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4-1891

AN ORDINANCE for accepting and adopting a certain Determination of the General Synod Session 1891, intituled, "Amended Rules for the Trial of Bishops for certain offences."

(Assented to 23 August, 1892.)

WHEREAS a certain Determination being Determination No. 11. was made by the General Synod of the Dioceses in Australia and Tasmania, on the 2nd day of October, 1891, intituled "Amended Rules for the Trial of Bishops for certain offences," a copy of which is contained in the Schedule annexed to this Ordinance. And whereas it is expedient that the said Determination shall be accepted by the Church in this Diocese. The Synod of the Diocese of Sydney, in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management and good government of the United Church of England and Ireland within the Colony of New South Wales, ordains and rules as follows:—That the said Determination and the Rules therein contained, and each and every of them shall be, and the same are and is hereby accepted and adopted, and shall so far as the same are applicable be applied to the management and government of the Church in this Diocese in like manner as if the said Determination, and the Rules therein contained, and each and every of them had been ordained and ruled by the Synod of this Diocese.

## SCHEDULE.

General Synod, Session 1891.

## DETERMINATION No. II.

*(Made Friday, 2nd October, 1891.)*

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**AMENDED RULES FOR THE TRIAL OF BISHOPS FOR CERTAIN OFFENCES.***I.—Tribunal.*

(a.) All the Bishops of the Church of England in Australia and Tasmania other than the accused and accuser (if a Bishop) shall constitute a Tribunal for the purposes of this Determination.

(b.) The Bishops composing the Tribunal shall appoint an Assessor being a Barrister or Attorney of the Supreme Court to advise and assist in questions of law and evidence.

(c.) A Court formed from such Tribunal shall for the purposes of this Determination be convened by summons to all and every the members of such Tribunal by the Primate who shall also preside thereat and no Trial shall proceed unless five Bishops together with the Assessor be present.

(d.) If there be no Primate or if he be disqualified by absence illness or incapacity or by being the accuser or the accused the Senior Metropolitan other than the Primate shall act as his Representative for all the purposes of this Determination and in case such Senior Metropolitan be disqualified as aforesaid the next senior Metropolitan or the Senior Bishop as the case may be shall act as such Representative.

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Any of the Bishops of the Church of England in Australia and Tasmania may be presented for trial for any of the following offences:—

(a.) Crime or immorality.

(b.) False doctrine by which shall be understood the holding and teaching publicly or in his official capacity doctrine contrary to the doctrine of the Church of England as contained in her Articles and Formularies as now set forth by authority.

(c.) Wilful violation of the Constitution and Statutes of the Synod of the Diocese over which he presides, or of the Constitution and Determinations of the General Synod so far as they have been accepted by the Synod of his own Diocese.

(d.) Any course of conduct involving wilful and habitual disregard of his consecration vows.

Provided that no charge shall be entertained for any offence committed three years before the date of such charge except when a conviction has taken place before a Civil Court in which case the charge must be preferred within one year after such conviction.

*III. Accusers.*

(a.) Any charge of crime, immorality, or false doctrine against any Bishop of the Church of England in Australia and Tasmania shall be preferred in writing and shall be signed either by a Bishop of the said Church not being under sentence of the Court as hereinafter mentioned; or by any five or more adult male Communicants of the said Church of good standing and repute, of whom two at least must be Presbyters having separate cure of souls in the said Church.

(b.) Every charge other than one of crime, immorality, or false doctrine shall be preferred in writing

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signed by the Primate, or by ten Clerical and ten Lay members of the Synod of the Diocese of the accused.

*IV. - Procedure. (1) Accusation.*

(a.) Whenever charges are formally made the accuser may if he think fit, and the accusers (if there be more than one) shall appoint a person to be his or their Adviser Advocate and Agent to prepare the accusation and proofs and conduct the prosecution and the accused may likewise if he think fit have the aid of an Adviser Advocate and Agent.

(b.) The accusation shall set forth the grounds on which it is made with reasonable exactitude of time and place and shall be delivered to the Primate.

(c.) Every charge of crime, immorality or false doctrine, shall be accompanied by written proof that each accuser is an Adult Communicant of the Church of England in Australia and Tasmania, and is of good standing and repute. The Primate, whenever such proof is not satisfactory to him, may require the accusers to supply him with additional proof of those facts.

*(2) Board of Inquiry.*

The Primate on receiving a formal accusation shall forthwith, if the charge seems to him of sufficient gravity, appoint a Board of Inquiry consisting, when the charge is one of false doctrine, of the Bishops of any three Dioceses in Australia and Tasmania, and consisting in every other case of the Chancellors or the official legal Advisers of any three Dioceses in Australia and Tasmania other than the Diocese of the accuser or the accused and shall lay the accusation before the said Board and the said Board shall if they think fit direct or permit the said accusation to be amended and shall report their opinion on the accusation to the Primate and

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if a majority of the said Board of Inquiry shall not be of opinion that a *prima facie* case has been shown for further proceedings such further proceedings shall be declared by him to be disallowed and such disallowance shall be certified to the accused and the accuser and to all the Bishops of the Dioceses in Australia and Tasmania and no proceedings shall thereafter be taken on such charges unless one or more statutory declarations by two Communicants of the said Church of good standing and repute of the discovery of new testimony as to the facts charged and setting forth what such testimony is shall be sent to the Primate on receiving which the Primate may if he be satisfied with the sufficiency of the newly discovered testimony again refer the accusation to the Board of Inquiry, and thereupon the like proceedings shall be had and taken as upon an original reference under this section.

(3) *Citation.*

If the Board of Inquiry shall be of opinion that a *prima facie* case exists for further proceedings, the Primate shall notify to the accused that he shall cease to exercise his functions as a Bishop till the charge has been finally determined and thereupon the right of the accused to exercise such functions shall cease for the time being and the Primate shall direct the preparation of Articles of Presentment and shall transmit such Articles of Presentment when so prepared to the accuser and accused together with his citation to appear either in person or by Counsel before the Court at such time and place as the Primate may appoint and he shall also cause duly certified copies of the said Articles of Presentment to be transmitted to the Bishops composing the Tribunal together with his summons to attend the Court provided that

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the time appointed shall be not less than two nor more than six calendar months from the day on which the notice should arrive at the most distant Diocese in the ordinary course of the public post. Provided also that the place shall be within the Diocese of the accused Bishop unless the same be in the judgment of the Primate so difficult of access that reasonable convenience may require the appointment of another place, and he shall further require the accuser and the accused to procure the attendance at the said Court of such witnesses as they may severally desire for the purpose of accusation or defence.

*(4) Trial.*

At the time appointed a sufficient number of Bishops having assembled together with the Assessor the Trial shall proceed as follows:—

*(a.)* The Primate shall summon the accused and in his presence shall read or cause to be read the Articles of Presentment and the accused shall be called upon to plead guilty or not guilty and his plea shall be duly recorded. If he neglect or refuse to plead a plea of not guilty shall be entered for him and every reasonable opportunity of defence shall be allowed to the accused according to the usages of English law.

*(b.)* If the accused neglect or refuse to appear according to the citation unless it be for some reasonable cause to be allowed by the Court the trial shall proceed as if he were present.

*(c.)* Every witness before he is examined shall make and sign the following declaration to be read aloud before the witness testifies and duly filed.

"I, A, B. a witness at the trial of the Right Rev. the Bishop of ——— now pending do most solemnly declare that the evidence I am about to give shall be the truth the whole truth and nothing but the truth."

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(d.) If there be ground to suppose that the attendance of any witness cannot be obtained at the trial it shall be lawful for the Primate on the application of either party to appoint a Commissary to take the testimony of such witness and the party so applying shall give the other party reasonable notice of the time and place of taking such testimony accompanying such notice with a list of the questions intended to be proposed to such witness whereupon it shall be lawful for such other party within six days after the service of such notice unless the time be enlarged by the Primate to propose counter-questions and such questions and counter questions if any and any questions which in the opinion of such Commissary shall arise out of the witnesses' answers to previous questions whether prepared as aforesaid or not shall be proposed to the witness by the Commissary after such witness shall have written and signed the declaration hereinbefore mentioned, and the testimony of such witness shall be reduced to writing and duly certified, and shall be transmitted under seal by the Commissary to the Court, together with the declaration duly certified. But no such testimony shall be read at the trial unless the Court have reasonable assurance that the attendance of the witness cannot be procured, or both parties consent that it be read.

(e.) The accuser and accused may, if they severally think fit, have the aid of Counsel; and in all doubtful particulars recourse shall be had to the general principles and practice of the English law, so far as the same are applicable to the case.

*V. - Judgment.*

(a.) After due examination and consideration of the case the Court shall give a decision of guilty or not guilty on each article in the presentment and the accused shall be considered not guilty of every article or

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charge of which he shall not be held to be guilty by at least two-thirds of the members of the Court.

(b.) The decision given on each article in the presentment having been reduced to writing and signed by the members of the Court who concur in it shall be pronounced as the judgment of the Court. Provided that in all cases of false doctrine the Court may in any case, and except in the case of a contemplated acquittal shall, before giving a decision and pronouncing judgment as aforesaid refer the case together with certified copies of as much of the proceedings as they shall think necessary to its complete elucidation to a Council of Reference to consist of the Council of Reference appointed under Determination II. of the General Synod Session 1872 together with two of the Divinity Professors of Oxford and two of Cambridge for their opinion which opinion shall be filed with the other papers pertaining to the trial.

*VI.—Sentence.*

(a.) If the accused be found guilty of any offence he shall before sentence is passed have an opportunity of being heard in excuse or palliation.

(b.) The sentence of the Court shall then be pronounced by the Primate and shall be Admonition Suspension or Deprivation and such sentence shall be certified under the hand and seal of the Primate and a copy thereof shall be delivered to the accused and to all the Bishops of Australia and Tasmania and in the case of deprivation to the Archbishops of Canterbury and York and all Metropolitans or Chief Bishops in communion with the Church of England and the sentence of the Court shall take effect immediately unless the execution thereof be stayed by order of the Court.

*VII.—Re-hearing when the charge is one of false doctrine.*

When the charge is one of false doctrine, it shall be in the power of the accused Bishop to demand imme-

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diately after sentence has been pronounced whether the Court has been unanimous and then if the Court shall not have been unanimous to require that the case be referred to three Metropolitans, or chief Bishops of the Anglican Communion to be chosen by the Court of whom the Archbishop of Canterbury shall be one and the case shall be referred accordingly and if any two of these shall within six months from the date of such reference or such extended time as the Court shall appoint require that the case or any portion of it shall be re-heard or reviewed it shall be so re-heard or reviewed and the decision of the Court after such re-hearing or review shall be final.

*VIII.—Costs.*

Before the holding of any trial, the accuser or accusers shall give such security for costs as the Board of Inquiry may in their judgment consider to be sufficient, and such costs shall be at the disposal of the Court.

*IX.—Records.*

The Court shall cause to be kept a full record of its proceedings attested by the signature of the Primate who shall have the custody of and exclusive control over such record and all documents connected with the trial.

*X.—Power to make Rules.*

It shall be lawful for the aforesaid Bishops from time to time to make all such general rules as to the forms of citations summonses and other proceedings and otherwise for the effectual execution of this Determination and of the intention and object thereof as in the judgment of the said Bishops shall be necessary or proper. And such rules shall be laid upon the table of the Synod

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at its first session thereafter. Provided that such rules shall have the force of law unless and until disallowed by the Synod.

*XI.—Interpretation Clause.*

Wherever the words "Synod of the Diocese" are used in this Determination they shall be read as including the equivalent Body in Dioceses in which no Diocesan Synod exists.

*XII.—Repeal.*

Determination II., Session 1881 is hereby repealed.

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