



Church of Scotland Courts Act 1863

1863 CHAPTER 47

An Act for removing Doubts as to the Powers of the Courts of the Church of *Scotland*, and extending the Powers of the said Courts. [13th July 1863]

WHEREAS it would much conduce to the Interests of Religion were Ministers of Parishes against whom a Libel has been found relevant for alleged immoral Conduct, or for alleged Error in Doctrine, to abstain from exercising Ministerial Functions until the said Libel has been disposed of by final Sentence; but Doubts exist whether the Right of the Courts of the Church of *Scotland* to require and enjoin Ministers of Parishes so to abstain from Ministerial Functions in such Circumstances may not be liable to legal Impediment, and it is desirable to remove such Doubts: And whereas it is expedient to declare the said Right, and farther to declare the Right of the Presbyteries of the said Church to make Provision for supplying the Ordinances of Religion in any Parish where the said Ordinances have ceased to be performed by the Minister thereof:

Be it therefore declared and 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 :

1 When a Libel found relevant against a Minister, Presbytery may require and enjoin him to abstain from the Discharge of his Functions.

Whenever any Presbytery or other Court of the Church of *Scotland* shall have found a Libel relevant, charging the Minister of any Parish with immoral Conduct or with Error in Doctrine, and shall have resolved to proceed to a Proof of the said Libel, it is hereby declared and enacted that it is and shall be held to be the Right of the said Presbytery to pronounce a Deliverance requiring and enjoining such Minister to abstain from the Exercise and Discharge of all Ministerial Functions of his Office as Minister of the Parish until the Libel shall have been fully investigated and finally disposed of; and in the event of an Appeal against such Deliverance the same shall continue in force until the same shall have been recalled by the Court of Appeal; and the Ordinances of Religion in the said Parish shall, so long as such Deliverance is unrecalled, be administered in the same Way as if the Parish were vacant by the Decease of the

Minister thereof: Provided always, that nothing herein contained shall affect the Right of such Minister to his Stipend.

2 When a Minister has become insane, Presbytery to appoint an Assistant.

When, in the course of any Judicial Process affecting the Status of a Minister, or on the Representation of any Party having Interest, it has been established to the Satisfaction of a Presbytery or other Superior Court of the Church, on a Certificate by the Sheriff of the County, which he is hereby authorized to grant after due Investigation, that the Minister of any Parish is insane, and thereby disabled from discharging the Duties of his Office, it is hereby further declared and enacted, that it is and shall be the Right of the Presbytery, unless an Arrangement for the Purposes after mentioned shall have been made on behalf of the said Minister to the Satisfaction of the Presbytery, to appoint a qualified Assistant to perform the Duties of the Charge until the said Minister shall be enabled to resume the same, or until the Parish shall be declared vacant, and at the same Time to apportion and fix, by their Deliverance appointing such Assistant, an Allowance out of the Stipend not exceeding One Half of the whole Proceeds of the Benefice, and which shall be payable so long as such Assistant shall hold and continue to act on his Appointment by the Presbytery; and such Deliverance, when duly intimated to the Heritors or others liable in Payment of the Stipend, shall be equivalent to a legal and completed Assigination by the Minister to such Assistant of the Portion of the Stipend specified in the Deliverance so long as the said Deliverance shall subsist: Provided, that it shall at all Times be competent to such Minister to apply to the Presbytery to be restored to the Duties of his Office on the Ground of his Recovery, and the Presbytery, on being satisfied that such Minister has recovered, shall recall the Deliverance, and from the Date of such Recall all Right and Interest under the Deliverance shall cease and determine.

3 Provision in case of a Minister being suspended.

When, by their final Sentence upon a Libel, a Presbytery or other Church Court shall suspend a Minister from the Discharge of the Duties of his Office for a Term specified in the said Sentence, it is hereby further declared and enacted, that it is and shall be held to be the Right of the Presbytery to appoint a qualified Assistant to discharge the said Duties, and to apportion and fix an Allowance to such Assistant out of the Stipend not exceeding One Half of the whole Proceeds of the Benefice, and which shall be payable so long as such Assistant shall hold and continue to act on his Appointment by the Presbytery; and such Sentence, when duly intimated to the Heritors or others liable in Payment of the Stipend, shall be equivalent to a legal and completed Assigination by the Minister to such Assistant of the Proportion of the Stipend specified in the Sentence.

4 Church Court may appoint a Person to dictate the Evidence of Witnesses, or appoint a Shorthand Writer to take it down.

Where in any Cause depending before a Presbytery or other Superior Court of the Church a Proof shall have been allowed, it shall be lawful and competent for such Court to appoint a qualified Person being an Advocate, Writer to the Signet, Solicitor before the Supreme Courts, or a Procurator duly entered as a Practitioner in any Sheriff Court in *Scotland*, of not less than Three Years standing, to sit with them for the Purpose of dictating to the Clerk of Court the Evidence given by the Witnesses examined in the Course of the Proof, and the Oath De fideli administratione officii

Status: This is the original version (as it was originally enacted).

shall be administered by the Moderator to any Person so appointed ; and it shall be lawful and competent for such Court, if it see fit, to appoint the Evidence of the Witnesses examined in the course of such Proof to be taken down by a Writer skilled in Shorthand Writing, to whom the Oath De fideli administratione officii shall be administered; and the said Shorthand Writer shall afterwards, and within such Time as may be fixed by the Court, write out in full the Evidence so taken down by him in Shorthand; and the extended Notes, so written out, certified by the Moderator and Clerk of Court to be correct, shall be the Record of the oral Evidence in the Cause : Provided always, that nothing herein contained shall prevent any Church Court, if it see fit, from taking down and recording the Evidence adduced in any Cause, according to the Form hitherto in use.