

To be construed with Ord. 46 of 1932

CHAPTER 230.

CHURCH OF SCOTLAND GOVERNMENT.

[No. III of 1872.]

[12th October, 1872.]

1. This Ordinance may be cited as the Church of Scotland Government Ordinance. Short title.

2. In this Ordinance, unless the context otherwise requires,— Interpretation.

“ Church of Scotland ” means the Church as established by law in that part of the United Kingdom called Scotland, in terms of statutes referred to in the Treaty of Union between the two kingdoms of England and Scotland and Acts of Parliament ratifying the same;

“ the Church ” means the branch in the colony of the Church of Scotland;

“ parish ” means every district in the colony now or hereafter defined by the Presbytery as a parish;

“ chapel of ease,” or “ chapel,” means any church or chapel belonging to or held for behoof of the Church in the colony, other than the church of the parish to the minister of which an annual stipend is now or may hereafter be assigned;

“ minister ” means every minister to whom a parish is now or hereafter allotted by the Presbytery, and every minister in charge of a chapel of ease or a mission station under the control of the Presbytery or of any minister of a parish;

“ the Presbytery ” means the Presbytery of British Guiana as hereinafter constituted;

“ elder ” means an office-bearer of the Church; and “ moderator ” and “ clerk ” mean office-bearers of the Presbytery, respectively elected or appointed in the same way as the like officers are elected or appointed in the Church of Scotland, and with the same functions and duties, and liable to the same discipline on the part of the Presbytery;

KIRK SESSION.

Constitution
of kirk
session.

3. The ministers and all the elders of each parish shall constitute, and are hereby declared to be, the kirk session of that parish.

PRESBYTERY.

Constitution
of Presbytery.

4. The ministers and the joint ministers, if any, of all the parishes, and one elder from each kirk session shall constitute, and are hereby declared to be, the Presbytery of British Guiana.

Incorporation
of the
Presbytery.

5.—(1) The Presbytery of British Guiana by that name shall be, and is hereby declared to be, a body politic and corporate, with perpetual succession; and it shall not be necessary for it to have a common seal; and it shall have full power and authority in its corporate name to sue and be sued, to acquire and hold lands and other property, movable and immovable, for the purposes of the Church, to sell that movable property, and to sell, mortgage, alienate, or lease for a term of years any of the lands or other immovable property of the Presbytery.

(2) All movable and immovable property on the eighteenth day of May, nineteen hundred and four, held by or vested in the vestry of any parish assigned or allotted to the Church is hereby vested in the Presbytery.

Election and
term of
service of
elder repre-
senting kirk
session.

6.—(1) The elder representing any kirk session at the Presbytery shall be elected in the same way as the like officer is elected in the Church of Scotland.

(2) All questions respecting the validity of the election shall be finally determined by the Presbytery.

(3) The term of office of an elder shall be the same as in the Church of Scotland.

Quorum at
meeting of
Presbytery.

7. At every meeting of the Presbytery, except a meeting for preparing a libel, or a meeting for receiving and entertaining a libel in the first instance, three members, of whom two must be ministers, shall be sufficient to constitute a meeting.

Absence of
moderator
or clerk.

8. Whenever the moderator or clerk is unable, from absence or any other cause, to perform any duty properly performable by him, any meeting may appoint some qualified person to perform the duty.

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9.—(1) The Presbytery shall be, and is hereby declared to be, the supreme ecclesiastical Court of the Church, and shall have full power,—

Powers and authority of the Presbytery.

- (a) to inquire into any charge against any minister of acts or conduct which would be offences according to the ecclesiastical law of Scotland;
- (b) to cite the party accused to appear before it and answer the charge;
- (c) to summon all necessary witnesses and examine them upon oath or upon solemn affirmation in cases where an affirmation is allowed by law instead of an oath;
- (d) to require the production of such deeds, evidence or writings as may be necessary;
- (e) to adjourn from day to day or for a longer period until the inquiry is concluded; and
- (f) to pronounce sentence of censure, suspension, or deposition, as the nature of the case may require.

(2) In any proceedings aforesaid the Presbytery shall have regard to the instructions contained in the form of process approved of by the General Assembly of the Church of Scotland on the eighteenth day of April, seventeen hundred and seven.

PROCEEDINGS AGAINST MINISTER FOR MISCONDUCT.

10. Any minister guilty of any act or conduct which, by the law of the Church of Scotland, would subject a minister of that Church to censure, or suspension, or deposition shall, on conviction, be censured, suspended, or deposed, according to the nature of the offence:

Ministers subject to law of Church of Scotland for misconduct:

Provided that every proceeding against any minister for any offence under this Ordinance shall be commenced within twelve months after the commission of the offence alleged or charged, and not afterwards, (leave of absence not being reckoned as part of the said twelve months,) and the service of a citation on the accused party as hereinafter provided shall be deemed the commencement of any proceeding.

Proviso.

11. If the Presbytery is informed by any person in writing, or knows from common report, that any minister is accused of any act or conduct punishable by virtue hereof, and if the accusation appears to be well founded, the

Mode of making accusation against minister:

Presbytery may prepare, or may permit the individual accuser, if any, to prepare, a libel against the party accused :

Proviso.

Provided that no libel shall be prepared by the Presbytery, and no libel prepared by any other person shall be received and entertained in the first instance, except at a meeting of the Presbytery at which not less than five ministers shall be present.

Inhibition of minister pending charge.

12. In every case in which, from the nature of the offence charged, it appears to the Presbytery to be undesirable that the accused party should continue to officiate as a minister while the charge is pending, the Presbytery may cause a notice to be served on that party at any time, pending any proceedings before the Presbytery or pending a reference to the General Assembly as hereinafter provided, inhibiting him from performing any service of the Church from and after the expiration of fourteen days from the service of the notice until sentence has been finally given in the cause, and also to make provision for the administration of the ordinances of religion in any parish or chapel so long as that notice remains in force, but the inhibition shall in no way affect the inhibited minister's right to his stipend and manse.

Preparing and issuing libel.

13.—(1) The libel shall—

- (a) be drawn as near as may be in the form adopted in the ecclesiastical courts of the Church of Scotland;
- (b) set forth with reasonable precision the nature of each offence charged;
- (c) state the time when, and the place where, each offence is alleged or reported to have been committed; and
- (d) be signed by the moderator and clerk, and by the individual accuser, if any, whose true place of abode shall be written after his signature.

(2) On the back of the libel there shall be endorsed an instruction, signed by the moderator and clerk, to cite the accused to appear before the Presbytery to answer to the said charge at the place and date named in the instruction.

Lists of witnesses and documents.

14. A list of the witnesses to be adduced, and of the articles or documents to be produced, in proof of the libel,

shall be prepared and shall be signed in the same way as the libel; and additions may at any time be made to the list, which shall be signed in the same way as the list.

15.—(1) The clerk shall prepare copies of the libel, of the instruction thereon, and of the list, and shall certify the copies under his hand to be true, and shall cause his citation of the accused and the copies to be served without delay upon the accused personally, or at his last known place of abode, thirty clear days at least before the day of appearance; and, in default of that service, all proceedings under the citation shall be void, unless the accused voluntarily appears and waives the service:

Service of libel:

Provided that the accused shall be held to have waived objection to the citation or service if he appears and pleads to the libel without stating his objection, and that the judgement of the Presbytery upon any objection which may be stated to the citation or service shall be final.

Proviso.

(2) The affidavit of the clerk's messenger shall be held full and sufficient evidence of the service having been effected.

Evidence of service.

16. If the party appears and his answer is any other than an unqualified admission of the truth of the charges contained in the libel, the Presbytery shall proceed to hold a court under this Ordinance, and to hear the cause, and thereupon—

Procedure in the Presbytery court.

- (a) the moderator shall be the president, and the clerk shall be the clerk, of the Court;
- (b) either party may have the aid of any counsel, who may be entitled to be heard on his behalf;
- (c) all witnesses shall be sworn and examined in open court, and their testimony shall be reduced to writing by the clerk or some duly authorised assistant or clerk pro tempore, and shall be read over to and signed by them;
- (d) the proceedings with respect to the arguments and addresses of counsel, the examination of witnesses, and the production of evidence, shall be regulated as near as may be by the prevailing practice of the Supreme Court in its criminal jurisdiction; and
- (e) the finding shall be that of the majority of the Presbytery, and the finding shall be delivered, and the sentence shall be pronounced, in open court.

Default of attendance of member of Presbytery.

17. If after a process has been instituted any member of the Presbytery refuses or fails to attend the Presbytery Court without sufficient cause, or having attended withdraws without excuse before the termination of the proceedings, he shall, for every day of refusal or absence to act and vote, forfeit to His Majesty, for the public use of the colony, the sum of fifty dollars, to be recovered by summary execution at the instance of the Attorney General.

Non-appearance of accused.

18. If the accused, being duly cited, refuses or neglects to appear before the Presbytery, at the time and place appointed, and answer the libel, the Presbytery may proceed *ex parte*.

Arriving at and pronouncing sentence.

19.—(1) If the votes are equal, the case shall be decided by the casting vote of the moderator, who shall have no deliberative vote.

(2) If the accused pleads guilty, the Presbytery shall then, or at some convenient day thereafter, pronounce sentence of censure, or suspension, or deposition, as the nature of the offence may require.

(3) If the accused is found guilty after a hearing (whether in his presence or *ex parte*) of an offence involving suspension or deposition, the Presbytery shall not pronounce sentence until after the expiration of ten clear days from the day of the delivery of the finding, in order to afford an opportunity of reference to the General Assembly, as hereinafter provided.

REFERENCE TO THE GENERAL ASSEMBLY.

Reference of case to the General Assembly :

20. Within ten days from the day of the delivery of the finding, either the Presbytery may make, or the accused may demand, a reference of the case through the colonial committee to the General Assembly of the Church of Scotland before proceeding to final judgement or sentence :

Proviso.

Provided that the demand, if not made orally at the trial, shall be made in writing, addressed to the moderator and signed by the accused party.

Transmitting copies of proceedings in case of reference.

21. Immediately on reference or demand therefor being made, true copies of the libel, proof, and finding, and of the reference or demand, certified under the hand of the moderator and clerk, shall be transmitted to the Church of Scotland Committee of the Churches Overseas, for the

consideration and decision or advice of the General Assembly of that Church; and it shall be competent to the said General Assembly, on receipt of the reference, to dispose of the same by pronouncing such deliverance or decision as to it seems just and conformable to the laws and practice of the Church of Scotland.

22. On the receipt of deliverance or decision, and not before, the Presbytery shall pronounce final sentence in accordance therewith; but the Presbytery shall not act upon the decision, unless the same is certified under the hands of the moderator and clerk of the General Assembly, and has been transmitted through the committee aforesaid to the moderator or clerk of the Presbytery.

Sentence on decision of the General Assembly.

SUSPENSION AND DEPOSITION.

23. Where any sentence of suspension is pronounced by the Presbytery, the same shall be certified to the Governor under the hand of the moderator and clerk, and the stipend of the minister so suspended shall be chargeable during the whole period of that suspension to the extent of one-half for the performance of the duties of his office.

Disposal of stipend of minister during suspension.

24. Where any sentence of deposition is pronounced by the Presbytery, the incumbency, or other preferment shall become vacant, and the same shall thereupon be filled up according to law :

Vacation of living on deposition of minister :

Provided that any sentence of deposition pronounced against any minister to whom an annual stipend is assigned by any Ordinance for the time being in force shall be certified to the Governor under the hand of the moderator and clerk.

Proviso.

WITNESSES.

25.—(1) In order to procure the attendance of witnesses at any presbytery court, a citation in any convenient form seeming fit and signed by the clerk, may be served on every witness whose name appears on a list of witnesses prepared and signed as hereinbefore provided.

Making and returning service on witness at the Presbytery Court.

(2) The citation shall specify the time and place at which the witness is to attend, and the person against whom the charge is preferred.

(3) The citation may contain the names of twelve witnesses, a copy shall be served by some intelligent person,

able to read and write, on each witness, and a return of each service shall be indorsed on the original.

(4) If anyone does not appear, the return of service shall be verified by the oath of the person making the service taken before the presbytery court or any justice of the peace.

Witness in contempt or disobedience.

26.—(1) If a witness residing in any part of the colony, whose evidence may be required before any presbytery court held by virtue hereof, refuses or neglects to attend, without lawful excuse, or refuses to be sworn, or to make affirmation, or to give evidence when sworn or after making affirmation, or is guilty of any other contempt of or disobedience to the lawful order of that court, any judge of the Supreme Court, upon motion made to him by order of the Presbytery, may cause the witness to be brought before him, and may sentence the witness to a fine not exceeding ninety-six dollars and to imprisonment for any term not exceeding thirty days unless the fine is paid, and may make such order as to costs as the judge may seem proper, and this right shall extend to the accused party.

Tender of viaticum and remuneration.

(2) No process shall issue against the witness unless the judge is satisfied that he was duly summoned, and that a sum had been tendered to him sufficient for the payment of his reasonable travelling expenses, and for his remuneration at a rate per diem according to the scale in force for the payment of witnesses summoned before the Supreme Court in its criminal jurisdiction.

Evidence of witness unable to attend

27.—(1) In the event of any witness being about to leave the colony, or being so ill or old or infirm as to be unlikely to be able to attend at the trial, and to render it probable that his evidence may be lost, the party wishing to obtain or perpetuate the evidence of that witness, may at any time before or after the commencement of proceedings hereunder, apply to the moderator for an order to have him examined.

Order for examination.

(2) If the party so applying is the accused, or if proceedings have been commenced, the moderator shall make the order as of course, but, if proceedings have not been commenced the order shall not be made except upon an application in writing, signed by the applicant, and setting forth the grounds upon which it is based.

(3) The party obtaining any order under this section shall be liable for all the costs incurred in consequence

thereof, unless the final decision in the matter is in his favour.

(4) The moderator shall report the granting of the order at the first meeting of the Presbytery thereafter, and shall, without waiting for that meeting and without delay, prepare a duplicate of the order, and cause the witness to be cited to appear, if able to travel, at the time and place mentioned in the order, and, if unable to travel, to give evidence at his own residence at the time mentioned in the order.

Report of
grant of
order.

(5) The evidence shall be taken, unless some other place is considered more convenient, at the vestry of the church of that parish in or nearest to which the witness resides, in the presence of a committee of not less than three members of the Presbytery, one at least of whom shall be an elder, and all of whom shall be selected by the moderator, where practicable, from members of the Presbytery residing near the place appointed for the examination.

Where and
by whom
evidence
taken.

(6) One of the members so selected shall act as convener and another as clerk, the evidence shall be given in open court upon oath or upon affirmation, as the case may require, shall be reduced to writing by the clerk, and read over to and signed by the witness and by the convener and clerk, and for the purposes of this sub-section the convener shall have full power and authority to administer the oath to, or to take the affirmation of, the witness.

How
evidence
taken.

(7) Due notice shall be given to the opposite party to appear by himself or by counsel, at the time and place appointed, to cross-examine the witness, or, instead of appearing, to send written interrogatories; and, in default of that notice, no evidence so taken as aforesaid shall be admissible at the trial.

Appearance
of opposite
party.

28.—(1) Every order issued and to be carried out in conformity with the provisions of the last preceding section shall be served, and the service, if necessary, shall be verified, in manner provided for ordinary summonses to witnesses.

Service of
order.

(2) Everyone on whom the order may be served failing or refusing to comply therewith or to give evidence, or being guilty of any other contempt or disobedience of the Presbytery Court, shall be dealt with in manner provided with respect to witnesses summoned to appear in the ordinary way and guilty of similar default or contempt.

Witness in
contempt or
disobedience.

Deposition of dead or absent witness.

29. If it is proved at the trial, by the oath or affirmation of any credible witness, that any person whose evidence has been so taken is dead or absent from the colony, or so ill, or old, or infirm as not to be able to travel, all examinations, cross-examinations, interrogatories, and answers thereto, if purporting to be signed by the witness and by the convener and clerk, shall be read at the trial as evidence in the cause, without further proof.

MISCELLANEOUS PROVISIONS.

Service of process in legal proceedings.

30.—(1) In all legal proceedings against the Presbytery, service of process upon the moderator for the time being shall be good and sufficient service.

(2) In all legal proceedings by the Presbytery, the power ad litem shall be signed by the moderator and clerk for the time being.

Vesting of property.

31.—(1) All property in the colony heretofore vested in any person for the benefit of the Church of Scotland shall be considered, from and after the commencement of this Ordinance, to be the property of the Presbytery.

(2) All property, whether movable or immovable, at the commencement of this Ordinance belonging to the Church of Scotland in the colony, or held by or vested in any person, body of persons, or body corporate, for or for the use of or in trust for that Church, shall be and the same is hereby vested in the Presbytery.

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Execution of documents:

32.—(1) All policies, transports, mortgages, cancellations of mortgages, transfers, and other documents, requiring to be formally executed on behalf of the Presbytery, shall be deemed sufficiently executed if signed by the moderator and clerk for the time being.

(2) In addition to the powers of execution of the documents last aforesaid, each of those documents shall be deemed sufficiently executed if signed by some person duly authorised to do so at a meeting of the Presbytery:

Proviso.

Provided that an extract from the minutes of that meeting, signed by the moderator and clerk, or, in their absence, as prescribed by section eight of this Ordinance, shall be attached to and form part of the document.

(3) Everyone who signs in any of the capacities in this section stated shall be taken to have so signed until the contrary is proved.

33. In all matters not specially provided for by this Ordinance, the Presbytery shall so far as may be practicable possess and exercise the like power and authority in all matters ecclesiastical and disciplinary, as are possessed, and may be lawfully exercised, by the several Presbyteries of the Church of Scotland, and its proceedings shall be governed by the laws, regulations, process, and practice of the Church of Scotland.

Power,
authority,
and pro-
ceedings of
the Presby-
tery under
this
Ordinance.

33. A

34. Nothing in this Ordinance shall in any way prejudice, alter, or affect any right, power, or authority vested in the Governor by virtue of the royal commission, or in the Governor and Legislative Council, by any law now or hereafter to be in force in the colony.

Sec. 5-1
Ord. 46 of 1932
Saving of
rights of the
Governor and
of the Govern-
or and Legis-
lative
Council.

27. Sec. 6 of Chs. 46 of 1932