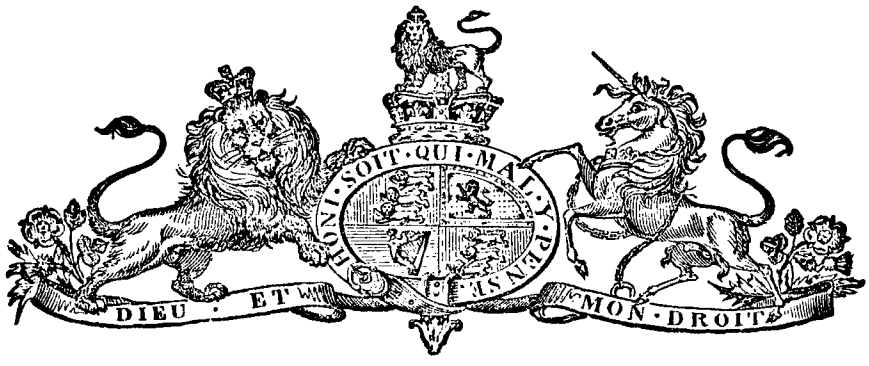


ANNO TRICESIMO PRIMO & TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

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CAP. XCVI.

An Act to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in *Scotland*.

[31st *July* 1868.]

WHEREAS it is expedient to amend the Procedure in regard to Ecclesiastical Buildings and Glebes in *Scotland*: 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:

Interpretation of Terms.

1. Where not inconsistent with the Context, the following Expressions shall in this Act have the Meanings herein-after assigned to them:

The Expression "Church" shall include all necessary Fencing of the Site whereon the Church is built, in so far as the Heritors are now by Law bound to provide the same:

The Expression "Manse" shall include all necessary and usual Offices, Garden, and Garden Walls which the Heritors are now by Law bound to provide:

The Expression "Parish" shall include united Parishes:

The Expression "Glebe" shall include Grass Glebe or Ministers Grass:

The Expression "Lands and Heritages" shall have the Meaning assigned to it in the Act Seventeenth and Eighteenth *Victoria*, Chapter Ninety-one, intituled *An Act for the Valuation of Lands and Heritages in* Scotland:

The Expression "the Lord Ordinary" shall mean the Lord Ordinary in Teind Causes in the Court of Session:

The Expression "Sheriff" shall include Sheriff Substitute:

The Expression "Heritor" shall mean any Proprietor of Lands and Heritages at present liable in the Assessments which may be imposed according to the real or valued Rents thereof, as the Case may be, for the Purposes set forth in the Third Section hereof:

The Expression "valued Rent" shall in the County and Lordship of *Zetland* mean and include "Number of Merks Land."

Short Title.

2. This Act may be cited as the "Ecclesiastical Buildings and Glebes (*Scotland*) Act."

Heritors dissatisfied with Determinations of Presbyteries in regard to Churches, Manses, Glebes, &c. may remove Proceedings by Appeal to Sheriff.

3. From and after the passing of this Act, if, in the course of any Proceedings before any Presbytery of the Church of *Scotland* relating to the building, rebuilding, repairing, adding to, or other Alteration of Churches or Manses, or to the designing or excambing of Sites therefor, or to the designing or excambing of Glebes or Additions to Glebes, or to the designing or excambing of Sites for or Additions to Churchyards, and the suitable Maintenance thereof (including the building or repairing of Churchyard Walls), any Heritor or the Minister of the Parish shall be dissatisfied with any Order, Finding, Judgment, Interlocutor, or Decree pronounced by such Presbytery, it shall be competent for such Heritor or Minister, within Twenty Days of the Date of such Order, Finding, Judgment, Interlocutor, or Decree, to stay such Proceedings by appealing the whole Cause as herein-after provided; and such Appeal, on being duly intimated to the Clerk of the said Presbytery, shall have the Effect of staying the Presbytery from taking any further Steps in connection with said Proceedings: Provided always, that if no such Appeal is taken and duly intimated within the Period foresaid, every such Order, Finding, Judgment, Interlocutor, or Decree not appealed from as aforesaid shall be final and not subject to Review: Provided also, that if the Heritor or Minister taking any Appeal as aforesaid shall unduly delay to follow forth the same, it shall be competent for any other Heritor, or for the Minister of the Parish, or for the Clerk of the Presbytery of the Bounds by the Authority of the said Presbytery, or for the Clerk of the Heritors by the Authority of the Heritors, to sist himself as a Party to said Appeal, and to follow forth the same as the original Appellant could have done.

4. An

Appeal, how to be taken.

4. An Appeal under this Act shall be taken by the Appellant or his Agent presenting a summary Petition to the Sheriff of the County in which the Parish concerned is situated, praying him to stay the Proceedings before the Presbytery, and to dispose of the same himself: Provided, that where the Parish is situated within more than One County the Petition may be presented to the Sheriff of either County; and the Sheriff to whom the first Application is made shall have the same Power, Authority, and Jurisdiction as if the whole of the Parish were situated within his County.

Intimation of Appeals.

5. All Appeals under this Act shall, within Ten Days of their Presentation, be intimated by Circular, transmitted by the Appellant or his Agent through the Post Office, addressed to each Heritor or his known Factor or Agent, to the Clerk of the Heritors, if there be such Clerk, to the Minister of the Parish (if the Benefice is full at the Time), and to the Clerk of the Presbytery of the Bounds: Provided always, that where the Number of Heritors of the Parish exceeds Forty, it shall not be necessary to address a Circular to each Heritor or his Factor or Agent, but it shall be sufficient if a Copy of the Petition of Appeal is affixed to the most patent Door of the Church for Two successive *Sundays* next following the Presentation of the Petition, and if Notice of the Presentation of the Petition is inserted in a Newspaper circulating in the County during each of Two successive Weeks.

No written Pleadings unless specially ordered.

6. Upon any Petition of Appeal under this Act being considered by the Sheriff he shall satisfy himself that the Intimation before mentioned has been made, and, if not duly made, he shall order such Intimation as he shall consider necessary, and thereafter he shall inquire into the Circumstances, and hear the Parties, by themselves or their Agents, without any written Pleadings, unless the same shall be specially ordered by him; but he shall take a Note of the Proceedings and of any Evidence which may be led before him, and shall dispose of the Petition as shall be just.

Proceedings for rebuilding of Church or Manse.

7. In any Proceedings for the rebuilding of a Church or Manse the Sheriff shall, unless the Matter has been decided by the Presbytery by a Judgment or Finding final under the Third Section hereof, *primo loco*, consider whether, in accordance with the Law as at present existing, a new Edifice should be erected, or whether the existing Buildings should be repaired, and for that Purpose he may take such Evidence and make such Remits to Architects or other professional Persons as he shall think right, and he shall pronounce a Finding accordingly: Provided always, that, if the Sheriff see Cause, he may dismiss the Petition.

8. In

Proceedings for rebuilding or repairing of Church or Manse.

8. In any Proceedings for the building or repairing of a Church or Manse the Sheriff shall inquire, with such Assistance of Architects or other professional Persons as he shall think proper, into the Truth of the Allegations contained in the Petition; and if he shall be satisfied that, in accordance with the Law as at present existing, a Church or Manse should be built, or that Repairs are necessary, he shall pronounce a Finding accordingly: Provided always, that, if he see Cause, the Sheriff may dismiss the Petition.

Where Parties differ or delay as to erecting or repairing, Sheriff to cause Buildings or Repairs to be executed.

9. Where the Sheriff shall find that, in accordance with the Law as at present existing, a Church or Manse must be built, rebuilt, or repaired, but the Heritors shall delay or refuse to give effect to it, he shall remit to an Architect or other professional Person to prepare Plans and Specifications for such building, rebuilding, or Repairs, and after hearing any Objections thereto he shall approve of or modify the same, and ordain the same to be executed, and, if need be, he shall remit to an Architect or other professional Person to receive Tenders for the Execution of said Plans and Specifications, to accept of such Tenders as shall seem best, and to superintend their Execution; and the Sheriff shall find the Heritors who are now liable in the Expense of such building, rebuilding, or Repairs, and shall assess and allocate the same, together with a sufficient Sum to cover the Expenses of Collection upon them, according to their respective Real Rents, as these shall appear on the Valuation Roll or Rolls in force at the Date of such Assessment and Allocation, or according to their valued Rents, as the Case may be, and shall grant Decree for Payment thereof in such Instalments and under such Conditions as he shall direct.

Proceedings for building or repairing Churchyard Walls.

10. In any Proceedings for building or repairing Churchyard Walls the Sheriff shall inquire as to the Truth of the Petitioner's Allegations, and if he shall find that the Walls should be built or repaired, but the Heritors shall refuse or delay to give effect to such Finding, he shall remit to some Person to prepare the necessary Specifications (on which, if required, he shall hear Parties), and he shall approve of or modify the same, and, if need be, remit to some Person to take and accept Tenders, and superintend the Execution thereof, and he shall assess, allocate, and decern for the Expenses thereof, as in the Case of building, rebuilding, or repairing a Church or Manse.

Proceedings for designing or excambing Glebes, &c.

11. In any Proceedings for designing a Glebe or Churchyard, or the Site of a Church or Manse, or Additions to any of the same, or for excambing a Glebe, Churchyard, Site of a Church or Manse, or any Portions thereof, the Sheriff shall inquire into the

the Truth of the Petitioner's Allegations, and for that Purpose may take such Evidence, and make such Remits to Land Valuators, Surveyors, or other Persons of Skill, as shall seem necessary, and shall dispose of the Petition in accordance with the Law as at present existing, and shall assess and allocate the Expense of acquiring Land (including any Buildings thereon) for such Glebe or Churchyard, or for the Site of such Church or Manse, or for Additions to any of the same, and decern therefor, as in the Case of building, rebuilding, or repairing a Church or Manse: Provided always, that the Sheriff's Decree of Designation or Excambion shall have the same Force and Effect as a Decree of Designation or Excambion pronounced by a Presbytery before the passing of this Act, except as herein-after provided: Provided also, that it shall not be competent for the Sheriff to pronounce any Decree of Excambion, unless it shall appear, under the Hand of the Clerk of the Presbytery of the Bounds, that the Presbytery have given their Consent to such Excambion.

Mode of declaring a "Free Manse."

12. After the Completion of the Works ordered in the Course of any Proceedings for the building, rebuilding, or repairing of any Manse, it shall be competent for any Heritor of the Parish to move the Sheriff to declare it a "Free Manse;" and if the Sheriff shall be satisfied that the Manse is in a State of thorough Repair, he shall find and declare accordingly, and his Decree shall have the same Force and Effect as a Decree in similar Terms pronounced by a Presbytery before the passing of this Act would have had: Provided always, that such Decree shall have Effect only till the Expiration of Fifteen Years from its Date, or until the Appointment of a new Minister to the Parish, whichever Event shall first happen.

Sheriff, if required, personally to inspect Premises or Locality.

13. In any Proceedings for the building, rebuilding, or repairing of any Church or Manse, or for the Designation of any Glebe, Churchyard, Site of any Church or Manse, or of any Additions thereto, or for the Excambion of any Glebe, Churchyard, Site of any Church or Manse, or of any Portions thereof, it shall be competent for the Parties, or any of them, to require the Sheriff to make a personal Inspection of the Premises or Locality, as the Case may be; and the Sheriff shall comply with such Requisition.

Decrees, &c. of Sheriff to be final.

14. All Orders, Findings, Judgments, Interlocutors, or Decrees pronounced by any Sheriff under the Authority of this Act shall be final and conclusive, and not subject to Review by any Court whatsoever, unless an Appeal shall be taken to the Lord Ordinary against the same in manner herein-after mentioned.

15. Th

Sheriff or Lord Ordinary may dispose of Questions of Expenses.

15. The Lord Ordinary or the Sheriff, as the Case may be, shall be entitled to dispose of all Questions of Expenses, and to grant Decree therefor.

Form of Note of Appeal.

16. An Appeal to the Lord Ordinary under this Act may, when otherwise competent, be taken by a Note of Appeal written at the End or on the Margin of the Order, Finding, Judgment, Interlocutor, or Decree appealed from, or by a separate Note of Appeal lodged with the Sheriff Clerk; and such Note of Appeal may be in the following or similar Terms:

"The Petitioner [*or* Respondent] appeals to the Lord Ordinary "in Teinds Causes:"

And the said Note shall be signed by the Appellant or his Agent, and shall bear the Date on which it is signed.

Not competent to appeal after Twenty Days from Date of Judgment, &c.

17. It shall not be competent to take or sign any Note of Appeal after the Expiration of Twenty Days from the Date of the Order, Finding, Judgment, Interlocutor, or Decree complained of in any Proceedings before the Sheriff under this Act, and during such Period of Twenty Days Extract shall not be competent; but on the Expiration of the foresaid Period, if no Appeal shall have been taken, the Clerk of Court may give out the Extract.

Effect of Appeals under this Act.

18. Such Appeal shall be effectual to submit to the Review of the Lord Ordinary the whole Orders, Findings, Interlocutors, Judgments, or Decrees pronounced by the Sheriff in the Cause in so far as not final as herein-before provided, not only at the Instance of the Appellant, but also at the Instance of every other Party appearing in the Appeal, to the Effect of enabling the Lord Ordinary to do complete Justice without the Necessity of any Counter Appeal; and an Appellant shall not be at liberty to withdraw or abandon an Appeal without Leave of the Lord Ordinary; and an Appeal may be insisted in by any Party in the Cause other than the Appellant, in the same Manner and to the like Effect as if it had been taken by himself.

Notice of Appeal.

19. The Sheriff Clerk shall, within Two Days after the Date of any Appeal being taken, send written Notice of such Appeal to the Respondent or his Agent: Provided that the Failure to give such Notice shall not invalidate the Appeal; but the Lord Ordinary may give such Remedy for any Disadvantage or Inconvenience thereby occasioned as may in the Circumstances be thought proper.

Form of bringing Appeals to Lord Ordinary.

20. Within Two Days after the Appeal shall have been taken the Sheriff Clerk shall transmit the Process to the Depute Clerk of Session attached to the Bar of the Lord Ordinary, who shall subjoin to the Appeal a Note of the Day on which it is received; and it shall be

be lawful for either the Appellant or the Respondent at any Time after the Expiry of Eight Days from the Date of such Note to enrol the Appeal; and when the Appeal is called in the Roll, it shall be competent for the Lord Ordinary to order the Note of Appeal and any other Papers or Productions to be printed, or the Lord Ordinary may dispense with the printing of the same; and in case the Papers ordered to be printed shall not be printed by the Appellant, or in case he shall not move in the Appeal, it shall be lawful for the Lord Ordinary, on a Motion by any other Party in the Cause, to grant an Order authorizing the Party moving to print the Papers aforesaid, and to insist in the Appeal as if it had been taken by himself: Provided always, that when any Appeal is taken to the Lord Ordinary, he shall have the whole Powers which are hereinbefore conferred on the Sheriff: Provided also, that all Orders, Findings, Interlocutors, Judgments, or Decrees pronounced by the Lord Ordinary shall be final and not subject to Review.

Certain Provisions of 8 & 9 Vict. c. 19. and 23 & 24 Vict. c. 106. incorporated with this Act.

21. The Provisions of the "Lands Clauses Consolidation (*Scotland*) Act, 1845," and the "Lands Clauses Consolidation Acts Amendment Act, 1860," with respect to the Purchase and taking of Lands by Agreement, or otherwise than by Agreement, shall be incorporated with this Act; and for the Purposes of this Act the Expression "the Promoters of the Undertaking" wherever used in the said Acts shall mean the Heritors of any Parish under this Act: Provided always, that the Provisions in the said Acts "with respect to the Purchase "and taking of Lands otherwise than by Agreement" shall have effect only in respect of such Lands as the Sheriff of the County shall have designated as above provided for: Provided farther, that the Provisions in the said Acts with respect to Lands acquired "by "the Promoters of the Undertaking under the Provisions of this "or the Special Act, or any Act incorporated therewith, but which "shall not be required for the Purposes thereof," shall not be restricted in Operation to any fixed Period after the Purchase of such Lands.

Mode of calling Meetings of Heritors.

22. Notwithstanding any Law, Statute, or Usage to the contrary, Meetings of Heritors for any Purpose whatsoever may be called in the following Manner; that is to say, on the Requisition of the Clerk of the Heritors, or of any Heritor or Heritors possessed of Lands yielding One Fourth Part of the total Real Rental of the Parish as the same shall appear on the Valuation Roll or Rolls then in force, or valued at One Fourth Part of the total valued Rent of such Parish, as the Case may be, or, when he shall himself think such Meeting expedient or necessary, the Minister of the Parish shall cause an Intimation of the Meeting to be given immediately after

after Divine Service in the Forenoon, and Circular Letters containing a similar Intimation to be sent to all Heritors of the Parish at least Twenty-one free Days before such Meeting shall take place; provided that where in any Parish the Number of Heritors exceeds Forty, it shall not be necessary to send Circular Letters as before provided, but in lieu thereof Intimation of the Meeting shall be given by the Minister by Advertisement in a Newspaper circulating in the County once during each of Two successive Weeks between the Intimation from the Pulpit before mentioned and the Day for which the Meeting has been called.

All Parochial Assessments to be imposed according to the real or valued Rent.

23. All Assessments for the Purpose of defraying Expenses connected with the building, rebuilding, or repairing of Churches or Manses, or the designing or excambing of Sites therefor, or the designing or excambing of Glebes or Additions to Glebes, or the designing or excambing of Sites for Additions to Churchyards, and the suitable Maintenance thereof (including the building, rebuilding, or repairing of Churchyard Walls), in any Parish, shall be imposed in manner after mentioned upon all Lands and Heritages within such Parish according to the yearly Value thereof as the same shall appear on the Valuation Roll or Rolls in force in such Parish at the Time when such Assessments are made, or according to the valued Rent of such Lands and Heritages, as the Case may be; and such Assessments shall be imposed and recovered according to the present Law and Practice: Provided always, that when the Area of any Parish Church heretofore erected has been allocated among the Heritors according to their respective valued Rents, all Assessments for the Repair thereof shall be imposed on such Heritors according to such valued Rent.

Act not to increase existing Burdens.

24. Nothing herein contained shall have the Effect of extending or increasing the Burdens which now by Law rest upon the Minister or Heritors of any Parish in respect of any of the Matters above set forth. Nothing contained in this Act shall exempt from or render liable to Assessment any Person or Property not previously exempt from or liable to Assessment.

Repeal of Statutes, &c. so far as inconsistent with this Act.

25. All Laws, Statutes, and Usages shall be and the same are hereby repealed, in so far as they are at variance or inconsistent with the Provisions of this Act: Provided always, that the same shall continue in force in all other respects.

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