ferguson*) (3); third Auchterarder case (*Earl of Kinnoull v. Ferguson*) (4); second Strathbogie case (*Presbytery of Strathbogie v. Minority of the Presbytery*) (5); first Strathbogie case (*Edwards v. Cruickshank*) (6); third Strathbogie case (*Cruickshank v. Gordon*) (7); Culsalmond case (*Middleton v. Anderson*) (8); Stewarton case (*Cunninghame v. Presbytery of Irvine*) (9); Lethendy case (*Clark v. Stirling*) (10). These cases bring out the attitude of the party which formed the Free

(1) See Lord Macnaghten's opinion, post, p. 632.

(2) (1838) 16 S. 661; (1839) MacL. & Rob. 220. See report of *Auchterarder Case*, by Charles Robertson, Edinburgh, 1838, 2 vols.

(3) (1841) 3 D. 778.

(4) (1843) 5 D. 1010.

(5) (1840) 2 D. 585, 587.

(6) (1839) 2 D. 258, 282.

(7) (1843) 5 D. 909.

(8) (1842) 4 D. 957.

(9) (1843) 5 D. 427.

(10) (1839) 1 D. 955.

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H. L. (Sc.) Church, and they demonstrated that that attitude was one of complete spiritual independence and power to regulate their own affairs: see specially the judgments in the *Stewarton Case*. (1)

As to the legislative power, the Free Church party in 1843 asserted that there was legislative power within the Church, and they constituted themselves at the disruption upon that principle. The Act of Assembly, dated June 8, 1847, brings out very sharply the views of the Free Church as to their legislative power; as also the Catechism issued a few years after the disruption by the unanimous resolution of the Free Church. The Free Church adopted the Confession as an act of the Church, and, having adopted it, they might substitute for it a new Confession, and there was nothing to prevent them rejecting it; for the same power which enabled them to adopt it enabled them to dispense with it. They complied with the prescribed form. Question 231 (2) in the Catechism brings that out very sharply. Just as the Church could in 1560 of its own motive decide to make John Knox's Confession the Confession of the Church, so they have power to change. The position taken up by the Free Church unanimously (almost immediately after it was formed) was that the faith which it then professed was due entirely and exclusively to the Church's own act, and that it had adopted it freely and of its own will; and it necessarily followed that the body that can adopt can make a change. If a Church accepts the status of Establishment on the basis of accepting a particular Confession, then there is a contract between the Church and State which compels the Church so long as it is a party to the contract to adhere to that Confession. But where the Church is apart from the State altogether, and where there is no person with a title to interfere except individual members of the Church, then the case comes to this: that the basis on which the members associated was a basis which entitled certain alterations to be made from time to time. And all who joined the Church must be assumed to have known that they were joining a body who had assumed and exercised that power. For example, where a person joined

(1) 5 D. 427.

(2) See Appx. N, p. 760.

the Church in 1843 and found a certain creed adopted, the question would arise, How did it become the creed of the Church? The answer was, it became the creed, as the Catechism says, by the voluntary adoption of the Church.

The Act of Assembly, July 4, 1562 (1), is an illustration of

(1) "PART II.

"ACTS OF ASSEMBLY.

"A.—DOWN TO 1843.

"1. 4th July 1562.

"Touching the removeing of Idolatrie, the Kirk now, as of before, concludes humble supplication to be given in to her hienes, but the manner how, they have referred to farther consultation of her Majesties Secret Councill.

"That supplication be made to her hienes for punishing of all vyces commanded by the Law of God to be punished, and yet not commanded be the law of the realme, viz., blasphemie of God's name, contempt of his word and Sacraments, profanation of the saman be sick as were not lawfully called to the ministratioun thereof, perjurie and the taking of the name of God commonlie in vaine, breakers of the Sabbath day. In keeping of common mercats, adulteries, fornication, filthie talking; and further, that punishment be execute upon the transgressors of the last proclamation made against massmongers and hearers.

"Anent the actiones of divorcement, to make supplication to the Secret Councill, that either they give up universallie the Judgment of divorce to the Kirk and their Session, or else to establish men of good lives, knowledge and Judgement, to take the order thereof; provyding allwayes that the saids Lords make provisione and ordinance how the guiltie Persons shall be punished.

"And sua dissolveth this Assembly,

and appointed to convey again the 25th day of December next to come in Edinburgh.

"(Sic subscriptur) JOHN GRAY.

"2. 1566. *Confession of Helvetia Approved.*

"The Assemblie being advised with the interpretation of the Confessioun of the Tigurine [i.e. Zurich] kirk made by Mr. Robert Pont, ordeaneth the same to be printed, together with the epistle sent by the Assemblie, allowing the same, providing a note be putt in the margin of the said Confessioun, where mentioun is made of the remembrance of some holie days, &c. In this Confessioun, superioritie of ministers above ministers is called an humane appointment; confirmatioun, a device of man; baptisme by weomen is condemned; prolix prayers, hindering the preaching of the Word; canonicall houres, that is, prayers to be chanted, and often repeated at sett times, as the Popish maner is, heaping up of ceremonieis to the prejudice of Christian libertie, observation of sancts' dayes. But this Assemblie would not allow the dayes dedicated to Christ, but tooke exception against that part of the Confessioun; yea, our Assemblie meete often upon the 25th of December, so that manie of the ministrie could not be at home in their owne parishes, to teache upon Christ's nativitie. This Confessioun, called commounlie the Latter Confessioun of Helvetia, was allowed not onlie by the Kirk of Scotland, but also Geneve, Savoy, Pole, Hungarie; but not the Kirk of England, because of the manie

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the Church accepting a Confession of Faith, but only in part—taking exception to certain parts which it does not accept: see also Act of Assembly, 1581. Referring to the Book of Discipline, Lord Justice-Clerk Hope said no doubt, if the Church had got the Book of Discipline recognised by the Church, then, “they would have had the power to do anything they liked, because the powers presented for the Church in the Book of Discipline are so large.” With regard to the Free Church, now that they are away from the State and took the Book of Discipline with them, they must be held to have all these extensive powers, which Lord Justice-Clerk Hope said would have belonged to them as an Established Church if the Book of Discipline had been recognised by the State. In the Act of Assembly, 1590, there is again a reference to the Book of Discipline, and in the Act of July 4, 1591, subscription to the Book of Discipline is insisted on. Then see the Acts, December 6, 1638, and December 8, 1638. (1) These Acts prove that the

corruptions maintained by them, which are condemned in it. . . .

“4. April 1581.

“Forswameikle as Travells has been taken in the forming of the Policie of the Kirk, and diverse Sutes made to the Magistrate for approbation thairof; quhilk albeit as yit hes not takin the happie Effect quhilk gude men wald crave, yit that the Posteritie sould judge weill of the present Age, and of the Meining of the Kirk: The Assemblie hes concludit that the Buik of Policie agriet upon in diverse Assemblies before sould be registrate in the Acts of the Kirk, and to remaine thairin ad perpetuam rei memoriam; and Copies thairof to be taken be everie Presbyterie. . . .

“7. Julii 4, 1591.

“Anent the Subscription of the Buik of Policie injoynt in the last Assemblie, in respect the greatest

Part of the Presbyteries as yit hes not satisfiet the Ordinance of the Kirk; the Assemblie hes ordaynit the former Act to be observit and execute betwix and the next Assemblie, and the Moderator of everie Presbyterie to sie to the Execution therof under the Pain of 40 Pound to be employit to the Use of the Puir besyde the publick Rebuke in the opin Assemblie.

(1) “December 6, 1638. *Condemning the Service Book, Book of Canons, Book of Ordination, and the High Commission.*

“I. The Assembly having diligently considered the Book of Common Prayer, lately obtruded upon the reformed Kirk within this realme, both in respect of the manner of the introduction thereof, and in respect of the matter which it containeth, findeth that it hath been devised and brought in by the pretended prelates without

Free Church took with them the legislative power and authority which the Church of Scotland had historically. If they were a legislative body, then it will have to be shewn that

direction from the Kirk, and pressed upon ministers without warrand from the Kirk, to be universally received as the only forme of divine service, under all highest paines, both civill and ecclesiasticall; and the book it self, beside the popish frame and forms in divine worship, to containe many popish errors and ceremonies, and the seeds of manifold and grosse superstition and idolatrie. The Assembly, therefore, all in one voice, hath rejected and condemned, and by these presents doth reject and condemne the said book, not only as illegally introduced, but also as repugnant to the doctrine, discipline, and order of this reformed Kirk, to the Confession of Faith, constitutions of Generall Assemblies, and Acts of Parliament establishing the true religion; and doth prohibite the use and practice thereof, and ordaines Presbyteries to proceed with the censure of the Kirk against all such as shall transgresse.

“II. The Assembly also taking to their consideration the book of Cannons, and the manner how it hath been introduced, findeth that it hath been devised by the pretended prelates without warrand or direction from the Generall Assembly, and to establish a tyrannicall power in the persons of the pretended bishops over the worship of God, men’s consciences, liberties, and goods; and to overthrow the whole discipline and government of the Generall and Synodall Assemblies, Presbyteries, and Sessions formerly established in our Kirk.

“Therefore, the Assembly, all in one voice, hath rejected and con-

demned, and by these presents doth reject and condemne, the said book, as contrare to the Confession of our Faith, and repugnant to the established government, the Book of Discipline, and the acts and constitutions of our Kirk, prohibits the use and practise of the same; and ordains Presbyteries to proceed with the censure of the Kirk against all such as shall transgresse. . . .

“9. *Act of the Assembly at Glasgow, December 8, 1638, declaring Episcopacie to have been abjured by the Confession of Faith, 1580, and to be removed out of this Kirk.*

“The Assembly, taking to their most grave and serious consideration, first, The unspeakable goodnesse and great mercy of God, manifested to this nation, in that so necessarie, so difficult, and so excellent and divine work of reformation, which was at last brought to such perfection that this Kirk was reformed, not only in doctrine and worship, but also, after many conferences and publick reasonings, in divers nationall Assemblies, joyned with solemne humiliations and prayers to God, the discipline and government of the Kirk, as the hedge and guard of the doctrine and worship, was prescribed according to the rule of God’s Word, in the Book of Policie and Discipline, agreed upon in the Assembly 1578, and insert in the register 1581, established by the acts of Assemblies, by the Confession of Faith, sworn and subscribed, at the direction of the Assembly, and by continuall practise of this Kirk. . . .”

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H. L. (Sc.) 1904 they have done something which limits their power to be able as the Free Church to legislate about anything.

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OVERTOUN (LORD). That would depend entirely upon the extent of its power to change. A body can never cease to be the same body by exercising its inherent powers. If it does something which extinguishes itself, then it is non-existent; but if the body is constituted in such a way as that it has the inherent power to do something, so long as it is only exercising that power it is merely fulfilling one of its own functions. The respondents are not prepared to say that the Church could do anything that would be inconsistent with the position of being a Church of which Christ is the only Head and His Word the only standard. If the true definition of the position of the Church of Rome would make it fall within what is described as the basis of this Church, then the Free Church could have gone back to Rome. They could have made any alteration they liked on the Confession of Faith.

MACALISTER v. YOUNG. The Church changed the adoption of Knox's Confession for the Westminster Confession; yet there were differences between these Confessions. They were not identical on election; Knox's was much stronger. Then the Westminster Confession was much stronger on the Sabbath. The Church adopted the latter with the view to natural uniformity, and the Church in departing from one and taking the other was simply exercising its inherent power, and it followed they had the power to alter. The same power which enabled them to adopt the Confession enabled them to alter it. They not only voluntarily adopted the Westminster Confession of Faith, but they examined its terms, finding them satisfactory; and they adopt it with qualifications, shewing that they felt themselves entitled to have rejected it altogether if they chose. That was a very clear exercise of the Church's inherent power.

The Acts of Assembly are similar. The Church considered it had power by its own inherent legislative power to exclude Episcopacy. The Church refused to obey the five articles of

Perth. The first of the Barrier Acts was in 1639, and there was a complete sequence of them to 1697; but the title at the beginning is not a part of the Act; it was merely a docket put on by the officials of the Assembly. The Barrier Acts were never intended to confer a power which the Church assumed that it had at that time inherently, but were for the regulation of the exercise of the power. Principal Hill (1) and Dr. Cook (2) (authorities in ecclesiastical law) both support the view that there was an inherent legislative power in the Church. The documents establish that historically the Church had an inherent legislative power, and exercised that power on a great variety of matters as far back as there was record, and passed the Barrier Act for the purpose of regulating the manner in which the legislative power was to be exercised. And, further, the terms of the Barrier Acts shewed the Church had within its scope matters relating to doctrine, discipline, and government. The question is not in fact what was the power, but what was the power the Free Church party claimed in 1843; and it is enough for the respondents to shew that the Free Church in 1843 had a certain theory of what were the powers of the Church, which they had maintained during the disruption period, and that that theory they put forward as their view of the position of the Church, and that they founded their Free Church upon that theory. Then in the "Claim, Declaration, and Protest" (3) there is nothing to justify the view that the Church made the question of Establishment an essential or fundamental principle of the Church. What the essence of the Church they were founding was that they were the Church of which Jesus Christ was the Head, and that no temporal power had any right to interfere with them at all. That was the essence, and not that of Establishment. What they said in effect in that declaration was: "Here are the statutes which have been passed for a long period of years, and the passages which give the Church exclusive jurisdiction in

(1) View of the Constitution of the Church of Scotland, by Rev. George Hill (3rd ed.), 1835, p. 4. (2) Practice of the Church Courts of Scotland, by Rev. J. Cook (1882 ed.), pp. 287-9.

(3) See Appx. G, p. 737.

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 spiritual matters; and although these statutes have been interpreted against us, we now appeal to the State to readjust matters, so that we may be put into the position these statutes legitimately led us to think it occupied." To say "They would deprecate any breach of connection between Church and State" is not the way to speak of a fundamental principle. They regret the breach; but it is another thing to say that the connection between the Church and State is a fundamental and essential principle which cannot under any circumstances be abandoned. They nowhere in these documents said that Establishment was a fundamental principle. In the Protest, although maintenance and support is spoken of, it is not spoken of as an essential principle of the Church, but simply as a matter which those who joined in the Protest regarded as a proper duty on the part of the State.

The clause relied on by the appellants is a clause which when properly construed is expressive of an opinion retained on the part of those who were protesting with regard to the duty of the magistrate, and not inserted there in any sense with the purpose of formulating an essential principle of the Church as it was to exist after its separation from the Establishment. It was a view with regard to a third party altogether external to the Church, not necessarily involved in any of the Church's functions, but really more a matter of economics than of fundamental faith, and accordingly it did not belong to the category of questions which could not be dealt with according to the will of the Church when it became thoroughly constituted as an independent Church. Dr. Chalmers is merely expressing an opinion when he speaks of the Government giving of its resources to maintain the Gospel, and he sums it up by saying, "We are the advocates"—upon a contentious matter upon which there was a great variety of opinions—"for a national recognition and a national support of religion, and we are not Voluntaries." The speech was merely a sort of public proclamation of the circumstances under which they were placed, but not in the sense of making an offer as a contract with all and sundry on the basis of that document. The model trust deed is one of the most important documents. It takes

its origin in the Act of 1844. The meaning of the words "Church to be identified as in the model trust deed" was that the terms of the model trust deed were to be taken as a guide. Here the minority represented by the appellants was less than one-third, and the case has not arisen which is provided for in the Act. The model trust deed was not merely a draft. It received the approbation of the Assembly, Act 1844, and the Assembly approved the report of the deed. Then on the separation the draft was unanimously approved of and recommended for adoption to the several congregations of the Church; and, further, the model trust deed is printed in the proceedings of the Assembly of 1851 with the Acts of the Assembly. In these circumstances it is out of the question to contend that the model trust deed was not one of the most authoritative documents, and it brought more in detail before all the adherents of the Church what was the constitution of the Free Church. The document frequently called attention to what was essential and fundamental: "It was at all times an essential doctrine of the said Church and a fundamental principle in its constitution that there is no other Head of the Church but the Lord Jesus Christ." Now there is not a word there about Establishment, and there are many other passages to the same effect. If the Church had intended to put forward as one of its great principles the maintenance of the constant striving to keep up the Establishment, surely they would have told the people in the parishes that if they formed themselves into a congregation in connection with the Free Church that that was one of their principles. Any congregation that joined the Free Church agreed to have the question what was the identity of the Free Church identified by the model trust deed; and therefore, as far as the congregation was concerned, the model trust deed was exclusive of everything else. The trust is defined, and the 4th clause shews the relation of the General Assembly to the Church: "Trustees to be subject in all things to the General Assembly"; so that the property was really placed subject to the control of the Assembly. What was the Free Church—for the purposes of the deed—was determined by the 9th and 10th clauses, which

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provided for possible contingent disruptions. The appellants have left the Free Church because they refused to unite. Therefore, if it is held that the appellants are right, that they are the Free Church, then it is not disputed that the respondents have cut themselves off from them, as the respondents have refused to accompany the appellants into the position which they took. There is, therefore, a cleavage in the Church. If the appellants had been in the proportion of a third, the 9th clause would have applied to their case; but they are not nearly a third. But the clause does apply to the respondents, for they are more than a third—in fact, nearly the whole Church. The difficulty is that they are more than a half, and, therefore, not a minority. It does seem an extraordinary thing that when the Church separated from the Establishment in 1843, if the duty of the civil magistrate to maintain and support the Church was an essential and fundamental principle of the Free Church, that in the model trust deed there is not a single word about Establishment. The questions to deacons in the Act 1846 (1) coincide with the view that from beginning to end

(1) "XIV.—ACT XII. 1846—ACT ANENT QUESTIONS AND FORMULA.

"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 licence to preach the Gospel, and by all office-bearers at the time of their admission: And the General Assembly, in passing this Act, think it right to declare that

while the Church firmly maintains the same Scriptural principles as to the duties of nations and their rulers in reference to true religion and the Church of Christ for which she has hitherto contended, she disclaims intolerant or persecuting principles, and does not regard her Confession of Faith, or any portion thereof, when fairly interpreted, as favouring intolerance or persecution, or consider that her office-bearers by subscribing it profess any principles inconsistent with liberty of conscience and the right of private judgment.

"I.—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 de-

the Free Church took their stand upon spiritual independence as that which was essential and fundamental, and nothing else. H. L. (Sc.) 1904

clare 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?

"II.—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 authorised 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?

"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

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And the office-bearer or probationer who joined the Church, in accepting the Confession of Faith, is left free as regards conscience and private judgment on the matter of the duty of the civil magistrate, and that accordingly, at the very beginning of the Free Church, you have that liberty of individual opinion in the Free Church which was exactly the basis of the union in 1900. In the Act 1846 "nothing in the Confession of Faith is held as favouring persecution" applies to all parts of the Confession of Faith which relate to the civil magistrates, including that of the establishment of religion. The Act 1851 certainly recognises the duty of a Church as far as possible to carry out a union. The above-mentioned documents shew that the duty of the civil magistrate was not an essential principle.

Dr. Candlish, the most prominent man next to Dr. Chalmers, in dealing with addresses received from other Churches, gives his guidance as regards doctrine of Establishment. (1)

judicatories of this Church? Are you willing to subscribe to those things?

"III. PROBATIONERS, 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).

"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?"

(1) "And will the Assembly allow me in closing to say that I trust there will be no mistake in reference

to the sentiments I hold of other bodies of evangelical Christians. My friends will bear me witness that I am the very last person who would stand on the rigid assertion of the mere theory of Establishments for the purpose of keeping up division or schism in the Church. So far from that, it appears to me that the distinct refusal of the states and kingdoms of this world to recognise the only principle on which we can consent to have the Church established—their refusal to establish the Church of Christ while they recognise her spirituality and freedom—leaves us to a very great degree of practical liberty and a large measure of practical discretion as to the terms on which we should stand with other Churches. Is the division and schism of the Christian Church to be kept up by a question as to the duty of another party" (that is, the State) "over whom we have no control? Let it be that we maintain our

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Then we come to 1858, when the Assembly deliberately adopted the view that there was nothing in the union of the Free Church with the United Presbyterian Church in the Colonies which in any way affected the relations between the Colonial branch of the Free Church and the Free Church at home. The basis of the union with Victoria (1) is an example of the union in Nova Scotia, New Zealand, Queensland, and South Australia, and the Scottish Free Church refused to support the minority, and told them to go back to the fold they had left. Then as to the Mutual Eligibility Act, 1873. Prior to 1843 members of the Colonial presbyteries had been treated as Free Church ministers, and any ministers holding a parish in the Colonies were eligible for a Free Church call in Scotland without subscribing or doing anything to shew that their principles were in accordance with the Scottish Free Church. In 1873 the same privilege was extended to United Presbyterian ministers. No doubt that last Act was not passed unanimously, but the Act proceeded necessarily on the view that there was no essential difference between the United

different opinions as to the duty of the State to support the Church, and the duty of the Church to receive support from the State when it is given consistently with spiritual freedom: still, shall that question, which has become a mere theoretical question in the Church of Christ, and which, so far as we can judge, seems destined to be a theoretical question till the time when the kingdoms of this world shall become the Kingdoms of our Lord and of His Christ,—shall that question prevent cordial co-operation and harmony among ourselves, and our united action in defence of our common Protestantism against a common foe?"

(1) "Bases adopted in Unions recently consummated among Presbyterian Bodies in the British Colonies." They included the United Presbyterian Church as well as the Free

Church. The first is, "That the Westminster Confession of Faith, the Larger and Shorter Catechisms, the form of Presbyterian Church Government, the Directory for Public Worship, and the Second Book of Discipline be the standards and formularies of the Church. (2.) That, inasmuch as there is a difference of opinion in regard to the doctrines contained in these standards relative to the power and duty of the civil magistrate in matters of religion, the office-bearers of this Church, in subscribing these standards and formularies, are not to be held as countenancing any persecuting or intolerant principles, or as professing any views in reference to the power and duty of the civil magistrate inconsistent with the liberty of personal conscience or the right of private judgment."

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Presbyterian Church and the Free Church which should prevent a minister of the one becoming a minister of the other. That also goes to shew that the Establishment principle was not a vital principle of the Free Church. Then in the Act of 1892, "Anent Confession of Faith," there was no alteration of doctrine which it was not competent to the Free Church to make. The main point of that Act was to emphasize that view of that part of the Confession of Faith which dealt with free "offer of salvation to all men," as distinguished from the "foreordination of man to death." The Confession of Faith was never anything but a subordinate standard. The standard was the Scriptures, and neither Knox's nor the Westminster Confession professed to be infallible, and therefore they leave to the Church the interpretation of Scripture and the reconciling of the Confession of Faith with Scripture where, in the opinion of the Church, the Confession of Faith deviates from Scripture. The book "Sum of Saving Knowledge" had for ages been one of the subordinate standards of the Church. It is mentioned in the Act of 1851, which was the publication of the subordinate standards of the Church. It was spoken of as a practical application of the Confession of Faith. The Church was doing all it could to meet the difficulties which were entertained in men's minds with regard to a rigid and absolute unmodified acceptance of all views however extreme. The Established Church could not make any alteration in their standards without the consent of the State; but what was the use of freedom if the Free Church were not entitled to adjust the standards of their Church from time to time so as to meet difficulties in regard to the question to probationers and deacons, "Do you abjure and reject the Arminian heresy?" There was nothing in the Free Church formula which denied election; they combine always with the free offer of salvation the operation of God's grace by way of election. But they do extend the election doctrine so as to make it applicable to all those who repent and believe. The Act of 1892 merely gave formal expression that it was the duty of the Church in the circumstances, finding that the existing formulas were bars in the way of the Church doing her duty; it was her

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duty to consider the situation relative to that difficulty, and to make it plain what in the estimation of the Church was their interpretation of those phrases which to many minds appeared contradictory and ambiguous in the Confession of Faith. The appellants complain of the Act of Union of 1900, that the preamble authorizes probationers to take advantage of any of the Acts cited, namely, the Act 1647, the Church approving of the Confession of Faith (we say with qualifications), Act XII., 1846, of the Free Church Declaratory Act of 1879, of the United Presbyterian Church Act XII., 1892, with relative Act, 1894, of the Free Church. These all have been referred to except the Act of 1879 of the United Presbyterian Church. There the two doctrines, predestination and the free offer of salvation, were enunciated. Therefore there was nothing in the basis of union which effected any change. It was merely introduced as being a standard of the United Presbyterian Church side by side with the Acts of the Free Church. And the Act of 1879 is not substantially different from the Act of the Free Church of 1892. The position of the two Churches as regards Establishment was the same; there never was any imposition upon an office-bearer of the United Presbyterian Church of any view as to Voluntarism as a standard, and accordingly in the United Presbyterian Church there were plenty of people in favour of Establishment. No doubt the larger number were against it, and resolutions were passed in favour of disestablishment, but that did not affect the unity of the Church, because there was nothing in the United Presbyterian Church which imposed any particular view about Voluntarism in that way. There was diversity of view and complete freedom of opinion upon the matter. In these circumstances the respondents submit there was nothing in the union of 1900 which to any extent involved a departure from the principles of the Free Church. Taking the standards of the two Churches, and putting them in juxtaposition, there was nothing in regard to their general articles of faith which could be said to differentiate the one from the other; and in regard to the relations of the civil magistrate to the Church, there was nothing

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in the standards of either Church which precluded the union in this country any more than in the Colonies. A word as to the Second Book of Discipline. The Free Church carried it into their constitution for the purpose of exercising free from the State altogether all the powers of a complete spiritual independence. Spiritual independence meant absolute power with regard to everything spiritual in connection with the Church, and, having placed that as a fundamental doctrine, they are supreme, and, if unanimous, independent of every doctrine of the Church. Further, when a case comes before a tribunal of appeal which has to decide matters of doctrine, it is within the strict rule of evidence to look to works of authority upon the matters of doctrine which emerge even though not put in evidence in the Court below: *Read v. Bishop of Lincoln*. (1)

Now the first question was, Did the Free Church do anything by the Act of 1892 which was inconsistent with the Confession of Faith? What the respondents most strongly contest is that it would be proper, consistently with the standards of knowledge, for this House or any other Court to hold that the maintenance of the doctrine of predestination was inconsistent with the maintenance of the doctrine of the free offer of the Gospel to all sinners without distinction. These are two propositions which are held together by every Church, and which Christians of nearly every denomination say can be held together, either on the ground that the matter is a mystery which is not for them to inquire into, or on the ground that these conceptions are easily capable of being conceived as reconcilable if the proper speculative view is kept in mind. That is enough for the respondents, if they can shew first of all that the Confession recognises the Scripture as paramount, and then that these doctrines are distinctly laid down side by side in the Scripture itself. Now in the Act of 1892 there are two doctrines referred to and adopted. The doctrine of predestination is only referred to, and the doctrine of the offer of the Gospel to all is substantially affirmed. It was an emphatic statement of that side in contrast with the

(1) [1892] A. C. 644.

somewhat greater stress that is laid in the Confession of Faith upon the doctrine of predestination, and the only question which the House has to determine is, Is there anything in that statement, judged not simply by the unskilled interpretation of the "plain man," but according to the light of contemporary theological knowledge, which constrains the Court to hold that these two doctrines are inconsistent? The test is stated in the Confession of Faith itself. (1) It refers back for the test of validity to the Scripture itself; and consequently, if you find in the Scripture that the two doctrines are stated with the same apparent antithesis as appears in the Declaratory Act and other documents of the same kind, then these documents are to be read, not as affirming contradictory propositions, but as affirming two propositions, each of which is to be found in Scripture, and both of which are to be accepted. The Scriptures enunciate the doctrine of predestination (Acts 13, v. 48); also there is a distinct offer of salvation to all men (Romans 5, v. 18). The offer of the Gospel is in John 3, v. 16; 1st Ep. to John 2, v. 2; Colossians 1, v. 23; 1st Ep. to Timothy 2, vv. 4, 6; Titus 2, v. 11; 2nd Ep. of Peter 3, v. 9; and see Article 17 in the Prayer Book. The question was, Did people give their property to this Church in support of a doctrine opposed to the doctrine in the Declaratory Act? The two are not opposed. There is great confusion current regarding the difference between Arminianism and Calvinism. Calvin himself taught the offer of the Gospel to all men. The contradiction between the two doctrines was this: Arminius held that the source of man's salvation—of his power to take avail of the offer of the Gospel—lay in his own will alone; while Calvinism asserted that it also lay in the sovereign grace of God, and depended on the will of God in

(1) "(IX.) The infallible rule of interpretation of Scripture is the Scripture itself; and therefore, when there is a question about the true and full sense of any scripture (which is not manifold but one), it must be searched and known by other places that speak more clearly. (X.) The supreme

Judge, by which all controversies of religion are to be determined, and all decrees of councils, opinions of ancient writers, doctrines of men, and private spirits, are to be examined, and in whose sentence we are to rest, can be no other but the Holy Spirit speaking in the Scripture."

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manifesting that sovereign grace. That was the real difference between the two. The question was, Had the Free Church at the beginning made the assertion of the Calvinistic theory in an extreme form a condition of their trust—that is, the doctrine of predestination—in such a form as to exclude the possibility of the offer of salvation to all men? So little have the appellants regarded it as contradictory, that they have preached the offer of salvation every Sunday, as do all ministers. The fact is that in practice the two are treated as reconcilable, because it is seen that the notion of the contradiction arises simply from the pictorial and anthropomorphic images we form of the Divine Will as operative in space and time, and as a thing having some casual relation to another thing separated from it—the will of the human being. The Free Church taught the two views as consistent as the Scripture taught them as consistent. It is impossible to hold that two doctrines are contradictory which occur in the Scripture juxtaposed with one another. It was laid down in the Synod of Dort that the two were to be held together.

[EARL OF HALSBURY L.C. The Synod of Dort denounced Arminians, deprived them of all their property, and exiled them if they would not abandon the Arminian doctrine. They took a good practical view of what was necessary to suppress what they called heresy.]

The respondents cannot admit that this is Arminianism. The doctrine of Arminius was that the source of man's salvation lay in his own will, and not in the Will of God; and that was condemned. The appellants contended that in the statement in the initial paragraphs of the Act of 1892 there was a doctrine contradictory to the doctrine of the Westminster Confession. There is no admitted contradiction between foreknowledge and foreordination to salvation or the reverse of the particular individual, and the free will of that individual. You must hold the doctrine of predestination consistently with the free will of man to accept what is offered to him, and it is these two doctrines which are laid down in the Confession of Faith and in this Declaratory Act with almost equal distinctness. Nor can you overlook the fact that there is in the

formula of the Free Church a denunciation of Arminianism. Whoever comes into the Free Church comes in on the basis of the Declaratory Act—renouncing Arminianism in express terms. They must have had something intelligible in their minds, and what was intelligible was that they held this doctrine as a doctrine which was consistent with the Calvinism of the Confession. Calvin himself preached this doctrine: Calvin's Commentary on the Gospel of St. John. Commenting on the words "that whosoever believeth on Him may not perish," he says "that it was a remarkable commendation of faith that it frees us from everlasting destruction." Shortly, what occurred in the Confession of Faith was this: There were two things, the one foreordination by God, and the other the free will of man and the freedom of the offer which is made to man; and these two are held by theologians as consistent with each other. The Confession of Faith did not assert one to the exclusion of the other.

The point of predestination was not raised in the record or in the Court below; therefore it arises in this House for the first time.

[EARL OF HALSBURY L.C. That is so; but we have the materials before us, and must deal with them.]

There ought to have been a proof in the Courts below of what expert theologians thought of the matter. The *Lincoln Case* (1) is therefore relevant. However, the respondents' contention is that the two sides of the doctrine are asserted in Scripture, and there arises an antinomy (an apparent contradiction) between two principles which conflict, which are not to be judged from the standpoint of the plain man, or in a merely anthropomorphic fashion. The Westminster Commissioners, desirous of not letting one side of the antinomy be asserted to the exclusion of the other, laid stress upon the first; but both sides are in the Westminster Confession. And those who put forward the "Sum of Saving Knowledge" (2)—a Westminster doctrine drawn by a Scottish Commissioner, and a subordinate standard of the Free Church (see Free Church Act,

(1) [1892] A. C. 644.

(2) Called a Practical Application of the Doctrine of the Confession.

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H. L. (Sc.) 1851)—were of opinion that there was nothing in the Confession of Faith which prevented them from regarding the two as part of a homogeneous whole of doctrine: see arts. 4, 6, 7, 9, 10; chap. 2, arts. 2, 3. In chapter 2 there is a definition of God. The 3rd article contains the doctrine of the Trinity stated in the most abstract form, which is as incomprehensible a mystery as is the doctrine we are dealing with. It is laid down as part of the most systematic reasoning and most profound systems of speculative thought that inconsistency not only does not arise, but it is even blasphemous to assert that a man's will is not free to this extent—that although predestined and controlled by the will of God, he is at the same time free and responsible for the acceptance or non-acceptance of the offer of salvation: Taylor's *Elements of Metaphysics* (1903), 362; see also Bradley's *Ethical Studies*, 19; Vatke's *Die Menschliche Freiheit* (1841 ed.), 414.

[THE EARL OF HALSBURY L.C. mentioned a translation of the minutes of the discussion of the Westminster Confession by the librarian of the British Museum, Archbishop Ussher's *Formula of Irish Articles*, and an extract from the Council of Constantinople, 1642, which his Lordship translated.]

There it is said, "By the Will of God alone." That is just what Vatke condemned in St. Augustine, that he rode that doctrine to death; he put in the word "alone." In the Confession of Faith you find two standards apparently in contradiction; but you are warned that they are not really a contradiction, but that it is a high mystery, and it is enough to say that the Church said this is a mystery to be received as a matter of faith, and therefore that there cannot be any contradiction. Dr. Chalmers's *Prelections on Butler's Analogy* (1849 ed.), 312, 313, stated that Calvinism and the free offer of the Gospel for him, Calvinist as he was, went together: see also his *Institutes of Theology*, vol. viii. 403-407; (1883 ed.), 319; and Canon Mozley on the Augustinian Doctrine of Predestination. It has been the view, not only of the Free Church, but of the Established Church before them, to teach both these doctrines as not irreconcilable.

Now what sort of Church did the Free Church seek to

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found in 1843? The question may be conceded to be one of contract and of trust springing from that contract, and the question is what was that contract and what was the trust. It was a trust "for behoof of the Free Church," and the question is what the Free Church meant. The principal object of the disruption was not to get rid of Establishment, but to shake themselves free of the interference of the Civil Courts, and to be able to determine all the controversies raised for themselves. The identity of the new Church consisted, and was intended to consist, in its form of government. A Church does not depend for its identity on its doctrines. It is an organization on a democratic basis which, like a living organism, preserves its form amid the changes of its material. The limit to what the Church could do was that they could not, by what is called an act of apostacy, put an end to the identity of their organization. If the Church committed such an act as to disentitle it to be called the Free Church founded under the Headship of Christ and the teaching of His Word, then it would cease to be the beneficiary under the trust for the Free Church. But so long as it retained its identity as a Church, the fundamental principle of which was the Headship of Christ, it could adopt or modify or change its doctrines. If they had a government which was supreme and exclusive in matters of doctrine, then they could change the doctrine. The test of personal identity of the Free Church lies not in doctrine, but in its life—in the continuity of its life—as ascertained by the fact that the majority have continuously kept on doing these things assumed to be within their competency—in other words, of its government. Then as to property, the Free Church intended to put its property at the disposition of the General Assembly, which had power over doctrine and exclusive jurisdiction: see the fourth purpose of the trust deed. Stress must be laid on what was done in 1843, before there was any talk of property to found a Church—that is to say, an organization with a particular form of government based upon the constitution of the old Established Church as understood by the Free Church. Its identity depends, just as does the identity of a club, on whether its constitution at a particular time is the

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work of the majority acting in general meeting within their powers. What was its nature? The Free Church was absolutely exclusive by the intention of its founders, as manifest in their documents and in their actings, of the power of the Civil Courts to enter and scrutinize their documents. There could have been no power to raise any question of interdict upon the question whether the formula changed the Confession. There could have been no power to question the power of the Church in commissioning a minister to preach the true Gospel. It was the province of the Church to determine the question of doctrine, and the Civil Courts were bound to accept the interpretation which the contract assigned to the Church exclusively. Now, what has the Church done? After all it has entered into a union with the United Presbyterian Church, preserving the things which we have described as the only essentials. The Free Church are entirely at one with the United Presbyterians on the Headship of Christ, His Word as the only rule of faith, and the Presbyterian form of government. There are minor matters also on which they agree—the duty of the civil magistrate to observe religion, observance of the Sabbath, law of marriage, and so on—both falling short of a duty at any time to set up a form of Establishment. The Free Church in 1900 made what might be called an interpretation of their principles as they were held in 1843. It may or may not have been an alteration; but if so, it was an alteration to give effect in the completest fashion to their paramount purpose—the preaching of the Word of their Master. That was an object the two Churches held in common, and the Free Church considered that it was entitled to subordinate the manner to the measure, and to put that forward. They considered it was within their competence, because they held in 1843 that the first thing they had to do was to constitute themselves a Church with certain powers; that the property had been put, not on certain defined trusts like the congregational property in *Craigie v. Marshall* (1), but at the disposal of the Church acting through the majority, which had in express terms, by the fourth purpose of the model trust deed, power to direct in all respects how the

trustees should dispose of that property. They considered in those circumstances that they were free. In the union they do not ask any one to give up any doctrine as to Establishment; they say, "This is so unimportant that we allow everybody to hold their own view." Doctrine is not part of the component parts of the identity of this Church. It consisted of an organization of persons on a permanent basis for the purpose of worship, which implied Church government and the power to change doctrine. The identity and continuity of life of the Church consists in the continuity of the Church and its government in the hands of a majority of individuals—a democratic constitution, which exists so long as the office-bearers continue to fulfil their function of being the office-bearers into whose hands, according to their principle, Christ their Head has delegated government for the purpose of the teaching of His Word as it is in the Scriptures. So long as they do that according to Presbyterian forms they remain continuously in the Church, and their actings and the history of their doings are the key to the identity of the Church at any particular period, and the key to the particular question of who are the beneficiaries, when any question is raised in a Court of law as to who is entitled to the funds held for behoof of the Church. The contention of the respondents is that, if they are right in their contention, the question of the doctrine for the time being, whether in Church polity or in the interpretation of the Confession—or the alteration of the Confession, for that matter—is within the jurisdiction of the Church Courts. It is part of the original foundation that that was to be the rule of the organization.

Henry Johnston, K.C., in reply.

The House took time for consideration.

Aug. 1. EARL OF HALSBURY L.C. My Lords, in this case the pursuers complain of a breach of trust, the trust being for the behoof of the Free Church of Scotland, and the breach of trust alleged being the use of certain property being, as alleged, no longer used for the behoof of the Free Church of Scotland,

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but for the maintenance and support of another and a different body, namely, the United Free Church. That body was formed in 1900, and consisted of a certain number of those who professed to belong to the Free Church of Scotland and others who, up to the time of the union, had belonged to the United Presbyterian body. They purported to unite and to exclude from their communion, or, at all events, from all participation in their organization, those who refused to unite in the new body, and have, of course, used the funds of which they claim to be the beneficial owners for the use of the new united body.

This is the breach of trust complained of, and the question is whether that complaint is well founded.

Now in one sense there can be no doubt what was the original purpose of the trust. It was for the maintenance and support of the Free Church of Scotland.

What was the Free Church of Scotland in 1843 can hardly admit of doubt. The reasons which those who separated themselves from the Established Church of Scotland then gave for their separation are recorded with distinctness and precision, and I do not think there can be any doubt of the principles and faith of those who came out from the Church of Scotland and described themselves as the Free Church of Scotland. Their name was significant: they claimed to be still the Church of Scotland, but freed from interference by the State in matters spiritual.

It was to the persons thus describing themselves that the funds in dispute were given, and until the union of 1900 with the other body we do not hear of any difficulty having arisen in the administration of the trust.

Now, however, the new body has established a new organization, it is alleged to profess new doctrines, and its identity with the Free Church, for whose behoof the property was settled, is disputed; and it accordingly becomes necessary to consider in what consists the identity of the body designated by the donors of the fund as the Free Church of Scotland.

Speaking generally, one would say that the identity of a religious community described as a Church must consist in the unity of its doctrines. Its creeds, confessions, formularies,

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tests, and so forth are apparently intended to ensure the unity of the faith which its adherents profess, and certainly among all Christian Churches the essential idea of a creed or confession of faith appears to be the public acknowledgment of such and such religious views as the bond of union which binds them together as one Christian community.

If this be so, there is no lack of material from which to deduce the identity of the Free Church of Scotland. Its founders left their claim, declaration, and protest to stand for all time as a clear exposition, both of their reasons for leaving the Church of Scotland when they did leave it and as a profession of their faith as the true Church of Scotland, though separated from the Establishment, which in their view was itself heretical from its submission to the temporal power in what they regarded as exclusively spiritual.

Now, in the controversy which has arisen, it is to be remembered that a Court of law has nothing to do with the soundness or unsoundness of a particular doctrine. Assuming there is nothing unlawful in the views held—a question which, of course, does not arise here—a Court has simply to ascertain what was the original purpose of the trust.

My Lords, I do not think we have any right to speculate as to what is or is not important in the views held. The question is what were, in fact, the views held, and what the founders of the trust thought important.

Fortunately your Lordships have the authority of most learned judges, their decisions now reaching back for something like a century, which I shall quote somewhat copiously as laying down the principle upon which such questions as are now in debate should be determined. Commenting on what Lord Eldon said, Lord Moncreiff in Scotland and Sir William Cusack Smith in Ireland, have expressed themselves in a manner which I think may well be applied to the matter now in debate. Lord Eldon said (*Craigdallie v. Aikman* (1)): "With respect to the doctrine of the English law on this subject, if property was given in trust for A., B., C., &c., forming a congregation for religious worship; if the instrument provided for the case

(1) (1813) 1 Dow, 1, 16.

H. L. (Sc.) of a schism, then the Court would act upon it; but if there was no such provision in the instrument, and the congregation happened to divide, he did not find that the law of England would execute the trust for a religious society, at the expense of a forfeiture of their property by the cestuis que trust, for adhering to the opinions and principles in which the congregation had originally united. He found no case which authorized him to say that the Court would enforce such a trust, not for those who adhered to the original principles of the society, but merely with a reference to the majority; and much less, if those who changed their opinions, instead of being a majority, did not form one in ten of those who had originally contributed; which was the principle here. He had met with no case that would enable him to say, that the adherents to the original opinions should, under such circumstances, for that adherence forfeit their rights.

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“If it were distinctly intended that the Synod should direct the use of the property, that ought to have been matter of contract, and then the Court might act upon it; but there must be evidence of such a contract, and here he could find none. He proposed, therefore, that the cause should be sent back with two findings, of this nature: (1.) That the ground appeared to have been purchased and the house built for a society united, and proposing to continue united in religious opinion. (2.) That it did not in point of fact appear how this property was to be applied, in case the society should happen to differ and separate.”

Lord Moncreiff said in *Craigie v. Marshall* (1), quoting Lord Eldon in *Craigdallie v. Aikman* (2): “‘If it were distinctly intended that the Synod should direct the use of the property, that ought to have been matter of contract, and then the Court might act upon it; but there must be evidence of such a contract, and here he could find none.’ He, therefore, proposed to remit the cause with two findings. Accordingly it was remitted with very precise findings, importing that it appeared sufficiently as matter of fact, that the ground was purchased, and was to be used for religious worship ‘by a number of persons agreeing

(1) (1850) 12 D. 523, at p. 560.

(2) 1 Dow, 1, 16.

at the time in their religious opinions and persuasions, and, therefore, intending to continue in communion with each other,’ and that the society had acceded to a body called the Associate Synod; but that it did not appear, as matter of fact, ‘for what purpose it was intended at the time such purchase and erections were made, or at the time such accession took place, that the ground and buildings should be used and enjoyed, in case the whole body of persons using and enjoying the same should change their religious principles and persuasions, or if in consequence of the adherence of some such persons to their original religious principles and persuasions, and the non-adherence of others thereto, such persons should cease to agree in their original principles and persuasions, and should cease to continue in communion with each other, and should cease, either as to the whole body, or as to any part of the members, &c., to adhere to the Associate Synod.’ With these findings the cause was remitted for further consideration.

“There is no ambiguity in the principles on which Lord Eldon made this remit. Under the remit the Court ordered a condescendence, with a view to the ascertainment of the matters of fact, whether there was a real difference in the religious principles or not; and afterwards pronounced an interlocutor, the result of which was, that the Court found that the pursuers ‘have failed to condescend upon any acts done or opinions professed by the Associate Synod, or by the defenders, from which this Court, as far as they are capable of understanding the subject, can infer, much less find, that the defenders have deviated from the original principles and standards of the Associate Presbytery and Synod; farther find, that the pursuers have failed to render intelligible to the Court on what ground it is that they aver that there does exist at this moment any real difference between their principles, and those of the defenders,’ &c.; and, therefore, found it unnecessary to enter into the inquiries which had been directed by the House of Lords, under the supposition that the defenders had departed from the original standards and principles of the Association.”

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H. L. (Sc.) In *Dill v. Watson* (1) Smith B. in Ireland on the same subject said: "Again, I do not conceive that I appeal from the Word of God to that of man, by proclaiming or attesting by my signature, that I concur in the interpretation given by a numerous body of my fellow Christians to certain passages of Scripture. They agree with me, I agree with them in construction and consequent creed; but neither take their belief upon the authority of those others. Both draw their faith from the Bible as its common source; both consider the Bible as containing the only rule of, and furnishing the only unerring guide to a true faith; each, with God's assistance and the subordinate and pious aid of human instruction, interprets as well as man's infirmity will permit; both coincide in the same interpretation; that interpretation regulates their faith; and all who thus coincide become members of the same religion. And thirdly, we do not coerce our neighbour by calling for his signature to our profession or articles of faith. We leave him free to adopt or to repudiate that faith, according as his reason, his conscience, and the grace of God may direct him. We but say to him, If you agree with us affix your signature to certain articles, or in some way notify your recognition of their truth; or if you disagree, withhold such signature or declaration. And we say of him, in the former case, that he *is*, and in the latter case that he *is not* of our religion. We do not compel him to hold our faith; we but ask him to inform us, by certain acts, whether he does hold it or does not; and we ask this, only if he claim to be enrolled as one of our body, and to be in religious communion with us. In the absence of such a test, our Establishment would not be a rock, cemented into solidity by harmonious uniformity of opinion, it would be a mere incongruous heap of, as it were, grains of sand, thrown together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissension. *Hic dextrorsum abit; ille sinistrorsum.* This indeed I should hold to be,

(1) (1836) 2 Jones Rep. (Ir. Ex.) 48, 91.

in the language of a late prelate, 'a Church without a religion.'

The principles for decision thus propounded have been recognised and acted upon ever since, and it would seem that it may be laid down that no question of the majority of persons can affect the question, but the original purposes of the trust must be the guide.

Under these circumstances it would seem to reduce the question in dispute to an examination of the evidence as to what is the difference between them, if any, and if that difference does or does not accord with the original purpose of the trust; but in examining this question one has to bear in mind, not what we or any other Court might think of the importance of the difference, but what the donors of the trust fund thought about it, or what we are constrained to infer would be their view of it if it were possible to consult them.

The first point in dispute is very plainly set forth by the pursuers in the 13th condescendence. After pointing out in the 10th condescendence that the Free Church of Scotland was a voluntary association or body of Christians associated together under a definite contract involving the maintenance of definite principles, the condescendence 13 proceeds thus: [His Lordship read it as given above, with the respondents' answer. (1)] These then, my Lords, are the two contentions upon which the first part of the controversy depends.

My Lords, I cannot doubt that upon this head there is an overwhelming body of evidence in favour of the pursuers. Indeed, two of the learned judges have stated in express terms that originally the Free Church did profess what has been conveniently called the Establishment principle, though, for reasons which will be dealt with hereafter, they do not think that those who now represent the Free Church are bound by that original opinion.

My Lords, I am unable to understand by what test I am to ascertain what the donor of a fund has made essential to his gift, unless it is by what he has said or written, and when I find that the Free Church invited support by the circulation

(1) Ante, pp. 548, 555.

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of Dr. Chalmers' address, what can I say but that he expresses the views of the Church that he represents? "By giving up your connection with the State, and thus separating yourselves from the worldly advantages of such a connection, you may be said to have withstood a great temptation to sin in one form; but such is the deceitfulness of the human heart that without the heedfulness and the humility which Apostles of old so pressed upon the early converts, there is danger of being carried away by temptation in another form—and temptation, too, to the very same sin. Rather than be seduced from one of your greatest principles, you have given up one earthly dependence; but let principle have its perfect work, and have a care lest you be tempted from even the best (ought to be "least") of your principles by the promises and the allurements of another earthly dependence. Rather than compromise the authority of Christ over the affairs of His own Church, you have forfeited the countenance of men in power, that is, who have the power of this world's authority on their side. Beware of compromising another of your doctrines or articles of faith; and in the defence of which the Church of Scotland did lately signalize herself under the authority of Christ, over the kings and governments of earth, and the counterpart of this government, to uphold religion in the world; beware, we say, of making any compromise or surrender of this your other principle, and this, too, to gain the countenance of those who may still be called men in power, that is, who have the power if not of authority and office, have at least the power of numbers on their side. This may be termed a less principle than the other, of inferior consideration in itself, and inferior consequence to the vital or spiritual well-being of Christ's Church upon earth. But let us not forget what the Bible says of those who break even the least of the commandments, that they shall be called least in the Kingdom of Heaven. The men who stand opposed to us on this second, or as many choose to term it, this secondary question, might, with all the hay and stubble and wood of this, and it may be of other errors, be reposing on the like precious foundation with ourselves. They might be men with whom we differ, and yet with whom we can agree to

differ. They might be coadjutors in the great work of evangelizing the people of our land—brethren with whom we can hold sweet and profitable counsel on the capita fidei or weightier matters of the law, having one faith, and one Lord and one baptism. But we shall not, even for their friendship, violate the entireness of our principles, or make surrender of the very least of them. It is not for those ministers of Christ whom I am now addressing, and who, on the altar of principle have just laid down their all—thus quitting and for the sake of one principle the friendship of men who have the power of office—it is not for them to give up another principle for the sake of courting the friendship of men who have the power of numbers. We must not thus transfer ourselves from one earthly dependence to another. We have no other dependence than God. We acknowledge the authority and will submit to the influence of no other guide than His eternal and unalterable truth as seen in the light of our own consciences. To be more plain let me be more particular. The Voluntaries mistake us if they conceive us to be Voluntaries. We hold by the duty of government to give of their resources and their means for the maintenance of a Gospel ministry in the land: and we pray that their eyes may be opened, so as that they may learn how to acquit themselves as the protectors of the Church, and not as its corruptors or its tyrants. We pray that the sin of Uzziah, into which they have fallen, may be forgiven them; and that those days of light and blessedness may speedily arrive, when kings shall be the nursing fathers and queens the nursing mothers of our Zion. In a word, we hold that every part and every function of a commonwealth should be leavened with Christianity; and that every functionary, from the highest to the lowest, should in their respective spheres do all that lies in them to countenance and uphold it. That is to say, though we quit the Establishment, we go out on the Establishment principle—we quit a vitiated Establishment, but would rejoice in returning to a pure one. To express it otherwise, we are the advocates for a national recognition and a national support of religion, and we are not Voluntaries."

It would probably be admitted by all that the authority of

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Dr. Chalmers as an exponent of the views of the Free Church could hardly be overrated; but it was not his personal view merely. The words were addressed by him as Moderator, and were adopted unanimously, and directed to be circulated by the Assembly.

My Lords, I am reluctant to render longer what I have to say by literal quotations from authoritative declarations of the Free Church; but though I summarize, I am actually using the language which originally and for a long period afterwards those who spoke on behalf of the Free Church have said and written: "The Free Church has ever highly valued her connection with the State." "Firmly asserts the right and duty of the civil magistrate to maintain and support an Establishment of religion in accordance with God's Word." "They" (the Free Church) "reserve to themselves and their successors to strive by all lawful means to secure the performance of this duty." "The State was bound to establish and endow the Church." "The Free Church has not in the least degree altered its views respecting the lawfulness and the desirableness of a right connection between Church and State." "History and experience have convinced us" (the Free Church) "that there is a form of alliance which is at once practicable and agreeable to Scripture and highly beneficial."

My Lords, I cannot doubt that each of the utterances I have quoted is important, and to my mind conclusive evidence that originally at all events the views of the founders of the trust were in favour of the Establishment principle. The question whether they were fundamental or susceptible of being changed demands a separate treatment, which, as it is applicable to both questions in debate, must be reserved for the present.

Now the views of the United Presbyterian Church cannot be more definitely or more shortly stated than in their own language authoritatively—stated by themselves and before their union with the Free Church. "It is not competent," they say, "to the civil magistrate to give legislative sanction to any creed in the way of setting up a civil Establishment of religion, nor is it either his province to provide for the expense of the ministra-

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tion of religion out of the national resources. It is Jesus Christ, as sole King and Head of His Church, who has enjoined upon His people, to provide for maintaining and extending it by free-will offerings; that this being the ordinance of Christ it excludes State aid for these purposes and that adherence to it is the true safeguard of the Church's independence."

In my view what follows does not at all qualify this passage, but in fairness it ought to be added: "Moreover, though uniformity of opinion with respect to civil Establishments of religion is not a term of communion in the United Presbyterian Church, yet the views on this subject held and universally acted upon are opposed to these institutions."

Here we have the two bodies which are supposed to establish identity of religious belief—the one asserting the right and duty to maintain and support an Establishment of religion, the other asserting that Christ's ordinance excludes State aid; each of them, therefore, treats the question as one of religious belief and obligation, and not one from which religious duties are excluded.

The second question in debate is the difference between the two bodies as to the two doctrines known as the Calvinistic and the Arminian doctrine of predestination. I use these two phrases, subject to more ample exposition hereafter, in order to summarize what I have to say, as preliminary to the discussion of the subject itself.

I regret very much that we have not any opinion from the learned judges whose judgment we are called upon to review; I am afraid, speaking for myself, I do not think it is competent to me to avoid dealing with it. It is included in the allegation of a departure from the doctrines which is complained of in the summons, and it has been argued before your Lordships with great learning and ability. One observation made by the learned counsel I entirely agree to, namely, that in discussing this subject one cannot ignore the contemporaneous theological discussions at the time the Confession of Faith was compiled.

Now the doctrine in dispute was the subject of a copious amount of literature all through the seventeenth century.

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Looking then at the history of the particular dispute which is brought into debate, it cannot be said that the language of the Confession of Faith was lightly drawn or arrived at without long debate and deliberation.

Indeed, it may be said of the Westminster Confession as a whole that it was composed with a deliberate and careful scrutiny which may be regarded as hardly equalled in any theological discussion; and though councils of the Church have lasted longer, yet if one regards the composition of the Assembly itself, the original parties to the discussion, the presentation of its different portions to Parliament, the adoption of it by Parliament, and afterwards by the Church of Scotland, these things give an overwhelming sanction to it, and at all events to its original meaning by those who were content to accept it as a test of the unity of their religious belief.

If this observation is true and applicable to the Confession of Faith as a whole (the minute report of its deliberations has been deciphered by the distinguished director and principal librarian of the British Museum), the particular doctrine debated as part of the code of belief which the Free Church adopted in 1843, and which it is alleged that the United Free Church has abandoned, can hardly be said to be one which any Christian Church could regard as a matter of indifference. It divided the Dutch Reformed Church at the beginning of the seventeenth century. It proved the subject of debate at the Hague in 1611 and at Delft in 1613.

An edict of the States of Holland sought to put an end to the controversy, but in vain; and, finally, in 1619, ten years after the death of Arminius, or Harmensen, as was his real name, the Arminian heresy, as it was described, was publicly condemned. Its professors were denounced as liars and deceivers, and those who participated in it were deprived of their civil rights unless they retracted.

James I. is said to have procured the exile of Conrad Vorstius, one of the protagonists of the Arminian doctrines, and afterwards he wrote a pamphlet against him, and argued that he ought to be put to death for his unchristian doctrines, while on the other hand the Councils of Constantinople in

1642 and the Council of Jerusalem in 1672 pronounced the following opinions:—

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Treating of what they describe as the Calvinistic doctrine— Councils of Constantinople, 1642, cap. 3 (1): “*τὸν Θεὸν ὑποτίθησιν ἀδικώτατον, τυραννικῇ χρώμενον ἐξουσίᾳ, μόνῃ λέγων τῇ θελήσει αὐτοῦ τοὺς μὲν εἰς δόξαν προορίσαι, τοὺς δὲ ἀποβάλλειν εἰς κόλασιν, μηδαμῶς τὰ ἔργα αὐτῶν σκοπούμενον. οὐ τί ἂν γένοιτο ἀσεβέστερον;*” (2) “*Deum facit iniquissimum, tyrannica potestate utentem, aiens eum sola sua voluntate alios prædestinare ad gloriam, alios in pœnam mittere, nulla operum habita ratione. Quo quid magis impium proferri possit?*”

The Synod of Jerusalem in 1672 said (extract from cap. 3): “*ἀλλὰ καὶ τὸ τὴν θεϊὰν θέλησιν αἰτίαν εἶναι τῶν κατακρινομένων οὕτως ἀπλῶς καὶ ἀναιτίως ποῖαν οὐκ ἔχει μαρίαν; ποῖαν οὐκ ἐπιφέρει κατὰ τοῦ Θεοῦ συκοφαντίαν, καὶ ποῖαν εἰς τὸ ὕψος οὐ λαλεῖ ἀδικίαν, καὶ βλασφημίαν; ἀπείρατον μὲν γὰρ κακῶν τὸ Θεῖον, καὶ πάντων ἐξ Ἰσοῦ ἔθελον τὴν σωτηρίαν, ὡς μὴ ἐχουσης χώραν τῆς προσωποληψίας παρ’ αὐτῷ οἶδαμεν. τοῖς βεβήλοις γενομένοις σκευέσι διὰ μοχθηρὰν αὐτῶν προαίρεσιν καὶ ἀμετανόητον καρδίαν ὡς δίκαιον παραχωρεῖν τὴν κατάκρισιν ὁμολογοῦμεν· κολάσεως δ’ αἰωνίου, ὠμότητός τε καὶ ἀσπλαγχτίας, καὶ μισανθρωπίας αἰτίον, οὔποτε, οὔποτε φαμέν τὸν Θεόν, τὸν χαρὰν γίνεσθαι ἐν οὐρανῷ ἐπὶ ἐνὶ μετανοοῦντι ἁμαρτωλῷ ἀποφηνάμενον· μὴ γένοιτο ἡμᾶς οὕτως ἢ πιστεῦσαι, ἢ ἐννοῆσαι ἕως ἂν ἐαυτῶν ἐσμέν. ἀναθέματι δὲ αἰωνίῳ καθυποβάλλομεν τοὺς τὰ τοιαῦτα καὶ λέγοντας, καὶ φρονοῦντας, καὶ χεῖρους πάντων ἀπίστων γινώσκομεν.*” (3) “*Sed et*

(1) Labbé (Philip) and Gabr. Cosartii (or under title of Coleti) Sacrosancta Concilia, Venice, 1728-1733, Vol. XXI., p. 1629.

(2) This may be translated as follows: “He represents God as being most unjust, using tyrannical power [despotism], when he says that He in obedience solely to His own will predestines some to glory and sends others to punishment, without taking any account at all of their works. Than which what could be more impious?”

(3) “But what madness it is to say

that the Divine will should be the author of the condemnation of men thus absolutely and with grounds! What a calumny on God, and what an injury and blasphemy against His Majesty! For we know that God is incapable of producing evil, and that he desires the salvation of all alike, as there is with him no respecting of persons; of those that through their depraved nature and impenitent heart have made themselves vessels for dishonour we confess that it is just to allow damnation; but of eternal punishment, and cruelty and mercilessness and

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hominum ita simpliciter ac sine caussâ damnatorum auctorem statuere divinam voluntatem, insania quanta? quæ major Deo calumnia inferatur? Quanta in supremum Numen injuria, quanta blasphemia? Quippe intentatorem malorum non esse Deum, et omnium ex æquo salutem velle, ceu apud quem personarum acceptio nulla est, cognoscimus: et his qui pravis voluntatis suæ moribus ac secundum impœnitens cor se vasa in contumeliam effecere, damnationem juste decerni confitemur. Æternæ autem punitionis, immanitatis, duritiæ et inhumanitatis nusquam, nusquam dicimus auctorem esse Deum, super uno peccatore pœnitentiam agente esse in cælo gaudium, afferentem. Absit a nobis ita cogitare, nedum credere, quamdiu nostri compotes sumus: immo vero talia dicentes ac sentientes anathemati sempiterno subjicimus et cunctis infidelibus pejores agnoscimus."

I quote from the edition of the Councils of the Church published in Venice by two Jesuit Fathers in 1728, who have appended to the originals their own Latin translation.

It was in this state of the controversy agitating the Christian Church throughout the world that the Confession of Faith was adopted by the Church of Scotland on August 27, 1647, and the approval and adoption of it was made in a form which was intended to prevent cavil as to its being agreed upon without objection or doubt. It recites that the Confession was twice publicly read over, examined, and considered, that copies were printed that it might be sedulously perused by all members of the Assembly unto whom frequent intimation was publicly made to put in their objections and doubts, 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 doctrines, worship, discipline, and government of this Kirk, it proceeds to adopt

inhumanity, we never call that God the author who has declared that there is joy in Heaven over one sinner that repenteth. God forbid that we should so believe, or even conceive, as

long as we are in our right senses; and we devote to eternal anathema all those who say or think such things, and we hold them to be worse than any infidel."

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My Lords, I think it is only necessary to put in juxtaposition the language of the Confession of Faith itself and the statement of doctrine set forth by one component part of the supposed united body united in one faith and doctrine.

The Confession of Faith: "Chap. III. *Of God's Eternal Decree*. Sect. III. *By the decree of God*, for the manifestation of his glory some men and angels are predestinated unto everlasting life, and others fore-ordained to everlasting death. Sect. IV. These angels and men, thus predestinated and fore-ordained are particularly and unchangeably designed; and their number is so certain and definite that it cannot be either increased or diminished."

Now then for the Act. Act (Declaratory Act) anent Confession of Faith made May 26, 1892 (1): "That this Church also holds that all who hear the Gospel are warranted and required to believe to the saving of their souls; and that in the case of such as do not believe, but perish in their sins, the issue is due to their own rejection of the Gospel call. That this Church does not teach, and does not regard the Confession as teaching, the fore-ordination of men to death irrespective of their own sin."

It has been argued with great ingenuity, that inasmuch as the doctrine of predestination as treated of in the Scriptures is a mystery, and that various opinions have been held in respect of it, it cannot be made a test doctrine, since another doctrine may be held with it, not to human intelligence reconcilable with it, but equally derived from and established by scriptural authority. If the Scottish Church or the Westminster Confession as one of its declarations of doctrine had simply declared that predestination was one of its doctrines, there might be something in the argument, but the argument ignores the fact that the Westminster Confession purports to explain, and does explain, in language which does not admit of doubt, what is meant. Each party well knew what they meant. It is not a question of metaphysical subtleties or ambiguous

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I am, therefore, led to the conclusion that upon this second question the appellants are entitled to succeed.

But, my Lords, another question is raised which in one sense as affecting the law of trusts and their administration is most important.

The Dean of Faculty boldly argued for the inherent power of every Christian Church to change its doctrines, and Lord Young has based his judgment upon this proposition.

My Lords, apart from some mysterious and subtle meaning to be attached to the word "Church," and understanding it to mean an associated body of Christian believers, I do not suppose that anybody will dispute the right of any man, or any collection of men, to change their religious beliefs according to their own consciences; but when men subscribe money for a particular object and leave it behind them for the promotion of that object, their successors have no right to change the object endowed.

In this case it is suggested that the terms of what is called the Barrier Act suggest such licence to change.

I am not able to concur in such an inference.

It is obvious that dealing with such a subject as formularies books of religious instruction, and the like, many things might be done, written and taught which might touch doctrine, and for the purpose of preventing any alteration in doctrine the precautions insisted upon by the Barrier Act were thought necessary to prevent and render impossible any departure from the orthodox standards. It provides that "before any General Assembly of the Church shall pass any Acts which are to be binding rules and constitutions to the Church" (observe "binding rules and constitutions") "the same Acts be first proposed as overtures to the Assembly."

Many things might be proposed which as "binding rules and constitutions" might touch doctrine, or worship, or discipline, or government; but that the Church of Scotland in 1697 might change its faith or permit it to be changed is a suggestion which to one acquainted with its history either then

or even a very long time after is not very plausible. It is only just to Lord Young to say that he adds: "I desire to say that there is, in my opinion, no rule of law to prevent a *dissenting Church from abandoning a religious doctrine or principle, however essential and fundamental or from returning to it again with or without qualification or modification* Whether or not a property title is such that a forfeiture of property will follow such abandonment or return is another matter."

But that is the whole question now before your Lordships, and as it appears to me there is nothing in calling an associated body a Church that exempts it from the legal obligations of insisting that money given for one purpose shall not be devoted to another. Any other view it appears to me would be fatal to the existence of every Nonconformist body throughout the country.

But there is another and a further ground upon which I think the appellants are entitled to succeed, and that is that the so-called union is not really an union of religious belief at all. The united body has united in its organizations. It has established its various administrative arrangements, has declared its authority as the United Free Church, and in that name has absorbed the various bodies of the United Presbyterians and the Free Church as originally constituted; but has it agreed in the doctrines or either of them, and if so, which is it that has given way?

My Lords, I am bound to say that after the most careful examination of the various documents submitted to us, I cannot trace the least evidence of either of them having abandoned their original views. It is not the case of two associated bodies of Christians in complete harmony as to their doctrine agreeing to share their funds, but two bodies each agreeing to keep their separate religious views where they differ—agreeing to make their formularies so elastic as to admit those who accept them according as their respective consciences will permit.

Assuming, as I do, that there are differences of belief between them, these differences are not got rid of by their agreeing to say nothing about them, nor are these essentially diverse views

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H. L. (Sc.) avoided by selecting so elastic a formulary as can be accepted by people who differ and say that they claim their liberty to retain their differences while purporting to join in one Christian Church.

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It becomes but a colourable union, and no trust fund devoted to one form of faith can be shared by another communion simply because they say in effect there are some parts of this or that confession which we will agree not to discuss, and we will make our formularies such that either of us can accept it.

Such an agreement would not, in my view, constitute a Church at all, or it would be, to use Sir William Smith's phrase, a Church without a religion. Its formularies would be designed not to be a confession of faith, but a concealment of such part of the faith as constituted an impediment to the union.

I am disposed to quote one passage from what was said by Dr. William Willson from the Moderator's Chair in 1866, and which I find in Mr. A. Taylor Innes' most excellent Treatise on the Law of Creeds in Scotland (1). Speaking of the freedom of the Church as to confessions of faith, he says: "We are not at liberty to hold forth a confession in which we do not believe. For in such a case the Church is absolutely without a confession . . . It ceases to be either a bond of union or a public testimony. It is lawful for the Church to revise her confession and adjust it to her present attainments and exigencies; it is lawful for her altogether to dispense with a confession, if, indeed, without one any organization were possible, but to retain a confession which has ceased to be believed can never be lawful."

He is speaking, of course, of the Christian conscience, and, as he says at an earlier period of his discourse, when the Church has arrived at the conclusion that its confession must be altered, "the time has come for us then to frame a new bond of union with each other, a new testimony to the world."

This would certainly not be done by making formularies ambiguous or elastic, or authorizing its votaries to put different

(1) 1902 ed. p. 245, n.

meanings upon a set of words the function of which was intended to be a test of the unity of their faith.

That this is the principle upon which the so-called union has been arrived at is proved by the declaration of the United Church, in which they claim in effect to retain their own separate views held either in the United Presbyterian or in the Free Church, or in either of the bodies which originally composed the united body which afterwards became the United Presbyterian Church. They say this: "1. The various matters of agreement between the Churches with a view to union are accepted and enacted without prejudice to the inherent liberty of the United Church, as a Church of Christ, to determine and regulate its own constitution and laws as duty may require, in dependence on the grace of God and under the guidance of His Word. 3. As this union takes place on the footing of maintaining the liberty of judgment and action heretofore recognised in either of the Churches uniting, so, in particular, it is hereby declared that members of both Churches, and also of all Churches which in time past have united with either of them, shall have full right as they see cause to assert and maintain the views of truth and duty which they had liberty to maintain in the said Churches."

For these reasons, I think the judgment ought to be reversed, and I so move your Lordships; but I cannot conclude without expressing how much we are indebted to the learned counsel on both sides for their most able and learned argument.

[It was admitted that the other appeal must follow the decision in this.]

LORD MACNAGHTEN. My Lords, I am unable to agree in the conclusion at which your Lordships have arrived. I do not differ from any of your Lordships as to the law—at least, I think not. I accept the principles laid down in this House in *Craigdallie v. Aikman* (1) and the other cases referred to during the argument. I accept those principles loyally and entirely, however much I may err in their application.

(1) 1 Dow, 1, 16; 2 Bli. 529; 21 R. R. 107.

H. L. (Sc.) My Lords, every one, I think, must feel that the consequences of your Lordships' decision to-day for good or evil will be far-reaching and of momentous importance—graver, I think, and more serious than the consequences of any decision in which it has been my lot to take part. And the argument addressed to your Lordships has been worthy of the occasion. But after all the question at issue is one of a very ordinary description. It is alleged on the one hand and denied on the other that there has been a breach of trust in the disposition of property. The complaint is that funds contributed and set apart for one purpose have been diverted to another and a different purpose. Such questions are of everyday occurrence, and the problem in each case must be solved by the ordinary commonplace inquiry, What was the purpose for which the funds in dispute were collected? What was the original trust?

My Lords, the funds in question in the present case represent moneys contributed for the support of the Free Church of Scotland. They represent property dedicated to the use of the Church body or voluntary association of professing Christians founded by those ministers of the Established Church of Scotland who in 1843, on the memorable occasion known as the Disruption, withdrew from the Establishment; or according to their own view of the transaction separated from the State, carrying with them the greater part of the office-bearers of the Established Church and at least one-half of her members in full communion, asserting all the while for themselves and their followers in time to come the character of the ancient and true Church of Scotland. Setting forth with these lofty pretensions they declared their adherence to the principles and practice of the Church of Scotland as regards doctrine, worship, discipline, and government untrammelled and unfettered by connection with the State and purged of every taint of Erastianism.

The question, therefore, seems to me to be this. Was the Church thus purified—the Free Church—so bound and tied by the tenets of the Church of Scotland prevailing at the time of disruption that departure from those tenets in any matter of substance would be a violation of that profession or testimony

which may be called the unwritten charter of her foundation, and so necessarily involve a breach of trust in the administration of funds contributed for no other purpose but the support of the Free Church—the Church of the Disruption? Was the Free Church by the very condition of her existence forced to cling to her subordinate standards with so desperate a grip that she has lost hold and touch of the supreme standard of her faith? Was she from birth incapable of all growth and development? Was she (in a word) a dead branch and not a living Church?

This, I think, is the real and only question. But if I may venture to say so without offence, it has been rather pushed aside and obscured by a very interesting preliminary search after a principle, if it be a principle, called for the sake of convenience, and not, I think, for the sake of clearness, “the Establishment principle,” which in my humble judgment partakes rather of the elusive attraction of an ignis fatuus—which means much or little, just as you may choose to interpret one of the most obscure passages in the Westminster Confession—which in one aspect no Christian man I think would hesitate to accept, but which in the mouth of an adherent of a Church that has abandoned Establishment and separated from the State can only mean a counsel of perfection unattainable in this world, at least until the advent of the millennium.

Your Lordships have been furnished with a print of many Scottish statutes and a bulky volume containing the Acts of the General Assembly of the Church of Scotland. I have read those documents and many others to which the attention of the House was directed with much interest and some care. I can only say that they have confirmed me in the opinion I entertained at the conclusion of the first argument—no doubt erroneously—that the judgment under appeal was right and ought to be affirmed.

I do not propose to trouble your Lordships by tracing the history of the Church of Scotland in its connection with the State from the date of the first Reformation to the time of the Disruption. That was done very ably and very fully by the learned counsel at the bar. It is enough for me to say that during the whole period of the existence of the Church of

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Scotland there was a constant assertion of spiritual independence—of the right, as it was termed, of the Lord Jesus to reign in His own House. I will only give one instance—I might give many—and I will give an instance that occurred almost on the eve of Disruption. On May 23, 1838, the General Assembly of the Church of Scotland passed this resolution, which is called “Resolution anent the Independent Jurisdiction of the Church of Scotland.” “The General Assembly, having heard and considered the overtures on the independent jurisdiction of the Church of Scotland, agreed, by a majority, to the following resolution: That the General Assembly of the Church of Scotland, while they unqualifiedly acknowledge the exclusive jurisdiction of the Civil Courts in regard to the civil rights and emoluments secured by law to the Church, and ministers thereof, and will ever give and inculcate implicit obedience to their decisions there anent, do resolve, that, as is declared in the Confession of Faith of this National Established Church, ‘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’; and that in all matters touching the doctrine, government, and discipline of this Church, her judicatories possess an exclusive jurisdiction, founded on the Word of God, ‘which power ecclesiastical’ (in the words of the Second Book of Discipline) ‘flows immediately from God and the mediator Jesus Christ, and is spiritual, not having a temporal head on earth, but only Christ, the only spiritual King and Governor of his kirk’; and they do farther resolve that this spiritual jurisdiction, and the supremacy and sole headship of the Lord Jesus Christ, on which it depends, they will assert and at all hazards defend, by the help and blessing of that great God, who, in the days of old, enabled their fathers, amid manifold persecutions, to maintain a testimony, even to the death, for Christ’s kingdom and crown; and, finally, that they will firmly enforce submission to the same upon the office bearers and members of this Church, by the execution of her laws, in the exercise of the ecclesiastical authority wherewith they are invested.”

Thus, while the Church was in connection with the State,

she took upon herself to declare emphatically that what she claimed was nothing less than an exclusive jurisdiction founded on the Word of God in all matters touching the doctrine as well as the government and discipline of the Church. The fact that this resolution was passed by a majority shews that it was carried by the vote of the party which five years later went out as the Free Church. Some may have hesitated—some dissented. The majority—the Free Church in embryo—recognised this claim of “Church Power” as the governing principle of the Church.

My Lords, during the period when the Church which had passed through the furnace of two reformations was approaching her last and greatest trial there grew up in the Church two parties—the Moderates and the Evangelicals. It was to the Evangelicals in later days that the Free Church of Scotland owed her separate existence. For a long time the Evangelical party was in a minority, and matters then went tolerably smoothly between Church and State. Ultimately in 1834 the Evangelicals gained the ascendancy. They were the party of progress, reform, and church extension. They planted religion in remote and half-civilized districts in the Highlands of Scotland. They founded missions in all parts of the world. Their zeal and fervour were, as their adherents boasted, in striking contrast to the apathy and lukewarmness of the Moderates. When they became the dominant party they carried matters with a high hand. They passed Acts, the Veto Act, and the Chapel Act, which were altogether beyond the competence of the Church as established by law. They censured and deposed ministers who obeyed the decrees of the Court of Session. They held those decrees to be encroachments on the true liberties of the Church, and actually pronounced them illegal. The State refused to admit their claims. The strong arm of the law restrained their extravagances. They still maintained that their proceedings were justified, and required by the doctrine of the Headship of Christ, which was common to all the Reformed Churches, but to which they attached peculiar and extraordinary significance. Then came the protest of 1842—“the unanswered and unanswerable protest,” as they called it.

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It was followed by a cold and chilling reply from the Government in power; and it became evident to all thinking men that as the State would not give way the leaders of the Assembly and those who adhered to them would have to retract their pretensions and own themselves defeated or quit the Establishment altogether. No one who knew the courage and temper of the leaders of the Assembly, no one who had caught the note of defiance and triumph sounded by Dr. Chalmers at the close of the Edinburgh Convocation, could doubt what the issue would be.

And now, in passing, I would call your Lordships' attention to one fact which seems to me not unworthy of notice, when Dr. Chalmers' address, preached before the first Free Church Assembly, is relied upon as a sort of prospectus on the faith of which the funds of the Free Church were collected, as if the Free Church were a joint stock concern, and that sermon an invitation to the public to put their money in it. My Lords, months before the Disruption actually took place, when all Scotland was looking forward with feverish anxiety to the last act of the drama, the leaders of the Evangelical party, with Dr. Chalmers at their head—a great divine and an eloquent preacher, who had a wonderful faculty of organization and something of the genius of a statesman—set about collecting funds for the needs of the Church. "Before the meeting of the General Assembly" (I am now quoting from a book which I believe is of recognised authority), "the members of the popular party had arranged their course of proceeding. Associations were formed throughout the whole of Scotland, and subscriptions were collected for the purpose of building churches and providing a maintenance for the ministers who were soon to lose the benefits of the national endowments. Dr. Chalmers presided over the general finance committee and acted with an energy and success which amazed even those who had best known his labours for a similar purpose in the cause of the Establishment. The thousands of circulars which he dispersed bore the following mottoes: 'Surely I will not come into the tabernacle of my house, nor go up into my bed; I will not give sleep to my eyes, nor slumber to mine eyelids,

until I find a place for the Lord, an habitation for the mighty God of Jacob!' 'The God of Heaven He will prosper us; therefore we His servants will arise and build!'" (1)

My Lords, that was the origin of the fund. Those were the winged messengers that prepared the ground and sowed the good seed. And when the Disruption took place, and appeals were made in every parish, in every nook and corner of Scotland, calling upon the people to stand by the Church of their forefathers, denouncing the tyranny of the State, describing in harrowing terms the sufferings of ministers, old and young, driven from their homes with their wives and children, forced to seek shelter in sheds and hovels while they faithfully ministered to their flocks, and some actually dying of want and exposure, money came in abundantly in answer to the call. Dr. Chalmers' address to the first Free Church Assembly was but one of a thousand—I might say, of a million—similar discourses. It was eloquent, of course. It was stirring. But I rather take leave to doubt whether the warning that I find there, against Voluntaryism and against Anarchy, an evil, as the preacher truly says, more to be dreaded than Voluntaryism, was very stirring or likely of itself to evoke a generous response. The negation of dangerous principles does not as a rule rouse enthusiasm. Of what is called the Establishment principle as a tenet or opinion of the Free Church I shall have a word to say presently. All I want to impress upon your Lordships at this moment is that when that sermon was preached by Dr. Chalmers, on an occasion more eloquent and more stirring than any appeal in words could be, the fund was already in full swing.

Then for whom and with what purpose was the money collected? Except as regards sums devoted to special purposes and special objects, the fund was all one fund. It was collected for the needs of the Free Church of Scotland. And what was the Free Church? Did it go out as a Sect or a Persuasion or a Connection, with peculiar tenets cut and dried and defined in the precise language of a conveyancer? Nothing of the kind. Those who went out went forth declaring that they were not a

(1) Ecclesiastical History of Scotland, by George Grub, vol. iv. p. 226.

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sect, but the National Church—that they were still the Church of Scotland. “We are,” they said (to quote the words of Dr. Candlish, one who was only second—if he was second—to Dr. Chalmers himself)—“we are still the Church of Scotland—the only Church that deserves the name, the only Church that can be known and recognised by the maintaining of those principles to which the Church of our fathers was true, when she was on the mountain and on the field, when she was under persecution, when she was an outcast from the world. And, believing that we are not seceders from the Church, but are the Church separated from the State—believing that we are not a sect separated from the Established Church, but that we are the Church of Scotland separating from the State, we hold ourselves entitled without any disparagement to other religious bodies to assume and act upon the principle that we are to maintain the character of the National Church of Scotland.” (1) An impossible position, it may be said, in point of law! They went out, not as a Church, but as individuals separating from the Church, and they united again in a voluntary body of professing Christians! That may be so. But to themselves and to their adherents, and I may add to other religious bodies which were not of their communion, they supported the character of the National Church of Scotland. And supporting that character, rightly or wrongly assumed, they must be taken, I think, in regard to their own body, to have all the powers of a National Church.

Speaking for myself, I cannot form a conception of a National Church untrammelled and unfettered by connection with the State which does not at least possess the power of revising and amending the formulæ of subscription required of its own office-bearers, and the power of pronouncing authoritatively that some latitude of opinion is permissible to its members in regard to matters which, according to the common apprehension of mankind, are not matters of faith. I agree that a sect may erect any point or any punctilio however trifling and absurd into an article of faith. My position is, that the adherents of the Free Church were not a sect, and

(1) Memorials of Robert Smith Candlish, D.D., p. 310.

that they never made the Establishment principle an article of faith.

But, my Lords, I go further. This Establishment principle, whatever it is, can have no higher authority than the article of the Westminster Confession in which it is supposed to be embedded. If the Church has power to amend her Confession she can, of course, take occasion to declare that the Establishment principle is to be regarded as an open question, in reference to which every man is at liberty to exercise his private judgment. Now, it seems to me clear that the Free Church when it came into existence claimed the power of altering and amending her Confession of Faith. On the second argument the Dean of Faculty called your Lordships' attention to a little book entitled “Catechism on the Principles and Constitution of the Free Church of Scotland issued by authority of the General Assembly.” The preparation of this work was taken in hand in 1843. It was issued in December, 1845, by authority of the Publication Committee. It sets forth in the forefront of an appendix the Resolution of 1838, which I have already quoted. In 1847 the General Assembly approved generally of this catechism “as containing a valuable Summary of this Church's history and Exhibition of her distinctive principles from the beginning of the Reformation to the present time.” And the Assembly earnestly recommended its general use. So that it has an unquestionable claim to be considered a contemporaneous document exhibiting the distinctive principles of the Free Church. Mr. Taylor Innes, in his valuable work on the Law of Creeds in Scotland (1), quotes from it as a book of authority, but speaks of it as an intensely polemical volume. So it is. From beginning to end it attacks and flouts and belittles the Established Church; but the very bitterness of its tone shews that it was composed in the earliest days of Disruption. I will not weary your Lordships by quoting from it at any length, but I may remind your Lordships that it points out that the Church of Scotland, as a Church on its own authority, adopted the Westminster Confession, at the very time when Knox's Confession had the sanction of the State. (2)

(1) 1902 ed. pp. 86, 244.

(2) Q. 234: see Appx. N, p. 760.

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The catechism deals at some length with "Church Power." It explains that this power is the power of the Keys. It declares that it is divided into four parts, and that the first part is "the Dogmatic power in virtue of which the Doctrine and Laws of the Word are declared and religious controversies are determined." (1) It asks, "When is the Dogmatic power abused?" The answer is, "When it is made the pretext for a claim of infallibility and employed to subvert the right of private judgment, and when that implicit submission which is due only to the Word is demanded for Church formularies and decrees." (2) In an earlier passage, in a note to Q. 44 quoted by Mr. Taylor Innes, there is a sly hit at the Established Church, and a sharp contrast drawn between the view of the Evangelical party and the view of the Moderates, not altogether to the advantage of the latter. "It is one thing," say the authors of the catechism, "for the civil privileges and endowments of a Church to be tied to a confession by civil enactments" (that was the comparative freedom of the Evangelicals), "and quite another thing for a Church itself to be so" (that was the bondage of the Moderates and their Established Church). "In the former case the Church when she finds that any articles of her Confession are unscriptural is at liberty to renounce them, being only bound if she do to resign her temporalities. In the latter case the law allows no relief whatever for the Church in her corporate capacity when she discovers errors in her Confession, which, of course, is as much as to say that the Church is bound always to go absolutely upon the supposition of its soundness, and to interpret the Word of God agreeably to its declarations. Under these circumstances the supreme and ultimate standard of doctrine is, not the Bible, but the Confession of Faith."

My Lords, I greatly fear that that is the position into which the Free Church will be driven if Mr. Johnston's argument prevails.

I could easily multiply quotations from this Free Church catechism; but I think I have quoted enough to prove that to the fathers of the Free Church movement the notion of

(1) Q. 135.

(2) Q. 139.

altering the Westminster Confession of Faith was not so very shocking.

I do not rely on the Barrier Act. If I may say so, it seems to me that that was rather a false point. The Barrier Act may possibly imply—it certainly does not assert—Church Power as understood by the Evangelical party and the Free Church of Scotland. The Resolution of 1838 belongs to a different class of legislation. It is a declaratory Act. It speaks in the plainest and clearest language. The Free Church Catechism shews that at the time of the Disruption it was understood to mean precisely what it says and to assert the exclusive power of the Church founded on the word of God over doctrine—that is, over her creeds, her confessions, her formularies, and her decrees. So the Act of 1838 declares. So the Free Church Catechism of 1845 teaches. The Act of 1838 therefore supplies what was wanting in *Craigdallie v. Aikman* (1) and the very thing which in Lord Eldon's view would have sufficed to turn the scale. Without ignoring both the Act of 1838 and the Free Church Catechism of 1845 it seems to me impossible to deny that provision for expansion and development—for that growth without which there can be no life—was part and parcel of the original trust under which the funds in question in the present case have been collected and set apart.

My Lords, if the view which I have roughly indicated is correct, I think it is enough to dispose of this case in both its branches. But there are two points on which a great deal of argument was bestowed, and on which I should like to say a few words. There is the Establishment principle as it is called, and there are those higher mysteries which were dealt with boldly but reverently by the learned counsel who spoke second for the United Free Church. (2)

My Lords, as regards the Establishment principle, I know that that very distinguished man to whom I have already referred and who, after Dr. Chalmers, was the leader of the Free Church, doubted to the last whether the principle of a

(1) 1 Dow, 1, 16.

(2) Haldane, K.C.

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 1904 He maintained that throughout the whole of the Church's
 FREE CHURCH history there was no event—that was the word he used—that
 OF SCOTLAND proclaimed formally and directly that the principle of a
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 v. the Church was bound to maintain. Speaking for myself, I
 OVERTOUN (LORD). do not altogether take that view, though I agree with him in
 MACALISTER thinking that the Establishment principle sinks into absolute
 v. insignificance compared with the great principle of the in-
 YOUNG. dependence and power of the Church and “the exclusive
 Lord authority of Christ in His own house.” I think it must be
 Macnaghten. admitted that the Establishment principle, as it may be
 gathered from the somewhat obscure language of the West-
 minster Confession, was the generally received opinion in the
 Church. It was necessarily the received though unexpressed
 opinion of the Church before the Disruption. When the
 Disruption took place circumstances were altered, and then I
 think there was a diversity of opinion on the subject.

Lord Trayner says that it appears to him “difficult to hold
 that a mere opinion as to what some third person was bound
 to do, which he might neglect or refuse to do, and which the
 Church would not compel him to do, could in any way be an
 essential part of the constitution of the Church which held
 that opinion.” Well, that was exactly Dr. Candlish's opinion
 at the very time of the Disruption. I refer to his opinion, not
 as the opinion of a person authorized to speak on behalf of the
 Church, but as the opinion of a very leading man, whom
 many others would probably follow.

At the General Assembly, held in Glasgow in the autumn
 of the year of Disruption, Dr. Candlish, speaking about the
 Establishment principle and pointing out that the refusal of
 the State to establish the Church on the only terms to which
 the Church could consent left them a great degree of liberty
 as to the terms on which they should stand with other
 Churches, puts the case thus: “Is the division and schism
 of the Christian Church to be kept up by a question as to the

(1) Memorials of R. S. Candlish, p. 554.

duty of another party over whom we have no control? Let it
 be that we maintain our different opinions as to the duty of
 the State to support the Church, and the duty of the Church
 to receive support from the State when it is given consistently
 with spiritual freedom, still shall that question, which has
 become a mere theoretical question in the Church of Christ,
 and which so far as we can judge seems destined to be a mere
 theoretical question till the time when the kingdoms of this
 world shall become the kingdoms of our Lord and of His
 Christ—shall that question prevent cordial co-operation and
 harmony among ourselves, and our united action in defence of
 our common Protestantism against the common foe?” (1)

My Lords, I have no doubt that the opinions which
 Dr. Candlish expressed so eloquently at the time of the Dis-
 ruption must have been held by many adherents of the Free
 Church. And as time went on and the splendid voluntarism
 of the Free Church on a basis and a scale never before under-
 stood or attempted placed the Free Church on a level with the
 Established Church at home, and in a position certainly not
 inferior as regards missionary labours abroad, the natural
 tendency, I think, even among those who were disposed to
 regard the Establishment principle as a sacred principle (if any
 such there were), must have been in the direction of the
 conclusion that the Church of Scotland could exist not only
 without an Establishment, but even without the profession of
 the Establishment principle.

My Lords, speaking for myself, and with the utmost
 deference to the great majority from whom I have the mis-
 fortune to differ, I think this question about the Establishment
 principle is a very small question indeed, and that it occupied
 a great deal too much of the argument to the exclusion of far
 weightier matters.

My Lords, I cannot call the matters that were discussed by
 Mr. Haldane small or insignificant. They are mysteries into
 which I do not think it is our province to intrude. And, indeed,
 I am not quite sure that at the conclusion of Mr. Haldane's
 argument I had gained a clearer insight into these hidden

(1) Memorials of R. S. Candlish, pp. 317, 318.

H. L. (Sc.) things than I had before. At any rate, I am happy to think that it is not necessary to enter into such questions at all. If the Church has power to relax the stringency of the formulæ required from her ministers and office-bearers, so as to avoid offence to the consciences of the most conscientious and to keep within her fold the most able and enlightened of her probationers, that is all that is required. That she has that power I cannot doubt. These formulæ were imposed by Parliament. If they owed their force and efficacy in the Established Church to Acts of Parliament, the Free Church has rejected the ordinances of men and the authority of Parliament, and is free to regulate her own formulæ. If in the Established Church they owed their force wholly or in part to the antecedent recognition of the Church, the Free Church, as it seems to me, claiming to act and recognised by her adherents as acting in the character of a National Church and proceeding regularly in accordance with her constitution, may do now what the Church did in the seventeenth century.

My Lords, owing to the vast importance of this case and the very able and learned arguments of counsel at the bar, I have thought it right to state in my own language the reasons which have led me to the opinion I hold. Under ordinary circumstances I should have been content to express my concurrence in the opinions delivered by the learned judges in Scotland, and specially in the opinions of the Lord Ordinary and Lord Trayner.

It is impossible, in my opinion, to overrate the importance of the issue awaiting decision. I do not agree with the learned counsel for the appellants that the United Free Church is a changeling—a creature of a composite nature with a double face and two voices. I think the Free Church has preserved her identity. I think she is entitled to as much respect, I had almost said as much veneration, as when she went forth, casting off for conscience sake the fetters and the advantages of State connection. I do not think she has forfeited any of her rights by receiving into her bosom a Reformed and Presbyterian Church, one with her in faith, in baptism, and all essential points of doctrine. And for my part I should hesitate

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long before I could give my voice for a decision which will I fear compel, or at any rate direct, her to subordinate the Scriptures to the Westminster Confession of Faith.

LORD DAVEY. My Lords, the subject-matter of the action out of which this appeal has arisen is certain heritable and movable property of great value, which is held by trustees, who are the first respondents, in trust for the Free Church of Scotland. That Church is a voluntary and unincorporated association of Christians united on the basis of agreement in certain religious tenets and principles of worship, discipline, and Church government. The pursuers and present appellants were in the year 1900, and claim to be still, members of the Free Church, and their complaint, so far as it is cognisable by a civil Court, is that their trustees, at the bidding of other members of the Free Church, but in breach of their trust, have applied, and threaten and intend to apply, the trust property to purposes which are alien to the purposes of the trust, and for the benefit of persons who have no title to call themselves members of the Church. In fact, the appellants say that they alone hold in their integrity the tenets and principles of the association for whose benefit the trust was founded.

The law on this subject is free from doubt. It has been settled by numerous decisions of the Courts both in Scotland and in England, and has been affirmed by judgments of this House. The case of *Craigdallie v. Aikman* (1) came twice before this House. In the second appeal Lord Eldon thus stated the principle on which the House proceeded: "When this matter was formerly before the House we acted upon this principle, that if we could find out what were the religious principles of those who originally attended the chapel we should hold the building appropriated to the use of persons who adhere to the same religious principles." And after stating the result of the inquiries directed by the former judgment Lord Eldon said: "Supposing that there is a division of religious opinions in the persons at present wishing to enjoy this building, the question then would be which of them

(1) 1 Dow, 1, 16; 2 Bli. 529, at pp. 539, 541.

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adhered to the opinions of those who had built the place of worship, and which of them differed from those opinions? Those who still adhered to those religious principles being more properly to be considered as the cestuis que trust of those who held this place of worship in trust, than those who have departed altogether from the religious principles of those who founded this place, if I may so express it."

In an English case (*Attorney-General v. Pearson* (1)), decided in 1817, and therefore between the two appeals in the *Craigdallie Case* (2), Lord Eldon, referring to that case, expounded the principle acted on by the House more at large. "But if," he said, "on the other hand, it turns out (and I think that this point was settled in a case which lately came before the House of Lords by way of appeal out of Scotland) that the institution was established for the express purpose of such form of religious worship, or the teaching of such particular doctrines as the founder has thought most conformable to the principles of the Christian religion, I do not apprehend that it is in the power of individuals having the management of that institution at any time to alter the purpose for which it was founded, or to say to the remaining members, 'We have changed our opinions—and you, who assemble in this place for the purpose of hearing the doctrines, and joining in the worship prescribed by the founder, shall no longer enjoy the benefit he intended for you, unless you conform to the alteration which has taken place in our opinions.' In such a case, therefore, I apprehend—considering it as settled by the authority of that I have already referred to—that where a congregation become dissentient among themselves, the nature of the original institution must alone be looked to as the guide for the decision of the Court, and that to refer to any other criterion, as to the sense of the existing majority, would be to make a new institution, which is altogether beyond the reach, and inconsistent with the duties and character, of this Court."

My Lords, I disclaim altogether any right in this or any other Civil Court of this realm to discuss the truth or reasonableness

(1) 3 Mer. 353, at p. 400; 17 R. R. 100, 101. (2) 1 Dow, 1, 16; 2 Bli. 529; 21 R. R. 107.

of any of the doctrines of this or any other religious association, or to say whether any of them are or are not based on a just interpretation of the language of Scripture, or whether the contradictions or antinomies between different statements of doctrine are or are not real or apparent only, or whether such contradictions do or do not proceed only from an imperfect and finite conception of a perfect and infinite Being, or any similar question. The more humble, but not useless, function of the civil Court is to determine whether the trusts imposed upon property by the founders of the trust are being duly observed. I appreciate, and if I may properly say so, I sympathise with the effort made by men of great intelligence and sound learning to escape from the fetters forged by an earlier generation. But sitting on appeal from a Court of law, I am not at liberty to take any such matter into consideration.

The question in each case is, What were the religious tenets and principles which formed the bond of union of the association for whose benefit the trust was created? I do not think that the Court has any test or touchstone by which it can pronounce that any tenet forming part of the body of doctrine professed by the association is not vital, essential, or fundamental, unless the parties have themselves declared it not to be so. The bond of union, however, may contain within itself a power in some recognised body to control, alter, or modify the tenets and principles at one time professed by the association. But the existence of such a power would have to be proved like any other tenet or principle of the association.

My Lords, I do not propose to travel through the numerous documents which state the grounds of the great disruption in 1843, and the principles held and professed by the founders of the Free Church. The result, in my opinion, is that the Free Church took with it the doctrine, government, and discipline of the Established Church, freed from the fetters and conditions imposed on that Church by its connection with the State. The Free Church adopted as its standards the Westminster Confession and the other subordinate standards of the Established Church. It also adopted the provisions of the Barrier Act, and any other provisions affecting the constitution of the Church or

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the powers of its General Assembly. In fact, the founders of the Free Church claimed that "in doctrine, polity, and discipline they truly represented the Church of their fathers," and that "it is her being free and not her being established that constitutes the real historical and hereditary identity of the Reformed National Church of Scotland."

There is, however, one document which should be more particularly referred to, namely, the protest put forth as their first act by the members of the General Assembly of the Established Church who withdrew from that Assembly on the historical May 18, 1843. This protest was ordered to be recorded by the several presbyteries of the Free Church at the beginning of their presbytery books as the ground and warrant of their proceedings, and it may fitly be called the Charter of the Free Church. It is at once an apologia and an affirmation of the distinctive position taken up by the founders of the Church. In vindicating in vigorous terms their right and duty to separate from the Establishment—maintaining the Confession of Faith and other standards of the Church of Scotland as theretofore understood—they are careful to firmly assert the right and duty of the civil magistrate to maintain and support an establishment of religion in accordance with God's Word.

It is a matter in dispute whether it was a tenet of the Established Church that it is the duty of the State to establish and endow a National Church. It has been said by learned judges in the Court of Session (see Lord Meadowbank in *Smith v. Galbraith* (1)) that it was not required that the principle of a religious establishment in connection with and endowed by the State should be professed as an article of faith. It was pointed out that the article on the civil magistrate admits of other constructions, and that a civil ruler may perform the duty ascribed to him in that article in other ways than by establishment and endowment. But, however this may be, I think it is plain from their public utterances that the founders of the Free Church considered that the Establishment principle was part of the body of doctrine which they brought with them from the Established Church, and that they held and stated it

(1) (1843) 5 D. 665, 685.

in the clearest terms. It is impossible, in my opinion, to get rid of the explicit statement of the doctrine in the protest of May 18, 1843, by calling it "parenthetical," or a matter of opinion. The affirmance of the doctrine may be said to derive strength from the form of the sentence. For it shews that the authors of the protest regarded it as of so much importance that they go out of their way to state it, and thus define more clearly their position, and avoid the imputation that by separating from the Established Church they had become "Voluntaries." Again, in the Act of 1846, "anent questions and formula," while disclaiming intolerant or persecuting principles, "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." And (not to multiply evidence of what is not really disputed) in the address of Dr. Chalmers, which was incorporated in a manifesto issued by direction of the General Assembly of May, 1843, and entitled "The Affectionate Representation of the Free Church of Scotland," that eminent person expressed himself in language which I will not repeat, as it has been read by my noble and learned friend on the Woolsack.

My Lords, I cannot bring myself to doubt that a doctrine thus "firmly" asserted and maintained, and officially put forward, was a distinctive tenet of the Free Church of Scotland, and formed a link in the bond of union between the members of that association. The Lord Ordinary and the learned judges in the Inner House treated it as neither fundamental nor essential, and they seem to have regarded it as a pious opinion, held, indeed, by the founders of the Church, but destitute in the circumstances of any practical importance. I have already said that I have no means of testing the fundamental or essential character of the doctrine apart from the utterances of the parties themselves. They certainly were as far as possible from treating it as an open question, and that attitude was maintained for many years after the foundation of the Church. The doctrine of the independence of the Church under the headship of Christ

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alone was the very foundation of their position, and was necessarily put forward by them as fundamental; but that is no proof that they did not regard other tenets also as essential or distinctive articles of belief. The questions, therefore, in my opinion come to be whether it was a term in the compact or bond of union that the General Assembly should have power to alter or vary the doctrines of the Church, and what are the limits (if any) of such a power. I was impressed (as I believe all your Lordships were) by the powerful argument of the Dean of Faculty. If I understood the learned Dean correctly, he maintained that the General Assembly of the Church of Scotland had by its constitution an inherent power of plenary legislation over all matters ecclesiastical, including doctrine, subject only to the conditions imposed by the Act of Assembly called the Barrier Act. And he carried his argument so far as to maintain that the General Assembly of the Free Church, exercising the inherent powers of the Established Church, but freed from the fetters imposed by Acts of Parliament, might derogate from or even reject the Confession of Faith itself.

My Lords, the freedom of the Church from the control of the civil power in spiritualibus, which is asserted by the Free Church, does not appear to me to warrant any *a priori* inference of the existence of such a plenary power of legislation in the General Assembly. It is, indeed, almost a truism that an unestablished religious association is free from State control as regards doctrine, government, and discipline. But that freedom which differentiates a voluntary association from an Established Church is not inconsistent with the adoption by the association of certain tenets which distinguish it from other similar bodies. The right of the Assembly to impose any innovation from established doctrine on a dissentient minority, and the limits of such right (if any), must be found in the constitutional powers of that body, and must be proved by evidence. The historical argument of the learned Dean appears to me on examination to afford but little assistance on this crucial point. Knox's Confession of Faith was not adopted by the General Assembly of the Church, for at that

time the Presbyterian form of Church government was not established, and there was no such body. It was presented by the Barons and others to Parliament, and then passed into law. The statutes of 1638 and the subsequent years were passed during the period which is called in Scotch ecclesiastical history the Second Reformation, and appear to be in the nature of protests against the action of the King's Government, and in some instances the King's Commissioner is supplicated to obtain the ratification by Parliament of the Acts of the Assembly. The Westminster Confession was adopted by an Act of the General Assembly in 1647, and did not receive parliamentary sanction until 1692, after the period of disturbance between the Restoration and the Revolution of 1688 had passed away. It is to be observed, however, that in the Act of 1647, approving the Westminster Confession, it is expressly stated that the said Confession was found by the Assembly to be "in nothing contrary to the received doctrine, worship, discipline, and government of this Kirk." The Assembly, therefore, did not consider itself to be introducing into the Church any innovation in doctrine. The Westminster Confession was intended to be an eirenicon or basis of union between the Churches in the two kingdoms, and the adoption of it by the Scottish Assembly was as much a political as an ecclesiastical act. The Chapels Act and the Veto Act, which were the forerunners and indirectly the cause of the great disruption, can hardly be cited as evidence of the power of legislation which is claimed. These Acts were said by their authors to be declaratory only of existing rights, and although they involved the assertion of the larger principle for which the majority in the General Assembly were then contending, the particular subjects dealt with would seem to come within the scope of the internal management of an unestablished Church. They were held in the Court of Session and in this House in the course of the litigation which ensued to be of no effect, because their provisions (it was held) were at variance with those of Acts of Parliament. It was not necessary, therefore, for the learned judges to give any decision as to the abstract power in the General Assembly to

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H. L. (Sc.) 1904 pass them. But the dicta of the learned judges were not favourable to the respondents' contention (see the opinions in the first *Auchterarder Case* (1)).

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Counsel referred to Chapter VII. of the Second Book of Discipline. The sections numbered from 6 to 8 describe the powers of all assemblies from Kirk Session to an Ecumenical Council, and do not relate specially to the General Assembly. It does not appear to me that any of these sections either confer or recognise the existence of a power in the General Assembly to impose new doctrines on the Church, for that is what is claimed. They seem to be directed to the preservation and maintenance of established doctrine and the reform of abuses. Sects. 21 to 26 describe the powers of what is there called the National Assembly, corresponding to what is now designated the General Assembly. There are large powers for the protection of the spiritual jurisdiction, the patrimony of the Kirk, and generally concerning "all weighty affairs that concern the well-being and good order of the whole Kirks of the realm." But nothing is said as to doctrine. Counsel did not, in fact, bring to your Lordships' attention any work of recognised authority in the Presbyterian Churches in which it is clearly laid down that the General Assembly possesses this plenary power of legislation over doctrine. And I cannot say that it has been proved to my satisfaction that either by inherent right, or by usage, or by contract, the General Assembly of the Free Church has any such power.

But, my Lords, I think that the learned judges of the Court of Session relied principally on the provisions of the Barrier Act, 1697. The first observation is that that Act is a procedure Act, and not an enabling Act. It does not purport to confer any new powers whatever, but it regulates the exercise of such powers as the General Assembly may possess. It is said, however, that the provisions of the Barrier Act contemplate and imply the existence of a power in the General Assembly to make some innovations or alterations in (amongst other things) doctrine. I think this would be true if, after the word "existence," you added the words "or the possible

(1) 2 Robert. 25 et seq. (Special report by Charles Robertson, Edinburgh.)

exercise by the Assembly." The Act may have been passed for the purpose of preventing a majority from making or assenting to sudden innovations and alterations which it was expected or feared might be attempted from within or from without, without very carefully weighing what the strict constitutional powers of the Assembly were. But, my Lords, let it be assumed that the language of the Act does imply the existence of some power. Certainly it is not necessarily an unlimited or general power, and the question then is, what is the extent or what are the limits of the power? It has been said that it is a power to legislate in any manner not inconsistent with the continued existence of the Church. But applying that to the case now before us, what, it may be asked, is the Church but an organized association of Christians holding certain doctrines and principles in common? I was at one time disposed to think that a sound limitation might be found if the power were confined to the interpretation of formularies. But further reflection has satisfied me that if your Lordships were so to hold, you would only be making a more or less plausible but wholly unverified assumption. I also think that not only an accepted interpretation of Scripture, but an accepted interpretation of or inference from a subordinate standard may just as well be an article of faith as any other opinion, and there is no tenable distinction for this purpose between one religious principle or opinion and another. I do not think, for example, that you advance the argument by calling the Establishment principle a question of polity only. I have come to the conclusion that it would be contrary to all principle to infer from the provisions of the Barrier Act, unsupported by any evidence of usage or other evidence, a power in the General Assembly, or the majority, to vary the trusts upon which this property is held to the prejudice of a dissentient minority. I think the Dean of Faculty was logically right in contending for an unrestricted power of legislation. But if the property was intended to be held in trust for a body of Christians holding such doctrines as the majority acting through the General Assembly might from time to time approve, such an intention should be made clear beyond the possibility of question.

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Now, what is it that the General Assembly has done? I shall content myself by referring to three documents. In 1867 there was a movement in the Free Church for union with the United Presbyterian Church. In a report of a committee of the Free Church of that year on union with other Churches there is contained a statement of the United Presbyterian Church committee under the heading of "Distinctive Articles": "That it is not competent to the civil magistrate to give legislative sanction to any creed in the way of setting up a civil Establishment of religion, nor is it within his province to provide for the expense of the administrations of religion out of the national resources; that Jesus Christ, as sole King and Head of His Church, has enjoined upon His people to provide for maintaining and extending it by free-will offerings; that this being the ordinance of Christ it excludes State aid for these purposes, and that adherence to it is the true safeguard of the Church's independence. Moreover, though uniformity of opinion with respect to civil Establishments of religion is not a term of communion in the United Presbyterian Church, yet the views on this subject held, and universally acted on, are opposed to these institutions." I will only ask your Lordships to contrast this language with the views on this subject expressed by Dr. Chalmers, and put forward by the founders of the Free Church in their manifesto entitled "The Affectionate Representation of the Free Church of Scotland, 1843," to which I have already referred. In fact the voluntary principle—i.e., the unlawfulness of accepting aid in any form from the State—was put forward as one of the most distinctive principles of the United Presbyterian Church in a tract published by authority on the jubilee of that Church in the year 1897.

By an Act of the General Assembly of the Free Church dated October 30, 1900, after a recital that a union of the Free Church of Scotland and the United Presbyterian Church of Scotland was in contemplation, and was about to be consummated, it was enacted and ordered (amongst other things) that all property held by trustees for behoof of the Free Church of Scotland should belong to and be held for behoof of the United Free Church of Scotland.

On the following day the Act of Union was passed, and certain declarations were adopted by the United Assembly defining the basis of union, the third of which is as follows:—

"As this union takes place on the footing of maintaining the liberty of judgment and action heretofore recognised in either of the Churches uniting, so in particular is it hereby declared that members of both Churches and also of all Churches which in time past have united with either of them, shall have full right as they see cause to assert and maintain the views of truth and duty which they had liberty to maintain in the said Churches."

In other words, the Establishment principle and the doctrine as to the duty of the civil magistrate towards the Church which was maintained and firmly held by the founders of the Free Church are henceforth to be open questions for members, ministers, and office-bearers, and the property which was placed in trust for the Free Church is henceforth to be held in trust for the maintenance of a Church, in the pulpits of which distinctive tenets of the Free Church may or may not be taught, and, indeed, doctrines at variance with them, and directly contradictory of the Establishment principle, may lawfully be maintained. The appellants also say that in the constitution of the United Free Church another distinctive principle of the Free Church as declared by the founders of that Church has been abrogated, namely, the unqualified acceptance of the Westminster Confession. They point to the change in the language of the question relating to the Confession which candidates are required to answer in the United Free Church. They say that this change, accompanied and explained by the declaration contained in the preamble of the Act prescribing these questions, has the effect of substituting for a belief in the whole doctrine of the Confession of Faith belief in such portions thereof only as the General Assembly may from time to time determine to be of the substance of the Reformed Faith, or (in other words) such portions as the Assembly may from time to time approve. This is not a mere question of interpretation of formularies, and I am disposed to

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H. L. (Sc.) think that on this point also the argument of the appellants is well founded. The learned Dean of Faculty rightly said that the substantial question was, whether the United Free Church has preserved its identity with and is the legitimate successor of the Free Church. My Lords, I find myself quite unable to answer that question in the affirmative.

The other case relates to the trusts of buildings held for particular Free Church congregations on trust deeds which are in the form of the model trust deed approved by the General Assembly of the Free Church. The terms of this trust deed were much relied on by the counsel for the respondents, not only with reference to these congregational trusts, but also on the general question. The trust is that the building shall be enjoyed as 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 body or bodies of Christians as the Free Church may at any time hereafter associate with themselves under the aforesaid name of the Free Church of Scotland, or under whatever name or designation they may assume. The operative part of the deed is preceded by a long historical narrative, which is interesting and appears to me rightly to define the position and constitution of the Free Church, but it does not appear to me to carry the case further than the facts themselves do. Nor do the terms of the trust seem to affect the general question beyond shewing that it was in the contemplation of the parties that the Free Church might unite with some bodies of Christians. With regard to the congregational property, I feel more difficulty. I think the soundest view, however, is to hold that there is a general overriding trust for the purposes of the Free Church, and it was not intended that the majority controlling the Free Church might by subverting the basis of that Church divert the trusts of the congregational property. I think, therefore, that the union here contemplated must be taken to be one with other Churches which might properly be made without detriment to the distinctive tenets of the Free Church. More than one union of that character has, in fact, been made without objection.

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For the reasons I have given, I am of opinion that the two appeals should be allowed.

LORD JAMES. My Lords, in the cases before your Lordships for decision, the secular Courts have been appealed to for the purpose of determining differences that have arisen between two sections of the Church, until lately known as the Free Church of Scotland.

The jurisdiction of the Courts, and therefore of your Lordships, to determine such differences proceeds from the fact that property held by trustees upon certain trusts has lately been dealt with, or sought to be dealt with, for the purpose of carrying out a union between the Free Church of Scotland and another body, known as the United Presbyterian Church; and the pursuers in the Court below—the appellants before your Lordships—allege that the application of the properties in question to the purposes of the Churches thus united constitutes a breach of the trusts under which the properties are held.

It is obvious that the first step towards the elucidation of the question before your Lordships' House is to determine the nature of the trusts controlling the properties in question. In order to do so, a brief reference to facts, some of which have become historical, is necessary.

Prior to 1843 the Presbyterian Church of Scotland was in existence as the Established Church. But grave questions deeply affecting the minds and opinions of some of its members had come into existence. The protest of the General Assembly of the Free Church, dated May 18, 1843, complains: "That the Courts of the Church, by law established, and the 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."

On this ground, and apparently on this ground only, a large

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H. L. (Sc.) number of the members of the Established Church seceded from it and formed themselves into a new body, under the name of the Free Church. As far as I know, the seceding body adhered to all the tenets and views of the Establishment, excepting upon the above question of secular interference with the spiritual affairs of the Church.

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Upon the Free Church thus constituted as a whole, and upon certain congregations of it, considerable property has been conferred by different settlers and donors.

The case set up by the pursuers is, that these properties are held under certain trusts; that those who conferred the properties upon the Free Church intended that they should be applied for the purposes of that Church as it existed at the time when the transfers of property were made. It is also alleged that the Free Church, having united with another body known as the United Presbyterian Church, has so varied its conditions as to cease to retain its original identity. In the Courts below reliance in support of this contention was almost entirely placed upon the argument that a fundamental difference existed between the two Churches in this—that the Free Church acknowledged and asserted the principle of an Established Church, whilst the United Presbyterian Church condemned that principle and was, to the fullest extent, a voluntary Church, accepting Voluntaryism as a necessary and fundamental article of its faith.

Such being the case presented in the Courts below and at the bar of your Lordships' House by the pursuers, it is necessary first to determine to what extent the Free Church was based upon the principles of Establishment. But before entering upon such inquiry it is, I think, worthy of remark that the Church is not a positive, defined entity, as would be the case if it were a corporation created by law. It is a body of men united only by the possession of common opinions, and if this community of opinion ceases to exist, the foundations of the Church give way. But difference of opinion to produce this result must be in respect of fundamental principles, and not of minor matters of administration or of faith.

The basis of the Established Presbyterian Church was

the Westminster Confession of Faith. At the time of the disruption, in 1843, full adherence to the principles of this important document was declared by the seceders. Article III. of Chapter XIII. of the Westminster Confession is as follows: "The civil magistrate may not assume to himself the administration of the Word and Sacraments or of the power of the Keys of the Kingdom of Heaven; yet he hath authority and it is his duty to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered and observed. For the better effecting whereof he hath power to call Synods, to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God."

It seems to me that this article clearly enunciates the principle of an establishment, and that this principle, as distinguished from its application, has never been repudiated by those who formed the Free Church.

But the opinion of any one on that point at the present day is of but little importance compared with the views expressed by those who formed that Church. Clear and distinct expression of those views can be found.

In the first place, in the claim, declaration, and protest issued by the General Assembly of the Church of Scotland on May 30, 1842, it is stated (1): "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 (Chapter XXV., s. 6), and that while God, the supreme Lord and King of all the world, has 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 (Chapter XXIII., s. 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

(1) See Appr. G, p. 737.

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commands, and to be subject to their authority for conscience' sake, from which ecclesiastical persons are not exempted (Chapter XXIII., s. 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 (Chapter XXX., s. 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 again in the same document there appears as follows: "And whereas this Church highly valuing as she has ever done her connection on the terms contained in the statutes hereinbefore 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."

Coming to the protest of May, 1843, we read: "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 successors to strive by all lawful means as opportunity shall, in God's good providence, be offered to secure the performance of this duty according to the Scriptures." Yet the document proceeds to announce separation.

Again, in the pastoral address issued by the General Assembly of the Free Church on the same day, May 30, 1843, it is stated: "Long was it the peculiar distinction and high glory of the Established Church of Scotland to maintain the sole Headship of the Lord Jesus Christ, His exclusive Headship in the Church which is His Kingdom and House. It was

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ever held by her indeed that the Church and the State being equally ordinances of God, and having certain objects connected with His glory and the social welfare, might and ought to unite in a joint acknowledgment of Christ and on the employment of the means and reasons belonging to them respectively for the advancement of His cause. But while the Church in this manner might lend her services to the State, and the State give its support to the Church, it was ever held as a fundamental principle that each still remained, and ought under all circumstances to remain, supreme in its own sphere, and independent of the other. On the one hand, the Church having received her powers of internal spiritual government directly from her Divine Head, it was held that she must herself at all times exercise the whole of it, under a sacred and inviolable responsibility to Him alone, so as to have no power to fetter herself, by a connection with the State or otherwise, in the exercise of her spiritual functions. And in like manner, in regard to the State, the same was held to be true, on the same grounds, and to the very same extent in reference to its secular sovereignty. It was maintained that as the spiritual liberties of the Church, bequeathed to her by her Divine Head, were entirely beyond the control of the State, so, upon the other hand, the State held directly and exclusively from God, and was entitled and bound to exercise, under its responsibility to Him alone, its entire secular sovereignty, including therein whatever it was competent for, or binding upon, the State to do about sacred things, or in relation to the Church, as, for example, endowing and establishing the Church, and fixing the terms and conditions of that Establishment."

But perhaps the most explicit declaration on the subject of the principle of Establishment is to be found in the following words of Dr. Chalmers, rendered authoritative by their circulation by the orders of the General Assembly of May, 1843: "The Voluntaries mistake us if they conceive us to be Voluntaries." (These are the words which were read by my noble and learned friend on the Woolsack.) "We hold by the duty of government to give of their resources and their means for

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the maintenance of a Gospel ministry in the land; and we pray that their eyes may be opened, so as that they may yet learn how to acquit themselves as the protectors of the Church, and not as its corrupters or its tyrants. We pray that the sin of Uziah, into which they have fallen, may be forgiven them; and that those days of light and blessedness may speedily arrive, when kings shall be the nursing fathers, and queens the nursing mothers of our Zion. In a word, we hold that every part and every function of a commonwealth should be leavened with Christianity; and that every functionary, from the highest to the lowest, should, in their respective spheres, do all that lies in them to countenance and uphold it. That is to say, though we quit the Establishment, we go out on the Establishment principle—we quit a vitiated Establishment, but would rejoice in returning to a pure one. To express it otherwise, we are the advocates for a national recognition and a national support of religion, and we are not Voluntaries."

To these declarations of Dr. Chalmers I feel great importance should be attached. Apart from the fact that they were issued under the authority of the General Assembly, Dr. Chalmers was specially appealing for material support for the Free Church as a seceding body; and I know nothing more likely to influence the generosity of donors than the eloquent appeal of such a man as Dr. Chalmers. From him those who gave would seek both guidance and information as to the body upon which their gifts would be conferred.

Then in December, 1843, the Assembly of the Free Church, replying to the address from the Congregational Churches of North Wales, said: "But you misapprehend the nature of the movement we have made in supposing that we have in the least degree altered our views respecting the lawfulness and desirableness of a right connection between Church and State."

That the Establishment principle was adhered to by the Free Church seems to have been accepted in the Court below. Lord Trayner in his judgment says: "It is not open to doubt that the Free Church from its constitution in 1843 down, at least, to its union with the United Presbyterian Church professed the Establishment principle."

Even the separation from the Established Church was apparently intended to be of a temporary character only, because we find in the claim and protest of May 30, 1842, the following statement: "But that it shall be free to the members of this Church or their successors at any time hereafter when there shall be a chance 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 procure to their office-bearers the best 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."

Such being the declarations of the seceders at the time of the disruption, I can find no departure from such views at any time before the union with the United Presbyterian Church. On the contrary, between the years 1842 and 1900 repeated declarations of adhesion to the principle of Establishment were made on behalf of the Free Church.

I have thus dealt at length with the position accepted by the Free Church in relation to Establishment, and the result seems to be that the seceders of 1843, having belonged to the Established Church, seceded from it, not because it was an Established Church, but because the principle of the Establishment within it had become vitiated. To the principles of Establishment the seceders still fully adhered; and to the Established Church itself they would gladly have returned as soon as there was any discontinuance of the interference with spiritual government which they regarded as vitiating the true principles of Establishment.

It still has to be considered whether the principle was essential and fundamental or a mere matter of policy. It is difficult to define any positive standard between an essential and a non-essential principle. But surely there is a great gulf between the principle of Establishment and that of Voluntaryism. It seems to me, having read the declarations of the General Assembly and the distinct utterances of Dr. Chalmers, that scant justice would be done to the eloquent leaders of the secession movement of 1843 if we construed them

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FREE CHURCH OF SCOTLAND (GENERAL ASSEMBLY OF) v. OVERTOUN (LORD). Still more important is it to consider what was the view of the importance of the principle entertained by those donors who, may be, listened to the appeal of Dr. Chalmers. Would they have regarded it as non-essential? Would they have endowed a Church pledged to Voluntaryism? I think not.

MACALISTER v. YOUNG. Lord James. It is a much easier task to gather the views of the United Presbyterian Church on the subject of Establishment. That Church came into existence in the year 1847 by virtue of the union of two Churches which had previously seceded from the Established Church. It is not denied that from first to last the United Presbyterian Church has existed without connection with the State, and as a voluntary Church accepting as a fundamental principle that of Voluntaryism. A most emphatic declaration in favour of that principle was made as late as the year 1897 in a tract, No. XXV., issued by the United Presbyterian Church. Again I quote Lord Trayner's authority in the Court below. He says that it is not open to doubt "that the United Presbyterian Church throughout the whole period of its existence has repudiated the principle of Establishment and professed instead the principle of Voluntaryism."

Entertaining these different views, the Free Church and the United Presbyterians have taken steps, seemingly correct in form, to become united under the name of the United Free Church. And this union is sought by the majority who support it to be imposed on the minority who object to become members of the new United Church, and to take effect upon property held by the Free Church so as to transfer it to the new body, the United Church.

Apparently it was sought to make the union subject to a reservation, so as to leave an independent and different judgment to members of the two Churches. Clause 3 of the declaration of the United Assembly is as follows: "As this union takes place on the footing of maintaining the liberty of judgment and action heretofore recognised in either of the Churches uniting, so in particular it is hereby declared that

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But this freedom to differ, whilst admitting the differences, does not lessen or remove them. The United Free Church, as a whole, holds within it neither the principle of Establishment nor of Voluntaryism; such questions were to be open questions. But the man who as a member of the Free Church had accepted the views of a Church which claimed Establishment as one of its fundamental principles may well object when he is told that he shall no longer belong to a Church holding that principle, but that he must, under compulsion, join a Church wherein members of it may think as they will on this broad subject, and must, whether he wishes it or not, be in communion with the supporters of the voluntary system to the same extent as if they had been adherents to the principle of Establishment in accordance with the tenets of the Free Church.

My Lords, we must recollect that we are dealing with property applied to the use of men in return for services rendered as ministers of the Free Church—to the use of men who have adhered to the tenets of that Church—who have changed nothing, who have varied nothing. From an answer I received from counsel at the bar I learnt that the refusal of these ministers to become members of this mixed body was treated as a matter of discipline; and so the sentence for thus adhering to an old unaltered faith apparently amounts to deprivation.

That this is so seems to proceed from the effect of the Act of October 30, 1900, whereby it was resolved that the whole property of the Free Church should be transferred to and belong to the United Free Church. The assertion that the dissenting minority by so dissenting ceased to be members of the Free Church, and lost and forfeited all their rights and privileges as members thereof, is to be found at statement 15 of the defenders' case. The sentence thus imposed upon the ministers

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 "They separated and cut themselves off from the said Church,"
 says the statement of the defenders, "and by so doing lost and
 forfeited all their rights and privileges as members thereof.
 They do not constitute or represent the Free Church of
 Scotland, and they have no right or title to any property
 which belonged to the said Free Church of Scotland. They
 are not members of the United Free Church of Scotland, and
 they have no right or title to any property belonging to it."

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My Lords, there are one or two subjects that must be referred to. Lord Trayner in his judgment says: "But esto that the Establishment principle had been explicitly declared in 1843 to be an essential principle of the Free Church, I think the Church had the power to abandon that principle, and to that extent alter that principle." From this view I differ, because, regarding "essential" as meaning fundamental, I do not think that a Church can change such fundamental principle and yet at the same time preserve its identity. As I understood, it was admitted at the bar this power of change is restricted so as to keep the Church within the limits of identity. The retention of the name does not preserve identity, and yet the change of principles might be so great as to leave nothing but the name of the Church. I think, too, it was admitted by way of example that if change had introduced the doctrines of the Church of Rome the identity of the Free Church would be lost; and surely this view brings us back to the question whether there has been any change of a fundamental or vital principle of the Church, and to this an answer has been given.

An important document, the model trust deed of November, 1844, has also to be dealt with. The respondents naturally rely upon it as shewing that at the very time of the secession it was contemplated that the Free Church might unite with other Churches. I agree that this is so, for the deed sets out a trust in favour of the congregations "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 may at any time hereafter associate with themselves."

Even if the model trust deed contained no such reference to union with other Churches I should regard the power as existing, for I agree with Lord Young when he says in his judgment that "any two or more Churches may lawfully unite so as to form one Church, and that nothing more is necessary to the union than their own consent, which they are respectively free to give or withhold."

Doubtless that is so in respect of the mere legality of the act of uniting, but different considerations are raised in these suits. We have to deal with the rights of property, with the execution of trusts, and we have to see that the objects the donors had in view are carried out. Such being the case, I do not think that the model trust deed gives greater power of union than the Free Church possessed without it. The Church may unite, and so says the model trust deed, but if property is sought to be transferred to the new body the identity of that new body—that is the Free Church—after the union must be maintained; and nothing in the deed gives a power to unite so as to bring into existence a Church incapable of identity with the Free Church. And if this be so, we are recalled to the consideration of the main question argued in this case.

My Lords, great stress was laid at the bar upon the effect of an Act passed in the year 1697 called the Barrier Act. (1) It was argued that this Act conferred legislative powers upon the General Assembly in respect of matters of doctrine or worship, discipline or government within the Church. I cannot agree in this view. The Act is entitled "An Act anent the method of passing Acts of Assembly of general concern to the Church, and for preventing of innovations." It is a procedure Act regulating the exercise of the existing powers of the Assembly, but conferring no new jurisdiction and increasing no powers. Doubtless the Assembly had before the passing of the Acts certain powers in respect of the matters referred to, and it was thought desirable to enact that such powers should only be exercised after full notice given. That is all the Barrier Act did. Certainly nothing within it gives any power to alter the identity of the Church.

(1) See Appx. G, p. 736.

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My Lords, I have not thought it necessary to enter upon any detailed statement of the law affecting the application of property left in trust for a voluntary body such as the Free Church was. It seems enough to say that sufficient guidance on that subject is to be found in the case of *Craigdallie v. Aikman* (1), the decision in which case supplies principles applicable to the present.

I probably have already conveyed to your Lordships the result I have arrived at. After very earnest consideration of the facts before this House, and of the very able arguments presented at the bar, I have come to the conclusion that the appellants are entitled to the judgment of your Lordships. That conclusion is founded upon the grounds I have above referred to. I am thus relieved from dealing with the second ground upon which the union of the Churches is attacked, and I am glad that there is no necessity for me to deal with that interesting but difficult problem presented by the alleged difference of doctrine existing in the two Churches.

I am aware that your Lordships' duty is only to give judgment upon the strict issues raised before you, and that that judgment must lie where it falls; but, even at the risk of exceeding my duty, I venture to express the sincere hope that some way will be found to avoid the capture by either litigants of any spoils of war; and that hope is confident, because I believe that the primary, indeed the only, object of those who have united and those who have dissented has been to promote the interests of the Church, and that equally now will it be their care that the Church as a whole and the individual members of it shall in no degree suffer from the events with which your Lordships have had to deal.

LORD ROBERTSON. My Lords, in the elaborate arguments submitted to the House many questions have been discussed which involve difficult theological and historical inquiries. I have, as in duty bound, carefully considered those various aspects of the controversy, and I have come to the conclusion

(1) 1 Dow, 1, 16.

that the case admits of decision, and ought to be decided, upon grounds much more palpable and certain.

The question is, to whom does certain property now belong which was given to the denomination of Christians which called itself the Free Church of Scotland? That body was founded in 1843; it consisted of ministers and laity, who seceded from the Established Church of Scotland on certain questions of Church polity, but who professed to carry with them all the doctrine and system of the Established Church, only freeing themselves, by secession, from what they regarded as intolerable encroachments by the Law Courts upon the Church's spiritual functions. Rightly or wrongly, the theory of the Free Church was that they, and not the Established Church, were the Church of Scotland.

The Church thus set up was endowed, by the liberality of its members, with the property now in dispute. Two competitors now claim it. Of the respondents, the first remark to be made goes to the very root of their claim. They are not, either in name or composition, the Free Church of Scotland. They are not even the majority of the Free Church, but the assignees of the majority of the Free Church; they are a body formed in 1900 by the fusion of the majority of the Free Church with another body of Presbyterian Dissenters, the United Presbyterian Church. The property of the Free Church is claimed by this composite body, which, to the extent of a third or some large proportion (for the particulars are not before us and are unimportant), is composed of United Presbyterians. Of this new body it may be affirmed nearly as truly that it is United Presbyterian as that it is Free Church, and its name, the "United Free Church," suggests the fact.

Now I do not attach conclusive importance to the name; but it is important and still more significant. In any view, the change of name and the fact of fusion put it on the respondents to prove their identity with the original beneficiaries. They have to do this, too, not in a question with the heirs-at-law of the founders, but in competition with an existing body of ministers and members of the original Free

H. L. (So.) Church, who have simply stayed where they were, and about whose pedigree there is no dubiety.

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For reasons to be afterwards stated, it is not too lightly to be assumed that such unions are within the competency of any majority, however large, even if there existed no essential differences between the uniting bodies. The present, however, is not a case in which (as in some instances, which will presently be examined in detail) the Free Church has absorbed smaller Presbyterian bodies holding all her own pristine principles, and has done so without any change of her name or formularies. The United Presbyterian Church treated with and joined the Free Church not only formally, but in fact, on at least equal terms. The two bodies which met to consummate the union enacted and declared that the Free Church and the United Presbyterian Church "do and shall henceforth constitute one united Church, that the name of the United Church shall be the United Free Church of Scotland, and that its supreme Court shall be designated the General Assembly of the United Free Church of Scotland." From these proceedings it resulted that, so far as the respondents were concerned, the Free Church judicatories ceased to exist, their place being taken by Kirk Sessions, Presbyteries, Synods, and General Assemblies of the new Church, composed in part of gentlemen who formerly were United Presbyterians, and in part of gentlemen who formerly were Free Churchmen.

On October 30, 1900, the General Assembly of the Free Church made over the whole property of the Free Church to the United Free Church. On the following day, October 31, 1900, the General Assembly of the new Church proceeded to set up a new formulary for the admission of their preachers, which had been preconcerted and made matter of treaty. Whereas a probationer of the Free Church used to be required to affirm his belief that "The whole doctrine of 'the Confession of Faith' is the truths of God," the United Free Church probationer requires to affirm his belief in "the doctrine of this Church" (i.e., the United Free Church) "set forth in the Confession of Faith." (The elasticity of "the doctrine of the United Free Church," which is thus made the object of belief,

is ascertained by the fact that the various matters of agreement between the Churches with a view to union were declared by the United Assembly to be "accepted and enacted without prejudice to the inherent liberty of the United Church as a Church of Christ to determine and regulate its own constitution and laws as duty may require in dependence on the grace of God and under the guidance of his Holy Word.") The United Free Church probationer has also to affirm the general principles of the (United Presbyterian) "Basis of Union, 1847," as well as those of the (Free Church) "Claim of Right of 1842" to be principles sanctioned by the Word of God and the subordinate standards of the Church. I do not at present comment on the importance of such changes, but note them as shewing that the constitution of the new Church is a new constitution enacted by the new and composite body, and adapted to the exigencies of the United Presbyterians.

Another matter of salient importance demands attention. One of the recitals in the Act of General Assembly of the Free Church by which they authorized the union is that, "the committees of the two Churches having met and communicated to one another the existing doctrinal standards, rules, and methods of the two Churches, it appeared that in regard to doctrine, government, discipline, and worship therein set forth a remarkable and happy agreement obtained between them, and also in particular in the views of the two Churches in respect to the spirituality and freedom of the Church of Christ—her subjection to Him as her only Head and to His Word as her supreme standard, and that an incorporating union might harmoniously be accomplished." There is no profession of identity, but of an "agreement" having been "obtained," which is described as "remarkable." Now the steps and stages of these long negotiations are before the House, and from these it appears that on this question of Establishment there were in 1863 and in 1867 sharp differences. The tenets of the two bodies are printed in parallel columns in the printed papers, and I am going shortly to refer to them.

Nothing before the House shews or suggests that the United Presbyterians departed by an iota from their own doctrine. On

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the other hand, there is no avowal by the Free Church that she departed from the position formulated in the parallel columns. What was done was simply to drop the subject and unite. While such is the name and such the composition of the respondents' body, the position of the other competitor, the appellants, is very much simpler. They are those ministers and laity of the Free Church who did not concur in the union of 1900, but protested against it; they have done nothing but remain where they were, holding to the letter all the doctrines of the Free Church, adhering to it as an institute, and continuing its existence according to the measure of their powers. They say that in the event which has happened they are the Free Church—their brethren having left them for this new Church—just as those brethren might have left them for the Establishment or for the Episcopalians. They have, however, been declared by the respondents no longer to be of their communion, and their manses and churches have been formally claimed by the respondents for their own exclusive use. The adherents of the appellants are numerically few—some few thousands—but it has not been suggested that this introduces any legal difference from the situation as it would have been had they been more numerous. Since the days of Cyrus it has been held that justice is done by giving people, not what fits them, but what belongs to them.

Such being, in sketch, the relative positions of the two claimants to this property, it is plain that the respondents can only succeed by making out that it was an inherent quality of that Free Church to which this property was given that it could transform itself in the way that I have described, and oust from the property those who desire to remain where they were, in principle, doctrine, and organization. For let it not be forgotten that the contention of the respondents necessarily involves that the majority is entitled, not merely themselves to retain the property, but (1.) to introduce the United Presbyterians as beneficiaries, and (2.) to oust the dissentient minority from the benefits of the foundation. This is why I protested at the outset against the too ready acceptance of the doctrine that "union" is competent to a majority.

In considering this contention, I steady myself by dwelling on an observation very frequently repeated by the Dean of Faculty in his able speech for the respondents. "This case," said the Dean, "differs from all previous cases in the same region of law in this—this is a gift to a Church," not to a congregation, nor for the promotion of certain doctrines, but to a Church named and designated. I think there is great force in this, but in another way from that intended. This property was given to the Free Church, an existing Church, complete within itself as an ecclesiastical organism and separate from other Churches. This becomes extremely clear when it is remembered that there were already existing, at the moment of the disruption, the two dissenting Presbyterian bodies which now form this very United Presbyterian Church, and that the incorporation of those two into the United Presbyterian Church took place in 1847, during those early years of the Free Church when this property was being accumulated. Those dissenting bodies were, so far as worship, doctrine, discipline, and government were disclosed in their standards, exactly the same as the Free Church which was set up side by side with them. Accordingly, even if we knew nothing to corroborate the inference which this gives rise to, the broad fact is that the Free Church was set up as an independent Church separate from those with whom the recent union has now been effected. Therefore, with the Dean of Faculty, I say this property was given to a particular Church, and it is very difficult to see that it will do to end that Church, and then, picking up most of her doctrines, come forward to claim that United Presbyterian and Free Church alike shall share as members of a body which is not even called the Free Church.

When the history of the foundation of the Free Church is more closely examined, we see that it was not fortuitously or from mere love of separation that the Free Church was founded and endowed as a Church separate from the two confluent of the United Presbyterian Church.

Those existing dissenting bodies held opinions about Church government and Church and State which were inherited and carried forward by the United Presbyterian Church; and in

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H. L. (So.) 1843 they, as after 1847 their successor the United Presbyterian Church, were the exponents in Scotland of voluntary principles. By this, as it ought to be unnecessary to say, I mean, not merely that in fact they were not endowed by the State, but that they were opposed on principle to the endowment of religion by the State. It is honourable to the United Presbyterian Church that, in good times and in bad, it has never used ambiguous language or nicely balanced phrases about this matter, and has never sailed under false colours. All through the negotiations with the Free Church, as before them, it was strenuous and busy in "diffusing a knowledge of the voluntary principles of the Church"; it year by year upheld "the Church's testimony on the proper relations of Church and State, and in favour of religious equality by disestablishment and disendowment," and "renewed the testimony of 1847, constantly maintained, 'That it is not within the province of civil government to provide for the religious instruction of the subject.'"

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In order, once for all, to ascertain precisely the true position of the United Presbyterian Church upon these subjects, it is convenient to read the statement of their distinctive principles made by their committee when negotiating for union with the Free Church in 1867; and the passage has a special value, because, in the circumstances, it was not likely to contain overstatements on controversial points. It stands out also as a landmark because it has never to this day been abandoned by the United Presbyterian Church, either before, in, or after their union with the Free Church. Here is what is said: "That it is not competent to the civil magistrate to give legislative sanction to any creed in the way of setting up a civil establishment of religion, nor is it within his province to provide for the expense of the ministrations of religion out of the national resources; that Jesus Christ, as sole King and Head of His Church, has enjoined upon His people to provide for maintaining and extending it by free-will offerings; that this being the ordinance of Christ, it excludes State aid for these purposes, and that adherence to it is the true safeguard of the Church's independence. Moreover, though uniformity of opinion with

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

All of this declaration is very clear, but the closing sentence has a special significance in regard to the whole of the present case. On paper, the United Presbyterian Church held just the same general doctrines as the other Presbyterian Churches; like them, she held the Scriptures to be the only rule of faith; as with them, so with her, the Westminster Confession and Catechisms were her Confession and Catechism. None of her formularies made mention of Voluntaryism or exacted the profession of that principle from her office-bearers or members. The learned judges whose decision is now under review would, I suppose, have thought that this fact removed all ground of division between the voluntary bodies and the Free Church bodies in 1843. But the founders of the Free Church were not content with these criteria of the distinctive notes or testimonies of a Church, and they declined to coalesce with the Voluntaries, although Voluntaryism was not then, any more than now, a term of communion in those bodies. "The Affectionate Representation of the Free Church of Scotland, 1843," is conclusive on this point, and it has a peculiarly direct authority and relevance in the present controversy. It has been called, and I think accurately, "the prospectus" of the new Church, and it states the grounds and principles on which support was asked for it. Now this manifesto or prospectus discusses this very question of the proper relations of the Free Church to the Dissenters, who now form the United Presbyterian Church. The manifesto seems to anticipate the not unnatural objection to the formation of a new Church, that here were existing orthodox Presbyterian Churches—why not join them? The answer is conclusive. That would be against our principles. And in two very eloquent pages—for the writer was Dr. Chalmers—the Establishment principle is urged upon those addressed, in the most peremptory terms, as being still binding on them as "a doctrine or article of faith"—the Voluntaries are warned that they mistook the Free Church if

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they conceived them to be Voluntaries; and it is emphatically asserted for the Free Church that, "though we quit the Establishment we go out on the Establishment principle; we quit a vitiated Establishment, but would rejoice in returning to a pure one." The same attitude is politely but firmly expressed in the General Assembly's replies to the various bodies of Voluntaries who addressed the Free Church with congratulations at the time of the disruption. They are all asked not to mistake the Free Church for Voluntaries.

The conclusion which I draw from all this is that it was of the essence of the foundation to which this property belongs that it should be a Church separate from voluntary Dissenters. On broader grounds, though closely connected, it is difficult to see how the pretensions of the Free Church, such as they were, could have been embodied in anything but a Church of her own. Her theory was that she was, amid right-hand and left-hand defections, the Church of Scotland—the Church of the first and the second Reformations—the burning bush, never consumed. With all Presbyterians, this is a noble claim to allegiance; nor was it the less inspiring in 1843, because the Church had been (as she held) unjustly deprived of the benefits of Establishment, and her loyalty to the principle of national religion was proving itself to be of the sort that is true although it be not shone upon.

Now, in dealing with the question before your Lordships' House, it is necessary from the outset to bear firmly in mind that the Establishment principle can be held by Churches that, in fact, are unconnected with the State, and are, in fact, supported by voluntary contributions alone. I should have thought this the necessary hypothesis of the whole question, as we have to do with a dissenting Church; but in two passages of the learned judges' opinions, afterwards to be adverted to, this seems to be forgotten.

Again, the intrinsic importance of any particular doctrine in relation to the general body of Christian teaching is no criterion of whether it is or is not an essential or fundamental doctrine in a particular Church, and least of all in Scotland. It is not its own importance, but the place assigned to it in the foundation

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of the new Church that has got to be ascertained. I dwell on this for a moment, and illustrate it from the case in hand. Whether the Establishment principle is or is not a fundamental doctrine of the Free Church is the dispute in this case; but there is no doubt at all that the claim of the Free Church as against the Law Courts (I put it shortly) is of the essence of her foundation. This question is settled, not because the judges or your Lordships so appraise that doctrine, in comparison with all the various doctrines of faith and morals set out in the Confession of Faith, but because that was the undoubted ground on which the new Church was set up. Now I observe in Lord Low's very able judgment that he makes much of the fact that here were two Churches identical in doctrine, worship, and form of government, and they were working together in the same field, so that their agencies overlapped and their efforts were to some extent wasted. And his Lordship goes on to speak of the duty of unity among Christians.

This is all very true; but then these considerations were full in view of the founders of the Free Church. This is not a case where the new Church was set up in Scotland to preach the Gospel to people who were not within reach of the common doctrines of Christianity, or even of Calvinistic Christianity. In the theory of the founders of the Free Church, it was intolerable that their adherents, although agreeing in all other matters, should continue to worship along with those who were content that the Court of Session should force the presbytery to ordain the patron's presentee, and do all the various things which led to the disruption. In fact, again, they set up their churches side by side with those of the other Presbyterian bodies who also held exactly the same doctrinal standards. And the evil consequences of having two separate churches instead of one, which Lord Low adverts to, being palpable and flagrant, then as now, the just inference seems to be that the founders of the Free Church deemed the difference between themselves and the Voluntaries so vital that the duty of Christian unity must give way to the more imperious duty of Christian fidelity to truth. In the same fashion the older secessions had taken place on questions not about any of the doctrines of personal

H. L. (Sc.) religion or of theology, but about Church polity. Questions of
 1904 polity had, in short, been in Scotland often made the causes of
 FREE CHURCH OF SCOTLAND (GENERAL ASSEMBLY OF) separation between Churches, and in 1843 this unquestionably
 OVERTOUN (LORD). was again the case. The only question is, Was the doctrine of
 polity on which the Free Church was founded solely what was
 called spiritual independence, or did it not also comprehend
 the Establishment principle?

MACALISTER v. YOUNG. I am, of course, not to be understood as speaking in praise
 Lord Robertson. of separation (or of any doctrine on one side or another of this
 dispute), but no one will understand the present case unless he
 receives into his mind the possibility of people valuing separa-
 tion as a safeguard for doctrines which they hold intensely, and
 as to which they know that the surrounding world is indifferent
 or hostile. And the error of the respondents seems to me to be
 that, shutting their eyes to the extremely special and limited
 raison d'être of the Free Church, and contemplating themselves
 as a Christian Church, they measure the importance of any
 doctrine in relation to Christianity as a whole, and not with
 reference to their own distinctive origin.

Another fallacy must be guarded against. To prove that
 spiritual independence is more important than the Establish-
 ment principle is only to prove that the latter is in importance
 subordinate to the former; but it does not entitle us to call the
 Establishment principle a principle of subordinate importance.
 The true question, as I view the matter, is whether the two
 doctrines (spiritual independence and Establishment) have not
 been made by the founders of the Free Church complementary
 parts of one doctrine.

The instrument of the highest and most direct authority,
 as evidencing the position of the Free Church, is the protest
 of 1843. It was, by Act of Assembly, enjoined on the
 presbyteries to record this protest, together with the Act of
 Separation and Deed of Demission, at the beginning of their
 presbytery books as the ground and warrant of their pro-
 ceedings. The protest seems to me, on the face of it,
 amply to support the "Affectionate Representation" (already
 referred to) in the assertion that "we come out on the Estab-
 lishment principle." The protest is that it shall be lawful to

them, in the circumstances in which they are placed, to
 withdraw from the existing Establishment (as if this act
 required defence); but they make this protest "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
 providence be offered, to secure the performance of this duty
 agreeably to the Scriptures," and so on. Your Lordships have
 doubtless read the document as a whole, and there is nothing
 in the context which detracts from the significant and solemn
 emphasis of what I have quoted. They had come to the
 conclusion that, in the circumstances in which they found
 themselves, "a free Assembly of the Church of Scotland as by
 law established cannot at this time be holden," and therefore,
 and therefore only, they came out.

The claim, declaration, and protest of 1842 is referred to in
 the protest of 1843 as setting forth the true constitution of the
 Church. Now Lord Low, admitting that in this document
 also the Establishment principle is affirmed, remarks that it is
 "in a parenthetical way." The simple explanation of the
 form of the sentence, and of the lesser saliency of the position
 assigned to that principle in this paper, is that it is a manifesto
 from and by an Established Church. The motive of the paper
 is to protest against interference with the judicatories of that
 Church. Accordingly, the hypothesis is that Establishment
 as a principle requires no vindication or assertion; and it in
 fact only enters the argument when the loss of Establishment
 is referred to as one of the national dangers impending. But
 the references in this connection are of unmistakable import.

The unqualified language of the protest of 1843, the docu-
 ment which, as we have seen, each presbytery was to take as
 the warrant of its proceedings, stands witness, therefore, of the
 distinctive principles of the Free Church. I have already
 spoken of the Affectionate Representation of 1843 as the mani-
 festo on which endowment was invited; and these two historical
 papers are those which bear most directly on the question,
 What are the trusts of this foundation?

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H. L. (So.) There are a number of authoritative documents of the
 1904 General Assembly in following years; and, having examined
 FREE CHURCH them all, I find them all to bear out the statements made to
 OF SCOTLAND the public in the affectionate representation. The degree of
 (GENERAL ASSEMBLY OF) prominence attached to the one or the other of the Church's
 v. doctrines of course depends on the occasion of the pronounce-
 OVERTOUN (LORD). ment, and it would be unfair to isolate any statement from its
 MACALISTER motive and context. I shall mention three utterances as
 v. instructive in more ways than one, especially as the first of
 YOUNG. these is founded on by the respondents.
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In 1851 (the matter in hand rendering this appropriate) it is spiritual independence that is put into the "parenthesis" and the Establishment principle that is substantively asserted. "While this Church has ever held that she possesses an independent and exclusive jurisdiction or power in all ecclesiastical matters," and so on, "she has at the same time always strenuously advocated the doctrine taught in Holy Scripture, that nations and their rulers are bound to own the truth of God and to advance the Kingdom of His Son." The Assembly goes on, in a historical review of Scottish history, to illustrate how this had been done and how it had not been done, the first instances approved being the statutes establishing the Church in 1567 and 1592. Now in this paper there occurs a passage which has been founded on by the respondents, in which the Assembly says that "it is her being free and not her being established that constitutes the real historical and hereditary identity of the Reformed National Church of Scotland." Of course it is not the fact of her being established that constitutes the identity, or the Free Church claim would be impossible. But I entirely fail to see what this has to say to the principle of Establishment. This argument of the respondents is merely another instance of the recurring fallacy which confuses the fact of a Church being established with the holding by a Church of the Establishment principle.

The "Act VII. 1853" is "anent the principles of the Church"; it is short and unequivocal, and it contains an authoritative exposition or gloss of the claim, declaration, and

protest of 1842 and the protest of 1843. It "declares that this Church maintains unaltered and uncompromised the principles set forth in the claim, declaration, and protest of 1842 and the protest of 1843 relative to the lawfulness and obligation of a scriptural alliance between the Church of Christ and the State." It will be remembered that in the protest the protestors reserved to themselves and their successors "to strive by all lawful means to secure the performance of the duty of the State to support an Establishment of religion in accordance with God's Word." So now the General Assembly goes on to explain that there is not, in 1853, any "present call" to take steps in that direction. This, the return to a purified Establishment, was the only "union" ever thought of by the old Free Church.

The only other Act of Assembly of the Free Church to which I need refer is that of 1873, in which, in full view of the United Presbyterians—for the Act relates to the mutual eligibility of their ministers—the Assembly "declare their adherence to the great fundamental principles of this Church, regarding, first, the sole and supreme authority of the Lord Jesus Christ" (I need not quote this in full—it is the doctrine of spiritual independence); and, secondly, "the prerogative of the Lord Jesus Christ as head over all things to His Church and supreme over nations and their rulers, who are consequently bound collectively and officially as well as individually and personally to own and honour His authority, to further the interests of His holy religion, and to accept the guidance of His Word as making known His mind and will." We are now, in 1873, entering the zone of negotiation, and the language is becoming a little general; but the important thing is that the doctrine about the State, whatever it was, is put abreast of the doctrine about spiritual independence, the two being declared "great fundamental principles of this Church." And what the second of these doctrines was in 1843 is not in doubt.

What has now been said relates to authoritative declarations of the Free Church herself; and now a word must be said of her inherited standards. I shall put the argument very low indeed when I say that the Confession of Faith, on the face

H. L. (Sc.) of it, is consistent with the high place given by the Disruption leaders to the Establishment principle. It is quite certain that the Confession of Faith is inexorably opposed to the theory of religious equality, which is, as we have seen, to this day avowed by the United Presbyterians, who now form part of the respondents' Church. The notion that the State is to stand neutral between good religions and bad, which is what is meant by religious equality, is diametrically opposed to the whole teaching of John Knox. Upon this subject, and on this occasion, I cannot do better than quote from one of the Disruption leaders themselves, the historian of "The Ten Years' Conflict" (1876 edition, pp. 39 and 41 of vol. i.). "Knox," says Dr. Robert Buchanan, "and his enlightened and able associates were clear and decided about these two things: first, that no State can, without grievous sin, lend its countenance to the Roman Antichrist or to any false religion whatever; and, second, that every State is bound to embrace, acknowledge, and encourage the true religion." "In Scotland, as everywhere else, at the period of the Reformation, the duty of the State to own and uphold the true religion was looked upon as a first principle, which did not require and hardly admitted of discussion." To those who realize the high theocratic views of the sixteenth and seventeenth centuries in Scotland, it is easy to understand that the autonomy of God's Church and the duty of the State to support it were but two essential parts of the one great conception of a Christian nation. And this is in truth the clue to the Disruption documents.

On the specific question about the 23rd chapter of the Confession of Faith, I own that I read with some surprise that doubts had been entertained by learned judges as to the effect of the words that it is the duty of the civil magistrate to "take order that" "the ordinances of God" be "duly settled, administered, and observed." I must still take leave to think that those words do describe what we call Establishment; and I observe that in the *Campbelton Case* (1), where these observations were made, the question

(1) *Gulbraith v. Smith*, (1837) 15 S. 808; (1843) 5 D. 665.

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before the Court was State endowment, which is a different thing.

On all the grounds which I have stated, I come to the conclusion that the doctrine of Establishment was one of the distinctive and fundamental doctrines of the Free Church.

I shall now mention one or two points in the judgments in the Court of Session, so far as relating to that question, which demand attention. Lord Trayner, whose judgment is most clear, has stated a very curious objection to the likelihood of the Establishment principle being a fundamental doctrine of a Church. His Lordship finds it "difficult to hold that a mere opinion as to what some third person was bound to do, which he might neglect or refuse to do, and which the Church could not compel him to do, could in any way be an essential part of the constitution of the Church which held that opinion." This difficulty really arises out of the time-honoured personification of the State as the civil magistrate. It would certainly not have been admitted by John Knox, even when Queen Mary represented the civil magistrate. And in these latter days of popular power the civil magistrate sits in every pew, and his religious duty may be preached from every pulpit.

Again, Lord Trayner thinks that "the history of the Free Church shews that as a Church, apart from the opinions of individual members, it did not regard the Establishment principle as one of its fundamental principles." I pause to observe that I have founded in no instance on the opinion of individual members, but on the collective and official declarations of the Church. Now his Lordship's first point is, "It was from the commencement and down to the date of its union a Church conducted and maintained in point of fact according to the voluntary principle. If in theory it was something else, the theory did not square with the fact." This comes to no more than that the Free Church had not, in fact, State endowment, which is the hypothesis, without which no question could arise. His Lordship's next point is that the Free Church not only did nothing to give effect to the Establishment principle, but, on the contrary, devoted much of its time and energy to bring

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about, if it could, the disestablishment of the Church of Scotland. Now this agitation took place only in the later and, as the appellants would say, the backsliding days, when union with the Voluntaries also came in view. The important correction to be made is that nothing of this kind took place in times which in any possible view can be looked to as evidencing the principles of the Church set up in 1843, and, therefore, as fixing the scope of this foundation.

I find in Lord Trayner's judgment an antithesis set up between matter of faith (and sometimes the Latin equivalent is used) and matter of polity. This can only be important if what is matter of polity, as distinguished from matter of faith, cannot be made by a Church one of its distinctive and fundamental doctrines in the sense of this controversy. I have already given my reasons for thinking this untenable, and the distinction, therefore, inconclusive.

The Lord Justice Clerk attaches very great, and Lord Trayner great, importance to the decision in the *Campbelton Case* (1), to which I have already alluded. Now that decision was that the principle of State endowment was not an essential or fundamental doctrine of a particular congregation in Campbeltown. It was not a Free Church congregation at all, and the question arose before 1843. The judges thought that its mere adherence to the Confession of Faith did not pledge that congregation to the doctrine of State endowment. But what in my judgment ties the Free Church to the doctrine now in question is a series of acts with which the Campbeltown congregation had nothing to do, and the doctrine is State Establishment.

I must add that the grounds upon which the Lord Justice Clerk comes to the conclusion that the principle of Establishment was in the early days of the Free Church treated as "subordinate" do not seem very cogent. In the first place he quotes, as proving the doctrine of "the early days," two documents which belong to the later days, 1871 and 1873, and must be read in the light of their dates. But, further, to say that in 1843 the "principle" of Establishment was

(1) 15 S. 808; 5 D. 665.

"repudiated" is to ignore the whole theory of the appellants' case and the argument it gives rise to.

Lord Low decided the case on the ground that the Establishment principle was not so essential that the General Assembly could not depart from it. He expresses a cautious and guarded view as to its power to deal with what he deems more essential doctrines. The Lord Justice Clerk seems to take much the same view, but he rates very high the "legislative" power of the Church. Lord Trayner, however, takes a much bolder position: "Esto that the Establishment principle had been explicitly declared in 1843 to be an essential principle of the Free Church, I think the Church had the power to abandon that principle and to that extent alter the original constitution." Lord Trayner's view was argued at your Lordship's bar with great vigour and confidence.

Before proceeding to consider this argument, I ought to point out that the judgment of Lord Young is wholly rested upon the ground, stated in very sweeping terms, that there is nothing to prevent a dissenting Church from abandoning a religious doctrine, however essential and fundamental, and that an ex facie absolute property title cannot be limited by reference, not expressed, to "the essential doctrines and fundamental principles in the constitution of the Church." It is unnecessary to say more of this ground of judgment than that it is in flat contradiction of the decision of your Lordships' House in the case of *Craigdallie*. (1)

The more plausible theory of the respondents is that there are to be found inherent in the Free Church some extremely elastic powers of altering her constitution. Those powers, it is said, were as much a quality of the Free Church when it received the endowments now in dispute as the doctrine of Establishment, and any one giving to the Church gave on that footing. This must mean, if it has any effect on the present controversy, that such alterations may be made by a majority of the General Assembly with the consent of a majority of presbyteries. The extent of the powers so claimed is shewn by the respondents' counsel having avowed that they held that

(1) 1 Dow, 1, 16.

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the Free Church could do away with the Confession of Faith as one of her standards; and Lord Trayner is not prepared to say that the doctrine of the Divinity of Christ does not stand in the same precarious position.

I shall state in advance the answers to this view, and then examine the opinions of the Court in a little more detail.

First, the learned judges have greatly overrated the "legislative" power of the Church, misled by what I think an erroneous construction of the Barrier Act. Second, putting this legislative power as high as you choose, it is a power affecting the internal affairs of the Church, and has no relation at all, and for historical reasons could not have, to such operations as this union of 1900. Third, the Lord Justice Clerk has been completely misinformed as to the tenets of the three dissenting bodies whose unions with the Church of Scotland in 1839, and the Free Church in 1853 and 1876, his Lordship regards as precedents; and this error brings to the ground the argument from actual practice.

The main ground of the respondents' argument is the Barrier Act of 1697. It is an Act of the General Assembly, and Lord Trayner says that it "confers" on the Assembly a certain legislative power. Now if the Barrier Act be examined it will be seen that it does not "confer" or purport to "confer" any legislative power. What it does is, it imposes certain checks on sudden alterations or innovations in doctrine, worship, discipline, or government. The respondents' argument is that this implies that the General Assembly has unlimited power of legislation in the matters named. I do not think this a legitimate deduction. The Act, on the contrary, rather hints that some recent Acts had been of questionable legality, or at least had not commanded "exact obedience." It names doctrine, worship, discipline, and government, not as being the ambit of the Assembly's power, but as the regions of apprehended attack. When all this is read in the light of contemporary history, the motive of the Barrier Act is obvious as a desire to ward off incursions of the Episcopalians. And I do not think that at the very most it comes to more than furnishing some evidence that the General

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Assembly either had been dealing, or might be induced to deal, with those high matters. The respondents' argument incidentally called attention to a prior Act of Assembly about innovations, which is instructive in the same direction. For this Act, August 6, 1641, forbids novation in doctrine to be brought in or practised in the Kirk unless it be first propounded, examined, and allowed in the General Assembly. The inference from this, if the respondents' argument were applied to it, must be that, according to use, novations in doctrine had formerly been brought in by the inferior Courts or officers of the Church, and that this was the law.

But on the question of historical fact there is no need to rely on the implications (for they are no more) of one Act of Assembly. Where is the Act—where are the Acts—which evidence the actual exercise of those powers? The respondents' appeal to the Act of 1560, adopting Knox's Confession of Faith, entirely fails them. It was adopted by the Estates, as Mr. Taylor Innes very justly observes in a passage which appears in the first, though not in the second edition of his admirable work on Creeds. "Nothing," he says, "can be clearer than that the doctrine was not adopted in any way upon the authority of the new-born or Reformed Church; all the forms of free and deliberate voting of the doctrine as truth, as the creed of the Estates, not of the Church, were gone through." Of the other most extreme instances of independent action which were cited, it may be observed that the Book of Discipline was not an alteration of an existing creed, except to the indirect extent to which an added standard usually affects the authority of the old, even if (as here) both old and new were consentaneous; that the adoption of the Covenant was a revolutionary act in a revolutionary time; that the Westminster Confession of Faith, while it was adopted by the General Assembly (with certain qualifications), was the offspring of parliamentary action, initiated before the General Assembly took it up. Of the two modern instances, the Chapel Act and the Veto Act, the Chapel Act was held by its authors to be so clearly declaratory that it was not sent down to presbyteries under the Barrier Act, and the whole theory of

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the Free Church party was that neither Act was an alteration of the constitution of the Church, so much so that the Assembly hesitated before sending the Veto Act to the presbyteries.

The case of the respondents, therefore, on the Barrier Act does not stand the test of examination, and does not support their theory that, in giving to the Free Church, the pious founders of the Free Church were knowingly giving to a Church one of whose inherent qualities was that she could alter her essential principles. Neither history nor law make this out.

The House is in a much better position to deal with this question after the rehearing than before it, because of the complete presentation in print of the historical documents relied on. In my own case, a very careful study of those papers has largely increased my confidence in rejecting the respondents' argument. I find nothing from beginning to end which supports the theory that the Church of Scotland exercised or claimed the right to alter doctrines which she had asserted to be scriptural. (I am not now, of course, speaking of the doctrine of Establishment, which is in dispute, but of doctrine generally, and more especially of the Confession of Faith.)

Amid the mass of documents the Second Book of Discipline has been confidently relied on by the respondents. Conceding, as I think is their right, that this book was an adopted standard of the Free Church, I fail to discover in it any help in their present trouble. That it stood them in good stead about non-intrusion is certain, but this is not *hujus loci*. What strikes any one who reads the book through is that it is not, and does not purport to be, a picture of an existing institution, and even as an ideal it is vague. As matter of fact, it was promulgated before the system of Presbyterian government had been systematized and set up in Scotland. It is not surprising, therefore, that beyond negating the theory of Episcopacy it contains no recognisable description of the Scotch Presbyterian Kirk as an ecclesiastical organism, and more particularly it never confronts the question with which your

Lordships have to deal, namely, What control has that ecclesiastical organism, even when taken as a whole (and still less when examined in its parts), over her doctrine? The truth is that here, as throughout the case, the respondents mistake the emphatic denial of the right of the State to meddle with those matters for an assertion of the right of the Church to absolute power over her own declared doctrine. The passage mainly relied on (Chapter VII., head 8) proves too much, for it applies to all the four kinds of Assemblies; but, on the face of it, it deals with ordinances depending for their utility on circumstances of time and place, and this cannot possibly include doctrine. The only hint or reference to the subject of doctrine in relation to a judicatory (in VII., 25) would rather imply that oecumenical councils are the bodies to declare doctrine; but this is not clear, and it is enough to say that the subject now before us is not dealt with in relation to the Scotch Kirk.

One admitted fact, indeed, in what may be called the customary law or common law of the Established Church and the Free Church, directly negatives this theory of the unrestricted command of the Church over her creeds. The General Assembly itself is made up of Commissioners, and each commission is in writing. By immemorial custom, this commission bears that the Commissioners are to repair to the Assembly "and there to consult, vote, and determine, in all matters that come before them, to the Glory of God and the good of the Church according to the Word of God, the Confession of Faith, and agreeably to the constitution of the Church, as they shall be answerable." Now I must own my inability to see how it would fall within this mandate to do away with, or help to do away with, the Confession of Faith as a standard of the Free Church; and I mention this as testing the argument for the unlimited power of the General Assembly under the Barrier Act.

It has, indeed, been attempted to use one remark of Lord Cranworth in *Forbes v. Eden* (1) as implying that in all Churches there is a legislative power. The case was that of a specific change in one of the canons of the Scottish Episcopal

(1) (1867) L. R. 1 H. L., Sc. 568.

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H. L. (Sc.) Church made by the Synod of that body, and I do not think it was laid down as law that powers of legislation are necessarily inherent in every dissenting body, this being in each case really a question of fact. But Lord Cranworth's remarks make perfectly clear that what he is speaking of is entirely internal regulation, and it is here that the whole argument of the respondents about legislation falls short of the required conclusion.

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To revert to the Presbyterian Church of Scotland. It may be a merit or a demerit, but the original and historical theory of the Reformed Church of Scotland was that within and not outside her pale was truth to be found. Without were Prelatists and Papists. When, later on, some Presbyterians had held aloof from the Revolution settlement, and, still later, others had made the several secessions of the eighteenth century, their attitude and the attitude of their parent Church never raised the question of comprehension, the seceders in more than one instance having been deposed. The single instance which we referred to in pre-disruption days of a dissenting body coming back into the Church was the return of the Associate Synod in 1839, and it is enough to say that while the Act of Assembly is called "Act anent Reunion with Seceders," each office-bearer of the Associate Synod was required, before taking his seat as a member of presbytery, to subscribe the Westminster Confession of Faith and the formula of the Church of Scotland; and this being done they were "received," and were declared to enjoy all the rights and privileges of ordained ministers and elders of the Church of Scotland. In passing, it may be noticed that one of the recitals in the Act is, "whereas the members of the Associate Synod do heartily concur with us in holding the great principle of an ecclesiastical establishment and the duty of acknowledging God in our national as well as our individual capacity." The only reservation made by the returning dissenters was "reserving only to themselves the right which the members of the Established Church enjoy, of endeavouring to correct in a lawful manner what may appear to them to be faulty in its constitution and government." If it had been desired to

furnish an illustration of a contrast to the union now in question, it would have been difficult to picture one more complete than it thus supplied by history.

The second case of "union" is that of the Original United Seceders, another of the bodies who held by the Covenanting traditions. They, in 1852, had come to be satisfied that "we may, with honour and consistency, drop our position of secession and maintain our principles in communion with the Church of Scotland," i.e., the Free Church. Accordingly they were "received and admitted" by the Free Church "as pastors, congregations, and kirk sessions of the Free Church of Scotland."

The other case of union took place in 1876, also in the days of the Free Church. It is founded upon by the Lord Justice-Clerk in his judgment under a misapprehension, which unfortunately enters pretty deeply into his Lordship's judgment. The Lord Justice Clerk says of the Reformed Presbyterian Church that it "certainly did not hold the Establishment principle"; and for this surprising statement he gives as his reason that since 1689 they declined to become members of the Church of Scotland as established, abode by their objections to the Revolution settlement, and did not "commit" themselves "to an approval of an alliance of the Church with the British State as at present constituted, having in view especially the unscriptural character of its ecclesiastical relations." Now so far from the Reformed Presbyterians not holding the Establishment principle, they were the ecclesiastical heirs of the Covenanters, who held it passionately, and they represented the extreme right in Presbyterian orthodoxy. But they washed their hands of the Revolution settlement, because the same State which established the Presbyterian Church in Scotland ignored the "second Reformation," and established in England the Prelatical Church, against which woe had never ceased to be denounced by the Church of the second Reformation. Accordingly, the attitude of the Reformed Presbyterians on the Establishment question was exactly analogous to that of the Free Church—holding the Establishment principle, they held

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aloof from the existing Establishment because, as they held, constituted on wrong terms. The statement of the Lord Justice Clerk, therefore, can only be supported if his Lordship means that men do not hold the Establishment principle if they decline to join the Establishment as constituted at the time. And if this be sound, it furnishes (as already pointed out) a very simple end of the present case.

The net result, then, of the history of these unions is this, and nothing more, that where the General Assembly have been satisfied about Presbyterian bodies that they held the same standards as themselves, and were sound on the Establishment principle, those bodies have been admitted with full honours.

I have hitherto discussed the case relating to the general property of the Free Church, and I have come to the conclusion that the appellants are entitled to prevail. The other action only differs because of the model trust deed. Of it I have only to say that it is, and was treated in its inception as, a conveyancer's instrument; that its clauses about union seem to me to apply necessarily only to such unions as were competent to the Free Church; and that they are entirely satisfied, and were probably suggested, by such cases as had occurred. It is not in such a deed that you can look for constitutional changes, or for new powers not hitherto possessed.

Regarding the whole of the property now in dispute, I cannot see how, in law or in fairness, a majority of the men who acquired it on the representations made in the affectionate representation could have been allowed, say in 1850, to carry off the property to the Voluntaries and come forward, arm in arm with the Voluntaries, and claim it for the fused body. And after all the argument we have heard, I have discovered no reason which makes that fair and lawful in 1900 which would not have been so fifty years earlier.

A serious and weighty argument was addressed to your Lordships on both sides of the bar relating to the Confession of Faith. That argument treated of two separate matters which in my judgment must be separately considered.

The first is whether the respondents have not deposed the

Confession of Faith from its place of authority as a standard of the Church, and whether this of itself does not take them outside the trusts under which the property is held. The second and quite separate question is whether on one specific doctrine, namely, predestination, the new formulary is not contradictory of the Confession of Faith.

On the former of these questions my judgment is in favour of the appellants. First of all, I put aside any confusion which may arise from the substitution of the Westminster Confession for John Knox's Confession. It is with the Westminster Confession that we have to do, and it seems to me that if anything is certain, it is that the Free Church was pledged to the doctrine of the Westminster Confession as her doctrine and the doctrine of her office-bearers. Through all her history, and at every crisis of her history, assuming her identity with the historical Church of Scotland, she proclaimed this on the house-tops and in the most solemn and deliberate of her testimonies. Freed from State interference in 1843, she proceeded to fasten on herself the old obligations. Of her rights in judicial cases to construe the Confession of Faith there is no need to speak. But that the Confession of Faith is "the truths of God" was solemnly attested to be the personal belief of all who signed it. That this was found to be a hard yoke is credible, and has been asserted. Of the means at the command of the Free Church to alleviate this pressure I do not know. But what she has now done is to substitute a belief in "the doctrine of the Church as expressed in the Confession of Faith," and the general words in the first of the declarations adopted by the United Assembly on October 31, 1900, make it plain that the doctrine of the Church, as part of her constitution, is intended to be mutable. This places the Confession of Faith in a precarious instead of a stable position, and in my opinion this is an abandonment of an essential characteristic of the Free Church.

Such being my opinion on the more general question as to the Confession of Faith, I deem myself absolved from the necessity of entering on that one of its articles which has been separately discussed, namely, predestination.

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H. L. (Sc.) I am of opinion that in both cases the judgments ought to be reversed with costs.

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LORD LINDLEY. My Lords, in the year 1900 the Free Church of Scotland (which the pursuers and appellants claim to represent) and the United Presbyterian Church united and formed the United Free Church of Scotland. Property previously held by trustees in trust for the Free Church was transferred to trustees in trust for the united body, i.e., the United Free Church; and the question raised by the first appeal is whether this transfer of property was or was not a breach of trust and invalid, although sanctioned by the General Assembly of the Free Church and by the great majority of the members thereof. The Court of Session decided this question against the pursuers, and they have appealed to your Lordships' House against this decision.

The second appeal relates to property conveyed to trustees for particular congregations of the Free Church, the trusts of which are fully set out in the model trust deed of 1844, which is one of the most important documents in the case. The question raised by the second appeal is whether the trusts declared by that deed are confined to members of the Free Church, represented by the appellants, or whether the trusts are wide enough to include all the members of the United Free Church formed in 1900. The Court of Session decided this question also against the appellants.

Both appeals are really based upon the ground that the union of the two Churches could not be legally effected consistently with the constitution and standards of the Free Church, and that consequently the transfer of the property of that Church to the United Free Church was a breach of trust and invalid; and that as regards the congregational property, the benefit of the trusts of the model trust deed can only be enjoyed by persons professing the doctrines which the appellants contend were the unalterable doctrines of the Free Church.

My Lords, the whole controversy turns on the powers of the General Assemblies of the Free Church. If they have no power to relax the fetters which the appellants contend bound

the Free Church hard and fast from its birth, then these appeals ought to succeed. But if, as the Courts in Scotland have held, the General Assemblies of the Free Church have power to do what they have done, then these appeals must fail. I propose, therefore, to confine my observations entirely to this one crucial question.

The circumstances which led to the secession of the founders of the Free Church from the Established Church and the views of the seceders are fully set out in the claim, declaration, and protest of May 30, 1842, and in the protest of May 18, 1843. These documents and the model trust deed framed on the basis of these documents in 1844 shew that whilst the seceders renounced all the benefits derived by the Established Church from its connection with the State, and shook off so far as they could all interference and control by the State, yet they clung tenaciously to the Holy Scriptures, the Westminster Confession, the two Catechisms, and the Second Book of Discipline, and regarded them as determining and regulating their doctrine, worship, discipline, and government. The government of the Church is declared to be in the hand of the Church officers, which means in the last resort the General Assembly. The powers of this body, as originally established, are to be found in the Westminster Confession and in the Second Book of Discipline; but the Free Church greatly enlarged these powers in 1843 and 1851, as will be seen presently. The claim, declaration, and protest above referred to treat the immunity of the General Assembly from all State control as a fundamental principle of the Church of Scotland; and the Free Church was formed in order to secure this immunity more completely than the Civil Courts had declared to be possible for members of the existing Established Church. Freedom from all State control in spiritual matters, as understood by Free Church men, is the *raison d'être* of the Free Church. The address to Her late Majesty (May 30, 1842), the Act of Separation and Deed of Demission by Ministers (May 23, 1843), and the Deed of Demission by Elders (May 30, 1843) which followed it all put this as the great object of the whole movement. At the same time the claims of the seceders

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H. L. (Sc.) are declared to be based on the constitution and standards of the Church of Scotland as heretofore understood; and in particular they considered it the duty of the State to promote religion as inculcated in the Westminster Confession and the other standards of the Established Church. By the expression "heretofore understood" I think is meant understood by the Church of Scotland unfettered by legislation and by legal decisions based upon it.

I must now invite your Lordships' attention to the powers of a General Assembly of the Church of Scotland, as declared in the Second Book of Discipline (1578), the Westminster Confession (1643, ratified by statute June 7, 1690), and the Barrier Act (1697).

The Second Book of Discipline is referred to in the claim, declaration, and protest of 1842 as one of the Church's authorized standards, and in the Act and Declaration of 1851 (which will be hereafter mentioned) as one of her earliest standards. It is a work of great authority. Speaking of Assemblies, it is laid down (Chapter VII., s. 8): "They have power also to abrogate and abolish all statutes and ordinances concerning ecclesiastical matters that are found noisome and unprofitable, and agree not with the time, or are abused by the people." This is a very large legislative power exercisable by General Assemblies of the whole Church, but not I should think by smaller assemblies, whose functions are more circumscribed.

The Westminster Confession is, next to the Holy Scriptures, the most authoritative document of all for members of the Scotch Church. It is plain from the language of this Confession that its framers laid no claim to infallibility for themselves and disclaimed infallibility for the Synods and Councils of the Church which should adopt that Confession (see Chapter XXXI., Article IV.). But although infallibility is denied them, great power is conferred upon them; for Synods and Councils are to determine controversies of faith and to make rules for public worship and government of the Church (see Chapter XXXI., Article III.). Their power is limited to ecclesiastical as distinguished from civil affairs (see Article V.). It is also declared in the Confession itself that the Holy Scriptures are the

foundation of the doctrine contained in the Confession, and are to be the foundation of the doctrines of the Church which adopts it (see Chapter I.). In all controversies of religion the Church is finally to appeal unto the Holy Scriptures (Chapter I., Article VIII.).

Chapters I. and XXXI., when read together, appear to me to confer upon Synods or Councils the power of interpreting the Holy Scriptures and the various articles of the Confession when controversies arise as to their meaning; and, as infallibility is disclaimed, it follows that an interpretation put by a Synod or Council on Scripture or the Confession is not binding for all time, but may be modified, or even rejected and be replaced, by another interpretation adopted by a later Synod or Council, and declared by it to be in its judgment the true meaning of the Scriptures or Confession upon the matter in controversy.

I take it to be clear that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used *bonâ fide* for the purposes for which they are conferred. If, therefore, a Synod or Council, under colour of exercising their authority, were to destroy the Church which they were appointed to preserve, or were to abrogate the doctrines which they were appointed to maintain, their acts would be *ultra vires* and invalid in point of law; and it would be the duty of every Court in the United Kingdom so to hold if the question ever involved a controversy as to civil rights and so arose for judicial decision. For all persons who are members of the Church of Scotland its General Assembly is the highest Council of the Church, and it is difficult to limit the powers conferred upon it by the foregoing documents except by an appeal to the implied condition to which I have referred.

I cannot agree with those who contend that the powers of the General Assembly as declared in these documents are unlimited; but I am not able myself to define the limits of its authority more accurately than above stated. It is probably impossible to draw a sharp line clearly dividing all acts of a General Assembly which are within its power from acts which

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are beyond it. But it does not follow that it is impossible, or, indeed difficult, to decide in the great majority of cases whether a particular act is within its power or beyond it. Great as the powers are, they are limited by what can be found in the Scriptures. The Church must be a Christian Church and a Reformed Protestant Church. So far all is plain. I should, myself, think that it must be a Presbyterian Church. But this question is disputable and happily does not arise.

That very extensive but not accurately defined powers, both as to doctrine and government, are vested in a General Assembly of the Scottish Church is apparent from the Act of Assembly of 1697, commonly called the Barrier Act. Extensive but undefined power is there unmistakably assumed and recognised; no limit is set to it; but very important machinery is provided for its future exercise to prevent hasty decrees. In that respect the Act is a restrictive Act, for unless the prescribed machinery is adopted, an Act of Assembly cannot become a "binding rule and constitution of the Church." But the restriction only affects procedure; the wide powers of the General Assembly are not curtailed. This Act is, in my opinion, clearly applicable to the General Assemblies of the Free Church. It was included in what was adopted when that Church was created.

My Lords, if the case now before this House had to be decided on the documents to which I have already alluded, and without reference to any Acts of Parliament or other Acts of Assembly, I should hesitate long before I came to the conclusion that what the appellants mainly complain of was beyond the power of the General Assembly of the Free Church. Any interpretation of the Scripture or of the subordinate standards *bonâ fide* adopted by a General Assembly, and held by them better to express the doctrine intended to be expressed by the language used in the Confession itself, cannot, in my opinion, be treated as beyond their power, but is well within it.

But there are other documents which have to be considered, and especially the model trust deed, prepared in 1844 under the instructions of the General Assembly of the Free Church and formally approved and adopted by it in 1851. It is therein

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recited that it was at all times an essential doctrine of the Church of Scotland that it should have a government in the hands of the Church officers, distinct from the civil magistrate or supreme power of the State, and that this government comprehends "the whole power of the Keys," which expression I understand includes those wide powers to which I have already referred in all matters touching the doctrine, worship, discipline, and government of the Church. Then it recites the secession from the Established Church and the formation of "the General Assembly of the Free Church of Scotland," and the claim of the Free Church to all the powers and privileges and the same internal government, jurisdiction, and discipline according to the true and original principles of the Church of Scotland before the separation. The model deed then gives a form of conveyance of property to trustees upon trust declared at great length, but which may be shortly summarized as trusts for the use as a place for religious worship by members of the Free Church. These trusts clearly contemplate the union of the Free Church with "other bodies of Christians as the said Free Church of Scotland may at any time hereafter associate with themselves," and provision is made for worship by such united bodies. The fourth trust is very important. It is to the effect that the trustees shall at all times be subject, in the management and control of the trust property, 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. Provision is made for the event of a secession from the Church which will be found in the ninth trust.

These trusts are confined to the congregational property which is the subject of the second appeal; but no one suggests that as regards the constitution of the Free Church and the powers of the General Assembly there is any difference between one set of members and another. In my opinion the model trust deed emphasizes and makes plain much that is obscure when the subordinate standards alone are looked at, especially when the legislation affecting them is borne in mind.

In the year 1844 trustees were appointed to hold any property

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which might be bequeathed or conveyed to them for the Free Church, and also such places of worship as might be erected on sites granted to trustees nominated by the General Assembly, and also such other places of worship as persons might wish to convey to them on the terms of the model trust deed. A fresh appointment was made in 1871.

I pass on to consider what was done as regards the union of the Free Church with the United Presbyterian Church. Union with other Presbyterian Churches was apparently desired some fifty years ago; but in order to effect union with the United Presbyterians several arrangements of importance had to be made, particularly with reference to the mutual eligibility of the ministers and other officers of the two bodies to Church offices, and to adjustment of the different views held by the two Churches respecting predestination and respecting their relation to the State, and the duties of the State as regards religion. It took many years to settle these preliminary matters. In 1892 the General Assembly of the Free Church passed "The Declaratory Act anent Confession of Faith"; and although a small minority of members protested against it, I am quite unable to discover any valid ground for holding this Act to be one which a General Assembly of the Free Church had no power to pass. It no doubt relaxes the excessive stringency of certain articles of the Westminster Confession, if construed literally; but it imposes no new fetters, and in relaxing the old ones, and so rendering them more acceptable to many earnest Presbyterians desirous of remaining in the Church or becoming members of it, the General Assembly were honestly attempting to preserve the Free Church and its fundamental doctrines, and, in my opinion, there is no pretence for saying that they were false to their trust and were endeavouring to destroy any doctrines which it was their duty to preserve.

My Lords, I can understand that an ordinary member of the Free Church brought up from childhood to regard the Confession as an inspired document to be construed literally and in the same sense for all time may think some of the doctrines set forth in this Act unorthodox; but that is not the question on which this appeal turns. The question is whether it is

competent for the governing body of that Church, i.e., the General Assembly, complying with the conditions of the Barrier Act, to declare that the Confession, properly understood, does not require absolute uniformity of belief on the matters dealt with by the Declaratory Act. This is the great question at issue between the parties to this appeal, and I have come to the clear opinion that on this question the appellants are wrong. I come to this conclusion after a careful examination of the powers of the General Assembly as contained in the documents before referred to. These powers are, in my opinion, as fundamental in the constitution of the Free Church of Scotland, and as essential to its preservation, as any of the doctrines in the Confession or other subordinate standards.

The appellants made a great point of the alteration made by this Declaratory Act in the fundamental doctrine of the Free Church respecting the principle of Establishment, by which I understand is meant the duty of the State to promote religion, and especially the Presbyterian religion, as set forth in the Westminster Confession, and sanctioned by Parliament as already mentioned. Chapter XXIII., Article III., of the Confession declares what in the view of the Church of Scotland is the duty of the State. Its language is very general, and leaves the State to determine in what manner it will perform such duty. Some, at all events, of the founders of the Free Church attached great importance to this principle of Establishment which was not held by all Scotch Presbyterian Churches. But it does not follow that this principle was to be tenaciously adhered to for all time, and that no future General Assembly should have power to modify or relax it if owing to changes of opinion or other circumstances the General Assembly of the Free Church deliberately came to the conclusion that the preservation and healthy growth of the Free Church required the principle to be reconsidered.

I cannot come to the conclusion that the view taken in 1843 of the duty of the State was a fundamental doctrine admitting of no explanation or modification. Dr. Chalmers' address adopted by the Free Church shews that he and its then members would have strenuously opposed the change made, but it does

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 not follow that he or they would have denied the power of a future General Assembly to make such change after due deliberation.

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As I understand the matter, the Free Church can and does fulfil all her spiritual functions without any State aid, and the attempt to obtain aid from the State, whilst repudiating all State control, has proved a failure. This doctrine as to the duty of the State whether best described as a political or a religious doctrine is a doctrine which the General Assembly could, in my opinion, repeal or modify as might be expedient.

In 1900 the Act uniting the two Churches was passed by the Free Church of Scotland after complying with all the conditions of the Barrier Act. The Act was dated October 31, 1900, and the two Churches were then formed into one under the name of the United Free Church of Scotland, and its supreme governing body was designated the General Assembly of the United Free Church of Scotland. Having regard to the constitution of the Free Church, I cannot agree that this union could only be legally valid if assented to by all the members of the Free Church.

As part of this transaction the property held for the Free Church by its trustees was ordered to be conveyed to a new body of trustees for the United Free Church, and this was done; but a dissentient minority protested.

This transfer is complained of by the pursuers and is sought to be set aside. But having regard to the trusts on which the property of the Free Church was held, and to the powers of its General Assembly, the pursuers have, in my opinion, completely failed to prove any breach of trust or misapplication of the property of the Church. The United Free Church is the Free Church lawfully enlarged; the individuals entitled to the use and enjoyment of the Church property are lawfully more numerous than before. The pursuers in the first appeal have not been unlawfully excluded from such use and enjoyment. There is no evidence that any person has been deprived of the use and enjoyment of any property held in trust for the Free Church or the United Free Church, or any congregation of either, except a few ministers represented by the appellants in

the second appeal who repudiate the authority of the General Assembly of the Free Church to make the changes complained of, and who by their own conduct have deprived themselves of their right to the benefit of the trusts on which such property is held. Both appeals are based on the erroneous view that the Free Church had no freedom, but that it was bound hard and fast to certain doctrines expressed in language admitting for all time of only one meaning. I am quite unable so to regard it. The struggle for liberty was not so abortive as that.

In the course of the argument many statutes and decisions were referred to. Those which related to conflicts with the Established Church of Scotland are not so important for the present purpose as those which relate to disputes between members of non-established Churches. The decisions relating to the Established Church (namely, the *Auchterarder Case* (1) and other Scotch cases referred to in argument) would be all-important if your Lordships had to consider the validity of acts done by the General Assembly of the Established Church of Scotland; for that Church is governed not only by the Westminster Confession and Acts of Assembly, but also by statutory enactments which make reform in her doctrines, worship, discipline, and government difficult, if not impossible without legislation. But the Free Church is emancipated from these fetters.

As formed in 1843 the Free Church was purely a voluntary religious association, both Christian and Protestant, and believed by its founders to be divinely instituted, professing doctrines based on the Scriptures and the old subordinate standards, governing itself by certain rules, and providing a representative assembly of its own for explaining its doctrines and for preserving the association by making such changes in its worship, discipline, and government as might be found expedient after consulting the whole body as required by the Barrier Act. A trust for the Free Church is in my opinion a trust for such persons as shall hold the doctrines and submit in ecclesiastical matters to the government and discipline

(1) 2 Robert. 25. (Special report.)

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adopted by the founders of the Free Church, with such modifications as may be made from time to time by the General Assembly of that Church, provided the conditions required by the Barrier Act are observed, and provided the Church is preserved as a Reformed Church with Presbyterian government.

There is no statutory or other law which makes such an association illegal or which compels it to accept the Westminster Confession, whether with or without modification. The founders of the Free Church did accept it, but only subject to the powers which they insisted were vested in the General Assembly of that Church. So long, therefore, as the General Assembly does not exceed those powers, or act contrary to some statutory or other law of Scotland, or commit any breach of trust as above explained, it is not the function of any civil Court to interfere with it. This I regard as settled by the decision of your Lordships' House in *Craigdallie v. Aikman* (1), *Forbes v. Eden* (2), and is in entire accordance with the general law of trusts applicable to such associations as the Free Church: see *Attorney-General v. Pearson* (3); *Milligan v. Mitchell* (4); *Long v. Bishop of Cape Town*. (5)

The distinction between an erroneous decision by a body having jurisdiction to deal with a particular subject-matter, and a decision by a body having no jurisdiction over the matter decided, is familiar to all lawyers, and must be steadily borne in mind in this case. In passing the Declaratory Act in 1892 and the Act of Union of 1900 I can discover nothing ultra vires or contrary to any law. Still less can I discover anything ultra vires or contrary to law in the interpretation put by the General Assembly of the Free Church on some of the articles in the Westminster Confession, or in the alterations made in the declarations and forms to be made and signed by the ministers and officers of the Church. It follows that, in my opinion, the transfer of property which is complained of (and which was simply consequential on the Acts

(1) 1 Dow, 1, 16.

(2) L. R. 1 H. L., Sc. 568.

(3) (1817) 3 Mer. 353; 17 R. R. 100.

(4) (1837) 3 My. & Cr. 72; 45 R. R. 218.

(5) (1863) 1 Moo. P. C. (N.S.) 411, 461.

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of Assembly of 1892 and 1900) was neither ultra vires nor contrary to any law, and cannot therefore be successfully impeached.

The foregoing observations apply to both appeals; but the second appeal appears to me to present less difficulty than the first. I regret that any ministers should have been excluded from their offices; but the trusts declared by the model trust deed are clear and explicit, and their validity cannot be questioned by those who have no title to the property to which it applies except under the provisions of that deed. There has been no breach of the trusts declared by the model trust deed.

My Lords, I might have contented myself with saying that I concurred in the decision of the Court of Session; but the question between the parties is of such great importance, and its solution requires a careful study of so many documents, statutes, and decisions, that I considered I should not be adequately discharging my duty to this House if I did not set forth, as clearly as I could, the reasons which have induced me to give my voice for the dismissal of both appeals with costs.

LORD ALVERSTONE. My Lords, inasmuch as I am differing in a Scottish appeal from the judgment of the Lord Ordinary, affirmed unanimously by the Second Division of the Court of Session, I think it only right that I should state my reasons for the judgment which I am about to give.

The question raised by these appeals is whether funds invested in the names of trustees, and real property held on trust for behoof of the Free Church of Scotland, have been dealt with in a way which constitutes a breach of trust. Both classes of property are now being applied, or it is proposed to apply them, for the purposes of the United Free Church, being a body of Christians formed by a union, or attempted union, of a great majority of the ministers and elders of the Free Church of Scotland with the ministers and elders of the United Presbyterian Church of Scotland, and the point to be decided is whether, having regard to the purposes for which the money and property were originally subscribed, given,

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The union, or attempted union, was assented to and approved of by a very large majority of the ministers and elders and congregations of the Free Church; the actual numbers are not material, but, as I understand, all except some thirty of the ministers approved of the proposed union; but the dissenting minority represent a very considerable body of adherents to congregations of the Free Church who do not approve of, and some of whom have protested against, the proposed union.

The law applicable to funds which have been given for the purpose of a voluntary association such as the Free Church is well settled, and it is not necessary for me to do more than refer to the decision of your Lordships' House in *Craigdallie v. Aikman* (1) to shew that such funds, in the absence of express provision, must be applied for the benefit of those who adhere to the original principles of the founders. If the terms of the foundation of the trust provide for the case of schism the Courts will give effect to them, but if there be no such provision, the cestuis que trust are those who adhere to the fundamental principles upon which the association was founded.

The Free Church of Scotland was formed in the year 1843 by what is called "the Disruption," or, in other words, the secession from the Established Church of Scotland of a large body of the ministers of the Established Church, who renounced entirely the pecuniary benefits of their connection with the establishment in maintenance of a protest which they had made against the interference by the civil Courts with rights which they considered to be the rights of the Church.

It is not necessary to trace the history of the Established Church down to 1843, or the history of the various secessions which had taken place before that date, but it is sufficient to say that those who founded the Free Church separated from the Established Church, not upon any question of doctrine, but solely upon the ground which I have just mentioned, and which ground is in no way inconsistent with the principle of Establishment.

(1) 1 Dow, 1, 16.

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The United Presbyterian Church was not then in existence; it was formed in the year 1847 by the union of two Churches which had separated from the Established Church many years before, and were known as the United Associated Synod and the Relief Church.

It is necessary to consider carefully what was the constitution of the Free Church in so far as it throws light upon the question raised for your Lordships' decision, namely, what were the trusts upon which the property in dispute in this action was held?

The first, and in fact the most important, question which arises on this part of the case may be stated as follows. It is maintained by the appellants and denied by the respondents, that the principle of Church Establishment was adopted as a fundamental or essential principle of the Free Church of Scotland; and that its founders made that principle one of the main grounds for refusing to join other existing voluntary Churches. It cannot, I think, be doubted that this principle was regarded as being fundamental by the founders of the Free Church, and was put forward as one of the main inducements in the appeals for pecuniary aid, in response to which a very large proportion of the funds and property now held in trust for behoof of the Free Church was given. Upon this part of the case I might content myself with adopting the view which is expressed by the Lord Ordinary, and by more than one of the judges of the Court of Session. Lord Low, in his judgment (1), expressed himself as follows: "There is no doubt that the founders of the Free Church, when they left the Established Church in 1843, did so, declaring that they adhered to the principle of an Established Church, and that they seceded only because as the law then stood the Church did not possess that independence, in what they regarded as matters spiritual, which in their view was essential in order to give effect to the cardinal doctrine of the Headship of Christ." And later on: "The Establishment principle (to use a convenient short phrase) was one which was regarded as of great importance by the Free Church at the

(1) 4 F. at p. 1093.

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commencement of its history, and naturally so, because, in the first place, it justified the action of those who had seceded by proclaiming that they were not schismatics, and, in the second place, the founders of the Church hoped that a change in the law might be effected which would enable them to return to the Establishment." And Lord Trayner says, in even more emphatic language (1): "The Free Church, from its constitution in 1843 down (at least) to its union with the United Presbyterian Church, professed the Establishment principle." And: "It was the feature of the Free Church (prior to the union) which distinguished it from all other Presbyterian Churches in Scotland, that it was the only Presbyterian Church not connected with the State which professed to hold the Establishment principle."

I am aware their Lordships in other parts of their judgments expressed the view that the principle either cannot be regarded as fundamental, or was one from which the General Assembly of the Free Church had power to depart; but I refer to these passages at present only for the purpose of shewing that, having regard to the views held by the founders of the Free Church with reference to the Establishment, their union with the two then existing Churches, which subsequently united to form the United Presbyterian Church, would not at that date, 1843, have been possible.

In view, however, of the great importance of the question, and inasmuch as opinions have been expressed that the principle of Establishment cannot be regarded as fundamental, I think it right, as briefly as possible, to examine the question for myself, and to state the reasons which have led me to the conclusion that it was regarded as a fundamental and essential principle of the Free Church at its foundation, for very many years afterwards, and, as I think, down to the time of the union with the United Presbyterian Church in 1900. Reliance was placed by the appellants upon the language of Article III. of Chapter XXIII. of the Westminster Confession, which is as follows: "The civil magistrate may not assume to himself the administration of the Word and Sacraments or of the

(1) 4 F. at p. 1113.

power of the Keys of the Kingdom of Heaven: yet he hath authority, and it is his duty to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered and observed. For the better effecting whereof he hath power to call Synods, to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God." (1)

It was strongly urged by the respondents that that article does not enunciate the principle of Establishment or Endowment. As regards Endowment the observation is probably well founded, but even taking the article by itself, in my opinion it distinctly embodies the principle of Establishment. Whether this be so or not is not very material upon the point of view which I am at present considering; the more important question is, How was it regarded by the founders of the Free Church?

The first important document is that of May 30, 1842. This was a claim, declaration, and protest made by then ministers of the Established Church before their secession; it is therefore not to be expected that the references to Establishment would be very distinct, but a passage (2) occurs which has not been quoted, and which is in the following words: "And whereas this Church, highly valuing as she has ever done her connection on the terms contained in the statutes hereinbefore 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."

This passage of the declaration which follows, and the concluding words of the Protest (3), shew that even in a document in which a claim was being made by members of an

(1) See Appx. E, p. 733.

(2) See Appx. G, p. 737.

(3) See Appx. G, p. 741.

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Established Church to spiritual independence they thought it right to point out the importance which the signatories attached to the principle of Establishment. The principle is, moreover, emphatically enunciated in the document entitled, "The Protest of the Commissioners to the General Assembly, on the 18th May, 1843." (1) This being the first Assembly of the then newly-formed Free Church, the words are of such importance that I think it right to quote them: "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."

It is, in my opinion, significant and to be borne in mind, that this protest was one of the first official acts of the Free Church. As far as I know, there is no document or evidence which suggest that there was at the time of which I am speaking, namely, the year 1843, any doubt or difference of opinion as to that which was understood by the expression the Establishment principle; but it is sufficient for my purpose to quote two passages from the Pastoral Address of May 30, 1843 (2), which was embodied in an Act of the Assembly of the Free Church, and to which the ministers were directed to call the attention of their people on June 15, 1843. These passages from that address state the principle as follows: "It was ever held by the Established Church indeed that the Church and the State being equally ordinances of God, and having certain common objects connected with His glory and the social welfare, might and ought to unite in a joint acknowledgment of Christ, and in the employment of the means and resources belonging to them respectively for the advancement of His

(1) See Appx. G, p. 741.

(2) Ante, p. 530.

cause." And later: "So upon the other hand the State held directly and exclusively from God, and was entitled and bound to exercise under its responsibility to Him alone its entire secular sovereignty, including therein whatever it was competent for or binding upon the State to do about sacred things or in relation to the Church, as, for example, endowing and establishing the Church and fixing the terms and conditions of that establishment."

These passages shew clearly what was understood by the founders of the Free Church as the Establishment principle.

I will not quote again the passage from Dr. Chalmers' speech in 1843, to which such frequent reference was made, but it is impossible to read it without being satisfied that he at least made the principle of Establishment one of the fundamental principles of the Free Church, and that his view was adopted unanimously by the Assembly on May 20, who directed that an account of the proceedings of the previous meeting should be sent to the ministers and friends, which account should contain Dr. Chalmers' address as Moderator. It should be noted in passing that the protest of May 18, 1843, was directed to be recorded at the commencement of the presbytery books, and I have not the slightest doubt that those documents to which I have referred were regarded by the ministers and members of the Church as formulating the essential principles upon which the Free Church was founded. It was a time of great excitement, and the attention of the Free Church ministers and their congregations and friends throughout the country would be closely directed to these important documents, and I doubt not that every line would be closely criticized and considered.

There is, moreover, a remarkable confirmation of this view in the language used in reply to the addresses received from other Congregational Churches in other parts of the kingdom in the year 1843. I need scarcely point out that in replying to such addresses the elders of the Free Church would have no object in criticizing, still less in traversing, any opinions which had been expressed in addresses of a friendly character transmitted to them, and this gives greater force to the language

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H. L. (Sc.) used in reply to such addresses, of which I would cite the two passages set out in the documents before us: "But you misapprehend the nature of the movement which we have made in supposing that we have in the least degree altered our views respecting the lawfulness and the desirableness of a right connection between Church and State" (Printed Papers, Appendix D, p. 21). "History and experience have convinced us that there is a form of alliance which is at once practicable and agreeable to Scripture and highly beneficial. We have renounced the temporal advantages of the Scottish Ecclesiastical Establishment, not in consequence of any alteration in our views on this subject, but because the Civil Courts had violated our constitution; and Parliament, under the guidance of an infatuated Government, had sanctioned that violation" (Appendix D, p. 25).

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I pause here to notice an argument strongly urged before us on behalf of the respondents, and which appears to have had weight with the Lord Ordinary and the judges of the Second Division, namely, that the passages in the documents leading up to the foundation of the Free Church, and in the preamble to the Act of 1846, to which I shall refer, were parenthetical and related to the action of third persons, namely, the civil magistrates, and not of the Church itself. So far from weakening the force of the declaration, couched in the terms in which it is, the fact, in my opinion, gives it additional weight. The separation was in no way promoted because the dissenting ministers objected to the principle of Establishment; that principle was not attacked by the claims of the Courts against which they had protested, and yet its recognition is considered of such great importance as to receive the prominent notice which I have quoted. Then with reference to the argument that it relates to the action of third parties, also strongly pressed upon us, I am unable to see how such an argument assists the respondents. It seems to me also to give additional weight to the firm assertion of the right and duty of Churches to support the State in the performance of its duty towards religion by the medium and through the agency of an Established Church, which assertion the protesting ministers were making.

It seems to me, moreover, that a brief consideration of the Establishment principle as contrasted with the principle of Disestablishment is sufficient to shew its fundamental or essential character. The one seeks to enforce the paramount duty of the State in its official capacity to recognise religion, to maintain and support the Church; the other desires to see all connection between the State and the Church broken down and destroyed, and to prevent the State from exercising any control whatever over the Church in any capacity, and, of course, from endowing or assisting to maintain a church; and if, as I shall point out later, the United Presbyterian Church certainly considered any civil establishment of religion unscriptural and unjust, it is difficult to understand how such a distinction between the views held by two Churches can be regarded as otherwise than fundamental and essential.

Nor does it seem to me that the suggestion made by Lord Trayner that the different view taken on this question by the Free Church and the United Presbyterian is a matter of polity and not a matter of faith makes any substantial difference. In one sense the questions on which the Free Church separated from the Establishment were not matters of faith, but, in my opinion, the difference between the Free Church and the United Presbyterian was a difference, not on a mere matter of detail, but upon a fundamental principle.

For these reasons I have arrived at the conclusion that the founders of the Free Church regarded the Establishment principle, not only as one of the very greatest importance, but as fundamental and essential, and that at that date union between the Free Church and either of the Churches subsequently forming the United Presbyterian Church would have been out of the question.

If I am right in this view, its bearing on the question raised before us is of the greatest importance. It cannot, in my opinion, be questioned that the documents to which I have referred and the principles which they embody were the documents upon the basis of which the donors of a very large proportion of the trust funds, the application of which is in question in this case, made their gifts and donations, and upon

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H. L. (Sc.) 1904 the faith of which also the real property in question was conveyed.

FREE CHURCH OF SCOTLAND (GENERAL ASSEMBLY OF) v. OVERTOUN (LORD). MACALISTER v. YOUNG. This conclusion leads me to consider whether the history of the Free Church since 1843 and events since that date support the view that that property held for its behoof may without breach of trust be applied for the purposes of a Church which supports the principle of Disestablishment. I pass, therefore, to consider briefly the history of the Free Church upon this point from 1843 to 1900.

Lord Alverstone C.J. In the year 1846 we find the Church thinking it right to declare that she "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." I regard this as a distinct recognition of the Establishment principle, and in no way weakened by the words following, which disclaim intolerant or persecuting principles. Five years later—in the year 1851—in a formal Act and Declaration of the Assembly the principle of Establishment is again recognised as of the highest importance; the words used are: "Holding firmly to the last as she holds still, and through God's grace will ever hold, that it is the duty of civil rulers to recognise the truth of God according to His Word, and to promote and support the Kingdom of Christ without assuming any jurisdiction in it or any power over it, and deeply sensible, moreover, of the advantages resulting to the community at large, and especially to its most destitute portions, from the public endowment of pastoral charges among them."

Again, in the year 1853, the Church, in emphatic language, reaffirms the principle, calling special attention to that of Establishment: "That this Church maintains unaltered and uncompromised the principles set forth in the claim, declaration, and protest of 1842, and the protest of 1843, relative to the lawfulness and obligation of a Scriptural alliance between the Church of Christ and the State, and the conditions upon which such an alliance ought to be regulated."

In the year 1864, when the question of union between the Free Church and the United Presbyterian Church was actually

under discussion, the committee of the Free Church stated, as one of its distinctive principles, that, as an act of homage to Christ, it is the duty of the civil magistrate, when necessary or expedient, to employ the national resources in aid of the Church; and again, in the year 1867, the principle is enunciated in even stronger language: "As an act of national homage to Christ the civil magistrate ought, when necessary and expedient, to afford aid from the national resources to the cause of Christ, provided always that in doing so, while reserving full control over his own gift, he abstain from all authoritative interference in the internal government of the Church."

Later, in the year 1873, when dealing with the question of eligibility of ministers, the General Assembly declared that it adhered to the great fundamental principle of the Church under two heads, the second of which was as follows: "Secondly, the prerogative of the Lord Jesus Christ as Head over all things to his Church, and supreme over nations and their rulers, who are consequently bound collectively and officially as well as individually and personally to own and honour His authority to further the interests of His holy religion."

These passages from the proceedings of the Free Church satisfy me that for a period of thirty years after the Free Church was founded the Establishment principle was regarded as fundamental, and I doubt not that during that period, and in reliance on that principle, a considerable part of the property in question was given and conveyed to trustees for behoof of the Free Church.

It was suggested by the respondents that the union of the Free Church with the Church known as the United Original Seceders in the year 1852, and with the Reformed Presbyterian Church in 1876, afforded arguments in support of the union with the United Presbyterian in the year 1900. I am wholly unable to follow that argument. I do not propose to trace the history of the two Churches with which the Free Church united beyond saying that, as far as I can gather from the papers, the Free Church, in uniting with them, in no way abandoned or altered any one of the principles which it had

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professed in the year 1843, but, on the contrary, both the united Churches represented that they were in complete sympathy with the Free Church. As regards the United Original Seceders, it is only necessary to examine the representation and appeal made by the Synod of that Church in the year 1852 to see that their union with the Free Church was based upon and only consistent with the view that the Free Church still maintained the Establishment principle. In the case of the Reformed Presbyterian Church the statement in the Act of Union that the United Churches accept the preamble to Article XII. of the Free Church Assembly, 1846, which I have already cited, proves, in my opinion, that the maintenance of the Establishment principle was the basis of union between the Free Church and the Reformed Presbyterian.

The action of the Free Church in the years 1892 and 1894, though it must be considered in connection with the question of the powers of the General Assembly, has, in my opinion, very little, if any, bearing upon the point which I am at present discussing. In the first place, these acts were objected to; but I would point out that although the Act of 1892, which is undoubtedly of great importance upon the second branch of the case, has no direct bearing upon the question of Establishment, one of the main grounds of objection and protest was stated in the following terms (Appendix A, p. 134): "Because under the head which refers to intolerant and persecuting principles which is to take the place of the present preamble to the formula, all reference to the duties of nations and their rulers to true religion and the Church of Christ as therein set forth is wholly omitted."

It now becomes necessary to consider the position of the United Presbyterian Church in reference to the Establishment principle. The possibility of a union of the Free Church with other bodies of Christians was undoubtedly contemplated by its founders: two such unions have in fact taken place; it becomes therefore of importance to consider whether or not the United Presbyterian Church was a Church with which the Free Church could properly unite, and whether it would be a breach of trust to apply funds held in trust for behoof of the Free Church as

originally constituted to the purposes of the united body, now the United Free Church. In my opinion this matter does not admit of serious doubt. I am aware it was argued by the respondents that the United Presbyterian Church between the years 1847 and 1900 might, without breach of trust, have united with the Establishment, or applied its funds in aid of Establishment, and it was contended by Mr. Haldane that the United Free Church could do so without impropriety. Without referring to all the documents which, I think, negative this contention, I would call attention to the view held by the United Presbyterian Church, as stated in the report of 1864, which seems to me to be wholly inconsistent with the argument: "That inasmuch as the civil magistrate has no authority in spiritual things, and as the employment of force in such matters is opposed to the spirit and precepts of Christianity, it is not within his province to legislate as to what is true in religion; to prescribe a creed or form of worship to his subjects, or to endow the Church from national resources; that Jesus Christ as sole King and Head of His Church has enjoined upon His people to provide for maintaining and extending it by free-will offerings, and this being Christ's ordinance it excludes State aid for these purposes; and that adherence to it is the true safeguard of the Church's independence." (1) And again in 1867: "That it is not competent to the civil magistrate to give legislative sanction to any creed in the way of setting up a civil establishment of religion, nor is it within his province to provide for the expense of the ministrations of religion out of the national resources, that Jesus Christ as sole King and Head of His Church has enjoined upon His people to provide for maintaining and extending it by free-will offerings; that this being the ordinance of Christ it excludes State aid for these purposes, and that adherence to it is the true safeguard of the Church's independence. Moreover, though uniformity of opinion with respect to civil establishments of religion is not a term of communion in the United Presbyterian Church, yet the views on this subject held and universally acted upon are opposed to these institutions." (2)

(1) See Appx. L, p. 755.

(2) Ante, p. 539.

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Further, I am wholly unable to reconcile this argument with the statement proved in evidence, and published in 1897 on behalf of the United Presbyterian Church. In that year a tract, No. XXV., prepared by the committee of the United Presbyterian Church on the disestablishment and disendowment of the Established Churches of England and Scotland, was issued by the United Presbyterian Church and sent to all the ministers of the Free and Established Churches. In that tract not only is it stated that the United Presbyterian Church maintains as one of its most distinctive principles that it is not the province of the State to establish and endow the Christian Church, but that civil establishments of religion are unscriptural and unjust. In the face of these documents it seems to me impossible to adopt the contention of the respondents; but here, again, I should be justified in relying upon the opinion of their Lordships in the Scotch Court. In the course of his judgment Lord Low said (Appendix D, p. 58): "On the other hand it seems to me to be equally certain that the United Presbyterian Church never read the Confession of Faith as laying down that it is the right and duty of the civil magistrate to maintain and support an Established Church. There does not appear to be any material difference between the two Churches upon the point so far as their standards are concerned, but the view of the United Presbyterian Church as a whole has always been that it is not within the province of the civil magistrate to endow the Church out of public funds, and that the Church ought not to accept State aid, but ought to be maintained by the free-will offerings of its members." Lord Trayner, moreover, states in emphatic terms that the United Presbyterian Church had, throughout the whole period of its existence, repudiated the Establishment principle.

With reference to the attitude of the United Free Church, and the possibility of its adopting a different view, the statements in the resolutions of the Assembly of the United Free Church, passed in the years 1901 and 1902, to the effect that the Establishment was objectionable on principle, and recording its testimony in favour of disestablishment of the Established

Church of Scotland, which statements were not attempted to be qualified by the counsel for the respondents, are, in my opinion, conclusive against any such contention.

The only argument on this point remaining to be noticed is that which was founded upon the documents agreed to by the Assembly of the Free Church and the Synod of the United Presbyterian Church at the time of union.

These documents transfer and convey all the property and funds of the Free Church of Scotland to the united body; but it was said that the modified forms of questions formulated by the General Assembly of the United Free Church in the year 1900 were not inconsistent with the principle of Establishment, in so far as that was a fundamental principle of the Free Church, and that office-bearers were left free to hold their own individual views on this question.

If I am right in the view which I have endeavoured to express, that the principle of Establishment was regarded by the founders of the Free Church as a fundamental principle of that Church, and was so maintained for a period of more than thirty years after its foundation, the fact that the Free Church of Scotland, in uniting with a Church pledged to disestablishment principles, and regarding civil establishments of religion as unscriptural and unjust, had agreed to treat the matter as an open question, seems to me entirely beside the mark for the purposes of the present discussion. The respondents must justify not only a nominal union, but the claim to apply the trust funds to the purpose of the united body, and to dispossess, as they have attempted to do, the Free Church ministers who have declined to join the United Free Church from the possession of their manse and churches. Unless the respondents can make good their point that the application of the moneys for the purpose of the united body does not amount to a breach of trust, the fact that they agreed for the purpose of the union not to raise any question cannot afford a justification.

The only remaining point which requires notice upon this part of the case is the argument that the terms of the model trust deed, which was settled by a committee of the Free

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Church and approved by the Assembly in 1844, justifies the transfer of the property to the united body. This argument is based mainly upon the first and fourth trusts, and incidentally upon the ninth trust. The object of this trust deed was undoubtedly to ensure that the property should be held for the purposes of the Free Church as originally constituted. It proceeds upon a general outline of the history of the Established Church, the disruption, and the subsequent formation of the Free Church. The first trust was, in my opinion, a provision not unnatural from a conveyancing point of view, that the trust should not cease in the event of the Free Church of Scotland uniting with themselves other bodies of Christians. It would in my judgment be contrary to every rule of law applicable to such a case to hold that it gave the Assembly of the Free Church power by mere union to divert the funds to a body which did not conform to the fundamental principles of the Free Church. Still less can the respondents rely upon the fourth trust, which was the natural sequence of the recital (Appendix A, pp. 66 and 67), as to the continuation of the form of Church government by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, and bestowed upon the General Assembly of the Free Church the same powers as those which had been enjoyed and claimed by the Assembly of the Established Church. The ninth clause not only affords no argument for the respondents, but incidentally supports the contention of the appellants. The majority who consented to the union with the United Presbyterian Church did not purport to carry out the object of the protest of May 18, 1843, more faithfully than the appellants who are the minority. Clause 9 only contemplates an apportionment or division in the event of a section not less than one-third of the whole of the ordained ministers claiming to be carrying out the objects of the protest more faithfully than the others. In my opinion, this accentuates the extreme importance attached by the Church at its foundation to the protest of May 18, 1843, and would make it entirely ultra vires of a section of ministers, purporting to act under the ninth trust, to disregard the assertion of right and duty therein made,

and to claim under this clause to associate itself with a body which was openly promoting disestablishment.

It is contended by the respondents—and this is really the foundation of the judgment of Lord Young—that the General Assembly had power to legislate in such matters, and to abandon the Establishment principle, even though and notwithstanding that it may have been one of the fundamental principles of the Free Church. This question has a bearing upon the second ground relied upon by the appellants, namely, that the Assembly of the Free Church had departed from the Westminster Confession and the standard of the Church, and had made changes in doctrine inconsistent with the fundamental principles of the Free Church. The powers of the Assembly of the Free Church were, in my opinion, no greater in relation to the fundamental principles upon which that Church was founded than were the powers of the Assembly of the Established Church. If I am right in the view which I have ventured to express, that paragraph 3 of Article XXIII. of the Westminster Confession, and the documents to which I have referred as shewing the fundamental principles upon which the Free Church was founded, did make—to adopt once more the language of the Act of 1873—the Establishment principle one of the great fundamental principles of the Church, I am wholly at a loss to understand upon what ground it can be said that the Assembly either of the Established Church or of the Free Church had the right to permit its ministers and elders to depart from that principle. I agree that the Barrier Act, upon which so much reliance was placed by the respondents, though it confers no new powers, recognises that the General Assembly possesses some powers of alteration with reference to doctrine, worship, discipline, and government, but such powers do not, in my opinion, include a power to subvert or destroy fundamental and essential principles of the Church.

I have now to say a few words upon the second point upon which reliance was placed by the appellants, to the effect that the Free Church, by its Acts of 1892 and 1894, and the Assembly of the United Free Church by their Acts of October, 1900, with reference to the questions and formulæ

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to be used in the ordination and induction of ministers and office-bearers, have departed from the fundamental principle of the Free Church in the matter of doctrine, and particularly in relation to the doctrine of predestination and free will as set forth in the Westminster Confession.

For reasons which I will briefly state, had this been the only ground upon which exception could be taken to the action of the Assembly of the Free Church, I am not at present satisfied that it has acted in excess of its powers.

I do not wish to express a final opinion, as I do not consider it necessary for the purpose of determining the legal rights of the parties to these appeals; and further consideration might satisfy me that the objection by the appellants that the Assemblies of the Free Church and the United Free Church have released their ministers and office-bearers from adherence to the Westminster Confession, as such, has more weight than I am at present disposed to attach to it. On the other hand, the argument of the Dean of Faculty and Mr. Haldane satisfied me that there are passages in the Westminster Confession and in other standards of the Church which might require such explanation and exposition as would fairly come within the words used in the Barrier Act, "alteration in doctrine." I do not feel myself competent, at any rate upon the information at present before me, to express any final opinion upon such a point, and I do not therefore propose to base my judgment upon the second ground which was urged before us on behalf of the appellants.

It only remains to consider the position of the appellants and their rights as a minority of the ministers and elders of the Free Church representing congregations or portions of congregations who are not prepared to join the United Free Church. It is not contended that they have changed their principles; it is not suggested that they have departed from any fundamental or essential principle of the Free Church; it is not alleged that they are not faithfully carrying out the objects of the protest of May 18, 1843. The respondents are threatening to attempt to eject them from their churches and manses, and to deprive them of any right to participate in any funds of the

Church, simply on the ground that they decline to become members of the United Free Church. The decisions of the Court of Session in *Craigie v. Marshall* (1) and *Couper v. Burn* (2), unless overruled by your Lordships' House, are wholly inconsistent, in my opinion, with any such right on the part of the respondents, and I am unable to support a judgment which would deprive the persons forming a minority of their rights simply upon the grounds that they are unwilling to become members of a body which has not only abandoned a fundamental principle of the Church to which they belong, but supports a principle essentially different from that on which that Church was founded.

For these reasons, I am of opinion that the appeal should be allowed.

FIRST APPEAL.

Ordered and adjudged, 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 said lands,

(1) 12 D. 523.

(2) 22 D. 120.

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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 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 after mentioned) 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, &c.

SECOND APPEAL.

Ordered and adjudged, that the interlocutors complained of be reversed: and the cause be remitted back to the Court below, with directions to assoilzie the defenders (appellants) from the conclusions of the action: and that the respondents do pay the costs in this House and in the Court below.

Lords' Journals, August 1, 1904.

Agents for appellants: *Deacon, Gibson, Medcalf & Marriot, for Simpson & Marwick, W.S., Edinburgh.*

Agents for respondents: *Grahames, Currey & Spens, for Cowan & Dalmahoy, W.S., Edinburgh.*

APPENDIX. (1)

APPENDIX A.

Act 1560, c. 1 (Thomson's Folio Acts, ii. 526).

xvii die Augusti.

The Confessioun of Fayth professed and beleved be the protestantis within the Realme of Scotland publischeit be thame in Parliament and be the estaitis thair of ratefeit and apprevit as hailsome and sound doctrine groundit upoun the infallibill trewth of God's word.

(Then comes a reference to Matthew xxiv.)

The estaitis of Scotland with the Inhabitantis of the samyn professing Christ Jesus his holy evangell to thair naturall cuntrey men and to all utheris Realmes and natiounis professing the samyn Christ Jesus with thame wische grace mercie and peace from God the father of our Lord Jesus Christ with the spreit of ryteous judgement for salutatioun.

Lang have we thristit deir brethren to have notifeit unto the warld the soume of that doctrine quhilk we professit and for the quhilk we have sustenit nfamy and dainger. . . . Bot seing that of the infinite gudenes of our God

(1) See Index of documents at end of case, p. 763.

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H. L. (Sc.) (quha nevir sufferethe his afflictit utterlie to be confoundit) above expectation we have obtainit sum rest and libertie we culd not bot sett furth this breve and playne confession of sic doctrine as is proponit unto us and as we beleive and professe. . . . Protesting that gif any man will note in this our confession any articke or sentence repugning to Godis holie word that it wald pleis him of his gentilnes and for christeane cherities saik to admoneish us of the samyn in writt and we of our honoures and fidelitie do promeis unto him satisfaction fra the mowthe of God (that is fra his holy scriptureis) or ellse Reformation of that quihilk he sall prove to be amys . . . and thairfoir be the assistance of the michtie spreitt of the same Lord Jesus we firmelie purpose to abyde to the end in the confessioun of this our fayth.

(Then follows the Confession of Faith in all its articles, passed one by one by the Assembly of States.)

Thir Actis and Articlis are red in the face of Parliament and ratifyt be the thre estatis of this realme at Edinburgh the sevintene day of August the yeir of God fifteen hundred and thre scoir yeiris.

APPENDIX B.

THE CONFESSION OF FAITH, 1560 (JOHN KNOX'S CONFESSION).

THE CONFESSION OF FAYTH professit and belevit be the Protestantis within the realme of Scotland, publischeit by thame in Parliament, and be the Estaitis thairof ratifeit and approvit, as hailsome and sound doctrine, groundit upoun the infallable trewth of Godis word.

THE CONFESSIONE OF THE FAYTH and doctrin beleued and professed by the Protestantes of the Realme of Scotland exhibited to the estates of the sam in parliament and by thare publict votes authorised as a doctrin grounded vpon the infallable wourd of God.

1561

The Preface.

THE ESTAITIS OF SCOTLAND, with the Inhabitantis of the samyn, professing Chyrst Jesus his Holy Evangell, To thair naturall Cuntreyemen, and to all utheris Realmeis and Natiouns, professing the samyn Lord Jesus with thame, wische grace, peace, and mercy from God the Father of our Lord Jesus Chyrst, with the Spreit of rychteouse judgement, for Salutatioun.

Long have we thristit, deir Brethren, to have notifeit unto the warld the soumme of that doctrine quhilk we professe, and for the quhilk we haive sustenit infamy and daingear. Bot sik hes bene the rage of Sathan against us, and against Christ Jesus his eternall veritie laittie borne amangis us . . . Protesting, that gif any man will note in this oure Confession any article or sentence repugning to Godis holie word, that it wald pleis him of his gentilnes, and for Christiane cherities saik, to admoneise us of the samyn in writt; and We have our honour and fidelitie do promeis unto him satisfaction fra the mouth of God, (that is, fra his holy Scriptures,) or ellis reformatioun of that quhilk he sall prove to be amys. . . .

Of the Civile Magistrat.—CAP. XXIV.

We Confesse and acknowledge impires, kingdomis, dominiounis, and cities to be distinctit and ordanit by God: the powers and authorities in the same (be it of Emperouris in thair empyris, of Kingis in thair realmes, Dukis and Princes in thair dominiounis, or of otheris Magistratis in free cities,) to be Goddis haly ordinance, ordenit for manifestatioun of his awin glorie, and for the singulare proffite and commodite of mankynde. So that whosoever gangis about to tak away or to confound the hail state of civile policeis, now lang establischt, we affirme the same men not onlie to be enemeis to mankynde, but also wickedlie to fecht against Godis expressed will. We farther Confesse and acknowledge, that sic personis as are placed in authoritie are to be loved, honoured, feared, and holdin in most reverent estimatioun: becaus that they are the lieutenantis of God, in whose sessiounis God him self doish sit and judge, (yea evin the Judges and Princes thame selfis,) to whome by God is gevin the swaerd, to the praise and defence of gud men, and to revenge and punnisse all open malefactoris. Moreover, to Kingis, Princes, Rewlaris, and Magistratis, we affirme that cheisie and maist principallie the confernatioun and purgatioun of the Religioun appertenis; so that not onlie thei are appointed for civile policey, bot also for maintenance of the trew Religioun, and for suppressing of idolatrie and superstitioun whatsomever, as in David, Josaphat, Ezechias, Josias, and otheris, heichly commended for thair zeall in that cause, may be espyit. And thairfoir we confesse and avow, that sic as resist the Supreme power, (doing that thing which apperteanis to his charge), do resist Goddis ordinance, and thairfoir can not be guiltless. And farther, we affirme, that whosoever deny unto thame thair aid, counsall, and confort, while the Princes and Rewlaris vigilantile travaill in the executing of thair office, that the same men deny thair help, supporte, and counsall to God, who be the presence of his lieutenant dois craveth it of thame.

The Giftis frelie gevin to the Kirk.—CAP. XXV.

Albeit that the worde of God trewlie preichit, and the Sacramentis rychtliche ministerit, and discipline executit according to the worde of God, be the certane and infallibill signis of the trew Kirk; we nott so meine, not that everie particulare person joynit with sic ane cumpany, be ane elect member of Christ Jesus. For we acknowledge and confesse, that dornell, cockell, and chaff, may be sawin, grow, and in great abundance ly in the middis of the wheat, that is, the reprobat may be joynit in the societie of the elect, and may externallie use with thame the benefitis of the word and sacramentis. . . .

APPENDIX C.

Act, 1567, c. 8 (Thomson, iii. 23).

Anent the Kingis aith to be gevin at his Coronatioun.

Item, Because that the incres of vertew, and suppressing of Idolatrie cravis that the Prince and the peple be of ane perfyte Religioun, quhilk of goddis

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mercie is now presentlie professit within this Realme. Thairfoir it is statute and ordanit be our Sovereane Lord, my Lord Regent and thre Estatis of this present Parliament, that all Kingis, and Princes, or magistratis quhatsumever, halding thair place, quhilkis hetrefter in ony tyme sall happin to Regne, and beir reule ouer this Realme, at the tyme of thair coronatioun, and ressaift of thair princely autoritie, mak thair faithfull promise, be aith, in presence of the eternall God, that induring the haill cours of their lyfe, they sall serve the samin eternall God, to the uttermaist of thair power, according as he has requyrit in his maist haly word, revelit and contenit in the new and auld Testamentis. And according to the samin word, sall mantene the trew Religioun of Jesus Christ, the preicheing of his haly word, and dew and rycht ministratioun of the Sacramentis now ressaift, and preichit within this Realme.

Act 1567, c. 12 (Thomson, iii. 24).

Anent the Jurisdiction of the Kirk.

Item, anent the article proponit, and gevin in be the Kirk to my Lord Regent, and the thre Estatis of this present Parliament, anent the jurisdiction justlie pertening to the trew Kirk, and immaculat spous of Jesus Christ: to be declarit and expressit as the article at mair lenth is consavit [namely, that the Church had proposed an article, and with regard to that article the Estates had regarded it]. The Kingis Grace, with advise of my lord Regent, and thre Estatis of this present Parliament, hes declarit, and grantit jurisdiction to the said Kirk: quhilk consistis and standis in preicheing of the trew word of Jesus Christ, correctioun of maneris, and administration of haly Sacramentis: And declaris that thair is na uther face of Kirk, no uther face of Religioun, than is presentlie be the favour of God estableit within this Realme: And that thair be na uther jurisdiction ecclesiasticall acknowlegeit within this Realme, uther than that quhilk is, and salbe within the same Kirk, or that quhilk flowis thairfra concerning the premissis. [Then the Act appointed a Commission.] And farther, our Sovereane Lord, with advise of my Lord Regent, and thre Estatis foirsaidis, hes gevin, and gevis power and commissioun to Schir James Balfour, . . . ministeris of the worde of God. To seirche furth mair speciellie, and to consider quhat uther speciall pointis or clausis, sould appertene to the jurisdiction, privilege and autoritie of the said Kirk, And to declar thair myndis thairanentis to my Lord Regent and thre Estatis of this Realme, at the nixt Parliament. Swa that they may tak ordour thairintill, and authoreis the samin be Act of Parliament as salbe fund agreabill to the word of God.

1572, c. 3 (Thomson, iii. 72).

That the Adversaries of Christis Evangell shall not Injoy the Patrimonie of the Kirk.

. . . every persoun quha sall pretend to be ane Minister of Goddis Word and Sacramentis or quha presently dois or sall pretend to have and bruke ony benefice usc of the frutes Stipend pension or portioun furth of Benefice and ar not alreddy under the discipline of the trew Kirk and participatis not with the sacramentis thair of sall in the presence of the Archebischoep Bischoep Superintendent or Commissionar of the Diocie or Province quhair he hes or

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sall have the Ecclesiasticall leving gif his assent and subscribe the articklis of Religioun contentit in the actis of our Sovereane Lordis Parliament and gif hes aith for acknowledging recognoscing of our Sovereane Lord and his autoritie and sall bring ane testimoniall in wryting thairupon. And oppenly on sum Sunday in tyme of sermone or publick prayeris in the Kirk quhair be ressoun of his ecclesiasticall leving he aucht to attend or of the frutes quhair of he ressavis commoditie reid baith the Testimoniall and Confessioun and of new mak the said aith within the space of ane moneth efter the Publication of this present Act. And gif he be furth of the Realme within thre scoir dayis efter the Publicatioun heirof. And in tyme cumming within ane moneth efter his admissioun under the pane that everie persoun that sall not do as is above appointed salbe Ipso facto depryvit and all his ecclesiasticall promotiounis and leving salbe vacand as gif he war than naturally deid. And gif ony persoun ecclesiasticall or quhilk sall have ecclesiasticall leving sall wilfully mantene ony doctrine directly contrair or repugnant to ony of the saidis articklis and being convenit and callit as followis sall persist thairin and not revoke his error or efter his revocatioun sall of new affirme sic untrew doctrine sic mantening affirming and persisting salbe just caus to deprive him of his ecclesiasticall leving. And it salbe lauchfull to thame befoir quhome he is callit and convenit to deprive him. Quhilk sentence of deprivation pronouncit he salbe deprivit in deid and his leving vacand as gif he war naturally deid. And that all Archebischoepis, Bischoppis Superintendentis Professouris or Titularis of Prelattis be callit and convenit for this effect befoir the General Assemblie of the Kirk and all Inferiour persounis befoir the Archebischoppis Bischoppis Superintendentis or Commissionaris of the Diocies or Provinces within the quhilkis thay dwell.

1572, c. 4 (Thomson, iii. 72).

Anent the disobedientis quhilkis salbe ressavit to our Sovereane Lordis mercy and pardoun.

1572, c. 14 (Thomson, iii. 76*).

Anent thame that sustenis the proces of Excommunicatioun.

APPENDIX D.

THE SECOND BUIK OF DISCIPLINE, or HEIDIS AND CONCLUSIONES of THE POLICIE OF THE KIRK, agreed upon in the GENERAL ASSEMBLY 1578; Inserted in the Registers of Assembly 1581; Sworn to in the National Covenant, revived and ratified by the Assembly 1638, and by many other Acts of Assembly, and according to which THE CHURCH GOVERNMENT is established by law, an. 1592 and 1690.

CHAPTER VII.

Of the Elderships, and Assemblies, and Discipline.

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

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

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

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

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

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

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

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

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

14. It hes power to excommunicat the obstinat. . . .

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

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

20. This assemblee hes power to handle, order, and redresse all things omittit or done amisse in the particular assemblies. It hes power to depose the office-beirers of that province for gude and just causes deserving depriva-

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tion. And generallie thir assemblies have the haill power of the particular elderschips whair of they ar collectit.

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

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

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

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

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

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

CHAPTER X.

Of the Office of a Christian Magistrate in the Kirk.

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

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

5. To sie that sufficient provision be made for the ministrie, the schules, and the paur: And if they have not sufficient to awaite upon their charges, to supplie their indigence even with their awin rents, if neid require. To hald hand als weill to the saving of their persons from injurie and opin violence;

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

APPENDIX E.

THE CONFESSION OF FAITH, agreed upon by the Assembly of Divines at Westminster, with the assistance of Commissioners from the Church of Scotland, as a part of the Covenanted Uniformity in Religion betwixt the Churches of Christ in the Kingdoms of Scotland, England, and Ireland. Approved by the General Assembly, 1647, and ratified and established by Acts of Parliament 1649 and 1690, as the publick and avowed confession of the Church of Scotland. [Thomson, vi. 161; ix. 117.]

CHAPTER I.—Of the Holy Scripture.

I. Although the light of nature, and the works of creation and providence, do so far manifest the goodness, wisdom, and power of God, as to leave men inexcusable; yet are they not sufficient to give that knowledge of God, and of his will, which is necessary unto salvation: therefore it pleased the Lord, at sundry times, and in divers manners, to reveal himself, and to declare that his will unto his church; and afterwards, for the better preserving and propagating of the truth, and for the more sure establishment and comfort of the Church against the corruption of the flesh, and the malice of Satan and of the world, to commit the same wholly unto writing; which maketh the holy scripture to be most necessary; those former wayes of God's revealing his will unto his people being now ceased. . . .

VIII. The Old Testament in Hebrew (which was the native language of the people of God of old), and the New Testament in Greek (which at the time of the writing of it was most generally known to the nations), being immediately inspired by God, and by his singular care and providence kept pure in all ages, are therefore authentical; so as in all controversies of religion, the Church is finally to appeal unto them. But because these originall tongues are not known to all the people of God, who have right unto and interest in the scriptures,

and are commanded, in the fear of God, to read and search them, therefore they are to be translated into the vulgar language of every nation unto which they come, that the word of God dwelling plentifully in all, they may worship him in an acceptable manner, and, through patience and comfort of the scriptures, may have hope.

CHAPTER II.—Of God, and of the Holy Trinity.

III. In the unity of the Godhead, there be three persons of one substance, power, and eternity; God the Father, God the Son, and God the Holy Ghost, The Father is of none, neither begotten nor proceeding; the Son is eternally begotten of the Father; the Holy Ghost eternally proceeding from the Father and the Son.

CHAPTER III.—Of God's Eternall Decree.

III. By the decree of God, for the manifestation of his glory, some men and angels are predestinated unto everlasting life, and others foreordained to everlasting death.

IV. These angels and men, thus predestinated and foreordained, are particularly and unchangeably designed; and their number is so certain and definite, that it cannot be either increased or diminished.

V. Those of mankind that are predestinated unto life, God, before the foundation of the world was laid, according to his eternall and immutable purpose, and the secret councill and good pleasure of his will, hath chosen in Christ unto everlasting glory, out of his meer free grace and love, without any foresight of faith or good works, or perseverance in either of them, or any other thing in the creature, as conditions, or causes moving him therunto; and all to the praise of his glorious grace.

CHAPTER VI.—Of the Fall of Man, of Sin, and of the Punishment thereof.

IV. From this original corruption, whereby we are utterly indisposed, disabled, and made opposite to all good, and wholly inclined to all evil, do proceed all actual transgressions. . . .

VI. Every sin, both original and actual, being a transgression of the righteous law of God, and contrary thereunto, doth, in its own nature, bring guilt upon the sinner, whereby he is bound over to the wrath of God, and curse of the law, and so made subject to death, with all miseries spirituall, temporall, and eternal.

CHAPTER VII.—Of God's Covenant with Man.

III. Man by his fall having made himself incapable of life by that covenant, the Lord was pleased to make a second, commonly called the Covenant of Grace; whereby he freely offereth unto sinners life and salvation by Jesus Christ, requiring of them faith in him, that they may be saved; and promising to give unto all those that are ordained unto life his Holy Spirit, to make them willing and able to believe.

CHAPTER IX.—Of Free Will.

III. Man, by his fall into a state of sin, hath wholly lost all ability of will to any spirituall good accompanying salvation; so as a natural man, being

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CHAPTER X.—*Of Effectuall Calling.*

I. All those whom God hath predestinated unto life, and those only, he is pleased, in his appointed and accepted time effectually to call, by his word and Spirit, out of that estate of sin and death in which they are by nature, to grace and salvation by Jesus Christ; inlightening their minds spiritually and savingly to understand the things of God; taking away their heart of stone, and giving unto them an heart of flesh; renewing their wills, and by his almighty power determining them to that which is good; and effectually drawing them to Jesus Christ; yet so as they come most freely, being made willing by his grace. . . .

III. Elect infants, dying in infancy, are regenerated and saved by Christ through the Spirit, who worketh when and where, and how he pleaseth. So also are all other elect persons, who are incapable of being outwardly called by the ministry of the word.

IV. Others not elected, although they may be called by the ministry of the word, and may have some common operations of the Spirit, yet they never truly come unto Christ, and therefore cannot be saved: much less can men not professing the Christian religion be saved in any other way whatsoever, be they never so diligent to frame their lives according to the light of nature, and the law of that religion they do profess; and to assert and maintain that they may, is very pernicious, and to be detested.

CHAPTER XI.—*Of Justification.*

I. Those whom God effectually calleth he also freely justifieth; not by infusing righteousness into them, but by pardoning their sins, and by accounting and accepting their persons as righteous: not for anything wrought in them, or done by them, but for Christ's sake alone: not by imputing faith itself, the act of believing, or any other evangelicall obedience to them as their righteousness; but by imputing the obedience and satisfaction of Christ unto them, they receiving and resting on him and his righteousness by faith: which faith they have not of themselves; it is the gift of God.

CHAPTER XIV.—*Of Saving Faith.*

I. The grace of faith, whereby the elect are enabled to believe to the saving of their souls, is the work of the Spirit of Christ in their hearts, and is ordinarily wrought by the ministry of the word: by which also, and by the administration of the sacraments and prayer, it is increased and strengthened.

II. By this faith, a Christian believeth to be true whatsoever is revealed in the word, for the authority of God himself speaking therein; and acteth differently upon that which each particular passage thereof containeth; yielding obedience to the commands, trembling at the threatnings, and embracing the promises of God for this life and that which is to come. But the principal acts of saving faith are, accepting, receiving, and resting upon Christ alone for justification, sanctification, and eternal life, by virtue of the covenant of grace.

CHAPTER XV.—*Of Repentance unto Life.*

I. Repentance unto life is an evangelicall grace, the doctrine whereof is to be preached by every minister of the gospel.

II. By it a sinner, out of the sight and sense, not only of the danger, but also of the filthiness and odiousness of his sins, as contrary to the holy nature and righteous law of God, and upon the apprehension of his mercy in Christ to such as are penitent, so grieves for and hates his sins, as to turn from them all unto God, purposing and endeavouring to walk with him in all the ways of his commandments.

III. Although repentance be not to be rested in, as any satisfaction for sin, or any cause of the pardon thereof, which is the act of God's free grace in Christ; yet is it of such necessity to all sinners that none may expect pardon without it.

V. Men ought not to content themselves with a general repentance, but it is every man's duty to endeavour to repent of his particular sins particularly.

VI. As every man is bound to make private confession of his sins to God, praying for the pardon thereof; upon which, and the forsaking of them, he shall find mercy; so he that scandalizeth his brother, or the church of Christ, ought to be willing, by a private or publick confession and sorrow for his sin, to declare his repentance to those that are offended; who are thereupon to be reconciled to him, and in love to receive him.

CHAPTER XXIII.—*Of the Civil Magistrate.*

I. 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 publick good; and, to this end, hath armed them with the power of the sword, for the defence and encouragement of them that are good, and for the punishment of evil-doers.

II. It is lawful for Christians to accept and execute the office of a magistrate, when called thereunto: in the managing whereof, as they ought especially to maintain piety, justice, and peace, according to the wholesome laws of each commonwealth; so, for that end, they may lawfully, now under the New Testament, wage war upon just and necessary occasion.

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

IV. 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.

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CHAPTER XXV.—*Of the Church.*

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I. The catholick or universall church, which is invisible, consists of the whole number of the elect that have been, are, or shall be gathered into one, under Christ the head thereof; and is the spouse, the body, the fulness of him that filleth all in all.

II. The visible church, which is also catholick or universal under the gospel (not confined to one nation, as before under the law,) consists of all those throughout the world that profess the true religion, together with their children; and is the kingdom of the Lord Jesus Christ, the house and family of God, out of which there is no ordinary possibility of salvation.

VI. There is no other head of the church but the Lord Jesus Christ: nor can the Pope of Rome in any sense be head thereof; but is that antichrist, that man of sin, and son of perdition, that exalteth himself in the church against Christ, and all that is called God.

CHAPTER XXX.—*Of Church Censures.*

I. 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.

II. To these officers the keys of the kingdom of heaven are committed, by virtue whereof they have power respectively to retain and remit sins, to shut that kingdom against the impenitent, both by the word and censures; and to open it unto penitent sinners, by the ministry of the gospel, and by absolution from censures, as occasion shall require.

CHAPTER XXXI.—*Of Synods and Councils.*

II. As magistrates may lawfully call a synod of ministers, and other fit persons, to consult and advise with about matters of religion; so if magistrates be open enemies to the church, the ministers of Christ, of themselves, by virtue of their office, or they, with other fit persons upon delegation from their churches, may meet together in such assemblies.

III. It belongeth to synods and councils ministerially to determine controversies of faith, and cases of conscience; to set down rules and directions for better ordering of the publick worship of God, and government of his church; to receive complaints in cases of maladministration, and authoritatively to determine the same: which decrees and determinations (if consonant to the word of God) are to be received with reverence and submission, not only for their agreement with the word, but also for the power whereby they are made, as being an ordinance of God, appointed thereunto in his word.

IV. All synods or councils since the apostles' times, whether general or particular, may err, and many have erred; therefore they are not to be made the rule of faith or practice, but to be used as an help in both.

V. Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs, which concern the commonwealth, unless by way of humble petition, in cases extraordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate.

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Act, 1690, c. 7 (Thomson, ix. 133).

Act ratifying the Confession of Faith and settling Presbyterian Church Government.

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 tyme been professed within this Land as also the Government of Christ's Church within this Nation agreeable to the word of God and most conducive to the advancement of true piety and Godliness and the establishing of peace and tranquility within this Realme, And that by ane Article of the Claime of Right, It is declared that the prelacie and the superiority of any office in the Church above presbyters, Is and hath been a great and insupportable greivance Lyke as by ane Act of the last Session of this Parliament Prelacie is abolished Therefore Their Majesties with advyce and consent of the saids three Estates Doe hereby revive ratife and perpetually confirm all lawes statutes and acts of Parliament made against popery and papists And for the maintenance and preservation of the true reformed protestant religion and for the true Church of Christ within this kingdom, In swa far as they confirme the same or are made in favours thereof: Lyke as they by these presents Ratife and establish the Confession of faith now read in their presence and voted and approven be them as the publick and avowed Confession of this Church containeing the summe and substance of the doctrine of the reformed Churches which Confession of Faith is subjoynd to this present Act: As also, They doe establish ratife and confirme the presbyterian Church Government and discipline That is to say the Government of the Church by Kirke sessions, presbyteries, provinciall synods and general Assemblies ratified and established by the Act of 1592, c. 8. And thereafter received by the generall consent of this Nation to be the only Government of Christ's Church within this Kingdome Reviveing and Confirmeing the forsaid act of Parliament in the haill heids thereof except that part of it relating to patronages which is hereafter to be taken into consideration. And Rescinding Annulling and making voyd the Acts of Parliament following [Popish and Prelacy Acts]. [These Acts being] Inconsistent with, or derogatory from the protestant Religion and presbyterian Government now established. . . . In pursuance of the premises Their Majisties doe hereby appoint the first meeting of the Generall assembly of this Church as above established to be at Edinburgh the third thursday of october nextcome In this instant year 1690: And to the effect the disorders that have hapned in this Church may be redressed Their Majesties with advyce and consent foresaid Doe hereby allow the Generall meeting and representatives of the forsaid presbyterian ministers and elders in whose hands the exercise of the Church Government is established either by themselves or by such Ministers and elders as shall be appointed and authorised visitors by them, according to the custom and practice of Presbyterian Government throughout the whole kingdom and severall parts thereof, to try and purge out all Insufficient, negligent, scandalous and erroneous Ministers by due course of ecclesiasticall processes and censures, and likeways for redressing all other Church disorders; And further it is hereby provyded

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And to the effect the calling and entering Ministers in all tyme comeing may be orderly and regularly performed. Their Majesties with consent of the Estates of Parliament Doe Statute and Declare, That in case of the vacancie of any particular Church and for supplyeing the same with a Minister the Heretors of the said parish (being protestants) and the elders are to name and propose the persone to the whole congregacione to be either approven or disapproven by them. And if they disapprove, that the disapprovers give in their reasons to the effect the affair may be cognosed upon by the presbytery of the bounds. . . .

Act 1693, c. 38 (Thomson, ix. 303).

Act for Settling the Quiet and Peace of the Church.

Approve and perpetually Confirme the fyfth Act of the Second Session of this Current Parliament Entituled Act Ratifying the Confession of Faith and Settling Presbyterian Church Government In the whole Heads Articles and Clauses thereof And do further Statute and Ordaine that no person be Admitted or continued for hereafter to be a minister or preacher within this Church, unless that he having first taken and subscribed the . . . assurance in manner appointed by another Act of this present session of Parliament. [That is the declaration of allegiance.] Do also subscribe the Confession of Faith ratified in the foresaid fyfth act of the second session of this Parliament declaring the same to be the confession of his faith and that he owns the doctrine therein contained to be the true doctrine which he will constantly adhere to.

APPENDIX G.

THE BARRIER ACT.

8th January, 1697.

Act anent the Method of passing Acts of Assembly of General Concern to the Church, and for preventing of Innovations.

(Commonly called the Barrier Act.)

The General Assembly, taking into their consideration the overture and Act made in the last Assembly concerning innovations, and having heard the report of the several commissioners from Presbyteries to whom the consideration of the same was recommended, in order to its being more ripely advised

and determined in this Assembly, and considering the frequent practice of former Assemblies of this Church, and that it will mightily conduce to the exact obedience of the Acts of Assemblies, that General Assemblies be very deliberate in making of the same, and that the whole Church have a previous knowledge thereof, and their opinion be had therein, and for preventing any sudden alteration or innovation, or other prejudice to the Church, in either doctrine or worship or discipline or government thereof, now happily established; do therefore appoint, enact, and declare, that before any General Assembly of this Church shall pass any Acts, which are to be binding rules and constitutions to the Church, the same Acts be first proposed as overtures to the Assembly, and, being by them passed as such, be remitted to the consideration of the several Presbyteries of this Church, and their opinions and consent reported by their Commissioners to the next General Assembly following, who may then pass the same in Acts, if the more general opinion of the Church, thus had, agree thereunto.

CLAIM, DECLARATION, AND PROTEST ANENT ENCROACHMENTS
OF THE COURT OF SESSION. GENERAL ASSEMBLY, MAY 30,
1842.

WITH ADDRESS TO THE QUEEN, ACT XX.

"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 . . . these have been of late assailed by the very Court to which the Church was authorized 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." . . . "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'" (a reference is given to the Confession, Chapter xxv.) "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' (Chapter 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' (Chapter xxiii. Sec. 4); and while the

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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' (Chapter 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" . . . "the preaching of the Word, administration of the Sacraments, correction of manners, the admission of the office-bearers of the Church to their offices, their suspension and deprivation therefrom, the infliction and removal of Church censures, and, generally, the whole 'power of the keys.'" . . . "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" . . . [Reference was then made to a series of Acts of Parliament already given] . . . "by which enactment" [that is, one of the last ones—1567, c. 7] "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." . . . "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 the 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*.'" [It then referred to the Censure of Robert Montgomery, 1582, and the Acts 1584 (a Black Act); 1592, c. 116; 1584, c. 129 (a Black Act); 1612, c. 1; 1661, c. 11; 1681, c. 6; 1669, c. 1; 1689, c. 18; 1690, c. 1; 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." [Then there are narrated various statutes: 1592, c. 117; 1690, c. 5; 1693, c. 22; 1695, c. 22; 1705, c. 4; 1706, c. 6 and c. 7. It then referred to the patronage question, and proceeded to shew how the question of patronage stood under the statutes, and how it had been abolished in 1690 and re-enacted by the Act of 10 Anne, c. 12.] . . . "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, appoint 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.'" [It proceeds to shew how the question of patronage stood under the statute, and how it had been abolished in 1690, and how it had been by the Act of Queen Anne restored.] . . . "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 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 authorize 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 authorized 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." [Then it proceeded to set out all that was done by the Courts, citing the following cases: *Auchterarder Case*, (1838) 16 S. 661; *Auchtermuchty (Moncrieff v. Maxton)*, (1735); *Culross (Cochrane v. Forbes)*, (1751); *Lanark (Dick v. Carmichael)*, (1752) Mor. Dict. 9954; *Forbes (Forbes v. M'William)*, (1762)

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Mor. Dict. 9931; *Dunse (Hay v. Presbytery of Dunse)*, (1749) Mor. Dict. 9911; *Unst (Lord Dundas v. Presbytery of Shetland)*, (1795) Bell's Cases, 169; *First Lethendy Case*, (1839) 1 D. 955; *Stewarton Case*, (1843) 5 D. 427; *Marnoch Case*, (1840) 3 D. 282; *Daviot Case*; *Strathbogie Cases*, Nos. 1, 2, 3, 5, (1840) 2 D. 258, 585, 1047, 1380; (1840) 3 D. 282; (1843) 5 D. 909; *Auchterarder Case*, (1841) 3 D. 778; (1842) 4 D. 957; *Culsalmond*, (1842) 5 D. 909, *Cambusnethan*, and *Stranraer (Wilson v. Presbytery of Stranraer)*, (1842) 4 D. 1294) Cases.

Then it proceeds: "And whereas farther encroachments are threatened on the government and discipline of the Church as by law established, 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 [*Third Auchterarder Case* and *Third Lethendy Case*] 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 hereinbefore 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 hereinbefore 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 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. . . ."

[The Protest]: "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, rights, 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 cognisance 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, rights, 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. . . ." "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. . . ." "And that in His own good time, He would restore to them these benefits, the fruits of the struggles and sufferings of their fathers in times past in the same cause; and, thereafter, give them grace to employ them more effectually than hitherto they have done for the manifestation of His glory."

Protest by those Commissioners to the General Assembly appointed to meet May 18, 1843, by whom this Assembly was constituted [General Assembly, 1843, Act 1, at Edinburgh and within a large Hall at Canonmills]: "The Commissioners to the General Assembly of the Church of Scotland, appointed to have been holden this day, having met in St. Andrews Church, the Ministers and Elders, Commissioners thereto, whose names are appended to the Protest then and there made and hereinafter inserted, having

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withdrawn from that place and having convened in a large Hall at Canonmills in 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." Then it proceeds: "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 henceforth 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*" [then there are some eight different heads having reference to the various decisions which had been pronounced with reference to the intruding upon them of pastors against the will of the congregation] . . . "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" . . . "And Farther 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 . . . 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" . . . "We, therefore, the Ministers and Elders foresaid," "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 farther 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 [see Appx. G, p. 737], 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 no wise 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."

APPENDIX H.

MODEL TRUST DEED.

DISPOSITION by JOHN HAMILTON, Esq., Advocate, and others, in favour of JOHN CADELL, Esq., Advocate, and others, Trustees for the Congregation of St. George's Free Church, Edinburgh. Dated 9th, 11th, and 12th November, and registered in Books of Council and Session 13th November 1844.

AND FURTHER, CONSIDERING that a Resolution of the said Deacons' Court has been duly intimated to us, authorizing and requiring us, as a majority and more than a quorum of the Building Committee foresaid, to Dispose and Convey the subjects after described, on the narrative, to the parties, and under

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the trusts, conditions, provisions, and declarations after written. THAT IS TO SAY, CONSIDERING, that WHEREAS in the year 1560, and from that year downwards, a Reformed Presbyterian Church existed in Scotland, professing to be reformed from Popery by Presbyters exercising the functions of a Church of Christ within these realms, and, in particular, adopting and approving of a Confession of Faith and two Books of Discipline, still extant, under these titles: AND WHEREAS the said Reformed Presbyterian Church continued to exist in Scotland in the year 1690, having a government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, which Church had been at different periods between the years 1567 and 1592, and the said year 1690, recognised and endowed by the State as the Established Church of the kingdom, but was then, in said year 1690, and had been for many years immediately preceding, unacknowledged by the State, and existing independent of State support: AND WHEREAS in the said year 1690 an Act was passed in the Parliament of Scotland, viz., the Act of the Second Session of the First Parliament of William and Mary, chapter 5, whereby the said Church was again recognised and endowed by the State as the Established Church of the kingdom, and not only its foresaid government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, was ratified and confirmed, and its ministers declared to have right to the maintenance, rights, and other privileges by law provided to the ministers of Christ's Church within the kingdom, but also its Confession of Faith, which it had adopted in the year 1647, and of which a verbatim copy is annexed to the said Act, was thereby ratified and established: AND WHEREAS the said Church, using, as before, its said mode of government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, continued, from and after the date of the said Act of Parliament, as long previous to that Act, to have the existence in Scotland as a Church of Christ, and was, from the date of the said Act, down to month of May 1843 years, and during the whole intermediate period, recognised and endowed by the State as the Established Church of Scotland: AND WHEREAS it was at all times an essential doctrine of the said Church, and a fundamental principle in its constitution, as set forth, in accordance with the Word of God, in the said Confession of Faith, that "there is no other Head of the Church but the Lord Jesus Christ," and that "the Lord Jesus, as King and Head of His Church, hath therein appointed a government in the hands of church officers, distinct from the civil magistrate," which government thus appointed by the Lord Jesus in the hands 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 object 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 of Faith, is declared, in conformity with Scripture, to have been "committed" 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": AND WHEREAS, further, it was at all times a fundamental principle of the said Church that no pastor should be intruded upon any congregation

contrary to the will of the people: AND WHEREAS, in the year 1834, the General Assembly of the said Church, convened at Edinburgh, passed, on 31st May 1834 years, an Overture and Interim Act, intituled "Overture and Interim Act on Calls," and on the 2nd of June 1834 years, passed a relative "Overture with Regulations for carrying the above Act into effect," whereby the said fundamental principle, that no pastor be intruded upon any congregation, contrary to the will of the people, was, as in previous Acts of the General Assembly of the said Church, distinctly declared, and was appointed to be given effect to as therein mentioned; and, because by an Act of the General Assembly of the said Church, passed on the 8th of January 1697 years, intituled an "Act anent the method of passing Acts of Assembly of general concern for the Church, and for preventing of Innovations," which is commonly called the "Barrier Act," the said General Assembly did "appoint, enact, and declare, that, before any General Assembly of this Church shall pass any Acts which are to be binding Rules and Constitutions to the Church, the same Acts be first proposed as Overtures to the Assembly, and being by them passed as such, be remitted to the consideration of the several Presbyteries of this Church, and their consent reported by their Commissioners to the next General Assembly following, who may then pass the same Acts, if the more general opinion of the Church, thus had, agree thereunto," therefore the said "Overture and Interim Act on Calls," and also the said "Overture with Regulations for carrying the above Act into effect," were, by the said General Assembly, in conformity with the said Barrier Act, remitted to the consideration of the several Presbyteries of the said Church, and the opinions and consent of the said Presbyteries having been reported by their Commissioners to the next General Assembly of the said Church, which was holden at Edinburgh in May 1835, the said next General Assembly, finding that the more general opinion of the Church, thus had, agree thereunto, did on 29th May 1835 pass the said Overture and Interim Act, under the title of an "Act on the calling of Ministers," into a standing law of the said Church, and for carrying the said last-mentioned Act into effect they, on 1st June 1835, passed an Overture and Interim Act, intituled "Overture and Interim Act, with Regulations for carrying into effect the Act of Assembly on the calling of Ministers": AND WHEREAS the General Assembly of the said Church, holden at Edinburgh in May 1838, passed on 23rd May 1838, in reference to the essential doctrine and fundamental principle first above mentioned, a formal Resolution in the following terms [see post, p. 632, and proceeds to give the history of the Disruption] AND WHEREAS the said Ministers and Elders, and those who adhere to them, thus form a body of Christians, known by the name of "The Free Church of Scotland," separate and distinct from the Established Church, as now recognised and endowed by the State; but using and exercising the foresaid form of Church Government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, and, in general, the same internal government, jurisdiction, and discipline, as before their said Act of Separation from the Church of Scotland, as now recognised and endowed by the State: 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

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designed, as Trustees in manner and to the effect following: THEREFORE, we, Dispose, &c. . . . *First*, UPON TRUST, that the building, or place of worship, or 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:— *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, for the time being, or of the then immediately preceding 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:— *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:— *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 charge, as aforesaid, shall simultaneously, or within a consecutive period, not exceeding three calendar months, not only publicly separate from the said body, or united body, of Christians, but, at the same time, publicly claim and profess to hold,

truly, and in bonâ fide, the principles of the Protest of 18th May, 1843, hereinbefore recited, and to be carrying out the objects of the said Protest more faithfully than the majority of the Ministers of the said body, or united body of Christians, and shall unite in forming one body of Christians, having Kirk-Sessions, Presbyteries, Provincial Synods, and a General Assembly, then and in that case, and 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 connection with the body of Christians adhering to the Ministers who shall have separated as aforesaid, and, for this purpose, to require and appoint the said Trustees, or Trustee, 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 deed 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

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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 good 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 said deed of declaration and appointment.

APPENDIX I.

ACT and DECLARATION anent the Publication of the Subordinate Standards and other Authoritative Documents of the Free Church of Scotland.

31st day of May, 1851.

Inter alia,

The General Assembly, on considering the Report of the Committee to which this matter was referred at a previous diet, unanimously agreed to sanction, as they hereby sanction, the publication of a volume, containing the subordinate standards, and other authoritative documents of this Church.

When it pleased Almighty God, in His great and undeserved mercy, to reform this Church from Popery by presbyters, it was given to the Reformers, amid many troubles, to construct and model the constitution of the Church, in doctrine, worship, discipline, and government, according to the Word of God, and not according to the will of earthly rulers. Our fathers, accordingly, in singleness of eye and simplicity of heart, without regard to the favour or the fear of man, so applied themselves to the work to which they were called, that they were enabled, with remarkable unanimity, to settle it upon the basis which, by the blessing of God, has continued unaltered down to the present time.

Of this settlement, besides that profession of the evangelical faith which is common to all the Churches of the Reformation, the peculiar and essential features are: I. The government of the Church by presbyters alone, or by that order of men which is indicated in the New Testament indiscriminately by the terms presbyters and bishops or overseers—*πρεσβυτεροι* and *ἐπισκοποι*—and II. The subjection of the Church, in all things spiritual, to Christ as her only Head, and to His Word as her only rule.

From the beginning these principles have been held as fundamental by the Reformed Church of Scotland; and as such they were recognised in her earliest standards—the First and Second Books of Discipline—adopted by her own independent authority, before the full sanction either of the Crown or of the Parliament was given to the Reformation which God had accomplished on her behalf. For these principles, the ministers and members of this Church, as well as the nobles, gentlemen, and burgesses of the land, from the first united in contending; and on more than one occasion, in the course of these early struggles—as in 1580, when the National Covenant was signed—our reforming ancestors bound themselves one to another, as in the sight of God, to maintain and defend them against all adversaries.

Farther: while this Church has ever held that she possesses an independent and exclusive jurisdiction or power in all ecclesiastical matters, "which flows directly from God, and the Mediator, Jesus Christ, and is spiritual, not having a temporal head on earth, but only Christ, the only King and Governor of His Church"; she has, at the same time, always strenuously advocated the doctrine taught in Holy Scripture—that nations and their rulers are bound to own the truth of God, and to advance the kingdom of His Son. And accordingly, with unfeigned thankfulness, did she acknowledge the good hand of the Lord, when, after prolonged contests with the enemies of the Reformation—and, in particular, with certain parties who sought not only to uphold a form of Prelatic government in the Church, but to establish the supremacy of the Crown in all causes, spiritual and ecclesiastical, as well as civil and temporal—a national recognition and solemn sanction of her constitution, as it had been settled by her own authority, according to the Word of God, was at last obtained;—first, in the Act of Parliament, 1567, and again, more completely, in the Act of Parliament, 1592—then and since regarded by her as the great constitutional charter of her Presbyterian government and freedom.

Thus the first Reformation was accomplished.

But before a generation had elapsed, a sad change for the worse took place. Through defection in the Church, and tyrannical invasion of her independence by the civil power, the Presbyterian polity and government were overturned, and manifold abuses and corruptions in discipline and worship were insidiously introduced. A second Reformation accordingly became necessary.

And here, again, it pleased Almighty God, as in that former Reformation of the Church from Popery by presbyters, to give to our fathers light and grace; so that, taking His Word as their only rule, and owning His Son as their only King in Zion, they were enabled not only to restore the constitution of the Church as it had stood when her first Reformation seemed to be completed, but to aim, also, at carrying out more fully the great essential principles of that constitution, and securing more effectually than before the prevalence of these principles over all the land, as well as their permanency through all coming ages

Thereafter, for the better prosecution of the work on hand, and in the face of the manifest purpose of the king and his adherents to crush it altogether, this Church, by commissioners duly named by the General Assembly, took part in the Assembly of Divines which met at Westminster in 1643. And having in view the uniformity contemplated in the Solemn League and Covenant, she consented to adopt the Confession of Faith, Catechisms, Directory for Public Worship, and form of Church Government, agreed upon by the said Assembly of Divines.

These several formularies, as ratified, with certain explanations, by divers Acts of Assembly in the years 1645, 1646, and particularly in 1647, this Church continues till this day to acknowledge as her subordinate standards of doctrine, worship, and government; with this difference, however, as regards the authority ascribed to them, that while the Confession of Faith contains the creed to which, as to a confession of his own faith, every office-bearer in the Church must testify in solemn form his personal adherence—and while the catechisms, Larger and Shorter, are sanctioned as directories for catechising; the Directory for Public Worship, the Form of Church Government, and the

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Directory for Family Worship, are of the nature of regulations, rather than of tests, to be enforced by the Church like her other laws, but not to be imposed by subscription upon her ministers and elders. These documents, then, together with a practical application of the doctrine of the Confession, in the Sum of Saving Knowledge—a valuable treatise, which, though without any express Act of Assembly, has for ages had its place among them—have, ever since the era of the second Reformation, constituted the authorized and authoritative symbolic books of the Church of Scotland.

Thus, for instance, in the civil sanction then given to Presbytery, the Parliament of 1690, overlooking altogether the higher attainments of the second Reformation, went back at once to the Act 1592, and based its legislation upon that Act alone, as being the original charter of the Presbyterian Establishment. Accordingly, it left unrepealed the infamous “Act Recissory” of King Charles by which all that the Church had done, and all that the State had done for her, in the interval between 1638 and the Restoration, had been stigmatised as treasonable and rebellious. Thus the Revolution Settlement failed in adequately acknowledging the Lord’s work. . . .

For it would be in a high degree ungrateful to overlook the signal and seasonable benefits which the Revolution Settlement really did confer upon the Church, as well as upon the nation. Not only did it put an end to the cruel persecution by which the best blood of Scotland had been shed in the field, on the hillside, and on the scaffold; not only did it reinstate in their several parishes the pastors who had been unrighteously cast out in the reign of the second Charles, and set up again the platform of the Presbyterian government; but by reviving and re-enacting the Statute of 1592, the original charter and foundation of Presbytery, it recognised as an inalienable part of the constitution of this country the establishment of the Presbyterian Church. It secured also effectually, as was then universally believed, the exclusive spiritual jurisdiction of the Church, and her independence in spiritual matters of all civil control. And by the arrangements which it sanctioned for the filling up of vacant charges; it abolished those rights of patronage which had been reserved in 1592, and made provision for enforcing the fundamental principle of this Church, that “no pastor shall be intruded into a congregation contrary to the will of the people.”

Among other tokens for good, as the Church humbly considered them, it may be mentioned as one of the most gratifying, that a beginning was made, during this reforming period, of the work of reunion among the true-hearted branches of the Presbyterian Church in Scotland. Overtures towards a junction with the Church of Scotland having been made by a highly esteemed body of those whose fathers had seceded from it, and ample deliberation having taken place on both sides, the end in view was happily and harmoniously attained in the year 1839, when the General Assembly, with the consent of the Presbyteries of the Church, passed an Act to the following effect:—

“Whereas proposals have been made by the Associate Synod for a reunion with the Church of Scotland, and a considerable number of overtures have been sent at the same time to the General Assembly from the Synods and Presbyteries of the Church favourable to that object; and it has been ascertained by a committee of the General Assembly, that the course of study required for a long time past of students in divinity in connection with said Synod is

quite satisfactory, and that their ministers and elders do firmly adhere to the Westminster Confession of Faith, the Larger and Shorter Catechisms, and other standards of our Church: and whereas the members of the Associate Synod do heartily concur with us in holding the great principle of an ecclesiastical establishment, and the duty of acknowledging God in our national as well as our individual capacity; and we, on the other hand, do heartily concur with the members of the Associate Synod in confessing the great obligation under which we lie to our forefathers in the year 1638, and several years of that century immediately following, and the duty, in particular circumstances, of uniting together in public solemn engagement in defence of the Church, and its doctrine, discipline, and form of worship and government: and whereas our brethren of the Associate Synod have declared their willingness, in the event of a reunion, to submit to all the laws and judicatories of this Church, reserving only to themselves the right which the members of the Established Church enjoy of endeavouring to correct, in a lawful manner, what may appear to them to be faulty in its constitution and government,—the General Assembly, with the consent of the Presbyteries of this Church, enact and ordain, that all the ministers of the Associate Synod, and their congregations in Scotland, desirous of being admitted into connection and full communion with the Church of Scotland, be received accordingly.”

This step was hailed with lively satisfaction by the supporters of the old hereditary principles of the Scottish Reformation, as not only a testimony to the returning faithfulness with which these principles were now maintained, but a pledge and presage also of other movements of a similar kind which might be expected to follow, as the work of reformation and revival went on: thus holding out the hope of this Church being honoured to be successful in healing the breaches of Zion as well as rebuilding the walls of Jerusalem. . . .

[It then referred to the Disruption, and proceeded.] All along, indeed, while the contentings of this third Reformation period were going forward, not only did “they that feared the Lord speak often one to another,” but most solemn consultations of the brethren were held at every step, with much earnest prayer, and many affecting pledges of mutual fidelity to one another, and to God. And as the crisis manifestly drew near, the whole body of those ministers of this Church by whom the contest was maintained met together in convocation, in November, 1842, being convened by a large number of the fathers of the Church, and, after a sermon preached by the late lamented Dr. Chalmers, continued in deliberation for several successive days, spending a large portion of the time in united supplication for the guidance and grace of God; and did not separate till, with one mind and one heart, they were enabled to announce, in resolutions having, in the circumstances, all the force of the most impressive vows and obligations, their final purpose, at all hazards, to maintain uncompromised the spiritual liberty and jurisdiction of this Church. And this they resolved to do, not by prolonged resistance to the civil courts, should the Crown and Parliament of Great Britain refuse the redress craved in the above-mentioned Claim of Rights, but by publicly renouncing the benefits of the National Establishment,—under protest that it is her being Free, and not her being Established, that constitutes the real historical and hereditary identity of the Reformed National Church of Scotland.

Holding firmly to the last, as she holds still, and, through God’s grace, will

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H. L. (Sc.) ever hold, that it is the duty of civil rulers to recognise the truth of God, according to His Word, and to promote and support the kingdom of Christ, without assuming any jurisdiction in it, or any power over it; and deeply sensible, moreover, of the advantages resulting to the community at large, and especially to its most destitute portions, from the public endowment of pastoral charges among them: this Church could not contemplate without anxiety and alarm the prospect of losing, for herself, important means of general usefulness—leaving the whole machinery of the Establishment in the hands of parties who could retain it only by the sacrifice of her fundamental principles—and seeing large masses of the people deprived of the advantage of having the services of a gospel ministry provided for them independently of their own resources. But her path was made plain before her. . . .

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5. EXTRACT from "THE SUM OF SAVING KNOWLEDGE."

HEAD III.

The outward means appointed to make the elect partakers of this covenant, and all the rest that are called, to be inexcusable. Matt. xxii. 14. Many are called.

I. The outward means and ordinances, for making men partakers of the covenant of grace, are so wisely dispensed, as that the elect shall be infallibly converted and saved by them; and the reprobate, among whom they are, not to be justly stumbled. The means are especially these four. 1. The word of God. 2. The sacraments. 3. Kirk-government. 4. Prayer. In the word of God preached by sent messengers, the Lord makes offer of grace to all sinners, upon condition of faith in Jesus Christ; and whosoever do confess their sin, accept of Christ offered, and submit themselves to his ordinances, he will have both them and their children received into the honour and privileges of the covenant of grace. . . .

Here (after setting down the precious ransom of our redemption by the sufferings of Christ, and the rich blessings purchased to us thereby, in the two former chapters), the Lord, in this chapter,

1. Maketh open offer of Christ and his grace, by proclamation of a free and gracious market of righteousness and salvation, to be had through Christ to every soul, without exception, that truly desires to be saved from sin and wrath: "Ho, every one that thirsteth," saith he.

2. He inviteth all sinners, that for any reason stand at a distance from God, to come and take from him riches of grace, running in Christ as a river, to wash away sin, and to stoken wrath: "Come ye to the waters," saith he. . . .

APPENDIX J.

BASIS OF UNION, adopted May, 1847.

1. That the word of God contained in the Scriptures of the Old and New Testaments is the only rule of Faith and Practice.

2. That the Westminster Confession of Faith and the Larger and Shorter Catechisms are the confession and catechisms of this Church, and contain the authorized exhibition of the sense in which we understand the Holy Scriptures;

it being always understood that we do not approve of anything in these documents which teaches, or may be supposed to teach, compulsory or persecuting and intolerant principles in religion."

10. That the respective bodies of which this Church is composed, without requiring from each other any approval of the steps of procedure by their fathers, or interfering with the rights of private judgment in reference to these, unite in regarding as still valid the reasons of which they have hitherto maintained their state of secession and separation from the Judicatories of the Established Church, as expressed in the authorized documents of the respective bodies, and in maintaining the lawfulness and obligation of separation from ecclesiastical bodies in which dangerous error is tolerated, or the discipline of the Church or the rights of her ministers or members are disregarded.

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APPENDIX K.

EXCERPT from RULES and FORMS of PROCEDURE of the UNITED PRESBYTERIAN CHURCH (1848).

After a narrative which says rules must be framed for the guidance of their office-bearers, it continued:—

"XV.—The Church is a spiritual community which has received from Christ, her Head, and holds within herself, all the power that is necessary for the administration of her affairs. She is entirely distinct from civil governments, and requires nothing from them but that civil protection to which all her members in their civil capacity are fully entitled. She addresses herself to the consciences and hearts of men, disclaiming all compulsory power over their persons or property, and the right of private judgment in all matters which relate to religion is universal and inalienable. This book of Rules and Forms is to be looked upon as shewing how the instructions given in the Word of God are reduced to practice in the government of the United Presbyterian Church. These forms are to be viewed in no other light than as the guards of substantial justice, in applying the principles already specified to the actual business of the Church.

"CHAP. II. SECT. IX.—SUB-SECT. II.

"Every minister of the United Presbyterian Church is bound to submit in the matter of temporal support, as in all other matters connected with his office, to the decision of Presbytery or Synod, and has no right to prosecute for stipend in the civil courts, it being a principle recognised in the Church that the high and sacred claim which Christ has given ministers on the consciences of their people for suitable maintenance is a security perfectly adequate, and excludes any appeal to a civil court for its enforcement."

"CHAP. V. SECT. II.—OVERTURES.

"4. Any proposal which involves a change in the constitution of the Church ought to be leisurely and carefully considered. If the Synod first approve

H. L. (Sc.) of the proposal, it is then transmitted in the form of an Overture to the Presbyteries of the Church for their opinion, and the opinion of their sessions."

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"2. Do you acknowledge the Westminster Confession of Faith, and the Larger and Shorter Catechisms, as an exhibition of the sense in which you understand the Holy Scriptures. [Note.—After the Declaratory Act of 1879 the second part of this Formula was altered from this point to 'This acknowledgment being made in view of the explanations contained in the Declaratory Act of Synod thereanent']; it being understood that you are not required to approve of anything in these documents which teaches, or is supposed to teach, compulsory or persecuting and intolerant principles in religion?"

"3. Are you persuaded that the Lord Jesus Christ, the only King and Head of the Church, has therein appointed a government distinct from, and not subordinate to, civil government? And do you acknowledge the Presbyterian form of government, as authorized and acted on in this Church, to be founded on, and agreeable to, the Word of God?"

"Do you approve of the Constitution of the United Presbyterian Church as exhibited in the Basis of Union; and, while cherishing a spirit of brotherhood towards all the faithful followers of Christ, do you engage to seek the purity, edification, peace, and extension of this Church?"

APPENDIX L.

INTERIM REPORT (1864) of the Committee on Union appointed by the General Assembly of the Free Church of Scotland in 1863.

"The Committee of the Free Church and the Committee of the United Presbyterian Church have been engaged in considering the question of the relation of the Civil Magistrate to Religion and the Church.

"I. With reference to that question, the following are the Articles of Agreement between the two Committees:—

"I. That Civil Government is an ordinance of God for His own glory and the public good; that to the Lord Jesus Christ is given all power in heaven and on earth; and that Magistrates as well as other men are under obligation to submit themselves to Him, and to regulate their conduct, in their several places and relations, by His Word.

"II. That the Civil Magistrate ought to further the interests of the religion of the Lord Jesus Christ among his subjects, in every way consistent with its spirit and enactments; and to be ruled by it in the making of laws, the administration of justice, the swearing of oaths, and other matters of civil jurisdiction.

"III. That, while it is the duty of the Civil Magistrate to embrace and profess the Christian religion, it is not his province to impose a creed or a form of worship upon his subjects, or to interfere with that government which the Lord Jesus Christ has appointed in His Church, in the hands of Church

Officers—it being the exclusive prerogative of the Lord Jesus to rule in matters of faith and worship; and that the Civil Magistrate is not to further the interests of religion by means inconsistent with its spirit and enactments, which disclaim and prohibit all persecution. . . ."

"II. With reference to the same question, the following are statements in parallel columns of distinctive principles about which the two Committees differ:—

"STATEMENTS OF FREE CHURCH COMMITTEE.

"I. That while the Civil Magistrate must not so sustain himself a public judge of true or false religion as to dictate to his subjects in matters of faith, and has no authority in spiritual things, yet, owning obligation to Christ, he may lawfully acknowledge as being in accordance with the Word of God, the creed and jurisdiction of the Church.

"As a further act of homage to Christ, it is his duty, when necessary or expedient, to employ the national resources in aid of the Church, provided always that in doing so, while reserving to himself full control over the temporalities, which are his own gift, he abstain from all authoritative interference in the internal government of the Church. And while the Church must ever maintain the essential and perpetual obligation which Christ has laid on all His people to support and extend His Church by free-will offerings; yet in entire consistency with said obligation, the Church may lawfully accept aid from the civil magistrate when her spiritual independence is preserved entire. But it must always be a question to be judged of according to times and circumstances, whether or not such aid ought to be given by the civil magistrate, as well as whether or not it ought to be accepted by the Church. And the question must in every instance be decided by each of the two parties judging for itself, on its own responsibility.

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"STATEMENTS OF UNITED PRESBYTERIAN CHURCH.

"I. That inasmuch as the Civil Magistrate has no authority in spiritual things, and as the employment of force in such matters is opposed to the spirit and precepts of Christianity, it is not within his province to legislate as to what is true in religion; to prescribe a creed or form of worship to his subjects, or to endow the Church from national resources; that Jesus Christ, as sole King and Head of His Church, has enjoined upon His people to provide for maintaining and extending it by free-will offerings; that this, being Christ's ordinance, it excludes State aid for these purposes; and that adherence to it is the true safeguard of the Church's independence.

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"II. It follows from the preceding articles that any branch of the Christian Church consenting to be in alliance with the State, and to accept its aid, upon the condition of being subject to the authoritative control of the State or its Courts in spiritual matters—or continuing in such connection with the State as involves such subjection—must be held to be so far unfaithful to the Lord Jesus Christ as King and Head of His Church. And upon this ground, in accordance with the history and the constitutional principles of the Church of Scotland, a protest is to be maintained against the present Establishment in Scotland.

"II. That the United Presbyterian Church, without requiring from her members any approval of the steps of procedure by their fathers, or interfering with the rights of private judgment in reference to them, are united in regarding as still valid the reasons on which they have hitherto maintained their state of secession and separation from the judicatories of the Established Church, as expressed in the authorized documents of the respective bodies of which the United Presbyterian Church is formed; and in maintaining the lawfulness and obligation of separation from ecclesiastical bodies in which dangerous error is tolerated, or the discipline of the Church, or the rights of her ministry or members are disregarded.

"Moreover, though uniformity of opinion with respect to civil establishments of religion is not a term of communion in the United Presbyterian Church, yet the views on this subject held, and universally acted on, are opposed to these institutions; and the statements set forth in these distinctive articles are regarded by that Church as a protest against the Church Establishment in Scotland.

APPENDIX M.

OVERTURE TO BE TRANSMITTED TO PRESBYTERIES FOR THEIR OPINION.

Anent Union with the United Presbyterian Church.

"Whereas negotiations for an incorporating Union between this Church and the United Presbyterian Church have been in progress since the year 1896, as more particularly set forth in the preamble of a Uniting Act, the tenor whereof follows; and whereas the General Assembly at its meeting in the month of May 1900 has, with consent of a majority of Presbyteries, authorized and accepted the plan of Union set forth in proposals submitted by the Joint Union Committee as a plan to come into operation as soon as a Uniting Act shall have been duly passed, it being understood that the united Church shall have such common designation as may be agreed upon, and that secondary details may be adjusted as to the General Assembly may seem meet; and whereas the Synod of the United Presbyterian Church at its meeting in May

1900 has given effect to the agreement proposed by all action competent at that stage:

"Therefore the General Assembly, with consent of a majority of Presbyteries, enact and ordain as follows, viz. :—

"I. That an incorporating Union may be effected by the Assembly in terms of the Uniting Act herein set forth as follows, viz. :—

"Whereas the Synod of the United Presbyterian Church, at its meeting in May, 1896, upon a proposal of the General Assembly of the Free Church of Scotland for closer co-operation of the two Churches in their common work, cordially approved of the proposal, and, further, adopted a resolution in favour of taking steps towards a Union with the Free Church of Scotland, and appointed a Committee, which was reappointed at the meeting of the Synod of 1897, to prosecute that object; and whereas the Free Church Assembly, having, in 1896, appointed a Committee to consider the subject, did, in 1897, reappoint the said Committee with powers to confer with the Committee of the United Presbyterian Church; and whereas these Committees having met and communicated to one another the existing doctrinal standards, rules, and methods of the two Churches, it appeared that in regard to doctrine, government, discipline, and worship therein set forth, a remarkable and happy agreement obtained between them, as also in particular in the views of the two Churches 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 supreme standard, and that an incorporating union might harmoniously be accomplished; and whereas Questions and a Formula to be used at ordination and induction, as also arrangements for the support and training of the ministry and for combining the methods and work of the two Churches, have been agreed upon, and have been considered by the inferior Courts of the two Churches—and in particular—

[There is then set forth the plan of the union, with provision for the ministry; training thereof; aged ministers and constitution of the General Assembly.] " . . . and the Synod, having approved of the proposals submitted under the several heads of said Report as providing a satisfactory scheme for an incorporating Union of the two Churches, remitted them to Presbyteries . . . ' [And then the Free Church did the same.]

" . . . after all which the Overture proceeded: "Therefore the General Assembly, with consent of a majority of Presbyteries, hereby enact and ordain that the plan of Union set forth in the proposals hereinbefore referred to, including the rearrangement of Presbyteries and Synods as that may be approved by next or any subsequent Assembly, is authorized and accepted by this Church with a view to an incorporating Union with the United Presbyterian Church as a plan to come into operation as soon as a Uniting Act shall have been passed by the General Assembly with consent of a majority of Presbyteries of the Church, it being understood that the united Church may be declared to consist of the Free Church of Scotland as existing previously to the Union, and the United Presbyterian Church as existing previously to the Union, under such common designation as may be agreed upon; and that secondary details may be adjusted as to that Assembly may seem meet."

"And whereas the Synod of the United Presbyterian Church, at its meeting in May 1900, adopted the proposals which had been remitted in the A. C. 1904.

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previous year to Presbyteries and Sessions, and by them finally approved of: and further, having approved of the proposals respecting Presbyteries and Synods, and the other practical matters agreed on as necessary to complete the arrangements for entering into Union with the Free Church of Scotland, and having also approved of the proposed Uniting Act, and of certain express Declarations which the Churches have in view in entering into Union, the Synod remitted said Act and Declarations for final approval to Presbyteries and Sessions:

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“And in the like manner the General Assembly of the Free Church of Scotland, at its meeting in the same month of May 1900, approved of the proposals respecting Presbyteries and Synods as then adjusted, and passed the foresaid Overture, with the consent of a majority of Presbyteries, into a standing law; and approved of the said proposed Uniting Act, and also of the foresaid Declarations, and remitted the same in the form of an overture to Presbyteries:

“And whereas in this month of October the General Assembly of the Free Church of Scotland, with consent of a majority of Presbyteries, and the Synod of the United Presbyterian Church, have now sanctioned the form of a Uniting Act, and also adopted the aforesaid Declarations, and having now severally passed all Acts necessary for the consummation of the Union on the terms agreed upon, having severally resolved to meet together for that purpose, and are now met accordingly:

“Now, therefore, the said General Assembly of the Free Church of Scotland and the Synod of the United Presbyterian Church thus met, first of all desire to express their devout thankfulness to the great Head of the Church, [and so on] And the General Assembly of the Free Church of Scotland, and the Synod of the United Presbyterian Church, empowered as aforesaid, do hereby, in terms and in pursuance of the deliverances of their respective Church courts, enact and declare that the Free Church of Scotland and the United Presbyterian Church do and shall henceforth constitute one United Church; that the name of the United Church shall be The United Free Church of Scotland, and that its Supreme Court shall be designated The General Assembly of the United Free Church of Scotland.’

“II. That the General Assembly of the Free Church of Scotland and Synod of the United Presbyterian Church, when they have met for the purpose of consummating the Union, and have adopted the Uniting Act, shall thereafter have the powers of a General Assembly of the United Church. . . .

“III. That the Church enters into this Union, and authorizes it in view of the following express Declarations, viz. :—

“1. The various matters of agreement between the Churches with a view to Union are accepted and enacted without prejudice to the inherent liberty of the United Church, as a Church of Christ, to determine and regulate its own constitution and laws as duty may require, in dependence on the grace of God and under the guidance of His Word.

“2. The Larger and Shorter Catechisms of the Westminster Assembly, received and sanctioned by the General Assembly of 1648, and heretofore enumerated among the doctrinal standards of the United Presbyterian Church, continue to be received in the united Church as manuals of religious instruction long approved, and held in honour by the people of both Churches.

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3. As this Union takes place on the footing of maintaining the liberty of judgment and action heretofore recognised in either of the Churches uniting, so, in particular, it is hereby declared that members of both Churches, and also of all Churches which in time past have united with either of them, shall have full right as they see cause, to assert and maintain the views of truth and duty which they had liberty to maintain in the said Churches.”

APPENDIX N.

12. PREFACES to and EXTRACTS from CATECHISM by Rev. Andrew Gray, on the PRINCIPLES and CONSTITUTION of the FREE CHURCH OF SCOTLAND, issued by authority of the General Assembly, under the superintendence of the Publication Committee.

PREFATORY NOTE TO THE PRESENT EDITION.

A laudable desire exists at present in certain quarters that the true principles of the Free Church of Scotland should be emphatically proclaimed. We do not know how this can be better done than by a republication and wide circulation of the Free Church Catechism, published soon after the Disruption—a book which, unfortunately, has of late fallen into comparative obscurity and neglect. The chief author of this excellent catechism was the late able Rev. Andrew Gray of Perth, than whom no man in Scotland knew better the principles of the Free Church. The work was, however, revised by others, and received the unanimous sanction of the Free Church General Assembly of 1847, only four years after the Disruption. It was earnestly recommended to general use by that Assembly, “as containing a valuable summary of this Church’s history and exhibition of her distinctive principles, from the beginning of the Reformation to the present time.” Nothing has occurred since that time to make this recommendation less applicable or important; and it is hoped that all the true-hearted ministers of our Church will now avail themselves of this new opportunity of giving a wide circulation to this valuable and instructive Free Church Catechism.

Edinburgh, June 1876.

JAMES BEGG, D.D.

At Edinburgh, the Eighth day of June, One Thousand Eight Hundred and Forty-seven Years. Session 30.

Which day the General Assembly of the Free Church of Scotland being met and duly constituted; *inter alia*,

The Assembly having resumed consideration of the overtures on the principles of the Church, agreeably to a resolution entered in their minutes at a former diet, Dr. Candlish was heard on the subject, and the following motion was unanimously agreed to:—

“The General Assembly having resumed consideration of the overtures, and of the report of the committee thereon, and being deeply sensible of the importance of instructing the people of this church, and especially the young in the great principles which she has been called to maintain; having also had their attention called to the Catechism on the Principles and Constitution of this Church, issued in December 1845, by authority of the Publication

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Committee, and since that time circulated with large acceptance in the land, and being satisfied with its soundness, as well as its suitableness to the purpose intended, approve generally of the same, as containing a valuable summary of this Church's history, and exhibition of her distinctive principles, from the beginning of the Reformation to the present time, and earnestly recommend its general use. And the Assembly authorise the Publication Committee to superintend the issue of any new edition of the Catechism that may be prepared, and to report upon it to the next General Assembly. And waiving the farther consideration of the other matters referred to in the overtures and the report as aforesaid, the Assembly appoint this Act to be read from all the pulpits on such an early Sabbath as may be agreed upon, at one or other of the ordinary diets of worship; on which occasion ministers are enjoined to preach to their people on the doctrine of the Headship of the Lord Jesus Christ as held by this Church, according to God's Word, as well as the peculiar responsibility of the Church, and of all her faithful people in regard to it."

Extracted from the records of the General Assembly of the Free Church of Scotland, by THOMAS PITCAIRN, *Cl. Ec. Scot. Lib.*

Division 1.—The Church's EXERCISE of her Freedom to Serve Christ alone as her Head.

Q. 231. *What Confessions of Faith were adopted by the Church of Scotland?*

A. The Old, or John Knox's Confession, which was drawn up in 1560; and the Westminster Confession, which was sanctioned by the Assembly in 1647.

Q. 232. *Did the Church adopt them freely, or were they imposed upon her by the civil power?*

A. The Church freely adopted them.

Q. 233. *Did not the State adopt them too?*

A. Yes; but it was after their adoption by the Church.

Q. 234. *When the Church substituted the Westminster Confession for that of John Knox, had the sanction of the latter by the State been withdrawn?*

A. No; the Confession of John Knox had the sanction of the State at the very time.

Q. 235. *Did the Church of Scotland always adopt such catechisms as she thought necessary and fit for the Christian instruction of the people?*

A. Always; and her catechisms sometimes had the sanction of the State, and sometimes no sanction but her own.

Q. 236. *Did she consult the will of the civil magistrate in inflicting her censures?*

A. She inflicted her censures on all offenders, both high and low, according to her sense of the will of Christ.

Q. 237. *What were her proceedings in regard to the form of her government?*

A. When she became convinced that it was not scriptural, she changed it.

Q. 238. *How often did this occur?*

A. Twice—in 1580 and 1638.

Q. 239. *What circumstance was it which made the step she took on these occasions a very striking exercise of freedom from the rule of the civil power?*

A. In both cases the form of government which she renounced and set aside had the sanction and approval of the State at the time.

Q. 240. *How did she exercise her freedom in regard to the composition of her judicatories?*

A. She at once gave effect to her fundamental principle respecting the equality of ministers, by admitting into her courts all who held the pastoral office, whether they were endowed or unendowed, and whether the charges they filled were civilly established or not.

Q. 241. *Was this all?*

A. No; by her sole appointment, ruling elders were, from the very first, made members of her judicatories along with their pastors.

Q. 242. *Did not the State EXPRESSLY sanction the right of ruling elders to sit in Church courts?*

A. It did; but not till the Revolution—one hundred and thirty years after the Church had admitted them.

Q. 243. *Are there any instances of this exercise of her freedom occurring subsequently to the Revolution?*

A. Yes; ordained chaplains and missionaries were received by her as members of her judicatories till about the middle of the eighteenth century; commissioners from the Scotch Church at Campvere, in Holland, sat in her General Assemblies till the breaking up of that Church by the French invasion in the days of Bonaparte; and she passed an Act in 1814, conferring on the Scotch Church in India a right of representation in her supreme court—which right has been enjoyed without interruption down to the present time.

Q. 244. *Did the State never sanction the right of Campvere or of India to be represented in the General Assembly?*

A. Never.

Q. 276. *Is there not a statement in the Confession of Faith, on which Erastians have fastened as favourable to their opinions?*

A. Such a statement there is in ch. xxiii. 3, which says, that "the civil magistrate hath authority, and it is his duty to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed. For the better effecting whereof, he hath power to call synods, and to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God."

Q. 277. *Does this mean that the civil magistrate is himself to administer the government of the Church?*

A. Such cannot be the meaning; for that would be to assume the power of the keys, which the Confession says he must not do; and it would be inconsistent with the doctrine laid down in the Confession, "that the Lord Jesus, as King and Head of his Church, hath appointed a government therein in the hands of church officers."

Q. 278. *Does it mean that the civil magistrate is to receive appeals from the decisions of the office-bearers of the Church, and finally to determine in the cases thus brought before him?*

A. Such cannot be the meaning; for then the government would be in the hands of church officers conjointly with the magistrate; whereas the Confession declares that it is "in the hands of church officers, distinct from the civil magistrate."

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A. Such cannot be the meaning; for the Confession teaches that "there is no other Head of the Church but the Lord Jesus Christ," and it also declares that "it belongeth to synods and councils ministerially" (that is to say, under Christ) "to determine controversies of faith and cases of conscience, and to set down rules and directions for the better ordering of the public worship of God and government of his Church;" and in this very passage it is intimated that the magistrate cannot effectually accomplish the object it is his duty to aim at, without resorting to the authority of ecclesiastical assemblies.

Q. 280. Does it mean that, when Church and State differ on any question of Church polity, or discipline, or Scripture principle, the State must always be held to be in the right, and it is the duty of the Church to succumb; or that, on the supposition of the State being in the right (a thing which, however, cannot be certainly known), the Church may be compelled by the civil arm to give way?

A. In that case there would be another head than the Lord Jesus Christ, and there would not be, in any reasonable meaning of the words, a government in the Church "distinct from the civil magistrate."

Q. 281. Does it mean that the magistrate shall make the Church obey his Acts of Parliament?

A. No; it says expressly that he is to provide that the things done by the Church shall be "according to the mind of God."

Q. 282. Does it mean that ecclesiastical synods cannot be held unless he is pleased to convoke them?

A. It says nothing like that; his power to call synods, when he wishes to consult them, and to have their aid, neither excludes nor infringes on the Church's right to hold them when she thinks them necessary; as is specially shown in the Act of Assembly, 1647, by which the Confession was approved and adopted.

Q. 283. Does it mean that he may lawfully infringe on the freedom of synodical deliberations?

A. Such cannot be the meaning; for, in doing so, he must arrogate the power of the keys, destroy the distinction between civil and ecclesiastical government, and make himself head of the Church; and a synod acting under coercion would, in respect of character and authority, be indeed no synod at all.

Q. 284. What, then, is the meaning of it?

A. The meaning of it is that the magistrate hath authority, and it is his duty, in his official capacity, to concern himself about the interests of religion and the welfare of the Church; and, in such ways as are competent to him, consistently with Christ's exclusive Headship in the Church, and the rights of that government which is "distinct from the civil magistrate," namely, by his example, his influence, and his legitimate control over temporal things, to take order (not to give order, or command, but to take order, or provide) for their advancement.

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[PRIVY COUNCIL.]

CALGARY AND EDMONTON RAIL-
WAY COMPANY AND ANOTHER . . . } SUPPLIANTS;

AND

THE KING RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

Canadian Act (53 Vict. c. 4)—Orders in Council thereunder—Construction—Grants thereunder include Mines and Minerals.

Held, that the appellant railway company, being entitled under Canadian Act 53 Vict. c. 4 and an Order in Council made in pursuance thereof to grants of Dominion lands as a subsidy in aid of the construction of their railway, were entitled to them without any reservation by the Crown of mines and minerals except gold and silver. The Dominion Lands Act, 1886, and the Regulations of 1889 thereunder, which prescribe a reservation to that effect, do not apply. They relate only to the sale of Dominion lands and to the settlement, use, and occupation thereof. The grants in question were not by way of sale.

APPEAL from a decree of the Supreme Court (April 29, 1903) affirming by an equal division of opinion a decree of the Exchequer Court (Nov. 10, 1902).

The question decided in this appeal related to certain Dominion lands granted to the appellant railway company by way of subsidies in aid of the construction of their railway, whether these grants were subject to a reservation in favour of the Crown of mines and minerals. That depended upon whether the general law prescribed by the Lands Acts and Orders in Council made thereunder applied, or whether the special Dominion Act (53 Vict. c. 4) and special Orders in Council thereunder authorizing the grants in question in effect overrode the general law and rendered the grants free of reservation except as regards gold and silver.

Both the special and general legislation are sufficiently set out in their Lordships' judgment.

* Present: LORD MACNAGHTEN, LORD DAVEY, LORD ROBERTSON, LORD LINDLEY, and SIR ARTHUR WILSON.

J. C.*

1904

July 20;
Aug. 5.