PART II.

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CHAPTER 48.

An Act to amend the Law relating to the Patronage of Benefices, and to their avoidance on Sequestration, and to amend the Pluralities Acts, 1838 and 1885.

[12th August 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Transfer of patronage rights.

1.—(1.) A transfer of a right of patronage of a benefice shall not be valid unless—

(*a*) it is registered in the prescribed manner in the registry of the diocese within one month from the date of the transfer, or within such extended time as under special circumstances the bishop may think fit to allow; and

(*b*) it transfers the whole interest of the transferor in the right, except as herein-after provided; and

(*c*) more than twelve months have elapsed since the last institution or admission to the benefice.

(2.) It shall not be lawful to offer for sale by public auction any right of patronage, save in the case of an advowson to be sold in conjunction with any manor, or with an estate in land of not less than one hundred acres situate in the parish in which the benefice is situate or in an adjoining parish and belonging to the same owner as the advowson, and any person who offers any right of patronage for sale by auction in contravention of this section, or who bids at any such sale, shall be liable, on summary conviction, to a fine not exceeding one hundred pounds.

(3.) Any agreement for any exercise of a right of patronage of a benefice in favour or on the nomination of any particular person, and any agreement on the transfer of a right of patronage of a benefice—

(*a*) for the re-transfer of the right; or

(*b*) for postponing payment of any part of the consideration for the transfer until a vacancy or for more than three months; or

(*c*) for payment of interest until a vacancy or for more than three months; or

(*d*) for any payment in respect of the date at which a vacancy occurs; or

(*e*) for the resignation of a benefice in favour of any person,

shall be invalid.

(4.) For the declaration set forth in section two of the Clerical Subscription Act, 1865, shall be substituted the declaration set forth in the schedule to this Act which shall be taken in the prescribed manner, and if any person knowingly makes any false statement in this declaration he shall be guilty of a misdemeanour, and shall be liable to the punishment attaching by law to perjury. 28 & 29 Vict. c. 122.

(5.) If any clergyman is knowingly party or privy to any transfer, presentation, or agreement which is invalid under this section, or commits any breach of the promissory part of his declaration, he shall be guilty of an offence in respect of which proceedings may be taken under section two of the Clergy Discipline Act, 1892. 55 & 56 Vict. c. 32.

(6.) The expression "transfer" in this section shall include any conveyance or assurance passing or creating any legal or equitable interest *inter vivos*, and any agreement for any such conveyance or assurance, but shall not include—

(*a*) a transmission on marriage, death, or bankruptcy, or otherwise by operation of law; nor

(*b*) a transfer on the appointment of a new trustee where no beneficial interest passes.

(7.) Nothing in this section shall prevent the reservation or limitation in a family settlement of a life interest to the settlor, or in a mortgage the reservation of a right of redemption.

2.—(1.) A bishop may refuse to institute or admit a presentee to a benefice— Grounds for refusal to institute.

(*a*) if, at the date of the vacancy, not more than one year has elapsed since a transfer, as defined by the first section of this Act, of the right of patronage of the benefice, unless it be proved that the transfer was not effected in view of the probability of a vacancy within such year; or

(*b*) on the ground that at the date of presentation not more than three years have elapsed since the presentee was ordained deacon, or that the presentee is unfit for the discharge of the duties of the benefice by reason of physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination, or having, with reference to the presentation, been knowingly party or privy to any transaction or agreement which is invalid under this Act.

(2.) A bishop shall not collate, institute, or admit any person to a benefice until the expiration of one month after notice, in the prescribed manner, that he proposes to collate, institute, or admit such person has been served on the churchwardens of the parish, who shall publish the notice in the prescribed manner.

Appeal against refusal to institute.

3.—(1.) Where a bishop, on any ground included in section two of this Act or of unfitness or disqualification of the presentee otherwise sufficient in law, except a ground of doctrine or ritual, refuses to institute or admit a presentee to a benefice, he shall signify the refusal in writing together with the grounds thereof to the person presenting to the benefice and to the presentee in the prescribed manner, and within one month after the signification either of those persons may, in the prescribed manner, require that the matter be heard by a court consisting of the archbishop of the province and of a judge of the Supreme Court, who shall be nominated by the Lord Chancellor from time to time for the purposes of this Act, and the bishop shall be made a party to the proceedings. The court constituted under this Act shall be a court of record and shall be held in public, and at any hearing the legal rules of evidence shall prevail.

(2.) The judge shall decide all questions of law and find as to any fact alleged as reason of unfitness or disqualification and his decision on such questions of law and his finding as to any such fact shall be binding on the archbishop, who shall thereupon—

(i) if the judge finds that no such fact sufficient in law exists, direct institution or admission; or

(ii) if the judge finds that any such fact sufficient in law exists, decide if necessary whether by reason thereof the presentee is unfit for the discharge of the duties of the benefice and determine whether institution or admission ought, under the circumstances, to be refused,

and in either case the archbishop shall give judgment accordingly, and that judgment shall be final.

(3.) The court shall have the same powers of administering oaths and of requiring the attendance of witnesses and the production by them of documents, and as to the payment and recovery of costs and expenses, as are exerciseable by the High Court of Justice.

(4.) If, within one month after a judgment of the court in favour of a presentee, the bishop fails to institute or admit him, the official principal of the archbishop shall institute or admit him if there is no other impediment.

(5.) If in any case to which this section applies the bishop signifies his refusal in manner provided by this section, no proceeding in the nature of *quare impedit* or *duplex querela* shall be taken in any other court in respect of the refusal.

(6.) Where the presentation is made to an archbishop, the archbishop of the other province, whether Canterbury or York, and such judge as aforesaid, shall constitute the court.

Provision as to grounds of refusal.

4. The bishop may, on the hearing of any case under section three of this Act, rely on—

(i) any ground included in his signification of refusal; and

(ii) by the leave of the judge (on such terms as to notice, costs, adjournment, or otherwise, as the judge thinks fit), any other ground sufficient in law (not being of doctrine or ritual).

Provision as to lapse.

5. In reckoning the date for lapse, no account shall be taken, in the case of the first and second presentations by a patron in respect of the same vacancy, of the period between a presentation by the patron and the refusal by the bishop to institute or admit the presentee, or of the period between the refusal of the bishop to institute or admit and the decision of the court upon such refusal; nor in case of a bishop having a right to collate to a benefice of the period between the service of the notice on the churchwardens under the provisions of this Act and the expiration of a month from the said service.

Right of presentation.

6.—(1.) A patron may not present again a person who has been refused by the bishop in respect of the same vacancy, and any such second presentation shall be void.

(2.) In the event of the presentee of a clerical patron being refused institution or admission by the bishop, and of such decision being upheld, the patron shall have the same right of further presentation as though he were a lay patron.

Presentation by Universities of Oxford and Cambridge.

7. So much of the statutes 3 and 4 James I., cap. 5, sect. 13, and 1. William and Mary, cap. 26, sect. 2, is hereby repealed as prevents the Chancellor and Scholars of the Universities of Oxford and Cambridge from presenting or nominating to the benefices and livings there mentioned persons already holding any benefice with cure of souls, provided that nothing be done in contravention of the other Acts regulating the holding of benefices in plurality. And further the said Universities shall be permitted to elect to such benefices, and to any other benefices or livings that are or may hereafter be in their patronage, and to exercise any other rights that they may possess in respect to them in any way that they may hereafter, by statute or ordinance of the University made in the ordinary manner, from time to time determine to be expedient.

Constitution of Commission under Pluralities Acts. 1 & 2 Vict. c. 106. 48 & 49 Vict. c. 54.

8. To the Commission appointed in pursuance of section seventy-seven of the Pluralities Act, 1838, as amended by the Pluralities Acts Amendment Act, 1885, there shall be added two other commissioners, being either laymen in the commission of the peace for the county in which the benefice is situate, or barristers or solicitors of not less than ten years' standing, nominated by the person who has presided as chairman of the last preceding quarter sessions for the county or division of the county in which the benefice is situated, or, failing him, by the lord lieutenant of the county.

Provided that the secretary of the bishop or the registrar of the diocese shall not be qualified as a commissioner.

Power to inhibit on report of negligence in discharge of duties.

9.—(1.) Where a commission appointed in pursuance of section seventy-seven of the Pluralities Act, 1838, as amended by the Pluralities Acts Amendment Act, 1885, and by this Act, reports that the ecclesiastical duties of a benefice are inadequately performed, and that this is due to the negligence of the incumbent of the benefice in the performance of those duties (which report the Commission is hereby empowered to make), the bishop, if he thinks

the appointment of a curate desirable, shall himself appoint a curate or curates, as in the said section mentioned, without requiring the incumbent to do so, and may also, if in his opinion the adoption of such a course is expedient in the interests of the benefice, inhibit the incumbent from performing all or any of those duties.

(2.) The power conferred by the said section amended as aforesaid, and by this section, of appointing and requiring the appointment of a curate, may be exercised from time to time in case of any vacancy in the curacy.

(3.) Where a curate has, before the commencement of this Act, been appointed under the said section, or the said section as amended by the Pluralities Acts Amendment Act, 1885, the bishop may, if he sees reason to believe that the incumbent is negligent in the performance of the ecclesiastical duties of the benefice, issue a commission under the said section as so amended and by this Act to inquire into the facts of the case, and if that commission reports that the incumbent is so negligent, the bishop may inhibit him from performing all or any of the said duties.

(4.) When an incumbent is inhibited under this Act, he shall not interfere with or control any curate in the performance of the ecclesiastical duties of the benefice, and any right of patronage vested in him by virtue of his incumbency shall, while he is inhibited, vest in the patron of his incumbency, or, if the incumbent be the patron, then in the archbishop of the province.

(5.) An incumbent so inhibited shall not be liable to any penalty or forfeiture for non-residence, but section ninety-three of the Pluralities Act, 1838, shall apply as if the incumbent were not resident as therein mentioned, and thereupon section ninety-four of the same Act shall apply as in the case where the curate's stipend is not less than the whole value of the benefice. The incumbent shall remain liable for repairs, but shall be entitled to retain out of the curate's stipend such amount in respect of repairs during the curate's occupation, and shall be entitled to such facilities for executing repairs, as the bishop may, in case of difference, decide to be reasonable.

(6.) The incumbent may appeal against the appointment of a curate by the bishop under this section and against any such inhibition to the court constituted under this Act within one month after such appointment or the issue of such inhibition. On any such appeal the judge shall determine whether the incumbent has been negligent as aforesaid, and the archbishop shall thereupon—

(i) if the judge finds that the incumbent has not been negligent as aforesaid, rescind the appointment and inhibition, if any; or

(ii) if the judge finds that the incumbent has been negligent as aforesaid, decide whether by reason thereof the said appointment should have been made, and also whether the incumbent should be inhibited from performing any and what ecclesiastical duties of his benefice;

and shall give judgment accordingly, and that judgment shall be final. Subject as aforesaid the provisions of section three of this

Act with respect to procedure shall apply to proceedings under this sub-section.

In certain cases of sequestration benefice to become void.

10. In the case of incumbents presented or collated after the commencement of this Act, if, on bankruptcy, or in aid of any writ of execution against property, the benefice of any such incumbent is sequestrated within twelve months after his institution, or if such sequestration, if issued after that period, continues for the space of one whole year, or if any such incumbent incurs two such sequestrations in the space of two years, the benefice shall, unless the bishop in the manner and within the time to be prescribed otherwise direct, become void, and section fifty-eight of the Pluralities Act, 1838, shall apply in like manner as if the benefice had become void under that section. 1 & 2 Vict. c. 106.

Power to make rules. 55 & 56 Vict. c. 32.

11. The rule committee, as defined by section nine of the Clergy Discipline Act, 1892, may make rules for prescribing anything which, under this Act, is to be prescribed, and for defining the duties of the officials by whom registration is to be effected, and with respect to the inspection of the register and the fees payable on registration and inspection under this Act, and the application thereof for the remuneration of the officials in the registry in respect of such registration and inspection, and for regulating the procedure on and incident to the hearing and determination under this Act of any question as to a refusal to institute or admit, or of an appeal against an inhibition or appointment of a curate, and the fees payable in respect thereof, and the appointment and duties of officers of the court, and otherwise for carrying the purposes of this Act into effect, and the provisions of that section shall apply in the case of any rules so made. For the purpose of framing rules under this section the judge nominated by the Lord Chancellor for the purposes of this Act shall be added to the said Rule Committee if not already a member thereof. In framing rules under this Act regard shall be had to making the procedure and practice as simple and inexpensive as possible. The fees paid in respect of proceedings in the court under this Act shall be paid over to the common fund of the Ecclesiastical Commissioners, who shall, out of such common fund, defray all the expenses of and incidental to the sittings of the court and the remuneration of its officers, and all expenses which are necessarily incurred in the execution of this Act in such proceedings: Provided that no portion of any fund destined for the relief of necessitous incumbents shall be applied to the payment of the aforesaid expenses.

Abolition of donatives.

12. Every benefice with cure of souls which at the commencement of this Act is donative shall as from that date be presentative.

Meaning of benefice.

13.—(1.) In this Act the expression "benefice" comprehends all rectories with cure of souls, vicarages, perpetual curacies, endowed public chapels, and parochial chapelries, and chapelries or districts belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, and districts formed for

ecclesiastical purposes by virtue of statutory authority, and includes benefices in the patronage of the Crown or of the Duchy of Cornwall, but does not extend to any of Her Majesty's Royal Chapels, or to any Royal peculiar, nor to any cathedral or capitular preferment or dignity, nor to any chapel belonging to any college, school, hospital, inns of court, asylum, or public or charitable institution, nor to any private chapel.

(2.) In section two of this Act the expression "duty" shall mean ecclesiastical duties as defined by section two of the Pluralities Acts Amendment Act, 1885, omitting the following words therein "and "the performance of which shall have been required of him in "writing by the bishop."

48 & 49 Vict. c. 84.

(3.) In section nine of this Act and in the Pluralities Act, 1838, and the Pluralities Acts Amendment Act, 1885, the expression "ecclesiastical duties" shall, in all respects, include those duties mentioned in section two of the Pluralities Acts Amendment Act, 1885, and also the observance of all the promises as to conduct which every clergyman of the Church of England solemnly makes at the time of his ordination; and the expression "negligence" in the performance of ecclesiastical duties shall include wilful default in the performance of such duties.

Commencement.

14. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-nine.

Short title.

15. This Act may be cited as the Benefices Act, 1898.

SCHEDULE.

Section 1 (4).

FORM OF DECLARATION.

I, *C.D.*, hereby solemnly and sincerely declare in reference to the presentation made of me to the rectory (or vicarage, &c.) of as follows:—

"(1.) I have not received the presentation of the said rectory (or vicarage, &c.) in consideration of any sum of money, reward, gift, profit, or benefit directly or indirectly given or promised by me, or by any person to my knowledge or with my consent, to any person whatsoever, and I will not at any time hereafter perform or satisfy any payment, contract, or promise made in respect of that presentation by any person without my knowledge or consent.

"(2.) I have not entered, nor, to the best of my knowledge and belief, has any person entered, into any bond, covenant, or other assurance or engagement, otherwise than as allowed by sections one and two of the

9 Geo. 4. c. 94.

Clergy Resignation Bonds Act, 1828, that I should at any time resign the said rectory (or vicarage, &c.).

"(3.) I have not by myself, nor, to my knowledge, has any person on my behalf, for any sum of money, reward, gift, profit, or advantage, or for or by means of any promise, agreement, grant, bond, covenant, or other assurance of or for any sum of money, reward, gift, profit, or benefit

whatsoever, directly or indirectly procured the now existing avoidance of the said rectory (or vicarage, &c.).

"(4.) I have not, with respect to the said presentation, been party or privy to any agreement which is invalid under section one, sub-section three of the Benefices Act, 1898."

Dated this day of 18 .

C.D.

CHAPTER 49.

An Act to Amend the Law with respect to Vaccination.

[12th August 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Vaccination within six months after birth. 30 & 31 Vict. c. 84.

1.—(1.) The period within which the parent or other person having the custody of a child shall cause the child to be vaccinated shall be six months from the birth of the child, instead of the period of three months mentioned in section sixteen of the Vaccination Act of 1867, and so much of that section as requires the child to be taken to a public vaccinator to be vaccinated shall be repealed.

(2.) The public vaccinator of the district shall, if the parent or other person having the custody of a child so requires, visit the home of the child for the purpose of vaccinating the child.

(3.) If a child is not vaccinated within four months after its birth, the public vaccinator of the district, after at least twenty-four hours notice to the parent, shall visit the home of the child, and shall offer to vaccinate the child with glycerinated calf lymph, or such other lymph as may be issued by the Local Government Board.

(4.) The public vaccinator shall not vaccinate a child, if, in his opinion, the condition of the house in which it resides is such, or there is or has been such a recent prevalence of infectious disease in the district, that it cannot be safely vaccinated, and in that case shall give a certificate under section eighteen of the Vaccination Act of 1867 of postponement of vaccination, and shall forthwith give notice of any such certificate to the medical officer of health for the district.

(5.) Notwithstanding any regulation of any lying-in hospital or infirmary, or other similar institution, the parent of any child born in any institution shall not be compelled under such regulation or otherwise to cause or permit the child to be vaccinated at any time earlier than the expiration of six months from its birth.

Exemption from penalties.

2.—(1.) No parent or other person shall be liable to any penalty under section twenty-nine or section thirty-one of the Vaccination Act of 1867, if within four months from the birth of the child he satisfies two justices, or a stipendiary or metropolitan police