
Tribunal for trial of Clergymen.

6/1904

AN ORDINANCE for establishing a Tribunal for the trial of Clergymen licensed by the Bishop within the Diocese of Sydney for offences, and for providing for and regulating the initiation and conduct of trials before and the proceedings under such Tribunal.

(Assented to 31 October, 1904)

Preamble.

WHEREAS it is desirable to establish a Tribunal for the trial of Clergymen licensed by the Bishop within the Diocese of Sydney and to frame rules for the initiation and conduct of trials before and the mode of proceeding under such Tribunal. The Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by "The Church of England Constitutions Act Amendment Act of 1902" and of all other powers vested in the said Synod ordains and rules as follows:—

Advocate of Diocese.

1. An officer to be styled "The Advocate of the Diocese" who shall be a Barrister or Solicitor of not less than seven years' standing shall from time to time be appointed by the Standing Committee of the Synod for a period of not exceeding five years. The Advocate of the Diocese shall saving as next hereinafter provided have the conduct of complaints before the Tribunal under this Ordinance. During his term of office he shall be liable to be removed from office by a vote of two-thirds majority at the least of the whole number of the members of the Standing Committee. The Complainants and Respondent shall be at liberty respectively to prosecute and defend any complaint in person or they or either of them may be represented at any stage by Counsel or Solicitor. Provided however that if the Complainants shall seven days

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at least before the time fixed for reducing the list of selected Triers deliver to the Registrar a written request that a complaint may be prosecuted by the Advocate the prosecution of the complaint shall thenceforth be carried on by the Advocate.

Council of Reference.

2. Immediately after the passing of this Ordinance and thereafter at the first Session of every Synod a Council of Reference shall be constituted in manner following viz. there shall be two Clergymen one of whom shall be nominated by the Bishop and the other elected by the Synod voting collectively together with three Laymen one of whom shall be nominated by the Bishop and the others shall be elected by the Synod voting collectively. Such Council of Reference after conference with the Bishop shall consider and report upon all complaints made under this Ordinance. No member of such Council of Reference shall be eligible to sit upon any Panel of Triers.

Panel of Triers.

3. At every ordinary Session of the Synod of the Diocese twelve Clergymen to be elected by the clerical members of the Synod and twelve Laymen to be elected by the lay representatives of the Synod being respectively members of the Synod shall be constituted a Panel of Triers for the purposes of this Ordinance and such Panel shall continue in existence until a fresh Panel shall be elected.

Complaint against Clergyman.

4. Any persons being males of the age of twenty-one years and upwards declaring themselves to be members of the Church of England and occupiers of seats who desire to promote a complaint against a Clergyman for any one or more of the offences specified in the Offences Definition Ordinance of one thousand nine hun-

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dred and four shall send to the Registrar in the form of Schedule "A" or as near thereto as may be a statement of complaint in duplicate signed by such persons and setting forth the grounds of such complaint. Provided nevertheless as follows:—

- (a) A complaint against a Clergyman in charge of a Parish Mission District or Conventional District or any Assistant Clergyman or Curate licensed to officiate therein shall be promoted by not less than three occupiers of seats in a Church of such Parish Mission District or Conventional District or by not less than three occupiers of seats in a Church of any other Parish Mission District or Conventional District in which the offence complained of may have been committed by such Clergyman or Assistant Clergyman or Curate.
- (b) A complaint against any Clergyman other than those mentioned in sub-clause (a) shall be promoted by not less than three occupiers of seats.

The Complainants shall at the time of sending their complaint to the Registrar pay to the Registrar the sum of ten pounds, to be used by him towards defraying the costs or expenses of any proceedings under the Ordinance in connection with the said complaint. The Registrar shall keep an account thereof and shall refund the balance (if any) to the Complainant upon the Determination of the said complaint. Provided always that if the complaint shall come before the Tribunal as hereinafter provided the said sum shall be held by the Registrar subject to the order and disposal of the Tribunal.

Registrar to inform Respondent.

5. The Registrar shall within seven days after the receipt of such statement of complaint send to the Respon-

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dent addressed to him in a registered letter through the Post Office at his last known place of abode a copy of such statement of complaint having endorsed thereon a request that the Respondent will file in duplicate with the Registrar an answer thereto within a time to be specified in such request. One of the duplicates when filed shall forthwith be sent by the Registrar to the Complainants. The Registrar may from time to time extend the time specified for such answer although the time originally specified or the extended time may have elapsed.

Submission of Respondent to Bishop's Judgment.

6. If the Respondent shall admit the charge and thereupon submit himself without any further proceedings to such judgment and sentence as the Bishop shall think fit to pronounce the Bishop shall deal with the case accordingly.

Submission of case to Council of Reference.

7. If the Respondent shall not within the time specified under clause five or any extension thereof admit the charge and submit himself to judgment and sentence under clause six the Registrar shall at the expiration of such time or any extension thereof convene a meeting of the Council of Reference and submit to them such statement of complaint and the answer thereto (if any).

Council may require statement of facts in writing, etc.

8. The Council of Reference may in any matter before them require the Complainants to furnish statutory declarations in support of the statement of complaint and may allow the Respondent to support his answer thereto in like manner.

Powers of amendment.

9. The Council of Reference may permit or direct any amendment of the statement of complaint and of the

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answer thereto at any time before reporting thereon and notice of any such amendment having been made shall forthwith be sent by the Registrar to the opposite party.

Report of Council.

10. If a majority of the Council of Reference shall report in writing that they are of opinion that a *prima facie* case has been made out against the Respondent the Registrar shall forward the report and all papers connected therewith to the Chancellor. But if the Council or a majority thereof are of opinion that a *prima facie* case has not been made out they shall report in writing giving their reasons that they are of opinion that no proceedings should be taken upon the statement of complaint and a copy of such report shall be forwarded by the Registrar to the parties interested and no further proceedings shall be taken on such statement of complaint.

Bishop may exhibit Articles of Accusation.

11. The Bishop of his own motion may direct the Advocate to exhibit Articles of Accusation before the Chancellor against any Clergyman.

Suspension of Clergyman pending trial.

12. Upon the exhibiting of Articles of Accusation as aforesaid or upon the receipt by the Chancellor of such ~~the Chancellor of such~~ Report the Bishop may suspend such Clergyman pending any proceedings under this Ordinance from all exercise of his ministerial functions but not from any emoluments of his office.

Selection of Tribunal.

13. Upon the exhibiting of Articles of Accusation as aforesaid or upon the receipt by the Chancellor of such report the Chancellor shall cite the Respondent to appear on a day not less than thirty days from the date of the service of such citation before the Tribunal constituted as hereinafter provided sending with such

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citation a copy of the Articles of Accusation... if any and the Chancellor shall appoint a time and a place for the trial and shall twenty days, at the least before such trial give to the Respondent and to the Complainants or the Advocate of the Diocese as the case may be notice of such time and place and shall further require them to attend in the meantime at a time appointed at the Registry of the Diocese for the purpose of reducing the list of selected Triers in the manner hereinafter provided. Provided that the Chancellor shall have power at any time to alter the place or the time for the trial or for the continuation thereof on the application of either of the parties on giving to each of the parties three days' notice at the least of such alteration.

Constitution of Tribunal.

14. The Tribunal before which the Respondent shall be cited to appear by the Chancellor shall be constituted of the Chancellor who shall be the President and of six members of the Panel of Triers before mentioned three of whom shall be Clergymen and three Laymen who shall be selected in the manner following that is to say the Standing Committee shall select by lot from the Panel of Triers seven Clergymen and seven Laymen and a list of the names of the Triers so selected shall at the time and place appointed as aforesaid for reducing the list of selected Triers be delivered to the Complainants or the Advocate of the Diocese as the case may be by whom the names of two Clergymen and of two Laymen may be struck therefrom and the list so reduced shall then be delivered to the Respondent by whom an equal number of names of each order may be also struck therefrom and the six names which are not so struck out shall be forwarded to the Registrar of the Diocese and shall constitute the Triers for the said trial. Should either the Respondent or Complainants or the

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Advocate of the Diocese as the case may be fail or neglect to exercise their or his right in striking out names at the time and place appointed the Chancellor shall strike out the names of an equal number of Clergymen and Laymen as the party so failing or neglecting would have been entitled to strike out and the matter shall then proceed as hereinbefore provided. Should any one or more of the Triers be absent at the opening of the trial the Chancellor shall in the place of each such person choose by lot from the Panel of Triers another person of the same order to be a member of the said Tribunal.

Powers of Tribunal.

15. Every such Tribunal shall have the same powers as are by the sixth and sixteenth sections of the Act of New South Wales 55 Victoria No. 32 (the Arbitration Act 1892)* conferred on Arbitrators and the seventh fifteenth eighteenth nineteenth twentieth and twenty-second sections of the same Act shall apply to proceedings before such Tribunal in the same manner (*mutatis mutandis*) as by the said Act they apply to Arbitrations.

Tribunal may proceed in the absence of the Respondent.

16. If in any case the Respondent shall refuse or neglect to appear either in person or by Counsel or Solicitor in obedience to the citation so issued and served upon him as hereinbefore provided the Tribunal may proceed to hear the cause in his absence.

Respondent being found guilty, Bishop to pronounce sentence.

17. If in any case on the hearing of the cause a majority of the Tribunal shall find the Respondent guilty the Tribunal shall so report to the Bishop and thereupon the Bishop shall not less than fourteen days after such finding give notice in writing to the said Respondent at the time and place at which he is required

*Enactments relating to Arbitration Consolidated by Act No. 29, 1902.

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to appear and shall in pursuance of such notice and after having heard the said Respondent (if he desire to make a statement) proceed to pass sentence. Provided that an appeal shall lie to any higher Ecclesiastical Tribunal of Appeal when such shall have been constituted. Provided further that no sentence shall be pronounced under this Ordinance other than suspension or deprivation of license or office and of the rights and emoluments thereto appertaining.

New Trial.

18. If in any case the Bishop shall be satisfied that justice requires it he may grant to the Respondent or Complainants or the Advocate of the Diocese as the case may be a new trial and thereupon another Tribunal shall be constituted for such new trial in the same manner as hereinbefore provided for the constitution of the first Tribunal. Provided that in the selection of such other Tribunal the names of the members of the first Tribunal shall be omitted from the Panel of Triers eligible to constitute the Triers for such new trial. Provided also that notice of the application for such new trial shall be given in writing to the Bishop within fourteen days from the finding of the Tribunal duly signed by the party applying for the same and shall state the grounds of such application.

Limitation of time for making charge.

19. No complaint shall be entertained under or in pursuance of this Ordinance against any Clergyman for or in respect of any offence committed or alleged to have been committed by such Clergyman unless such complaint shall have been sent to the Registrar within one year after the commission of the alleged offence. Provided always that whenever any such complaint shall be made against a Clergyman in respect of any offence for which a conviction shall have been obtained against him in any Court of competent jurisdiction such complaint

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may be entertained if the complaint shall have been sent to the Registrar at any time within six calendar months after such conviction although more than one year shall have elapsed since the commission of the offence in respect of which such complaint shall be made.

Open Court.

20. The trial of any Clergyman for any offence and the pronouncement of sentence in pursuance of this Ordinance shall take place in open Court. Provided that the Bishop may in his discretion direct that any such trial shall take place in camera.

Conduct of Business.

21. The Bishop the Chancellor and the Advocate of the Diocese may from time to time make and alter rules for the conduct of the business of the Tribunal and all such rules shall be laid before the Synod at its next ensuing Session.

Record of proceedings.

22. The Registrar shall have the custody and control of all documents in every case and either party to the cause shall on giving reasonable notice and paying the specified charges and fees be entitled to obtain inspection or a copy of all or any such documents in any case after the Council of Reference shall have reported that a *prima facie* case has been made out.

General clause, etc.

23. Whenever under this Ordinance any act required to be done by the Synod or by the Clerical members of the Synod or the Lay representatives of the Synod becomes necessary to be done when the Synod is not sitting such act may be done by the Standing Committee and shall enure until the next ensuing Session of Synod.

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Vacancies.

24. A vacancy in any office created under this Ordinance shall be caused by the death resignation or lunacy of any person filling such office or by the neglect or refusal or inability of any such person to perform any of the duties of such office. Such vacancies shall be filled up by the Standing Committee and the persons so appointed shall hold office (1) in the case of persons to be appointed by the Synod until the next ensuing Session of Synod (2) in the case of persons to be appointed by the Standing Committee for the period during which such office is tenable.

Short Title.

25. This Ordinance may be cited as "The Tribunal Ordinance 1904."

Interpretation.

26. In this Ordinance the words following in inverted commas shall unless the context otherwise indicates bear the meanings set against them respectively.

"Bishop" means Bishop of the Diocese of Sydney or other the person for the time being exercising the powers of such Bishop under Clause twenty-six of the Schedule to the Church of England Constitutions Act Amendment Act of 1902.

"Complainants" means the persons making or promoting a complaint against any Clergyman.

"Respondent" means any Clergyman against whom a complaint has been made.

"Chancellor" means the Chancellor of the Diocese appointed by the Bishop or in the event of a vacancy in the office or of his being unable or unwilling to act some person to be appointed by the Bishop to perform the duties assigned to the Chancellor by this Ordinance.

"Registrar."—The Registrar means the Registrar of

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the Diocese or the person for the time being performing his duties.

“Occupiers of seats” shall be held to signify members of the Church of England having rented seats in a Church in the Diocese of Sydney for a period of not less than twelve months (and having paid the rent due upon the same up to the last quarter day) or having usually attended during the preceding three months the celebration of Divine Service in a Church in the said Diocese.

27. The “Tribunal Ordinance of 1868” and an Ordinance for accepting and adopting a certain Determination of the General Synod entitled “Resolutions for the Constitution of an Appellate Tribunal” are hereby repealed.

SCHEDULE A.

IN THE ECCLESIASTICAL TRIBUNAL OF THE DIOCESE OF SYDNEY BETWEEN A COMPLAINANT AND B RESPONDENT.

Statement of Complaint.

I (or we), A.B., of do declare that I am a member of the Church of England and an occupier of a seat in the Church of and I (or we) do hereby charge the Rev. C. D. of that he has committed the ecclesiastical offence of the kind hereinafter set forth that is to say that he has been guilty of (here state the offence charged) on which charge I (or we) desire that the said C.D. be duly brought to trial and I (or we) the said A.B. do solemnly and sincerely declare that I (or we) do not make this charge from any private illwill towards the said C.D. or with any view to my (or our) own profit and I (or we) fur-

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ther declare in like manner that I (or we) believe the charges laid to be substantially true.

(Signed).....

SCHEDULE B.

IN THE ECCLESIASTICAL TRIBUNAL OF THE DIOCESE OF SYDNEY BETWEEN A COMPLAINANT AND B RESPONDENT.

Declaration by Triers.

I do solemnly and sincerely declare that I will well and truly try the several articles of complaint now to be exhibited before me and that I will find according to the evidence to the best of my judgment and ability.

(Signed).....
