CHAPTER clxxi.

An Act to provide for the discontinuance of the appointment of a minister to the second charge of the church and parish of South Leith in the county of Edinburgh; and for other purposes relating to the said church and parish. A.D. 1873.

[21st July 1873.]

WHEREAS an Act was passed in the ninth and tenth years of the reign of Her present Majesty, chapter two hundred and fourteen, intituled "An Act to provide for the Repair of the "Parish Church of South Leith in the county of Edinburgh, and "for the administration of the property and revenues thereof; to "alter the existing mode of electing a minister to the second "charge of the said church and parish; to confirm the proceedings "of the heritors of the said parish relating to the purchase of a "suitable house as a manse; and to effect other objects in con-"nexion with the said church and parish;" and which Act is herein-after referred to as "the Act of 1846:" 9 & 10 Vict. c. ccxiv.

And whereas it is inter alia provided by the Act of 1846 that the revenues derived from the seat rents in the said church, and the property vested by that Act in the ministers, elders, and deacons comprising the Kirk Session of South Leith, as trustees (herein-after referred to as "the trustees") for the purposes of the Act of 1846, shall, inter alia, be applied in payment of the stipend therein provided for the minister of the second charge of the said church and parish, and that any surplus of said revenues after payment of such stipend and providing for the expenses of management and repair and insurance of the said church against loss by fire, and a sum in name of communion element money, shall be paid into and accumulated as a sinking fund for raising or accumulating a capital sum equal to yield an annual income sufficient to pay the said stipend and other charges:

And whereas by section seven of the Act of 1846 the sum of five hundred and seventy pounds therein mentioned was directed

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to be paid over to the trustees, to be held and applied by them in making up the said sinking fund, and the said sum was accordingly paid over and is now held by them:

And whereas by the death of the Reverend Henry Duff a vacancy exists in the office or charge of second minister of the said church and parish, and it is expedient for the interests of the said church and parish that the right of patronage or presentation of a minister to fill the second charge of the said church and parish of South Leith should be suspended, and ultimately be discontinued, and that the whole charge of the said church and parish should be vested in and exercised by the minister filling the first charge of said church and parish, as herein-after provided, and that the revenues arising from the seat rents and property, and the said sinking fund as at present existing and accumulated, should be applied as herein-after provided in payment of an assistant minister, or assistant ministers, for the said church and parish, and for other ecclesiastical purposes in connexion with the said church and parish, as herein-after provided:

And whereas it is expedient that the trustees should pay to the Presbytery of Edinburgh the sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence, to be applied by them for the erection and endowment of an additional church in the said parish of South Leith, and that the trustees be authorised to borrow money for that purpose to the amount herein-after specified:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted; and 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 or referred to for all purposes as The South Leith Parish and Church Act, 1873; and the Act of 1846 and this Act may be cited together as The South Leith Parish and Church Acts, 1846 and 1873.

10 & 11 Vict. c. 16. incorporated.

2. The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the Commissioners are (except where expressly varied by this Act) incorporated with and form part of this Act, and for the purposes of this Act the expression "the commissioners" in those provisions shall mean "the trustees."

Interpretation of terms.

3. In this Act the words the sinking fund shall, except as regards the sinking fund by this Act provided, mean the sinking fund as at present existing directed to be accumulated under and in terms of the Act of 1846; the term free proceeds of the revenues shall mean the proceeds of the revenues and income arising from the property vested in the trustees by the Act of 1846, after deducting the expense of keeping the said church in repair, the management, including the cleaning, heating, and lighting thereof, and insuring the same against loss by fire, and the sum in name of communion element money, fixed by the Act of 1846.

This Act and Act of 1846 to be read together.

4. This Act shall be read as one Act with the Act of 1846 so far as not varied or inconsistent with this Act.

Right of presentation to second charge suspended.

5. From and after the passing of this Act the exercise of all rights of patronage or presentation of a minister to fill the second charge in the said church and parish of South Leith in the county of Edinburgh, whether belonging to or capable of being exercised by the persons having right under the Act of 1846, and the individuals or bodies, public, private, or corporate, whose right of patronage or presentation to the said second charge is reserved by section twelve of the Act of 1846, or the Presbytery of Edinburgh, jure devoluto, shall be and the same are hereby suspended and declared not capable of being exercised for a period of four years from and after the passing of this Act, which period is in this Act referred to as the suspense period, and during the suspense period the whole pastoral charge of the said church and parish shall devolve upon and be exercised by the minister filling the first charge of said church and parish for the time being; and the Kirk Session of South Leith shall be entitled to receive and apply the sum in name of communion element money specified in section three of the Act of 1846, and the trustees of the Ministers Widows Fund of the Church and Universities of Scotland, or their general collector or receiver, shall not be entitled to claim or receive any payments in respect of vacant stipend or otherwise for and on account of the vacancy existing in the office or charge of second minister of the said church and parish.

Application of funds and revenues during suspension.

6. During the suspense period the trustees shall, after paying therefrom the expenses of applying for and obtaining this Act, apply the sinking fund and the free proceeds of the revenues, and the money they are by this Act authorised to borrow, to the payment of the sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence to the Presbytery of Edinburgh, to be applied by them for the erection and endowment of

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an additional church in the said parish of South Leith in such situation as shall be approved of by the said Presbytery; and for these purposes the operation of section three of the Act of 1846, in so far as it provides for payment of the stipend therein specified of the minister filling the second charge of the said church and parish of South Leith, and for raising or accumulating by way of sinking fund a capital sum equal to yield an annual income sufficient to pay the said stipend of the minister filling the said second charge in perpetuity, is hereby suspended during the suspense period.

Second charge to cease.

7. When and so soon as the trustees shall have paid within the suspense period to the Presbytery of Edinburgh the sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence, the office or charge of the minister filling the second charge of the said church and parish of South Leith shall be discontinued and extinguished, and all rights of patronage or presentation of a minister to the second charge of the said church and parish presently existing shall cease and determine, and be no longer capable of being exercised, and the whole pastoral charge of the said church and parish shall devolve upon and be exercised by the minister filling the first charge of the said church and parish for the time being; and the Kirk Session of South Leith shall be entitled to receive and apply the sum in name of communion element money specified in section three of the Act of 1846; and a discharge by a person authorised by the Presbytery of Edinburgh, and certified by the clerk of said Presbytery as so authorised, to receive and discharge the said sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence, recorded in the books of Council and Session, shall be sufficient evidence of the payment of the said sum.

Repeal of Act as to patronage of second charge.

8. On payment as aforesaid to the said Presbytery of the sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence within the suspense period, sections twelve (except in so far as it enacts that the right of patronage or presentation to the second charge of the said parish, theretofore belonging to and exercised by the incorporations of the town of Leith, mentioned in said Act, or any of them, shall cease and determine, and declares the same to be extinguished and at an end), thirteen, fourteen, and fifteen of the Act of 1846 are hereby repealed.

Claims of ministers widows fund in respect of

9. On payment as aforesaid of the said sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence all claims or rights of the trustees of the Ministers Widows Fund of the Church and Universities of Scotland, or their general col-

lector or receiver, in name of contributions or subscriptions to the said Widows Fund, or otherwise, in respect of the said second charge of the said church and parish, or the minister thereof, shall cease and determine, and be no longer exigible; and section three of the Act of 1846, in so far as it provides for payment of the stipend therein specified of the minister filling the second charge of the said church and parish of South Leith, and for raising or accumulating by way of sinking fund a capital sum equal to yield an annual income sufficient to pay the said stipend to the minister filling the said second charge in perpetuity, and section eleven of the Act of 1846, are hereby repealed.

second charge extinguished. Repeal of Act as to minister's stipend and sinking fund.

10. For the purposes of this Act the trustees may from time to time under the authority of this Act borrow at interest, on the security of the free proceeds of the revenues or otherwise, any sums not exceeding in the whole the sum of one thousand five hundred pounds, and they may if required grant mortgages of the said free proceeds of the revenues.

Power for trustees to borrow.

11. The trustees may from time to time re-borrow any amount borrowed under the provisions of this Act, and from time to time paid off by them respectively, unless it be paid off by means of the sinking fund, in which case, and to the extent of the amount paid off by means of the sinking fund, their powers of borrowing and re-borrowing shall cease.

Power to re-borrow.

12. The mortgagees of the trustees under this Act may respectively enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a judicial factor. In order to authorise the appointment of a judicial factor in respect of arrears of principal, the amount owing to the mortgagees by whom the application for a judicial factor is made shall not be less than two hundred pounds in the whole.

Arrears may be enforced by appointment of a judicial factor.

13. All moneys borrowed by the trustees under the provisions of this Act shall be applied only to the purposes by this Act authorised.

Application of money borrowed under Act.

14. On payment as aforesaid of the said sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence, the free proceeds of the revenues shall be applied as follows:

First. In payment of the interest upon mortgages granted under the provisions of this Act:

Secondly. In forming the sinking fund required by this Act:

Thirdly. When the said mortgage debt shall have been fully paid, in the payment to such amount as the trustees shall consider proper of an assistant minister or assistant ministers

Application of revenues after expiry of period of suspension.

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for the said church and parish, and in making provision for the ecclesiastical purposes in connexion with the said church and parish, including the providing of free sittings for poor persons in church, as the trustees shall consider most beneficial for the said church and parish:

Fourthly. In the erection and endowment, or either the erection or endowment, as they shall see fit, of a new and additional church or new and additional churches in the said parish of South Leith, or the trustees may accumulate the free proceeds of the revenues, or such part thereof as they shall see fit, in such manner and to such amount as they shall consider proper, and from time to time invest such accumulations upon such securities as they shall approve, and apply the revenues, proceeds, or income of the funds so accumulated to all or any of the purposes fourthly herein-before mentioned.

Sinking fund.

15. The sum to be set apart yearly by the trustees as a sinking fund shall be of such amount as will secure the repayment of the said sum of one thousand five hundred pounds, together with the interest thereon, by equal annual instalments in the course of ten years from the period of each advance, and every sum so set apart may be applied either in paying off the money advanced under the provisions of this Act or by being invested and disposed of as provided by "The Commissioners Clauses Act, 1847," or partly in one way and partly in the other; and all mortgages paid off out of any such instalments shall for the purposes of this Act be deemed to have been paid off out of the sinking fund.

Second charge to continue in the event of nonpayment of money.

16. In the event of the said sum of three thousand four hundred and fifty-eight pounds seventeen shillings and sixpence not being paid to the Presbytery of Edinburgh within the suspense period, the office or charge of second minister of the said church and parish, as hitherto existing, shall be held to continue as before the passing of this Act, and the whole rights of patronage or presentation of a minister to fill the second charge of the said church and parish of South Leith, existing and reserved under the Act of 1846, shall revive and have full force and effect, in the same manner and as fully in all respects as if this Act had not been passed, and shall be exercised in such and the like manner as the same were in use to be or were capable of being exercised before the passing of this Act, except that for all purposes the vacancy in the said second charge shall be held to have occurred at the date of the expiry of the said suspense period: Provided always, that during the suspense period no stipend shall accrue in respect of the second charge: Provided

also, that notwithstanding anything in section three of the Act of 1846, if after the suspense period the second charge be revived as aforesaid, and a second minister be appointed, his claim or that of his representatives for arrears of stipend shall cease with his death or translation.

Patronage of new church.

17. The right of patronage or presentation of the minister of the additional church in the parish of South Leith, to be erected and endowed by the Presbytery of Edinburgh as aforesaid, shall, in the first instance, belong to and be exercised by the said Presbytery of Edinburgh, and on vacancies occurring in the office, or charge of minister of such additional church thereafter, the said right of patronage or presentation shall belong to and be vested in the male communicants in such additional church.

Expenses of Act.

18. The costs, charges, and expenses of and incident to the preparing for, obtaining, and passing this Act, or otherwise in relation thereto, shall be paid by the trustees out of the sinking fund and free proceeds of the revenues.

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