ANNO TERTIO & QUARTO

VICTORIÆ REGINÆ.

****

CAP. LXXXVI.

An Act for better enforcing Church Discipline. [7th *August* 1840.]

WHEREAS the Manner of proceeding in Causes for the Correction of Clerks requires Amendment: 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, That an Act passed in the First Year of the Reign of King *Henry* the Seventh, intituled *An Act for Bishops to punish Priests and other Religious Men for dishonest Lives*, shall be repealed.

Repeal of 1 H. 7. c. 4.

II. And be it enacted, That, unless it shall otherwise appear from the Context, the Term "Preferment," when used in this Act, shall be construed to comprehend every Deanery, Archdeaconry, Prebend, Canonry, Office of Minor Canon, Priest Vicar, or Vicar Choral in Holy Orders, and every Precentorship, Treasurership, Sub-Deanery, Chancellorship of the Church, and other Dignity and Office in any Cathedral or Collegiate Church, and every Mastership, Wardenship, and Fellowship in any Collegiate Church, and all Benefices with Cure of Souls, comprehending therein all Parishes, Perpetual Curacies, Donatives, endowed Public Chapels, Parochial Chapelries, and Chapelries or Districts belonging to or reputed to belong, or annexed or reputed to be annexed, to any Church or Chapel, and every

Definition of the Terms "Preferment," "Bishop," "Archbishop" and "Diocese."

 Curacy,

Curacy, Lectureship, Readership, Chaplaincy, Office, or Place which requires the Discharge of any Spiritual Duty, and whether the same be or be not within any exempt or peculiar Jurisdiction; and the Word "Bishop," when used in this Act, shall be construed to comprehend "Archbishop;" and the Word "Diocese," when used in this Act, shall be construed to comprehend all Places to which the Jurisdiction of any Bishop extends under and for the Purposes of an Act passed in the Second Year of the Reign of Her present Majesty, intituled *An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy.*

1 & 2 Vict. c. 106.

Bishop may issue a Commission of Inquiry.

III. And be it enacted, That in every Case of any Clerk in Holy Orders of the United Church of *England* and *Ireland* who may be charged with any Offence against the Laws Ecclesiastical, or concerning whom there may exist Scandal or evil Report as having offended against the said Laws, it shall be lawful for the Bishop of the Diocese within which the Offence is alleged or reported to have been committed, on the Application of any Party complaining thereof, or if he shall think fit of his own mere Motion, to issue a Commission under his Hand and Seal to Five Persons, of whom One shall be his Vicar General, or an Archdeacon or Rural Dean within the Diocese, for the Purpose of making Inquiry as to the Grounds of such Charge or Report: Provided always, that Notice of the Intention to issue such Commission under the Hand of the Bishop, containing an Intimation of the Nature of the Offence, together with the Names, Addition, and Residence of the Party on whose Application or Motion such Commission shall be about to issue, shall be sent by the Bishop to the Party accused Fourteen Days at least before such Commission shall issue.

Notice to be previously given.

Proceedings of the Commissioners.

IV. And be it enacted, That it shall be lawful for the said Commissioners or any Three of them to examine upon Oath, or upon solemn Affirmation in Cases where an Affirmation or Declaration is allowed by Law instead of an Oath, which Oath or Affirmation or Declaration respectively shall be administered by them to all Witnesses who shall be tendered to them for Examination as well by any Party alleging the Truth of the Charge or Report as by the Party accused, and to all Witnesses whom they may deem it necessary to summon for the Purpose of fully prosecuting the Inquiry, and ascertaining whether there be sufficient *primâ facie* Ground for instituting further Proceedings; and Notice of the Time when and Place where every such Meeting of the Commissioners shall be holden shall be given in Writing under the Hand of One of the said Commissioners to the Party accused Seven Days at least before the Meeting; and it shall be lawful for the Party accused, or his Agent, to attend the Proceedings of the Commission, and to examine any of the Witnesses; and all such preliminary Proceedings shall be public, unless, on the special Application of the Party accused, the Commissioners shall direct that the same or any Part thereof shall be private; and when such preliminary Proceedings, whether public or private, shall have been closed, One of the said Commissioners shall, after due Consideration of the Depositions taken before them, openly and publicly declare the Opinion of the Majority of the Commissioners present at such

such Inquiry, whether there be or be not sufficient *primâ facie* Ground for instituting further Proceedings.

Report of the Commissioners.

V. And be it enacted, That the said Commissioners or any Three of them shall transmit to the Bishop under their Hands and Seals the Depositions of Witnesses taken before them, and also a Report of the Opinion of the Majority of the Commissioners present at such Inquiry whether or not there be sufficient *primâ facie* Ground for instituting Proceedings against the Party accused; and such Report shall be filed in the Registry of the Diocese; and that if the Party accused shall hold any Preferment in any other Diocese or Dioceses, the Bishop to whom the Report shall be made shall transmit a Copy thereof, and of the Depositions, to the Bishop or Bishops of such other Diocese or Dioceses, and shall also upon the Application of the Party accused, cause to be delivered to such Party a Copy of the said Report and of the Depositions, on Payment of a reasonable Sum for the same, not exceeding Two-pence for each Folio of Ninety Words.

Bishop may pronounce Sentence, by Consent, without further Proceedings.

VI. And be it enacted, That in all Cases where Proceedings shall have been commenced under this Act against any such Clerk it shall be lawful for the Bishop of any Diocese within which such Clerk may hold any Preferment, with the Consent of such Clerk and of the Party complaining, if any, first obtained in Writing, to pronounce, without any further Proceedings, such Sentence as the said Bishop shall think fit, not exceeding the Sentence which might be pronounced in due Course of Law; and all such Sentences shall be good and effectual in Law as if pronounced after a Hearing according to the Provisions of this Act, and may be enforced by the like Means.

Articles and Depositions to be filed.

VII. And be it enacted, That if the Commissioners shall report that there is sufficient *primâ facie* Ground for instituting Proceedings, and if the Bishop of any Diocese within which the Party accused may hold any Preferment, or the Party complaining, shall thereupon think fit to proceed against the Party accused, Articles shall be drawn up, and, when approved and signed by an Advocate practising in *Doctors Commons*, shall, together with a Copy of the Depositions taken by the Commissioners, be filed in the Registry of the Diocese of such last-mentioned Bishop; and any such Party, or any Person on his Behalf, shall be entitled to inspect without Fee such Copies, and to require and have, on Demand, from the Registrar (who is hereby required to deliver the same), Copies of such Depositions, on Payment of a reasonable Sum for the same, not exceeding Two-pence for each Folio of Ninety Words.

Service of Copy of the Articles on the Party.

VIII. And be it enacted, That a Copy of the Articles so filed shall be forthwith served upon the Party accused by personally delivering the same to him, or by leaving the same at the Residence House belonging to any Preferment holden by him, or if there be no such House, then at his usual or last known Place of Residence; and it shall not be lawful to proceed upon any such Articles until after the Expiration of Fourteen Days after the Day on which such Copy shall have been so served.

IX. And

Bishop may require the Party to appear before him;

IX. And be it enacted, That it shall be lawful for the said last-mentioned Bishop, by Writing under his Hand, to require the Party to appear, either in Person or by his Agent duly appointed, as to the said Party may seem fit, before him at any Place within the Diocese, and at any Time after the Expiration of the said Fourteen Days, and to make Answer to the said Articles within such Time as to the Bishop shall seem reasonable; and if the Party shall appear, and by his Answer admit the Truth of the Articles, the Bishop, or his Commissary specially appointed for that Purpose, shall forthwith proceed to pronounce Sentence thereupon according to the Ecclesiastical Law.

and may pronounce Judgment on Admission.

How Notice and Requisition to be served.

X. And be it further enacted, That every Notice and Requisition to be given or made in pursuance of this Act shall be served on the Party to whom the same respectively relate in the same Manner as is hereby directed with respect to the Service of a Copy of the Articles on the Party accused.

Proceedings on a Hearing before the Bishop.

XI. And be it enacted, That if the Party accused shall refuse or neglect to appear and make Answer to the said Articles, or shall appear and make any Answer to the said Articles other than an unqualified Admission of the Truth thereof, the Bishop shall proceed to hear the Cause, with the Assistance of Three Assessors, to be nominated by the Bishop, One of whom shall be an Advocate who shall have practised not less than Five Years in the Court of the Archbishop of the Province, or a Sergeant at Law, or a Barrister of not less than Seven Years standing, and another shall be the Dean of his Cathedral Church, or of One of his Cathedral Churches, or One of his Archdeacons, or his Chancellor; and upon the Hearing of such Cause the Bishop shall determine the same, and pronounce Sentence thereupon according to the Ecclesiastical Law.

Sentence of Bishop to be effectual in Law.

XII. And be it enacted, That all Sentences which shall be pronounced by any Bishop or his Commissary in pursuance of this Act shall be good and effectual in Law, and such Sentences may be enforced by the like Means as a Sentence pronounced by an Ecclesiastical Court of competent Jurisdiction.

Bishop may send the Cause to the Court of Appeal of the Province.

XIII. Provided always, and be it enacted, That it shall be lawful for the Bishop of any Diocese within which any such Clerk shall hold any Preferment, or if he hold no Preferment then for the Bishop of the Diocese within which the Offence is alleged to have been committed, in any Case, if he shall think fit, either in the first instance or after the Commissioners shall have reported that there is sufficient *primâ facie* Ground for instituting Proceedings, and before the filing of the Articles, but not afterwards, to send the Case by Letters of Request to the Court of Appeal of the Province, to be there heard and determined according to the Law and Practice of such Court: Provided always, that the Judge of the said Court may and he is hereby authorized and empowered from Time to Time to make any Order or Orders of Court for the Purpose of expediting such Suits or otherwise improving the Practice of the said Court, and from Time to Time to alter and revoke the same: Provided also, that there shall be

Judge of the Court may make Orders for expediting such Suits.

no Appeal from any interlocutory Decree or Order not having the Force or Effect of a definitive Sentence, and thereby ending the Suit in the Court of Appeal of the Province, save by the Permission of the Judge of such Court. No Appeal from interlocutory Decree.

XIV. And be it enacted, That in every Case in which, from the Nature of the Offence charged, it shall appear to any Bishop within whose Diocese the Party accused may hold any Preferment that great Scandal is likely to arise from the Party accused continuing to perform the Services of the Church while such Charge is under Investigation, or that his Ministration will be useless while such Charge is pending, it shall be lawful for the Bishop to cause a Notice to be served on such Party at the same Time with the Service of a Copy of the Articles aforesaid, or at any Time pending any Proceedings before the Bishop or in any Ecclesiastical Court, inhibiting the said Party from performing any Services of the Church within such Diocese from and after the Expiration of Fourteen Days from the Service of such Notice, and until Sentence shall have been given in the said Cause: Provided that it shall be lawful for such Party, being the Incumbent of a Benefice, within Fourteen Days after the Service of the said Notice, to nominate to the Bishop any fit Person or Persons to perform all such Services of the Church during the Period in which such Party shall be so inhibited as aforesaid; and if the Bishop shall deem the Person or Persons so nominated fit for the Performance of such Services he shall grant his Licence to him or them accordingly, or in case a fit Person shall not be nominated the Bishop shall make such Provision for the Service of the Church as to him shall seem necessary; and in all such Cases it shall be lawful for the Bishop to assign such Stipend, not exceeding the Stipend required by Law for the Curacy of the Church belonging to the said Party, nor exceeding a Moiety of the net annual Income of the Benefice, as the said Bishop may think fit, and to provide for the Payment of such Stipend, if necessary, by Sequestration of the Living: Provided also, that it shall be lawful for the said Bishop at any Time to revoke such Inhibition and Licence respectively. Bishop empowered to inhibit Party accused from performing Services of the Church, &c.

XV. And be it enacted, That it shall be lawful for any Party who shall think himself aggrieved by the Judgment pronounced in the first instance by the Bishop, or in the Court of Appeal of the Province, to appeal from such Judgment; and such Appeal shall be to the Archbishop, and shall be heard before the Judge of the Court of Appeal of the Province, when the Cause shall have been heard and determined in the first instance by the Bishop, and shall be proceeded in in the said Court of Appeal in the same Manner and subject only to the same Appeal as in this Act is provided with respect to Cases sent by Letters of Request to the said Court; and the Appeal shall be to the Queen in Council, and shall be heard before the Judicial Committee of the Privy Council when the Cause shall have been heard and determined in the first instance in the Court of the Archbishop. What Appeals may be.

XVI. And be it enacted, That every Archbishop and Bishop of the United Church of *England* and *Ireland*, who now is or at any Time Archbishops and Bishops, Members of the Privy

Council, to be Members of the Judicial Committee on all Appeals under this Act.

Time hereafter shall be sworn of Her Majesty's Most Honourable Privy Council, shall be a Member of the Judicial Committee of the Privy Council for the Purposes of every such Appeal as aforesaid; and that no such Appeal shall be heard before the Judicial Committee of the Privy Council unless at least One of such Archbishops or Bishops shall be present at the Hearing thereof: Provided always, that the Archbishop or Bishop who shall have issued the Commission herein-before mentioned in any such Case, or who shall have heard any such Case, or who shall have sent any such Case by Letters of Request to the Court of Appeal of the Province, shall not sit as a Member of the Judicial Committee on an Appeal in that Case.

Attendance of Witnesses, and Production of Papers, &c. may be compelled.

XVII. And be it enacted, That it shall be lawful in any such Inquiry for any Three or more of the Commissioners, or in any such Proceeding for the Bishop, or for any Assessor of the Bishop, or for the Judge of the Court of Appeal of the Province, to require the Attendance of such Witnesses, and the Production of such Deeds, Evidences, or Writings, as may be necessary; and such Bishop, Judge, Assessor, and Commissioners respectively shall have the same Power for these Purposes as now belong to the Consistorial Court and to the Court of Arches respectively.

Witnesses to be examined on Oath, and to be liable to Punishment for Perjury.

XVIII. And be it enacted, That every Witness who shall be examined in pursuance of this Act shall give his or her Evidence upon Oath, or upon solemn Affirmation in Cases where an Affirmation is allowed by Law instead of an Oath, which Oath or Affirmation respectively shall be administered by the Judge of the Court or his Surrogate, or by the Assessor of the Bishop, or by a Commissioner; and that every such Witness who shall wilfully swear or affirm falsely shall be deemed guilty of Perjury.

Provisions of Act not to interfere with Persons instituting Suits to establish a civil Right.

XIX. Provided always, and be it enacted, That nothing herein-before contained shall prevent any Person from instituting as voluntary Promoter, or from prosecuting, in such Form and Manner and in such Court as he might have done before the passing of this Act, any Suit which, though in Form Criminal, shall have the Effect of asserting, ascertaining, or establishing any Civil Right, nor to prevent the Archbishop of the Province from citing any such Clerk before him in Cases and under Circumstances in and under which such Archbishop might, before the passing of this Act, cite such Clerk under and in pursuance of a Statute passed in the Twenty-third Year of the Reign of King *Henry* the Eighth, intituled *An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain Cases.*

23 H. 8. c. 9.

Suits to be commenced within Two Years.

Proviso.

XX. And be it enacted, That every Suit or Proceeding against any such Clerk in Holy Orders for any Offence against the Laws Ecclesiastical shall be commenced within Two Years after the Commission of the Offence in respect of which the Suit or Proceeding shall be instituted, and not afterwards: Provided always, that whenever any such Suit or Proceeding shall be brought in respect of an Offence for which a Conviction shall have been obtained in any Court of Common Law, such Suit or Proceeding may be brought against the Person convicted at any Time within Six Calendar Months after such Conviction,

viction, although more than Two Years shall have elapsed since the Commission of the Offence in respect of which such Suit or Proceeding shall be so brought.

27 G. 3. c. 44. not to apply to Suits against Spiritual Persons for certain Offences.

XXI. And be it declared and enacted, That the Act passed in the Twenty-seventh Year of the Reign of His late Majesty King *George* the Third, intituled *An Act to prevent frivolous and vexatious Suits in the Ecclesiastical Courts*, does not and shall not extend to the Time of the Commencement of Suits or Proceedings against Spiritual Persons for any of the Offences in the said Act named.

Power of Archbishops and Bishops as to exempt or peculiar Places or Preferments.

XXII. And be it enacted, That every Archbishop and Bishop within the Limit of whose Province or Diocese respectively any Place, District, or Preferment, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the Powers and Authorities necessary for the due Execution by them respectively of the Provisions and Purposes of this Act, and for enforcing the same with regard thereto respectively, as such Archbishop and Bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the Jurisdiction of such Archbishop or Bishop; and where any Place, District, or Preferment, exempt or peculiar, shall be locally situate within the Limits of more than One Province or Diocese, or where the same, or any of them, shall be locally situate between the Limits of the Two Provinces, or between the Limits of any Two or more Dioceses, the Archbishop or Bishop of the Cathedral Church to whose Province or Diocese the Cathedral, Collegiate, or other Church or Chapel of the Place, District, or Preferment respectively shall be nearest in local Situation shall have, use, and exercise all the Powers and Authorities which are necessary for the due Excution of the Provisions of this Act, and enforcing the same with regard thereto respectively, as such Archbishop or Bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the Jurisdiction of such Archbishop or Bishop respectively, and the same, for all the Purposes of this Act, shall be deemed and taken to be within the Limits of the Province or Diocese of such Archbishop or Bishop; provided that the Peculiars belonging to any Archbishoprick or Bishoprick, though locally situate in another Diocese, shall continue subject to the Archbishop or Bishop to whom they belong, as well for the Purposes of this Act as for all other Purposes of Ecclesiastical Jurisdiction.

No Suit to be instituted except as herein provided.

XXIII. And be it enacted, That no Criminal Suit or Proceeding against a Clerk in Holy Orders of the United Church of *England* and *Ireland* for any Offence against the Laws Ecclesiastical shall be instituted in any Ecclesiastical Court otherwise than is herein-before enacted or provided.

If a Bishop is Patron of the Preferment held by accused Party, Archbishop to act in his Stead.

XXIV. And be it enacted, That when any Act, save sending a Case by Letters of Request to the Court of Appeal of the Province, is to be done or any Authority is to be exercised by a Bishop under this Act, such Act shall be done or Authority exercised by the Archbishop of the Province in all Cases where the Bishop who would otherwise do the

the Act or exercise the Authority is the Patron of any Preferment held by the Party accused.

Saving of Archbishop and Bishop's Powers.

XXV. And be it enacted, That nothing in this Act contained shall be construed to affect any Authority over the Clergy of their respective Provinces or Dioceses which the Archbishops or Bishops of *England* and *Wales* may now according to Law exercise personally and without Process in Court; and that nothing herein contained shall extend to *Ireland*.

Act may be amended this Session.

XXVI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

LONDON: Printed by GEORGE E. EYRE and ANDREW SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1840.