



ANNO PRIMO

VICTORIÆ REGINÆ.

C A P. XXIII.

An Act to amend the Law for providing fit Houses
for the beneficed Clergy. [9th May 1838.]

WHEREAS for further promoting the Residence of the Clergy it is expedient and desirable that the Powers and Provisions given and made by an Act passed in the Seventeenth Year of the Reign of King George the Third, intituled *An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices*, as the same are explained and amended by an Act passed in the Twenty-first Year of the same Reign, intituled *An Act to explain and amend an Act made in the Seventeenth Year of the Reign of His present Majesty, intituled 'An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices,'* should be extended: Be it therefore 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, That from and immediately after the passing of this Act it shall be lawful for the Incumbent of any Benefice to borrow and take up at Interest for the Purposes of the said Acts, and

17 G. 3. c.53.

21 G. 3.c. 66.

Extension of the Provisions of recited also

Acts relating to the repairing and building of Houses of Residence.

also for the Purpose of buying or procuring, if necessary, a proper Site for a House and other necessary Buildings, or for the Purposes of the said Acts only, any Sum or Sums of Money not exceeding Three Years net Income of such Benefice, and to take all such Proceedings as are required in and by the said Acts (so far as the same are applicable for that Purpose), and, as a Security for the Money so to be borrowed, to mortgage the Glebe, Tithe, Rent-charges, Rents, and other Profits and Emoluments belonging to such Benefice, to such Person or Persons, Corporation or Corporations Aggregate or Sole, as shall lend the same Money, by One or more Deed or Deeds, for the Term of Thirty-five Years, or until the Money so to be borrowed, with Interest for the same, and such Costs and Charges as may attend the Recovery thereof, shall be fully paid and satisfied, according to the Terms and Conditions of the said Acts (so far as the same are applicable, and not hereby repealed or altered); and that from and after the Expiration of the First Year of the said Term (in which Year no Part of the Principal Sum borrowed shall be repayable) the Incumbent shall yearly and every Year (such Year to be computed from the Day of the Date of the Mortgage) pay to the Mortgagee One Thirtieth Part of the said Principal Sum, until the whole thereof shall be repaid, and shall at the End of the First and each succeeding Year pay the yearly Interest on the said Principal Sum, or on so much thereof as shall from Time to Time remain unpaid, in each Case according to the Terms and Conditions of the said Acts, except so far as the same are hereby repealed or altered; and such Mortgage Deed or Deeds shall be made as nearly as may be in the Form or to the Effect of the Form contained in the Schedule to the said Acts or One of them, and shall bind every succeeding Incumbent of such Benefice until the Principal and Interest, Costs and Charges, shall be paid off and discharged, as fully and effectually as if such Successor had made and executed the same.

Repeal of so much as requires Non-residents to pay 10 $\frac{1}{2}$ per Cent. per An. of Sum borrowed, &c.

II. And be it enacted, That so much of the said Acts as requires the Incumbent of a Benefice mortgaged under the Provisions thereof, if non-resident, to pay Ten Pounds *per Centum per Annum* of the Money originally advanced, and obliges an Incumbent paying Five Pounds *per Centum per Annum* to produce a Certificate of Residence, shall be and the same are hereby repealed as to all Mortgages to be made after the passing of this Act.

The yearly Instalments of Principal Sums secured by existing Mortgages to the Governors of Queen Anne's Bounty reduced.

III. And be it enacted, That for the future, as to every Mortgage which has been made to the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the poor Clergy, by any Bishop, under the Powers of an Act of Parliament specially enabling him, whereby a greater yearly Instalment than One Thirtieth Part of the Principal Sum is stipulated to be paid, or by the Incumbent of a Benefice, by virtue of the Two before-mentioned Acts, the Instalment of the Principal Sum to be paid in every Year to the said Governors or their Assigns by such Bishop or by the Incumbent (whether such Incumbent shall have been resident for the Space of Twenty Weeks in the Year for which such Instalment shall be payable, or not, and without the Production of any Certificate of such Residence,) shall be One Thirtieth Part of the Principal Sum originally advanced

vanced on such Mortgage, in lieu of the yearly Instalment thereby stipulated to be paid, until the whole of the said Principal Sum shall be fully discharged and paid, such substituted yearly Instalment to commence and be paid in each Case on the Day when the next yearly Instalment by virtue of the said Mortgage shall become due; and the Mortgages made to the said Governors of the Estates of any Bishoprick, or of the Glebe, Tithes, Rents, and other Profits and Emoluments of any Benefice, shall in every Case be and remain in force as a Security for the yearly Instalments of the Principal by the said Mortgages agreed to be paid, as well as for the Payment of the Interest arising on such Mortgages, and with all the Powers and Remedies for enforcing the same given by the said respective Acts, until the Money borrowed, and all Interest for the same, and also all Costs and Charges which shall be occasioned by the Nonpayment thereof, shall be fully paid and discharged, in like Manner as if such substituted yearly Instalments had been expressly mentioned in and secured by the said Mortgages, the Expiration of the Term of Years granted by the said Mortgages, or any other Cause or Matter whatsoever, notwithstanding.

IV. And be it further enacted, That it shall be lawful for the said Governors to advance and lend any Sum or Sums of Money not exceeding the Sum of One hundred Pounds in respect of each Benefice, out of the Money which has arisen or shall from Time to Time arise from the said Bounty for promoting and assisting the several Purposes of the said Acts and of this Act, with respect to any such Benefices as shall not exceed the clear annual improved Value of Fifty Pounds, and such Mortgage and Security shall be made for the Repayment of the Principal Sums so to be advanced as are herein-before mentioned, but no Interest shall be paid for the same; and in Cases where the annual Value of such Benefice shall exceed the Sum of Fifty Pounds, that it shall and may be lawful for the said Governors to advance and lend for the same Purposes any Sum or Sums of Money to the Extent authorized by this Act to be borrowed, upon such Mortgage and Security as aforesaid, and subject to the several Regulations of this Act, and to receive Interest for the same not exceeding Four Pounds for One hundred Pounds by the Year.

Governors of Queen Anne's Bounty may advance 100*l.* for Benefices not exceeding 50*l.* a Year without Interest.

V. And be it enacted, That it shall be lawful for any College or Hall within the Universities of *Oxford* or *Cambridge*, or for any other Corporate Bodies possessed of the Patronage of Ecclesiastical Benefices, to advance and lend any Sum or Sums of Money of which they have the Power of disposing in order to aid and assist the several Purposes of this Act, for the building, rebuilding, repairing, or purchasing of any Houses or Buildings for the Habitation or Convenience of the Clergy, or Sites for such Houses and Buildings, upon Benefices in the Patronage of such Colleges or Halls respectively, upon the Mortgage and Security directed by this Act for the Repayment of the Principal, without taking any Interest for the same.

Colleges, &c. may advance Money Interest-free to Benefices in their Patronage for Houses.

VI. And be it enacted, That when it shall happen that any existing House and Offices belonging to any Benefice shall be unfit for the Residence of the Incumbent thereof, and shall be incapable of being enlarged

Old Benefice Houses in certain Cases may be con-

verted into Farming Buildings for the Tenants of the Glebe.

enlarged or repaired so as to be rendered fit for his Residence ; and it shall be so certified to the Bishop of the Diocese wherein such Benefice shall be situate by some competent Surveyor or Architect, and that it will be advantageous to the Benefice that such House and Offices should be suffered to remain, it shall be lawful for such Incumbent, with the Consent in Writing of such Bishop (such Consent to be registered in the Registry of such Bishop), to allow such House and Offices to remain standing as a Dwelling House and Offices, or to convert the same into Farming Buildings for the Use and Occupation of the Occupier or Occupiers of the Glebe Lands belonging to such Benefice ; and from and after the complete Erection or the Purchase of a new House and Offices to the Satisfaction of the Bishop of the Diocese such old House and Offices shall from thenceforth be used for and converted to the Purposes aforesaid ; and the House and Offices to be so erected or purchased shall from thenceforth to all Intents and Purposes be deemed and taken to be the Residence House of and for such Benefice, without the Necessity of obtaining any Licence or Faculty for that Purpose.

Power to Incumbent (with Consent of Patron and Ordinary and Archbishop) to sell House of Residence if inconveniently situated, or under special Circumstances.

VII. And be it enacted, That where the Residence House, Gardens, Orchard, and Appurtenances belonging to any Benefice shall be inconveniently situate, or for other good and sufficient Reasons, it shall be thought advisable to sell and dispose thereof, it shall and may be lawful for the Incumbent of such Benefice, and he is hereby authorized and empowered, with the Consent and Approbation of the Ordinary and Patron thereof, and of the Archbishop of the Province, to be signified by their executing the Deed of Conveyance hereby authorized to be made, absolutely to sell and dispose of such House, Gardens, Orchard, and Appurtenances, any or either of them, with any Land contiguous thereto not exceeding Acres, to any Person or Persons whomsoever, either altogether or in Parcels, and for such Sum or Sums of Money as to such Ordinary and Patron and Archbishop shall appear fair and reasonable, and upon Payment of the Purchase Money for the same as herein-after mentioned by Deed indented to convey and assure such House, Gardens, Orchard, Land, and Appurtenances unto and to the Use of the Purchaser or Purchasers thereof, his or their Heirs or Assigns, or as he or they shall direct or appoint.

Purchase Monies to be paid to the Governors of Queen Anne's Bounty ;

VIII. And be it enacted, That the Monies to arise from such Sale or Sales as aforesaid shall be paid to the said Governors of the Bounty of Queen *Anne* ; and that the Receipt or Receipts of the Treasurer for the Time being of the said Governors shall be and be deemed and taken to be an effectual Discharge to the Person or Persons paying such Monies, or for so much thereof as in such Receipt or Receipts shall be expressed ; and after obtaining such Receipt or Receipts such Purchaser or Purchasers shall be absolutely discharged from the Money for which such Receipt or Receipts shall be given, and shall not be answerable or accountable for the Loss, Misapplication, or Nonapplication of such Monies or any Part thereof.

to be applied to buy

IX. And be it enacted, That the Monies to arise from such Sale or Sales as aforesaid shall, after Payment of all Costs, Charges, and Expences

Expences of such Sale or Sales, be applied and disposed of by the said Governors in or towards the Erection or Purchase of some other House and Offices, or the Purchase of an Orchard, Garden, and Appurtenances, or Land for the Site of a House, any or either of them, together with Land contiguous thereto, and not exceeding Twelve Acres, suitable for the Residence and Occupation of the Incumbent of such Benefice, and approved of by the said Ordinary and Patron, such Approval to be signified under the respective Hands of such Ordinary and Patron, and to be deposited in the Registry of such Ordinary; and such House shall from thenceforth be deemed and taken to be the House of Residence of such Benefice for all Purposes whatsoever.

or build a House for Incumbent's Residence.

X. And be it enacted, That in any Case in which the Consent of the Patron of any Benefice shall be required to the Exercise of any Power given by this Act, and the Patronage of such Benefice shall be in the Crown, the Consent of the Crown to the Exercise of such Power shall be testified in the Manner herein-after mentioned; (that is to say,) if such Benefice shall be above the yearly Value of Twenty Pounds in the Queen's Books, the Instrument by which the Power shall be exercised shall be executed by the Lord High Treasurer or First Lord Commissioner of the Treasury for the Time being; and if such Benefice shall not exceed the yearly Value of Twenty Pounds in the Queen's Books, such Instrument shall be executed by the Lord High Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the Time being; and if such Benefice shall be within the Patronage of the Crown in Right of the Duchy of *Lancaster*, such Instrument shall be executed by the Chancellor of the said Duchy for the Time being; and the Execution of such Instrument by such Person or Persons shall be deemed and taken for the Purposes of this Act to be an Execution by the Patron of the Benefice.

How Consent of Patron to be testified when Patronage in the Crown.

XI. And be it enacted, That in any Case in which the Consent of the Patron of any Benefice shall be required to the Exercise of any Power given by the said Acts or by this Act, and the Advowson and Right of Patronage of such Benefice shall be Part of the Possessions of the Duchy of *Cornwall*, the Consent of the Patron of such Benefice to the Exercise of such Power shall be testified in the Manner herein-after mentioned; (that is to say,) the Instrument by which the Power shall be exercised shall be executed by the Duke of *Cornwall* for the Time being, if of full Age; but if such Benefice shall be within the Patronage of the Crown in Right of the Duchy of *Cornwall*, such Instrument shall be executed by the same Person or Persons who is or are by the said Acts authorized to testify the Consent of the Crown to the Exercise of any Power given thereby in respect of any Benefice in the Patronage of the Crown; and the Execution of such Instrument by such Person or Persons shall be deemed and taken, for the Purposes of the said Acts and of this Act, to be an Execution by the Patron of the Benefice.

How Consent to be given when Patronage is attached to the Duchy of Cornwall.

XII. And be it enacted, That in any Case in which the Consent of the Patron of any Benefice shall be required to the Exercise of any Power given by this Act, and the Patron of such Benefice shall be

How Consent to be given where

Patron is an
incapaci-
tated Person.

a Minor, Idiot, Lunatic, or Feme Covert, it shall be lawful for the Guardian or Guardians, Committee or Committees, or Husband of such Patron (but in case of a Feme Covert with her Consent in Writing) to execute the Instrument by which such Power shall be exercised in testimony of the Consent of such Patron; and such Execution shall for the Purposes of this Act be deemed and taken to be an Execution by the Patron of the Benefice.

Remaining
Powers of
recited Acts
extended to
this Act.

XIII. And be it enacted, That all Powers, Authorities, Provisions, Forms, and Matters in the said Acts contained shall, except as is herein otherwise directed, extend and be applicable, *mutatis mutandis*, to all Mortgages and other Instruments made, as well under and for the Purposes of this Act as of the before-mentioned Acts, and as if the same had been respectively repeated and set forth herein.

In case of a
Purchase the
Powers of
Act 7 G. 4.
c. 66. to ap-
ply.

XIV. And be it enacted, That in the Case of a Purchase as aforesaid the several Powers and Provisions contained in an Act made and passed in the Seventh Year of the Reign of His Majesty King George the Fourth, intituled *An Act to render more effectual the several Acts now in force to promote the Residence of the Parochial Clergy, by making Provision for purchasing Houses and other necessary Buildings for the Use of their Benefices*, shall be and the same are hereby extended to this Act for the Purposes aforesaid.

Sequestra-
tions under
Act 17 G. 3.
c. 53. to have
Priority.

XV. And be it enacted, That every Sequestration to be issued under the Provisions of the said Act of the Seventeenth Year of the Reign of King George the Third shall have Priority, and the Sums to be thereby recovered shall be paid and satisfied in preference to all other Sequestrations and the Sums to be thereby recovered, except such Sequestrations as shall be founded on Judgments duly signed and docketed before the passing of this Act.

Construction
of " Bene-
fice " in this
Act.

XVI. And be it further enacted, That in the Construction of this Act the Word " Benefice " shall be deemed, construed, and taken to extend to and comprise all Rectories with Cure of Souls, Vicarages, Perpetual Curacies, and Chapelries, the Incumbents of which respectively in Right thereof shall be Corporations Sole.

PRINTED BY SIR NORMAN GIBB SCORGIE, C.V.O., C.B.E.
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of Parliament

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