THE FORM OF PROCESS 1707

Act approving a Form of Process in the Judicatories of the Church with relation to Scandals and Censures.

General Assembly of the Church of Scotland [Act XI. Session. 11, April 18, 1707]

The General Assembly, having this day, and at several former diets, had read in their audience the overtures concerning a Form of Process in the judicatories of this Church with relation to scandals and censures, which were transmitted by the late General Assembly to the several Presbyteries for their judgment thereupon, and having maturely considered the said whole overtures, with the remarks and observations of Presbyteries made upon the same after full reasoning, both in committees and open Assembly, upon the several particulars contained in the said Form of Process, the General Assembly did, by their votes, *nemine contradicente*, and hereby do, ratify and approve the foresaid From of Process as now amended in the whole heads and articles thereof, and appoint and ordain the same to be observed and practised by the respective judicatories of this Church as an act and ordinance of Assembly and as fixed binding rules and directions in the whole matters therein contained, except the 7th, 8th, and 9th paragraphs of the fourth chapter, and what concerns the pressing of the Oath of Purgation—as to which the General Assembly supersedes at this time to enjoin the observation thereof as positive standing rules; but they did, and hereby do, unanimously recommend to the several Presbyteries and other judicatories of the Church, that they regulate themselves according to the advice therein insinuated, as they shall find to tend most to edification; the tenor of which From of Process follows.

The form of process in the judicatories of the church of Scotland, with relation to scandal and censures.

CHAPTER I. Concerning Church Government, Discipline, Scandals, and Censures in general.

1. Our Lord Jesus Christ hath instituted a government and governors ecclesiastical in his house, with power to meet for the order and government thereof; and to that purpose, the Apostles did immediately receive the keys from the hands of their Lord and Master Jesus Christ, and did use and exercise the same upon all occasions, and Christ hath from time

to time furnished some in his Church with gifts for government, and with commission to exercise it when called thereunto, and has promised his presence to be with them to the end of the world.

2. It is agreeable to, and founded on the Word of God, that some others besides those who labour in the word and doctrine be Church governors, to join with the ministers of the Word in the government of the Church, and exercise of discipline and oversight of the manners of the people, which officers are called ruling elders; as also, that the Church be governed by several sorts of judicatories, and one in subordination to the other, such as Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies.
3. Church discipline and censures for judging and removing of offences are of great use and necessity in the Church, that the name of God, by reason of ungodly and wicked persons living in the Church, be not blasphemed, not 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.
4. Nothing ought to be admitted by any Church judicatory as the ground of a process for censure, but what hath been declared censurable by the Word of God, or some act or universal custom of this National Church, agreeable thereto; and the several judicatories of this Church ought to take timeous notice of all scandals; but it is judged, that if a scandal shall happen not to be noticed in order to censure for the space of five years, it 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 the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty.
5. These Assemblies or Church judicatories before mentioned have power to convene and call before them any persons within their own bounds, whom the ecclesiastical business which is before them doth concern, either as party, witness, or otherwise, and to examine them according to the nature of the affair, and to hear and determine in such cases as shall orderly come before them, and accordingly dispense Church censures.
6. If a person be charged with a scandal, who lives within the bounds of another parish, the kirk-session of the parish where that person resides should be desired to cause cite that person to answer before the session in whose bounds the scandal happened, and the same course is to be followed in such cases by the other judicatories of the Church, seeing, for order's sake, they should not presume to exercise their authority without their own bounds.
7. The minister of the Word, holding an office above that of the ruling elder, cannot be liable to the censure of the kirk-session, but to the superior judicatories of the Church.

CHAPTER II. Concerning the entering of Processes, Citation of Parties and Witnesses, and taking Depositions, and anent Fugitives from Discipline.

1. Members of kirk-sessions are wisely to consider the information they get of scandals, and consult with their minister thereanent, even before the same be communicated to others, that thereby the spreading of the scandal may be prevented, and it may be removed by private admonition, according to our Lord and Saviour's rule, Matth. xviii. 15, which, if amendment follow, 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.
2. When any business is moved in a Church judicatory, whether by information, petition, or otherwise, they are, in the first place, to consider, whether the matter in its circumstantiated case, be proper for them to enter upon, and whether it be orderly brought in, and proper for them to cognosce and discuss it themselves, or prepare it for superior judicatories, and should endeavour to shorten their work as much as with the edification of the Church they can, especially as to the head of scandal, but still, on all occasions, the office-bearers in the house of God are to show all prudent zeal against sin.
3. In proceeding in all causes where there is any person or parties concerned, the judicatory is to see that, before they proceed, these persons or parties be duly sisted before them by a legal and timeous citation in writing, bearing its cause, either at the instance of a party complaining, or, at least, by order of the judicatory; and, if they be residing within the parish, the same may be upon forty-eight hours' advertisement, and the execution of the summons bearing its cause, and made before two or three witnesses, inserted, is to be returned by the beadle or officer in writing, and the persons cited called at the door; and this is especially to be observed by Presbyteries and other superior judicatories of the Church.
4. Sometimes it may be fit that the party be privately spoken to before any citation be given, or process begun, for their better gaining, in which case, the minister is to exercise his own discretion, and take the concurrence of elders and others with him; but if the party cited as above appear not, there ought to be a second and then a third citation given by the order of the sessions and Presbyteries, either personally, or left at their dwelling-house, before the judicatory declare the person contumacious, unless the party be cited to appear before a superior judicatory, by reference or appeal, in which case there is not that need of so many citations before the superior judicatory, the party having actually appeared before the inferior judicatory; and being cited *apud acta* to appear before the superior, and the same marked in the minutes, or having been declared contumacious before the cause was brought before the superior judicatory.
5. All citations *apud acta* are peremptory, and if instructed, infer contumacy, if not obeyed.
6. If the person do not appear on the third citation, or upon a citation *apud acta*, and no relevant excuse adduced and verified, though in that case he be censurable for contumacy, yet it may be fit the judicatory procced to take cognition, either by examining

witnesses upon oath, or by other documents, of the verity of the scandals delated against him, before they censure him for contumacy.

7. If the party appear, then the moderator is to inform the person of the occasion of his being called, and to give him, if desired, a short note in writing thereof, with the names of the witnesses that are to be made use of.
8. There seems to be no need of accusers or informers in ecclesiastical processes, where the same are not raised at the instance of a party complaining formally, but the party, if cited by order of the judicatory, is to answer the judicatory in what is laid to his charge; yet so, that if the party cited be found innocent and acquitted, those who informed the judicatory, whether the party require it or not, ought to be noticed for either their calumny or imprudence, as the judicatory shall find cause.
9. If there be witnesses to be made use of in the process, a list of their names ought to be given to the defenders some time before, or at least at their compearance, and the witnesses ought to be timeously cited to give evidence, and, if they refuse after three citations given, and executions returned, may be proceeded with as contumacious, or if judged needful, after the first or second citation, application may be made to the civil magistrate, that he may oblige them to appear.
10. Before the witnesses be judicially examined, the accused person is to be called, and the relevancy of the libel discussed, and if the defender compear, he may object against any of them, and if the objection be relevant, and made evident to the judicatory, the witnesses are to be cast; but a person's being the delator or informer doth not hinder him to be a witness, except in the case where he formally complained for his own interest, or of pregnant presumptions of malice against the person accused.
11. Though there be no relevant objection, yet the witnesses are solemnly to be purged of malice, bribe, or good deed done, or to be done, and of partial counsel.
12. The witnesses are to be sworn and examined in the presence of the accused party, if compearing, and he may desire the moderator to propose such questions or cross questions to the witnesses as may tend for his exculpation, which, if the judicatory think pertinent, are to be proposed; but no accused person is to interrupt the witnesses, or speak during the time of deposition.
13. If the party accused do before probation offer grounds of exculpation to be proven by witnesses, the moderator and clerk, if required, are to give warrant to cite the witnesses upon the parties' charges, the relevancy of the offered exculpation being first considered and sustained by the judicatory, and if the exculpation be fully proven as to the substance of the scandal, all further proof of the libel and accusation must there sist, and the defender is to be assoilzied; as if the libel be special as to the time and place of a fact, and the accused more pregnantly allege and clearly prove *alibi*; but if the substance of the scandal be once sustained and deponed upon, there can be no place for exculpation, unless it be as to some extenuating or alleviating circumstances, not contrary to, but consistent with, the depositions already taken.

14. If witnesses cannot subscribe their names to their deposition, the clerk is to mark that they declare they cannot write, and the moderator is to subscribe the same, whether they can subscribe or not.
15. After the depositions are ended, the parties being removed, the members of the judicatory, at the same or some after diet thereto appointed, are to advise the cause, and there and then to reason the affair calmly, speaking always to the moderator one after another, without interrupting one another, using no reflecting language to or of one another, nor too long harangues or digressions.
16. If any person or persons under process for scandals abscond, they should, after being called before the judicatory, and not compearing, be cited first from the pulpit of the parish where the process depends, and where they reside, and if they do not thereupon appear before the judicatory, before whom the process depends, they are by order of the Presbytery to be cited from the pulpits of all the kirks within their bounds, to compear before the Presbytery; and if they do not then compear, they are to be declared fugitive from church discipline, and the same intimated in all the kirks within the bounds of the Presbytery, desiring, that if any knows of the said fugitives, they may acquaint the minister or elder of the bounds thereof; and the Presbytery are to sist there until they get further notice of these persons.

CHAPTER III. Concerning Swearers, Cursers, Profaners of the Lord's Day, Drunkards, and other Scandals of that nature.

1. It may fall out that one single act of drunkenness, or breach of the Lord's Day, disobedience to parents, or of swearing, cursing, scolding, fighting, lying, cheating, or stealing, may be clothed with such circumstances as may be a just ground of process immediately, and even bring the persons guilty under the censure of the lesser excommunication and suspension from the benefit of the sealing ordinances, and require their appearance in presence of the congregation to be rebuked, before relaxation; but the weight of this is duly to be pondered, and Church judicatories, and members thereof, are to consider whether the private admonition of persons alleged and found guilty of the above scandals, if not clothed with such circumstances, or the bringing them to public, will tend most to edification, and proceed accordingly.
2. But ordinarily in all such offences, the guilty, for the first fault, should be spoken to in private by the minister or an elder, and admonished; and on promise from a sense of guilty to amend, they may sist there.
3. But if the person relapse, he should be called before the session, and if found guilty, may be there judicially rebuked; where the session on promise, from a due sense of sin to amend, may again sist.
4. But if the person amend not after that, the session should orderly proceed, unless repentance appear, and due satisfaction be offered, till they inflict the censure of the

lesser excommunication and suspension from the benefit of the sealing ordinances, under which the censured are to lie, till amendment and reformation.

5. With respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftener than once before the congregation, the rules prescribed by the fourth Act of the General Assembly, *anno* 1705, are to be followed.
6. If the guilty persons continue in this condition, or lie under the censure of the lesser excommunication a considerable time, and yet be found frequently relapsing in these vices they are censured for, it may be constructed such a degree of contumacy, and so aggravate the crime as to found a process of the censure of the higher excommunication, which is to be inflicted or not, as may tend most to the reclaiming of the guilty person, and edification of the Church.

CHAPTER IV. Concerning the Sin of Fornication, Adultery, and Scandalous Carriage tending thereto.

1. In delations about the sin of uncleanness, it falls frequently out, 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.
2. Many of these actions 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.
3. Yet some of those actions which come under the name of scandalous behaviour 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.
4. If a married woman, whose husband hath been notourly absent for a considerable time, beyond the ordinary time that women use to go with child, be found with child, this also may give ground to a kirk-session for a process against her; but in this case, judicatories should be prudent in considering well all circumstances, and whether or not the person hath been always of entire fame before, as also how the public fame now runs.
5. When an unmarried woman is known to be with child, the same gives ground to a kirk-session for a process against her, and after she is cited before the session and appeareth, she is to be interrogated who is the father of that child, and though in other cases the divulging of a secret may be very imprudent, and, indeed, the raising of a scandal; yet in this case, where there is a child, whereby there is an undeniable scandal, and the keeping secret of the father a ground of greater offence, and of suspecting many innocent persons, if she discover not the father, she is to be looked upon as contumacious.

6. Prudence may sometime require that the person she nameth to be the father of the child be informed thereof, and spoken to privately, and if he deny the same, he is seriously to be dealt with to confess; but if he still deny, then the session is to cause cite him to appear before them.
7. In this process, when the delated father compeareth, he is to be interrogated, and if he deny, he is to be confronted with the woman, and the presumptions as particularly held forth as possible, and all along, there should be private treating with him, in all meekness, charity, and seriousness, and if, after all this, he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as suspicious frequenting her company, or being *solus cum sola in loco suspecto*, or in suspected postures, and such like, which he cannot disprove to the satisfaction of the session, may so lay the guilt upon him, as to show him that there appears no other way of removing the scandal, but his appearance to be publicly rebuked therefor: If he will not submit himself to be rebuked as above, it perhaps may be more for edification, that a true narrative of the case be laid before the congregation, and intimation given, that there can be no further procedure in that matter till God in his Providence give further light, and to sist there at the time, than that an oath be pressed, and upon refusal, proceed to the higher excommunication; but if the person accused do offer his oath of purgation, and crave the privilege thereof, the Presbytery may (if they shall judge it for edification and removing of the scandal) allow the same, which may be to this purpose: *"I, A. B., now under process before the Presbytery of for the sin of, alleged to be committed by me with C. D., and lying under that grievous slander, being repute as one guilty of that sin, I, for ending of the said process, and giving satisfaction to all good people, do declare, before God and this, that I am innocent and free of the said sin of, or having carnal knowledge of the said C. D.; and hereby call the great God, the judger and avenger of all falsehood, to be witness and judge against me in this matter if I be guilty; and this I do, by taking his blessed name in my mouth, and swearing by Him who is the great judge, punisher, and avenger, as said is, and that in the sincerity of my heart, according to the truth of the matter and mine own conscience, as I shall answer to God in the last and great day, when I shall stand before him to answer for all that I do in the flesh, and as I would partake of his glory in heaven after this life is at an end."*
8. In taking this oath for purgation, all tenderness and caution are to be used, nor is the session to press any man thereto, but they are to deal with him and his conscience as in the sight of God, and if he offer to give his oath, the judicatory are to accept it or not as they shall see cause, and then to proceed to remove the scandal with the advice of the Presbytery, as may be most to edification; but this oath is not to be taken in any case but this, when the presumptions are so great that they create such jealousy in that congregation and session, that nothing will remove the suspicion but the man's oath of purgation, and when his oath will probably remove the scandal and suspicion, in all other cases this oath is in vain, and so should not be admitted, and never but by advice of the Presbytery.

9. This oath for purgation is to be taken either before the kirk-session or Presbytery or the congregation, as the Presbytery shall determine, and if the oath be taken before the session or Presbytery, it is to be intimated to the congregation that such a person hath taken such an oath, and the party may be obliged to be present in the congregation, and may be put publicly to own his purging himself by oath, and so be declared free from the alleged scandal.
10. After an end is made as above with the delated father, the woman is to be dealt with to give the true father; and if, after all serious dealing and due diligence, she give no other, she is to be censured according to the quality of the offence confessed by her, without naming the person delated by her, the judicatory reserving place for further censure upon further discovery.
11. If the woman who hath brought forth the child doth declare she knoweth not the father, alleging she was forced, as in the fields, by a person unknown, or any the like reason; in these cases great prudence is to be used, the former behaviour of the woman exactly searched into, and she seriously dealt with to be ingenuous; and if she hath been of entire fame she may be put to it to declare the truth as if she were upon oath, but not without the advice of the Presbytery, and no formal oath should be taken; and if the woman confess she was not forced, but doth not know the man, whether married or unmarried, the same censure is to be inflicted upon her as in the case of adultery.
12. If a person doth voluntarily confess uncleanness, and if there be no child, and the case be brought to the kirk-session, the session is to inquire what presumptions there are of the truth of the thing confessed, or what may have moved the person to make that confession, whether it floweth from disquietness of mind, or from sinistrous design, as when a man suing to a woman for marriage is denied, and for revenge, or for to obtain his desire, spreads the report that he hath been guilty with her, they are to be dealt with according as the presumptions upon search are found, or not.
13. If it be found that there is no ground for the confession, and that it is false, the person confessing is to be censured as defaming himself, and likewise as a slanderer of the other party; and withal application is to be made by the session to the civil magistrate that he may be punished according to law.
14. If there be need of witnesses, the directions formerly mentioned, Chapter II. are to be followed.
15. When persons guilty of uncleanness live one in one parish and another in another parish, the process against them and censures are to be before the session of the parish where the woman liveth, or where the scandal is most notour.
16. If a scandal of uncleanness be committed where neither party resides, as if persons having their fixed residence in one parish do commit uncleanness in another parish, or perhaps in the fields, or in the time of fairs or markets, in these cases they are to be processed and censured where their ordinary abode is, except the place of their abode be at a considerable distance from the place where the sin was committed, and the scandal be most flagrant where it was committed.

17. When there is a scandal of uncleanness, whereof persons are guilty living in different parishes, the session where the sin was committed is to acquaint the other sessions where any of the persons resides, who are *ex debito* to cause summon these persons to appear before that session where the scandal is to be tried.
18. When a person is convicted of scandal by a session of another congregation than his own, and the censure of the lesser excommunication is inflicted, the session is to send an account thereof to that session to which he belongs; but there is no need of any other sentence of his own session to fix the censure on him, but only a public intimation thereof to be made in his own parish.
19. When a person is censured and absolved from his scandal in another congregation than where he lives, he is to bring a testimonial of his absolution, which is to be intimated to the congregation he lives in, if the scandal be also flagrant there; otherwise, it will be sufficient to intimate the same to the session, and the same is to be done in the case of the profession of repentance, where there has been a sentence of the lesser excommunication.

CHAPTER V. Concerning Appeals from a Kirk-Session to a Presbytery, &c.

1. All persons who judge themselves leased by the procedure or sentence of a kirk session, may appeal to the Presbytery, by declaring and protesting at passing of the sentence, and should thereupon, according to the eighth act of the General Assembly, 1694, give in the appeal, with the reasons thereof, in writing, to the moderator or clerk of the session, within the space of ten days after the time of appealing, and procure extracts thereof, and present the same to the next meeting of the Presbytery thereafter, if there be a competent time, at least ten free days betwixt the time of appealing and the meeting of the Presbytery, and should then insist in the appeal, wherein, if the appellant fail, the appeal, *ipso facto*, falls and becomes null, and the appellant is to be held as contumacious, and proceeded against accordingly by the kirk session.
2. When an appeal is brought from a kirk-session to a Presbytery, the Presbytery is to consider whether the cause is of that nature as it behoved at length to come to the Presbytery by the course of discipline, before the final determination thereof, as if it be in a process of alleged adultery, or such like, then the Presbytery, to save themselves time, may fall upon the consideration of the affair without insisting much upon the *bene* or *male appellatum*, though it seem to be preposterously appealed.
3. But if the cause be such as the kirk-session are the competent and proper judges of even to its ultimate decision, and if there hath been no cause given by the kirk-session, by their breaking the rules of an orderly process, either by the course of the process, or by the incompetency of the censure, the Presbytery is not to sustain the appeal.
4. If the Presbytery do not sustain the appeal, and find there hath been some fault, passion, or culpable mistake in the appellant, the Presbytery is to inflict some censure, such as a reproof before the Presbytery, or appoint an acknowledging of their precipitancy before their own session, or such like, on those appealers they find to have been malicious and

litigious, thereby to prevent unnecessary appeals; and that beside remitting back to the session to stand either to the censure of the session, if it be inflicted already, or to sist themselves during the process if it be depending.

5. If the appeal be sustained, and yet upon proceeding on the cause the Presbytery find the appellant censurable, it is always to be minded that whatever censure be inflicted to remove the offence he hath given to the Presbytery, yet the appellant, if found guilty, is to undergo a censure, either before the kirk-session or congregation he belongs to, such as the Presbytery thinks he deserves, else Presbyteries will be always troubled with appeals.
6. If, on the other hand, on trial of the process, the Presbytery find the kirk-session hath unwarrantably proceeded, either in contributing to the raising of a scandal, or inflicting the censure without a sufficient cause, and thereby the appellant leased, the Presbytery is not only to assoilzie the appellant, but to take such ways as may be proper and effectual to vindicate the appellant's innocence, and wipe off the scandal taken at him.
7. 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.
8. But such an emergency may very well occasion the Presbytery's giving the minister and elders of that session suitable injunctions and rules to walk by, or private admonitions, or to call for a visitation of their session register.
9. The same method is to be followed in appeals from Presbyteries to Synods, and from Synods to General Assemblies.
10. An appeal being made by parties, should sist the execution of the sentence appealed from, only while the appeal is duly and diligently prosecuted, and may thereby be determined; otherwise not unless the judicatory appealed to receive the appeal, and take the affair before them; and in that case the judicatory appealed from is to sist until the appeal be discussed.

CHAPTER VI. Concerning Processes which natively begin at the Kirk-Session, but are not to be brought to a final determination by them.

1. There are some processes which natively begin at the kirk-session, which, for the atrocity of the scandal, or difficulty in the affair, or general concern, the session having the opportunity of frequent meetings of the Presbytery to have recourse unto, do not determine of themselves, such as scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the congregation, schism and separation from the public ordinances, processes in order to the highest censures of the Church, and continued contumacy; but the kirk-session, having received information of such gross scandals, they are to weigh the same according to the rules and directions prescribed them in processes which belong to their peculiar province, and if they find good ground for a process, they are to

deal with the person accused to confess that which cannot now be hid nor amended till satisfaction be made to the Church, which, when done, the session is to refer the case, and send an extract of their procedure thereanent to the Presbytery.

2. When there is no confession of the scandals above mentioned, the session are not to proceed to lead probation, by witnesses or presumptions, till an account of the matter be brought by reference to the Presbytery as aforesaid; and the Presbytery do thereupon appoint the session to proceed and lead probation; and after probation is led, the same is to be brought to the Presbytery, who may inflict what censure they see cause.
3. Sometimes it will fall out that the process is so clear, as in a case of judicial confession, that the kirk-session may summon the delinquent when before them *apud acta*, to compear before the Presbytery, without previous acquainting them thereof; but where there is any difficulty the kirk-session should inform the Presbytery, and take their advice, before a party be summoned before them.
4. When the party or parties compear before the Presbytery, if they confess and profess repentance for their sin, then the Presbytery having gravely rebuked, and seriously exhorted the party or parties, are to determine the censure, and prescribe the time and place of the parties their profession of repentance publicly in the church of that congregation where the process began, the scandal being there to be taken away, or remit them to the session to receive order thereanent.
5. It is thought more fit that the delinquents be appointed to remove the scandal in the congregation where the offence is most flagrant, especially if they reside there, rather than in the place where it was committed, if it be not public there, and that intimation of the removing thereof be made in other places, if the judicatory shall find it needful.
6. When persons censured for these grosser scandals do apply to the kirk-session for relaxation, they may both be privately conferred with, and likewise their acknowledgments heard before the session; but they ought not to be brought before the congregation, in order to their absolution, nor absolved, but by advice and order of the Presbytery.

CHAPTER VII. Concerning Processes against Ministers.

1. All processes against any minister are to begin before the Presbytery to which he belongeth, and not before the kirk-session of his own parish.
2. The credit and success of the Gospel (in the way of an ordinary mean) much depending on the entire credit and reputation of ministers, their sound doctrine and holy conversation, no stain thereof ought lightly to be received, nor when it comes before a judicatory ought to be negligently inquired into, or, when found evident, ought to be slightly censured.
3. And because a scandal committed by a minister hath, on these accounts, many aggravations, and once raised, though it may be found to be without any ground, yet it is not easily wiped off; therefore, a Presbytery should exactly ponder by whose information

and complaint it comes first before them, and a Presbytery is not so far to receive the information as to proceed to the citation of a minister, or any way begin the process until there be, *first*, Some person who, under his hand, gives in the complaint, with some account of its probability, and undertakes to make out the libel; 2*d*, Or at least do, before the Presbytery, undertake to make it out, under the pain of being censured as slanderers; or, 3*d*, That the *fama clamosa* of the scandal be so great as that the Presbytery, for their own vindication, see themselves necessitated to begin the process without any particular accuser; but the Presbytery in this case should be careful, first, to inquire into the rise, occasion, broachers, and grounds of this *fama clamosa*.

4. All Christians ought to be so prudent and wary in accusing ministers of any censurable fault, as that they ought neither to publish nor spread the same, not accuse the minister before the Presbytery without first acquainting the minister himself, if they can have access thereto; and then, if need be, some of the most prudent of the ministers and elders of that Presbytery, and their advice got in the affair.
5. If there shall be ground found to enter in a process against a minister, the Presbytery should first consider the libel, then order him to be cited, and to get a full copy, with a list of the witnesses' names to be led for proving thereof, and a formal citation, in writing, is to be made, either personally, or at his dwelling-house, bearing a competent time allowed to give in answers to the libel, and his just defences and objections against witnesses, at least ten free days before the day of compearance, and the citation should bear the date when given, and the names of the witnesses to the giving thereof; and the execution bearing its date, with the names and designations of the witnesses, should be made in writing, and signed by the officer and witnesses, which being accordingly returned, he is to be called, and if he compear, the libel is to be read unto him, and he is to be inquired, if he has any answers to give in to the libel, that they may be read and considered, in order to the discussing of the relevancy; and if the Presbytery find the same, and that there is cause to insist, they are to endeavour to bring him to a confession, whereby he may most glorify God; and if he confess, and the matter confessed be of a scandalous nature, censurable in others, such as the sin of uncleanness, or some other gross scandal, the Presbytery (whatever be the nature of his penitency, though to the conviction of all) are *instanter* to depose him, *ab officio*, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence by the public profession of his repentance.
6. If a minister be accused of any scandal, and cited to appear before his own Presbytery, and do absent himself, by leaving the place, and be contumacious, without making any relevant excuse, after a new public citation and intimation made at his own church when the congregation is met, he is to be holden as confessed, and to be deposed and censured *instanter* with the lesser excommunication; but if, after some time, he do not return and subject himself to the censures of the Church, he may be proceeded against till he be censured with the greater excommunication, if the judicatory see cause for it.

7. If the minister accused do appear and deny the fact after the relevancy is found, the Presbytery proceeding to probation, and to find the truth of the matter, all the circumstances are to be exactly canvassed, and the accused heard to object against the witnesses. As also, he should be allowed to be present at the examination, and modestly to cross-interrogate, and then the reputation of the witnesses and their hability duly regarded, and the examinations considered; if, after consideration of all these, the judicatory shall find the scandal sufficiently proven, they are to proceed to censure, as advised in the case of confession in paragraph 5th.
8. If the matter laid to the minister's charge be such practices as, in their own nature, manifestly subvert that order, unity, and peace, which Christ hath established in his Church, or unsoundness and heterodoxy in doctrine, then great caution should be used, and the knowledge and understanding of witnesses much looked unto; and, withal, if the errors be not gross, and striking at the vitals of religion, or if they be not pertinaciously stuck unto, or industriously spread with a visible design to corrupt, or that the errors are not spreading among the people, then lenitives, admonitions, instructions, and frequent conferences, are to be tried to reclaim without cutting off, and the advice of other Presbyteries sought, and unless the thing be doing much hurt, so as it admits of no delay, the Synod or General Assembly may be advised with in the affair, and the same intimated to the minister concerned.
9. If the libel and complaint brought against a minister be a multitude of smaller things laid together, as several acts of negligence or other unsuitable actions, the Presbytery, in proceeding therein, are to make a Presbyterial visitation of that parish to which the minister belongs, and at the said visitation, are first to see if any of these things, now laid to the minister's charge, were committed prior to the last Presbyterial visitation of that parish, and whether they were then laid to his charge, and if they were not, it should be tried how they come to be laid to his charge now.
10. If the Presbytery find those things laid to his charge to be committed since the last visitation, or find a satisfying reason wherefore they were not then tabled, they are to inquire what diligence hath been used in acquainting the minister with the offence taken at these things when first committed by him, and how far the minister hath been guilty of giving offence after he knew offence to be taken.
11. It should likewise, in this case, be inquired, whether any of the complainers did first, in a prudent private way, inform any of the neighbouring ministers of some of these things committed by their minister, who is now challenged, before these offences came to be so many, as to merit a public and solemn trial, and accordingly the Presbytery is to judge.
12. If the Presbytery find, upon trial, the complaint to resolve on the minister's having committed such acts of infirmity or passion, as, considering all the circumstances, may be either amended, and the people satisfied, and no such offence taken, or at least not to remain so as to hinder the minister's profiting the people, and that the offence was taken by the minister's own people only or mainly; then the Presbytery is to take all prudent ways to satisfy and reclaim both minister and people, and do away the offence.

13. But before a minister deposed for scandalous carriage can be restored to the exercise of the ministry, there should not only be convincing evidences of a deep sorrow for sin, but an eminent and exemplary humble walk and edifying conversation, so apparent and convincing as hath worn out and healed the wound the scandal gave.
14. Immediately on the minister's being deposed by the Presbytery, the sentence is to be intimated in his congregation, the church declared vacant, the planting thereof with another minister hastened, and never delayed on the expectation of his being reponed, it being almost impossible that every he can prove useful in that parish again.

CHAPTER VIII Concerning Processes in order to the Censure of the greater Excommunication.

1. Since there is a distinction betwixt the greater and the lesser excommunication, it seems that whatever have been the causes of the first process, yet ordinarily all processes that are in order to the greater excommunication are to be grounded on manifest contumacy, or obstinate continuance in scandalous practices; and where there is no manifest contumacy or continuance as aforesaid, the lesser excommunication needs only have place; yet in some extraordinary cases, the Church, according to Scripture warrant, hath summarily excommunicated persons guilty of notour atrocious scandalous sins, to show the Church's abhorrence of such wickedness.
2. Even where there hath been a scandal delated, and contumacy following, by not appearing, it should be considered whether any scandalous practice hath been proven or not; if not proven, then only the simple contumacy is to be proceeded against, for which it were hard to go a greater length than the lesser excommunication.
3. If the scandal hath been proven, and the censure of the lesser excommunication intimated, as in Chapter III., it seems most reasonable that there be no further proceeding unless the scandal be gross, or of an heinous nature, or that it is spreading and infectious, as in heresies or schism in the Church, in which cases contumacy is to be proceeded against in order to the greater excommunication.
4. The kirk-session having brought the process to an intimation of the censure of the lesser excommunication, before they inflict the same they are to refer the affair to the Presbytery, bringing their whole proceedings before the Presbytery in writing, that the Presbytery may thereby have a clear and full view of the whole affair.
5. The Presbytery finding the kirk-session hath orderly proceeded, and that the lesser excommunication is not sufficient, and that the affair is so weighty as to oblige them to enter on the process, they are to cause their officer to cite the scandalous person.
6. If the party appear, then the Presbytery is to proceed in the inquiry at the accused about the scandal alleged and libelled, and if he deny it, then they are to proceed and lead probation as in other cases.

7. But if the party appear not, but contemn the citation, the Presbytery causeth renew the same until he hath got three citations, and after the three citations he is to be cited out of the pulpit; and, for the further conviction of all concerned, intimation is to be made that the judicatory will proceed and inquire into the presumptions or probation of the guilt; and this is to be done although the delinquent be absent.
8. Then the Presbytery is to order the minister of the congregation next Sabbath, after forenoon sermon, to acquaint the congregation what proceedings the kirk-session first, and thereafter the Presbytery, had made in the affair, and how contumacious the party was, and that the Presbytery intended to proceed to the highest censure; and the minister is gravely to admonish the party (if present) to repent and submit himself to the discipline of the Church, threatening him, if he continue impenitent, that the Church will proceed; yea, though he be absent, the minister is to acquaint the people that the Church requires him to repent and submit as above said, under the foresaid certification.
9. There should be three public admonitions, and a Presbytery should intervene betwixt each admonition; and if, after all, that person continue impenitent or contumacious, the same is to be represented to the Presbytery, who are thereupon to appoint public prayers thrice to be made, in which the minister is to exhort the congregation seriously to join with him in prayer for the scandalous impenitent or contumacious person, which be is solemnly to put up to God, humbly begging that he would deal with the soul of the impenitent, and convince him of the evil of his ways.
10. These public prayers of the Church are to be put up three several Sabbath days, a Presbytery (where its meetings are more frequent, once a month at least) intervening betwixt each public prayer, both to show the Church's tenderness towards their lapsed brother, their earnestness to have him reclaimed, and like wise to create a greater regard and terror of that dreadful censure, both in the party and in all the people.
11. If, after all, the scandalous person makes no application, but continues impenitent, the Presbytery, after prayer, is to pass sentence, and appoint a minister to intimate the same, and to show the Presbytery's resolution to proceed upon such a Sabbath as they shall name, for pronouncing that dreadful sentence solemnly in face of the congregation, unless either the party, or some for him, signify some relevant ground to stop their procedure.
12. That day being come, it were fit the minister did preach a sermon suited to that solemn occasion, or at least after sermon the minister should show the congregation what he is going about, introducing the narrative of the process with a discourse concerning the nature, use, and end of Church censures, particularly that of the greater excommunication, if he hath not done it fully in his sermon.
13. Then narrating all the steps of the process in order, showing the Church's faithfulness and tenderness towards the scandalous person, and declaring his obstinate impenitency; and that now, after all other means were used, there remained only that of cutting off the scandalous person from the society of the faithful, and intimating the Church's warrant and order to him so to do.

14. And before the minister pronounce the sentence he is to pray, and desire all the congregation to join with him therein, that God would grant repentance to the obstinate person, would graciously bless his own ordinance, and make the censure effectual, both to edify others, and to be a mean to reclaim the obstinate sinner.
15. Then, after prayer, the minister is, with great gravity and authority, to pronounce the censure, showing his warrant from our Lord's command, and the Apostle Paul's direction, and recapitulating the Presbytery's warrant, in obedience thereunto, and resuming the scandalous and obstinate person's behaviour, whom he is to name; he, therefore, in the name and authority of our Lord and Master Jesus Christ doth, *in verbis de præsenti*, pronounce and declare him or her excommunicated, and shut out from the communion of the faithful, debarring that person from their privileges, and, in the words of the Apostle, delivering that person over to Satan; which sentence is to be intimated according to the 9th Act of the General Assembly, *anno* 1704.
16. If, after prayer, or before the censure be pronounced, the scandalous person do make any public signification of his repentance, and of his desire to have the censure stopped, the minister, upon apparent seriousness in the scandalous person, which he showeth to the congregation, may thereupon delay pronouncing the sentence, till he report to the Presbytery at their next meeting, who are then to deal with the scandalous person as they shall find cause.
17. After the pronouncing of this sentence, the people are to be warned that they hold that person to be cast out of the communion of the Church, and that they shun all unnecessary converse with him or her; nevertheless, excommunication dissolveth not the bonds of civil or natural relations, nor exempts from the duties belonging to them.
18. Although it be the duty of pastors and ruling elders to use all diligence and vigilance, both by doctrine and discipline respectively, for preventing and purging out such errors, heresies, schism, and scandals, as tend to the detriment and disturbance of the Church; yet, because it may fall out, through the pride and stubbornness of offenders, that these means alone will not be effectual to that purpose; it is therefore necessary after all this to employ the aid of the civil magistrate, who ought to use his coercive power for the suppressing of all such offences, and vindicating the discipline of the Church from contempt.

CHAPTER IX. Concerning the Order of Proceeding to Absolution.

1. If, after excommunication, the signs of repentance appear in the excommunicated person, such as godly sorrow for having incurred God's heavy displeasure by his sin, occasioned grief to his brethren, and justly provoked the Church to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God through Christ, and to reform his life and conversation, with an humble desire of recovering peace with God and his people, and to be restored to the favour of God and light of his countenance, through the blood of Jesus Christ, and to the communion of the Church;

and the Presbytery upon his application be satisfied therewith, and judge that he ought to be absolved, and thereupon give warrant for his absolution, he is to be brought before the congregation, and there also to make free confession of his sin and sorrow for it, to call upon God for mercy in Christ, to seek to be restored to the communion of the Church, promising to God, through grace, new obedience, and more holy and circumspect walking, as becomes the Gospel, and that this appearance before the congregation be as often as Church judicatories shall find may be for edification and trial of the professing penitent's sincerity; and being satisfied in this, then the minister and congregation are to praise God, who delighteth not in the death of a sinner, but rather that he should repent and live; as also for blessing the ordinance of excommunication, and making it effectual, by his Spirit, to the recovering of this offender, to magnify the mercy of God through Jesus Christ, in pardoning and receiving to his favour the most grievous offenders, whensoever they unfeignedly repent and forsake their sins; but before the minister proceed to absolution, he is to pray with the congregation to this effect: *"That the Lord Jesus Christ, Prophet, Priest, and King of his Church; who, with the preaching of the Gospel, hath joined the power to bind and loose the sins of men; who hath also declared, that whatsoever by his ministers is bound on earth shall be bound in heaven; and also, that whatsoever is loosed by the same shall be loosed and absolved in heaven, would mercifully accept his creature N., whom Satan of long time hath held in bondage, so that he not only drew him to iniquity, but also so hardened his heart that he despised all admonitions; for the which his sin and contempt, the Church was compelled to excommunicate him from the society of the faithful; but now, seeing the Holy Spirit, by his grace, hath so prevailed, that he is returned and professeth repentance toward God, and faith toward our Lord Jesus Christ, that it may please God, by his Spirit and grace, to make him a sincere and unfeigned penitent; and, for the obedience of our Lord Jesus Christ unto death, so to accept of this poor, believing, and returning sinner, that his former disobedience be never laid to his charge; and that he may increase in all godliness, so that Satan in the end may be trodden under foot by the power of our Lord Jesus Christ; and God may be glorified, the Church edified, and the penitent saved in the day of the Lord."*

2. Then shall follow the sentence of absolution, in these or the like words: *"Whereas thou N. best, for thy sin, been shut out from the communion of the faithful, and hast now manifested thy repentance, wherein the Church resteth satisfied, I, in the name of the Lord Jesus, before this congregation, pronounce and declare thee absolved from the sentence of excommunication, formerly denounced against thee, and do receive thee to the communion of the Church, and the free use of all the ordinances of Christ, that thou mayest be partaker of all his benefits, to thy eternal salvation."*
3. After this sentence of absolution, the minister speaketh to him as to a brother, exhorting him to watch and pray, and comforting him as there shall be cause; the elders embrace, and the whole congregation holdeth communion with him, as one of their own; and the absolution should be intimated in all the Churches where the excommunication was intimated.

Glossary

Unfamiliar and obsolete words

Assoilzied - Discharged and not to be tried again on the grounds specified
Cognosce - to investigate
Compear - to appear or be present, especially in response to an official summons
Delator – an informer (delation is the act of informing against someone)
Hability - Fitness
Lenitives - to sooth or soften (e.g. in the case of an offender it would mean to show clemency or moderation in the severity of censure)
Notour/notourly - notorious/notoriously
Oath of Purgation - an oath taken to clear oneself of an accusation
Sinistrous - a wrong, unfavourable, adverse or misleading account
Sist - to stop
Thereanent – with respect to that matter
Trilapse - a threefold lapse, (i.e the same error committed three times)

Latin phrases

Apud acta - as recorded in the official proceedings
Solus cum sola in loco suspecto – a man suspected to be alone with a woman in a place
Nemine contradicente - no one opposing or contradicting
In verbis de præsenti - words expressing a present commitment
Ex debito - as a matter of duty
Bene/male appellatum - an appeal that is rightly and properly made (bene) or wrongly and improperly (male) made
Fama clamosa - a widespread report or rumour
Instanter - immediately, without delay
Ab officio - from office (e.g to be deposed *ab officio* is to be deposed from a position or office)