CHAP. 43.

An Act for the Amendment of the Law relating to Ecclesiastical Dilapidations. [13th July 1871.] A.D. 1871.

WHEREAS as well for the better sustentation of houses of residence, chancels, and other buildings which incumbents of ecclesiastical benefices and other ecclesiastical persons are by law or custom bound to maintain in repair, as also for the relief of such persons and their representatives, it is expedient to amend the law relating to ecclesiastical dilapidations:

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, as follows:

Preliminary.

1. This Act may be cited as "The Ecclesiastical Dilapidations Act, 1871," and shall come into operation as on and from the first day of August one thousand eight hundred and seventy-one, which day is in this Act referred to as "the commencement of this Act." Short title.

2. This Act shall not extend to Scotland or Ireland. Extent.

3. The term "benefice" in this Act shall comprehend all rectories with cure of souls, vicarages, perpetual curacies, donatives, endowed public chapels, and parochial chapelries, and chapelries or districts belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel. Explanation of terms.

The term "patron" shall, with reference to any benefice, mean the person or persons or corporation who, in case such benefice were vacant, would be entitled to present thereto; but if the right to present to such benefice shall be vested in different persons or corporations, whether jointly or by way of alternate presentations, the term patron shall (unless the context requires otherwise) comprehend both or all such different persons or corporations in whom such right of joint or alternate presentations shall for the time

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being be vested; and as regards the patrons referred to in sections 126, 127, and 128 of the Act 1 & 2 Vict. chapter 106, the actions of or towards such patrons required by this Act shall be performed in the manner stated in such sections 126, 127, and 128, as if the said sections were here repeated and made applicable to the provisions of this Act.

The term "surveyor" shall mean the official surveyor elected under this Act, except where otherwise described.

The term "governors" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

The term "the archdeacon" shall mean the archdeacon of the archdeaconry within which the benefice is situated with regard to which the provisions of this Act are sought to be applied.

The term "the rural dean" shall mean the rural dean of the rural deanery within which the benefice is situated with regard to which the provisions of this Act are sought to be applied.

What included as buildings.

4. The provisions of this Act respecting buildings belonging to a benefice shall apply to all such houses of residence, chancels, walls, fences, and other buildings and things as the incumbent of the benefice is by law or custom bound to maintain in repair.

Building out of diocese.

5. For the purposes of this Act any building belonging to a benefice shall be deemed to be within the diocese of the bishop under whose jurisdiction the benefice is, although the building be not in fact locally situate within that diocese.

Vacancy of see, &c.

6. During the vacancy of a see the powers under this Act which may be exercised by a bishop shall be exercised by the guardian of the spiritualities of the diocese. Where a bishop is disabled from exercising in person the functions of his office, those powers shall be exercised by the person lawfully empowered to exercise his general jurisdiction in the diocese.

Powers of archbishops and bishops.

7. The powers which may be exercised under this Act by a bishop shall be exercised by an archbishop in relation to his diocese.

Surveyors of Dilapidations.

Surveyors for each diocese.

8. Within three months after the commencement of this Act, a surveyor or surveyors of ecclesiastical dilapidations shall be appointed in and for each diocese by the archdeacons and rural deans, if any, of such diocese, assembled at a meeting convened for that purpose, at which the bishop of the diocese, or in his absence the senior archdeacon present, as to the date of his

appointment as archdeacon, shall preside. Every such appointment may be general or for a limited term, and may be for the whole or part of the diocese as shall be stated in the appointment, and shall be subject to the approval of the bishop of the diocese; the bishop shall have power to hear any complaint against the surveyor of neglect, breach of duty, or unfitness for his office, and to remove him from his office after giving him an opportunity of showing cause to the contrary. No surveyor appointed under the provisions of this Act shall have any claim to compensation in consequence of the repeal or any alteration of this Act. A.D. 1871.

Their successors.

9. On a vacancy occurring in the office of surveyor, a fit person shall in like manner be appointed within three months from the occurrence of such vacancy.

Payment of surveyors by fixed rate of charges.

10. The surveyor shall be paid according to a rate of charges, and not by way of salary, and such charges, and also the fees of the bishop's secretary and registrar for work done in pursuance of this Act, shall be fixed in each diocese by the bishop, the archdeacons, the rural deans, if any, and the chancellor for the time being of such diocese, assembled at a meeting convened for that purpose, who may from time to time, at a meeting convened for that purpose, revise and alter such rate of charges and fees, but if any such alteration of surveyors charges be made after the buildings belonging to any benefice shall have been inspected pursuant to this Act by a surveyor, the payment of such surveyor for such inspection, and for all subsequent proceedings after such inspection with reference thereto, shall be according to the rate of charges in force at the time of making such inspection.

Surveyor not to be interested in contracts.

11. It shall not be lawful for the surveyor to be beneficially interested, directly or indirectly, by himself or by any partner or otherwise, in any work or contract to be executed or entered into by any person or persons (except any public company of which he may happen to be a member or shareholder, but not manager or director) under the provisions of this Act.

Inspections at other times than when a Benefice is vacant.

Inspection may be ordered at request of archdeacon, rural dean, patron, or incumbent.

12. It shall be lawful for the bishop, on the complaint in writing of the archdeacon, or of the rural dean, or of the patron of a benefice, that the buildings of the benefice are in a state of dilapidation, or at the request of the incumbent, to direct the surveyor to inspect the buildings of the benefice, or any of them: Provided always, that a copy of such complaint shall be forwarded

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by the bishop to the incumbent, or the sequestrator, if any, one month before such inspection shall be ordered.

As to a benefice under sequestration.

13. As regards a benefice under sequestration at the time of the commencement of this Act, the bishop may, at any time during such sequestration, and as regards a benefice thereafter put under sequestration, the bishop may, within six months after such sequestration issued, direct the surveyor to inspect as aforesaid, and such inspection shall be renewed in every fifth year while such benefice shall be under sequestration.

Form of report and service on incumbent.

14. The surveyor shall as soon as conveniently may be after such direction inspect, and within one month after inspection send to the bishop a report of the result of the same, and shall send a copy to the incumbent, and to the sequestrator, if any.

Its contents.

15. Where the surveyor shall report that any works are needed for putting into repair any dilapidated building belonging to a benefice, he shall report,—

1. What works are so needed, specifying the same in detail:
2. What he estimates to be the probable cost of such works:
3. At or within what time or times such works respectively ought to be executed.

Objections by incumbent, and reference thereon.

16. The incumbent, or the sequestrator, if any, may within one month after the sending the said copy state in writing to the bishop objections to the report on any grounds of fact or law, and in such case the bishop may, if he shall think fit, at the expense of the party objecting, direct a second report to be made by another surveyor or take the opinion of counsel upon any question of law, and the bishop shall, after due consideration of the whole matter, give his decision in writing.

If no objections to the report shall be made, then, at the end of the period limited for making objections thereto, the report shall be final; and if objections shall have been made, then the report, as modified by the bishop's decision, shall be final.

Incumbent may borrow from the governors.

17. It shall be lawful for the incumbent to borrow and for the governors, if they shall think fit, upon his request and with the consent of the bishop and patron, to lend upon the security of the possessions of the benefice,—

(1.) The whole or any part of the sum stated in the final report as the cost of the works:

(2.) Such sum as the governors shall think fit in respect of costs and expenses,

18. The sum (if any) lent by the governors shall be placed in their books to the credit of an account to be entitled "The Dilapidation Account of A.B., incumbent of ," and out of the said sum the governors shall forthwith pay and discharge the costs and expenses of and incidental to the preparation and completion of the security.

The governors to keep a dilapidation account.

19. In case of a benefice not under sequestration, it shall be the duty of the incumbent to execute the repairs prescribed in the final report in the manner and at or within the time or times therein prescribed, or within such extended time or times as the bishop shall by writing under his hand direct.

Incumbent to execute works.

20. In the case of a benefice under sequestration, the sum stated in the final report as the cost of the works shall be a charge upon the moneys from time to time received by the sequestrator in respect of the net profits or income of the benefice in priority to all other charges, except the stipends of the curate or curates appointed to perform the duties attaching to the benefice, and the sequestrator shall so long as the sequestration shall remain in force pay so much of such profits as shall remain in his hands after payment of the said stipends to the governors until the whole of the sum stated shall have been paid.

Sequestrators to pay dilapidation moneys to the governors.

21. Moneys paid to the governors in respect of a benefice under sequestration shall be placed in their books to the credit of an account to be called The Dilapidation Account of C.D., sequestrator of . The repairs may be executed from time to time as the moneys are received by the governors or be deferred, with the consent of the bishop, until the whole sum required to be paid by the sequestrator to the governors shall have been paid, and the repairs shall be paid for out of the moneys standing to the credit of the said account in like manner as in the case of repairs executed by an incumbent; and if any benefice under sequestration shall become vacant before such repairs shall have been completed, an inspection and report shall be made by the surveyor and proceeded with in the same manner as if such benefice had not been under sequestration; and the amount (if any) which shall have been paid to the governors by the sequestrator in respect of repairs, and not expended, shall be carried to the dilapidation account of the new incumbent in reduction of the amount payable by the late incumbent, his executors or administrators.

Application of money paid by sequestrators.

22. Where complaint shall be made by the archdeacon, or the rural dean, or the patron of the benefice as aforesaid, if the incumbent shall, within twenty-one days after notice of such complaint

Proviso in case archdeacon or patron make

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complaint of want of repairs.

shall have been given as aforesaid, inform the bishop in writing that he intends forthwith to put his buildings in proper repair, the bishop shall allow the incumbent a reasonable time to execute such repairs, and on being satisfied that such repairs have been fully executed shall abstain from further proceedings; but the bishop may during the progress and after the completion of such repairs direct the surveyor to inspect and report thereon, and if the surveyor shall report that the repairs are insufficient direct the surveyor to inspect and report upon such repairs; and if he shall report that further repairs are necessary, then the powers of this Act shall or may be put in force in like manner as if the incumbent had not given notice that he intended himself to do the repairs.

Execution of works on neglect, &c. of incumbent.

23. If any incumbent shall refuse or neglect duly to execute in the prescribed manner, and at or within the prescribed time or times, any prescribed repairs, it shall be lawful for the bishop to raise the sum prescribed in the final report, if not otherwise provided by the incumbent, together with all costs incurred by the bishop in relation thereto, by sequestration of the profits of the benefice, and the provisions contained in sections 20 and 21 with respect to the payment of the profits of the benefice to the governors and the application of the money shall be applicable to this section.

Avoidance of benefice not to affect report, &c.

24. No report, order, or proceedings thereunder shall be affected by a vacancy occurring in the benefice before the commencement or pending the execution of the works prescribed by the report, but such report shall be acted on as if such vacancy had not occurred, subject nevertheless to any modification which may be made therein in consequence of any report of the surveyor after his inspections made in consequence of such vacancy, in pursuance of provisions herein-after specified.

Houses of Residence of Archbishops, Bishops, Deans, and Canons.

Archbishop or bishop may require inspection.

25. At any time after the commencement of this Act, it shall be lawful for any archbishop or bishop and for the holder of any dignity or office in any cathedral or collegiate church to employ any surveyor, approved for the purpose by the Ecclesiastical Commissioners for England, to inspect and examine any house of residence or other building appurtenant thereto of such archbishop or bishop, or belonging to any such dignity or office which he is by law or custom bound to maintain in repair at his own personal cost.

Works to be prescribed.

26. Where, in the opinion of such surveyor, founded on any such inspection, any works are needed for putting into a proper state of repair the house of residence or other building inspected, he shall

report what works are so needed, and at or within what time or times such works or any particular part or parts thereof ought to be executed.

Evidence of execution of works.

27. A certificate of such surveyor that such works have been duly executed, which shall be filed in the registry of the diocese in duplicate, and one of the duplicates whereof shall be delivered or sent by the registrar to the archbishop or bishop, to whose see or to the person to whose dignity or office, as the case may be, the certificate relates, shall be conclusive evidence of the due execution of such works.

Protection of archbishops or bishops from further liability.

28. If the archbishoprick or bishoprick, dignity, or office to which the certificate shall relate shall become vacant within the period of five years from the filing of such certificate, the archbishop or bishop, or the holder of the dignity or office, as the case may be, or his representatives respectively, shall not, as to such house of residence or other building, be liable to any claim for dilapidations in respect of such archbishoprick or bishoprick, dignity, or office, either under this Act or at the suit of any successor independently of this Act, except for wilful waste and loss or damage by fire; but this exemption from liability shall be subject to the like condition in regard to insurance against fire as is contained in the forty-seventh section in the case of the incumbent of a benefice.

As to vacant Benefices.

Inspection of buildings of a benefice on a vacancy; notice to officiating clergyman.

29. Within three calendar months after the avoidance of any benefice after the commencement of this Act, unless the late incumbent shall under this Act be free from all liability to dilapidations, the bishop shall direct the surveyor who shall inspect the buildings of such benefice, and report to the bishop what sum, if any, is required to make good the dilapidations to which the late incumbent or his estate is liable, and the late incumbent, his executors or administrators, shall have right of entry at reasonable hours, with his or their surveyor, upon the premises of the vacated benefice until such time as the question of the dilapidations has been finally settled.

Report of inspection to be sent to bishop, new incumbent, and late incumbent, or his representatives.

30. The surveyor shall send a copy of the report to the new incumbent forthwith (or as soon as he shall have been instituted or admitted), and a copy also to the late incumbent, his executors or administrators. The surveyor shall certify to the bishop when and to whom and in what manner each copy was sent.

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Contents of report.

31. The report shall state what works, if any, are, in the opinion of the surveyor, needed, specifying the same in detail, and may state any special circumstances, and shall state what sum, in the opinion of the surveyor, will be required to make good the dilapidations.

Objections to the report.

32. The new incumbent and the late incumbent, his executors or administrators, may state in writing to the bishop objections to the report on any grounds of fact or law, and in such case the bishop may, if he shall think fit, at the expense of the party objecting, direct a second report to be made by some competent person, or take the opinion of counsel upon any question of law.

Time for objecting.

33. Such objections shall be transmitted to the bishop within one month after the sending of the copy of the report to the party by whom they are made, but the bishop may receive an objection transmitted at a later period if for any special reason he shall think fit to do so.

The bishop to make an order.

34. The bishop shall in uncontested cases, as soon as conveniently may be after the time for the transmission of objections has expired, and in contested cases after consideration of the whole matter, make an order stating the repairs and their cost for which the late incumbent, his executors or administrators, is or are liable.

Delivery of bishop's order.

35. The order shall be signed by the bishop in triplicate, and he shall send one copy to the new incumbent, another to the late incumbent, his executors or administrators, and the other to the registrar of the diocese, to be filed in the registry, and the registrar shall send a copy thereof to the governors.

Sum payable for dilapidation to be a debt due.

36. The sum stated in the order as the cost of the repairs shall be a debt due from the late incumbent, his executors or administrators, to the new incumbent, and shall be recoverable as such at law or in equity.

The new incumbent to pay over the dilapidation money to the governors.

37. The new incumbent shall, as and when he shall recover the said sum or any part thereof, forthwith pay the amount recovered to the governors; and if and whenever he shall recover any further part of the said sum he shall in like manner forthwith pay to the governors the further part so recovered.

The governors may advance

38. It shall be lawful at any time for the new incumbent to borrow, and for the governors, if they shall think fit, upon his

request and with the consent of the bishop and patron, to lend, upon the security of the possessions of the benefice,—

money on the security of the benefice.

(1.) The whole or any part which the governors shall not have received from the new incumbent of the sum stated in the order as the cost of the repairs; and

(2.) Such sum as the governors shall think fit in respect of costs and expenses.

The governors to keep a dilapidation account.

39. The amount received by the governors from the new incumbent, together with the sum (if any) lent by them to him as aforesaid, shall be placed in their books to the credit of an account to be entitled "The Dilapidation Account of A.B., incumbent of ;" and from the sum (if any) so lent by them they shall forthwith pay and discharge the costs and expenses of and incidental to the preparation and completion of the security.

New incumbent to pay the balance to the governors.

40. The new incumbent shall, within six calendar months next after the date of the order (or within such extended period as hereinafter mentioned), pay to the governors, to be carried to the credit of the said account, such sum (if any) as, together with the sums theretofore carried to the credit of the said account, will make up the sum stated in the order as the cost of the repairs.

Extension of time within which such payment must be made.

41. The bishop, if from any special circumstances he think fit, may, upon the application of the new incumbent, enlarge the period within which such incumbent is required to pay such last-mentioned sum for any period not exceeding twelve months from the date of the order, and may authorise the payment of such amount either in one sum or by instalments of such amounts and on such days (not being beyond the end of such twelve months) as the bishop shall determine.

Repairs to be executed within 18 months.

42. The new incumbent shall cause the repairs specified in the order to be executed within eighteen months after the date of the order, unless, with the consent of the patron and bishop, he shall decide upon rebuilding the premises in question, in which case the money standing to the credit of his dilapidation account in the books of the governors shall be applied towards the cost of the new building.

Payment of money to governors of Queen Anne's Bounty by new incumbent may be enforced by sequestration.

43. If the moneys payable under this Act to the governors by the new incumbent of any benefice shall not be paid by such incumbent before the expiration of the time specified in this Act for such payment to be made, the governors shall give notice thereof to the bishop, and it shall be lawful for the bishop to raise the amount thereof by sequestration of the profits of the benefice.

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Execution of Works.

Upon execution of works, money to be paid by governors on receipt of surveyor's certificate.

44. Where money is standing to the credit of the dilapidation account of an incumbent required by this Act to execute repairs, such repairs shall be paid for as follows; that is to say, when and as the surveyor shall certify that a specified sum ought to be paid to any person or persons in respect of such works, such certificate shall, when countersigned by the bishop, be delivered to the governors, who shall, on the receipt of such certificate, cause the amount therein specified to be paid to the person or persons named therein as entitled to receive the same out of the moneys standing to the credit of the said dilapidation account, and so, from time to time, until the whole of the repairs shall have been executed, or the moneys standing to the credit of the said account shall have been exhausted, and if any further moneys shall be required for the completion of such repairs the same shall be paid by the incumbent.

Execution of works if benefice under sequestration or on refusal of incumbent.

45. The repairs to be executed in the case of a benefice under sequestration, and the repairs to be executed in the case of the refusal or neglect of the incumbent to execute the same (including rebuilding or repairing in case of fire), shall be executed under the direction of the surveyor, who may employ any builders or contractors to execute the same according to a specification and contract to be prepared by such surveyor; and the builder or contractor executing such works shall be paid for the same as the works proceed, and the surveyor shall from time to time certify the sum to which the builder or contractor is entitled in respect thereof, which certificate shall, when countersigned by the bishop, be delivered to the governors, who shall, on receipt of the same, cause the amount therein specified to be paid to the person or persons named therein as entitled to receive the same out of the moneys standing to the credit of the said dilapidation account, and so from time to time until the whole of the repairs shall have been executed, or the moneys standing to the credit of the said account shall have been exhausted; but neither the governors, the bishop, nor the patron shall incur any liability at law or in equity to any builder or contractor, or otherwise, under or by virtue of any such specification or contract, further than the obligation on the part of the governors to pay the moneys standing to such dilapidation account in manner aforesaid.

Final certificate of completion of works.

46. When the repairs shall have been finished, the surveyor, if the same shall be completed to his satisfaction, shall give a certificate

of the same having been completed, which certificate shall be in triplicate, and one of the triplicates shall be delivered to the incumbent or the sequestrator, another registered in the registry of the diocese, and the third delivered to the governors, and such certificate shall be conclusive evidence of the due execution of the prescribed works.

Protection to incumbent from further liability for 5 years.

47. No further or subsequent report shall be made as to the buildings belonging to the benefice, and specified in the last-mentioned certificate (except at the request of the incumbent himself), before the end of five years from the filing of the said certificate.

If such benefice shall become vacant within such period of five years, the incumbent or his representatives shall not be liable to any claim for dilapidations in respect of the buildings specified in the certificate, except for wilful waste.

The exemption from liability under this present section shall in no case apply to loss or damage by fire where the incumbent at the time of filing the certificate of the due execution of the works shall not have insured, to the satisfaction of the governors, the house of residence and buildings belonging to the benefice in some fit office against loss or damage by fire, in at least three fifths of the value thereof, and who shall not keep such house and buildings so insured during such period of five years or until the earlier avoidance of the benefice.

Payment of surveyor for inspection and certificates.

48. The charges of the surveyor for his inspections and reports and certificates made or given by him under the provisions of this Act, and also the fees of the bishop's secretary and registrar, shall, except as otherwise provided by this Act, be paid by the incumbent or by the sequestrator, and shall be a debt due from him or them to the surveyor, secretary, and registrar respectively, and recoverable as such in law and equity. The sum, if any, which shall have been advanced by the governors in respect of surveyor's charges shall be paid by them to the surveyor.

Benefice becoming vacant during repairs, liability of outgoing incumbent or his representatives.

49. If an inspection shall have been made of any benefice under this Act, and the incumbent liable to execute the prescribed repairs shall vacate such benefice before the surveyor shall have signed a certificate of the completion of the same, such incumbent, his executors or administrators, shall be liable to the payment of all moneys in respect of such repairs (not previously paid by him to the governors in respect thereof), and of the surveyor's inspection, report, and certificate, which such incumbent would respectively have been liable to pay in case he had not vacated, which

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moneys shall be a debt due from such incumbent, his executors or administrators, to the next incumbent, and shall be recoverable as such at law or in equity; and such next incumbent, whether he shall recover the same or not, shall be liable to pay all such moneys in the same manner as his predecessor in such incumbency would have been liable to pay in case he had continued to be the incumbent of such benefice, and such next incumbent shall be allowed, with the consent of the patron and bishop, to borrow on the security of the profits of the benefice such sum as he shall fail so to recover towards meeting such payments as the governors may be willing and able by law to advance on loan for that purpose.

Execution of works other than those specified in surveyor's report. Special certificate of surveyor.

50. If the incumbent liable to execute repairs shall be desirous of altering or remodelling the buildings belonging to the benefice, or any of them, or of rebuilding the same or any of them, so as to render such repairs or any of them impracticable or unnecessary, it shall be lawful for such incumbent, with the consent of the bishop and patron, to execute the proposed works in lieu of such repairs; and in such case the surveyor shall, upon the completion of such works to his satisfaction, give a special certificate, certifying that the same have been completed, which certificate shall be signed in triplicate, and one of such triplicates shall be delivered to the incumbent, and another to the bishop, who shall cause the same to be registered in the registry of the diocese, and another to the governors, and such certificate shall have the same effect as a certificate of the completion of the works specified in the order.

Where such additional works do not render impracticable or unnecessary all the works specified in the report.

51. If such additional or substituted works shall not render the whole of such repairs impracticable or unnecessary, then so much of the money standing to the credit of the dilapidation account as the surveyor shall certify to be necessary for the execution of the repairs not so rendered impracticable or unnecessary shall be retained by the governors, and shall be dealt with, as regards certificates and otherwise, in the same manner as if the repairs not so rendered impracticable or unnecessary had been the only repairs specified in the order.

Postponement of works may be allowed on payment of a sum to meet probable further dilapidations.

52. If an incumbent, after having paid to the governors the amount specified in the report, desire to defer the execution of the works specified in the report, or any of them, for a limited period, and the surveyor shall certify in writing that such postponement may be safely made, the bishop, with the consent of the patron, may authorise such postponement, and may require the incumbent to pay to the governors such a sum, annually or in gross, as shall

be certified by the surveyor to be proper to meet any probable further dilapidations, and the moneys so paid shall be carried to the credit of his dilapidation account; and if the benefice shall be vacated during the period of postponement, the late incumbent, his executors or administrators, shall not be entitled to be repaid any part of such additional moneys, but he or they shall not be subject to any further claim for dilapidations, and in case of such vacancy the money paid by him to the governors shall be dealt with as if the succeeding incumbent, upon his succeeding to the benefice, had paid the same in respect of such repairs and dilapidations.

No sum recoverable for dilapidations except on a surveyor's report.

53. No sum shall be recoverable for dilapidations in respect of any benefice becoming vacant after the commencement of this Act, and to which this Act shall be applicable, unless the claim for such sum be founded on an order made under the provisions of this Act.

As to Insurance.

Insurance of buildings of a benefice by the incumbent.

54. The incumbent of every benefice shall insure, and during his incumbency keep insured, the house of residence and farm and other buildings for the time being standing on the lands belonging to such benefice, and the outbuildings and offices respectively belonging thereto, and also the chancel of the church when the incumbent is liable to repair the chancel, against loss or damage by fire, in some office or offices for insurance against loss or damage by fire, to be selected by such incumbent, to the satisfaction of the governors, in at least three fifths of the value thereof.

Filing of annual receipts for the premium.

55. Every such insurance shall be effected in the joint names of the incumbent and the governors, and the incumbent shall cause the receipt for the premium for such insurance for each year to be exhibited at the first visitation of the bishop or archdeacon next ensuing after the same shall become payable; and the following questions shall be added to those annually sent to incumbents under the provisions of the Act of the session of the first and second years of Her Majesty, chapter one hundred and six, that is to say, "In what office and for what amount are the buildings of your benefice insured against fire?" and "What was the amount and date of the last annual payment for such insurance?"

Sums received from insurance office on destruction of buildings by

56. In case any building belonging to any benefice, and insured in pursuance of this Act, shall be destroyed or damaged by fire, and the office in which the same shall be insured shall elect to pay the sum insured instead of causing the buildings to be reinstated at the

fire to be expended in restoring them, &c.

expense of the office, the sum so paid shall be paid to the governors and dealt with in the same manner as moneys standing to the credit of a dilapidation account.

Destruction of buildings not insured. Cost of restoring to be paid by the incumbent, and to be recoverable by sequestration.

57. If, when any building belonging to a benefice shall be destroyed or damaged by fire, such building shall not be insured against loss or damage by fire for an amount sufficient to reinstate and make good the same, the surveyor shall give to the bishop a certificate in writing (in triplicate), signed by such surveyor, specifying the sum which, in his opinion, shall be required, in addition to the insurance money, if any, for reinstating the buildings so destroyed or damaged, one of which triplicates the bishop shall cause to be filed in the bishop's registry, another to be sent to the incumbent or the sequestrator (if any), and another to the governors, and the incumbent or the sequestrator (if any) shall have the same opportunity of making objections, and the bishop shall have the same power of consulting another surveyor or taking the opinion of counsel, as are provided in the sixteenth section with reference to the cases therein mentioned; and the incumbent of the benefice, if the same shall not be under sequestration, shall pay the amount so specified to the governors within three calendar months next after the date of such certificate; and if such amount shall not be so paid, it shall be lawful for the bishop, at any time after the end of such three calendar months, to raise the same (or so much thereof as shall not be so paid) by sequestration of the profits of the benefice; and the amount so raised shall in like manner be paid to the governors, and the moneys so paid to the governors shall be dealt with in the same manner as moneys standing to the credit of a dilapidation account, and the incumbent shall cause the buildings so destroyed or damaged to be forthwith reinstated, and the cost thereof shall be paid as the works progress, out of the amount so paid to the governors, on certificates of a surveyor, in the manner herein-before specified in regard to repairs directed to be executed by a new incumbent; and if the incumbent shall refuse or neglect to reinstate such buildings, the same may, after the governors have received the necessary amount in manner aforesaid, be repaired and reinstated in manner herein provided in regard to repairs of buildings belonging to a benefice under sequestration.

In case the benefice shall be under sequestration the sum stated in the certificate of the surveyor shall be a charge upon the moneys from time to time received by the sequestrator in respect of the net profits or income of the benefice as mentioned in the twentieth section of this Act, and the provisions contained in the said twentieth section and in twenty-first section with respect to the

payment of the profits of the benefice to the governors and the application of the money shall apply to this section as if the provisions therein had, mutatis mutandis, been repeated herein. A.D. 1871.

Miscellaneous.

Providing for case of buildings of benefice when let on lease.

58. The provisions contained in this Act in regard to buildings standing on the lands belonging to any benefice shall not be applicable to the buildings (if any) belonging to the benefice, which shall be comprised in any lease, for years or lives, for the time being subsisting, so long as such lease shall be subsisting, except so far as the lessee shall not, by virtue of such lease, be liable to insure, rebuild, or repair such buildings; but it shall be lawful for the surveyor to inspect the buildings comprised in any such lease.

When exemption claimed lease or counterpart to be produced.

59. Every incumbent or lessee alleging that any buildings belonging to a benefice are exempt from the provisions of this Act shall produce to the surveyor for his perusal the counterpart of the lease, or the lease, in respect of which such exemption is claimed, unless such counterpart shall already have been deposited in the bishop's registry or with the Ecclesiastical Commissioners for England.

Remedy on death of incumbent.

60. Every sum of money by this Act raiseable by the bishop by sequestration during an incumbency shall be deemed a debt due from and payable by the incumbent; and if any money payable under this Act by an incumbent shall not be recovered by sequestration or otherwise during his incumbency, the liability of such incumbent thereto and of his representatives shall continue and be in no way affected; and in case of his death while he shall be incumbent, the same money, or so much thereof as shall remain due, shall be paid to the parties entitled under this Act to receive the same by his representatives out of his estate and effects.

Moneys paid to bishop by succeeding incumbent to be a debt due from prior incumbent.

61. All moneys which respectively would have been raiseable by the bishop by sequestration during an incumbency, and which shall be paid by a succeeding incumbent, or shall be recovered by sequestration during such succeeding incumbency, shall be a debt due from such prior incumbent or his estate to the incumbent by whom or out of whose income, derived from the benefice, the same shall be paid, and shall be recoverable as such at law or in equity.

Form of security.

62. A security made under the provisions of this Act may be in the form contained in the first schedule hereto, or in such other form as the governors may approve, and the certificate of the

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treasurer to the governors of any sum having been placed to the credit of the account mentioned in the certificate shall be conclusive evidence of the fact of the said sum having been so placed, and the governors shall, as regards the recovery of the sums due upon the said security, have the same remedies against the incumbent and his successors, and against the property comprised in the security, as if the advance had been made for repairing or rebuilding under the provisions of the Acts contained in the second schedule hereto, and the receipt of the treasurer for the time being to the said governors shall be a discharge for all moneys paid to them in pursuance of the provisions of this Act.

Incumbent to furnish particulars of the value of the benefice.

Patron and ordinary to consent.

63. Before the governors shall lend any money on the security of the possessions of the benefice under the provisions of this Act they shall require the incumbent to furnish them with a just and particular account in writing, signed by him and verified by his oath or statutory declaration, of the annual profits of the living, and shall procure the consent in writing of the bishop and patron under their respective hands, or, if the patron shall be a corporation aggregate, under the common seal of such corporation. Such consent may be given in the form specified in that behalf in the Acts contained in the second schedule hereto, or in such other form as the governors may approve.

Provisions of Gilbert Acts to apply to the securities.

64. The provisions of the Acts contained in the second schedule hereto, and of the Acts referring to or amending the same, with respect to the registration of mortgages and to the proportioning of payments in the case of death or avoidance, and to stamps and fees of offices, and to the priority of sequestrations, shall apply to securities made under the authority of this Act as if the said provisions had, mutatis mutandis, been repeated herein.

Moneys standing to the credit of a dilapidation account to be invested. Application of income. Payment of expenses.

65. All moneys standing to the credit of a dilapidation account shall, in the meantime, and until such moneys be required for the purposes of this Act, be invested by the governors in the manner in which they are authorised to invest other moneys held by them, and if any surplus shall remain of moneys standing to the credit of a dilapidation account after satisfying the requirements of this Act, such surplus shall be applied in discharge of any principal sum owing on the security of a mortgage made by the incumbent under the provisions of this Act, and if there shall be no such sum, or if the surplus be more than sufficient for the discharge of such sum, such surplus or further surplus shall be paid to the incumbent or to the sequestrators. The governors may retain, to meet the office expenses incurred by reason of this Act, a per-centage of the sums

paid to them under the provisions of this Act, to be regulated according to a table or scale to be prepared by the governors, and to be subject to the approval of the Lords Commissioners of Her Majesty's Treasury; and the governors may, with the like approval, from time to time alter, amend, add to, or reduce such table or scale; and every such table or scale, and every such alteration, amendment, addition, or reduction in, to, or of the same, shall be published in the London Gazette, and shall be laid before Parliament.

Providing for death or change of surveyor during repairs.

66. In case of the death, removal from office, or resignation of a surveyor after making an inspection and before granting his final certificate of the completion of the necessary repairs, the previous acts of such surveyor in regard to such inspection, including his report (if any), shall be adopted by the surveyor appointed to act in his place, who shall proceed in the matter of such inspection, report, and certificate in the same manner as if the inspection had originally been made by him.

Power of surveyor, &c. to enter and inspect, &c. at seasonable times.

67. It shall be lawful for any surveyor employed under this Act, his servants and workmen, for the purposes of this Act to enter into the buildings belonging to any benefice, and to inspect and examine the same, and also any works in progress under this Act, and, in the case of any benefice under sequestration, or of any repairs to be executed or buildings to be reinstated in consequence of the refusal or neglect of the incumbent, for all persons authorised by the surveyor to enter into the buildings belonging to such benefice, and to execute the works by this Act authorised, but no inspection shall be made under this Act except at seasonable times and within reasonable hours.

Limitation, &c. of actions.

68. No proceedings shall be commenced against any surveyor or other person acting under the authority of this Act for any alleged irregularity or trespass, or other act or thing done or omitted by him under this Act, unless notice in writing is given by the intending plaintiff or prosecutor to the intended defendant, one month at least before the commencement of the proceeding, nor unless the proceeding is commenced within three months next after the act or thing complained of is done or omitted, or, in case of a continuation of damage, within three months next after the doing of such damage has ceased. The plaintiff or prosecutor shall not succeed in any such proceeding, if tender of sufficient amends, including the reasonable costs of plaintiff or prosecutor, is made by the defendant before the commencement of the proceeding; and in case no tender has been made, the defendant may, by leave of the court in which the proceeding is taken, at any time pay into such

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court such sum of money as he may think fit, whereupon such proceeding and order shall be had and made in and by the court as may be had and made on the payment of money into court in an ordinary suit.

Form of bishop's order and delivery of notices.

69. Every consent by or authority from a bishop under this Act shall be in writing under his hand, and all notices, letters, reports, and other documents by this Act directed to be sent, delivered, or otherwise notified or given to or left with any bishop, incumbent, officiating clergyman, or person, shall be deemed to have been duly sent, delivered, notified, given, or left respectively, if sent through the post in a prepaid letter, addressed, in the case of an incumbent or officiating minister, to the house of residence of the benefice, or if there shall be no such house of residence, then to one of the churchwardens at his usual place of residence, and in all other cases to the usual or last known place of residence in England of the party.

Existing incumbents (if the bishop consents) not liable to dilapidations for substitution of buildings of equal or greater value. No existing incumbent liable for dilapidations as to buildings pulled down by prior incumbents unless amounts recoverable from prior incumbent.

70. If an incumbent holding a benefice at the time of the commencement of this Act shall, prior thereto, (without due authority,) have caused any buildings belonging to such benefice to be pulled down, and shall have substituted other buildings of equal or greater value, such incumbent shall (if the bishop of the diocese consent) not be liable to dilapidations in respect of the buildings so pulled down, provided such substituted buildings shall have been insured pursuant to this Act; and no incumbent holding a benefice at the time of the commencement of this Act shall be liable for dilapidations in respect of any buildings which shall have been pulled down by a preceding incumbent, unless the incumbent so holding such benefice shall have received or shall be entitled to recover at law or in equity from the last preceding incumbent or his estate the amount chargeable on account of such dilapidations, and in such case the liability of the existing incumbent shall be limited to the amount so received or recoverable at law or in equity.

Removal of unnecessary part of any glebe house.

71. Wherever it shall appear that any building belonging to or forming part of any house of residence is unnecessary, it shall be lawful for the bishop, upon the application of the incumbent and with the consent in writing of the patron of the benefice, to authorise by a written instrument under his hand the removal of the said building; and the proceeds, if any, of such removal shall be applied to the improvement of the benefice in such manner as the bishop of the diocese and the patron of the benefice may agree on.

Not to affect existing powers of bishop, &c.

72. Nothing in this Act contained shall be construed to lessen or destroy any authority or power which, before the passing of this Act, any bishop or archdeacon or other ordinary possessed in respect of requiring the repairs of any ecclesiastical buildings to be executed.

Saving powers contained in Acts specified in second schedule.

73. Notwithstanding anything contained in this Act, all the powers and authorities contained in the Acts specified in the second schedule hereto, and in any Act or Acts amending or referring to the same, shall be exerciseable either separately or concurrently with the powers of this Act.

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SCHEDULES.

FIRST SCHEDULE.

Form of Mortgage.

This indenture, made the day of , between *A.B.*, incumbent of the benefice of , in the county of and diocese of , of the one part, and the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy of the other part. Whereas the said governors, pursuant to "The Ecclesiastical Dilapidations Act, 1871," upon the request of the said *A.B.*, and with the consent of the bishop and patron (testified by their having signed [*or* sealed] the instrument of consent hereto annexed), have agreed to advance the sum of pounds upon the security of the said benefice: Now this indenture witnesseth that the said *A.B.*, in consideration of the sum of pounds having been carried in the books of the said governors to the credit of an account entitled "The Dilapidation Account of *A.B.*, incumbent of ," as evidenced by the certificate hereupon endorsed and signed by the treasurer to the said governors, doth hereby grant unto the said governors all the glebe lands, tithes, rents, rentcharges, moduses, compositions for tithe, salaries, stipends, fees, gratuities, and other emoluments and profits whatsoever arising, coming, growing, renewing, or payable to the incumbent of the said benefice in respect thereof, with all and every their rights, privileges, and appurtenances thereunto belonging, To have, hold, receive, and take the said premises, with their appurtenances, unto the said governors from henceforth for and during the term of thirty-five years in as full, ample, and beneficial manner, and with such remedies and powers for obtaining and recovering the same, and every part thereof, to all intents and purposes, as the said incumbent or his successors could or might or ought to have held, enjoyed, received, and taken the same if these presents had not been made: And the said *A.B.* for himself, his heirs, executors, and administrators, doth

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hereby covenant with the said governors that the said *A.B.*, during the time he shall continue incumbent of the said benefice, shall and will well and truly pay or cause to be paid unto the said governors interest for the said sum of
pounds, or so much thereof as shall remain due, at the end of every year, to be computed from the day of the date of these presents, after the rate of pounds per centum per annum, by yearly payments, the first of the said payments to be made on the day of next; and also shall and will, from and after the expiration of one year from the day of the date of these presents, in each and every year during such time as aforesaid, well and truly pay or cause to be paid unto the said governors one equal thirtieth part of the said principal sum of pounds, the first of such payments to be made on the day of , 18 , and shall and will continue such respective payments of the said interest, and on account of the said principal money, so long as he shall continue incumbent of the said benefice, or so long as during his incumbency anything shall remain due upon the security of these presents: Provided always, and these presents are upon this condition, that if the said *A.B.* and his successors shall well and truly pay or cause to be paid the said principal money and interest for the same, in manner and at the times aforesaid, according to the true intent and meaning of the said Act and of these presents, and also all costs and charges which shall have been occasioned by the nonpayment thereof, these presents and everything herein contained shall cease and be void: Provided also, that it shall and may be lawful for the said *A.B.* and his successors peaceably and quietly to hold, occupy, possess, and enjoy all and singular the said glebe lands, tithes, rents, rentcharges, moduses, composition for tithes, stipends, fees, gratuities, and other emoluments and profits whatsoever arising or to arise from or in respect of the said benefice, until default shall be made by him or them, respectively, in the payment of the interest and principal or some part thereof, at the times and in the manner aforesaid. In witness, *&c.*

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SECOND SCHEDULE.

17 Geo. 3. c. 53.
21 Geo. 3. c. 66.
7 Geo. 4. c. 66.
1 & 2 Vict. c. 23.
28 & 29 Vict. c. 69.

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