CHAPTER ii.

An Act to provide for the removal of the restrictions attaching to the burial ground of the church of St. Mary Barnsley in the West Riding of the county of York for the sale and vesting thereof to and in the trustees of the Beckett Hospital and Dispensary Barnsley and the use thereof for building or otherwise and for other purposes. [29th March 1944.]

WHEREAS by an Act passed in the fifty-ninth year of the reign of King George the Third intituled "An Act "for repairing and improving or rebuilding the church at "Barnsley in the West Riding of the county of York and "for improving and enlarging the churchyard and burial "grounds thereof" (hereinafter called "the Act of 1819") a body of trustees (hereinafter called "the church trustees") consisting of the perpetual incumbent or curate of Barnsley and the officiating minister of Barnsley and their respective successors for the time being and of the other persons therein mentioned was constituted for carrying into execution the purposes of the said Act including the acquisition of certain lands therein described and the laying out and making thereon of such new or additional burial ground or cemetery as they should think fit with power to raise money for the said purposes by means of rates to be assessed and levied as by the said Act provided: 59 Geo. III c. cxiv.

And whereas by an Act passed in the fifth year of the reign of King George the Fourth intituled "An Act for "raising a further sum of money for carrying into execution "an Act passed in the fifty-ninth year of the reign of His "Majesty King George the Third intituled 'An Act for "repairing and improving or rebuilding the church at 5 Geo. IV c. lxiii.

" Barnsley in the West Riding of the county of York and for " improving and enlarging the churchyard and burial " grounds thereof " and for amending the said Act " (hereinafter called " the Act of 1824 ") certain persons named therein were appointed as additional trustees for carrying into effect both the Act of 1819 and the Act of 1824 and the powers and provisions of the Act of 1819 were amended and enlarged:

And whereas it was also provided by the Act of 1824 that when the several purposes thereof and of the Act of 1819 should have been fully carried into execution all the powers and authorities vested in the church trustees in and by the same should cease and determine:

And whereas in exercise of the powers conferred by the said recited Acts a portion of the piece of land described in the schedule to this Act and situate in the county borough of Barnsley (hereinafter referred to as " the borough ") was in the year eighteen hundred and thirty-nine purchased by the church trustees the same being conveyed to such trustees and their successors heirs and assigns for ever and was duly consecrated and utilised for enlarging a burial ground which had previously been laid out and made on the remainder of the said piece of land which had in the year eighteen hundred and six been conveyed to the then curate of the said church the churchwardens and certain other persons in trust for use as a burying ground or place for interment of the dead:

And whereas the church trustees have for many years past ceased to exercise any of their functions under the said recited Acts and no burials have for many years taken place in the said burial ground as so enlarged as aforesaid which is situate in close proximity to the church of St. Mary Barnsley but wholly detached therefrom and which together with the land forming the site of the southerly one-half part of a public footpath adjoining the northern boundary of the said burial ground is or is believed to be vested in the present incumbent of the benefice of the said parish church of St. Mary Barnsley (hereinafter in this preamble referred to as " the incumbent ") as such incumbent or as sole trustee under the said Acts:

And whereas by a lease dated the fifth day of August nineteen hundred and twenty-seven and made between a former incumbent of the said parish of the one part and the mayor aldermen and burgesses of the borough (hereinafter referred to as " the corporation ") of the other part the said piece of land was demised to the corporation at a nominal rent for the term of twenty-one years from the first day of July nineteen hundred and twenty-six and thereafter until

determined in the manner prescribed in the said lease subject (inter alia) to the condition that the same should not be used by them otherwise than for the purpose of an open space or recreation ground for the inhabitants of the borough:

And whereas the Beckett Hospital and Dispensary Barnsley (hereinafter called "the hospital") which was established in the year eighteen hundred and sixty-five and is now in urgent need of extension and enlargement occupies a site immediately adjacent to the said burial ground on the north being only divided therefrom by the public footpath hereinbefore referred to.

And whereas the corporation as the highway authority in respect of the said public footpath have consented to the stopping up of the same on the conditions which are set out in this Act and have also expressed their willingness to surrender the said lease upon a request made by the trustees of the hospital (hereinafter called "the Hospital Trustees") at any time after the transfer and vesting of the said piece of land to and in the said trustees under this Act so that the said land may be used for the purpose of extending and enlarging the hospital:

And whereas the Hospital Trustees are desirous of acquiring the said piece of land together with so much of the site of the footpath aforesaid as is not already vested in them for the purpose of erecting thereon extensions and enlargements of the hospital and it is expedient and would be of public and local advantage that the said piece of land should (subject to the provisions contained in this Act) be freed from all restrictions which may affect the same by reason of its being a disused burial ground and that the same and so much of the site of the said footpath as aforesaid should be sold to and vested in the Hospital Trustees (subject so far as regards the said piece of land to the said lease until the same shall be surrendered by the corporation) in order that the same may be so used and that the said trustees and their successors in title as owners of the same should be empowered subject to the conditions specified in this Act to build upon the same or to sell or dispose of the same for building or for any other purposes whatsoever freed from all such restrictions as aforesaid:

And whereas it is expedient consequent upon the provisions of this Act with respect to the said burial ground that certain other land in close proximity thereto which together with other land is held by the Wakefield Diocesan Church Organisation Society on behalf of the rector and churchwardens of the said parish church of St. Mary Barnsley upon the trusts and with the powers declared in a declaration of trust made by the said society on the sixteenth day of November

nineteen hundred and thirteen should as in this Act provided become and be maintained as a public garden or open space:

And whereas the Right Reverend Campbell Richard Hone D.D. Lord Bishop of Wakefield in whose diocese the said ecclesiastical parish of St. Mary Barnsley is situate as patron of the benefice of St. Mary Barnsley in right of his see has consented to the provisions of this Act:

And whereas the Reverend William Evans Wilkinson B.A. Canon of Wakefield the incumbent has with the consent as aforesaid of the said patron consented to the provisions of this Act:

And whereas it is expedient that the other provisions of this Act be enacted:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the King'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 (that is to say):—

Short title.

1. This Act may be cited as the Beckett Hospital and Dispensary, Barnsley, Act 1944.

Interpretation.

2.—(1) In this Act the expression—

"the Act of 1819" means an Act passed in the fifty-ninth year of the reign of King George the Third intituled "An Act for repairing and improving or "rebuilding the church at Barnsley in the West "Riding of the county of York and for improving "and enlarging the churchyard and burial grounds "thereof";

"the Act of 1824" means an Act passed in the fifth year of the reign of King George the Fourth intituled "An Act for raising a further sum of money for "carrying into execution an Act passed in the fifty-"ninth year of the reign of His Majesty King George "the Third intituled 'An Act for repairing and im-"proving or rebuilding the church at Barnsley in "the West Riding of the county of York and for "improving and enlarging the churchyard and "burial grounds thereof' and for amending the "said Act";

"the church trustees" means the trustees constituted by or under the Act of 1819 and the Act of 1824 or either of those Acts;

" the incumbent " means the rector for the time being of the rectory of the parish church of St. Mary Barnsley;

" the borough " means the county borough of Barnsley in the West Riding of the county of York;

" the corporation " means the mayor aldermen and burgesses of the borough;

" the diocese " means the diocese of Wakefield;

" the bishop " means the lord bishop for the time being of the diocese;

" the registrar " means the registrar of the diocese;

" the plan " means the plan signed in triplicate by Charles Williams esquire the chairman of the committee of the House of Commons to which the Bill for this Act was referred of which plan one copy has been deposited in the Committee and Private Bill Office of the House of Commons another copy has been deposited in the Parliament Office House of Lords and another copy has been deposited with the registrar;

" the burial ground " means the piece of land in the borough referred to in the preamble to this Act which was formerly used for burials and which is described in the schedule to this Act and coloured pink on the plan;

" the footpath " means the public footpath in the borough connecting Church Lane with the public footpath (known as Victoria Avenue) leading in a north-westerly direction to Victoria Street and passing immediately to the north of the burial ground and to the south of the Beckett Hospital and Dispensary and coloured yellow on the plan;

" the scheduled land " means—

(i) the burial ground; and

(ii) the land forming the site of the southerly one-half part of so much of the footpath as adjoins the burial ground and is cross-hatched in black on the plan;

" the lease " means the lease of the burial ground dated the fifth day of August nineteen hundred and twenty-seven recited in the preamble to this Act;

" the hospital " means the Beckett Dispensary Barnsley now commonly known as the Beckett Hospital and Dispensary Barnsley;

" the trust deed " means the trust deed dated the twenty-eighth day of August eighteen hundred and sixty-two relating to the hospital;

" the Hospital Trustees " means—

The Right Honourable Wentworth Henry Canning Beaumont Viscount Allendale C.B.E.;

George Bingley Lancaster esquire;

William Henry Newton esquire;

Ralph Frederick Pawsey esquire;

Dame Annie Christine Sutherland C.B.E.;

Edward Sheerien esquire J.P.;

being the present trustees of the hospital and includes the trustees thereof for the time being;

" the appointed day " means the first day of September nineteen hundred and forty-four;

2 & 3 Geo. 6. c. 62. " war period " means the period for which the Emergency Powers (Defence) Act 1939 is in force;

" the parochial church council " means the parochial church council of the ecclesiastical parish of St. Mary Barnsley constituted under the Parochial Councils (Powers) Measure 1921 and the Representation of the Laity Measure 1929;

11 & 12 Geo. 5. No. 1. 19 & 20 Geo. 5. No. 2. " the declaration of trust " means the declaration of trust dated the sixteenth day of November nineteen hundred and thirteen made by the Wakefield Diocesan Church Organisation Society and referred to in the preamble to this Act.

(2) If there be any discrepancy between the description of the burial ground which is contained in the schedule to this Act and the plan referred to in this section the said plan shall prevail.

Sale of scheduled land.

47 & 48 Vict. c. 72. 50 & 51 Vict. c. 32.

3.—(1) Notwithstanding anything in the Act of 1819 the Act of 1824 the Disused Burial Grounds Act 1884 the Open Spaces Act 1887 or in any other enactment but subject to the provisions of this Act the scheduled land shall upon the appointed day by virtue of this Act and without any conveyance be transferred to and vested in the Hospital Trustees for an estate in fee simple free from incumbrances but subject so far as regards the land demised thereby to the lease until the same shall be surrendered by the corporation to be held by such trustees upon such trusts and to and for such intents and purposes and with and subject to such powers and provisions subject to the provisions of this Act as are expressed declared and contained in the trust deed concerning the trust premises subject thereto and the price specified in subsection (2) of this

section shall thereupon be paid by the Hospital Trustees to the parochial church council (whose receipt therefor shall be a good and sufficient discharge) and if for any reason the said sum is not so paid the Hospital Trustees shall pay to the said council in addition to the said sum interest thereon at the rate of four per centum per annum calculated from the appointed day until the date of actual payment.

(2) The price to be paid by the Hospital Trustees in respect of the said transfer to the incumbent and to the churchwardens of the said parish of St. Mary Barnsley (in respect of their interest (if any) in the scheduled land) shall be the sum of five hundred pounds.

Provisions as to removal of human remains.

4.—(1) The Hospital Trustees shall as soon as practicable after the scheduled land shall have been vested in them and before exercising upon or in regard to such land any of the powers of the section of this Act of which the marginal note is " Power to use scheduled land for building and other purposes " and (unless prevented by reason of force majeure accident or any other cause beyond the control of the said trustees) before the expiration of three years from the passing of this Act or from the termination of the war period whichever is the later but subject to the provisions in that behalf in this Act contained remove or cause to be removed from the burial ground the human remains interred therein and the monuments tombstones and other memorials of deceased persons now in or about the same.

(2) Before proceeding to remove or cause to be removed any human remains from the burial ground the Hospital Trustees shall publish a notice for three successive days in two local newspapers circulating in the West Riding of the county of York to the effect that it is intended to remove any such remains and such notice shall have embodied in it the substance of subsections (3) (4) (5) (6) and (7) of this section.

(3) At any time within two months after the first publication of such notice any person who is an heir executor administrator or relative of any deceased person whose remains are interred in the burial ground may give notice in writing to the Hospital Trustees of his intention to undertake the removal of such remains and thereupon he shall be at liberty without any faculty for the purpose but subject as hereinafter mentioned to any regulations made by the bishop to cause such remains to be removed to and re-interred in any consecrated burial ground or the consecrated portion of any cemetery in which burials may legally take place.

(4) If any person giving notice as aforesaid shall fail to satisfy the Hospital Trustees that he is such heir executor

administrator or relative as he claims to be the question shall be determined on the application of either party in a summary manner by the registrar of the consistory court of the diocese who shall have power to make an order specifying who shall remove the remains.

(5) The expense of such removal and re-interment (not exceeding in respect of remains removed from any one grave the sum of fifteen pounds) shall be defrayed by the Hospital Trustees such sum to be apportioned if necessary equally according to the number of remains in the grave.

(6) If within the aforesaid period of two months no such notice as aforesaid shall have been given to the Hospital Trustees in respect of the remains in any grave or if after such notice has been given the persons giving the same shall fail to comply with the provisions of this section and with any regulation of the bishop the Hospital Trustees may without any faculty for that purpose remove the remains of the deceased person and cause them to be re-interred in such other consecrated burial ground or in the consecrated portion of such other cemetery in which burials may legally take place as the Hospital Trustees think suitable for the purposes subject to the consent of the bishop.

(7) All monuments and tombstones relating to the remains of any deceased person removed under this Act shall at the expense of the Hospital Trustees be removed and (subject as hereinafter in this subsection provided) re-erected at such place within the West Riding of the county of York and in such position over or near to the remains to which they respectively relate as the bishop may direct on the application (if any) of such heir executor administrator or relative as aforesaid or failing any such application on the application of the Hospital Trustees:

Provided that where no such application by such heir executor administrator or relative as aforesaid is made to the bishop for a direction as to the removal and re-erection of any monument or tombstone the bishop may direct the Hospital Trustees to cause the same to be removed and the Hospital Trustees shall comply with any such direction and the Hospital Trustees shall cause to be made a record of such monuments and tombstones and of their situation when re-erected or removed showing the particulars respecting each monument and tombstone as a separate entry and such record shall be deposited at the General Register Office Somerset House London with the miscellaneous records in the custody of the Registrar-General.

(8) The removal of the remains of any deceased person under this section shall be carried out under the supervision

and to the satisfaction of the medical officer of health of the borough.

Stopping up of footpath.

5. When the scheduled land shall have been vested in and the lease shall have been surrendered by the corporation to the Hospital Trustees it shall be lawful for the said trustees forthwith to stop up the footpath whereupon the rights of user over the same by the public shall by virtue of this Act be extinguished.

Power to use scheduled land for building and other purposes.

6. When the scheduled land shall have been vested in the Hospital Trustees and all the human remains found in the burial ground shall have been removed therefrom—

(1) the burial ground shall be freed and discharged from all trusts uses obligations disabilities and restrictions which may affect the same by reason of the same being a disused burial ground and from all other trusts uses obligations disabilities and restrictions whatsoever heretofore attaching thereto under ecclesiastical law or otherwise and from all rights and interests of the owners of any graves therein:

(2) notwithstanding anything contained in the act of 1819 the Act of 1824 the Disused Burial Grounds Act 1884 the Open Spaces Act 1887 or any other enactment it shall be lawful—

(i) for the Hospital Trustees at any time thereafter to erect or procure the erection of buildings on the scheduled land for the purposes of the extension and enlargement of the hospital and (subject to the provisions of this section) to sell or otherwise deal with and dispose of the same for building or for any other purposes in like manner as if no part thereof had ever been used or set apart for the purpose of burial; and

(ii) for the successors in title of the Hospital Trustees owners for the time being of the scheduled land and persons claiming through or under them at any time thereafter to erect or procure the erection of buildings on the scheduled land and to sell or otherwise to deal with and dispose of the same for building or for any other purposes in like manner as if no part thereof had ever been used or set apart for the purpose of burial:

(3) provided that—

(*a*) the Hospital Trustees shall not exercise any of the powers conferred upon them by this section

until they shall have purified or sterilised the scheduled land to the reasonable satisfaction of the medical officer of health of the borough;

(*b*) so long as the Hospital Trustees do not exercise the powers of this section in relation to any part of the scheduled land they shall to the reasonable approval of the corporation lay out and maintain such part as a garden or open space;

(*c*) before the Hospital Trustees sell or otherwise deal with and dispose of the scheduled land or part thereof (except by way of sale to the corporation) they shall first offer in writing to sell the same to the corporation at a price to be determined as hereinafter provided;

(*d*) if the corporation are desirous of purchasing the same they shall signify their desire in that behalf to the Hospital Trustees within three months after such offer of sale and if at the expiration of three months after such offer of sale the corporation have not so signified their desire the right of pre-emption of the corporation shall cease;

(*e*) if the corporation are desirous of purchasing the same and the corporation and the Hospital Trustees offering to sell the same do not agree as to the price thereof such price shall be determined by arbitration under and subject to the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919.

9 & 10 Geo. 5. c. 57.

Any question arising between the Hospital Trustees on the one hand and the corporation or the medical officer of the borough on the other hand under paragraph (*a*) or paragraph (*b*) of this proviso shall be determined in the same manner (mutatis mutandis) as is provided by the section of this Act of which the marginal note is "For protection of corporation" with respect to the determination of questions arising under that section:

(4) Nothing in this section shall authorise the erection upon the scheduled land of any building contrary to the provisions of—

22 & 23 Geo. 5. c. 48.

(*a*) the Town and Country Planning Act 1932 or any statutory modification thereof for the time being in force or any scheme or order for the time being in force thereunder; or

(*b*) the Public Health Act 1936 or any statutory modification thereof or any byelaws made by the corporation thereunder and for the time being in force; 26 Geo. 5. & 1 Edw. 8. c. 49.

but subject to the requirements of any such provision with reference to space about buildings and subject to the provisions of this Act nothing in this subsection shall prevent any part of the scheduled land from being used in accordance with the provisions of this Act for the extension and enlargement of the hospital.

Provision of alternative open space.

7.—(1) Upon the appointed day the land held by the Wakefield Diocesan Church Organisation Society in trust for the rector and churchwardens of the said parish church of St. Mary Barnsley which is situate on and adjoins the northerly side of Church Fold and is coloured blue on the plan shall by virtue of this Act and notwithstanding anything in the declaration of trust be and become a public garden or open space (not to be used for the purposes of games or other recreation) and shall be laid out and thereafter maintained as such public garden or open space by and at the expense of the parochial church council but to the reasonable approval at all times of the corporation Any question arising between the parochial church council and the corporation under this subsection shall be determined in the same manner (mutatis mutandis) as is provided by the section of this Act of which the marginal note is " For protection of corporation ." with respect to the determination of questions arising under that section.

(2) If the corporation shall acquire the land abutting on Church Lane and lying to the westerly side of the said land coloured blue on the plan and shall appropriate such first-mentioned land as a public garden or open space the parochial church council will permit the corporation to take down and remove the wall which at present divides the land coloured blue on the plan from the said land lying to the westerly side thereof to the intent that such lands shall together form one public garden or open space but without prejudice to the provisions hereinbefore contained as to the user and maintenance of the portion thereof which is coloured blue on the plan and without prejudice to the ownership of either that portion or the said portion lying to the westerly side thereof.

For protection of corporation.

8. Notwithstanding anything contained in this Act the following provisions for the protection and benefit of the corporation shall apply and have effect except in so far as may be

otherwise agreed in writing between the corporation and the Hospital Trustees (that is to say):—

(1) Before exercising in regard to any part of the burial ground the powers conferred upon them by the section of this Act of which the marginal note is "Power to use scheduled land for building and other purposes" the Hospital Trustees shall remove any benches or forms belonging to the corporation and at present placed in such part of the burial ground as aforesaid to such other land or lands as the corporation may request:

(2) Plans and elevations of any buildings proposed to be erected by the Hospital Trustees on the scheduled land shall be submitted by those trustees to the corporation for their approval and no such buildings shall be so erected except in accordance with such plans and elevations as may be reasonably approved by the corporation:

Provided that if the corporation fail within thirty days after the submission of such plans and elevations to signify to the said trustees in writing their decision thereon they shall be deemed to have disapproved the same:

(3) Before stopping up the footpath the Hospital Trustees shall—

(*a*) reimburse to the corporation the cost of removing the electric lamp standard which is erected therein and also the cost of providing and laying an electric service main from Victoria Street along Victoria Avenue to No. 14 Victoria Avenue and a supply main (remote control) from Victoria Street along Victoria Avenue to the electric lamp standard erected at the south-easterly end of Victoria Avenue;

(*b*) reimburse to the corporation the cost of carrying out any diversions of water mains services valves and fittings which the corporation may reasonably deem to be necessary in consequence of the intended stopping up of the footpath;

(*c*) arrange to the reasonable approval of the corporation for the disposal of any surface water which would otherwise flow into or along the footpath from Victoria Avenue:

(4) As soon as the footpath has been stopped up the Hospital Trustees shall take down the existing

boundary wall which extends along the southerly side of the footpath from the north-westerly corner of the burial ground to the south-easterly end of Victoria Avenue and shall at their own cost on the request of the corporation convey to the corporation without consideration the unincumbered fee simple of so much of the footpath as lies between the points last aforesaid and to the northward of the centre line thereof:

(5) The Hospital Trustees shall not take up alter or interfere with the public convenience belonging to the corporation and adjoining the southerly boundary of the burial ground until the corporation shall have provided another public convenience and the Hospital Trustees shall on demand repay to the corporation one-half of the expense reasonably incurred by them in so doing such contribution not to exceed one hundred and fifty pounds:

(6) Any question arising between the Hospital Trustees and the corporation under the provisions of this section shall be referred to and determined by a single arbitrator to be appointed on the application of either party after notice in writing to the other by the President of the Law Society and subject as aforesaid the provisions of the Arbitration Acts 1889 and 1934 shall apply to any such reference and determination. 52 & 53 Vict. c. 49. 24 & 25 Geo. 5. c. 14.

Application of purchase money.

9. The purchase price payable by the Hospital Trustees under the provisions of this Act and any interest payable in respect thereof may be applied by the parochial church council in the laying out of the land referred to in the section of this Act of which the marginal note is "Provision of alternative open space" as a public garden or open space as provided by that section and if or in so far as such purchase price and interest (if any) is not so applied it shall be applied by that council to the following purposes and in the following manner (that is to say):—

(*a*) in or towards the building or provision of a church hall or a mission hall to be used for or in connection with the purposes of the said parish of St. Mary Barnsley and the purchase of a site therefor and in payment of all costs and expenses in connection with such matters; or

(*b*) (to the extent to which such purchase price is not so applied as aforesaid) to such other purpose or purposes for the benefit of the said parish as the bishop may from time to time and after consultation with the incumbent determine.

Registration of Act.

10. The Hospital Trustees shall forthwith after the passing of this Act deliver to the registrar a printed copy of this Act which shall be registered in the registry of the diocese.

Dissolution of church trustees and repeal of Acts of 1819 and 1824.

11.—(1) The persons who were the trustees under the Acts of 1819 and 1824 immediately before the passing of this Act shall as and from the date of the passing of this Act cease to be such trustees and shall be released from all further duties obligations and liabilities as such trustees in relation to the execution of the powers of the said Acts.

(2) The Acts of 1819 and 1824 are hereby repealed.

Costs of Act.

12. All the costs charges and expenses preliminary and of and incidental to the preparing applying for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Hospital Trustees out of the funds of the hospital.

The SCHEDULE referred to in the foregoing Act.

DESCRIPTION OF THE BURIAL GROUND.

A piece of land in the borough containing approximately 1.5 acre bounded on the north by a public footpath (unnamed) connecting Church Lane with the public footpath known as Victoria Avenue and leading in a north-westerly direction to Victoria Street on the east by Church Lane on the south by lands belonging to the corporation and forming the approach road which leads in a westerly direction from St. Mary's Church to the south-eastern corner of the land belonging to the corporation and known as Fairfield and on the west by land forming part of Fairfield aforesaid.

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