CHAP. 44.

An Act to enable Clergymen permanently incapacitated by illness to resign their Benefices with provision of Pensions. [13th July 1871.]

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BE it 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:

Short title.

1. This Act may be cited for all purposes as "The Incumbents Resignation Act, 1871."

Definition of terms.

2. Except where otherwise controlled by the context, the following terms shall in this Act have the following meanings; (namely,)

The term "benefice" shall comprehend all rectories with cure of souls, vicarages, new vicarages, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries with or without districts annexed or belonging to them:

The term "bishop" shall, with reference to any benefice, mean the bishop or archbishop for the time being within whose diocese such benefice is locally situate, and during the vacancy of any episcopal see the term "bishop" shall mean the archbishop of the province in which such see is comprehended:

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 being be vested; and as regards the patrons referred to in sections 126, 127, and 128 of the Act first and second Vict., chapter one hundred and six, the actions

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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.

Limitation of Act.

3. The provisions of this Act shall apply only to those parts of Her Majesty's dominions called England and Wales and the Channel Islands.

Exemption from penalties by 31 Eliz. c. 6., 12 Anne, st. 2. c. 12., &c.

4. The sum assigned as a pension to a retiring incumbent under this Act shall not be deemed a pension, sum of money, or benefit within the meaning of the thirty-first Elizabeth, chapter six, or the twelfth Anne, statute two, chapter twelve, or any other Act.

How the provisions of the Act are to be put into exercise.

5. On a representation being made to the bishop in the form contained in Schedule A. to this Act, by the incumbent of any benefice, provided he has been the incumbent of such benefice for seven years continuously, that he desires, on the ground that he is incapacitated by permanent mental or bodily infirmity from the due performance of his duties, to retire from his benefice under the provisions of this Act, in that case it shall be lawful for the bishop, if he see fit, to cause a commission to be issued under his hand and seal, addressed to five persons, to be nominated as herein-after mentioned, authorising and requiring them to inquire into and report to him upon the truth of the ground alleged, and upon the expediency of the resignation of the said incumbent; and it shall be lawful for such Commissioners to inquire into and report upon all such matters in anywise affecting such resignation, or connected therewith, as they may deem necessary; and the Commissioners shall make their return to the commission within three months from the issuing of the commission, or within such enlarged time as the bishop shall, by writing under his hand and seal, from time to time direct.

Commissioners to inquire and report.

Who are to be Commissioners.

6. One of the five Commissioners shall be the archdeacon of an archdeaconry or the rural dean of a rural deanery of the diocese wherein the benefice is situate, as the bishop may determine; one other of the Commissioners shall be an incumbent of the same diocese, nominated by the incumbent wishing to retire; one other of the Commissioners shall be an incumbent of the same diocese, nominated by the bishop; one other of the Commissioners shall be a magistrate being in the commission of the peace for the county wherein the benefice is situate, and a member of the Established Church of England, nominated by the person who has presided as chairman of the last preceding quarter sessions for the county or division of the county, or if there be no such person,

then by the lord lieutenant of the county; and the remaining Commissioner shall be nominated by the patron, or, in the case of alternate patronage, jointly by both or all of the patrons, or in case of difference by the patron entitled to the next presentation.

Notice of intention to issue commission.

7. Notice of the intention to issue such commission shall be delivered or sent by the bishop to the incumbent, patron, chairman of quarter sessions, or lord lieutenant of the county, as the case may be, and the churchwardens of any such benefice respectively; and such commission shall not issue until the expiration of one month from the delivery or sending of such notices. The notice to the patron and chairman of quarter sessions or lord lieutenant shall require such patron and chairman or lord lieutenant respectively to nominate a Commissioner by sending his name and address in writing to the bishop within one month from the date of such notice; and, if such patron or chairman or lord lieutenant respectively shall omit to nominate a Commissioner within the time limited, the bishop may nominate a Commissioner instead of such patron, chairman, or lord lieutenant respectively; and when and so soon as such commission shall be issued, notice of such commission shall be delivered or sent by the bishop to each Commissioner and to the churchwardens of the benefice. Service by prepaid letter shall be sufficient service of all notices and documents under this Act.

Commissioners may examine on oath.

Limitation of pension.

8. The Commissioners shall give seven days notice of their first meeting, affixed to the usual place of public notices in the church of the benefice. Three of the Commissioners shall constitute a quorum, and the Commissioners at a meeting of them duly constituted may examine on oath, if they see fit, the persons who are desirous or willing to be examined by them, touching any matter relating to the object of the Commissioners, and may administer the oaths necessary for that purpose, and the Commissioners shall in their return to the commission certify all such matters and things as shall appear to them material, together with their opinion as to the expediency or otherwise of the proposed resignation, and, if they or at the least any three of them deem the resignation expedient, shall specify the amount of pension which in their opinion ought to be allowed out of the revenues of the benefice to the retiring incumbent; provided that in no case shall such pension exceed one third part of the annual value of the benefice resigned.

Who to consent to deed of resignation.

9. If the return to the commission shall certify the resignation to be expedient, and the patron shall in writing have consented or shall not within one calendar month thereafter in writing refuse

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his consent thereto, the bishop shall proceed as is herein-after provided; but if the patron shall so refuse his consent, the return to the commission shall be laid before the archbishop of the province, who shall, within one calendar month, give his decision in writing whether such resignation shall or shall not be accepted, which decision shall be final. If the patron shall have declared his consent or have not refused it as aforesaid, or if the archbishop shall decide that the resignation shall be accepted, the bishop shall cause a declaration as in Schedule B. to be prepared, inserting therein the amount of pension so allowed out of the revenues of the benefice to the retiring incumbent, and the day, not being less than one month after the date of the declaration, when the incumbency shall be void and the pension shall commence, and the times of payment, not being oftener than twice a year, and shall sign the same in triplicate in the presence of one witness, and shall cause one copy thereof to be delivered or sent prepaid by post to the patron of the benefice, and another copy thereof to be delivered or sent in like manner to the incumbent of the same, and the third copy to be filed in the registry of the diocese, and such declaration shall be the title deed of the retiring incumbent to the pension assigned therein to him; provided that no benefice shall at any time be subject to the payment of more than one pension.

Pension to be a charge on the benefice.

10. The pension so allowed shall be a charge upon the revenues of the benefice, and shall be recoverable as a debt at law or in equity from the incumbent of the said benefice by the retired clerk, his executors, administrators, or assigns, but such pension shall not be transferable at law or in equity.

Annual value of benefice.

11. The annual value of a benefice for the purposes of this Act shall be the net annual value after deducting all rates, taxes, and charges assessed upon and payable out of the benefice, exclusive of the parsonage, vicarage, or other place of residence of the incumbent.

Patron to present to resigned benefice.

12. After the filing of such declaration as aforesaid the benefice shall, ipso facto, be vacant on the day fixed in such declaration; and the patron thereof shall be entitled to present a clerk for the same as if it had been vacated by the death of the incumbent thereof, and the clerk who shall be collated, instituted, or licensed thereto shall be entitled to the revenues of the same, subject nevertheless to the payment to the retired clerk of such sum as may be allowed to him as pension; and such clerk shall have the same right and claim in respect of dilapidations as if the benefice had been vacated by the death of the incumbent thereof.

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Pensioned clerk amenable to ecclesiastical discipline.

13. Every pensioned clerk shall remain amenable to ecclesiastical discipline, and be liable to suspension from or forfeiture of pension for offences which would have involved suspension from or forfeiture of the benefice had he remained incumbent thereof, and proceedings under the Act three and four Victoria, chapter eighty-six, intituled "An Act for better enforcing Church Discipline," may be taken against every offending pensioned clerk in the same manner as if he had remained incumbent of the benefice, and in the same manner in all respects as if the offence alleged to have been committed had been committed within the said benefice: Provided always, that in case any offending pensioned clerk shall reside elsewhere than in England or Wales or the Channel Islands it shall be lawful for the bishop by a letter or summons under his hand, with the consent of the archbishop of the province, to be signified by his countersigning such letter or summons, addressed and sent prepaid by post to such pensioned clerk at his last known place of residence, to require such clerk to attend in England and appear to any proceedings which may be instituted against him for any such offence by him committed or alleged to have been committed, and to appoint a place in England where service of all subsequent process, articles, and documents may be made, and service of such process, articles, and documents at such place shall be sufficient; and if such pensioned clerk shall neglect to appear to such proceedings within three calendar months after such letter or summons shall have been sent to him as aforesaid, and to appoint such place for service, such proceedings may be prosecuted in his absence.

Parsonage house to belong to new incumbent.

14. It shall in no case be lawful to assign the house of residence of the incumbent as any part or the whole of the pension for a retired clerk; but such house of residence shall belong to and be enjoyed by the incumbent of the benefice as if the benefice were free from all claim by a retired clerk.

Pension to cease or to be altered under certain circumstances.

15. The right of a retired clerk to the pension assigned to him shall cease upon the enrolment of any deed of relinquishment by the clerk under the thirty-third and thirty-fourth Victoria, chapter ninety-one, or on and after the day on which he is admitted to another benefice; and in the event of any retired clerk undertaking clerical duties elsewhere than within the benefice from which he retired, it shall be lawful for the incumbent of the benefice to bring the same to the notice of the bishop, who shall cause inquiries to be made into the facts, and upon his being satisfied that such retired clerk is or has been undertaking such clerical

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duties and receiving a remuneration for the same, it shall be competent for such bishop to determine whether the pension payable to such retired clerk shall cease or be diminished in any and what proportion or for any and what period: Provided always, that such retired clerk may, within one month after a notice of the determination of the bishop shall have been sent to him by post, appeal to the archbishop of the province, who shall confirm, annul, or vary the decision of the bishop as to such archbishop shall appear just and proper, and the cessation of or the alteration, if any, made in the pension shall be stated by endorsement on the declaration filed in the registry, and the title of the retired clerk to receive and the liability of the existing incumbent to pay a pension out of the revenues of the benefice shall cease or be altered in accordance with such endorsement, and a copy of such endorsement signed by the bishop shall be delivered on application to the incumbent and patron of the benefice.

Expenses of inquiry.

16. If a commission under this Act be issued on the representation of an incumbent, and the return thereto shall state that in the opinion of the Commissioners the ground for resignation of the incumbent is not proved, or the retirement of the incumbent is not expedient, then in such case all the expenses which shall have been incurred by or with the sanction or by the direction of the bishop in or towards carrying the provisions of this Act into execution shall be defrayed by the incumbent, and shall be recoverable from him by or for the bishop as debts in and by course of law. If the return to the commission issued on the aforesaid representation shall state that in the opinion of the Commissioners the retirement of the incumbent is expedient, then one moiety of the expenses incurred by or with the sanction or under the direction of the bishop in or towards carrying the provisions of this Act into execution shall be defrayed by the incumbent whose retirement is recommended, and the other moiety shall be a charge on the revenues of the benefice, and shall be recoverable as a debt at law or in equity from the incumbent thereof by or for the bishop.

Costs incurred by registrar, &c.

17. The costs incurred by any secretary of a bishop and any registrar of a diocese in carrying into execution the provisions of this Act shall be fixed and regulated in accordance with and in the manner specified in the provisions of the 131st section of first and second Vict., chapter one hundred and six, as if the duties required of such secretary and registrar under this Act had been specified in the said recited Act.

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Resignation by lunatic.

18. The right of resignation and of doing any act leading to, connected with, or consequent on such resignation by this Act given to an incumbent, may, if the incumbent be a lunatic found such by inquisition, be exercised in his name and on his behalf by the committee of his estate.

SCHEDULE A.

To the Right Reverend the Lord Bishop of .

I, , being now, and having been for the last seven years continuously, rector [vicar, *or* incumbent,] of , within your lordship's diocese, hereby represent to your lordship, that I, finding myself incapacitated, by permanent mental or bodily infirmity (*as the case may be*), from the due performance of the duties of my office, am desirous of resigning the aforesaid benefice, on being allowed to receive a pension out of the revenues of the same.

Accordingly, I respectfully request your lordship to issue a commission under the provisions of the Incumbents Resignation Act, 1871, to inquire and report, as provided by the said Act, upon the expediency of my proposed resignation.

As witness my hand, this day of in the year of our Lord 18 .

(L.S.)

SCHEDULE B.

Whereas on the day of , in the year of our Lord 18 , a commission was issued by us, the bishop of , under the provisions of the Incumbents Resignation Act, 1871, on the representation of the Rev. , incumbent of , within the diocese aforesaid, and in their return thereto the Commissioners stated that in their opinion the resignation of the said was expedient, and that a pension of pounds per annum out of the revenues of the said benefice should be allowed

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to the said Rev. on his retirement therefrom: And whereas the patron has consented, or not refused his consent, to such resignation, [*or*] the archbishop has determined that such resignation shall be accepted:

We , by divine permission bishop of , do declare the said benefice void of the person of the said Rev. , to all intents and purposes of the law, on and after the day of , subject nevertheless to the payment by half-yearly payments from the day of next, out of the revenues thereof, of the said yearly pension of pounds, the first of which half-yearly payments shall be payable on , and future half-yearly payments at periods of six months from such day, or such other sum as may hereafter be assigned under the provisions of the said Act unto the said for his life, or such less period as hereafter may be assigned by law and endorsed hereon.

As witness our hand this day of in the year 18 .

Witnesses to the signature of the bishop

LONDON: Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1871.