

XIX. Sess. 17, May 30, 1842.—**Claim, Declaration, and Protest**, anent the Encroachments of the Court of Session. ([fn. 1](#))

The General Assembly of the Church of Scotland, taking into consideration the solemn circumstances in which, in the inscrutable providence of God, this Church is now placed; and that, notwithstanding the securities for the government thereof by General Assemblies, Synods, Presbyteries, and Kirk-Sessions, and for the liberties, government, jurisdiction, discipline, rights, and privileges of the same, provided by the statutes of the realm, by the constitution of this country, as unalterably settled by the Treaty of Union, and by the oath "inviolably to maintain and preserve" the same, required to be taken by each Sovereign at accession, as a condition precedent to the exercise of the royal authority; which securities might well seem, and had long been thought to place the said liberties, government, jurisdiction, discipline, rights, and privileges of this Church beyond the reach of danger or invasion;

—these have been of late assailed by the very Court to which the Church was authorised to look for assistance and protection, to an extent that threatens their entire subversion, with all the grievous calamities to this Church and nation which would inevitably flow therefrom;

—did, and hereby do, solemnly, and in reliance on the grace and power of the Most High, resolve and agree on the following **Claim, Declaration, and Protest**: that is to say:—

Ch. 25, Sect. 6. Ch. 23, sect.; Ch. 23, sect. 4.; Ch. 30, sect.

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;" 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;" 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;" 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;*"

which government is ministerial, not lordly, and to be exercised in consonance with the laws of Christ, and with the liberties of his people:

Ch. 30, sect. 2.; Ch. 23, sect. 3.

And whereas, according to the said Confession, and to the other Standards of the Church, and agreeably to the Word of God, *this government of the Church*, thus appointed by the Lord Jesus, *in the hand of Church officers*, distinct from the civil magistrate or supreme power of the State, *and flowing directly from the Head of the Church to the office-bearers thereof*,

to the exclusion of the civil magistrate,

comprehends, as the objects of it,

the preaching of the Word, administration of the sacraments, correction of manners, the admission of 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," which, by the said Confession, 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 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 divers and repeated Acts of Parliament, recognised, ratified, and confirmed—inasmuch as,—

1690, c. 5

First, The said Confession itself, containing the doctrine and principles above set forth, was "ratified and established, and voted and approved as the public and avowed Confession of this Church," by the fifth Act of the second Session of the first Parliament of King William and Queen Mary, entitled, "Act ratifying

the Confession of Faith, and settling Presbyterian Church government,"—to which Act the said Confession is annexed, and with it incorporated in the statute law of this kingdom.

1567, c.7.

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

1567, c. 19. (Fol. Edit.) 1579, c. 69.; 1581, c. 99.; 1592, c. 116.; 1690, c. 5.

Third, By an Act passed in the same first Parliament, and renewed in the sixth Parliament of the said King James VI., entitled, "Anent the jurisdiction of the Kirk," the said Kirk is declared to have jurisdiction "in the preaching of the true Word of Jesus Christ, correction of manners, and administration of the holy sacraments;" and it is farther declared. "That there be *no other jurisdiction ecclesiastical* acknowledged within this realm, other than that *which is and shall be within the same Kirk, or that flows therefrom, concerning the premises*;" which Act, and that last before mentioned, were ratified and approved by another Act passed in the year 1581, entitled, "Ratification of the liberty of the true Kirk of God and religion, with confirmation of the Laws and Acts made to that effect of before;" which other Act, and all the separate Act therein recited, were again revived, ratified, and confirmed by an Act of the twelfth Parliament of the said King James VI., entitled, "Ratification of the Liberty of the true Kirk," &c.; which said Act (having been repealed in 1662) was revived, renewed, and confirmed by the before mentioned statute of King William and Queen Mary.

1592, c. 116.; 1567, c. 7.; 1584, c. 129.

Fourth, The said Act of the twelfth Parliament of King James VI. ratified and approved the General Assemblies, Provincial Synods, Presbyteries, and Kirk-Sessions "appointed by the Kirk," and "the whole jurisdiction and discipline of the same Kirk;" cased and annulled "all and whatsoever acts, laws, and statutes, made at any time before the day and date thereof, against the liberty of the true Kirk, jurisdiction and discipline thereof, as the same is used and exercised within this realm;" appointed presentations to benefices to be directed

to Presbyteries, "with full power to give collation thereupon, and to put order to all matters and causes ecclesiastical within their bounds, according to the discipline of the Kirk, providing the foresaid Presbyteries be bound and astricted to receive and admit whatsoever qualified minister, presented by his Majesty or laic patrons; "(the effect of which proviso, and of the reservation in the Act of the first Parliament of King James VI., above mentioned, is hereinafter more fully adverted to;) and farther declared, that the jurisdiction of the Sovereign and his Courts, as set forth in a previous Act, to extend over all persons his subjects, and "in all matters," should "noways be prejudicial nor derogate any thing to the privilege that *God has given* to the spiritual office-bearers of the Kirk, concerning *heads of religion, matters of heresy, excommunication, collation, or deprivation of ministers, or any such like essential censures*, grounded and having warrant of the Word of God;" by which enactment, declaration, and acknowledgement, the State recognised and established as a fundamental principle of the constitution of the kingdom, that the jurisdiction of the Church in these matters was "given by God" to the office-bearers thereof, and was exclusive, and free from coercion by any tribunals holding power or authority from the State or supreme civil magistrate.

1662, c. 1.; 1592, c. 116.

Fifth, The Parliament holden by King Charles II., immediately on his restoration to the throne, while it repealed the above recited act of the twelfth Parliament of Kings James and other relative acts, at the same time acknowledged the supreme and exclusive nature of the jurisdiction thereby recognised to be in the Church, describing the said Acts, as Acts "by which the *sole and only* power and jurisdiction within this Church *doth stand in the Church*, and in the General, Provincial, and Presbyterial Assemblies and Kirk Sessions," and as Acts "which may be interpreted to have given any Church power, jurisdiction, or government, to the office-bearers of the Church, their respective meetings, other than that which acknowledgeth a dependence upon, and subordination to, the sovereign power of the King, as supreme."

1690, c. 5.; 1592 c 116.

Sixth, The aforesaid Act of King William and Queen Mary,—on the narrative that their Majesties and the Estates of Parliament conceived "it to be their bounden duty, after the great deliverance that God hath lately wrought for this Church and kingdom, *in the first place*, to settle and secure therein the true Protestant religion, according to the truth of God's Word, as it hath of a long time been professed within this land; as also the government of Christ's Church within this nation, agreeable to the Word of God, and most conducive to true piety and godliness, and the establishing of peace and tranquillity within this

realm,"—besides ratifying and establishing as aforesaid the Confession of Faith, did also "establish, ratify, and confirm the Presbyterian Church government and discipline; that is to say, *the government of the Church by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies*, ratified and established by the 116th Act of James VI., Parliament 12, anno 1592, entitled, 'Ratification of the Liberty of the true Kirk, '&c., and thereafter received by the general consent of this nation, *to be the only government of Christ's Church within this Kingdom*;" and revived and confirmed the said Act of King James VI.

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

1592, c. 116.

First, The General Assembly having, in the year 1582, proceeded to inflict the censures of the Church upon Robert Montgomery, minister of Stirling, for seeking to force himself, under a presentation from the king, into the archbishopric of Glasgow, contrary to an act of the General Assembly discharging the office of Prelatic bishop in the Church, and for appealing to the secular tribunals against the infliction of Church censures by the Church courts, and seeking to have these suspended and interdicted,—and having deposed and excommunicated him, notwithstanding of an interdict pronounced by the Privy Council of Scotland, the then supreme secular court of the kingdom,—and having at the same time declared it to be part of the subsisting discipline of the Church, that any ministers thereof who "should seek any way by the civil power to exempt and withdraw themselves from the jurisdiction of the Kirk, or procure, obtain, or use any letters or charges, &c., to impair, hurt, or stay the said jurisdiction, discipline, &c., or to make any appellation from the General

Assembly to stop the discipline or order of the ecclesiastical policy or jurisdiction granted by God's Word to the office-bearers within the said Kirk," were liable to the highest censures of the Church;—although their sentence of excommunication was declared by one of the acts of Parliament of the year 1584, commonly called the "Black Acts," to be void, yet ultimately the king and privy council abandoned their interference, Montgomery submitted to the Church courts, and the statute of the twelfth Parliament of King James VI., already mentioned, cased and annulled "all and whatsoever acts, laws, and statutes made at any time before the day and date thereof, against the liberty of the true Kirk, jurisdiction and discipline thereof, *as the same is used and exercised within this realm* since which enactment, no similar interference with the discipline and censures of the Church was ever attempted till the year 1841.

1584, c. 129.; 1592, c. 116.

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

1612, c. 1.; 1640, c. 7.

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

1661, c. 11.; 1681, c. 6.; 1669, c. 1.; Estates, 1689, c. 18.

Fourth, A like acknowledgement, that the Sovereign was "the only supreme governor of this kingdom, over all persons, *and in all causes*," having been, on the second establishment of Prelacy consequent on the restoration of King

Charles II., required as part of the ordinary oath of allegiance, and having been also inserted into the "Test Oath," so tyrannically attempted to be forced on the subjects of this realm during the reigns of Charles II. and James II., and the same doctrine of the king's supremacy in all causes, spiritual and ecclesiastical, as well as temporal and civil, having farther been separately and specially declared by the first act of the second Parliament of the said King Charles II., (1669,) entitled, "Act asserting his majesty's supremacy over all persons and in all causes ecclesiastical," whereby it was "enacted, asserted, and declared, that his majesty hath the supreme authority and supremacy over all persons, and in all causes ecclesiastical, within this kingdom,"—the Estates of this kingdom, at the era of the Revolution, did set forth, as the second article of the "Grievances" of which they demanded redress under their "Claim of Right," "That the first act of Parliament, 1669, is inconsistent with the establishment of Church government now desired, and ought to be abrogated."

1690, c. 1.; 1689, c. 2.; 1706, c. 6.

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

And whereas divers 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:—

1592, c. 117.

It was, by an act of the twelfth Parliament of King James VI., enacted "That all and whatsoever sentences of deprivation, either pronounced already, or that happens to be pronounced hereafter by any Presbytery, Synodal or General Assemblies, against any parson or vicar within their jurisdiction, provided since his Highness' coronation, is, and shall be repute in all judgements, a just cause to seclude the person before provided, and then deprived, from all profits, commodities, rents, and duties of the said parsonage and vicarage, or benefice of cure; and that, either by way of action, exception, or reply; and that the said sentence of deprivation shall be a sufficient cause to make the said benefice to vaike thereby:"

1690, c. 5.

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

1693, c. 22.

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

1695, c. 22.

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

1705, c. 4.; 1706, c. 6.; 1690, c. 5.; 1706, c. 7.; 5 Anne, c. 8.

And whereas, at the Union between the two kingdoms, the Parliament of Scotland, being determined that the "true Protestant religion," as then professed, "with the worship, discipline, and government of this Church, should be effectually and unalterably secured," did, in their Act appointing commissioners to treat with commissioners from the Parliament of England, as to an union of the kingdoms, provide, "That the said commissioners shall *not* treat of or concerning any alteration of the worship, discipline, and government of the Church of this kingdom, as now by law established;" and did, by another Act, commonly called the Act of Security, and entitled, "Act for securing the Protestant Religion and Presbyterian Church Government," "establish and confirm the said true Protestant religion, and the worship, discipline, and government of this Church, to continue without any alteration to the people of this land in all succeeding generations;" and did "for ever confirm the 5th Act of the first Parliament of King William and Queen Mary," entitled, "Act ratifying the Confession of Faith, and settling Presbyterian Church Government, *and the whole other Acts of Parliament relating thereto*;" and did "expressly provide and declare, That the foresaid true Protestant religion, contained in the above mentioned Confession of Faith, with the form and purity of worship presently in use within this Church, and its Presbyterian Church government and discipline; that is to say, the government of the Church by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, all established by the foresaid Acts of Parliament, pursuant to the Claim of Right, shall remain and continue unalterable: and that the said Presbyterian government shall be the only government of the Church within the kingdom of Scotland:" And farther, "for

the greater security of the same," did, *inter alia*, enact, "That, after the decease of her present Majesty, the Sovereign succeeding to her in the Royal Government of the Kingdom of Great Britain shall, in all time coming, at his or her accession to the Crown, swear and subscribe, that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion, with the government, worship, discipline, right, and privileges of this Church, as above established by the laws of this kingdom, in prosecution of the Claim of Right;" which said Act of Security, "with the establishment therein contained," it was specially thereby enacted, "should be held and observed in all time coming, as a fundamental and essential condition of any treaty or union to be concluded betwixt the two kingdoms, *without any alteration thereof, or derogation thereto, in any sort, for ever*:" It being farther thereby provided, that "the said Act and settlement therein contained shall be insert and repeated in any Act of Parliament that shall pass, for agreeing and concluding the foresaid treaty or union betwixt the two kingdoms; and that the same shall be therein expressly declared to be a fundamental and essential condition of the said treaty or union in all time coming." In terms of which enactment, this Act of Security was inserted in the Treaty of Union between the two kingdoms, as a fundamental condition thereof, and was also inserted in the Act of the Parliament of Scotland ratifying and approving of the said Treaty, and likewise in the corresponding Act of the Parliament of England, entitled, "An Act for a Union of the two Kingdoms of England and Scotland."

1690, c. 5.; 1592, c. 116.; 1592. c. 117.; 1690, c. 23.

And whereas, at the date of the said Treaty of Union, the right of patrons to present to churches stood abolished by statute, after the following manner, viz.:—By the Act of King William and Queen Mary, herein before mentioned, the Act of James VI., also herein before mentioned, then standing totally repealed, was only revived, subject to the express exception of "that part of it relating to Patronages," which consequently remained repealed and unrestored, and "which," the Act 1690, c. 5, farther bore, "is hereafter to be taken into consideration." The part of the said Act, thus left repealed and unrevived, was the provision, that Presbyteries "be bound and astricted to receive whatsoever qualified minister presented by his Majesty or laic patrons,"—a provision which, while it subsisted, was held to leave the Church free to proceed in the collation of ministers "according to the discipline of the Kirk;" and non-compliance with which implied only a forfeiture of the fruits of the particular benefice, which it did by virtue of the immediately succeeding statute 1592, c. 117, whereby it was enacted, that "in case the Presbytery *refuses* to admit any *qualified* minister presented to them by the patron, it shall be lawful to the patron to retain the whole fruits of the benefice in his own hands." This subject having, accordingly, been thereafter taken into consideration in the same session

of Parliament, was definitively settled by an Act, entitled, "Act concerning Patronages," whereby the right of presentation by patrons was "annulled and made void," and a right was vested in the heritors and elders of the respective parishes "to *name* and *propose* the person to the whole congregation, to be approved or disapproved by them," the disapprovers giving in their reasons "to the effect the affair may be cognosced upon by the Presbytery of the bounds, at whose judgment, and by whose determination," (as is declared by the said Act,) "*the calling and entry* of a particular minister is to be ordered and concluded."

10 Anne, c. 12.

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

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

chap. 3, § 5.

And whereas, in particular, this Church required, as necessary to the admission of a minister to the charge of souls, that he should have received a call from the people over whom he was to be appointed, and did not authorise or permit any one so to be admitted till such call had been sustained by the Church Courts, and did, before and subsequent to the passing of the said Act of Queen Anne, declare it to be a fundamental principle of the Church, as set forth in her authorised Standards, and particularly in the Second Book of Discipline,

repeated by Act of Assembly in 1638, that no pastor be intruded upon any congregation contrary to the will of the people:

Act of Assembly, 1736, c. 14.; Act of Assembly, 1834, c. 9.

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

Auchterarder Case, 1839.

And whereas, by a judgment pronounced by the House of Lords, in 1839, it was, for the first time, declared to be illegal to refuse to take on trial, and to reject the presentee of a patron, (although a layman, and merely a candidate for admission to the office of the ministry,) in consideration of this fundamental principle of the Church, and in respect of the dissent of the congregation; to the authority of which judgment, so far as disposing of civil interests, this Church implicitly bowed, by at once abandoning all claim to the *jus devolutum*,—to the benefice, for any pastor to be settled by her,—and to all other civil right or privilege which might otherwise have been competent to the Church or her Courts; and anxiously desirous, at the same time, of avoiding collision with the Civil Courts, she so far suspended the operation of the above mentioned Act of Assembly, as to direct all cases, in which dissents should be lodged by a majority of the congregation, to be reported to the General Assembly, in the hope that a way might be opened up to her for reconciling with the civil rights declared by the House of Lords, adherence to the above mentioned fundamental principle, which she could not violate or abandon by admitting to the holy office of the ministry a party not having, in her conscientious judgment, a legitimate call thereto, or by intruding a pastor on a reclaiming congregation contrary to their will; and farther, addressed herself to the Government and the Legislature for such an alteration of the law, (as for the first time now interpreted,) touching the temporalities belonging to the Church, (which alone she held the decision of the House of Lords to be capable of affecting or regulating,) as might prevent a separation between the cure of souls and the benefice thereto attached.

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

presentation or legal title to the benefice, the said Court, even in such cases, never attempted or pretended to direct or coerce the Church Courts, in the exercise of their functions in regard to the collation of ministers or other matters acknowledged by the State to have been conferred on the Church, not by the State, but by God himself. On the contrary, they limited their decrees to the regulation and disposal of the temporalities which were derived from the State, and which, as the proper subjects of "actions civil," were within the province assigned to the Court of Session by the Constitution, refusing to interfere with the peculiar functions and exclusive jurisdiction of the Courts of the Church. Thus,—

Monerleff D. Maxton. Feb. 15, 1735.

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

Cochran v. Stoddart, June 26, 1751. Dick v. Carmichael, Mar. 2, 1753. Forbes v. M'Wilham, Feb. 1762.

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

Cochran, Nov. 19, 1748.

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

Hay V. Presbytery of Dunse, Feb. 26, 1749.

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

Lord Dundus V. Presbytery of Shetland, May 15, 1786.

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

1537, c. 36.; 1532, c. 1.

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

1st Lothendy Case.; Stewarton Case.

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

Marnoch Case.

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

Daviot Case.

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

Stewarton Case.

By granting interdict against the establishment of additional ministers to meet the wants of an increasing population, as uninterruptedly practised from the Reformation to this day;—against constituting a new Kirk-Session in a parish, to exercise discipline;—and against innovating on its existing state, "as regards pastoral superintendence, its KirkSession, and jurisdiction, and discipline thereto belonging."

Strathbogie Cases.

By interdicting the preaching of the Gospel, and administration of ordinances throughout a whole district, by any minister of the Church under authority of the Church Courts, thus assuming to themselves the regulation of the "preaching of the Word" and "administration of the sacraments," and at the same time invading the privilege, common to all the subjects of the realm, of having freedom to worship God according to their consciences, and under the guidance of the ministers of the communion to which they belong.

2d Auchter arder Case.

By holding the members of inferior Church judicatories liable in damages for refusing to break their ordination vows and oaths, (sworn by them, in compliance with the requirements of the statutes of the realm, and, in particular, of the Act of Security embodied in the Treaty of Union,) by disobeying and setting at defiance the sentences, in matters spiritual and ecclesiastical, of their superior Church judicatories, to which, by the Constitution of the Church and

country, they are, in such matters, subordinate and subject, and which, by their said vows and oaths, they stand pledged to obey.

Culsamond Case.

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

Cambusne than Case.; Stranraer Case.; 4th Lethendy Case.

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

1st and 2d Strathbogle Cases.

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

3d Strathbogie Case.

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

5th Strathbogie Case.

By assuming to judge of the right of individuals elected members of the General Assembly to sit therein, and interdicting them from taking their seats; thus interfering with the constitution of the Supreme Court of the Church, and

violating her freedom in the holding of General Assemblies secured to her by statute.

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

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

4th Strathbogie Case.; 3d Auchterarder Case.; 3d Lethendy Case.

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, and minorities of inferior judicatories authorised to take on trial and admit to the office of the holy ministry, in disregard of, and in opposition to, the authority of the judicatories of which they are members, and of the superior judicatories to which they are subordinate and subject.

And whereas, the government and discipline of Christ's Church cannot be carried on according to His laws and the constitution of His Church, subject to

the exercise, by any secular tribunal, of such powers as have been assumed by the said Court of Session.

And whereas this Church, highly valuing, as she has ever done, her connection, on the terms contained in the statutes herein before recited, with the State, and her possession of the temporal benefits thereby secured to her for the advantage of the people, must, nevertheless, even at the risk and hazard of the loss of that connection and of these public benefits,—deeply as she would deplore and deprecate such a result for herself and the nation,—persevere in maintaining her liberties as a Church of Christ, and in carrying on the government thereof on her own constitutional principles, and must refuse to intrude ministers on her congregations, to obey the unlawful coercion attempted to be enforced against her in the exercise of her spiritual functions and jurisdiction, or to consent that her people be deprived of their rightful liberties.

THEREFORE, the General Assembly, while, as above set forth, they fully recognise the absolute jurisdiction of the Civil Courts in relation to all matters whatsoever of a civil nature, and especially in relation to all the temporalities conferred by the State upon the Church, and the civil consequences attached by law to the decisions, in matters spiritual, of the Church Courts, do, in name and on behalf of this Church, and of the nation and people of Scotland, and under the sanction of the several statutes, and the Treaty of Union herein before recited,

Claim, as of Right, that she shall freely possess and enjoy her liberties, government, discipline, rights, and privileges, according to law, especially for the defence of the spiritual liberties of her people, and that she shall be protected therein from the foresaid unconstitutional and illegal encroachments of the said Court of Session, and her people secured in their Christian and constitutional rights and liberties.

And they **Declare,** that they cannot, in accordance with the Word of God, the authorised and ratified Standards of this Church, and the dictates of their consciences, intrude ministers on reclaiming congregations, or carry on the government of Christ's Church, subject to the coercion attempted by the Court of Session as above set forth; and that, at the risk and hazard of suffering the loss of the secular benefits conferred by the State, and the public advantages of an establishment, they must, as by God's grace they will, refuse so to do; for, highly as they estimate these, they cannot put them in competition with the inalienable liberties of a Church of Christ, which, alike by their duty and allegiance to their Head and King, and by their ordination vows, they are bound to maintain, "notwithstanding of whatsoever trouble or persecution may arise."

And they Protest, that all and whatsoever acts of the Parliament of Great Britain, passed without the consent of this Church and nation, in alteration of, or derogation to the aforesaid government, discipline, right, and privileges of this Church, (which were not allowed to be treated of by the Commissioners for settling the terms of the Union between the two kingdoms, but were secured by antecedent stipulation, provided to be inserted, and inserted in the Treaty of Union, as an unalterable and fundamental condition thereof, and so reserved from the cognizance and power of the federal legislature created by the said Treaty,)—as also, all and whatsoever sentences of courts in contravention of the same government, discipline, right, and privileges, are and shall be, in themselves, void and null, and of no legal force or effect; and that, while they will accord full submission to all such acts and sentences, in so far—though in so far only—as these may regard civil rights and privileges, whatever may be their opinion of the justice of legality of the same, their said submission shall not be deemed an acquiescence therein, but that it shall be free to the members of this Church, or their successors, at any time hereafter, when there shall be a prospect of obtaining justice, to claim the restitution of all such civil rights and privileges, and temporal benefits and endowments, as for the present they may be compelled to yield up, in order to preserve to their office-bearers the free exercise of their spiritual government and discipline, and to their people the liberties, of which respectively it has been attempted, so contrary to law and justice, to deprive them.

And, finally, the General Assembly call the Christian people of this kingdom, and all the Churches of the Reformation throughout the world, who hold the great doctrine of the sole Headship of the Lord Jesus over his Church, to witness, that it is for their adherence to that doctrine, as set forth in their Confession of Faith, and ratified by the laws of this kingdom, and for the maintenance by them of the jurisdiction of the office-bearers, and the freedom and privileges of the members of the Church from that doctrine flowing, that this Church is subjected to hardship, and that the rights so sacredly pledged and secured to her are put in peril; and they especially invite all the office-bearers and members of this Church, who are willing to suffer for their allegiance to their adorable King and Head, to stand by the Church, and by each other, in defence of the doctrine aforesaid, and of the liberties and privileges, whether of office-bearers or people, which rest upon it; and to unite in supplication to Almighty God, that He would be pleased to turn the hearts of the rulers of this kingdom, to keep unbroken the faith pledged to this Church, in former days, by statutes and solemn treaty, and the obligations, come under to God himself, to preserve and maintain the government and discipline of this Church in accordance with His Word; or otherwise, that he would give strength to this Church—office-bearers and people—to endure resignedly the loss of the temporal benefits of an establishment, and the personal sufferings and sacrifices

to which they may be called, and would also inspire them with zeal and energy to promote the advancement of His Son's kingdom, in whatever condition it may be His will to place them; and that, in His own good time, He 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.