

authority of the church, and of the laws of the Kingdom, have been acquiesced in by the State, and submitted to by the Establishment. That Court has pretended by its civil authority exercised in the name of the Queen, to restore to their spiritual functions men who have been deprived of them by the General Assembly sitting and acting in the name of the Lord Jesus Christ; and the body which permits such men, as ministers of the gospel, to administer her spiritual affairs, still professes to hold by that Confession of Faith which declares that "The Lord Jesus, as King and head of his church, hath therein appointed a government in the band of church-officers, distinct from the civil magistrate."

At the time of the Secession, and down to the Disruption proceedings, it was the recognised right, as it was the unquestionable duty, of the church, according as she had the means of meeting the wants of her people, to erect congregations, to settle ministers over them, and to give these ministers their proper standing in the church, for the exercise of the functions both of preaching and of ruling which belong to their office. The duty was not attended to so fully as might have been desirable; but still, the cases are sufficiently numerous to shew that the right was fully acknowledged. Thus the Lord President of the Court of Session, in a case which came before him in 1836, referring to the Act of Assembly 1833, which gave to the ministers of what were called the Parliamentary Churches the full powers of parish ministers, says, "This was a matter within the proper province of the Assembly. They had the power to pass such an Act, and they exercised that power. And I see no conflict between the provisions of this Act and those of the statute. The Parliament, on the one hand, and the Assembly on the other, *each being supreme in its own province*, passed their respective enactments both tending towards the same end, and the last being in supplement of the first. The Assembly made no disjunction of the parishes *quoad civilia*, but it declared the ministers to be members of all church courts: and it also declared them to possess all the privileges of the parish ministers of Scotland, and that the Assembly alone could do—I don't think the Assembly exercised a new power in declaring a minister to be possessed of such privileges. I conceive the same power to have been exercised in analogous cases, such as when second

ministers were appointed, or in any of the numerous instances where new ministers were appointed in Scotland." So late as in 1833, in a case before the Teind-court, the Lord Justice Clerk declared, "I have never seen cause to dispute the power of the church to disjoin or erect parishes *quoad sacra*." This right also is fully recognised in the Act of the 4th and 5th of William IV., which provides, that where any church, chapel, &c. "built, or acquired, or endowed by voluntary contribution, shall, according to the provisions of the existing law, be erected into a parochial church, either as an additional church &c., or as the church of a separate parish to be erected out of a part or parts of any existing parish or parishes, whether the same be established and erected merely *quoad spiritualia* by the authority of the church courts of the Established Church of Scotland, or also *quoad temporalia* by authority of the Commissioners of Tiends:" neither the King nor any private patron shall have any claim to the patronage of such newly erected church. Now, however, the Scottish Establishment, in abject submission to the Court of Session, has allowed itself to be denuded of the power to obey Christ's command, "Feed the flock of God which is among you," by appointing ministers with full pastoral authority to watch over them, even where the people are willing by their own efforts to provide means of support for such ministers. At the bidding of that court, they have even gone the length of depriving of their pastoral authority somewhere about three hundred ministers, and breaking up as many Kirk-Sessions, who had been solemnly appointed in the name of the Lord Jesus Christ, and by the proper office-bearers of his church, to watch over the respective portions of the flock which had been entrusted to their care.

The novelty of the views which have led to these decisions, and the extent to which the Establishment, in what may be regarded as its proper spiritual functions, is now under the control of the Court of Session, may be further seen by attending to the remarks of some of the Judges, in delivering their opinions.

Lord Cuninghame, one of the Judges in the majority, in a Note (a curiosity in its way but too long for insertion) appended to a finding of his as Lord Ordinary, 6th December, 1842, in one of the stages of the Auchterarder case, contemplates the superseding of the Presbytery, and the authorising of a minority of their