MEASURES

PASSED BY THE NATIONAL ASSEMBLY OF THE CHURCH OF ENGLAND WHICH RECEIVED THE ROYAL ASSENT DURING THE YEAR 1933.

23 & 24 GEO. 5.

No. 1.

A MEASURE passed by the National Assembly of the Church of England.

To enable Parochial Church Councils to purchase rights of patronage in certain cases.

[29th March 1933.]

Interpretation.

1. In this Measure—

(i) the expression "right of patronage" means the perpetual right of presentation to a benefice on a vacancy, including an alternate right, and "presentation" includes in the case of a non-presentative benefice nomination; "right of patronage." "presentation."

(ii) the expression "the patron" means the person or body of persons or corporation for the time being entitled to a right of patronage, including a trustee, whether for sale or otherwise, and the incumbent of a benefice in whom a right of patronage is vested by virtue of his office; "the patron."

(iii) the expression "principal benefice" means a benefice in the incumbent of which is vested by virtue of his office a right of patronage of another benefice, and the expression "ancillary benefice" means a benefice the right of patronage of which is so vested in the incumbent of a principal benefice; and the word "ancillary" shall be construed accordingly; "principal benefice." "ancillary benefice."

(iv) the expression "principal patron" means the patron of a principal benefice; "principal patron."

"transfer." (v) the expression "transfer" includes any conveyance or assurance passing or creating any legal or equitable interest inter vivos, and any agreement for any such conveyance or assurance, but does not include (*a*) a transmission on marriage, death or bankruptcy, or otherwise by operation of law, nor (*b*) a transfer on the appointment of a new trustee where no beneficial interest passes;

"parish." (vi) the expression "parish" includes every ecclesiastical area (other than a conventional district) for which there is a parochial church council, and the expression "the council" means the parochial church council of a parish;

"the council."

"the Board." (vii) the expression "the Board" means the Diocesan Board of Patronage of the diocese in which the benefice concerned is situate;

"the registrar." (viii) the expression "the registrar" means the registrar of the diocese concerned;

"appointed day." (ix) the expression "the appointed day" means the day appointed for the coming into operation of this Measure.

Power of council to resolve to purchase right of patronage.

2. Where a transfer of a right of patronage of a benefice has been or shall have been registered since the passing of the Benefices Act, 1898 (Amendment) Measure, 1923, and at the date of such registration two vacancies of such benefice subsequent to the passing of that Measure have not occurred, the council of the parish within which such benefice is situate may by a resolution (in this Measure referred to as "the provisional resolution") resolve to purchase such right of patronage: Provided that—

(i) the provisional resolution is passed within three years after the appointed day, or within three years after the registration of the transfer, whichever date shall be the later; and

(ii) the provisional resolution is confirmed, within three calendar months after the passing thereof, by a resolution (in this Measure referred to as "the confirmatory resolution") passed at a Special or Extraordinary Parochial Church Meeting convened and held in accordance with the Rules for the Representation of the Laity.

3. Upon the passing of the confirmatory resolution the following provisions shall have effect (that is to say) :— Provisions for carrying out the purchase, &c.

(i) Within fourteen days from the date of the passing of the confirmatory resolution the council shall give notice to the patron and to the Board that they have resolved to purchase the right of patronage;

(ii) The notice to the patron shall contain an offer by the council to purchase the right of patronage at the price named in such notice. Such notice (hereinafter called "the original notice") shall be in the form numbered one set out in the First Schedule hereto; and where there is a principal patron the council shall at the same time notify him of the offer so made;

(iii) In the event of no agreement for the sale and purchase of the right of patronage either at the price named in the original notice or at some other price being come to within three calendar months from the date of the original notice being given, the council may within one calendar month thereafter give notice to the patron that they refer the matter to arbitration. Such notice shall be in the form numbered two set out in the First Schedule hereto; and the council shall at the same time pay to the registrar a sum equal to one-tenth of the price offered by them, or a sum of twenty pounds, whichever shall be the greater, as a deposit on account of the price eventually awarded and (together with any interest thereon) to be dealt with accordingly;

(iv) The price to be paid on the proposed purchase shall be the price awarded by the arbitrator appointed and proceeding in accordance with the Rules contained in the Second Schedule hereto. The award shall be sent by the arbitrator to the council and a copy thereof to the patron and the principal patron (if any);

(v) If the price awarded shall be not more than that named in the original notice, then the original notice and the award shall together constitute a binding contract for sale between the patron and

the council as from the date of the original notice and at the price named in the award;

(vi) If the price awarded shall be more than that named in the original notice, and the council shall within six calendar months from the receipt of the award send to the patron a final notice (in the form numbered three set out in the First Schedule hereto) stating that they desire to proceed with the purchase, then the original notice, the award, and the final notice shall together constitute a binding contract for sale between the council and the patron as from the date of the original notice, and at the price named in the award;

(vii) A contract for sale under either of the two preceding paragraphs shall not require registration as a transfer under the Benefices Act, 1898, and the patron shall upon the payment to him or the person entitled to give a valid receipt, or as hereinafter otherwise directed, of the purchase money and his costs and expenses of the arbitration, as certified by the arbitrator's award, and his costs of deducing and proving his title so far as the council may require and of and in connection with the conveyance convey the right of patronage of the benefice to the Board;

61 & 62 Vict. c. 48.

(viii) A deed of conveyance under this Measure may be in the appropriate form set out in the Third Schedule hereto, and shall operate to vest the right of patronage of the benefice in the Board in fee simple free from all or any trusts or incumbrances, charges or powers of charging, previously affecting the same but without prejudice to the rights of any person claiming by title paramount at law to that of the patron, and all or any trusts incumbrances, charges or powers of charging superseded by such conveyance shall attach to the purchase money in the hands of the patron, or other person giving a receipt for the same;

(ix) A right of patronage conveyed to the Board under this Measure shall be deemed to be a right of patronage acquired by the Board within section 2 of the Benefices (Diocesan Boards of

Patronage) Measure, 1932, and exerciseable according to its own discretion, but so that the Board shall not be at liberty to transfer the same save with the consent in writing of the council;

(x) In the event of the council not giving notice as in paragraph (vi) of this section provided of its desire to proceed with the purchase, they shall pay to the patron his costs and expenses as certified by the arbitrator;

(xi) A patron shall be at liberty to sell and convey under this Measure notwithstanding any restriction on the sale of the right of patronage statutory or otherwise;

(xii) The bishop of the diocese in which the benefice is situate may in his discretion, upon the application in writing of the council or the patron, extend the times referred to in paragraph (iii) of this section, and shall give notice of any such extension to the persons concerned;

(xiii) Costs incurred subsequent to the arbitrator's award, and becoming payable to the patron under paragraph (vii) of this section, shall, in case the parties differ, be taxed by a solicitor to be nominated by the parties or in cases of disagreement be taxed by the registrar, if he has not acted for either party, and, if he has so acted, by a solicitor to be nominated in that behalf by the Chancellor of the diocese.

Vacancy in benefice before transfer to the Board.

4. In the event of a vacancy in the benefice occurring after the date when the contract for sale becomes binding, but before the date of the transfer to the Board, the transfer shall not become operative during such vacancy, and the patron may exercise his right of patronage in respect of such vacancy in the same manner as if he had not contracted for the sale of the same: Provided that if the council shall within one calendar month from the date of such vacancy pay or tender to the patron the contract price, he shall present to such benefice the person nominated in that behalf by the Board.

Rights of patronage of ancillary benefices.

5.—(1) Where a transfer of the right of patronage of a principal benefice has been or shall have been registered within the period allowed by section 2 of this

Measure, the council of a parish within which there is a benefice ancillary to such principal benefice may resolve to purchase the right of patronage of such ancillary benefice, and the consequent provisions of this Measure shall apply accordingly:

Provided that—

(i) in addition to the consent of the patron of the ancillary benefice the consent of the principal patron shall be necessary to a purchase by agreement; and

(ii) the notices required by this Measure to be sent to the patron of a benefice which is the subject of a resolution to purchase shall (save as in section 3 (ii) of this Measure provided) be sent to the principal patron as well as to the patron of the benefice to which the resolution relates.

(2) Where the right of patronage of an ancillary benefice has been purchased under the provisions of this Measure, the purchase money shall be paid to the Ecclesiastical Commissioners as part of the endowment of the principal benefice, and where the right of patronage is for the time being vested in the principal patron under or by virtue of section 10 (1) (ii) of the Benefices (Ecclesiastical Duties) Measure, 1926, he shall join in conveying the same to the Board.

(3) In the event of a council resolving to purchase the right of patronage of a principal benefice, the time for giving notice thereof to the principal patron shall be three calendar months from the date of the confirmatory resolution, and the council shall within fourteen days from the date of the confirmatory resolution give notice of such intention to purchase to the council of every parish of which the benefice is ancillary to such principal benefice, and if within two calendar months from the date of such notice the council of any such parish shall give notice in writing to the council of the parish having the principal benefice that in the event of such purchase taking effect they desire the patronage of the ancillary benefice to be vested in the principal patron, such right of patronage shall, in the event of the purchase being completed and the right of patronage of the principal benefice being vested in the Board, forthwith vest in the principal patron for his own use and benefit and as if the

same had always been a right of patronage independent of the principal benefice.

(4) No notice given as last aforesaid to the council of the parish having the principal benefice shall be so given unless the giving thereof has been directed by a resolution in that behalf passed at a special or extraordinary parochial church meeting of the ancillary parish convened and held in accordance with the Rules for the Representation of the Laity.

Amendment of the Benefices Act, 1898.

6.—(1) The register of transfers for the purposes of the Benefices Act, 1898, shall as from the coming into operation of this Measure include in every case a note of the price (if any) paid for the interest transferred, and the application for registration shall state the price (if any) accordingly.

(2) A duplicate of the entry in the register relating to every such transfer shall be sent by the registrar to the council concerned within fourteen days from the date thereof.

Notices.

7. All notices shall be in writing and may be by registered letter, and as to the patron or principal patron (if his address is unknown) shall be deemed to have been duly given if sent by registered letter to the address (if any) contained in the Register of Transfers under the Benefices Act, 1898, or in the absence of such address if given by advertisement in a newspaper circulating in the neighbourhood of the benefice concerned.

Rule Committee. 55 & 56 Vict. c. 32.

8.—(1) The Rule Committee as defined by section 9 of the Clergy Discipline Act, 1892, may from time to time make vary or add to any rules or forms relating to matters of procedure or to costs, expenses or fees arising under this Measure.

(2) Every rule purporting to be made by the said Rule Committee in pursuance of this Measure shall forthwith be laid before both Houses of Parliament, and if an Address is presented to His Majesty the King by either House within the next twenty days thereafter on which that House has sat praying that any such rule may be annulled, His Majesty in Council may annul the same, without prejudice to the validity of anything done in the meantime in pursuance thereof; but, subject as aforesaid, every such rule shall, while unrevoked, be of the same validity as if contained in this Measure.

Exemptions.

9. Nothing in this Measure shall apply to—

(i) rights of patronage vested in or exercised by

(*a*) His Majesty, whether in right of his Crown or of his Duchy of Lancaster; or

(*b*) His Majesty or the Duke of Cornwall as the possessor for the time being of the Duchy of Cornwall; or

(*c*) the Admiralty in respect of benefices the patronage of which belongs to Greenwich Hospital; or

(*d*) any archbishop or bishop or dean in respect of his office or the dean and chapter of any cathedral church; or

(ii) rights of patronage in benefices ancillary to any benefice whereof the right of patronage is vested or exercised as mentioned in this section; or

(iii) a right of patronage sold on the occasion of the last transfer in conjunction with any manor or with an estate in land of not less than one hundred acres situate in the parish in which the benefice is situate or in an adjoining parish and belonging to the same owner as the right of patronage.

Commencement.

10.—(1) This Measure shall come into operation on the appointed day save that section eight and rule 1 in the Second Schedule hereto contained, so far as it provides for the appointment of arbitrators, shall come into operation forthwith on the passing hereof.

(2) The appointed day shall be such day not later than twelve months after the passing of this Measure as the Archbishops of Canterbury and York may determine.*

(3) The determination by the Archbishops of Canterbury and York of the appointed day shall be notified by advertisement in the London Gazette.

Short title.

11. This Measure may be cited as the Benefices (Purchase of Rights of Patronage) Measure, 1933.

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* The day thus determined was June 1, 1933: *see* "London Gazette," May 16, 1933, p. 3293.

Extent. **12.** This Measure shall apply to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man.

SCHEDULES.

Section 3.

THE FIRST SCHEDULE.

FORM 1.—(FIRST NOTICE TO PATRON.)

In the matter of the
BENEFICES (PURCHASE OF RIGHTS OF PATRONAGE) MEASURE, 1933.

Take notice that by a Resolution confirmed on the day of 19 the Parochial Church Council of the Parish of in the Diocese of have resolved to purchase the right of patronage of the Benefice of within the said Parish, and hereby offer you as Patron the sum of for the same.

(Signed)
Secretary of the Council.

To the Patron of the above-mentioned Benefice.

FORM 2.—(NOTICE AS TO ARBITRATION.)

In the matter of the
BENEFICES (PURCHASE OF RIGHTS OF PATRONAGE) MEASURE, 1933.

Take notice that the Parochial Church Council of the Parish of hereby refer the matter of the sale and purchase of the right of patronage of the Benefice of to arbitration, and are paying a deposit of £ to the Registrar of the Diocese.

(Signed)
Secretary of the Council.

To the Patron of the above-mentioned Benefice.

FORM 3.—(FINAL NOTICE TO PATRON.)

In the matter of the
BENEFICES (PURCHASE OF RIGHTS OF PATRONAGE) MEASURE, 1933.

Take notice that the Parochial Church Council of the Parish of desire to proceed with the purchase of the right of patronage of the Benefice of

(Signed)

Secretary of the Council.

To the Patron of the above-mentioned Benefice.

Sections 3 and 10.

THE SECOND SCHEDULE.

RULES FOR ARBITRATION.

1. Arbitrations under this Measure shall be referred to a single arbitrator. A panel of three persons to act as arbitrators shall be appointed from time to time by the Ecclesiastical Commissioners for England with the approval of the Lord Chancellor, and in the event of the patron and the council not mutually consenting to a reference to any one of the said panel within 14 days from the date of the notice to refer to arbitration or such longer period as they may agree, the bishop shall, on the application of either party to be made within seven days from the expiration of the said period or such further time as he may allow, refer the matter to such one of the said panel as he may think fit.

2. The arbitrator by his award shall certify the price to be paid for the right of patronage concerned.

3. Such price shall be not less than the price named by the council in their original notice, and shall be such price as the arbitrator shall consider equitable, after taking into consideration all the circumstances of the case, including the price (if any) paid on any transfer of the right of patronage registered since the passing of the Benefices Act, 1898 (Amendment) Measure, 1923.

4. The arbitrator shall also certify by his award at such amount as he shall think proper the costs and expenses of the patron or of the principal patron reasonably incurred in relation to the arbitration. He may also thereby set off against the same any costs and expenses incurred by the council and in his opinion attributable to unreasonable conduct by the patron or principal patron (as the case may be).

5. The arbitrator may if he thinks neither party will be prejudiced thereby make his award notwithstanding any irregularity in the previous proceedings, and may direct the giving of any further notices, or the doing of any further acts in the matter, and may decline to proceed with the arbitration either temporarily or at all if he is not satisfied that the patron or principal patron is or should be taken to be cognisant of the proceeding before him. When no purchase price can be awarded by reason of a person wrongfully claiming to be patron or principal patron, he may award to the council such a sum as will in his opinion meet the costs and expenses reasonably incurred by them in the matter. All sums for costs and expenses awarded by the arbitrator shall be recoverable as a debt due to the person to whom they are so awarded.

6. The patron (including a principal patron) and the council may attend the arbitration by themselves or their agents, and shall (whether they attend or not) give such information and produce such documents in their possession or power as the arbitrator shall reasonably require. In any case of refusal to give such information or to produce such documents the arbitrator may proceed on such materials as are available, and may make such presumptions as he may think reasonable against the person so refusing.

7. The award shall be final and binding on the patron and the council, and where the patron is a trustee on the beneficiaries.

8. A fee of £5 5*s*. shall be payable by the council to the arbitrator.

THE THIRD SCHEDULE.

Section 3.

Forms of Conveyance.

No. 1.

By a Patron absolutely entitled, or by Personal Representatives, or by Trustees, whether Trustees of or for any Association, or Statutory Owners, or for Sale, or otherwise.

I [*or* We] [*add names and addresses*], Patron [*or* Patrons] of the Benefice of in the Parish of and Diocese of in consideration of the sum of £ now paid to me [us] by the Parochial Church Council of the said parish, the receipt whereof I [we] hereby acknowledge, acting under the authority of the Benefices (Purchase

of Rights of Patronage) Measure, 1933 [*if not absolutely entitled add* "and in exercise of all statutory or other powers me [us] hereunto enabling"] and as beneficial owner(s) [*or* trustee(s)] hereby convey unto the Board of Patronage of the said Diocese the perpetual right of patronage and presentation of and to the said benefice.

[*Add if necessary* :—

(*a*) The usual statutory acknowledgment and (in the case of an actual owner) undertaking;

(*b*) A statement as to value for the purposes of section 73 of the Finance (1909 to 1910) Act, 1910.]

In Witness, &c.

No. 2.

BY A PATRON WHO IS TENANT FOR LIFE.

I [*name and address*], being under a Principal Vesting Deed of the day of 19 estate owner of the right of patronage hereby conveyed in consideration of the sum of £ to A, B, and C, D, the trustees of the Settlement referred to in the same Deed now paid by the Parochial Church Council of the Parish of and Diocese of * do hereby acting under the authority of the Benefices (Purchase of Rights of Patronage) Measure, 1933, and in exercise of all statutory or other powers me hereunto enabling, and as trustee convey unto the Board of Patronage of the said Diocese the perpetual right of patronage and presentation of and to the Benefice of in the said Parish of

[*Add if necessary* :—

(*a*) The usual statutory acknowledgment;

(*b*) A statement as to value for the purposes of section 73 of the Finance (1909 to 1910) Act, 1910.]

In Witness, &c.

No. 3.

CONVEYANCE OF AN ANCILLARY BENEFICE.

In consideration of the sum of £ paid by the Parochial Church Council of the Parish of B in the Diocese of to the Ecclesiastical Commissioners for England, I, , the Incumbent of the Benefice

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* The Council should take a receipt from the Trustees.

of A and by virtue of my office patron of the ancillary Benefice of B, acting under the authority of the Benefices (Purchase of Rights of Patronage) Measure, 1933, and as trustee hereby convey unto the Board of Patronage of the said Diocese the perpetual right of patronage and presentation of and to the said Benefice of B.

[*Add, if necessary,* a statement as to value for the purposes of section 73 of the Finance (1909 to 1910) Act, 1910.]

No. 2.

A MEASURE passed by the National Assembly of the Church of England.

To transfer the parish of Northenden and parts of the parishes of Baguley and Timperley from the Diocese of Chester to the Diocese of Manchester, and for purposes connected therewith.

[28th June 1933.]

Transfer of Wythenshawe parishes.

1.—(1) As from the passing of this Measure—

(i) the following parish and parts of parishes in the Wythenshawe district, namely:

(*a*) the parish of Northenden; and

(*b*) the parish of Baguley, except such part thereof as lies to the west of the Bridgewater Canal; and

(*c*) such part of the parish of Timperley as is now within the boundaries of the city of Manchester,

shall be transferred from the diocese of Chester to the diocese of Manchester, and shall be in the archdeaconry of Manchester and the rural deanery of Heaton;

(ii) such part of the parish of Baguley as lies to the west of the Bridgewater Canal shall, for all ecclesiastical purposes, be added to and form part of the parish of S. Mary Magdalene, Ashton-upon-Mersey, in the diocese of Chester;