

2. a. The *Act of reference* is sufficiently plain: "The Presbytery, having adopted the report of the Committee in the Gabarus case, resolved at this stage to refer the case, for final judgment, to the Synod." The Synod, however, instead of heeding the matter referred, reviewed the findings of Presbytery, against which there was no appeal. For such a course the Synod has neither law nor precedent, and cites neither. Compare *Constitution and Procedure of the Presbyterian Church in Canada*, 114:—"The higher Court, after inquiring into: (1) The regularity of the proceedings minuted; and (2) the correctness of the record, orders the record to be attested, with or without notes. When necessary it gives instruction or admonition to the lower Court; but a *judicial sentence shall not be reversed* by such action." And 121: "The higher Court considers, first, if the reference is in proper form; and, secondly, if there is ground for making it. If it is informal, or appears to be unnecessary, it is dismissed; if not, it is sustained. If the reference be sustained, the higher Court hears the whole case, and decides it or sends it back to the lower Court with instructions." It cannot be supposed that the words "*the whole case*" in the last sentence are to be taken absolutely, for this rule has regard to all kinds of references, and a reference may be for advice upon some particular point (*Constitution and Procedure*, 119,) in which case it would be unfair to the lower and burdensome to the superior court that the latter should be required to hear the whole case, the smallest part of which only may have been referred for advice. The words must, therefore, be understood as qualified by the context and include only matters concerning, included in, or depending upon the point referred. Otherwise the sentence: "It is the duty of the lower court to exercise, as far as possible, its own judgement before making the reference," (*Constit. and Proced.*, 119,) is a snare to all the lower courts of the Church. In all the law of our Church and practice of our ecclesiastical courts there is no rule or precedent to the effect that a superior court may, of its own motion, reverse a finding of a lower court from which there is no appeal. On the other hand, the Synod of the Maritime Provinces having, in 1877, as in 1880, reversed a decision of the Presbytery of Sydney from which there had been no appeal taken, the General Assembly, on appeal, re-affirmed the decision of Presbytery. See *Minutes of Assembly*, 1878, page 31. b. The Synod gave decision in the case referred and yet neither sustained nor dismissed the reference. c. The Synod took action—handed the case over to a committee—before the reference was stated to the court. d. The committee on the cases from Sydney Presbytery had proceeded very far in all the cases before the Presbytery's Commissioner was present.

3. From the Synod's decision, reviewing and reversing the findings of Presbytery from which no appeal had been taken, Mr. Gordon, in name of his Presbytery, appealed to the General Assembly. a. To justify its own action and in answer to Mr. Gordon's reasons of appeal, the Synod says: "The findings of the Committee of the Presbytery of Sydney, as adopted by that Presbytery were submitted to the Synod, as it appeared to the Synod, not merely as a basis for action by the Synod, but for the purpose of being reviewed as a step to action by the Synod." The Synod must have thought the Presbytery very stupid, indeed, when it deemed the latter capable of performing such a foolish, cringing act. At the same time, it must be remembered that the act of reference was plain, and that the Presbytery's commissioner, both before the Committee and in open Synod, exposed the fallacy of the Synod's position with regard to the point referred. b. The four who dissented, (see Synod's *answers*,) were Mr. Sutherland, (the party accused, who, if the Court wished to deal harshly with him, might have been deprived of vote or voice in the matter), and his elder, and Mr. Murray and his elder, all of whom are accustomed to dissent. c. The Synod does not reply to Mr. Gordon's third reason of appeal. Instead of pointing out the necessity, if there were such, of their course, they fall back upon the position that they did as they thought best in the matter. Thus they acknowledge by implication that they have no law, usage, precedent or necessity for the course they adopted.