

3072

PROCEEDINGS

OF

Presbytery of London,

ON

MEMORIAL AND COMPLAINT

OF

THOMAS KYDD.

HAMILTON:

F. T. BARKER, BOOK & JOB PRINTER, CORNER KING & JAMES STTS.

1862.

PROCEEDINGS

At Goderich, and within St. Andrew's Church there, the 5th September, 1861—which day the Presbytery of London met and was constituted with prayer.

INTER ALIA.

A deliverance of Synod was read, appointing a commission, consisting of the Rev. John Hogg, the Rev. George McDonell, and Col. E. Thompson, to advise with the Presbytery on the complaint of Mr. Thomas Kydd, which was sent up to the Presbytery for consideration.

The members of Commission being all present, the memorial and complaint of Mr. Thomas Kydd, were read. The Presbytery agreed to hear the complainant first, and afterwards Mr. MacKid, on the subject of the memorial's complaint.

Whereupon Mr. MacKid protested and appealed to the Synod against the hearing of the complainant, Mr. Thomas Kydd, for reasons to be given in due time, took instruments in clerk's hands, and craved extracts, which were granted."

Mr. Thomas Kydd and *Mr. MacKid* were then heard at length.

Whereupon the Presbytery proceeded to consider the deposition of Mr. Thomas Kydd, and other three elders, on the 13th of May, 1858, and all minutes relating to the subject in the Session and Presbytery records were read.

After discussion, it was moved by Mr. Rannie, and seconded by *Col. Thompson*, and agreed to—That the Presbytery having heard read the minutes of the Kirk Session of Goderich, and Presbytery of London, in reference to the deposition of Thomas Kidd, James Leys, Duncan McLaren, and John Nairn, four members of the Kirk Session of Goderich, from the office of the eldership, and finding that both the members of the Kirk Session and of the Presbytery of London had acted in that case with irregularity, and contrary to the laws of the Church, resolved to rescind, and hereby do rescind the sentence of deposition passed on the 13th May, 1858.

The Presbytery then adjourned until the following morning at nine o'clock.—Closed with prayer.

At Goderich, and within the Church there, Sept. 6, 1861— which day the Presbytery met pursuant to adjournment, and was constituted with prayer.—The Rev. Mr. Bell, Moderator.

The deposed elders were called into court, and the decision of the Presbytery read. The clerk was instructed to send an extract of minute to James Leys, Duncan McLaren, and John Nairn, who were not present.

The Presbytery then proceeded to consider the sale of the Church property, complained of by Mr. Thomas Kydd. Sheriff Macdonald was heard in explanation, on behalf of the Trustees, and the history of all the proceedings connected with the sale was read from the books of the Church. Whereupon the Presbytery after consideration, and on the motion of Mr. Nicol, seconded by Mr. Rannic, agreed to the following resolution:—That the Presbytery deeply regret the necessity of parting with so much valuable property belonging to the Church in Goderich; that they approve of the sale in the circumstances, but consider that an obligation rests upon the congregation to replace for manse purposes, when required, the £150 received from the Manse Fund and conveyed away in the sale of the property.

Mr Thomas Reid protested against that part of the resolution which approved of the sale and appealed to the Synod, promising to give in reason in due time, took instruments in the clerk's hands and craved extracts, which were granted.

The Presbytery then proceeded to take evidence on the state of the congregation.

Sheriff Macdonald upon examination said there were between two hundred and three hundred hearers when the Church was organized. The congregation has very much decreased within the last three years or four. That decrease is partly owing to a difference between Mr. Kydd and Mr. MacKid. There was some falling off previously. The congregation is at present very small—seldom less than a hundred—sometimes between one and two hundred.—A change of ministry might have a good effect in removing the opposition. Mr. Kydd's charges are new to me. Had I known them I would have felt it to be my duty to enquire into them. If made by some persons I would not had them, because they have no regard to truth. That the debt and executions of Mr. Kydd have been very injurious to Mr. MacKid's pulpit ministrations, are a matter of opinion.

At this stage of the proceedings Mr. MacKid begged to state that in view of the dissatisfaction and estrangement which appears to exist among the adherents of the Church in this locality—the cause of which however he cannot impute to himself—he is now

willing, from a sincere desire to promote the harmony of the congregation, and hereby offers to resign his charge, provided such resignation be made without stain on his ministerial character; and, in the meantime, that he be placed under the supervision of the Presbytery as an ordained missionary, and on the understanding that the Presbytery strongly recommend to the Synod to allow him to retire upon his full allowance.

Hereupon the complainant withdrew his charge.

The Presbytery after due deliberation agreed to accept Mr. MacKid's resignation, express their sympathy with him, and continue confidence in his ministerial character, and strongly to recommend to the Synod in terms of his request—to permit him to retire upon his full allowance.

This decision having been intimated to Mr. MacKid, the Presbytery appointed Mr. Hamilton Gibson to preach at the Church in Goderich, vacant on the 22nd day of September.

The Presbytery then adjourned to meet in London on the first Wednesday of January, 1862.—Closed with prayer.

Although stated in the above minute that Mr. MacKid protested and appealed, it is an interpolation made by the clerk. Mr. MacKid did indeed protest and appeal for leave to complain to the Synod, but it was not received or minuted, and Mr. McDonell, one of the Commissioners then stated, "Mr. MacKid may say what he chooses, read what he chooses, and do what he chooses, but we will pay no attention to him." And, instead of being heard at length, as stated, in the minute, he only read the paper which follows, and laid it on the Presbytery table, but no notice was taken of it:

To the Rev. the Presbytery of London of the Presbyterian Church in Canada, in connexion with the Established Church of Scotland, the memorial and remonstrance of the members and adherents of St. Andrew's Church at Goderich,

RESPECTFULLY SHERETH,

That in obedience to the citation of your moderators, dated the 7th day of October, instant, calling a *pro re nata* meeting of the Presbytery of London, on Monday, the 23rd inst., to confer with your memorialists on the subject of the Reverend Alexander Mackid's resignation, we now attend at the Bar of the Court for the purpose of holding such conference as has been desired. Although in pursuance of an announcement, made from the pulpit, on Sunday, the 17th September last, at the request of the clerk of the Presbytery, calling a meeting of the congregation, "in order to obtain our concurrence in said resignation," we consider it proper to convene a public meeting on the 21st day of September, and take into consideration the whole subject of that resignation, as well as the action of the Presbytery immediately antecedent and subsequent thereto; and caused a minute of the proceedings of that meeting to be duly transmitted to the clerk of the Presbytery, we have to request the attention of the court to the circumstance that their meeting, to-day, is the first time we have been regularly cited to appear before the Presbytery in

this matter, or to take any part in its deliberation or proceedings. We have, indeed, heretofore heard casually that a meeting of the Presbytery, held at Goderich, on the 3rd of September last, and subsequent days, the most important interests of this congregation were deliberated upon, and disposed of without any reference to ourselves as a congregation; that these proceedings led to the resignation of our Pastor, and have been followed by much confusion and perplexity, chiefly owing to the irregularity with which they were initiated; but your memorialists, as a congregation, were never cited to take a part in these deliberations, and their concurrence in these irregular proceedings was only required after their most important interests had been disposed of. That concurrence your memorialists have deemed it proper to withhold, for reasons which they are now prepared to offer, and before entering upon any conference with the Presbytery on the course which it may now be prudent in the circumstance to take, we claim the privilege, which we think is due to us at our first regular appearance at your Bar, to express our sentiments in relation to the enquiry upon which the Presbytery have entered, and to the action already taken by the Presbytery in pursuing this investigation. Acting on this privilege we are constrained to acknowledge that we regard with sorrow and alarm the course which this Presbytery has taken in the inquiry enjoined on them by the Synod, in the matter contained in the memorial of Thomas Kydd. With sorrow, because we believe that course to have been irregular and at variance with the laws of the Church, and that it may be productive of much injustice to the parties principally concerned; and with alarm, lest the injustice already committed may have the effect of disturbing the harmony and even imperiling the existence of the present congregation.

Called upon as we are, for the first time, to take a part in the proceedings of the court in this momentous crisis of our affairs, it is incumbent on us, with the view of clearly explaining our position and intentions, hereby to review the action that has already been taken, as well by the Synod as by the Presbytery, in the matter of Thomas Kydd's memorial.

That memorial appears to have been presented to the Synod in a very unusual and irregular manner, and under circumstances, which, had they been known to the Synod, would have justified its summary rejection. It was not even sustained by the personal appearance of the complainant—a fatal objection to its reception, but for the generous waiver of the party complained against—and when the difficulty was so surmounted, the Synod, without further enquiry into its merits, without at all entering upon their consideration, without even having read the long statement that accompanied the short memorial of two pages, without considering it further than that its subject matter involved an enquiry which properly and legitimately belonged to the Presbytery, sent the memorial and the long written and printed statements, and other papers that accompanied it, down to the Presbytery of London, in order that they, as a court of competent investigation and adjudication, might make due enquiry into the whole matter complained of in the memorial. But as the memorial also charged the Presbytery of London with a design to stifle enquiry, and to obstruct the course of justice, the Synod at the same time issued a commission directed to three respected members of the Synod, who were instructed to advise with the Presbytery of London in their investigations, and to act as the assessors of the Presbytery in adjudicating on the subject matter of the complaints. As the memorial did not affect the appearance or form of an appeal to the Synod from a deliverance of the Presbytery, but was in fact, a complaint made directly to the Synod of matters which belonged legitimately to the Presbytery, as a court of original

jurisdiction, the course pursued by the Synod, although, perhaps, more lenient to the complainant than he merited, was, in our opinion, the only one that could be adopted consistently with the laws of the Church, when the memorial itself was not to be thrown under the table. But as the whole of the matter contained in the memorial was sent down *simpliciter* to this Presbytery, as the court fully competent to deal with them, we respectfully submit that the memorial should have been considered by this Presbytery in the same manner, and subject to the same rules of procedure, of evidence and of adjudication as if it had been presented in the first instance to the Presbytery; that its merits were exposed to the same scrutiny, and the complainant, personally, was subject to the same disabilities, and his status in the Church to the same investigation as if he had directly appealed to the Presbytery for the first time, and had not taken the extraordinary course of addressing his complaint at once to the Synod. At the reception of the memorial by the Synod they had no opportunity of making *any* enquiry into the character, conduct or status of the complainant. They made no effort to do so, nor was the attempt necessary, for in sending down the whole matter to the Presbytery, they could not for a moment imagine that the Presbytery would fall in its duty to institute such a preliminary enquiry into the status of the complainant, agreeably to the laws of the Church. The Synod was well aware that the mere waiver of an objection to the personal appearance of the complainant before the Synod could not invest him with virtues, reputation or standing which he did not possess, had he complained in the first instance to the Presbytery; and it was also aware that, if his character was deficient in those qualities which were necessary to his appearance before a Church court, as this was an enquiry which the laws of the Church expressly imposed on the Presbytery, as a duty properly belonging to and incumbent on all Presbyteries to perform, the postponement of such an investigation until the whole matter was submitted to the Presbytery, could not be productive of any evil either to the complainant or to the parties complained against; while thereby the proceedings of the Church court would be taken with due regard to system and regularity, and consistently with express ordination. The Synod, no doubt, well understood that in sending down the whole subject matter of the memorial to the Presbytery of London, they could not suspend or sanction the suspension of any of those wise laws which the Church has, from the earliest times, provided for her own good government, and for the protection of her ministers and members from the wicked assaults of her enemies.

It appears, however, that the Presbytery of London, from a sincere, but as your memorialists believe, from a mistaken desire to render due obedience to an assumed direction of the Synod, have considered it incumbent on them to enter at once, and without any reference to the character or status of the person complaining at their bar, without any enquiry as to the quarter whence that complaint proceeds, to enter upon a painful investigation involving the character and conduct of one of the ministers of the Church, and the peace, prosperity and even the existence of one of her congregations. Viewing the personal status of the complaint as a matter already disposed of by the Synod, the Presbytery of London seem to have considered that any enquiry into this vital question would be regarded by the Synod as evidence of the Presbytery's contumacy, and in order to avoid even the appearance of disobedience to the instructions of the supreme court of the Church, this Presbytery has thus, we respectfully think, shrunk from the consideration of some of the most important matters that were actually sent down to them.

As the court of competent authority, fully recognised by the Synod, in the very letters of their instructions, in all their functions, powers, duties, and responsibilities, we submit that the Presbytery were bound in duty to the laws of the Church, and to the instructions of the Synod, to consider the form and regularity of the complaint—the personal status of the complainant in the Church—his right to appear before any Church court as a party complainant. If these vital considerations formed no part of the enquiry enjoined by the Synod, then it is at once obvious that any person whatever, without character or responsibility, holding no recognised position in the Church, or any connection with it, might at once break down all the restrictions and safeguards with which the Church has fenced round her Presbyteries, her Sessions, her ministers and members, with which she has guarded them from intrusion by parties suffering under Church censure and disabilities, and from the assaults of wicked enemies from without, by demanding directly and at once the ear of the Synod, on the subject of alleged wrongs and grievances, claiming its immediate interposition, with its ministers and members and inferior judicatories; and that matters which belong exclusively to the civil tribunals of the land should be heard and adjudicated by the Supreme Ecclesiastical Court; or, if resort to the Synod, in such a case, would be an anomaly so monstrous that a speedy check to the absurdity would be found by the Legislature, it is at least abundantly obvious, that the precedent that has just been made by the Presbytery of London, must give facilities to any person whatever, who may at one time have been a member of the Church, for disregarding the constitution of the Synod as a court of appeal and ultimate jurisdiction, ridding himself at once of all the disabilities which would overwhelm him in an inferior judicatory, and addressing himself immediately and directly to the Synod as a court of original jurisdiction in all matters of complaint against a minister of the Church, and thus avoiding the preliminary enquiry as to the status which the Church has ordained shall be made in the case of every person seeking relief within her jurisdiction. But your memorialists apprehend that, in the present case, the Synod assumed no such arbitrary power—no such anomalous jurisdiction. We cannot imagine that the Synod ever conceived any attempt to abrogate or limit any of the powers or functions of the Presbytery, and with which, by the laws of the Church, Presbyteries are Ecclesiastically invested, we cannot imagine that the Synod, when it directed an enquiry into the matters contained in Thomas Kidd's memorial, did not to the fullest extent recognise the right of the Presbytery to enquire into the character in which he appeared in this court; into his antecedents in the Church; into his rights to appear in any Church court whatever, we assume that as the Synod did not think itself competent to institute such an enquiry, the memorial was sent down to the Presbytery unshorn of any of its inherent qualities, with all its merits and imperfections untouched, and deserving no adventitious sanctity from its presumptuous appearance in a higher tribunal to which it did not legitimately belong.

If your memorialists are correct in their assumption, they respectfully submit that the Presbytery of London committed a fatal error in allowing Mr. Kydd to be heard on the subject of his complaint before he had justified his own position in the Church, and in treating with indifference the preliminary objections, which were urged with much force by their ministers; to Mr. Kydd's personal status, in summarily disposing of these objections without any enquiry into their foundation and validity, and in disregarding the protest and appeal taken by their minister against the summary disposal of these objections. In this departure from precedent, from express law, from immemo-

rial usage, founded on broad principles of justice, your memorialists see the confusion into which the whole of the question now before the Presbytery has been thrown, and they think they can descry a long series of perplexing difficulties, from which the St. Andrew's congregation may find it impossible to extricate themselves, unless the Presbytery of London should see fit to retrace its steps and pursue a course more consistent with the best interests of the congregation, more conducive to the ends of justice, and more in harmony with the laws and practise of the Church.

That these anticipated evils are by no means imaginary, but that they are positive dangers threatening the very existence of the congregation, must be patent to every one cognisant of the chain of circumstances preceding the introduction of Thomas Kydd's complaint to the Synod. It was presented in the name of a person who, although formerly a member and an elder of St. Andrew's Church, had practically ceased to be a member of the Church so far back as the year 1857, who had voluntarily, and by writing under his own hand, addressed to the Kirk Session, resigned the office of the eldership in 1857, and again in 1858, who had accompanied his resignation of the eldership, with a written announcement of his withdrawal from all connexion with the congregation; who, as well before as since his retirement and separation from the congregation, to avow his determination to allow them no repose, and to relax in no effort to disturb their peace and harmony, until they should abandon their present minister.

Again the memorial complains of matters alleged to have transpired more than four years previous to its presentation, some of which had already been disposed of by a Presbytery visitation, and therefore could not competently be again made the subject of adjudication; it offered no reason or justification for the delay that had taken place in bringing up such matters for investigation. It complained of a deliverance made by the Presbytery in the year 1858, while by the express laws of the Church, appeal in all such cases, must be made immediately, or with all possible despatch, after the deliverance complained of; and, above all, the complaint was presented by a person not only in communion with the Church, but whose moral character and principles are not such as would entitle him to be heard in any Church court.

The memorial so presented was accompanied with a long separate statement of wrongs and grievances, alleged to have been inflicted on the complainant by the Presbytery, by the minister of St. Andrew's Church congregation, and indeed by many individuals, who are not and never were connected with that congregation. And in that supplementary statement reference is made to a pamphlet, printed and circulated by the memorialist himself, and containing a mass of calumnies, criminations, and recriminations against every person whose acquaintance he seems even to have formed, with confessions of his own guilt, which, if they can be credited, even from his own mouth and his own pen, would contain abundant evidence of his absolute unfitness for being recognised as a reputable member of any Christian congregation.

The memorial, which is of no great length, was the only part of his case that was read to the Synod. The supplementary matter, whether written or printed, was not read or even adverted to in the Synod. It was first opened to the Presbytery of London in the month of September last, where it was, for the first time, read and laid on the table. Your memorialists cannot but regard it as unfortunate that these supplementary papers did not receive the consideration of the Synod, for, scandalous and unfounded as the greater

portion of the charges therein contained is, the unchristian temper and disposition of the memorialist are so prominently distinguished that the Synod must have been justified in the summary rejection of the whole case, and thus have saved all the perplexing difficulties into which the Presbytery, as well as the congregation, have since been involved.

But if the Synod was satisfied on the simple reading of Mr. Kydd's short memorial, that the investigation therein prayed was one exclusively appertaining to the duties and functions of the Presbytery, if without reading one sentence of the voluminous supplementary matter, the Synod sent down the whole enquiry to this Presbytery, your memorialists cannot conceive upon what possible grounds of justice this Presbtery could ignore one important feature of that investigation—the personal status of the complainant, which must necessarily follow him into whatever Church Court he may choose to present himself. Had the Synod deemed it proper to enter upon the enquiry at all—had they even proceeded to read the whole of the memorialist's case—had they proposed to themselves any consideration of its merits, the objections to the memorialists' competency as a complainant would undoubtedly have been made, and will any one doubt that, if they had been proved, they would not have been sustained? And because the minister of St. Andrew's Church congregation, feeling himself to be the party principally affected by the charges made, voluntarily and generously waived the objection to the non-appearance of the complainant personally, and expressed his readiness to meet the complainant in any competent tribunal; and thereupon the Synod, recognizing the competency of the Presbytery to make the investigation, at once sent the whole case to them. Can it be contended that either the Synod or the minister of St. Andrew's Church congregation waived all the other objections which the laws of the Church provide against an incompetent complainant? In waiving the first preliminary objection, which might have been successfully taken, the minister of St. Andrew's Church, in effect, said: "I care not in what court my relations to my congregation are investigated. I am prepared to go into that investigation in Synod or in Presbytery; but before the investigation initiated I claim the protection of those laws which the Church has ordained for the safety of its ministers from wicked assaults. If the Synod declines the enquiry and requires that it shall be made by the Presbytery, in the first instance, then I claim all the privileges from the Presbytery which would have been readily conceded by the Synod. I claim the privilege of knowing every assailant, the right to know his worthiness, his fitness to be a contestant; and with these privileges, which would be vouchsafed to me by the Synod, I am prepared to make my defence before the Presbytery."

We contend that the Synod denied none of those privileges to our minister. We contend that their whole proceedings shew that the whole case for and against the complainant was kept entire, and reserved for the investigation and consideration of this Presbytery; and we respectfully submit that the Presbytery of London, at their sitting in September last, committed the first fatal departure from the laws and practice of the Church, by ignoring these rights to our minister, which had been reserved by the Synod.

Nor was the irregularity then committed confined to the ignoring of those privileges which belong to every minister of the Church. Your memorialists as a congregation were deprived of the opportunity of maintaining their own position in the proposed investigation. Had the Presbytery which met at Goderich, in the month of September last, been simply an ordinary Presbytery visitation, held for the purpose of an enquiry into the condition of

St. Andrew's Church, we submit that we would have been entitled as members and adherents to have received the usual citation to attend before the Presbytery, and take a part in the deliberations, or at least to have been invited to give evidence in matters pertaining to the congregation. We submit that we were entitled to have been made parties to the proceedings, and that the court should have been made a perfectly open one, to which all parties interested should have been cited to appear.

But no official intimation was given to the congregation of the meeting of this Presbytery in September last. The congregation was left to hear of the meeting only casually, and it could therefore excite no extraordinary interest. The most important interests of the congregation may be said, in fact, to have been disposed of in the absence of the congregation. And the complaining party, so long separated from the congregation, seems to have been the only one favoured with a courteous intimation from the Presbytery.

Your memorialists are willing to believe that this was an unpremeditated omission; but they cannot the less lament an accident which has proved injurious to our minister, has thrown the proceedings of the Presbytery into confusion, and has involved the congregation in difficulties from which they cannot easily extricate themselves.

Your memorialists have heard with surprise that, in a court so constituted, the subject of the complainant's memorial was opened and considered, and, at the first stage of the Presbytery's proceedings, Thomas Kydd, who had formally and voluntarily, and by a writing under his own hand, resigned the eldership in 1857, who had been formally deposed by the Presbytery of London from the same office in 1858 on the ground of unchristian conduct—had without any enquiry into the merits of his deposition, into his character at the time of his deposition, or into his conduct and Church connexions since his deposition; but upon a simple enquiry into the technical regularity of that deposition, had suddenly and without notice to the congregation, who might have been supposed most deeply interested therein, been restored to all his Church privileges and honours, and invested with all the sacred functions of an Elder in a congregation from which he had been separated for upwards of four years. We have no desire to discuss with this Presbytery their technical objections to the regularity of Mr. Kydd's deposition by a former Presbytery. We are willing to believe that this Presbytery saw in these objections a proper subject for regret at the course taken by the Presbytery in 1858; but we contend that this Presbytery could not, without inflicting a grievous wrong and injury on the congregation, without fatally wounding its peace and contentment. We proceed further than to give expression to that regret—that the Presbytery could not consistently, and with due regard to the well-being and interests of the Church, before they had made all due enquiry into Mr. Kydd's character, principles and habits, not only at the time of his deposition, but since thrust him into the sacred office of an Elder of St. Andrew's Church, not only without the consent of the congregation, but in direct opposition to their wishes, and in defiance of their most sacred feelings. We submit most respectfully that such a proceeding was precipitate and may be productive of the worst consequences to the congregation, and may terminate in its total disruption and extinction.

If the object of the Presbytery in restoring Thomas Kydd to all his former relations to the Church, were solely to place him in the position of a competent complainant, so that thereby his complaint against our minister might be divested of those objections which might otherwise have attached to his status in the church, we apprehend that any bene-

fit which the Presbytery might imagine they were conferring on Mr. Kydd will prove illusory, and that his restoration to nominal honor, will be but barren of enjoyment, inasmuch as the position to which he has been restored by the Presbytery can never be recognized by the congregation. Had the Presbytery satisfied itself with passing an opinion on the technical irregularity of his deposition, we should not have hazarded one word of expostulation or dissent. We should have submitted to the more experienced judgment of this Presbytery in matters of church procedure and practice. But when the Presbytery stepped beyond this line, and followed a course which did violence to all the most cherished feelings of our nature, to the sanctity of our religious principles, and our moral instincts, in the attempt to restore Mr. Kydd to our confidence, and to the sacred relations between a congregation and its elder, it made an attempt in which it is beyond the power of any Presbytery to succeed. The mere discovery of a technical error in Mr. Kydd's deposition, could not restore him to our confidence, and without that confidence, it is impossible to see that his restoration can be productive of benefit either to him or to us.

But whether the action of this Presbytery in restoring Thomas Kydd to the Eldership in St. Andrew's Church congregation, was intended simply as an expression of dissent from the proceedings of a former Presbytery, or whether it offered itself to the Presbytery, as the readiest mode of investing him with a technical status in this Court, and thereby enabling him to proceed with his complaint against our minister. We apprehend that in neither case can it satisfy the laws now in force in the church, as to the reputation of a party making any complaint against a minister of the church. No mere verbal amendment of the technical irregularity of a former Presbytery, can confer on Mr. Kydd permanent exemption from disabilities which may attach to him in respect of his character and conduct as a member of the church, and so far as the enquiry of the Presbytery may be persisted in, we protest against the memorial of Thomas Kydd forming the basis of any deliverance by the Presbytery which can affect our relations to our pastor, before an enquiry has been instituted into the moral and religious standing of Thomas Kydd. The rescinding of the sentence whereby an Elder has been deposed, may proceed on technical or upon moral grounds. In the case of Thomas Kydd, this Presbytery has declared that the deposition was tainted by a technical defect.

Is this Presbytery now prepared to go further, and to declare Thomas Kydd to be a man of blameless life, of unspotted reputation, of unsullied virtue, who was made a martyr to the injustice and malignity of his own congregation, and to the arbitrary procedure of a former Presbytery? Having made this discovery and declaration, is this Presbytery now prepared to insist on the congregation of St. Andrew's church joining Mr. Kydd in christian fellowship at the altar and with the sanctuary? Is this Presbytery prepared by some extraordinary mechanical process, to draw more closely in the case of Thomas Kydd and the congregation, the endearing relation of elder and people? If not, then the rescinding of the sentence of deposition can be attended with no personal benefit to Thomas Kydd. It can clothe him with no new dignity, and invest him with no new virtue,—and if he is not acceptable to the congregation now, more than he was in 1858, the formal act of the Presbytery still leaves him exposed to all those disabilities under which he formerly labored.

Should he attempt to take his seat at the board of the Kirk Session

as an Elder of St. Andrew's church, the same moral disqualifications which unfitted him for that office in 1858, will operate against him in 1861,—he will still be required to establish his general worthiness, his truthfulness, his integrity,—his possession of all those Christian graces which the church positively requires that her elders shall have, and he shall do so before the whole congregation, before he can be allowed to touch the sacred things on the altar.

And will matters be different with Thomas Kydd when he appears as a complainant before any of the church courts? Will the rescinding deliverance of this Presbytery which has given him the nominal status of an Elder, not still have him exposed to every charge of fraud, falsehood, malice, dishonesty, immorality, that could ever have been brought against him? It can have no effect in relieving him from any of those preliminary objections which affect the status of every member of the church who may present any complaint against one of her ministers. It will still be necessary for him to shew in this as well as in every other church court, that he is a person of "good report"—that he is entitled by his merits to the respectful consideration of this court, and it will still be necessary for him to rebut the charges preferred against him,—that he is a breeder of disturbances in the congregation, an habitual mischief maker, a scandal monger, a wicked calumniator of the ministers of Christ, a man whose tendencies and disposition are prone to do acts which will bring discredit on the church.

Holding these views of the laws of the church as applicable to Thomas Kydd's position in this court, your memorialists have beheld with sorrow the indifference of this Presbytery to all the preliminary objections which were urged by their minister, in the case submitted by him at the last meeting of Presbytery held in this place. We are aware that this Presbytery regarded these objections to status as having been theretofore virtually disposed of by the Synod when they received the memorial of Thomas Kydd, and sent the case down to the Presbytery,—but so confident are we that such is an erroneous view of the Synod's proceedings—an erroneous construction of their directions—so confident are we that the Synod in these proceedings and instructions, recognised, or intended to recognise, all the rights, functions and privileges of the Presbytery, as a court of original enquiry and jurisdiction, and that in sending this important case down to this Presbytery, they sent the whole case and not a fragment of it, with full instructions to deal with it as a whole, and with the full weight of their inalienable privileges and functions. And so satisfied are we with the extreme peril to the church or Presbytery, voluntarily and from mistaken views of its position and duties, hazard the surrender of any of their privileges or functions, as a court having original jurisdiction in such matters—that we now freely and without any reserve, adopt every word and argument urged by our minister in his case, now on the table of the Presbytery, as embodying our own clear and decided opinion on what we think ought to have been the position of the Presbytery in this enquiry, and as containing the substance of our own objections to Mr. Kydd's status in this court, should the Presbytery deem it proper to resume the enquiry.

Your memorialists, as a congregation, have been asked, as a congregation, to concur in the proceedings of the Presbytery, at their meeting in September last, but believing as they do, that these proceedings were entirely irregular, that the complainant ought to have been compelled to

remove his own disabilities before he could utter one word or offer any evidence in support of his memorial, believing that the Presbytery, by surrendering its own exclusive privileges, as a court of enquiry, has exposed our minister, unnecessarily to improper hardships, disadvantages, and to positive injustice, and that such exposure, to injustice operated so sensitively on his mind as to constrain him to the tender of his resignation, which, with the privilege of a trial, conducted in accordance with the laws of the Church, and a fair and impartial hearing, he might have withheld, we unhesitatingly decline to give our concurrence in a resignation extorted under circumstances so unprecedented, lest that concurrence should be construed into a homologation of proceedings which we believe to have been irregular from the beginning. We cannot be made to believe that that resignation was the voluntary act of our minister, we cannot believe that, without any previous consultation with us, without the expression of any desire on the part of his present congregation, and without any existing dissatisfaction or estrangement in fact, of the members of his congregation, he would voluntarily and without previous intimation to them, have suddenly severed the sacred ties which have bound him and them together for nearly fourteen years. And we now respectfully but firmly warn this Presbytery of the danger to which they will expose the congregation, should the Presbytery give any countenance to the spiteful and malevolent acts of disappointed individuals, who, finding their own connexion with the congregation for ever severed ignominiously to themselves, are unable to rest satisfied without wicked attempts to gratify their malevolent feelings, with the complete disruption of the present congregation, we would therefore earnestly implore this Presbytery to re-consider the propriety of the course that has been taken in the matter of Thomas Kydd's memorial. To re-consider the preliminary objections urged in his case by our minister, and if this Presbytery be satisfied that the Synod did not withhold any of the privileges conferred on every Presbytery by the laws of the Church, then to give that weight and potency to these objections to which their intrinsic merits entitle them, and which the justice and importance of this case demand. In so far as these objections were embodied in the case of our minister, laid on the table of this Presbytery, we desire now to be allowed to make that case our own; we pray that these objections may be again read to this court as forming a part of this memorial, and we ask for judgment and your deliverance upon both as forming inseparable portions of the same case.

We do not appear before this court as a restless and disappointed faction in the congregation, or as any miserable minority, whose separation from the congregation might be productive of benefit. We appear at your bar with the signatures of two hundred and thirty united members of the congregation, adhibited to the accompanying statement, in which we offer an abstract of our claims, and of the reasons for which we respectfully decline giving our sanction to or concurrence in the recent proceedings of the Presbytery. These reasons we now venture briefly to sum up.

1. Because the memorial, purporting to be a statement of Thomas Kydd's grievances, ought not to have been received by the Presbytery without a preliminary enquiry being instituted as to whether it had been presented in accordance with the laws of the Church.

The document referred to, which was supplementary to the memorial, was not read or opened by the Synod, its contents were unknown to the

Synod; and the Synod could therefore have pronounced no deliverance in regard to it.

It was sent down with the memorial itself to the Presbytery with the most ample power to them to examine its validity, its competency, and its regularity. The Synod entered upon no discussion of its merits, its forms, or its manners. They pronounced no judgment upon it in any respect, but sent it down unopened to a Court fully competent and authorised properly to dispose of it. Its whole merits and demerits, with those of the memorial, ought therefore to have been considered and adjudicated upon according to the laws of the Church, and ought not to have been invested with false dignities, which the Synod by no action of theirs invested it with.

2. Because Thomas Kydd was heard by the Presbytery in support of this document, as well as of his memorial, without any preliminary enquiry as to his status in the Church as to whether he was a fit and proper person to appear at your bar; and because he was so heard against the protest of the Minister of St. Andrew's Church, founded on the objection that he was a person of immoral character, whose connection with the congregation had been severed for many years, and under circumstances of a disreputable character. And because he was so heard, notwithstanding that ample and sufficient proof was tendered of his unfitness to appear in any Church Court, of his having long since ceased to be a member of the congregation, by his own will and act, and under his own hand, and of his having absented himself from Ordinances since the month of July, 1837.

3. Because the removal, by the Presbytery, in 1861, of the sentence of deposition from the Eldership passed upon Thomas Kydd and Duncan McLaren in 1858, and the continuance of the same sentence as against James Leys and John Nairn was irregular and anomalous, and in violation of the laws of the Church, as sanctioned and construed by the highest authorities in ecclesiastical law, inasmuch as the reason for the restoration of Thomas Kydd and Duncan McLaren prevailed with as much force if they had any force at all, for the restoration of James Leys and John Nairn, who are rendered less objectionable on account of moral character, fitness and acceptability, and inasmuch as the said sentence of deposition as against all the persons named, having been confirmed by the Synod in their attestation of the minutes of the Presbytery, it was *ultra vires* of the Presbytery to rescind a sentence so sanctioned and confirmed.

4. Because that sentence of deposition was removed without any enquiry having been instituted into the relations of Thomas Kydd and Duncan McLaren, with the Church, since said deposition was pronounced, without any enquiry into their religious principles, moral habits, or conduct, either before or since their said deposition, without any enquiry into their acceptableness as elders, by the present congregation, without any official and regular notice to the congregation of the course intended by the Presbytery to be pursued, without any opportunity of the congregation being heard in the matters of rescinding the said deposition, and therefore, without due consideration of the disastrous consequences to the congregation, should these individuals be distastefully thrust upon them as elders.

5. Because the disagreements and estrangements alleged to exist in the congregation are matters of the past, and no longer exist, and were brought under the notice of the Presbytery by persons no longer connected with the congregation, whose efforts for years, when they were in Church

communions, were to brood mischief and keep alive dissension. Such disagreements and estrangements having ceased to perate almost immediately after the retirement of these disaffected individuals from the Church; and, although the recent irregular action of the Presbytery has given to these disagreements and estrangements the aspect of existing evils, and then forced upon our minister the apparent necessity for retiring from his charge, yet the present harmony and increasing strength of the congregation is susceptible of direct proof; and your memorialists believe that were they to concur in the resignation of their minister, and the other action of the Presbytery, such concurrence would speedily have the effect of shutting the door of St. Andrew's Church, and would be the signal of their dissolution as a congregation.

Under the whole circumstances, your memorialists humbly pray that this Presbytery may so reconsider their proceedings in the matter of Thomas Kidd's memorial, and the resignation of their minister, as to have the effect of averting a calamity which the whole Church may have reason to deplore. In offering their remonstrance to this Reverend court, on the consequences of the action recently taken by them, we may have been betrayed by our excited feelings into expressions too warm for supplicants at your bar, but we trust that we may not be charged with intentional disrespect, or with any desire to give any offence to the court.

We have felt it proper to appear before you in the attitude of firmness, and with the language of warning and expostulation, but our hearts have been at the same time filled with reverential and dutiful obligations to this as one of the high courts of the church, placed immediately over us, and with prayer that the giver of all good, may so direct your counsel and proceedings, and that your future action may avert the calamities which now threaten this congregation.

On the 14th September Mr. MacKid received the following letter:

LONDON, Sept. 13th, 1861.

MY DEAR MACKID.—I am afraid the Presbytery made an omission in accepting your resignation last Friday, by not summoning the congregation to appear in their own interest before it was accepted. The circumstances were indeed peculiar, the congregation being under examination at the very time. But it may be well to rectify every mistake, and after consulting the Moderator and others of the Presbytery, I have to request that you will call at the close of the service on Sabbath first, a public meeting of the congregation, in order to obtain their concurrence in the resignation; and also, that they may appoint a committee to make arrangements for the supply of the pulpit—the meeting to be on which ever night you deem most suitable. Be so good as to request a full attendance.

Instead of obeying the above request, Mr. MacKid read the letter to the congregation, and stated that if those present chose they might remain after the benediction was pronounced and appoint a day, or take any other step they might deem advisable.—

They did remain and appointed a meeting to take place on Saturday, 21st September, of which the following is the minute:

"At a meeting held in St. Andrew's Church, in the Town of Goderich, C. W., this 21st day of September, 1861, it was moved by Mr. Kay and carried unanimously, that Sheriff Macdonald be chairman. It was moved by Mr. W. Kay, and seconded by Mr. Pentland, that Mr. Gooding be appointed Secretary.—Carried unanimously.

Sheriff Macdonald read an extract of proceedings of Presbytery at Goderich, on 6th September, 1861.

Respecting the memorial of Thomas Kydd and the action of the Presbytery thereon, a letter from Mr. Nicol to Mr. Macdonald was read.

It was moved by Mr. W. Young and seconded by Mr. John Buchanan, That we do not concur in the resignation of Rev. Alexander MacKid and the action of the Presbytery thereon.

Moved in amendment by Mr. William Kay, and seconded by Mr. William Kerr, That whereas dissatisfaction and estrangements appear to exist among the adherents of the Church in this locality—the cause of which, however, the minister, the Reverend Alexander MacKid cannot impute to himself, he has nevertheless judged it expedient to resign the charge thereof—that this congregation, called for the purpose, acquiesce in the step taken by the minister and approved by the Presbytery, for the purpose of restoring harmony, and hereby appoint a committee to act with the Presbytery in obtaining supplies for the vacant pulpit.

On the amendment and motion being put by the chairman, the motion was carried by a large majority—about 105 for motion, and 5 for amendment.

A protest was then put in by Mr. Kydd, in the following words:

"I hereby protest and appeal to the Presbytery against the resolution now passed, for reasons to be given in within the legal time. Goderich, 21st Sept., 1861. S'd. THOMAS KYDD.

It was then moved by Mr. Robert Little, and seconded by Mr. Heatland, That Sheriff Macdonald be nominated to wait upon the Rev. Mr. Gibson, and acquaint him of the action taken by this meeting, and to caution him against declaring the church vacant for the present; and that a minute of the whole proceedings at this meeting be forwarded without delay to the Rev. Mr. Nicol, Clerk of the Presbytery. Carried unanimously. The meeting then adjourned.

The following circular was issued by Moderator of Presbytery: The Manse, East Williams, Sept. 26, 1861. Rev. Sir,—A

requisition having been presented to me that I should call a *pro re nata* meeting of Presbytery of London, to take into consideration the action of the congregation of Goderich, at its meeting on the 21st inst., and to receive the report of the Deputation to Stratford, I beg to call a meeting of the Presbytery of London for these purposes, to be held at London on Friday the 4th October, at noon.

I am, yours truly, sd. ROBT STEVENSON, Mod'r.

On 5th October Sheriff Macdonald received the following communication from the Rev. Mr. Nicol:

London, C.W., Oct. 4th. My Dear Sir,—The Presbytery of London at its meeting to day have requested the Moderator to call a *pro re nata* meeting of the Presbytery of Goderich on Tuesday the 13th inst., at half-past 6, p. m., for the purpose of conferring with the congregation of Goderich. The Presbytery have appointed either Mr. James McEwen or myself to preach at Goderich on Sabbath the 13th and to cite the congregation to appear before the Presbytery in their own interest, on the matter of Mr. MacKid's resignation. Will you be kind enough to cause notice to be given that there will be service on that day.

I am, my dear sir, yours very truly, sd. FRANCIS NICOL.

To Sheriff Macdonald.

The following circular was issued by Moderator of Presbytery: The Manse, East Williams, Oct. 7, 1861. Rev. Sir,—At the request of the meeting of Presbytery held in London, on the 4th inst., I beg to call a *pro re nata* meeting of the Presbytery of London at Goderich, on Tuesday the 22nd inst., at half-past six o'clock, p. m., to confer with the congregation at Goderich on the subject of the Rev. Alexander McKid's resignation, and if necessary to proceed with the case of Mr. Thomas Kydd's memorial and complaint, as enjoined by the Synod. Also to consider the Report of the Deputation to Stratford. A full attendance is particularly requested. I am, yours truly,

ROBERT STEVENSON, Mod'r.

On Sunday, 30th Oct., the Rev. Mr. Nicol preached in Goderich, and served an edict, citing the congregation to appear before the Presbytery on Wednesday, 23rd October at 10, a. m.

Attention is particularly requested to the discrepancy in the dates, as above stated, as well as the necessity of an investigation how the meeting of Presbytery was altered from the date fixed on in Presbytery to the date of the Moderator's circular.

At Goderich and within the Church there, the 22nd Oct., 1861 —which day the Presbytery of London met, in consequence of a circular letter transmitted by the Moderator to the members, the tenor of whereof follows,—see above—and were constituted with prayer. Sederunt.

The conduct of the Moderator in calling the meeting for the objects stated in the circular was approved of. The clerk then read the report of the Stratford deputation which was received and approved of.

The Presbytery adjourned until the following morning at ten o'clock—closed with prayer.

At Goderich, and within the church there, Oct. 23rd., 1861, which day the Presbytery of London met according to adjournment and was constituted with prayer. Sederunt.

The minutes of the previous meeting were read. The clerk stated that in compliance with the order of Presbytery, he had preached in Goderich on Sabbath the 13th inst., and cited the congregation to appear that day, before the Presbytery on their own interest, in reference to the "PROPOSED" resignation of Mr. Mackid. The Presbytery agreed that the resignation of Mr. Mackid should stand as not accepted in consequence of the irregularity of not summoning the congregation before the resignation was accepted. The congregation of Goderich being present in considerable number; the minutes of the different meetings of the Presbytery on the subject of Mr. Thomas Kydd's complaint were read for the information of the congregation. Mr. Macara, on behalf of the congregation presented a memorial signed by 266 members and adherents and read the same. It was agreed that the memorial should be received. Mr. Wm. Young stated that the memorial was a fair expression of the feelings and opinions of the congregation. Mr. A. Young concurred in that opinion. A show of hands having been taken, it turned out general in favor of the memorial, only one having been held up against it,—*Mr. Thomas Kydd.*—Mr. Thomas Kydd protested and appealed against the memorial being received, promising to give in reasons in due time. Took instruments in the clerk's hands and craved extracts, which were granted. Mr. Thomas Kydd also stated his willingness to go into proof if it were required, of the allegations contained in his memorial and complaint.

After consideration, it was moved by Mr. Rannie, and seconded by Mr. Bell, and unanimously agreed to,—That the Presbytery having heard the congregation of St. Andrew's Church, Goderich, express their decided disapproval of Mr. Mackid's resignation, was received by the Presbytery and Commissioners of Synod, acting conjointly, as a settlement of the difficulties in which Mr. Mackid and his congregation were involved, resolve, that in consequence of the absence of the Synod's Commission, the resignation of Mr. Mackid be referred to the Synod for their adjudication. Resolved also, that the whole matter of Mr. Thomas Kydd's

memorial and complaint be referred back to the Synod. The Presbytery deeming it inexpedient in the face of increasing difficulties to proceed farther with its consideration. Closed with prayer.

Case for the Rev. Alexander MacKil, in the matter of the Memorial by Thomas Kydd, of Goderich, read to the Synod of the Presbyterium Church of Canada, in Connexion with the Established Church of Scotland, at their Session held at Quebec, in May, 1861:

Before proceeding with the enquiry enjoined upon the Presbytery by the Synod, in regard to the matter contained in the memorial, it seems pertinent to the whole question that may arise, and I may be allowed to suggest that it may be incumbent on this Court to consider carefully the position of the several parties, their relations to each other, and the duties which the Presbytery is called upon to perform. By the parties, I mean the memorialist and the several persons complained against; and by the duties of the Presbytery, I respectfully refer to its power and jurisdiction in reference to the specific subjects of the enquiry it is called upon to make.

Having been present at the last session of the Synod held at Quebec in the month of May, and having there heard Mr. Kydd's memorial read to the Synod, I cannot conceal from myself the fact, that although the memorialist has charged numerous parties with improper and unbecoming conduct, as members of the Church, yet, that he has carefully selected and singled me as the principal object of his attack. And, although I cannot regard myself as at this moment placed on my trial as on a libel by the Presbytery, founded on a preliminary investigation of the truth of, or even as the sole object against whom a libel may be directed, inasmuch as the memorial contains a variety of unconnected charges made not only against myself individually, but against many individuals unconnected with each other, unless as members of the same church—but also against this Presbytery and the Kirk Session—and inasmuch as no copy of the memorial has been served upon me, with a list of complainant's witnesses, according to the laws and practice of the Church where a libel has been found, yet, as the memorial, if any considerable portion of it be proved to be true may form the foundation for a libel by the Presbytery, against myself individually, I consider that I am justified in viewing the present enquiry as one for the ascertainment of this preliminary question in particular—Whether there is a *probabilis causa* for the Presbytery, by their libel, charging me

as a minister of this Church with acts unbecoming my relation to the congregation at Goderich, whose pastor I am.

If I have formed a correct estimate of my own position, in reference to this enquiry, then I consider that I am entitled to a preliminary examination into the position of the memorialist in that Church of which I am a minister, into the character and nature of the matters of which he complains, and into the power and duties of the court before which I have been placed, under the direction and injunctions of the Synod, and upon their examination I shall now enter with as much liberty as the nature of the enquiry will permit.

In his memorial, Thomas Kydd represents himself to be a member of the Presbyterian Church of Canada, residing at Goderich, and in that character he charges me as the minister of St. Andrew's Church, at that place, with numerous acts of misconduct, which he brings before the Synod with the view of my punishment, and possibly of my deposition. The memorialist, however, does not confine himself to charges against myself, but conjoins them with several serious complaints of the conduct of the Trustees, and of other members of the congregation, of the Kirk Session, and even of the Presbytery. In ordinary circumstances, had the complaint been directed against myself, individually, the memorialist could not competently have brought it before the Synod in its present shape, for in such cases the Synod is not a court of original enquiry or jurisdiction, but of reviews, and could only entertain the memorial by way of appeal from a deliverance of the Presbytery. It was necessary, therefore, for the memorialist, before he could obtain a *locus standi* before the Synod, to conjoin with his complaint against myself, individually, certain charges of misconduct and oppression by the inferior jurisdictions which have, as he alleges, deprived him of all remedy against me, in proceeding before the Presbytery, and of all means of obtaining redress, except through a complaint made directly to the Synod, whom he calls upon to relieve him from the oppressive proceedings of this Presbytery, which he charges with an attempt to stifle enquiry, and so to obstruct the course of justice. In these circumstances, the Synod, at their late Session, felt themselves called upon to entertain the memorial to some extent, as a complaint against an inferior judicatory, and to proceed thereon in the exercise of its own proper functions, and within the defined limits of its own powers and responsibilities, and as a court of ultimate resort, not as a court having original jurisdiction in such matters, but as the Supreme court of the Church in this Province, endowed with power and authority over its inferior jurisdiction, to enforce the laws of the Church in all its famifications, and to see that the course of

justice was allowed to run smooth through the inferior courts within its jurisdiction. The memorialist indeed did not appear personally before the Synod, as by the laws of the Church he was strictly bound to do, to support and prove the matters contained in his memorial, and to substantiate the charges he has brought before the Synod, against myself and others; but, as I felt then, and still feel, exceedingly desirous that Mr. Kydd should be offered every facility (consistent with decorum and with those laws which the Church has ordained, and constantly enforces for its good government,) for substantiating the charges made by him to the Synod, I at once, and voluntarily, waived every objection that could be taken to the non-appearance of the complainant before the Synod in support of his memorial, submitted to such an investigation of the subject matters of the complaint, as the Synod should in its wisdom direct.

The Synod accordingly adopted the course most befitting its dignity and power, in such extraordinary circumstances. It did not assume to itself the authority and power of a court of original jurisdiction to enquire into the characters and conduct of a minister of the Church, but it directed the Presbytery of London as the court competent and authorized by the laws of the Church, to adjudicate on such matters, to make the necessary enquiries which it would have been bound to do had the memorial been, in the first instance, submitted to the Presbytery itself. But, inasmuch as this Presbytery is also charged by the memorial with a design to stifle enquiry, and to obstruct the course of justice, the Synod at the same time issued a commission, directed to three gentlemen now present, who were enjoined to advise with the Presbytery of London in their investigations, and to act as their assessors in adjudicating on the subject matters of the complaint.

I have thus respectfully explained my own conceptions of the position of the court towards the parties complaining and complained against, not with any intention of restricting or limiting the powers of the Presbytery, and of this commission, but with the view of so defining that position and those powers that the duties incumbent on myself, in the place I now occupy, may be adequately performed in relation as well to my opponent as to the court itself, and that I may be enabled the more perfectly to confine myself to the proper subjects of enquiry before the court.

I think, therefore, that I am warranted in considering this Presbytery as a court of original jurisdiction, sitting to hear and adjudicate on certain matters of complaint now brought before them, as if for the first time, which matters of complaint and adjudication they are *not called upon to report* in whole or in part to the Synod, as if on a reference from them to this Presbytery, or under a com-

mission from the Synod, directed to this Presbytery, but to advise as a Presbytery holding original jurisdiction in such matters, and with full powers of adjudication, with certain commissioners appointed expressly by the Synod, as the assessors of the Presbytery, and with such advice and assistance to proceed to judgment according to the laws of the Church, throughout their whole investigation, and in their final determination of the matters so submitted to them.

This I apprehend to be the fair and common sense construction that must be given to the acts and proceedings of the Synod in relation to this matter, at their late Session, and to the words of the commission issued by them. The commissioners are enjoined to advise with the Presbytery of London in regard to the contents of the memorial; and the Presbytery are required *not to report their proceedings* to the Synod for final judgment of the Synod, but to give heed to such advice as the commissioners from the Synod may give; and the Presbytery is then required to proceed *themselves* to judgment according to the laws of the Church. In this there is no limitation of the judicial powers inherent in Presbyteries, and approved of by the laws of the Church.

Standing then upon the laws and practise of the Church, I hear their memorial read to the Presbytery of London, as a complaint made as if for the first time in this court of original jurisdiction, and competent to take cognisance of the matters contained therein, and as the *only* court competent, except by way of review, as appeal, to determine the causes and nature of the complaints or preferred, but dignified with all that superior learning, experience and wisdom which resides in and peculiarly distinguishes the Supreme court of our Church, now so honorably represented by this commission.

No copy of the memorial having been served upon me it would be impossible, owing to the multiplicity of the charges that have been preferred, the numerous parties who have been associated with me in the complaint, the long series of unconnected charges, and insinuations that have been preferred, the jumbling up of persons, dates, circumstances, details and inferences, otherwise unconnected, that have been confusedly thrown together, and the rambling course taken by the memorialist in preparing his charge, to attempt any specific answers in detail to the disjointed complaint. Nor perhaps, would a specific or consecutive answer to each charge be necessary at this stage of the proceedings, for, standing as I now do, under the protection of the laws of the Church, and sustained as I feel myself to be by the learning, the justice, and the characteristic construction of this venerable court, whose duty is to administer those laws faithfully and with strict regard for the interests of the Church itself,

as well as of its members, individually, I feel myself constrained reluctantly, but necessarily, to address myself to a few preliminary enquiries, the result of which, I am persuaded, must have a material bearing on your deliberations, and an important influence on the deliverance which it may seem meet for you to make. And the first of these enquiries I propose to make, is, as to the personal *status* of the memorialist in the Church, from whose courts he seeks relief, the character in which he now applies for redress for alleged wrongs, and the right by which he can maintain a complaint against any minister, or member of the Church in this court? As these preliminary enquiries will, I apprehend, result in exhibiting and proving beyond the shadow of a doubt the incompetency of the memorialist to make any complaint at all in the court, the impolicy and danger of allowing the memorialist the latitude he claims of making reckless and random charges against members of this Church, when he is not himself exposed to the risk of punishment, should these charges be proved to be malicious and unfounded, and the necessity there is of this court refusing in *line* to receive this memorial. I shall now address myself to certain specific objections to the reception of this memorial by the Presbytery.

By the laws and practise of the Church courts, as fully established and invariably admitted, as well as by the general policy and necessity of the case, no complaint can be preferred against a minister of the Church of Scotland, by any one who is not at present a member of that Church, or who is not entitled to membership; and all complaints made against any minister of the Church must be commenced by process, before the Presbytery, within whose bounds such minister and complainant are.

This practice is so obviously founded on right and principle, and also necessary for the good government and regularity of all Church Courts, that I need not enforce its abstract justice and expediency. The reception of complaints, made by parties unconnected with the Church, or not subject to its discipline, would be subversive of all order, and would lead to irretrievable confusion, in the attempt to adjudicate on matters which are proper subjects for adjudication by other tribunals, as must necessarily lower the Church Courts in public estimation by the necessary failure of their authority to execute their own process, and carry out and enforce their own judgments.

Under this objection, to the reception of the present memorial, I now charge, and am prepared to prove, that Mr. Kydd ceased to be a member of St. Andrew's Church congregation at Goderich as far back as the month of September, 1857; that he himself then attempted to retire from his connection with that

congregation with all his Church privileges; but that he was formally deposed by the Presbytery of London from the Eldership of that congregation in the month of May, 1858, and that he had not since been restored, nor has he made any attempt to be restored to Church privileges; that he is not now a member of St. Andrew's Church congregation at Goderich; that he is not now in communion with, and has no connection with that congregation; and that since the said month of September, 1857, he has had no connection with any congregation in connection with the Presbyterian Church of Scotland in Canada.

If such be the position of the memorialist in relation to the Church of Scotland in this Province, I contend that he is disqualified from appearing as a complainant before any of the Church judicatories; that he is not amenable to the laws of the Church, and therefore he has not here a *locum standi in judicio*.

Previous to the year 1857, Mr. Kydd had acted as the Treasurer of the St. Andrew's Church congregation at Goderich, and as an Elder duly ordained over that congregation. Until the month of July, in that year, he had attended the meetings of the Kirk Session, although for some time previously his attendance at Church had been very irregular, and on the Sacramental occasion in the month of January, 1857, he had altogether abstained from communicating, and had not partaken in the ordinance of the Church. In the month of August, 1857, he addressed a written document to "the Members of Session of St. Andrew's Church, Goderich," which document was laid before the Session, and was found to contain certain charges against myself as minister, but the charges were couched in terms so disrespectful and improper, and the manner in which the members of Session were addressed, were considered so irregular and designedly offensive, that the document was not received, and its non-reception, with the grounds thereof, were communicated to Mr. Kydd. On the 2nd of September, 1857, he presented a memorial to the Presbytery of London, setting forth the then unsatisfactory state of the congregation, as alleged by him, and preferring certain charges against myself as their minister. Mr. Kydd did not appear personally before the Presbytery in support of the memorial, but the Presbytery appointed a visitation of the congregation at Goderich, to be held in the month of October in the same year, for the purpose of enquiring into the matters contained in the memorial. The visitation accordingly took place, and after an adjournment till the month of November, the Presbytery, to make their final deliverance, in which Mr. Kydd was found guilty of malice and censured.

It having appeared from the admission contained in the memorial to which I have referred, that Mr. Kydd had wilfully and continuously absented himself from Church Ordinance, the Kirk Session, in the month of March, 1858, considered it to be their duty to report such violation of his ordination vow, to the Presbytery; and at their meeting held on the 3rd day of the same month the Presbytery having taken the report into consideration; they instructed the Moderator of Session to call a meeting of the session on a given day, and an order to test Mr. Kydd's contumacy, they directed the Moderator of Session to intimate such meeting in due form to Mr. Kydd, and in case of his failure to attend the meeting, to report the same to the Presbytery.

Such notice of a meeting to be held on 18th March having been duly transmitted to Mr. Kydd, he failed to attend, but the Moderator placed on the table a sealed letter addressed as follows:—"Mr. Alexander MacKid, St. Andrew's Church, Goderich," which address the Moderator stated he believed to be in the handwriting of Mr. Kydd; and the envelope having been therefore opened by the Session, it was found to contain the written notice of the meeting of Session, which the Moderator had been instructed to transmit to Mr. Kydd, but without any observation made by Mr. Kydd thereon, and without assigning any reason or excuse for his non-attendance at the meeting of Session. At the same meeting of the Session, held on 18th of March, Mr. Haldane, a member of the Session, produced and laid on the table a letter subscribed by Mr. Kydd, and transmitted to him (Mr. Haldane), which letter was in the following terms:—

"To the Moderator and Members of the Kirk Session of St. Andrew's Church, Goderich. Goderich, 16th March, 1858. Gentlemen,—On the 12th day of August last, I in effect tendered you my withdrawal from your board and congregation during the incumbency of Mr. MacKid, but this was returned for what appeared to me a very silly and stupid reason, viz: that it was not properly addressed. I now therefore repeat my resignation as above and have been careful to quote the words of your clerk, in addressing you at this time, in order that nothing may prevent its being entered on your minutes along with whatever action it may be your pleasure with regard to it. Signed. Thomas Kydd.

The Kirk Session having reported the above letter as well as the envelope containing the notice of the meeting that had been sent to Mr. Kydd, the Presbytery at their next meeting which was held in Stratford, on 13th May, 1858, unanimously pronounced the following deliverance. That the Presbytery viewing the malice

and disrespect exhibited against the Rev. Alex'r MacKie, not only as moderators of Session, but also as a minister of the Gospel by Thomas Kydd, as well as the contumacious conduct of Thomas Kydd, Duncan McLaren, James Leys, and John Nairn, elders, as contrary to all Church government and Christian communion, declare that the above named persons, Thomas Kydd, Duncan McLaren, James Leys, and John Nairn, elders, be deposed from the eldership, and deprived of all Church privileges, and the Presbytery then did, and now declare the said Thomas Kydd, Duncan McLaren, James Leys and John Nairn deposed from the eldership and deprived of all Church privileges; and that the same be intimated from the pulpits of the ministers within the bounds of the Presbytery, and that an excerpt of this minute be engrossed in the records of the Kirk Session of St. Andrew's Church, Goderich.

Such was Mr. Kydd's position and character in the St. Andrew's church at Goderich and in the Presbytery of London on 13th May, 1858, and such they have remained to this day, without change or modification. He has since sought no communion with the Church of Scotland, and at this moment, holds no connexion with that or with any other church of Christ. But in the memorial transmitted to the Synod, and now before the Presbytery of London—he complains *inter alia*, that he was unjustly deposed by the Presbytery of London, from his Eldership in St. Andrew's Church, Goderich.

If that deposition was unjust, and the present memorial be presented to the Synod by way of appeal from the deliverance of the Presbytery of London, how can he evade the voluntary resignation of his Eldership, and his voluntary withdrawal from the church, contained in his letters to the Kirk Session, dated 16th March, 1858, in which he distinctly and voluntarily withdraws from all connection with the congregation? If that letter be allowed to stand, any enquiry into the justice of his deposition would appear to be superfluous and uncalled for, and while that resignation remains in retention, he is not in a position to make any charge against the minister of the congregation from which he had declared his withdrawal and separation. But assuming for a moment that he could now withdraw that resignation and place himself in the position of a party unjustly dealt with and persecuted by the Presbytery of London, and that the present memorial is offered to the Synod by way of appeal from the deliverance of the Presbytery,—it is obnoxious to many grounds of objections which must defeat its reception, either by the Synod or by the Presbytery, and some of these objections I shall now present to notice.

1st. The memorial contains none of the elements, and none of

the formalities of an appeal from a deliverance of the Presbytery, declaring his deposition. Were such its object and character, it ought to have set forth the deliverance itself and the grounds of objection to that deliverance. But it partakes of no such character, either in form, matter, or spirit,—on the contrary, it is a discursive and rambling attempt to heap calumny and abuse on the Kirk Session of St. Andrew's Church—on the managers—on the members of Presbytery—on my own character as a minister, and on persons and circumstances having no connexion with the church and apparently indeed, on every individual whether in the church or out of it, against whom, Mr. Kydd at any period of his long and eventful life, may have thought it proper to have conceived malice, and upon whom he might work mischief. If such a document can be regarded as an appeal from a deliverance of the Presbytery of London, finding the memorialist deposed from his eldership, then all the forms and procedure of the church, sanctified by its traditions, and by the learning and wisdom and experience of its legislators and jurists—lay and clerical—may be set aside as meaningless and unprofitable, and an appeal may well be considered as the vehicle for reckless scandal and unmitigated malignity, from which neither church courts nor their Christian members, can have any protection. The policy and necessity for preserving some form in which such an appeal from the deliverance of the Presbytery must be made, are so very obvious, that it would be offering an insult to the reason and good feeling of this court to say more on the subject, and the only excuse for a departure from the ordinary form, although it offers none for wholesale abuse, would be in the circumstance alleged by the memorialist, that he has been denied extracts from the proceedings of the Presbytery. But if this be the true ground of his appeal to the Synod—and were it true the ground would certainly be sufficient—why is the memorial not directed to this object? To effect a purpose so laudable, is it necessary or becoming—is it consistent with decorum and with that respect with which every church court should be approached, to conjoin with this complaint—praiseworthy if true—a tirade of abuse, calumny and malevolent expressions, directed against every court, person and thing, with which Mr. Kydd, in the course of a long and restless life may have had occasion to find fault? And if such be the true ground of his appeal—the evidence must be at hand—the matter is simple and will easily be disposed of, and Mr. Kydd will then have an opportunity of appealing to the Synod on the justice or equity of his deposition; but in any enquiry before this or any other court, it is necessary that the true issues be distinctly and separately framed, so that parties complained against, know the

true grounds upon which they are attacked, and so prepare for their defence.

2nd. If this memorial can be received by way of an appeal to the Synod, whether from the delinquency of the Synod, or from its refusal to give extracts from its proceedings, it comes too late. Nothing is more clearly laid down in the practise of our courts, than that an appeal shall be made immediately on the judgment being pronounced, but the deliverance complained against was made so far back as the 13th May, 1858, and in May, 1861, three years from the date of the deliverance, Mr. Kydd appeals from that deliverance to the Synod, and if the appeal is founded on the refusal of the Presbytery to give extracts, that refusal must have been given so shortly after the date of the deliverance, that it will scarcely lessen the delay or mitigate the laches of the complaint.

But the memorialist has, I apprehend other objects in view than a simple appeal to the Synod from a deliverance of the Presbytery. I cannot conceal from myself—for the memorialist himself scarcely affects to disguise it—that the real object is to bring such charges against my character, as may lead to my deposition from the ministry; and as these charges could only legitimately be brought in—the first instance by way of complaint to the Presbytery, as the court of competent jurisdiction, and THE ONLY court of original jurisdiction in such matters, he has deemed it politic, in order to get rid of any objection to the regularity of the introduction of his complaint to the Synod, to conjoin these charges against myself, with a direct complaint against the Presbytery itself, and so to bring his whole case against me before the Synod, under cover of an appeal from the deliverance of the Presbytery. Irregular and highly objectionable, as the course may be, as a flagrant deviation from the constitution and laws of the Church, made with highly questionable and suspicious motives, I have no personal reluctance to meet the memorialist on the grounds he has himself chosen; but as a Christian minister, and as a member of this court, I claim the protection of these wise laws, and that matured experience and procedure which the Church has, from the earliest times, ordained, shall be the high guarantee that her courts can offer for their uprightness, and for the pure administration of justice. From the court I claim the protection of those safeguards which the Church has, from time immemorial, thrown around her ministers as a protection from private malice, from reckless and unfounded calumny, from uncharitable hatred, from busy intermeddling, and from restless malevolence. I claim that, in the first instance, my opponent shall declare the character in which he prefers these charges against a minister of the Church; that he shall substantiate his connexion with the Church; his rights to Church privileges; his claims to have any investigation at all into my character, as a minister; and his rights, as a member of the Church, to have any adjudication at all in the charges he now brings. Let him come to the disclosure and proof of his own position in the Church; but before he can have such an adjudication, as he now demands, I contend that he must first have a reversal of the sentence of deposition that has been passed upon him. He is bound either to rid himself of the objection to his own voluntary resignation, or to show that the deliver-

ance of the Presbytery, by which he now labors under the stigma of deposition, was unjust and unmerited. When he has purged his position in the Church, and his appearance here, of these fatal objections to his being heard at all, I shall then, before I meet him hand in hand, on the whole merits of his case, insist on the other preliminary objections to his memorial, which appears to me to be equally fatal to its reception. And to these other objections I shall now proceed to direct the attention of the court.

The first of these second class of preliminary objections, which I now take, is, that by the laws and practise of the Church courts, no enquiry into the conduct of a minister can be instituted, in reference to matters or circumstances alleged to have transpired more than one year preceding the date of the complaint.

Now it will be observed that there is not throughout the memorial a single matter or thing charged against me which did not occur before the Presbyterial visitation, which took place in the month of November, 1857, and upon which the Presbytery have already made their deliverance. The wide range of scandals, insinuations and assertions, which the memorialist has taken, is therefore impertinent to the matters at issue, and can find no place in your investigations. They would have all been quieted by this visitation which was intended to cover all the complaints and dissatisfaction in the congregation which were then alleged to exist, even although the laws had not expressly laid it down, that all enquiry was incompetent as to matters alleged to have transpired one year before the complaint. And it is impossible to question the wisdom of the law itself, by which we are all bound. Were a disaffected person at any time to be allowed to travel back into the obscurity of past years for complaints against his minister, when facts and circumstances had become obscured in lapse of time, when the death or removal of parties fully cognizant of these circumstances might render it impossible to adduce the necessary testimony in disproof, in explanation, or in rebutting the evidence of serious charges which might have otherwise been satisfactorily disposed of. There would be no end of the confusion, the bitter feeling and jealousies, that might constantly spring up, where private malignity sought for gratification. The character and conduct of the ministers of the Church would be perpetually exposed to the malignant designs of his enemies, and the Church herself would be incessantly be made the sport of the wicked scorn of those who had no love or respect for either her creed or discipline. I have no personal desire to avoid the fullest and most searching investigation, or the most candid explanation of all the circumstances and matters which the memorialist has charged against me.

But I contend that were you to give any countenance to such a direct invasion of the bulwarks by which our Church is surrounded, it would afford a dangerous precedent to future assailants, which might sap the foundations on which our security and stability rest. If I am to be placed on my trial in this place and before this court, let it be on substantive and direct charges of facts within the limitations prescribed by the law of the Church, and I shall hold myself prepared to meet them.

either with a simple and direct admission of their truth, or with an unqualified denial sustained by such testimony as will vindicate my character as a Christian minister.

The memorialist in his memorial and pamphlet which he has incorporated with it and made it a part, has attempted to criminate me with suspicions and improper designs and improper conduct, extending as far back as my first arrival in Goderich; and I now claim the opinion and judgment of this Court as to the period of time to which my defence is to be restricted. Not a charge of any importance has been preferred resting on any part of my conduct since the Presbyterial Visitation of 1857; am I now called upon to open up that visitation, and explain circumstances that transpired antecedently.

I approach the last of my preliminary objection to the competency of the memorial with great reluctance and pain, not because it is deficient in strength, either of evidence or of reasoning, but because it forms the *argumentum ad hominem*, and affects the character of the memorialist himself. There is no law of our Church entitled to stricter and more sacred observance than that which lays it down, that no process against a minister, can be instituted in a Presbytery, unless the complaint be given and accompanied with some reasonable account of its probability by a *person of GOOD report*. It is with grief I have to re-criminate on the memorialist, and to charge him with acts, both before and since his connection with the Church was severed, which would for ever deprive him of all claim to the respectful consideration of this court when he appears as the calumniator of any minister of the Church. I shall not enter at any length into details of the charges which I now make against Mr. Kydd, nor shall I trust myself to characterize the offences of which I charge him to be guilty of. For as it is my intention to adduce the most respectable and unquestionable testimony in support of these charges, I am disposed to allow the evidence to speak for itself. In order, however, that the memorialist may not plead ignorance of the nature of the offence, with which I now charge him, I shall only now refer to their general character, leaving a more specific detail of the circumstances to be evolved by the evidence. They consist of

1. Interference and improper intermeddlery with public money as well as with the revenue of St. Andrew's church, and consequent defalcation.
2. Drunkenness.
3. The gratification of malevolent feelings unbecoming his position, while an Elder of the church.

Before adducing the evidence with which I am now prepared in support of these charges, and before entering on my own defence, I desire to take the judgment of this court on the several positions I have stated in reference to the status of the memorialist, and the competency of his complaints. In taking this course, I can have no desire to shrink from a full and fair investigation of all or any of the charges which the memorialist has brought against me. For if they have any foundation in truth, they can each and all be as easily preferred by any other member of my congregation, or any members of the church within the

Presbytery bounds, who is amenable to church discipline. But in entering on my defence, I claim the protection of all those wise laws and usages by which the church has from time immemorial been hedged in, and I claim the right to be shielded from the calumnious assaults of those who have grown reckless, because they are no longer amenable to church discipline, and because they cannot expiate no crime by church punishment.