

The Constitutional Aspect of the Declaratory Act

By Rev. D. Beaton

Free Presbyterian Magazine – February 1993

In our Deed of Separation the constitutional aspect of the Declaratory Act is very clearly set forth in the following words: “That by passing of the Declaratory Act of 1892, the said present subsisting Church, calling herself the Free Church of Scotland, through her General Assemblies, has, in so far as said Church is concerned, destroyed the integrity of the Confession of Faith as understood and accepted by the Disruption Fathers and their predecessors, and instead of the Westminster Confession of Faith as the recognised standard of orthodoxy in the Church, in all its heads and articles, has substituted what is called 'the substance of the Reformed Faith therein set forth,' the Church, through the majorities of the members of her Courts, being by the said Declaratory Act made the sole judge of the particular points that are to be included under this category of doctrines - a provision which overthrows the fixed doctrinal Constitution of the Free Church of Scotland, and lays its Creed at the feet of an irresponsible majority to determine the same as it will.” In making this charge of violating the Constitution of the Free Church, Free Presbyterians have appealed to the fact that this Act was passed under the Barrier Act of 1697. The title of this famous Act indicates its purpose: “Act anent the method of passing Acts of Assembly of general concern to the Church and for preventing of Innovations.” The relevant part of the Act bearing on the subject under discussion may now be quoted: “Considering the frequent practice of former Assemblies of this Church, and that it will mightily conduce to the exact obedience of the Acts of Assemblies, that General Assemblies be very deliberate in making the same; and that the whole Church have a previous knowledge thereof, and their opinion be had therein, and for preventing any sudden alteration or innovation, or other prejudice to the Church, in either doctrine or worship, or discipline, or government thereof, now happily established; do, therefore, appoint, enact, and declare, that before any General Assembly of this Church shall pass any Acts, which are to be binding rules and constitutions to the Church, the same Acts be first proposed as overtures to the Assembly, and, being by them passed as such, be remitted to the consideration of the several Presbyteries of this Church, and their opinions and consent reported by their Commissioners to the next General Assembly following, who may pass the same in Acts, if the more

general opinion of the Church thus had agreed thereunto." There are two points in this Act which have a direct bearing on the violation of the Free Church's Constitution by the Declaratory Act. (1) The Barrier Act expressly states the kind of Acts with which it deals, viz., Acts "which are to be binding rules and constitutions to the Church." These words are plain enough, and lend themselves to only one interpretation, viz., that Acts which the Church sends down to Presbyteries under the Barrier Act are meant to be "Acts which are to be binding rules and constitutions to the Church," otherwise the collected wisdom of the Church, in General Assembly gathered, is betraying its utter incompetence to deal with legislation. (2) It is also clear from the wording of the Barrier Act that, while it was intended "for preventing any sudden alteration or innovation or other prejudice to the Church, in either doctrine or worship, or discipline, or government thereof," yet, though no doubt it was meant to hinder "sudden" alteration or innovation, it gave a significance to any alteration or innovation in doctrine or worship passed under it that it would not otherwise have but for the fact of having passed through the Barrier Act. It is this aspect of the Barrier Act which, it may safely be surmised, its framers never intended, that aided the wreckers of the Westminster Confessional doctrine in the Free Church of Scotland. The founders of the Free Presbyterian Church, while holding that the majority in passing the Declaratory Act were acting ultra vires, inasmuch as a use was made of the Barrier Act for which it was never intended, at the same time asserted that the Declaratory Act, being inconsistent with the Confession, violated the Constitution of the Free Church. In taking up positions seemingly at variance, there was no inconsistency. Both positions were tenable and consistent with the real facts of the situation created by the ecclesiastical policy of one of the astutest ecclesiastical leaders Scotland ever had, though, alas! his gifts were prostituted to a bad cause. It is true, of course, that in 1894 an Act was passed in which it is enacted "that the Assembly hereby declare that the statements of doctrine contained in the said [Declaratory] Act are not thereby imposed upon any of the Church's office-bearers as part of the standards of the Church; but that those who are licensed or ordained to office in this Church, in answering the questions and subscribing the formula are entitled to do so in view of the said Declaratory Act." This was only a makeshift, and deceived only those who wished to keep their eyes shut. When Principal Rainy found the Free Church in the serious position in which she was placed by the passing of the Declaratory Act his subtle brain immediately set to work on formulating some method whereby the

Declaratory Act would not appear to have the formidable position it really had under the Barrier Act, he fell on what must have appeared to himself and others a real inspiration in his ecclesiastical need. According to this presentation of the case, the Declaratory Act was not the serious piece of legislation that some men took it to be; it was only a "relieving Act." This phrase did ignoble service in many a speech, and captured the imagination of the facile followers of Dr Rainy to such a degree that those who thought differently were laughed to scorn. A relieving Act! What else was it but a relieving Act? It did not need Dr Rainy's subtle brain to coin this phrase, but there was one thing he ought to have laid a little more emphasis on to meet the real situation, and that was that this relieving Act relieved office-bearers from doctrines which were embedded in the constitution of the Free Church. The fact that it was a relieving Act did not nullify the damaging fact that it violated the Constitution of the Free Church.

A number who were opposed to the Declaratory Act still remained in the Church, and argued that they were not under it. This plausible argument ignored the working of ecclesiastical law. Take, for instance, a supposed case - The members of a whole Presbytery, with one or two exceptions, might refuse to licence a student because he wished to take advantage of the Declaratory Act, the case would be appealed to the Synod by the dissentients, and supposing the majority of the Synod supported the Presbytery, the matter would probably be appealed to the Assembly. The Assembly, in dealing with the case, had no option but to ask the Presbytery to licence the student and to give him the full benefit of any relief the Declaratory Act, its own Act, gave him. No amount of ecclesiastical argumentation could alter this fact, that the Assembly had passed this Act for such a purpose, and no amount of dissents could alter the fact that it was not an inoperative piece of legislation, but operative. Students, therefore, must be licensed and ministers ordained who were in the fullest sympathy with the Declaratory Act, and all the arguments of those who were opposed to it but yet remained in the Church betrayed their incapacity to realise the real logic of the ecclesiastical situation.

It has been argued by those who remained in the Church in 1893 and afterwards refused to enter the Union in 1900, that Free Presbyterians should be silent about being under the Declaratory Act, for (1) the Rev. D. Macfarlane remained in the Church a year after the Declaratory Act was passed, and during that year accepted a call to Raasay. In answer to this we have only to remind our readers that Mr Macfarlane explicitly stated in a letter to the press,

reprinted in the Free Presbyterian Magazine, vol. XXVIII, p. 150, that it was at the request of the Constitutional party, who were opposed to the Act, that he remained in the Church, in the hope that the Declaratory Act would be repealed at the Assembly of 1893. But even though, it could be proved that Mr Macfarlane was under the Declaratory Act for a year, which he denied, for the reasons stated in the aforementioned letter, that does not prove that the Free Presbyterian Church was; for in the formation of the Free Presbyterian Church there was a complete break by Messrs Macfarlane and Macdonald with the Church which passed the Declaratory Act. (2) It has been argued that the Free Presbyterian Church never repealed this Act. One scarcely wishes to believe that those who use this argument are serious, as it shows an exceptionally low mental acumen, but, as it has been used time and again, and by those of whom better things might be expected, it is necessary to point out for the reason above stated that the Free Presbyterian Church, in making a complete break with the Church of the Declaratory Act, and in going back to the attainments of the Disruption Church, was under no necessity to repeal a law which never had a place on its statute book. The charge, therefore, that the Free Presbyterian Church is still under the Declaratory Act because it did not repeal the same is a piece of inconsequent reasoning that no man who wishes to be credited with even a minimum of logical acumen should ever dream of using. It was entirely different with the Free Church, which claimed to have a continuity with the Free Church up to 1892 and onwards. They were in duty bound to repeal the Declaratory Act in accordance with their profession at the earliest possible opportunity. That opportunity came in 1900, but it is a matter of history that it was not repealed until after the property case had been decided, and it is also a matter of history that the reason of this delay was owing to the question of the Church property then in dispute between the United Free and Free Churches. It has often been a question of interest to us: Supposing there had been no Union, would an effort ever have been made by those who afterwards formed the Free Church to have it repealed? We are aware we are dealing with hypothetical propositions, but propositions which nevertheless are very interesting. In the famous Church Case, Lord James of Hereford put a very interesting question to Mr Salvesen, one of the Free Church counsel: "Supposing," he said, "the majority of the United Free Church said: 'We take that view, and we will administer the Trusts according to their original form.' What would prevent their taking possession of and seeking to administer the property?" To which Mr Salvesen replied: "I think they would have to rescind

the Union, because our view is that the Union necessarily involves the abandonment of the principles of the Free Church; but if they rescind the Union and came back to the Church, of course they would be entitled to participate along with the Pursuers [i.e., the Free Church]” In other words, had there been no Union the Free Church would not have been able to claim the property on the pleas she put forward in the case. Such, at any rate, seems to be the inference that may be drawn from the opinions of the learned counsel of the Free Church.

It was because those who afterwards formed the Free Presbyterian Church believed that it was impossible to remain in the Free Church without being bound by the Declaratory Act, with its anti-Scriptural, anti-Confessional teaching, that they left the Free Church as then constituted. Events have proved that they were wisely guided in this matter. Even from a worldly standpoint any little sacrifice made for the cause of truth has been made up more than a hundred-fold. The Lord has owned the stand made in 1893 in the interests of His truth, and there are many now at rest who rejoiced to see the day of deliverance when they experienced a joy which must have been akin to that felt by Israel when they left the bondage of Egypt forever behind.