ANNO OCTAVO & NONO

VICTORIÆ REGINÆ.

****

C A P. LI.

An Act to enable Archbishops and Bishops in *Ireland* to charge their Sees with the Costs incurred by them in defence of their Rights of Patronage, in certain Cases; and also to enable Tenants for Life and other Persons having limited Interests in Estates in *Ireland* to charge said Estates with the Costs incurred by them in asserting their Rights to Ecclesiastical Patronage, in certain Cases. [31st *July* 1845.]

WHEREAS an Act was passed in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the Limitation of Actions* 3 & 4 W. 4.
and Suits relating to Real Property, and for simplifying the Remedies c. 27.
for trying the Rights thereto, it was amongst other things enacted, that after the Thirty-first Day of *December* One thousand eight hundred and thirty-three no Person should bring any Quare impedit or other Action or any Suit to enforce a Right to present to or bestow any Ecclesiastical Benefice, as the Patron thereof, after the Expiration of One hundred Years from the Time at which a Clerk should have obtained Possession of such Benefice adversely to the Right of

Presentation or Gift of such Person, or of some Person through whom he claims, or of some Person entitled to some preceding Estate or Interest, or undivided Share, or alternate Right of Presentation or Gift, held or derived under the same Title, unless a Clerk should subsequently have obtained Possession of such Benefice on the Presentation or Gift of the Person so claiming, or of some Person through whom he claimed, or of some other Person entitled in respect of an Estate, Share, or Right held or derived under the same Title: And whereas by an Act passed in the Session of Parliament held in the Sixth and Seventh Years of Her present Majesty, intituled *An Act for extending to* Ireland *the Provisions not already in force there of an Act of the Third and Fourth Years of the Reign of the late King* William *the Fourth, intituled 'An Act for the Limitation of 'Actions and Suits relating to Real Property, and for simplifying 'the Remedies for trying the Rights thereto;' and to explain and amend the said Act*, it was amongst other things thereby enacted, that after the First Day of *January* One thousand eight hundred and forty-four the several Clauses and Enactments in the said first-mentioned Act and therein-before recited, relating to any Right to present to or bestow any Church, Vicarage, or any other Ecclesiastical Benefice, (the Clause thereof providing that the said Act, so far as it related to any such Right, should not extend to *Ireland*, always excepted,) should extend and apply to *Ireland*, and that as fully and effectually as if the said Clauses and Enactments were thereby repeated, substituting for the said Date of the Thirty-first Day of *December* One thousand eight hundred and thirty-three the Date of the First Day of *January* One thousand eight hundred and forty-four; and it was by the said last-mentioned Act further declared and enacted, that the said last-mentioned Act should not be prejudicial or available to or for any Plaintiff or Defendant in any Action or Suit already commenced, or on or before the said First Day of *January* One thousand eight hundred and forty-five to be commenced, relating to any Right to present to or bestow any Church, Vicarage, or other Ecclesiastical Benefice in *Ireland*: And whereas in consequence of the Provisions of the said Acts numerous Actions of Quare impedit and Proceedings have been brought and instituted, and are now depending, for the Purpose of determining the Right of Presentation to divers Ecclesiastical Benefices and Preferments in *Ireland*, by Persons whose Claims to exercise such Right would but for the instituting of such Proceedings have been barred by the Provisions of the aforesaid Acts: And whereas numerous Actions and Proceedings have been brought and instituted and are now pending against Archbishops and Bishops in *Ireland*, for the Recovery of Advowsons and Rights of Presentation to Ecclesiastical Benefices and Preferments in their Dioceses the Patronage whereof has been for long and uninterrupted Periods exercised by them and their Predecessors in right of their Sees, and the said Archbishops and Bishops have been and will be put to heavy Expences in preparing to defend and in defending in the said Actions and Proceedings their Rights of Patronage for themselves and their Successors; and it is just and expedient that they should be enabled to charge such Expences on the Estates of their respective Sees, subject to the Regulations herein-after provided: Be it enacted by the

6 & 7 Vict. c. 54.

Queen's

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, That every Archbishop and Bishop in *Ireland*, Defendant in any Action of Quare impedit or other Action or Suit already brought or instituted against him, and which was pending on the Sixteenth Day of *June* One thousand eight hundred and forty-five, or on which any Writ of Error or Appeal was then pending, for the Recovery of the Right of Presentation to or Patronage of any Ecclesiastical Benefice or Preferment the Patronage whereof has heretofore been enjoyed by him or his Predecessors in right of his See or of any See united thereto, shall be entitled to charge the Amount of all Costs reasonably incurred by him in or about the Preparation and Conduct of and consequent upon his Defence to such Action or Suit, including, if Occasion shall be, his Costs incidental to any Appeal or Writ of Error from any Judgment therein, (and which Costs respectively he shall not be enabled to recover from the Plaintiff or Plaintiffs in such Action, Suit, or Appeal, or Writ of Error, with the Costs also of creating any Securities hereby authorized to be made,) upon the Estates or other Revenues of his See, in manner herein-after directed; provided that a Judge before whom such Action or Suit shall have been first tried, or by whom the same shall have been first determined, shall certify by Writing under his Hand, to be deposited and preserved in the Registry of the Diocese, that such Archbishop or Bishop had probable Cause for defending such Action or Suit, and that he ought to be allowed to charge his Costs under the Provisions of this Act; and that the presiding Judge of any Court of Error, or the Speaker of the House of Lords in Cases of Appeal or Writ of Error there prosecuted, shall in like manner certify that there was good Ground of prosecuting or defending such Appeal or Writ of Error; and if any such Action or Suit, Appeal or Writ of Error, shall be dismissed, abated, or discontinued before any Trial or Determination thereof, or the Plaintiff shall be nonsuited therein, then a Certificate, signed by a Judge of the Court in which such Action or Suit has been brought or instituted, shall be effectual for the Purposes aforesaid; and that no Judge shall be precluded from considering an Archbishop or Bishop, grounding his Defence to any such Action or Suit upon previous Presentations or Collations only, to have had probable Cause for such Defence; provided also, that the Amount of Costs to be charged under the Authority of this Act shall be determined and certified by some Officer to whom the Taxation of Costs between the Plaintiff and Defendant in such Action or Suit shall or would be referrable, and that his Certificate shall be also deposited in the Registry of the Diocese.

Every Archbishop and Bishop, Defendant in Actions for Right of Patronage, may charge the Costs of such Actions on the Revenues of the See.

Judge to certify for Costs.

II. And be it enacted, That after such Certificates as aforesaid shall have been obtained by any Archbishop or Bishop, and deposited in the Registry of his Diocese, (which Certificates shall, for the Purposes of the Securities hereby authorized to be made, be conclusive Evidence of his Authority to raise the Amount certified by such Taxing Officer to be due to him,) it shall be lawful for him to raise, by way of Loans, for his Benefit and Reimbursement, the same Amount, or any Part or Parts thereof, and all Costs incident to the Execution

On obtaining Judge's Certificate, Money for defraying Costs, &c. may be raised by Mortgage.

Execution of these present Authorities, from any Persons or Corporations willing to advance the same, and, as a Security for the Money to be so raised, by any Deed or Deeds, duly sealed and delivered by him, and also registered in the Registry of his Diocese, to demise any Messuages, Lands, Towns, Tenements, Tithes, Rents-charge, or other Rents and Hereditaments of or belonging to his See, to the Persons or Corporations advancing the same Money, or to such Person or Persons as they respectively may appoint, by way of Mortgage, for any Term or Terms of Years, subject to proper Provisions for the Cesser of every such Term on Payment of the Principal Money to be so borrowed, with Interest thereon, to the Persons or Corporations who shall advance the same, their Executors, Administrators, Successors, or Assigns, at the Times and in the Manner herein-after mentioned; (that is to say,) the Interest thereof, or of so much thereof as shall from Time to Time remain unpaid, at such Rate as shall be agreed upon, to be paid on the half-yearly Days to be therein appointed, and One Thirtieth Part of the Principal Money at the End of the Third Year from the Determination of the Action or Suit, or the Cesser of the Proceedings with respect to which the said Costs shall have been incurred, and a like Thirtieth Part of the Principal Money at the End of each of the succeeding Twenty-nine Years, which Mortgage or Mortgages shall bind every succeeding Archbishop or Bishop of the same See, until the Principal Money and Interest thereby secured shall be paid off and discharged, as fully and effectually as if such Successor had made or executed the same.

Mortgage to contain a Covenant for Payment of Principal and Interest.

III. And be it enacted, That every such Mortgage shall contain a Covenant from the Archbishop or Bishop making the same, for himself, his Heirs, Executors, and Administrators, to pay and keep down so much of the said Principal Money and Interest as shall become payable upon such Mortgage or Mortgages during his Continuance in his said See.

For Recovery of Monies due on Mortgages.

IV. And be it enacted, That it shall not be lawful for any Mortgagee under the foregoing Authorities to enter into the Possession of the mortgaged Hereditaments or any Part thereof until some Principal Money or Interest secured by any such Mortgage or Mortgages shall be in arrear and unpaid for more than Forty Days after the same respectively shall have become due, but that when and so often as there shall be any such Arrear it shall be lawful for the Mortgagee or Mortgagees, his, her, or their Executors, Administrators, Successors, or Assigns, to recover the Monies so in arrear, together with the Costs and Charges attending the Recovery thereof, upon or out of the mortgaged Hereditaments, by Distress and Sale, in such Manner as Rent Service may by Law be recovered, or by entering on and receiving the Rents and Profits of the same Hereditaments, until full Payment of the same Arrears and Costs and Charges respectively.

No Mortgagee to recover more

V. Provided always, and be it enacted, That no Mortgagee or Mortgagees of the Lands or Possessions of any See under the foregoing

going Provisions shall after any Avoidance thereof be entitled to recover from the Hereditaments therein comprised more than One Year's Interest accrued before such Avoidance upon any Principal Sum due thereon, or more than One Instalment of Principal Money which shall have previously fallen due.

than One Year's Interest, &c. after Avoidance.

VI. And be it enacted, That every Archbishop and Bishop making any such Mortgage as aforesaid, and his Successors, shall pay the Principal and Interest Monies thereby secured at the Times and in manner thereby appointed for the said Purposes, or so much of the same Monies respectively as shall from Time to Time be due; and that upon every Avoidance which shall happen of the See during the Subsistence of any such Security the Archbishop or Bishop avoiding the same, his Heirs, Executors, or Administrators, shall pay so much of the accruing half-yearly Payment of Interest, if any, not actually due at the Time of such Avoidance, as shall be in proportion to the Time which at such Avoidance shall have elapsed of the current Half Year, and, in case such Avoidance shall happen in any Year at the End of which any Instalment of the said Principal Sum shall be due, shall also pay so much of the annual Instalment then accruing of the said Principal Sum as shall be in proportion to the Part which at such Avoidance shallhave elapsed of the current Year of the Security: Provided also, that it shall be lawful for the Archbishop or Bishop who shall be entitled to charge any such Principal Monies as aforesaid on the Security of the Possessions of his See, in lieu of borrowing the same, to grant to any Trustee or Trustees for himself any such Security for the same Monies, and Interest thereon at any Rate not exceeding Four Pounds *per Centum per Annum*, as he might have granted to any Person or Corporation advancing the same Monies; and that if any Archbishop or Bishop entitled to charge any Principal and Interest Monies upon the Possessions of his See under the Provisions of this Act shall die without having fully exercised or relinquished his Power, and before the Expiration of One Year from the Time at which the same Power shall have arisen, it shall be lawful for his Executors or Administrators to exercise the same Power to the like Extent as he might himself have done if still living, for the Benefit and in Increase of his Personal Estate; and that if any such Archbishop or Bishop shall die within Three Calendar Months next after the Determination of any Action or Suit, or the Cesser of the Proceedings in or with reference to which he shall have incurred any Costs, which, if living, and having obtained such Certificates as aforesaid, he might have charged on the Possessions of his See, then and in such Case his Executors or Administrators shall be at liberty to apply for such Certificates, and after obtaining the same to create any such Security for the Benefit of his Personal Estate as he might himself have created for the Amount of such Costs and Interest thereon.

For regulating Payment of Principal and Interest, and Proportions of Interest on Avoidance.

Principal Monies may be charged on Estates of the See in Trust, in lieu of borrowing.

VII. Provided also, and be it enacted, That notwithstanding any such Mortgage or Mortgages as aforesaid it shall be lawful for the Archbishop or Bishop who shall have made the same, and his Successors, from Time to Time to make such Contracts and Agreements for Leases, and to grant such Leases, as he or they might have entered

Mortgages not to interfere with Power of leasing.

into or executed in case the said Mortgage or Mortgages had not been made.

Who may charge Costs of Quare impedit.

VIII. And whereas many such Writs of Quare impedit have been sued out and Proceedings instituted by Persons who, under Family Settlement or otherwise, would only be entitled to a Life Estate or other limited Interest in the Advowsons or Right of Presentation to the Ecclesiastical Benefices to recover which the said Writs have been sued out and Proceedings instituted; and it is just and expedient that the said Plaintiffs in such Actions should be enabled, under certain Restrictions, to charge the reasonable Costs and Expences incurred by them in prosecuting such Claims upon the Estates of those who would be entitled in remainder to such Advowsons or Right of Presentation; be it enacted, That it shall and may be lawful for every Person who has now sued out any Writ of Quare impedit or instituted or brought any other Action or Suit to recover the Right of Presentation to or Patronage of any Ecclesiastical Benefice or Preferment in *Ireland*, and who shall in such Action or Suit finally establish his Right to such Advowson, Presentation, or Patronage, and who shall be by any Family Settlement or otherwise entitled only to a Life Estate or other limited Interest in or to the Advowson or Right of Presentation or Patronage in respect of which he shall so establish his Right, shall be entitled to charge all such Costs as he shall have incurred in the bringing and prosecuting of such Actions, and all Costs incidental thereto, including the Costs incident to any Appeal or Writ of Error therein, and over and above all such Costs as he shall be entitled to recover from the Defendant or Defendants in such Action, upon the Fee and Inheritance of the said Advowson, Right of Presentation, or Patronage, and also upon the Remainder, Fee, or Inheritance of all Lands, Tenements, and Hereditaments of which he shall be seised of the same Estate as in the said Advowson, Right of Presentation, or Patronage, and which are or shall be settled to the same Uses as the said Advowson, Right of Presentation, or Patronage: Provided always, that the Amount of Costs to be charged under the Authority of this Act shall be determined and certified by the Master of the Court of Common Pleas in *Ireland*, whose Certificate shall be final and conclusive, for the Purpose of the Securities hereby authorized to be made, that the Amount specified in such Certificate was properly and necessarily incurred.

Such Costs to be determined by Master of Common Pleas in Ireland.

Costs to be charged on Lands, &c. specified in Master's Certificate.

IX. And be it enacted, That it shall be lawful for any Plaintiff having obtained any Certificate as aforesaid, and which Certificate shall be deposited in the Office for registering Deeds in *Ireland*, by Deed under his Hand and Seal to charge the said Lands, Tenements, and Hereditaments which by this Act he is authorized to charge with the Amount specified in such Certificate; and such Charge, subject to all prior Incumbrances affecting the said Lands, Tenements, or Hereditaments, shall, on being registered in the Office for registering Deeds in *Ireland*, pursuant to the Statutes for that Purpose, be as valid and effectual to all Intents and Purposes as if made by a Person having the absolute Interest in the said Lands, Tenements, and Hereditaments; and that it shall and may be lawful for the said Plaintiff to exercise such Power of charging said Lands in favour of any Person

that he may think fit, either as a Security for the Loan of Money or otherwise; and that such Charge so created shall bear Interest from the Day of the Registration of the Deed creating same, at a Rate not exceeding Five Pounds *per Centum per Annum*, and shall be capable of being assigned and transferred.

Liability of such Lands, &c. limited.

X. Provided always, and be it enacted, That it shall not be lawful for any Person entitled to the said Charge to proceed to raise the Amount of the same by Sale of any of the Lands, Tenements, and Hereditaments upon which same shall be so charged, during the Continuance of the Life Estate of the Person so creating said Charge, nor shall it be lawful for such Person, at the Determination of the said Life Estate, to charge more than One Year's Arrear of Interest accruing during the said Life Estate, upon the Inheritance or Remainder in the said Lands; and that it shall be lawful for the Person entitled to such Charge, whenever One Year's Interest shall be in arrear, to apply by Petition, verified by Affidavit, to a Court of Equity in *Ireland*, stating the Facts, and it shall and may be lawful for such Court of Equity, on being satisfied that such Charge has been rightly created under this Act, and that One Year's Interest is due thereon, to appoint a Receiver over all or a competent Part of the Lands, Tenements, and Hereditaments included in such Charge, for the Purpose of paying such Interest, or if a Receiver be already appointed over such Lands, then to extend the said Receiver to the Matter of such Petition.

Plaintiff may charge his Costs, &c. if nonsuited, provided the Judge certifies that they ought to be charged.

XI. And be it enacted, That in case a Verdict shall be had against any Plaintiff, Tenant for Life as aforesaid, in any such Suit or Action, or the Plaintiff be nonsuited, or Judgment shall be given against such Plaintiff, or such Action shall be discontinued, dismissed, or abated before any Trial thereof, it shall and may be lawful for such Plaintiff to charge all such reasonable Costs and Expences which he shall incur in such Actions, including the Costs of any Appeal or Writ of Error from any Judgment therein, together with all Costs to which the Plaintiff may become liable, upon such Lands, Tenements, and Hereditaments, (except the said Advowson,) as he would have been entitled under the Provisions herein-before contained to charge his Costs if he had been successful in said Suit; provided that the Judge before whom such Action shall be tried, in case of a Verdict or Nonsuit in a Trial at Nisi Prius before a single Judge, and in all other Cases the Chief Justice of the Court of Common Pleas in *Ireland*, shall certify by Writing under his Hand that the said Plaintiff had probable Cause for instituting such Proceedings, and that such Costs ought properly to be charged upon the Lands, Tenements, and Hereditaments by this Act made chargeable therewith; and upon the obtaining of such Certificate the like Reference shall be made to the Master of the Court of Common Pleas to ascertain the Amount of such Costs, and the like Proceedings in all respects had, as herein-before provided in the Case in which the Plaintiff shall succeed, and with the same Force and Effect in all respects as is herein-before provided with regard to the same: Provided always, that the Certificate of the Judge or Lord Chief Justice, as the Case may be, shall be deposited, in

in such Case, together with the Master's Certificate of the Amount of such Costs, in the Office for registering Deeds in *Ireland*.

Construction of Act.

XII. And be it enacted, That the Word "Plaintiff" in this Act shall be deemed and construed to include the Case in which more than One Person is Plaintiff; and that, except where the Provisions or Context of this Act exclude such Construction, every Word importing the Singular Number only shall extend and be applied to mean several Persons and Things as well as one Person and Thing; and that every Word importing the Masculine Gender only shall extend and be applied to a Female as well as a Male.

To what Suits Provisions of this Act shall extend.

XIII. And be it enacted, That all the Provisions of this Act shall extend and be applied to all such Cases in which Proceedings have been taken or Suits commenced for the Recovery of the Advowsons of or Right of Presentation to any Ecclesiastical Benefice in *Ireland* in the Names of any Person or Persons as Trustees, where the immediate Cestuique Trust would be only Tenant for Life of such Advowson; and that for the Purposes of this Act all such Proceedings shall be deemed to have been taken and such Actions instituted in the Name of the said Tenant for Life, who shall have the same Power of charging the Costs and Expences incurred by him or by such Trustees, upon any Lands, Tenements, and Hereditaments of which he is Tenant for Life, as if the said Proceedings had been brought in the Name of such Tenant for Life, and not in the Name of said Trustees.

LONDON: Printed by GEORGE E. EYRE and ANDREW SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1845.