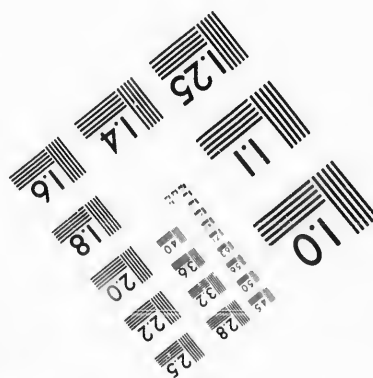
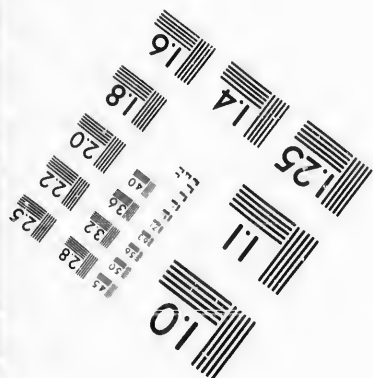
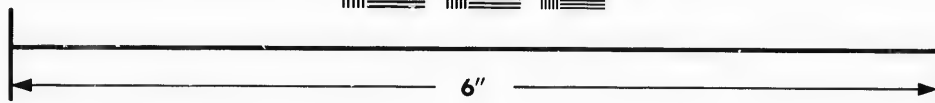
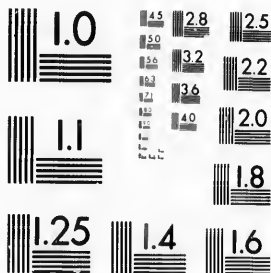


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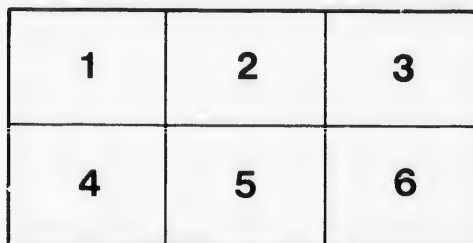
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# Presbyterian Church in Canada, General Assembly, 1881.

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## APPEAL.

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PRESBYTERY OF SYDNEY

*vs.*

SYNOD OF THE MARITIME PROVINCES.

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### CASE FOR THE PRESBYTERY.

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This appeal embraces the decisions of the Synod of the Maritime Provinces upon a reference from the Presbytery of Sydney and upon four appeals taken against decisions of the Presbytery by the Rev. D. Sutherland, minister at Gabarus. For the sake of brevity and for the purposes of reference, we state our case in short numbered paragraphs.

1. The history of the case is briefly this :—*a.* In the spring and summer of 1879 there were rumours widely spread and generally credited charging Mr. Sutherland with irregularity in the election and ordination of elders, in nominating them himself, not submitting the list of nominees for election, and requiring in their ordination a vow of steadfastness to himself in all cases, and other such infringements upon the rights of the Church and the cause of Truth, and these rumours had strong presumption of truth in the well-known character and history of Mr. Sutherland. The Presbytery, sympathizing with a brother in his position, refrained from noticing these charges until the Session of Gabarus, having returned one of these newly appointed elders as its representative to Presbytery, forced this Court to act in self-defence, and an investigation of the manner of election and ordination of said elders was instituted. *b.* Other complaints were also widely circulated against Mr. Sutherland, whereby the cause of truth and Presbyterianism suffered injury, and some of these also were forced upon the attention of Presbytery by a petition signed by 47 persons representing a large proportion of the small congregation of Gabarus. Learning that charges were lodged against him, Mr. Sutherland, manifestly designing to turn the edge of public censure from himself, brought charges before his Session against some of the petitioners and the ministers of his Presbytery, besides trying, in other ways, to hinder the administration of justice. See Sec. 8, *a, b.* *c.* After the examination of many witnesses, and prayerful deliberation, the Presbytery found all the charges, except the fourth, fully proven, and the fourth proven in part. From this decision there was no appeal, and, consequently, it must stand as the judicial finding of the competent court. The Presbytery might now proceed to final action, but, because of tenderness in dealing with a brother, they referred the case to the Synod for final judgement.

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 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.

4. The FIRST CHARGE brought against Mr. Sutherland in the petition presented to Presbytery was one of Sabbath desecration, specially inasmuch as he on the Lord's day, in the church, after or before the close of Divine Service, made intimation that a vessel had arrived or was about to arrive with lumber for his manse, that he would be away from home, and therefore the congregation would need to make arrangements for the landing of the lumber and bringing it to the manse. That this representation was correct is shown by the following *exhibit of testimony*: (The evidence of A\* is not of importance, because of the irregularity of his attendance at church; that of I and K is valueless, except in so far as it confirms that of the others, because of the evident unwillingness with which they testify. G. was not present on the Sabbath referred to.) Mr. Sutherland made an intimation on the Sabbath-day in reference to discharging a vessel, B, C, D, E, F, H, I, K, L, M, N. He made the intimation from the pulpit, B, C, E, K, L, M, N, (—on the floor of the church, H, I,)—before the benediction B, C, D, E,—after the benediction H, I, K, L, N. He said: That the vessel was coming, B, E, H, I, L, M, N: with lumber for the manse, B, E, H, I, M, N; the congregation must arrange to take the lumber off the vessel, C, E, H, I, K, L, M, N, and haul it to the manse, E; and that he had to leave home, H, I, K, L, M, N. John McLean, elder, then asked if they would take horses, B, C, D, E, F, I, K, L, M, N; Mr. Sutherland replied, Be quiet, C, we will not talk of such things now, B, D, E, F, I, K, L, M, N. He also asked the elders and trustees to meet in the vestry immediately to make arrangements for the work, B, D, E, (he did not ask them H, I, K, L, N.) "We met in the vestry, trustees and elders, and considered how we might discharge the vessel and bring up the lumber. Mr. S. was out and in with us. We were not consulting with him in the arrangements. We made arrangements and Mr. S. told me I was to have charge of the arrangements in his absence," B. The trustees and elders did not meet, H, I, L. The trustees and elders were asked on other Sabbaths to consult about scantling, digging cellar, &c., B. Mr. Sutherland spoke of scantling, &c., on other Sabbaths, E, F. "A Sabbath after (that first spoken of,) Mr. Sutherland said from the pulpit, Let the people come with their horses and haul the lumber up to the house. John McLeod said they had not food for the horses. Duncan Morrison said if they had no hay they had oats. On this second Sabbath he again told the trustees and elders to remain after the service to make arrangements in carrying this out," E. It was not his custom to make such intimations, H, I, N, (but N. was not regular in his attendance at church.)

5a. The finding of the Presbytery, based upon the above evidence is as follows (from report of Committee adopted by Presbytery):—"With reference to the charge of Sabbath desecration, your Committee disapprove of the intimation regarding the unloading of the vessel, which your Committee regard as proven, as inconsistent with the solemn services of the sanctuary, and censurable because (1) of the example of a minister in speaking of worldly matters on the Sabbath, and (2) the great amount of thinking and speaking of worldly matters such intimation would likely cause amongst the congregation." b. Unwarrantably reviewing the above finding, the Synod gives the following judgment:—"That the conflicting character of the evidence preferred with reference to the charge of Sabbath desecration against the Rev. D. Sutherland, disables the Committee from determining to what extent this charge can be pressed. But sufficient remains to show that Mr. Sutherland cannot be fully exonerated from somewhat of impropriety in referring as he did to secular matters on the Lord's Day, and accordingly, in the opinion of the Committee, the Synod should enjoin him to exercise due discretion in this respect hereafter." c. Testimony in which a "conflicting character" appears less than in the above (§ 4) would be hard to receive from an equal number of witnesses upon a kindred subject. The Synod was not in a position to weigh conflicting evidence, and therefore ought not to touch the

\* See Appendix A,—List of witnesses.

finding of the Presbytery. *d.* This decision of the Synod, and especially its designation of a breach of the Divine law by the euphemistic "somewhat of impropriety," has weakened the hands of members of Presbytery who have to contend for the sanctity of the Sabbath against Utilitarianism.

6a. THE SECOND COMPLAINT made against Mr. Sutherland by the petitioners was that he had left them for many Sabbaths for the last two or three years without any service; and that he had been going without their permission or that of the Presbytery to preach at Loch Lomond, where there was a minister of our church already settled, thus keeping up a division there. *b.* This charge has not been denied by Mr. Sutherland or his witnesses. The Presbytery, therefore, found "that Mr. Sutherland acted irregularly (1) in dividing his time between his own congregation and another without the leave of his Presbytery; (2) in going to a congregation belonging to a sister church without the leave of the Presbytery of that Church in whose bounds the congregation is; and (3) in going to such church in the immediate neighbourhood of a brother minister's congregation." The Synod determined that Mr. Sutherland committed no irregularity in this matter. *c.* This case embraces a very important question of ecclesiastical law: Are ministers allowed without the sanction of Presbytery to give a definite proportion of their time to congregations or stations other than those over which they have been placed by the Church, to the detriment of the latter? An affirmative answer to this question would appear as ridiculous in Presbyterianism as a negative in Congregationalism.

7a. THE THIRD CHARGE was more serious than the second, viz.: that Mr. Sutherland had deprived the petitioners of their pews, and had given said pews to others who had no right to them. The Presbytery were glad to find this charge not proven with regard to the petitioners themselves; but the evidence showed that he unjustly deprived one Alexander McDonald of his pew. There was an appeal taken upon the further order that the pew be restored to McDonald, but against the decision of Presbytery that the minister of Gabarus has been guilty of a tyrannical abuse of his office in this matter, there was no appeal. *b. Exhibit of Testimony:*—McDonald owned a pew in Gabarus church (C, D, E, G, H, I, N), and paid for it (A, H, I, K, M, N); Mr. Sutherland took it from him (A, B, F,) and gave it to Donald McIntyre (A, B, C, D, G, N). Donald McIntyre has it (M). McDonald lost his right to it by nonresidence; Mr. S. did not take it (K). "I cannot tell whether he (Mr. S.) did it, *i.e.* take the pew and give it to MeI.) himself, or by the concurrence of the session," (A\*) "Mr. S. offered my pew to Hector McKinnon in my own presence," (E).

8. The Synod charges the Presbytery with acting "toward Mr. Sutherland, alike in the conduct of "this" case, and in their findings thereanent with a degree of harshness not a little reprehensible." That the Presbytery had many provocations to harshness from Mr. Sutherland, and that at the same time it acted towards him with the greatest leniency and long-suffering, will be admitted by any candid reader of the record of the case. As specimens of Mr. Sutherland's conduct we give the following: *a.* "At last meeting the Commissioners from Gabarus who presented a petition complaining of the state of matters in that congregation were instructed to send their petition, to the Presbytery through the session. Roderick McLean, Esq., and Philip McDonald, elder and trustee, stated that they enclosed it to the Rev. Mr. Sutherland, Moderator of Session, with a written request to transmit it through session to the first meeting of Presbytery, and delivered the package to Mr. John McCormick, elder, who forwarded it to Mr. Sutherland. Mr. Sutherland, as Moderator of Session, being asked whether the Session of Gabarus had the aforesaid petition before them, answered that no petition was presented to the Session. On being pressed for a decided answer, he said there was a paper containing falsehoods which was allowed to lie on the table of Session at Gabarus. It was now manifest that the petition was not transmitted by the Session

\* Mr. S. had not the concurrence of the session. The elders concurred in McDonald's petition.

to the Presbytery, and that the design was to strangle it. The Clerk having stated that a duplicate copy was handed him, it was moved and carried, that in the circumstances the said copy should be substituted for the original." After some further delay, "Mr. Sutherland presented the original petition. The Presbytery considered such conduct on the part of Mr. Sutherland exceedingly strange and even censurable, inasmuch as he had the petition in his possession while he trifled with the court, declaring that he knew nothing about it; and that it was laid on the table of the session of Gabarus." See *Min. of Presby.* Sept. 10, 1879. *b.* Mr. Sutherland at the same meeting presented a petition as from the Session at Gabarus, to which were signed the names of John McLean and John McCormick, elders, who, subsequently on oath, testified that they were at no meeting of Session at which charges against Dr. McLeod (the subject of the petition) were mentioned, had no knowledge of the petition, and if their names were to it, they were not subscribed by their hand or authority. The names appear to be in Mr. Sutherland's handwriting, and are witnessed by his initials. See also *postea*, sec. 14, *c. d.*

9 *a.* The examination of witnesses who appeared on behalf of and against the complainants, upon the matter of McDonald's pew, was not "unwarrantable," as the Synod affirms. The Presbytery had two petitions before it; the one *special* having reference to McDonald's pew alone, signed by McDonald, and endorsed as truthful and concurred in by all the elders but one, and all the trustees of Gabarus congregation, presented to the Presbytery several weeks before the other which was *general*, and signed by some of the elders, trustees, communicants and adherents. The first charged Mr. Sutherland with depriving McDonald of his pew; the second, with depriving members of the church of their property, viz.: pews in the church at Gabarus. Since both were so related, it could not be very "reprehensible" to take evidence on them at the same time. The two petitions are still more closely related. McDonald had left the bounds of the congregation, had settled the preliminaries of the sale of his pew before Mr. Sutherland was settled at Gabarus (1875) to Mr. Hector McKinnon, who bought his farm, and intended to take his place in the support of ordinances, from which he was driven by Mr. Sutherland's conduct. Mr. S. in depriving McDonald of the pew, deprived McKinnon of the opportunity of purchasing it. McKinnon signed the general petition, and thus the Presbytery was forced to notice the McDonald pew case in examining witnesses on the general petition. *c.* The Synod's action in condemning in such strong language and so repeatedly the conduct of the Presbytery, against which there was not a dissenting voice in the lower court, even from the parties interested, is more "unwarrantable," than that condemned. *d.* So officiously careful is the Synod to show the Presbytery the error of their ways that it three times orders them to destroy "the whole of the minutes of the procedure bearing upon this case," which minutes extend to the length of 59 words, including a record of an appeal and a dissent.

10 *a.* THE FOURTH COMPLAINT was that Mr. Sutherland had taken into his own hands the management of congregational affairs to the extent of turning away the old trustees and appointing new ones. *b. Exhibit of Evidence:* Mr. S. turned out Mr. McLean from the trusteeship, E, F, G; a confused vote was taken, E, F; new trustees were appointed (April 1879), A, D, H, K, N, O; (to take the place of some who died, H,) None of the old trustees had died. K; \*the old trustees were not consulted in the appointment of successors, B; Mr. Sutherland appointed said new trustees, A, C, E, K, N, O, (he did not, M); he nominated them, B, C, D, K; there was no time between nomination and voting, A; a confused vote was taken. A, K, N; the congregation was not aware they were to elect new trustees until the meeting of April 10th or 11th, B, C. (R. McLean was never a trustee, H.)

\*It will be observed that although H, I, K, M, N, sometimes draw on imagination, such attempt is generally rebutted by one of themselves. None of the old trustees had died before even the closing of the case before Presbytery.

11a. The civil law of Nova Scotia, when any deed of trust, made for the benefit of a congregation, does not specify the manner in which vacancies in the trust are to be filled, prescribes the following order to be taken: "When a vacancy shall occur by reason of the death, removal or resignation or displacement of any trustees, it shall be lawful for the members of the church or congregation, from time to time, as occasion shall require, at any meeting convened, after public notice thereof from the pulpit of the church, for two consecutive Sundays preceding such meeting, or by printed notices posted in one or more conspicuous places in or about the house of public worship of such church or congregation for such two preceding Sundays, which published notices shall state the place and hour of such meeting, and the object for which the same is convened, by any resolution passed by not less than two-thirds of the members present at such meeting, to appoint one or more trustees, in place of any trustees dying, removing, resigning, or being displaced, as aforesaid,—provided always that a copy of said resolution, verified under the oath, before a Justice of the Peace, of the Pastor or Clerk, for the time being, of such church or congregation, shall be filed with the Clerk of the Peace for the County, within one month from the passing of such resolution. In default of the filing of such resolution, all acts done thereunder shall be void and of none effect." *Revised Statutes of N. S.*, 1873, page 594. Thus without authority of the congregation, who knew nothing of the necessity or election of new trustees, or of his Presbytery, and in direct contravention of the laws of the Province, Mr. S. appointed these new trustees, invading the office of the old trustees without any other necessity than the desire to remove honest and highly-honored men who would not do his bidding.\* And yet the Synod says that no proof is given to justify the charge of irregularity on his part. b. The Synod says that "from the evidence it did not appear that any person in the congregation was injured by the mode of election carried on by Mr. Sutherland." Forty-seven persons in the congregation cry out that they are injured! The old trustees, whose office has been invaded and whose power is usurped by others, cry out that they are injured!! The trustees are reduced from the status of a body whose acts are legal and have all the force of law to that of one whose transactions are null and void from the beginning!!! The Synod, however, decrees that not only is there no injury, there is not the appearance of injury. If the eyes of that court were not turned away in another direction, it would surely discern an appearance and a reality of injury here.

12a. THE FIFTH and last COMPLAINT embodied in the petition was that Mr. Sutherland had assaulted Roderic McLean, Esq., [at a meeting of the congregation], and had caused bodily injury both to McLean and another man. *Exhibit of Testimony*: Mr. Sutherland assaulted McLean, B, E; he did not, H, K, L, M, N. Mr. S. was in the Precentor's desk as chairman, E, F, M, and left his seat and came down to the passage in front, E, L, M, when McLean was about to pass, B, C, D, E, I. McLean attempted to pass, D, G, H, L, M, O; Mr. S. said, "Young men, cause the man to sit down," I, K, M. Mr. S. then laid his hand on McLean's breast, D, G, laying hold of him by the coat or vest, C, E, G. Something occurred to throw McLean into the pew in which Capt. McLeod was, D, H, I, L, M; Mr. Sutherland pushed McLean on Capt. McLeod, A, B, C, D, E, G. Capt. McLeod cried out, "Don't murder me," A, B, C, E, F, G, L. Capt. McLeod was hurt, A. McLean was hurt, E. Mrs. Sutherland rose, B, C, D, E, L, and cried out, "Papa, papa, B, D, E, L, N, what are you doing? D, E; let the man alone, B, E. Capt. McLeod, Junr., cried out, B, D, E, G, L, N, O, "Clear out, L, N, O, such proceedings were never seen," [or words to that effect], B, D, E, G, N, O. Duncan Morrison rose and said, "Mr. S., let McLean alone," B, E. John Ferguson interfered, H, I, K, N. There was a great sensation in the congregation, B, C, G, I, K; several went out, B, C, D, E, G. McLean did not put his hand on Mr. S., B. McLean forced himself on Mr. S., gave himself a turn and stumbled, I. McLean

\* E. g. The old trustees as well as the old elders would not stoop to deprive McDonald of his right in his own pew.

climbed Mr. S., and his weight came on no one, K. F bent his head, K "lost his sight," and O turned his back just before the assault. *b.* The Synod finds that "it is not clear that there was an assault at all, much less, if there was an assault, by whom it was committed." Such a decision when laid alongside of the evidence, carries its own condemnation. Even the Synod itself deems "the occurrence of such facts as worthy of being reprehended." It further says, "It is to be deplored that a scene such as appears to have occurred should have occurred upon any occasion in any circumstances, and, above all, in a church, and with a minister as one of the parties concerned." *c.* All those who spoke in the excitement of the moment, even Mrs. Sutherland herself, addressed Mr. Sutherland as the aggressor.

13a. Mr. Sutherland's FIRST APPEAL from the Presbytery of Sydney to the Synod was taken against the resolution to allow\* the commission of Mr. Alexander McDonald, as representative elder, lie on the table, until an investigation had been made of the rumors regarding his election. His reasons of appeal are too long for insertion, and are grounded upon the three assumptions (1) that the Presbytery must receive the commissions of Sessions upon their presentation, notwithstanding any knowledge members may have with regard to the ordination or non-ordination of the parties commissioned; (2) that the Presbytery rejected the commission in question; (3) that it was rejected because of a fault in McDonald's character. We are sorry to find that the Synod not only approves of these reasons, but repeats the statements that the Presbytery rejected the commission and supported the rejection by a "*fama* and rumors alleged against his character." These two have been repeatedly denied, and their falsehood can be seen from the record. It has been said that the meaning of the word *fama* countenances the latter; but fortunately the signification of words does not depend on the prejudices of men; a *fama* is a rumour which specifies some particular sin or sins, is widely spread, generally believed, and has strong presumption of truth—*Constit. and Procd.* 248. That the rumors upon which the Presbytery felt itself bound to act fulfilled these conditions. See above, § 1a. The sins were charged in the *fama* not in Mr. McDonald, but in Mr. Sutherland. *b.* If the Venerable the General Assembly declare it to be the law of the Church that a Presbytery is bound under all circumstances, notwithstanding the existence of grave complaints, to receive an elder's commission without inquiry as to the truth or untruth of such complaints, the Presbytery has nothing to say, but must bow to the decision. The Synod did not however pretend to give a decision in accordance with the law of the church. In answer to Mr. Gordon's reason: "By the decision a Presbytery has no protection from an irregularly ordained or an unordained person being a member of court, if he is commissioned by Session," the Synod replies: "Presbytery may justly take for granted that those commissioned by the Sessions under its jurisdiction are regularly ordained." There is no appeal to ecclesiastical law or usage.

14. SECOND APPEAL—*a.* Mr. Sutherland read in Presbytery the following paper and then handed it over to the Clerk of Presbytery, stating, at the same time, that the Session of Gabarus had taken evidence in the matter: "Sydney, 1879. I hereby refer Dr. McLeod's conduct towards the congregation and minister of Gabarus, as contained in the minutes of session, to Presbytery for adjudication. By order of Kirk-session, D. Sutherland, Mod'r. To the Clerk, to be communicated." The Presbytery found that this paper was no reference (which the Synod partially concedes) and dismissed it. *Constit. and Procd.*, 120: "A reference, as to form, consists of an extract minute of the resolution to refer, and must be accompanied with an extract minute of all proceedings in the case, and must be accompanied with all the papers necessary for the proper consideration of the matter referred; and is presented by commissioners appointed for the purpose." Mr. S. appealed to Synod against this decision. *b.* The Synod sustained the appeal and said that there is "no evidence of irregularity of procedure on the part of the Session of Gabarus in submitting their complaint to the Presbytery of Sydney." Of course not, for at the time of the appeal the

Session had submitted no complaint to the Presbytery, and there is no use of proving or disproving irregularity in an action never performed. *c.* But the Synod proceeds further; it enters in this judgment, as well as the last, into the question of reasons and answers. "The reasons submitted by Mr. Sutherland bear no marks of being disrespectful in expression," says that reverend court. In his 8th reason, Mr. S. says: "By shirking the reference . . . justice is burked and *mutatis mutandis* righteousness is fearfully prejudiced. I hope for better things from the Synod. 'I have done judgment and justice; leave me not to mine oppressors.'" Again, 10th: "In my opinion the proceedings will show that tremendous tyranny was exercised by the majority and that their proceedings are not valid." And yet here there are no marks of disrespect! *d.* "The reasons submitted by Mr. Sutherland bear no marks . . . of being incorrect in statement." The Synod actually employs those words, as can be seen on page 19 of their printed minutes. (1) No paper was submitted to Presbytery but that quoted above, and the minute-book of Gabarus Session, of which even the pages treating of the matter were not pointed out. Mr. S., however, says, reason 2nd: "The reference contained an extract as enjoined." This is a deliberate misstatement, and the Synod's committee knew it. (2) Mr. S. further says, reason 9th: "Dr. McLeod, in Presbytery, introduced these measures amid thundering threats to suspend myself, and an appeal to all present if they were all ready for that act." This is not in accordance with truth between man and man, and the fact was pointed out to the Synod in the Presbytery's answers to these reasons as follows: "As to the assertion that he was threatened with suspension, &c., the truth is that he became refractory and abusive and showed contempt of court, so that he was frequently called to order, and, at length, when the business was interrupted and could not be proceeded with, he was informed that if he continued his offensive conduct, he would be suspended." *Constit. and Proceed.* 308. The Presbytery pointed out these deviations from truth in their answers, after much provocation, not from any desire to deal harshly, but with the hope that Mr. Sutherland would amend his ways. *e.* The Synod proceeds, "Much of what is contained in the reasons alleged by the Presbytery of Sydney against this appeal is irrelevant." Reference is here made, as was pointed out by Mr. McRae, when he read the report, to the fifth answer. "The *fama* against Mr. Sutherland, which the Presbytery was so reluctant to take up, has now assumed a tangible form, and must be investigated in a fair, constitutional way. His character, as a minister of the Gospel, should be vindicated, if he is guiltless. This is the great desire and aim of the Presbytery. Mr. S. himself should be the first to seek such a result, and, for the purpose, should beg the interference of the Presbytery." This has reference to the charges contained in the petition presented by a portion of Mr. Sutherland's congregation, and its relevance depends upon *Constit. and Proceed.* 250: "Great caution is to be exercised in receiving accusations from any person . . . who is himself under censure or process." *f.* In answer to Mr. Gordon's reasons, the Synod says this appeal is dismissed. Well! what next?

15. THIRD APPEAL.—Mr. Sutherland, however, discovering that his paper was no reference, and constitutionally dismissed, and thus having no hope that the Synod would sustain his appeal, produced at the next meeting of Presbytery a petition to which reference has been already made (sec. 8 *b.*) upon the same subject as the paper quoted in sec. 14 *a.* The Presbytery dismissed the petition. Mr. S. appealed. The Synod dismissed the appeal, but in such a manner as to call for a re-iteration of the fact that Dr. McLeod in no way interfered with the Gabarus congregation, except in so far as he on one occasion as Moderator of Presbytery had to announce to some of the trustees of that congregation a decision of this Court.

16. FOURTH APPEAL, *a.*—As has been already stated, sec. 1 *a.* the Presbytery instituted an investigation into the mode of election and ordination of some elders at Gabarus. The Session was at first cited to appear before Presbytery to give testimony, but subsequently, Mr. Sutherland having stated that the older members of Session

could not appear from age and failing health, either in Sydney or at the church at Gabarus, a commission was given to three members of Presbytery to take the evidence of these older members, in conformity to *Constit. & Proceed.* 291. "When witnesses cannot attend, their evidence may be taken by commission of the court, or through another church court; but the parties must receive notice of the time and place appointed for the taking of such evidence." This commission was executed, and the elders also attended the meeting of Presbytery. The court upon careful consideration of the case found that there was irregularity in the mode of election, but at the same time agreed to sustain the ordination of these additional elders. From this decision Mr. S. appealed, and the Synod sustained his appeal. *b. Exhibit of Testimony.* There was no meeting of session at which it was agreed to add to the number of elders, Q, P, F. P, S; no conversation outside of the Session with Mr. S. on the desirability of additional elders, P; there was no call to the communicants to meet to elect elders, Q, R; (Mr. S. intimated such a call the Sabbath before April 10th. 1879, S); Mr. Sutherland nominated the new elders, Q, P, S; their election consisted in being named by Mr. Sutherland and no one objecting, Q. No meeting of Session was held between election and ordination to try the canons, Q. One of their ordination vows was that they should be faithful to the minister of the congregation, R. *c.* From the above it appears that the following rules of the *Constit. and Proceed.* were not observed: 223: "It belongs to the Session to determine when an addition should be made to its number; but it is competent for members of the congregation to petition the Session to this effect." 224 "When the Session has resolved to add to the number of elders, it first gives notice of this resolution to the congregation, and proceeds in the manner following: (1.) "A meeting of the congregation is held for the purpose of nominating persons qualified to fill the office. At this meeting a list is made of the names in full of persons duly proposed. This list is then submitted to all the communicants, who are required to return to the Session on or before a fixed date, the votes duly signed. At a meeting held thereafter the Session examines the voting papers, ascertains who have the highest votes, declares them elected, and orders the names of the persons so elected to be publicly announced. (2.) It is competent for the Session to hold an election without a previous meeting for nomination, in which case the requisite number may be elected by open vote, by calling the roll or by ballot. (3.) It is competent for the Session to ask the members to give in on a specified day ballots duly signed, containing the names of persons to the number required. The Session declares those who have the largest number of votes on examination of the ballots, duly elected." (Here three methods are laid down, one of which must be followed; Mr. Sutherland followed none, and violated the spirit of all of them.) 224. (4.): "After the election the Session deals with the elders elect as to the propriety of their accepting office. On their expressing their willingness to accept, the Session proceeds to satisfy itself in regard to their piety, prudence and knowledge of Divine truth, of the government and discipline of the church, and of the duties of the office." The wisdom of these rules is apparent, and if there be no irregularity in ignoring them, irregular procedure is a constitutional impossibility. Mr. Sutherland, though present and examining the witnesses, did not prove that he had the consent of one of his elders to the addition to the Session until he nominated the three additional members. The nomination and election took place at that stormy meeting referred to in § 12. Mr. Sutherland produced no evidence, not even a minute of the meeting, to show that a vote was taken on their election. If it had been taken, the result must have been, from the confusion and excitement of both minister and people, the same as in those which were taken: a few showing their hands upon they knew not which side. *d.* The Synod says: "It appears . . . that the action of the Presbytery . . . was even illegal,—especially in that they employed a civil magistrate to take evidence on oath from ecclesiastical officials." The Presbytery did not act illegally in this, for (1) it was the practice of some of the uniting Churches before the

Union to employ a civil magistrate to take evidence on oath, (2) "witnesses may be examined on oath," (*Constit. and Proced.* 287), and no particular person is authorized to administer such oath, and (3) the magistrate was present at the Commission not as a civil officer but as a member of the Commission, being one of the three appointed by Presbytery.

17a. THE FIFTH APPEAL of Mr. Sutherland was taken against a decision of his Presbytery ordering himself, Session, and Trustees to secure Mr. McDonald in his right to the pew which Mr. S. had taken from him and given to D. McIntyre. Mr. McDonald, as did all the people of Gabarus, subscribed to the Church and paid for a pew in it, upon the distinct understanding that the pew was to be his own property. b. The Synod again attempting to cover Mr. S. by his Session, says: "The Session of Gabarus was guilty of no irregularity or illegality in transferring the pew once occupied by McDonald to D. McIntyre." But the Session never did transfer the pew to D. McIntyre, unless the Session was like that of Poolewe—consisting of the minister alone. *Three of the four elders of Gabarus concurred in McDonald's petition, and thus condemned the action of Mr. S. in this case.* c. The Presbytery had a perfect right to receive the said petition, for one of its first duties is "to receive and dispose of petitions."—(*Constit. and Proced.* 21, and compare also 104). d. The Synod charges Presbytery with assuming to interfere with the action of the Session. No candid reader of these pages or of the documents in the case can credit the charge. e. Mr. Gordon in his reasons of appeal, says: "The Synod had more before it than the judicial record." The Synod replies: "It is not correct to say that the Synod had any matter before it other than what was collected by direct or legitimate inference from the papers submitted to the Synod by the Presbytery of Sydney." This needs a word of explanation. In a speech on the case in Presbytery, after the evidence on the petition was closed, Mr. Sutherland produced a little book which he said contained the rules of the congregation of Gabarus, and from which he said certain things might be proved, and handed it to the clerk, upon which he was asked if he gave this in as part of his evidence in defence; he replied "No." and immediately asked for the return of the book. Members of Presbytery had no opportunity of examining it. Its identity as a book referred to in the evidence was never attempted to be established. At the same time Mr. Sutherland raised the minute-book of his Session in his hand and laid it down again. These two books were before the Synod's Committee.

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## APPENDIX A.

### LIST OF WITNESSES EXAMINED.

#### 1. ON THE GENERAL PETITION.

- |                            |                          |
|----------------------------|--------------------------|
| A. Capt. John McLeod.      | H. Hugh Stewart.         |
| B. Duncan Morrison.        | J. Charles Stewart.      |
| C. Hector McKinnon.        | K. John Stewart.         |
| D. Donald Arch. Munro.     | L. D. McIntyre.          |
| E. Roderic McLean, Esq.    | M. Angus McCormick.      |
| F. Philip McDonald, Elder. | N. John Fergusson.       |
| G. Don. McIntyre's Son.    | O. Alexr. McLeod, Elder. |

#### 2. ON THE ELECTION &c. OF ELDERS.

- |                            |                           |
|----------------------------|---------------------------|
| F. Philip McDonald, Elder. | R. John McCormick, Elder. |
| P. Norman McLean, Elder.   | S. Rev. D. Sutherland.    |
| Q. John McLean, Elder.     |                           |

## APPENDIX B.

## DECISION OF SYNOD.

*At St. Andrew's Church, Chatham, the twenty sixth day of May, one thousand, eight hundred and eighty.*

Which day the Committee appointed to consider the papers referred to the Synod by the Presbytery of Sydney met and was constituted, Sederunt. Dr. McCulloch, Convener, Dr. Pollok, Messrs. Blanchard and Lawson, and Rev. Messrs. Nicholson, Christie and Macrae, who acted as Secretary.

The Committee, having read the petition from certain parties in the Gabarus Congregation, reflecting upon the character of Rev. D. Sutherland, of Gabarus, and the finding of the Presbytery of Sydney in reference to the same, proceeded to consider the evidence relating—

1. To the charge of Sabbath desecration contained in said petition. After due consideration, the Committee recommended the following as what, in their belief, should be the judgment of the Synod:

That the conflicting character of the evidence preferred with reference to the charge of Sabbath desecration against the Rev. D. Sutherland disables the Committee from determining to what extent this charge can be pressed. But sufficient remains to shew that Mr. Sutherland cannot be fully exonerated from somewhat of impropriety, in referring as he did to secular matters on the Lord's Day, and accordingly, in the opinion of the Committee, the Synod should enjoin him to exercise due discretion in this respect hereafter.

2. So far as appears, Mr. Sutherland, in the opinion of this Committee, committed no irregularity in going to preach, as he did at Loch Lomond, and therefore the finding of the Committee of the Presbytery of Sydney on this point cannot be sustained.

3. With respect to the third charge, the opinion of the Committee based upon the evidence, is very decided, that by the introduction of the case of Alexander McDonald in connection with that of the petitioners, the Presbytery went beyond the limits of the record, and acted toward Mr. Sutherland, alike in the conduct of said case and in their finding thereanent, with a degree of harshness not a little reprehensible. The whole of the Minutes of the procedure bearing upon this case ought, in the opinion of the Committee, to be destroyed.

4. As regards the election of Trustees, from the evidence it did not appear that any person in the congregation was injured by the mode of election carried out by Mr. Sutherland, and manifestly, very conclusive proof would be requisite to justify the charge of irregularity on his part, proof which, in the judgment of the Committee, is not furnished by the record.

5. Taking a conjunct view of the evidence on this point, the Committee consider that it is not clear whether there was an assault at all, much less, if there was an assault, by whom it was committed. It is to be deplored that a scene such as appears to have occurred should have occurred on any occasion in any circumstances, and above all, in a church, and with a minister as one of the parties concerned. And, without determining with what party the blame in this matter rests, the Committee deem the occurrence of such facts as worthy of being reprehended.

## ON THE APPEALS.

1. With reference to this appeal, the Committee consider that it should be sustained. The reasons given by the Presbytery in reply to those preferred by Mr. Sutherland are utterly without force, and the grounds alleged by him in support of his appeal against the action of the Presbytery are sufficient. In the opinion of the Committee, the Presbytery erred in rejecting the commission of Mr. McDonald,—the more that they refused to receive him for one reason, alleged irregularity in the mode of his election to office,—and supported their refusal with reasons of a quite different character, a fama and rumours alleged against his character.

2. With regard to this appeal, the Committee find no evidence of irregularity of procedure on the part of the Session of Gabarus, in submitting their complaint to the Presbytery of Sydney against the alleged interference of Dr. McLeod, in the affairs of the congregation of Gabarus. The reasons submitted by Mr. Sutherland bear no marks of being disrespectful in expression, nor of being incorrect in statement. Much of what is contained in the reasons alleged by the Presbytery of Sydney against this appeal is irrelevant. And, therefore, on the whole, the Committee recommend that this appeal be sustained.

3. The Committee find that the charge of interference on the part of Dr. McLeod, acting separately from the Presbytery, does not appear to be sustained. At the same time, since, in their opinion, the introduction of the McDonald case into that based upon the petition was altogether unwarrantable. They consider that, in dismissing this appeal, it should be dismissed simply as part of the whole case with which it is connected, the minutes of which they have, in a previous finding, enjoined the Presbytery to destroy.

4. As to this appeal, it appears to the Committee that the action of the Presbytery, with reference to the whole subject of election of elders in Gabarus congregation was unwarrantable, and even illegal,—especially in that they employed a civil magistrate to take evidence on oath from ecclesiastical officials. No ground appears why the Presbytery should have entered at all upon the investigation which they instituted as to this election; no proof is furnished that any grave irregularity was committed, or that any one complained. The Committee, therefore, recommend that the appeal be sustained, and that the minutes bearing upon this case be destroyed.

5. The Committee sustain this appeal also. So far as appears, McDonald's petition ought not to have been received by the Presbytery. The Session of Gabarus was guilty of no irregularity or illegality in transferring the pew once occupied by McDonald to D. McIntyre. The Presbytery had no right to interfere, as they assumed to do, with the action of the Session in dealing with the pews, and in ordering the Minister, Session and Trustees to restore the pew sold by A. McDonald, and resought in the petition to him. And the minutes bearing upon this whole case of the McDonald petition and pew, ought to be, and are hereby enjoined to be destroyed.

## APPENDIX C.

### I. REASONS OF APPEAL FROM ABOVE DECISION ANENT THE REFERENCE.

I protest and appeal on behalf of the Presbytery of Sydney against such part of the decision of Synod as reviews the findings of Presbytery of Sydney in the case referred, because—

1. These findings constitute the foundation of the reference.
2. From these findings there was no complaint or appeal.
3. The decision complained of unnecessarily censures the Presbytery, annulling their decisions. The reference was not for the confirmation or annulling of these findings, but to obtain a final judgement upon the case.

G. LAWSON GORDON.

### II.—SYNOD'S ANSWERS TO ABOVE REASONS.

1. 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.
2. From these findings, *four* members out of a court of *nine* dissented.
3. The Committee of Synod most carefully reviewed the whole of the voluminous evidence and other papers submitted to it; and the findings arrived at on the whole case, and on each point composing it, were based upon this careful review, and were unanimous.

### III.—REASONS OF APPEAL FROM SYNOD'S DECISION ANENT MR. SUTHERLAND'S APPEALS.

I protest and appeal on behalf of the Presbytery of Sydney from the decision of Synod in the several matters of appeal from the Presbytery of Sydney, because—

1. By the decision a Presbytery has no protection from an irregularly ordained or an unordained person being a member of court if he is commissioned by a Session.
2. The paper handed in by Mr. Sutherland was no reference in form or in sense, and the Session has no right to take evidence against a minister.
3. The Synod had more before it than the judicial record, *i.e.* matters not put in in evidence before the Presbytery.

G. LAWSON GORDON.

### IV.—SYNOD'S ANSWERS TO ABOVE REASONS.

1. Presbytery may justly take for granted that those commissioned by the Sessions under its jurisdiction are regularly ordained. In the particular case in question, the ordination of the elders of the Session of Gabarus was ultimately admitted by the Presbytery of Sydney, and in the view of the Synod was fully sustained by the evidence admitted in the case.

2. Allowing for the sake of argument that there was informality in the mere mode of the reference from the Session of Gabarus to the Presbytery of Sydney affecting the conduct of Dr. McLeod (which however is only partially conceded), it did not appear to the Synod that the Session took evidence on the charge against Dr. McLeod, beyond the point requisite to sustain the members of that Session in making what was intended by them as a complaint. But inasmuch as the appeal to which this person refers was dismissed by the Synod, it seems utterly uncalled for and unnecessary for Mr. Gordon to continue discussion upon a point in itself of the very smallest importance.

3. It is not correct to say that the Synod had any matter before it other than what was collected by direct or legitimate inference from the papers submitted to the Synod by the Presbytery of Sydney.

