

pellant refers only on this head, to Mr. Hill's Manual of "The Practice in the several Judicatories of the Church of Scotland," at pages 1 and 13, and to the acts and proceedings of the Church, at the Session of the Synod held at Hamilton in 1869, especially Book III of "*the Polity of the Church*," Chapter, 1. Although this book does not from these proceedings appear to have been put in force, even as an interim act, and the Appellant is not aware what proceedings may have been had as to this book subsequent to the then meeting of the Synod. The rules there laid down are, and, of necessity, must be, general in their terms, and it is unnecessary for the purpose of the present appeal, to attempt to lay down an exhaustive and strictly accurate definition or enumeration of the powers of the Session, as determined by the recognized standards, and long practice of the church, or of the precise acts which would justify the suspension of an Elder from his office.

In so far as the present appeal is concerned, it may be sufficient for the Appellant respectfully to submit to the Court, that the conduct of the Appellant has not been such, as under the laws and practice of the Church, to give any jurisdiction to the Kirk Session to take cognizance of the case, or to pronounce the judgment appealed from; and that nothing appears in the Record of the cause to shew anything done or omitted by the Appellant contrary to the Word of God, or the universal custom of the Church, or the confession, or catechisms recognized, nor any offence public or private injurious to individuals, or unbecoming his position as Elder, as is required by the authorities referred to, and to which Appellant refers the Presbytery.

AS TO THE MODE OF PROCEEDING ADOPTED BY THE SESSION, AND THE PRECISE OFFENSE CHARGED OR INTENDED TO BE CHARGED.—It will be seen from the proceedings quoted and from the minutes of the Session to which the Appellant makes reference, and which he prays may be produced in full for the information of the Presbytery so far as they bear on the case, that there was no accusation against the Appellant served on him which any person undertook to make good, no *fama clamosa* or public scandal calling for the action of the Session as prosecutor. No citation calling him to answer on a day named, no specification of what constituted the false statements, misrepresentations and unchristian averments, and insinuations in, the circular; no examination of evidence; no proof of any kind adduced, and no admission except of the fact of publication of the circular, and this coupled with the express denial of the alleged false statements, etc., and an earnest application for an investigation.

In all these respects, it is submitted, the proceedings were irregular, and so radically defective as to render the Judgment a nullity.

But in addition to this, the Appellant affirms that there is still a doubt whether it was the intention of the Session simply to charge him with a breach of the so called "Rule" of Session of the 15th April, by the publication of the circular; or whether the gist of the charge lay in publishing and circulating a circular containing *false statements, unchristian averments, &c.* On either supposition, the Appellant submits, that the proceedings were strikingly irregular and unwarranted and should be vacated by the Presbytery, if for no other reason than that the "Rule" referred to was not a rule which purported to enact, or could legally be followed by, a suspension from office for a breach of it. It is not sufficient to say for answer that if there is doubt as to the charge, there is none as to the judgment, which may have gone on one or both of the suppositions referred to: