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before the Synod proceeds to any other business. If the reasons for it be given along with it to the Clerk, in writing, they are entered upon the Minute. But if they are not given in till afterwards, they are not so entered, but are inserted in a separate Record of Dissents. When a dissent has been tendered by a member immediately after the pronouncing of the judgment dissented from, it is competent for any other member or members who were present when it was pronounced to intimate *his* or *their* adherence to the dissent at any subsequent diet of the Assembly's sittings. But no one's adherence can be received who was not so present.

Effect of Dissent.

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

Mode of executing decisions.

22. The Synod sometimes takes the whole business of intimating and executing its own judicial sentences into its own hands. Most frequently, however, it remits to the Presbytery or Kirk-Session of the bounds to carry out its determinations.

Extracts.

23. Parties in cases that have come before the Synod are entitled to Extracts, as in the Inferior Courts. The fact that the Synod is supreme, and that thus there is no room for Appeal or Complaint, makes a difference as to the position of parties with reference to Extracts. But with a view to the execution of the Synod's orders, and the carrying out of its objects, there is a general necessity for Extracts containing its Deliverances. Such Extracts are largely required by Church Courts, Committees, and individuals. Consequently the rule in practice has come to be more liberal as to the giving of Extracts by the Clerks of Synod, than it is as to the giving of them by the Clerks of Presbyteries, and Kirk-Sessions. The Clerks of the Inferior Courts are not allowed to give Extracts without the special orders of those Courts. But it is understood that the Clerks of Synod, without any formal instructions, give Extracts of Deliverances to all parties who have any kind of interest in those Deliverances. In a very extraordinary case, the Clerks might think it requisite to consult the Synod or the Church Interests Committee. But such is not the usual practice, nor could it be so conveniently, for most of the Extracts are required to be rapidly furnished immediately after the dissolution of the Synod.

CHAPTER IV

DISCIPLINE

PART I—*Principles and Processes common to all the Courts, or to two or more of them*

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Scriptural character.

1. CHURCH DISCIPLINE is held to be of great use and necessity in our ecclesiastical system. It is regarded as belonging to that government which Christ has instituted in the visible order of His kingdom, and which, by His institution, is essentially distinct from the government of civil magistrates. The purpose of it is declared in our Form of Process (See Appendix, No. IX., Chapter 1. 3) to be, 'That the name of God, by reason of ungodly and wicked persons living in the Church, be not blasphemed, nor His wrath provoked against His people; that the godly be not leavened with, but preserved from, the contagion, and stricken with fear; and that sinners who are to be censured may be ashamed, to the destruction of the flesh, and saving of the spirit in the day of the Lord Jesus.' The object is thus a threefold one—the glory of God, the purity of the Church, and the spiritual good of the offender. When scripturally and prudently exercised, discipline becomes more a privilege than a punishment, as one of the ordinances granted to the professing people of Christ.

With whom it deals.

2. It deals chiefly with church members. But the adult children of members, and all adherents, are also amenable to it, when they fall into gross sin.

What is admitted as ground for action.

3. It admits of nothing as a ground for its action but what has been declared censurable by the Word of God, or by some act or universal custom of the Church agreeable thereto. It does not apply to every kind of sin, but to those sins only which occasion scandal, or tend, by their character, to bring open reproach upon the cause of Christ, or to interfere manifestly with spiritual edification. Inquisitorial watching of private conduct, ultroneous intermeddling with family concerns, or attempts to drag secret sins into light, are not encouraged by it. On the contrary, the Presbyterian system of action in it is fitted to discountenance and rebuke everything of that kind.

4. In all cases where the inconsistent conduct of a member of the Church in any position has been flagrant, where a prejudicial report or *fama* is wide-spread, and where scandal has been raised,

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Which steps must be taken, and by whom.

Private conference.

it is held necessary for that Church Court which, according to ecclesiastical rule, has at the time the most immediate jurisdiction over the party, to take steps for the formal exercise of discipline.

5. In cases where no palpable scandal has come into public notice, much wholesome discipline may be exercised by private conference, without the formality of an appearance before a Church Court. It is thought that the rule laid down by our Lord himself (Matt. xviii. 15) fully justifies the exclusive use of an affectionate and faithful private dealing by a pastor or ruling elder with an offending party, when the conspicuousness of the offence is not such as to make public or judicial action requisite for the vindication of truth or purity. Much good has been frequently accomplished in this way, when a rigid determination to call the party to account before a Church Court would have produced no other result than irritation and resistance. It is felt that a spirit of love and tenderness is essential to the efficacy of discipline. Accordingly, the suggestion is made in our Form of Process itself, that 'if amendment follow private admonition,' according to our Lord's will, this is the 'far better way of gaining and recovering a lapsed brother; whereas the needless spreading of a scandal does sometimes harden the guilty, grieve the godly, and is dishonourable to religion.' (See Appendix, No. IX., Chapter II., Section 1. See also Part II.)

6. It is further laid down in the Form of Process, as a practical principle of Christian judgment, that while the several judicatories of the Church ought to take *timeous* notice of all scandals, a scandal which shall happen not to be noticed in order to censure for the space of five years should not be again revived, so as to enter in a process thereanent, unless it be of an heinous nature, or become again flagrant; but that the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty. (See Appendix, No. IX., Chapter I., Section 4.)

7. No case of discipline, upon which a final decision has once been pronounced in regular form by a competent Church Court, can be renewed again by any process, unless it can be shown that new grounds of action have arisen which were not before that Court. An extreme instance might appear in which a proof of great irregularity in procedure might be allowed, so as to re-open the matter. But such an instance would be too extreme and peculiar to interfere with the general rule, that a question of discipline once disposed of by a Court of final jurisdiction, or by any Court, without regular appeal, complaint, or review in due time, is conclusively and irreversibly determined.

8. When any case involving discipline is brought forward in a Church Court, whether by information, petition, or otherwise, they are called upon to consider, first of all, whether the matter be one which they ought to enter upon in the circumstances; whether it be orderly introduced to them; and whether it be competent or constitutional for them to take it up, and discuss it themselves, without submitting it either to a superior or an inferior judicatory.

9. Before proceeding to consider the merits of any case of discipline, the Church Court is bound to ascertain that all the parties concerned have been duly cited to appear before them. Citation may be duly given either *apud acta*, as it is called, when parties

Old Scandals not to be revived.

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Church Court to consider first how far they have to do with a case.

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being present at a meeting of the Court they are openly warned and summoned during the regular transaction of business, or by a written document bearing on it the cause of citation, and carrying with it the authority of the Church Court. It ought to be issued in ample time before the day appointed for the appearance, so as to leave no excuse for absence on the ground of too short notice. It ought to be conveyed to the residence of the cited party or parties by the Officer of the Church Court, and the delivery of a copy of it ought to be certified in writing by two witnesses or it may be despatched by registered post; after which, the Officer should return it, with the evidence of the summons having been executed, to the Clerk of the Court. If the citation has been executed by registered post, the proper evidence of its having been executed is the Post Office receipt. At the meeting of the Court on the day appointed, the first step, after the due execution of the summons has been intimated by the Clerk, is to have the party or parties called at the door.

10. If, after a citation by the Officer has been duly executed, a party cited do not appear, a second citation ought to be executed in the same form and manner; and if, after its due execution, the party do not appear, it should be followed by a third.

11. When, in consequence of an appeal, complaint, or reference from an inferior to a superior judicatory, a party has been cited *apud acta* to appear before the superior judicatory, there is no occasion for any further citation, provided the fact of the citation *apud acta* be inserted in the Minutes of the inferior judicatory, and appear in the Extract of Minute presented to the superior.

12. If a party do not appear after a third citation, or after a citation *apud acta*, which has been regularly recorded, and, if need be, intimated to the superior judicatory by Extract, and if no relevant excuse be adduced and verified, such party is liable to censure for contumacy.

13. Even in such a case as that referred to in Section 12, it may often be advisable to take evidence with relation to the *fama* or *charge* against the party, before censuring him for *contumacy*.

14. A case of scandal, requiring the exercise of Discipline, may be brought before a Church judicatory, either (1) by an accuser or accusers, who may take the responsibility of representing it or giving information regarding it, or (2) by some member or members of the Court stating that a *fama* has arisen which calls for ecclesiastical action.

15. The process of Discipline may go on, either by the accuser or accusers maintaining the charge before the Court, or by the Court itself investigating the *charge* or *fama* in the faithful discharge of duty, and proceeding therein according to the rules of the Church. When an accusation of a scandalous or serious character has been lodged with a Church Court, or when information involving such a charge has been communicated to a Church Court, the party lodging the charge or communicating the information ought to be prepared to maintain and prosecute it in a competent manner. But the declinature or failure of the party to do so cannot absolve the Church Court from the obligation of taking what steps it can toward the exercise of a scriptural discipline in the matter.

Second citation.

Apud acta citation.

Censure for contumacy.

Modes of bringing up a case.

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Use of confession.

Consideration as to a confession.

Notice to accused party.

Free Presbyterian Church witnesses.

Citation of witnesses.

Objections to relevancy, and to competency of evidence.

Subscription of witnesses.

Taking of proof, etc.

16. When a case of *charge* or *fama* has arisen, the party involved therein may voluntarily appear before the Church Court having jurisdiction over him, either with the view of confessing the truth of the charge, or the existence or foundation for the *fama*, or with the view of demanding investigation for the vindication of his character. He may even be himself the first person to bring the matter under the notice of the Court. In every one of these cases, every other citation except that of *apud acta* may be dispensed with.

17. In a case of confession, the Court must take into careful consideration the character and extent of the confession, before accepting of it, or proceeding either to censure or to absolution from scandal. They must endeavour in a prayerful spirit to deal at once tenderly and faithfully with the offender.

18. In every case where there is no confession, and where the Court find good ground for dealing seriously with the charge or *fama*, timely notice must be given to the party accused of the names of witnesses, and of the character of any other evidence that may be brought forward against him. No Court of our Church would be justified in proceeding to take evidence against any one in regular form, with a view to censure, without previously giving him ample opportunity of knowing upon what evidence the charge against him will be maintained, or without affording him adequate time for preparing his defence.

19. Members of the Free Presbyterian Church, when duly cited by a competent Church Court to appear and give evidence in a cause, are bound to obey the citation, and if they refuse after three citations, are liable to be dealt with as contumacious, unless they can offer a relevant and satisfactory excuse.

20. The Court are called upon to cite witnesses at the instance of a party accused, as well as at their own instance and at the instance of accusers.

21. Before the regular examination of witnesses in support of a charge, the accused party is entitled to have an opportunity of stating any objection to the relevancy of the charge as stated, and to the competency of the proposed evidence. Reasons may be found sufficient to disqualify particular witnesses. But there is less disposition now than there was formerly in Church Courts, as well as in civil and criminal Courts, to allow weight to merely technical objections, so as to shut out light which might otherwise be obtained in a question of discipline. The tendency prevails rather to receive the testimony of witnesses on whom suspicion rests, with a careful remembrance of the measure of weight due to such testimony, than to reject it altogether.

22. Witnesses should be asked to subscribe their names to their depositions, as taken down by the Clerk of Court. If they cannot write, the Clerk is required to mark that they declare their inability to write; and the Moderator ought, in such a case, to subscribe the deposition, though not subscribed by the party.

23. The Church Court must proceed in an orderly way in the judicial taking of proof and hearing of parties on the merits. And, after having given opportunity, according to the rules laid down for its guidance, for a full representation of what can be urged on both sides, they should cause parties to be removed, and enter into

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deliberation with a view to judgment. The particulars of procedure under this head may be best seen in the subsequent sections.

PART II—Processes peculiar to the Kirk-Session

1. In all ordinary circumstances it lies with the Kirk-Session exclusively to take the first steps with reference to any occasion for the exercise of discipline over the ordinary members of a Congregation.

2. Many acts of manifest inconsistency with Christian practice may not, as single acts, require the formal interposition of the Kirk-Session as a body, but may more properly be dealt with on the principle stated in Part I., Section 6. Under this class may be included acts of drunkenness, breach of the Lord's Day, disobedience to parents, swearing, cursing, scolding, fighting, lying, cheating, or stealing. In looking at such acts, the Kirk-Session and the Members thereof are expected to consider whether the private admonition of persons alleged to be guilty, or even seen to be guilty of such scandals, or the bringing of them into public view, will tend most to edification, and to take action thereon according to the best of their judgment. The ordinary course with reference to the offences now enumerated, when they appear as single acts, ought to be that the guilty parties be spoken to in private, and admonished by the Minister or by an Elder; and that, upon an acknowledgment of sin, and a promise to amend, no further steps should be adopted. (See Form of Process, Appendix No. IX., Chapter III. 1, 2.)

3. If after admonition for a first act, and a profession of repentance in private conference with the Minister or with an Elder, a person be found relapsing into the same sin, he should, according to the letter of the old law, be called in regular form before the Session, unless he voluntarily make appearance before them, confessing his aggravated guilt. The spirit, however, of the old law is evidently in favour of much discretion and circumspection being exercised by the Session and its individual members in determining at what point a formal summons, or even a formal appearance, is necessary or desirable.

4. It is possible that a single act of any one sin in the list given in Section 2, may be clothed with such circumstances as may be a just ground of formal process immediately, and involve even the necessity of suspension from the benefit of sealing ordinances. But, according to the words of the form of process, the weight of this is to be duly pondered. The existence of the circumstances referred to must not be hastily assumed.

5. If the person duly cited before a Kirk-Session, or otherwise appearing before a Kirk-Session, in connexion with an allegation or *fama* as to any inconsistency of the kind here spoken of, make confession of guilt, a judicial admonition or rebuke must be pronounced by the Moderator in name of the Kirk-Session, and in their presence, or publicly in presence of the Congregation, when the Session judge this to be for edification. If a promise be given, under an apparently adequate sense of sin, to amend, the procedure may cease without suspension from ordinances.

6. If no confession be made, but the party profess innocence, the nature of the charge must be distinctly defined, and a statement must be furnished to him containing the names of the witnesses and

Ordinary Members.

Private admonition.

Relapse after profession.

Single acts may require suspension, etc.

Judicial admonition or rebuke without suspension.

When no confession, charge to be defined, and list of witnesses, etc.

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Question of relevancy, etc.

Lesser excommunication.

Removal of suspension.

Principle of not raising scandal after five years.

a list of the documents by which it is proposed to establish that charge. If he require it, due time ought to be allowed to him for preparing his defence, and for obtaining the evidence of such witnesses as he may wish to bring forward. He may object either to the relevancy of the charge, or to the force of the proof by which it is supported. Careful attention must be given by the Kirk-Session to his objections. The result may be to show either that the charge is irrelevant or that it is not proven. In either case no further procedure can be taken with reference to it. But if all objections be overruled, and the party be found guilty in the judgment of the Session, then, except where circumstances tend to aggravate the offence in the manner suggested by Section 4, it may be sufficient in the meantime that a rebuke be judicially pronounced by the Moderator in the name of the Kirk-Session, and in their presence. But the process is not at an end, if there be no promise of amendment, and no indication of repentance. Such promise or indication may enable the Session to terminate the matter, when the party has for the first time been accused before them.

7. If after a rebuke before the Session or the Congregation for the kind of offence referred to, no profession of repentance, and no promise of amendment be tendered within a reasonable time, the Session may be compelled to pronounce the sentence of lesser excommunication, or, in other words, to suspend the party, in a formal way, from the benefit of sealing ordinances.

8. If, after a rebuke before the Session or the Congregation for this kind of offence, and after a profession of repentance with promise of amendment, it shall appear that the profession is not borne out and the promise not kept, and that the party may be reasonably charged again with the same or with a similar offence, the Kirk-Session must proceed in regular form with a view to the lesser excommunication. If no confession be made the case must be proceeded with as pointed out in Section 6, until it be seen whether the new charge be found proven. If it be found proven, the sentence of lesser excommunication must follow. Even if confession be made and repentance appear, they ought not at this stage to prevent a temporary suspension of the party from the benefit of sealing ordinances.

9. Confession, and an apparently sincere profession of repentance, when duly weighed by the Session, and found to be satisfactory, so far as man's fallible judgment can reasonably go, form a sufficient ground for removing a sentence of suspension, and restoring the party to the full communion and fellowship of the Church.

10. The principle of the Form of Process referred to in Part I., Section 6, that a scandal which has not been noticed in order to censure for the space of five years, should not be revived so as to enter in a process thereanent, unless it be of an heinous nature or become again flagrant, has special application to the class of offences spoken of in the nine preceding sections of this Second Part. The application of it to offences of a more palpably grievous character, must be regulated by careful discrimination and Christian prudence on the part of Kirk-Sessions. Every endeavour should be prayerfully made to harmonize such tenderness and forbearance as are for the profit of guilty parties, with a faithful regard to the honour of Christ and the spiritual feelings of His devoted people.

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Seventh Commandment.

Caution in admitting public processes.

Private rebuke, etc.

Some actions as censurable as direct acts of palpable sin.

Sentence of less or greater excommunication in view.

Question commonly raised as to taking away scandal.

Antenuptial fornication.

11. There are offences which bring such deep and open reproach upon the Christian profession, that it is hardly possible to avoid dealing in regular form with one of them, when any circumstance brings it palpably into view, or when a report is spread abroad regarding it. These offences are to be found chiefly in breaches of the Seventh Commandment.

12. In cases of accusation with respect to these breaches, it falls frequently out, according to the language of the Form of Process, 'that when the matter is put to the strictest trial, all that can be proven is but presumptions of guilt or scandalous behaviour, and not the act of uncleanness, the same being a work of darkness; and therefore this should oblige the Kirk-Session to be very cautious how to admit the public entering a process without good warrant, where there is not a child in the case, unless the scandal be very flagrant.'

13. 'Many of these actions,' according to the same authority, 'which give occasion to the raising a scandal of uncleanness, are such as are not themselves alone publicly censurable, but to be passed by with a private rebuke or admonition.'

14. 'Some of these actions,' however, according to the same authority, 'may be so lascivious and obscene, and clothed with such circumstances as may be as offensive as the act of uncleanness itself, and as censurable.'

15. In the case of any charge or *fama*, which involves an allegation of any such action as those referred to in the preceding section, or of fornication or of adultery, the Kirk-Session cannot allow the process to be entered upon at all without keeping in view that if the party be found guilty, the sentence of lesser excommunication or suspension from the use of sealing ordinances must follow.

16. It most frequently happens, under the existing circumstances of the Church and of society, that the first intimation of the scandal, which the Session receive, is in the form of a request by the guilty parties that they may be permitted to appear and confess their sin. In instances of this kind a sentence of suspension appears to be often assumed as existing, although it has not been formally pronounced. The parties have voluntarily submitted themselves already to all the effect of that sentence, and the question raised by them is one as to the taking of it away, or as to the absolving of them from the scandal, and the restoring of them to the fellowship of the Church.

17. It seems quite consistent with the spirit of the Form of Process that the Kirk-Session should proceed upon the footing referred to in the preceding section, in cases of a less heinous character, and especially when the sin confessed is that of antenuptial fornication, a sin which, though involving a grievous departure from God's pure and holy law of marriage, may often not be known so as to cause any scandal till long after a marriage has been solemnized. But the Kirk-Session are called upon to look closely at the whole circumstances of each case thus brought before them, and to regulate the course of discipline by what they see to be required for the good of the parties, the honour of Christ, the purity of Christian fellowship, and the edification of the Church. The amount of private dealing, the number of appearances before the Kirk-Session, the

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mode of administering rebuke, either before the Session or before the Congregation, and the time suffered to elapse before a sentence of absolution is pronounced, may vary according to a Scriptural wisdom and discretion in estimating the effect of discipline in its application to particular matters. But in every case of fornication there must be open appearance before the Kirk-Session for the confession of sin, and there must be open rebuke administered to the parties by the Moderator in the name and in presence of the Kirk-Session.

Committee to investigate grounds, etc.

18. When a charge of fornication, brought regularly before a Kirk-Session, is denied by the accused party after due citation and due appearance before the Court, it is needful for the Session to proceed regularly toward an investigation of the grounds upon which the charge or the *fama* proceeds. They may do this in the first instance by the appointment of a Committee, with instructions to report. Or, if there be any party or parties taking the responsibility of maintaining the accusation, such party or parties may be called upon to bring forward their case that the Kirk-Session may judge of it.

Distinct Statement, etc.

19. A distinct statement of the particular charge or charges, along with the names of the witnesses, and a list of documents, that are relied upon as supporting the accusation, ought to be put into the hands of the accused party, after which, if he or she desires it, time should be allowed for preparing his or her defence.

Citation *apud acta*.

20. If parties have been already duly cited, and are present before the Court, a citation *apud acta* is sufficient for summoning them duly to another meeting of Kirk-Session to be held on a future day.

Objections to relevancy.

21. If objections be brought against the relevancy of a charge or charges, or against the competency of particular witnesses, or of particular questions put to them, the Kirk-Session are bound to weigh these objections impartially. They are bound to do this with all the greater scrupulosity when there are no accusers, and when they are prosecuting the matter simply from their own sense of duty.

Formal rules as to citation.

22. In practice, the rigidly formal rules as to the citations of parties and witnesses are often greatly modified. A verbal intimation is found in most cases to answer every purpose. Only it ought always to be remembered that no one can be subjected to censure for non-attendance except in disobedience to a regular citation.

Taking of evidence.

23. A similar modification occurs in the taking of the evidence, when the parties are truly desirous of enabling the Kirk-Session to expiscate the truth. Such evidence may be gathered by what may be considered precognition, rather than judicial trial, as may suffice either to establish or rebut a charge, and thereby to effect the acquiescence of all parties in a Sessional deliverance thereanent. The object of a Kirk-Session should always be to bring out the truth, so as to adjust a matter at once in a scriptural and in a peaceful manner. But if friendly dealing with the heart and conscience fail in settling the question raised, through acknowledgment, either by the accusers or by the accused, of sin or error; and if a party stand upon his or her rights, then the cause of justice requires that the most exact forms of procedure be adopted. It is dangerous to neglect

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these in any case of difficulty. For no member of the Church can be deprived of his privileges as such, except by the establishment of his guilt with reference to a relevant charge, proved by competent evidence, before a competent Court, and by means of a regular and fairly conducted trial.

Reasonable steps as to both parties in a case.

24. A charge of fornication involves more than one party, and it is not considered competent to deal with it as regards one party alone, until at least all reasonable steps have been taken to bring the case of the other party under view at the same time. If both parties be members of one congregation, there is no difficulty in dealing immediately with them both. But if they belong to different congregations of the Free Presbyterian Church, the general rule is that the Kirk-Session which has jurisdiction over the woman takes up the case. The ground of this rule, however, being simply the circumstance that, in most instances, the scandal has greatest notoriety where the woman resides, there may evidently be exceptions to its application. If a question arise between two Kirk-Sessions as to which of them shall charge itself with the responsibility of investigating a *fama*, or entertaining a charge against a member or against two members of the Free Presbyterian Church, any such question ought to be referred by each of the Kirk-Sessions to its Presbytery. If they both belong to the same Presbytery, the judgment of that Presbytery will settle the question, unless it be thought advisable by one or more of the parties, or by any member or members of Presbytery, to carry the matter to the Synod by appeal or complaint. If the two Sessions belong to different Presbyteries, then each of those Presbyteries ought to bring the matter before the Synod, whose determination will be absolutely final. It is extremely desirable, however, that any such question should be harmoniously settled by an agreement between the two Kirk-Sessions. For the delay occasioned, either by references or by appeals or complaints, may be most injurious to the effectiveness of discipline, and to the spiritual health of congregations. Instead of referring the question to its Presbytery, a Kirk-Session may, after communicating a scandal to another Kirk-Session, and finding that this Kirk-Session will not enter upon the investigation, petition the Presbytery to whose jurisdiction the other Session is subject, calling upon that Presbytery to enforce upon it the duty of taking up the case. It is much better when, by friendly correspondence, all occasion for this kind of action is prevented.

Intimation by one Session to another.

25. As both parties must be cited in the case of a charge of fornication, even when they are members of different congregations, it is necessary that intimation of the charge be made by the Session which takes up the case to the Session which does not take it up in order that the latter Session may cite the party who is under its jurisdiction to appear thereanent before the former Session. The same course must be taken with respect to witnesses who, being members of the Free Presbyterian Church of Scotland, are not members of the same congregation with that to which the party principally accused belongs.

Witnesses who cannot attend.

26. When, from any cause, the personal attendance of a witness cannot be obtained, a certificate or affidavit from him may suffice, or two or more of the Session may be appointed to take his evidence.

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Acceptance of
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Denial of father.

Contumacious-
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Denial of
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Means for
ascertainment to
be exhausted.

Acknowledgment
of guilt sufficient.

Oath of
purgation.

Recording of
documents and
evidence.

Objections to
admissibility, etc.

27. If two parties appear together confessing themselves guilty of antenuptial fornication, although no child has yet been born, the confession may be accepted of, and the case proceeded with, until they are absolved from scandal. For such timely appearance and confession generally indicate a better understanding of the position in which their sin has placed them, than when an acknowledgment follows the birth of a child. But if only one party make confession before the birth, it has been found more expedient to sist procedure till after the birth. If, where one party only confesses, no child is born at all, the Session is required to exercise much caution before proceeding against any other party named, whose guilt it may be impossible to establish.

28. A woman confessing guilt with reference to the birth of her child is called upon to name the father. If she refuses to do so, she is dealt with as *contumacious*. If she declares that she does not know who the father is, procedure is delayed until advice be received from the Presbytery. (See Section 40 (6).)

29. If a man, accused by a woman, appear and deny the accusation, the woman is required to adduce evidence in support of her averment. Every fair effort should be made to ascertain the truth. If the woman has had more than one illegitimate child previously, and if the man has hitherto borne a fair character, she must furnish some *prima facie* good evidence before the Kirk-Session can be justified in even citing the accused party.

30. If the man named by a woman confessing guilt do not belong to the Free Presbyterian Church of Scotland, all reasonable endeavours should be made by the Kirk-Session to induce him to declare, either in writing or verbally in presence of the Session, or some of its Members, whether he is the father of the child. For the Kirk-Session are not justified in acting upon a woman's confession, so as to absolve her from scandal, until they have exhausted the means within their reach for ascertaining the paternity.

31. Sometimes the paternity is denied, while guilt otherwise is acknowledged. Such acknowledgment is held sufficient, unless proof can be adduced that the woman had connexion with another person, or unless her character be notoriously bad.

32. A rare case may occur, in which a man accused apparently without good reason, desires to take what is called the *oath of purgation*. This is not allowed, however, except on very special grounds, and never without authority from the Presbytery. (See Appendix No. IX., Form of Process, Chapter IV. 7, 8, 9.)

33. When evidence is brought forward and witnesses are examined in a regular trial before the Session, all documents produced and admitted must be recorded, and the statements of witnesses in answer to relevant questions must also be recorded. It may often be expedient for the Kirk-Session to open a separate record for the insertion of their procedure with reference to a particular case of discipline, and, by referring in their Ordinary Minute to this separate Record, they may sufficiently authenticate it. But it partakes of the same nature with their Ordinary Minutes, and must be kept with equal care, and according to the same rules.

34. Objections may be taken to the admissibility and credibility of witnesses, which objections the Session may either sustain or

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Solemn
declaration
equivalent to
oath.

Decision.

Effect of
Decision.

Such suspension
distinct from
suspension under
charge.

Absolution and
Restoration.

overrule. The accused party may cross-examine the witnesses against him, provided the questions put by him are approved of by the Session as relevant.

35. It was formerly thought necessary that the evidence before a Session should always be given on oath. A solemn declaration is now very generally substituted, to the effect that the witness will speak the truth, accompanied by an assurance that he bears no malice to the party or parties, and is not influenced by partial counsel. Evidence taken in connexion with such a declaration ought not to be identified with statements obtained by a mere precognition. But when received at all, it must be held to occupy precisely the same place with evidence taken on oath.

36. When all the evidence offered on either side has been taken and recorded, parties are removed. The Kirk-Session then deliberates in private and comes to a decision. Parties are then called in, and judgment is pronounced by the Moderator.

37. The effect of a Kirk-Session's judgment upon an Ordinary Member may be the infliction of one or more of four censures. It may be—(1) Admonition, involving affectionate warning of sin and danger, and exhortation to greater circumspection; or (2) Rebuke after confession or conviction of a scandalous offence, either before the Session alone or before the Congregation; or (3) Suspension from privileges for a longer or shorter period, or *sine die*, as the result of a confession or conviction, which seems to be identified in the Form of Process with what is called the Lesser Excommunication (see Section 38); or (4) What in common practice is now the striking off the offender's name from the Communion Roll, and declaring him or her to be no longer a Member of the Church, but what, in the most solemn manner of its infliction, is termed the Greater Excommunication, as described in the Form of Process (Chapter VIII. with reference to 1 Cor. v. 4, 5 and 1 Tim. i. 20). The latter form of Excommunication is rarely now resorted to, and cannot be adopted without the express authority of the Presbytery. In fact, the removal of a name from the Roll, and a declaration that the party is no longer a member, are, when adopted as the result of discipline, a milder form of the Greater Excommunication, adapted to the existing circumstances of the Church.

38. Suspension from privileges as a censure arising at the close of a judicial investigation ought to be carefully distinguished from the suspension which takes place while a party is only under a charge of sin, which has not yet been proved. The latter suspension is not of the nature of a censure at all. It is simply a step which cannot be avoided in the circumstances, and to which the party must submit, because it would not be for edification that he or she should partake of privileges while subject to a charge of scandal.

39. The Kirk-Session absolves from scandal and restores to privileges, when it sees sufficient ground for doing so, after hopeful evidence of penitence has been exhibited. The effect is simply to remove the sentence of Suspension, or the sentence of Greater Excommunication. The Church does not pretend to absolve from sin in the sight of God. But assuming the genuineness of outward professions and appearances, she proceeds on the supposition that the offender has already sought and obtained forgiveness through

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cases to be referred to the Presbytery.

the atoning blood of Christ. On this footing the Moderator pronounces sentence of absolution in the name of the Lord Jesus.

40. There are cases and occasions which require a Kirk-Session to refer a matter to the Presbytery before proceeding further in it:—

(1) A charge of incest must be referred to the Presbytery for advice.

(2) So also must a charge of adultery.

(3) So also a charge of having fallen into the sin of fornication for the third time.

(4) So also a charge of flagrant heresy or schism.

(5) So also a charge of continued *contumacy*, which embraces a resolute refusal to submit to discipline, and a declinature, without good ground, to appear when cited by the Session, either *apud acta* or through three distinct citations by the church officer.

The reference of such cases, of course, brings up all parties to the bar of the Presbytery, and strictly speaking, all parties being summoned *apud acta*, are bound to appear at the meeting of Presbytery. But as the Presbytery most frequently remits the matter back to the Session with or without instructions, it can hardly be said that, in practice, the parties are expected to appear at the Presbytery unless the Presbytery shall require them to be specially cited after the reference has been stated.

(6) When a woman declares that she does not know who is the father of her child, the matter must be referred to the Presbytery for advice.

(7) If a man expresses a desire to take the oath of purgation, this desire cannot be acceded to without a special reference to the Presbytery thereon.

(8) The more solemn form of the Greater Excommunication cannot be adopted without the authority of the Presbytery.

41. After receiving instruction from the Presbytery in any one of the matters which must be referred to them for advice, the Kirk-Session must adopt the same procedure and follow the same rules in carrying out those instructions which have already been detailed with reference to an ordinary charge of fornication.

42. The child of a person under discipline or censure cannot be baptized unless *bona fide* adopted by another member of the Church.

43. A member of a congregation who absconds during a process against him, or who leaves the congregation on being dealt with or suspended, is called a fugitive from discipline. A particular course of action with a view to the excommunication of such an one is set forth in the Form of Process. In existing circumstances it is deemed sufficient that the Kirk-Session formally erase the name of the party from the Communion Roll.

44. When any party is refractory or exhibits an improper spirit, the Session may competently sist procedure until he be brought to a better mind.

45. No law agent or legal adviser is allowed admission as such to a meeting of Kirk-Session. In particular cases a person might, e.g., be permitted to sit beside an accused party as a friend, but not to take any open part in the procedure; unless authorized by the Session to act for the accused on very special grounds.

46. If a charge be brought, or if a *fama* arise against an Elder or a Deacon, the Kirk-Session are called upon to proceed always by means of a preliminary inquiry or precognition. The accused party ought to be made aware of this precognition, so as to have an opportunity of offering explanation. If the accusation or report appear frivolous, or not likely to be proved, it should be allowed to drop. But if the contrary appear, the accused should be faithfully and affectionately dealt with, in order that he may be induced to make a candid statement of the whole truth. If he deny the charge, or say that there is no foundation for the *fama*, the rules of procedure are the same with those followed in the case of an ordinary member, until a judgment upon the effect of the evidence has been arrived at, except that, besides being in the meantime suspended from privileges, he is also *ipso facto* suspended from office. If the result of the investigation be that the party is suspended from privileges in the way of censure, or that he is excommunicated, he is *ipso facto* suspended or deposed from office. But the offence may appear such in the view of the Session as to necessitate his suspension or his deposition from office, even when they see no cause for depriving him of privileges, either for a longer or a shorter period.

47. A sentence of suspension or deposition pronounced upon an Elder or Deacon may either be read from the pulpit to the congregation, or intimated otherwise by the Moderator as may seem most for edification.

48. A deposed Elder or Deacon may be reponed to his office upon good cause shown, in so far as rigid law is concerned. But the cases are very rare indeed in which such reponement is thought to be for edification.

49. Further particulars with respect to the duties of a Kirk-Session in the administration of Discipline will be found in the Form of Process, which is recommended to the careful study of Ministers and Elders.

PART III—*Processes peculiar to the Presbytery*

DIVISION I—*Processes in connection with the action of Kirk-Sessions*

1. The rights of appeal and complaint from a Kirk-Session to its Presbytery are specially applicable to matters of discipline, according to the rules pointed out in Chapter I. Part II. Sections 18 and 19, which must be carefully observed. It is an important function of the Presbytery to consider carefully appeals and complaints affecting discipline, and to dispose of them in accordance with the Word of God and the laws of the Church.

2. When an Appeal or Complaint of this kind is brought before the Presbytery, and it appears that the matter is one which must come before them at any rate, according to Part II. Section 40, it is not held necessary for them to scrutinize very rigidly the circumstances in which the Appeal or Complaint has been taken, or the reasonableness of it, at that particular stage. It is considered warrantable for them, in order to prevent undue delay, to entertain the matter at once upon the merits, although they may, if they see cause, censure the Appellants or Complainers. (See Form of Process, Chapter V. 2, 4.)

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Charge or fama against Ruling Elder or Deacon

Intimation of sentence as to Elder or Deacon

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Appeals.

3. If the subject of discipline about which there is an Appeal or Complaint be one of which the Kirk-Session are throughout the competent and proper judges, the Presbytery are called upon to be very careful in the entertainment of the Appeal or Complaint, lest the orderly course of Sessional Discipline be frequently interrupted in an untimely and needless manner, or on frivolous grounds. On the other hand, if the Presbytery find that the Kirk-Session have done injustice to an accused party who has appealed, it is their duty not only to free that party, in a formal way, from scandal, and declare his or her innocence, but to take such methods within their jurisdiction as they may judge proper and effectual for vindicating his or her character, and wiping off the effects of the scandal.

4. 'Herein the Presbytery is to exercise great prudence, doing justice to the innocent, yet so as not to weaken the Kirk-Session's authority in that congregation, if in justice it can be avoided.'

5. It is competent for a Presbytery, when they perceive errors of judgment on the part of a Kirk-Session in dealing with a case of Discipline which has been brought up by Appeal, Complaint, or Reference, either openly to give suitable instructions to the Minister and elders, or to admonish them privately.

6. An Appeal or Complaint suspends the execution of any sentence of Discipline pronounced by a Kirk-Session, as long as the Appeal or Complaint is duly prosecuted, and until it be disposed of finally, either by the Presbytery, or by the Synod.

7. In dealing with a reference to them of any one of the matters referred to in Part II. Section 40, the Presbytery is, strictly speaking, entitled to assume that all the parties, having been cited by the Kirk-Session *apud acta*, are bound to be present, so that the case may be proceeded with to any extent by the Presbytery itself, if they see cause. But a very frequently adopted course, even when the reference is sustained as made in due form, is to remit the matter back to the Kirk-Session, with instructions or advice. It has thus become reasonable that, if the Presbytery see cause for themselves dealing at all with the parties personally, they should issue, or cause to be issued by the Session, a fresh and special citation to the parties, so as to make them aware that their presence before the Presbytery is really required. The Presbytery have undoubtedly the discretionary power of either carrying out the case themselves to its termination, or of at once remitting it back to the Kirk-Session, with authority to proceed, or of requiring parties to appear for Presbyterial rebuke or admonition, and then remitting further procedure to the Kirk-Session. It is often thought best to leave the responsibility as much as possible with the Session.

8. The authority of the Presbytery is requisite for the removal by absolution of any of those sentences which cannot be pronounced by the Kirk-Session, without having obtained the authority of the Presbytery at some stage of the process.

DIVISION II—Processes originating in the Presbytery

1. It is a special function of the Presbytery to investigate any charge or *fama* against a Minister or Probationer within their bounds. They alone have primary jurisdiction over either.

Justice to
innocent
and
authority of
Kirk-Session
to be
maintained.

ing of
discipline
by
Appeal or
Complaint.

cedure in
Appeals.

Authority as to
removal of
sentences.

Charge or fama
against a
Minister.

2. A Presbytery is called upon to prefer, in all cases, the honour of Christ and the purity of His Church to the temporary feelings and interests of men. Therefore, the allegation of serious offences against the light of God's Word, or against holiness of life, on the part of a Minister of the Gospel, and especially on the part of a Pastor, must not be lightly dealt with by his Presbytery.

3. The very gravity of this duty renders it all the more necessary for a Presbytery to exercise great caution and prudence, before themselves originating, or encouraging others to originate, a regular process against a Minister.

4. If allegations to the discredit of a Minister do not involve any imputation of immoral conduct, but of unsoundness in doctrine, or of views and practices opposed to the order, unity, and peace established by Christ in His Church, they ought not to be rashly entertained. The knowledge and understanding of those who make the allegations should be closely considered, before the adoption of any action regarding them. If alleged errors be not gross, and strike not at the vitals of religion; or if they be not pertinaciously clung to or industriously spread, with a visible design to corrupt; or if they be not spreading among the people, then, according to the old Form of Process, lenitives, admonitions, instructions, and frequent conferences are to be tried to reclaim without cutting off; the advice, if need be, of other Presbyteries should be sought; and unless the matter be doing much hurt, so as to admit of no delay, the Synod may be advised with in the affair, provided the Minister concerned be made aware of the steps that are taken. (See Form of Process, Chap. VII. 8.)

5. According to the same authority, if the complaint against a Minister involve a multitude of smaller things laid together, as several acts of negligence, or other unsuitable actions, the Presbytery ought to make a Presbyterial visitation of the Congregation with which the Minister is connected. In conducting a visitation in such circumstances, they are called upon to investigate carefully the character and origin of the allegations, whether they were ever raised previously; how, if they never were, they came to be passed over; and what has occasioned their being brought forward now. If the Presbytery, at their visitation, find satisfying reasons for the matter having been broached at the particular time, they were next required to ascertain what diligence has been used in acquainting the minister with the offence given by his procedure, and how far the offence has been continued after he was made aware of the effect produced. The inquiry is also recommended, whether any of the complainers did first, in a prudent, private way, inform any of the neighbouring Ministers of their complaints, before these had swelled out into a magnitude demanding Presbyterial interference.

6. If, by Presbyterial visitation or otherwise, the Presbytery find in the way of preliminary investigation or precognition, that the complaints resolve into the Minister having committed such acts of infirmity or passion, as, considering all the circumstances, may be amended, so as to satisfy the people, and to prevent any continued hindrance to the profitableness of the ministry of the Word among them, then the course suggested by the Form of

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Prudence.

Allegations not
to be rashly
entertained.

Case for Presby-
terial Visitation.

Case for simple
rebuke of parties.

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means for
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austed.
ght to a Libel.

Process is to take all prudent steps for satisfying both parties, for rebuking their respective errors, and doing away with the offence.

7. It thus appears that the Free Presbyterian Church, by retaining the old Form of Process as part of her law, would restrain a Presbytery from instituting or entertaining a regular process against any Minister, until all means have been exhausted for preventing the necessity of such a process being entered on.

8. At the same time it ought to be recollected, that if a Minister think himself aggrieved by the raising of any question regarding his conduct, or if he object to any investigation without a regular trial being granted to him, he is entitled to demand that a Libel or regularly arranged statement of any charge or charges against him be drawn out and placed in his hands, before he will consent to hold communication with his co-Presbyters on the subject of the allegations. Circumstances might occur which would justify him in taking this ground, although it is generally more consistent with the spirit of the Gospel that he should, at the very first, speak frankly and distinctly to those who propose to deal with him. (See Form of Process, Chap. VII. 9-12.)

9. It may thus be necessary sometimes to proceed by Libel even with respect to charges which, if well founded, do not of necessity involve the infliction of any high censure.

10. It has been established by long practice that no judicial process of a serious kind can be carried out against a minister or a Probationer, except by the use of what is called a Libel. This is a document consisting of three parts, and forming a regular syllogism. The first, or major proposition, sets forth the nature of the alleged offence, declares its contrariety to the Word of God and the laws of the Church, and indicates the kind of consequences which ought to follow from it. The second, or minor proposition, asserts the guilt of the Minister or Probationer, and specifies what are believed to be the leading facts involving guilt, and particularizing time, place, and other circumstances. This proposition may contain one or more counts of indictment. The third part connects the major and minor propositions together, and thereby deduces the conclusion that the Minister or Probationer, as guilty of the offence mentioned in the major proposition, ought to be subjected to the consequences, provided the minor proposition be made good, either by confession or by adequate evidence. It is of great importance that care be taken to frame the Libel with accuracy, so as to avoid grounds for questioning its relevancy. Rules for framing Libels, as well as Forms of Libel, may be found in 'Styles of Procedure,' by the Church Law Society, 1838, pp. 98-106, and in Appendix No. X. 3, of this Manual. It is advisable, in every case, that the Libel, however carefully framed by the help of these Rules and Forms, should, previously to its adoption, be revised by some one experienced both in ecclesiastical processes and in the nature of indictments generally, such as the Legal Adviser of the Church, A Libel must be signed by the party or parties prosecuting, and a list of witnesses and documents adduced in support of the charge embodied in it must be appended to it.

11. There are three distinct grounds which may warrant or require a Presbytery to entertain or frame a Libel, and without one of

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Libel.

which it is contrary to the Form of Process for a Presbytery to entertain a charge of scandal against a Minister, so far even as to cite the Minister, or in any way begin a process. One ground is that of some person giving in a complaint involving a charge of immorality or heresy under his own hand, with some account of its probability, and undertaking to make out a Libel. A second ground is that of a person simply undertaking to make out a Libel containing such a charge, under the pain of being censured as a slanderer if he fail to do so. And a third ground is that of a *fama clamosa* being so great, as that the Presbytery, for their own vindication, find it necessary to begin a process without any particular accuser.

(1) Since a scandal against a Minister, once raised, cannot be easily wiped off, a Presbytery must exactly ponder by whose information and complaint it comes before them. And in judging of the probability that would justify them in proceeding, they are called upon to weigh well the measure of credit due to the quarter from which an allegation of scandal proceeds.

(2) If the raiser of a Complaint, being a Member of the Church, press it upon them, representing that attention to it is requisite for the due exercise of discipline, while he fails to satisfy them of its truth being reasonably probable, they must require him to declare that he undertakes to make it out, under the pain of being himself censured as a slanderer. If he allow this declaration to be minuted, and put his hand to it, they are called upon to proceed.

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

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

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

14. When the Presbytery find it necessary to be themselves the Libellers in a case of charge against a Minister, they are called upon to consider the question as to the relevancy of the Libel before serving it. With this view, they are instructed to summon him, in regular form, with ten days' free notice, to attend a meeting of Presbytery, at which it shall be proposed to consider the propriety of serving the Libel. A copy of the proposed Libel must accompany the summons. They are called upon, at that meeting, to consider carefully the relevancy of the Libel, and if they resolve to

Credit due to
accusers to be
weighed.

Raiser of com-
plaint obliged to
make it out.

Inquiry as to
rise, etc., of fama

Preliminary
examination of
witnesses.

Dealing with a
view to con-
fession.

Order of Pro-
cedure after
Libel framed
by Presbytery

Description of
Libel.

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serve it, they must serve it as a Libel which they have already judged to be relevant. It is held that the Minister, if Minister of a sanctioned charge within the bounds, though specially summoned to attend on the occasion, is not yet a party at the bar, but is still a member of Court while the question of relevancy is discussed, and until the resolution to serve the Libel has been come to. (See Act V., Assembly 1853.)¹ If the Minister object to that resolution, his remedy is not by Appeal, but by Dissent and Complaint.

15. The rule laid down in the preceding Section does not apply to the case of a Probationer, against whom a Libel must be served before its relevancy is judicially considered, even when the Presbytery are the Libellers.

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

17. No Appeal or Dissent and Complaint at any stage of Presbyterial action in a case of *charge* or *fama* which involves a Libel, or may lead to the necessity of serving a Libel against a Minister, has the effect of sisting procedure, until the Libel has both been served and found relevant. (See Act IV., Assembly 1853.)¹

18. In every case in which a Presbytery has resolved to order a Libel to be served upon a Minister of the Church, he ceases *ipso facto* to exercise the functions of his office, both ministerial and judicial, until the Libel has been finally disposed of.

19. The relevancy of a Libel includes two things—(1) Whether the major proposition be true or not; that is, whether the offence or offences referred to be truly or not a subject of Church censure, inferring the indicated penalty, according to the Word of God and the standards of the Church; and (2) Whether the conclusion be fairly deducible or not from the premisses; that is, whether the facts specified in the minor proposition really amount or not to the offence or offences charged in the major proposition.

20. If the Libel be found irrelevant, except in the case in which, after appeal, complaint, or reference, the Synod has corrected the irrelevancy, the whole proceedings fall to the ground. If only part of it be found irrelevant, the case may go on upon the part which has been found relevant.

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

¹ App. IX.

¹ App. IX.

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the Libel, and also after it has been found relevant. It may be carried on either at a private meeting of the Presbytery, or by a Committee of their number appointed for the purpose.

22. If the accused Minister or Probationer persist in his denial of the charge or charges, after the Libel has been found relevant, the Presbytery, if prepared to carry on the case without reference to the Superior Courts, must proceed to take the proof, after hearing the Libel read over again, and after hearing also any answers that may have been given in on the part of the Minister or Probationer. The same rules for the conduct of the trial apply, which have been stated with reference to the action of Kirk-Sessions in cases of discipline. The whole procedure must be carefully minuted. It is expedient that it should be kept in a separate Record, lest from any cause a Superior Court should order the whole or any part of it to be deleted or destroyed. But it must be considered in the meantime as an integral part of the Presbytery's Minutes. The questions as to the competency of evidence, and other important points which may be raised in a case of Libel against a Minister, are often of such grave consequence that a more particular statement with respect to some of them is given in the Appendix. (See Appendix No. IX.)

23. When the Presbytery are prosecutors, and have adequate evidence before them that a Libel adopted by them as relevant has been served upon a Minister within their bounds, it is competent for them, if they see cause, to refer the case to the Synod, either on the ground that it does not appear expedient, in the circumstances, for the Presbytery to act both as prosecutors and judges, or on the ground that it does not appear expedient in the circumstances for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect. (See Acts IX. and X. Assembly 1854, and Report of Committee, 1855, Appendix No. IX.)

24. When the Libel is prosecuted not by the Presbytery, but by another party, and when, having had adequate evidence before them that the Libel has been duly served, the Presbytery have found it relevant, it is competent for them, if they see cause, to refer the case to the Synod, on the ground that it does not appear expedient, in the circumstances, for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect.

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

Presbytery's procedure as to proof.

Competency of reference to Superior Courts.

Deposition or Suspension after confession.

Libel framed by other parties.

No appeal, etc., to sist procedure till Libel served and found relevant.

Functions of Minister cease *ipso facto*.

Things included in relevancy of Libel.

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Fresh dealing toward confession.

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Process is to take all prudent steps for satisfying both parties, for rebuking their respective errors, and doing away with the offence.

7. It thus appears that the Free Presbyterian Church, by retaining the old Form of Process as part of her law, would restrain a Presbytery from instituting or entertaining a regular process against any Minister, until all means have been exhausted for preventing the necessity of such a process being entered on.

8. At the same time it ought to be recollected, that if a Minister think himself aggrieved by the raising of any question regarding his conduct, or if he object to any investigation without a regular trial being granted to him, he is entitled to demand that a Libel or regularly arranged statement of any charge or charges against him be drawn out and placed in his hands, before he will consent to hold communication with his co-Presbyters on the subject of the allegations. Circumstances might occur which would justify him in taking this ground, although it is generally more consistent with the spirit of the Gospel that he should, at the very first, speak frankly and distinctly to those who propose to deal with him. (See Form of Process, Chap. VII. 9-12.)

9. It may thus be necessary sometimes to proceed by Libel even with respect to charges which, if well founded, do not of necessity involve the infliction of any high censure.

10. It has been established by long practice that no judicial process of a serious kind can be carried out against a minister or a Probationer, except by the use of what is called a Libel. This is a document consisting of three parts, and forming a regular syllogism. The first, or major proposition, sets forth the nature of the alleged offence, declares its contrariety to the Word of God and the laws of the Church, and indicates the kind of consequences which ought to follow from it. The second, or minor proposition, asserts the guilt of the Minister or Probationer, and specifies what are believed to be the leading facts involving guilt, and particularizing time, place, and other circumstances. This proposition may contain one or more counts of indictment. The third part connects the major and minor propositions together, and thereby deduces the conclusion that the Minister or Probationer, as guilty of the offence mentioned in the major proposition, ought to be subjected to the consequences, provided the minor proposition be made good, either by confession or by adequate evidence. It is of great importance that care be taken to frame the Libel with accuracy, so as to avoid grounds for questioning its relevancy. Rules for framing Libels, as well as Forms of Libel, may be found in 'Styles of Procedure,' by the Church Law Society, 1838, pp. 98-106, and in Appendix No. X. 3, of this Manual. It is advisable, in every case, that the Libel, however carefully framed by the help of these Rules and Forms, should, previously to its adoption, be revised by some one experienced both in ecclesiastical processes and in the nature of indictments generally, such as the Legal Adviser of the Church. A Libel must be signed by the party or parties prosecuting, and a list of witnesses and documents adduced in support of the charge embodied in it must be appended to it.

11. There are three distinct grounds which may warrant or require a Presbytery to entertain or frame a Libel, and without one of

which it is contrary to the Form of Process for a Presbytery to entertain a charge of scandal against a Minister, so far even as to cite the Minister, or in any way begin a process. One ground is that of some person giving in a complaint involving a charge of immorality or heresy under his own hand, *with some account of its probability*, and undertaking to make out a Libel. A second ground is that of a person simply undertaking to make out a Libel containing such a charge, under the pain of being censured as a slanderer if he fail to do so. And a third ground is that of a *fama clamosa* being so great, as that the Presbytery, for their own vindication, find it necessary to begin a process without any particular accuser.

(1) Since a scandal against a Minister, once raised, cannot be easily wiped off, a Presbytery must exactly ponder by whose information and complaint it comes before them. And in judging of the *probability* that would justify them in proceeding, they are called upon to weigh well the measure of credit due to the quarter from which an allegation of scandal proceeds.

(2) If the raiser of a Complaint, being a Member of the Church, press it upon them, representing that attention to it is requisite for the due exercise of discipline, while he fails to satisfy them of its truth being reasonably probable, they must require him to declare that he undertakes to make it out, under the pain of being himself censured as a slanderer. If he allow this declaration to be minuted, and put his hand to it, they are called upon to proceed.

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

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

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

14. When the Presbytery find it necessary to be themselves the Libellers in a case of charge against a Minister, they are called upon to consider the question as to the relevancy of the Libel before serving it. With this view, they are instructed to summon him, in regular form, with ten days' free notice, to attend a meeting of Presbytery, at which it shall be proposed to consider the propriety of serving the Libel. A copy of the proposed Libel must accompany the summons. They are called upon, at that meeting, to consider carefully the relevancy of the Libel, and if they resolve to

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Grounds for
entertaining a
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Credit due to
accusers to be
weighed.

Raiser of com-
plaint obliged to
make it out.

Inquiry as to
rise, etc., of *fama*.

Preliminary
examination of
witnesses.

Dealing with a
view to con-
fession.

Order of Pro-
cedure after
Libel framed
by Presbytery

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serve it, they must serve it as a Libel which they have already judged to be relevant. It is held that the Minister, if Minister of a sanctioned charge within the bounds, though specially summoned to attend on the occasion, is not yet a party at the bar, but is still a member of Court while the question of relevancy is discussed, and until the resolution to serve the Libel has been come to. (See Act V., Assembly 1853.)¹ If the Minister object to that resolution, his remedy is not by Appeal, but by Dissent and Complaint.

el framed by
er parties.

15. The rule laid down in the preceding Section does not apply to the case of a Probationer, against whom a Libel must be served before its relevancy is judicially considered, even when the Presbytery are the Libellers.

appeal, etc.,
ist procedure
Libel served
found
vant.

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

ctions of
ister cease
facto.

17. No Appeal or Dissent and Complaint at any stage of Presbyterial action in a case of *charge* or *fama* which involves a Libel, or may lead to the necessity of serving a Libel against a Minister, has the effect of sisting procedure, until the Libel has both been served and found relevant. (See Act IV., Assembly 1853.)¹

ings Included
relevancy of
el.

18. In every case in which a Presbytery has resolved to order a Libel to be served upon a Minister of the Church, he ceases *ipso facto* to exercise the functions of his office, both ministerial and judicial, until the Libel has been finally disposed of.

ect of
levancy.

19. The relevancy of a Libel includes two things—(1) Whether the major proposition be true or not; that is, whether the offence or offences referred to be truly or not a subject of Church censure, inferring the indicated penalty, according to the Word of God and the standards of the Church; and (2) Whether the conclusion be fairly deducible or not from the premisses; that is, whether the facts specified in the minor proposition really amount or not to the offence or offences charged in the major proposition.

esh dealing
ward con-
ision.

20. If the Libel be found irrelevant, except in the case in which, after appeal, complaint, or reference, the Synod has corrected the irrelevancy, the whole proceedings fall to the ground. If only part of it be found irrelevant, the case may go on upon the part which has been found relevant.

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

¹ App. IX.

¹ App. IX.

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the Libel, and also after it has been found relevant. It may be carried on either at a private meeting of the Presbytery, or by a Committee of their number appointed for the purpose.

Presbytery's
procedure as to
proof.

22. If the accused Minister or Probationer persist in his denial of the charge or charges, after the Libel has been found relevant, the Presbytery, if prepared to carry on the case without reference to the Superior Courts, must proceed to take the proof, after hearing the Libel read over again, and after hearing also any answers that may have been given in on the part of the Minister or Probationer. The same rules for the conduct of the trial apply, which have been stated with reference to the action of Kirk-Sessions in cases of discipline. The whole procedure must be carefully minuted. It is expedient that it should be kept in a separate Record, lest from any cause a Superior Court should order the whole or any part of it to be deleted or destroyed. But it must be considered in the meantime as an integral part of the Presbytery's Minutes. The questions as to the competency of evidence, and other important points which may be raised in a case of Libel against a Minister, are often of such grave consequence that a more particular statement with respect to some of them is given in the Appendix. (See Appendix No. IX.)

Competency of
reference to
Superior Courts.

23. When the Presbytery are prosecutors, and have adequate evidence before them that a Libel adopted by them as relevant has been served upon a Minister within their bounds, it is competent for them, if they see cause, to refer the case to the Synod, either on the ground that it does not appear expedient, in the circumstances, for the Presbytery to act both as prosecutors and Judges, or on the ground that it does not appear expedient in the circumstances for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect. (See Acts IX. and X. Assembly 1854, and Report of Committee, 1855, Appendix No. IX.)

24. When the Libel is prosecuted not by the Presbytery, but by another party, and when, having had adequate evidence before them that the Libel has been duly served, the Presbytery have found it relevant, it is competent for them, if they see cause, to refer the case to the Synod, on the ground that it does not appear expedient, in the circumstances, for the proof to be taken, except in the presence of those who have the power of giving a final deliverance as to its effect.

Deposition or
Suspension after
confession.

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

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Citation of
Ministers.

Pastoral Charge: so that, even if he be reponed to the status of a Minister, he is not restored to that Charge.

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

27. If an accused Minister, when duly cited, do not appear, and either leave the locality, or show himself otherwise contumacious, without any relevant excuse, the Presbytery are required to hold him as having confessed, and to depose and censure him *instanter* with the lesser excommunication. If, after some time, he do not return and subject himself to discipline, he may be proceeded against, so as to be censured with the greater excommunication, if the Presbytery see cause.

28. The full citation of a Minister who does not obey an ordinary citation is a public citation from the pulpit of his Church.

29. A tendered resignation of his office by a Minister cannot stop procedure by libel against him. For no resignation can be accepted of, unless the Presbytery be satisfied that no charge of scandal or heresy can be reasonably brought against him.

30. It is competent for a Minister to be reponed to his status, and for a Probationer to have his license restored, upon professions of repentance which seem to be borne out by a course of consistent conduct. But great caution is requisite in entertaining the question of such reponement or restoration. A Minister may be reponed, or a Probationer's license may be restored, either by the Presbytery which pronounced the sentence of deposition or deprivation, or by the Presbytery having jurisdiction over him at the time when application is made for reponement or restoration.

PART IV—Processes peculiar to the Synod

1. The chief action of the Synod with relation to Discipline lies in the exercise of its powers as a Court of Review. The most serious questions as to the relevancy of Libels, as to the competency and effect of evidence in cases of Libel, and as to the Procedure of Presbyteries in judging of matters before Kirk-Sessions, may come up to the Synod by Appeal, Complaint, or Reference.

2. In dealing with Questions of Evidence thus introduced to their notice, the position of Synods is different, in one important particular, from that of Kirk-Sessions in their ordinary investigations, and from that of Presbyteries in their trial of the truth of Libels. The Synod cannot have the Witnesses personally before it, so as to judge of their statements by seeing and hearing them while they deliver their testimony orally. It must form the best judgment it can from the recorded evidence transmitted to it by the Clerks of Presbyteries, and from the pleadings of parties at its bar. When the papers in a case are very voluminous, it is sometimes found necessary that they should be all printed, to enable the Synod to judge of the case. This necessity may cause an Adjournment of the Synod for a week or two.

Minister not
appearing.

Resignation does
not stop Libel.

Deposition of a
Minister, etc.

Chief action in
review.

The Synod
judges by re-
corded evidence.

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PART IV.

Correction of
irregularity in
Record.

Case of Special
Reference.

Nobile Officium.

Case of palpable
scandal, heresy,
or contumacy.

Execution of
Sentences.

3. If the examination of a Presbytery's Record by a Synod exhibit what it regards as an irregularity or neglect on the subject of discipline, it is the function of the Synod to correct such irregularity or neglect. It may do this according to the nature of each particular case, either by simply reversing a judgment, or by reversing a judgment and instructing the Presbytery how to proceed, or by calling the Presbytery's attention to a matter as requiring investigation, or as requiring more investigation than they have given to it.

4. In the event of a reference coming to a Synod in terms of Act IX. or Act X. Assembly 1854, it is held that the Synod may take one of two courses. It may either differ from the Presbytery as to the question of expediency, dismiss the reference, and require the Presbytery to try the case themselves; or, secondly, it may sustain the reference, and resolve itself to try the case.

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

6. If any case of palpable scandal, or heresy, or contumacy be forced by circumstances upon the attention of the Synod before it has reached any inferior Court having jurisdiction over the party, the Synod may either remit such a case to the inferior Court, or deal with it summarily by the direct exercise of their own authority.

7. If a Libel involving a charge or charges of scandal or heresy be found *proven* by the Synod, the sentence following upon such a judgment, whether deposition, suspension *sine die*, or temporary suspension, or rebuke, or admonition, or deprivation of license, may either be pronounced by the Synod, or reserved for the action of the inferior Court in following out the Synod's instructions. (See Form of Sentence, Appendix X. 2.)