

"tablished regulations and practice of the Church, founded on Scripture; or unless involving those evils which discipline is intended to prevent." Book III, ch. 1, sec. 2, p. 44.

But on general principles, it would seem to be beyond the scope of an "Inferior Court" such as a Kirk Session, with jurisdiction over only one church, with powers restricted and defined by the general law of the Church, to create by its own solo action, an offence unknown to the general law of the Church and affix punishment and inflict it too by Judgment such as that now complained of. The practically large, and most important, powers of the Session would seem properly to be confined, (as to matters of discipline) to enforcing discipline and dealing with offenders against known and established laws, laws laid down and recognized by the standards of the Church as drawn from the law of God, and sanctioned by the general recognition of the highest courts and confessions of the Church.

Indeed, to hold that in this particular case, the Session acted legally in declaring that addressing circulars or letters was an offence subjecting a member to discipline, or acted wisely in enforcing such rule would go far to sanction, as a principle, that each session on of itself, not only enact rules for its own members or its own church, irrespective of the general law of the church, but can do so against the plain letter of the Rules adopted by *Synod* or *General Assembly*, and that thus there might be offences created varying in each Presbytery, and in each Church, in each Presbytery; offences created one day, and punished or repealed the next, at the discretion of a Kirk Session if there is nothing general, uniform, and sanctioned by the Church—characterizing and enumerating offences to be dealt with by Inferior Courts.

The appellant would therefore respectfully urge, that if the words quoted were intended as a "rule" subjecting a member to suspension, simply from the fact, admitted by the appellant of the publication of the circular in question, without regard to the truth or falsehood of the matter contained in it, the rule, in this sense, is beyond the jurisdiction of the Session, and is an attempt to constitute an offence unknown to the laws of the Church, and its enforcement is therefore manifestly illegal.

If the other supposition is adopted,—that it is not the simple breach of the rule that constitutes the offence,—not the mere publication or "addressing of circulars" or a circular addressed to the congregation, but addressing and publishing a circular containing *false statements, and unchristian averments and insinuations*,—then the law of the Church should have been followed in this case, as in every other. There should have been a proper citation, an accusation promoted by some one affected or injured by the offence, as laid down in the authorities referred to, for such a case as this cannot be considered to be a *public scandal or fama clamorosa* as understood by the law of the church, which the session itself might originate and carry on of its own proper motion. Nor was it enough to complain of the circular in general terms, but such and such words (enumerating them) should have been set up as containing a false statement or unchristian averment, or an unchristian insinuation, and if these words related to matters of fact and to matters admitting of verification by proof, by sworn testimony, and if the charges of false statements, &c., were denied, then the rules of the Church, as well as the plainest principles of justice required that there should have been such proof brought against the accused, or at the very least an opportunity allowed him to bring what evidence he could to support any statements of fact stigmatized as false.

It has already been seen, that the appellant complained in writing during the sitting of the Session at the very time the so called charge was brought up, that he had not been furnished with any "written and formal accusation though repeatedly asked for." In his written