Two other members of the county council; and

Two persons elected triennially by the county electors in the electoral division aforesaid, in accordance with such regulations as the Secretary for Scotland may from time to time prescribe, whether preliminary or incidental to such election, and for applying to such election any enactments as to offences at the election of county councillors, and for supplying casual vacancies on the committee; or

If the holdings are situate within the limits of any burgh, then, instead of the persons elected as aforesaid, two town councillors or commissioners, as the case may be, to be appointed for that purpose by the town council or commissioners of such burgh.

Extent of Act.

25. This Act shall not apply to Ireland.

Commencement of Act.

26. This Act shall come into operation on the first day of October, one thousand eight hundred and ninety-two.

Short title.

27. This Act may be cited as the Small Holdings Act, 1892.

CHAPTER 32.

An Act for better enforcing Discipline in the Case of Crimes and other Offences against Morality committed by Clergymen. [27th June 1892.]

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:

Effect of conviction of clergyman for treason, felony, or grave misdemeanours, or for certain other offences.

1.—(1.) If either—

(*a*) a clergyman is convicted of treason or felony, or is convicted on indictment of a misdemeanour, and on any such conviction is sentenced to imprisonment with hard labour or any greater punishment, or

(*b*) an order under the Acts relating to bastardy is made on a clergyman, or

(*c*) a clergyman is found in a divorce or matrimonial cause to have committed adultery, or

(*d*) an order for judicial separation is made against a clergyman in a divorce or matrimonial cause, or

(*e*) a separation order is made against a clergyman under the Matrimonial Causes Act, 1878;

41 & 42 Vict. c. 19.

then, after the date at which the conviction, order, or finding becomes conclusive, the preferment (if any) held by him shall, within twenty-one days, without further trial be declared by the bishop to be vacant as from the said date, and he shall be incapable, save as in this Act mentioned, of holding preferment.

(2.) Provided that if when so convicted he receives a free pardon from the Crown his incapacity shall cease, and if he receives the pardon before the institution of another clergyman to such preferment the bishop shall, within twenty-one days after receiving notice in writing of such pardon, again institute him and cause him

to be inducted into the preferment, and no fee shall be payable to any person whomsoever in respect thereof.

(3.) If any act required under this section to be done by a bishop is not done within the said twenty-one days it shall be done by or under the authority of the archbishop of the province.

Complaint against clergyman for immorality.

2. If a clergyman either is convicted by a temporal court of having committed an act constituting an ecclesiastical offence, and the foregoing section does not apply to him, or is alleged to have been guilty of any immoral act, immoral conduct, or immoral habit, or of any offence against the laws ecclesiastical, being an offence against morality and not being a question of doctrine or ritual, he may be prosecuted by any of the parishioners of the parish in which such clergyman holds preferment, or by the bishop of the diocese, or by any person approved by the bishop, and tried in the consistory court of the diocese in which he holds preferment, and may be so prosecuted and tried in accordance with the prescribed procedure, subject as follows :—

(*a.*) If the complaint made against the clergyman appears to the bishop of the diocese to be too vague or frivolous to justify proceedings he shall disallow the prosecution:

(*b.*) The prosecutor may at any stage of the proceedings be ordered to give security for costs, unless the offence alleged in the prosecution is one of which the clergyman has been convicted by a temporal court:

(*c.*) If any question of fact (other than the fact of the conviction of a temporal court) has to be determined, and either party to a case so requires, five assessors shall be chosen in the prescribed manner, and shall, for deciding a question of fact, be members of the court; and the decision of such question must either be the unanimous decision of the assessors, or that of the chancellor and at least a majority of the assessors:

(*d.*) If no such decision is arrived at, the case shall, if either party so desires, be retried as soon as possible, with assessors chosen as before, save that no assessors who acted at the former trial shall act as assessors on the retrial:

(*e.*) The chancellor on any trial shall preside, and shall alone determine any question of law, and also any question of costs, and whether the question is one of law or of fact shall be deemed to be a question of law.

Election of and mode of choosing assessors.

3.—(1.) The assessors shall be chosen in the prescribed manner from the list of assessors who shall be elected as soon as possible after the commencement of this Act, and every three years afterwards, as follows (that is to say) :—

(*a.*) Three shall be elected from their own number by the members of the cathedral church of the diocese;

(*b.*) Four shall be elected from their own number by the beneficed clergy of each archdeaconry in the diocese; and

(*c.*) Five shall be elected from the justices of the county by the court of quarter sessions of each county wholly in the diocese, and of such of the counties partly in the diocese as may be prescribed.

(2.) Provided that—

(*a.*) The consent of an assessor to serve shall be obtained before he is elected; and

(*b.*) If an assessor ceases to be one of the body from whom he is elected, or resigns, or dies, or becomes incapable of acting, the chancellor may declare a vacancy, and thereupon the vacancy may be filled by another election.

(3.) When the presence of assessors is required, three clergymen and two laymen shall be chosen out of the assessors on the said list by ballot conducted by the registrar in the presence of such (if any) of the parties as desire to be present by themselves or their representatives.

(4.) The assessors chosen shall be bound to attend when required, and if anyone fails so to attend without a reasonable excuse satisfactory to the chancellor he shall be disqualified for acting or being elected again as assessor, and the chancellor shall declare a vacancy, and the vacancy shall be filled by a new election.

(5.) If any assessor is objected to by either party for reasons approved by the chancellor, he shall be discharged from serving.

(6.) If by reason of any objection or of non-attendance or otherwise the requisite number of assessors is not obtained before the trial, the chancellor shall, if there is time, cause a clergyman or layman, as the case may require, to be chosen from the list of assessors by another ballot, but, if there is not time, shall appoint some clergyman or layman, as the case may require, who is willing to serve, and is not objected to by either party for cause shown and deemed sufficient by the chancellor, to make up the full number of five assessors.

Appeals on question of law or fact.

4.—(1.) Either party to a case may appeal against any judgment of a consistory court under this Act in respect of any matter of law.

(2.) If a defendant desires to appeal against any judgment of a consistory court under this Act in respect of the facts, he may petition for leave to appeal, and if he satisfies the appellate court that there is a primâ facie case leave shall be given, and he may appeal.

(3.) An appeal against any interlocutory judgment under this Act, not having the force or effect of a definitive sentence upon the merits of the case, shall not be allowed except by leave of the court.

(4.) An appeal or petition under this section shall be within the prescribed time and in accordance with the prescribed rules, and may (at the option of the appellant or petitioner) be to the provincial court or to Her Majesty the Queen in Council, but if to the provincial court the decision of that court shall be final.

(5.) If there is an appeal, the sentence shall be suspended until the appeal is determined or abandoned, and for the purpose of any inhibition be deemed not to have been given.

Limitation of prosecutions and conclusiveness of conviction, &c.

5.—(1.) A complaint under this Act for an offence shall not be made after five years from the date of the offence, or of the last of a series of acts alleged as part of the offence, except that complaint may be made within two years after a conviction by a temporal court becomes conclusive.

(2.) A conviction, order, or finding shall become conclusive for the purposes of this Act—

(*a*) where there has been any appeal (whether by case reserved, special case, motion for new trial, writ of error, appeal, or otherwise), upon the date at which the appeal is dismissed or abandoned, or the proceedings on appeal are finally concluded; and

(*b*) if there has been no such appeal, upon the expiration of the time limited for such appeal, or where no time is so limited of two months from the date of the conviction, order, or finding;

but, if varied on appeal, shall be conclusive only as so varied, and so far as it is reversed on appeal shall cease to be of any effect.

(3.) After the conviction of a clergyman by a temporal court of committing an act becomes conclusive, a certificate of such conviction shall be conclusive proof in an ecclesiastical court that he has committed the act therein specified, except in the case of a summary conviction, against which there is no right of appeal.

(4.) In the event of any such conviction, order, or finding, by or before a temporal court, as makes the preferment of a clegyman subject to be declared vacant, or renders a clergyman liable to prosecution under this Act, the court shall cause the prescribed certificate of the conviction, order, or finding, to be sent to the bishop of the diocese in which the court sits, and such certificate shall be preserved in the registry of that diocese, or of any other diocese to which it may be sent by direction of the bishop.

Sentences and incapacity for preferment.

6.—(1.) When a clergyman is, under this Act, adjudged guilty—

(*a*) regard shall be had in considering the sentence to the interests of the ecclesiastical parish or place concerned, and not to precedents of punishments; and

(*b*) he may be sentenced in every case to deprivation, and if so sentenced shall be incapable, save as in this Act mentioned, of holding preferment; and

(*c*) if he is sentenced to suspension for a term, he shall not, during that term, exercise or perform without leave of the court any right or duty of or incidental or attached to his preferment, nor reside in or within such distance from the house of residence of that preferment as is specified in the sentence, and shall not, at the end of the term, be re-admitted until he has satisfied the court of his good conduct during the term.

(2.) Where by virtue of anything in or done under this Act a clergyman becomes incapable of holding preferment, his incapacity—

(*a*) shall cease if he receives a free pardon from the Crown; and

(*b*) shall not extend to any preferment which the bishop of the diocese and archbishop of the province in which it is situate, after such public notice, if any, as they think desirable, allow him to hold.

(3.) Where by virtue of anything in or done under this Act the preferment of a clergyman is vacant, the time for lapse shall run from the date at which the prescribed notice of the vacancy is given.

Proceedings in case of disobedience to sentence.

7. If a clergyman wilfully disobeys a sentence passed under this Act, or any requirement or direction contained in such sentence, he may be cited before the consistory court, and if, after the prescribed proceedings for enabling him to show cause to the contrary, the chancellor is satisfied that the clergyman has been so wilfully disobedient and ought to be punished for it, the chancellor may pronounce judgment against him, which shall be subject to the like appeal as if pronounced on a trial under this Act, and sentence him to such ecclesiastical punishment as the gravity of the case appears to require, including a sentence of deprivation; and where any sentence is so passed, the writ de contumace capiendo shall not be issued.

Power to bishop to depose from holy orders a clergyman whose preferment is vacated under Act.

8. Where by virtue of this Act, or of any sentence passed in pursuance of this Act, the preferment of a clergyman becomes vacant, and it appears to the bishop of the diocese that such clergyman ought also to be deposed from holy orders, the bishop may, by sentence and without any further formality, depose him, and the sentence of deposition shall be recorded in the registry of the diocese: Provided always, that such clergyman may appeal against the said sentence within one month from the date thereof to the archbishop of the province, whose decision shall be final.

Power to make rules.

9.—(1.) The Rule Committee, that is to say the Lord Chancellor, the Lord Chief Justice of England, the judge of the provincial court, and the archbishops and bishops who are members of the Privy Council, or any three of the said persons, two of them being the Lord Chancellor and one other of the aforesaid judicial persons, may make rules for carrying this Act into effect, and in particular for regulating all matters relating to procedure, practice, costs, expenses, and fees under this Act, including the appeals (so far as rules made by the Privy Council or the Judicial Committee do not extend), the electing and choosing of assessors, the place of sitting of the court, the giving of security for costs, the passing of sentences, the validity of proceedings notwithstanding defects of form or irregularity, the application of this Act to a clergyman who cannot be found, or holds no preferment, or several preferments, the liability to and recovery of costs and expenses, the forms to be used, and all matters incidental to or connected with the administration of justice under this Act.

(2.) Every rule purporting to be made in pursuance of this section shall be forthwith laid before both Houses of Parliament, and if an address is presented to Her Majesty the Queen by either House within the next forty days thereafter on which that House has sat, praying that any such rule may be annulled, Her Majesty in Council may annul the same, without prejudice to the validity of anything done in the meantime in pursuance thereof; but subject as aforesaid, every such rule shall, while unrevoked, be of the same validity as if enacted in this Act.

Supplemental. 3 & 4 Vict. c. 86.

10.—(1.) Sections two, six, fourteen, eighteen, twenty-two, and twenty-five of the Church Discipline Act, 1840 (which sections are set out in the schedule to this Act), shall apply as if they were herein re-enacted and in terms made applicable to proceedings

under this Act, and with the substitution of the chancellor for the assessor of the bishop, and section fourteen of that Act shall apply where a clergyman is accused before a temporal court of any criminal offence, or of any act constituting an ecclesiastical offence, in like manner as it applies where a charge for the like offence is pending in an ecclesiastical court.

(2.) The consistory court means the court having the powers and duties of a consistory court of a diocese; and shall have jurisdiction over every place, district, and preferment, exempt or peculiar, over which the bishop of the diocese has, by virtue of this Act or otherwise, jurisdiction.

(3.) A bishop may act as bishop for the purposes of this Act in relation to a clergyman holding in his diocese a preferment of which the bishop is patron.

(4.) The judgment of a consistory court or (on appeal) of the appellate court that a clergyman has been guilty of an immoral act, immoral conduct, or immoral habit, or of any offence against the laws ecclesiastical, being an offence against morality and not a question of doctrine or ritual, shall be conclusive that the offence charged is cognizable by a consistory court under this Act.

(5.) The bishop may appoint as a deputy chancellor a barrister of not less than seven years' standing, or the holder of a judicial appointment.

Employment under Act no ground for pension, &c.

11. No person shall by reason of any employment or emolument under this Act acquire any right to compensation, superannuation, or other allowance on abolition of office or otherwise.

Definitions.

12. In this Act, unless the context otherwise requires,—

"Clergyman."

The expression "clergyman" means a clergyman, not being a bishop of a diocese, who is in holy orders in the Church of England, or who, though ordained by a bishop of another church, is permitted to officiate as a priest or deacon of the Church of England:

"Chancellor."

The expression "chancellor" means the judge of the consistory court by whatever name known:

"Provincial court."

The expression "provincial court" means as respects the province of Canterbury the Arches Court of Canterbury, and as respects the province of York the Chancery Court of York:

"County."

The expression "county" includes a riding or division having a separate court of quarter sessions:

"Member of a cathedral church."

The expression "member of a cathedral church" means any dean, residentiary canon, non-residentiary canon, prebendary, or honorary canon of that church:

"Archdeaconry."

The expression "archdeaconry" includes the Isle of Ely:

"Judicial appointment."

The expression "judicial appointment" includes a chairmanship of quarter sessions and a police or stipendiary magistrateship:

"Judgment."

The expression "judgment" includes decree and order:

"Prescribed."

The expression "prescribed" means prescribed by rules made in pursuance of this Act:

"Church Discipline Act."

The expression "Church Discipline Act, 1840," means the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-six, intituled "An Act for better enforcing Church discipline":

"Immoral act," "immoral conduct," and "immoral habit."

The expressions "immoral act," "immoral conduct," and "immoral habit" shall include such acts, conduct, and habits as are proscribed by the seventy-fifth and one hundred and ninth canons issued by the Convocation of the Province of Canterbury in the year one thousand six hundred and three.

Exclusion of question of doctrine or ritual, and savings.

13.—(1.) Nothing in this Act shall

(*a*) render a clergyman liable to be tried or sentenced under this Act in respect of any question of doctrine or ritual; or

(*b*) affect any prerogative of Her Majesty the Queen as respects pardon or otherwise; or

(*c*) affect the liability of a clergyman to any prosecution, action, or proceeding, in any court other than an ecclesiastical court, but if he can be prosecuted under this Act for an offence, any other criminal proceeding against him for that offence shall not be instituted in an ecclesiastical court.

(2.) This Act shall apply only to a clergyman who either holds preferment within the meaning of this Act, or resides or has committed the offence in England or Wales; and where a clergyman holds a licence from a bishop in England or Wales, this Act shall apply to that clergyman, notwithstanding that he resides elsewhere, as if he held preferment in the diocese of that bishop.

Short title, commencement of Act, and repeal.

14.—(1.) This Act may be cited as the Clergy Discipline Act, 1892.

(2.) This Act shall come into operation at the expiration of three months next after it passes, and, so far as regards any prosecution and trial under this Act, apply to offences committed before or after the passing or commencement thereof.

(3.) The Church Discipline Act, 1840, shall, except so far as the sections in the schedule to this Act are applied by this Act, be repealed as respects any proceeding instituted after the commencement of this Act against a clergyman for an offence for which he can be prosecuted or his benefice declared vacant under this Act.

SCHEDULE.

ENACTMENTS REFERRED TO.

CHURCH DISCIPLINE ACT, 1840.

3 & 4 Vict. c. 86.

Section Two.

Definition of the terms "preferment," "bishop," "archbishop," and "diocese."

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 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.

Section Six.

Bishop may pronounce sentence, by consent, without further proceedings.

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.

Section Fourteen.

Bishop empowered to inhibit party accused from performing services of the church, &c.

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 perferment 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 afore said, 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.

Section Eighteen.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

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 every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury.

Section Twenty-two.

Power of archbishops and bishops as to exempt or peculiar places or preferments.

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 execution 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.

Section Twenty-five.

Saving of archbishop and bishop's powers.

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.

CHAPTER 33.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and ninety-three, and to appropriate the Supplies granted in this Session of Parliament. [27th June 1892.]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and 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: