



CHAPTER CCXX.

An Act to authorise the application to other educational purposes, or the sale or letting, of Schoolhouses and other School Properties held on behalf of Congregations of the Free Church of Scotland; and for other purposes. A.D. 1878.

[8th August 1878.]

WHEREAS by an act of the General Assembly of the body of Christians calling themselves the Free Church of Scotland, (herein-after called "the Free Church,") dated the twenty-ninth day of May one thousand eight hundred and forty-three, the Assembly approved of a report of their committee on providing means for the education of students for the ministry and the establishment of a system of schools, and instructed the committee to take immediate steps for the establishment of a school in connexion with every congregation :

And whereas large sums of money were from time to time contributed and have been expended for the purpose of promoting the establishment of schools in connexion with the respective congregations of the Free Church; and numerous schoolhouses, schoolmasters houses, and other school properties now belong to or are held in lease for behoof of those congregations :

And whereas the Education Committee of the Free Church prepared the draft of a deed, which is generally known as "the model trust deed for schools," to be embodied or referred to in the disposition, feu charter, or other conveyance or lease of the ground or site acquired for the erection of such schoolhouses :

And whereas the titles to many of the said school properties have been taken in terms of the model trust deed for schools; and certain other of such school properties are held under titles taken in terms of another deed, the draft of which was prepared by direction of and approved by the General Assembly of the Free Church, which deed is generally known as "the model trust deed for churches;" and certain other of the said school properties are held under titles granted under powers contained in the Act 3 and 4

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A.D. 1878. Victoria, chapter 48, intituled "An Act to enable proprietors of
" entailed estates in Scotland to feu or lease on long leases portions
" of the same for the building of churches and schools, and for
" dwelling-houses and gardens for the ministers and masters thereof,"
(herein-after called "the Act of 1840,") and in the Act 4 and 5
Victoria, chapter 38, intituled "An Act to afford further facilities
" for the conveyance and endowment of sites for schools" (herein-
after called "the Act of 1841") :

35 & 36 Vict.
c. 62. And whereas the Education (Scotland) Act, 1872, (herein-after
called "the Education Act,") was passed "to amend and extend the
" provisions of the law of Scotland on the subject of education :"

And whereas, under the provisions of the Education Act, a
considerable number of the said school properties have been trans-
ferred to the school boards of the parishes and burghs within which
they are respectively situated ; but there remain a considerable
number of such school properties which have not been so transferred,
and which, in consequence of the passing of the Education Act, are
not now required for the purposes for which they were provided :

And whereas it is expedient that, notwithstanding the purposes
specified and the terms and conditions contained in the said model
trust deeds and in the aforesaid titles, provision should be made for
appropriating to other educational purposes the school properties
held under those deeds and titles, and for selling or letting such of
the said school properties as may not be so appropriated, and for
applying the prices and rents received for the same, but subject
always to the provisions herein-after contained :

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 for all purposes as the Free Church of
Scotland School Properties Act, 1878.

Interpreta-
tion of terms. 2. In this Act the following words and expressions shall have the
meanings hereby assigned to them respectively, unless there be
something in the subject or context repugnant to such construction ;
(that is to say,)

"School property" or "school properties" shall mean and in-
clude schoolhouses, schoolmasters houses, land held and used
in connexion therewith, and other appurtenances thereof,

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and the furniture and fittings of the same, whether the site thereof be held in property or in lease :

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“ General Assembly ” shall mean the General Assembly of the Free Church :

“ Deacons court ” shall mean and include the office-bearers, being the minister, elders, and deacons, or elders acting as deacons, in each congregation :

“ Guardian ” shall include tutors and curators of pupils or minors, or of persons labouring under incapacity or disability, factors loco tutoris and factors loco absentis, and husbands.

3. The deacons court of each congregation of the Free Church for whose behoof or in connexion with which any school property is held may, with the consent of the General Assembly (certified under the hands of the moderator and clerk of the General Assembly sitting at the time or of the immediately preceding General Assembly, or under the hands of the persons generally known or understood to hold these offices), appropriate such school property, or any part thereof, to such educational uses, including Sabbath schools, libraries, lectures, &c. in connexion with such congregation, as such deacons court may think fit ; and the same may be used accordingly, notwithstanding any restrictions or conditions with respect to the use or reversion or forfeiture thereof contained or referred to in the titles under which it is held : Provided always, that any portion of such school property erected or used for the purpose of a dwelling-house may continue to be used as such, subject to the proviso that in the case of any school property held by a title granted under the powers of the Act of 1840 or of the Act of 1841, such continued use thereof as a dwelling-house shall not be exercised without the consent of the granter of such title, or of his successor in possession at the time of the estate of which such property or the site thereof originally formed part.

Power to appropriate school properties to other educational purposes.

4. If the deacons court of the congregation for whose behoof or in connexion with which any school property is held, or the General Assembly, shall consider that such school property cannot be, or at any time has ceased to be, beneficially appropriated to educational uses as aforesaid, or may with greater advantage be sold or let for other purposes, such deacons court may, with the consent of the General Assembly, certified in manner herein-before provided, but always subject to the provisions herein-after contained, sell at the highest price which can be obtained such school property, or any part thereof, in such manner as they shall consider most expedient, and either by public roup or private bargain, and thereupon the trustees

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or other persons or person in whose names or name such school property is vested may convey or assign the same to the purchaser; or such deacons court, with consent aforesaid, may from time to time let the same at the highest rent which can be safely obtained, for such period and on such terms and conditions as they shall think proper, and they shall hold or apply the free proceeds of the sale of such school property, if sold, or the proportion thereof falling to such congregation as herein-after mentioned, and the free rents of such school property, if let, in the manner herein-after provided.

For protection of proprietors of estates of which sites of school properties originally formed part.

5. Provided always, that in any case where the school property intended to be sold or let as aforesaid, or the site thereof, is held by a title under which, either by reference to the Act of 1840 or to the Act of 1841, or otherwise than by incorporation of or reference to the terms and conditions of the said model trust deeds, the use of such school property is restricted, or any right therein is reserved to the person from whom such school property or site was acquired or to his successors, in the event of the same being used otherwise than for the purposes for which it was acquired, or ceasing to be used for these purposes, the deacons court of the congregation for whose behoof or in connexion with which such school property is held shall, before selling or letting the same, give notice in writing of their intention to such person, or to his successor in possession at the time of the estate of which such school property or site originally formed part. After receiving such notice such person, or his successor in possession at the time of such estate, may intimate to the deacons court either (1) his desire to purchase the said school property; or (2) his consent to the same being sold or let by the deacons court, subject to any terms and conditions which he may think fit. In the event of his intimating his desire to purchase the school property the value thereof at the time shall be ascertained by agreement, or (failing agreement) by an arbiter to be mutually agreed upon by the parties, or (if they do not agree upon an arbiter) to be appointed, on the application of either party, by the sheriff depute of the county in which the same is situate, and shall be paid by the purchaser to the deacons court, with interest from the date of the purchaser's entry. All the expenses of such arbitration and incident thereto, to be settled by such arbiter, shall be borne by the deacons court, unless the arbiter shall award a larger sum than shall have been previously offered by the purchaser, in which case he and the deacons court shall respectively bear his and their own expenses incident to the arbitration, but in all cases the expenses of the arbiter shall be borne by the deacons court. Unless and until one or other of such intimations is made to the deacons court such

school property shall not be sold or let; and in the event of no such intimation being made within six months after such notice in writing by the deacons court as aforesaid, all the restrictions and conditions with respect to the use or reversion or forfeiture thereof contained or referred to in the titles under which it is held shall remain in full force and effect.

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6. Where any school property is held under a title containing no restrictions with respect to the use thereof otherwise than by incorporation of or reference to the terms and conditions of the said model trust deeds, or where the person in possession at the time of the estate of which any school property originally formed part has consented to such school property being sold or let by the deacons court of the congregation for whose behoof or in connexion with which it is held, such school property may be sold or let in the manner herein-before provided, and shall be held free and discharged from any restrictions with respect to the use thereof, and from any provisions for reversion or forfeiture of the same to or in favour of the proprietor of the estate of which the same originally formed part, contained in or provided by the titles under which such school property is held, or the Act of 1840, or the Act of 1841, but such school property shall nevertheless be subject to any terms and conditions which may be agreed to between the deacons court and the person in possession at the time of such estate.

Restrictions as to use of school properties not to apply where imposed only by model trust deeds, or where heir in possession consents to sale or lease.

7. It shall be lawful for heirs of entail in possession for the time being of estates of which any school properties originally formed part, if of lawful age, and for the guardians of such heirs of entail or of other proprietors of such estates, if such heirs or proprietors be in pupillarity or minority or under any other legal disability, and for trustees and other persons holding limited interests in such estates, to consent as aforesaid to any sales or leases of such school properties; and for the purposes of this Act such heirs of entail, guardians, trustees, and other persons holding limited interests in such estates, shall be deemed the proprietors thereof.

Consents may be given by heirs of entail, &c.

8. Where any grant has been made out of any money voted by Parliament for the purposes of education in Great Britain, under the advice of any Committee of the Council on Education, for or towards the purchase of the site, or the erection, enlargement, or repair of any schoolhouse, or of the residence of the master or mistress thereof, or the furnishing of such schoolhouse or residence, nothing contained in this Act shall render valid any sale of the premises in respect of which such grant has been made, unless either the consent of the Secretary of State for the Home Depart-

Restriction as to sales of school properties to which Government grants have been made.

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As to
division of
proceeds of
sale.

9. Where any part of the original cost of the purchase, erection, or furnishing of any school property which shall be sold under the powers of this Act shall have been contributed by the General Assembly, the free proceeds of the sale of such school property, after deducting the reasonable expenses of and consequent upon the sale and any sum which under the provisions herein-before contained may be repaid to the Lords Commissioners of the Treasury in respect of any grant made with relation to such school property, shall, in cases where such free proceeds shall not amount to the aggregate sums contributed by the General Assembly and by the congregation for whose behoof or in connexion with which such school property is held respectively, be divided between the General Assembly and the deacons court of such congregation, in proportion to the respective amounts contributed towards such cost by the General Assembly on the one hand and by such congregation on the other hand; and in cases where such free proceeds shall amount to or exceed the aggregate sums contributed by the General Assembly and by such congregation respectively, such free proceeds shall be applied in the first place in payment to the General Assembly of the sum contributed by them, and the balance shall be paid over to the deacons court of such congregation; such cost, except in so far as defrayed out of any grant made as aforesaid or contributed by the General Assembly, being in all cases held to have been contributed by such congregation; and where no part of such cost was contributed by the General Assembly such free proceeds shall be paid over to such deacons court; and no subscriber or contributor (other than the General Assembly), whether by gift, bequest, or otherwise, of sums employed in the purchase, erection, enlargement, furnishing, repair, or maintenance of any school property, nor the heirs or representatives of any such subscriber or contributor, shall have any concern or interest in the proceeds of the sale of any of the said properties if sold, or in the rents or use thereof when not sold; and no such subscriber or contributor (other than the General Assembly), nor the heirs or representatives of any such subscriber or contributor, and no purchaser or lessee of any school property, shall have any concern or interest in the application of such proceeds of sale or rents.

Application
of proceeds
of sale and
rents.

10. The portions of the free proceeds of sale received by the General Assembly as aforesaid shall be applied by them towards such of the following purposes, in relation to educational interests

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in connexion with the Free Church, as they may appoint; that is to say, towards the granting of pensions or allowances to retired teachers (so far as the same are not paid by deacons courts as herein-after provided), the support of normal schools, the payment of fees of normal school students attending universities or colleges, the foundation of scholarships or bursaries, or the establishment or maintenance of a school or schools. The free proceeds or portions of free proceeds of sale and the rents received by each deacons court as aforesaid shall be applied by them towards such purposes as aforesaid, in connexion with their congregation or with the Free Church, as may be sanctioned by the General Assembly, or towards the establishment and maintenance of a Sabbath school or Sabbath schools, and of a library where deemed expedient, or for school prizes: Provided always, that if there shall be a retired teacher of a school attached or which may have been attached to such congregation to whom the General Assembly shall have granted a pension or allowance, the payment thereof shall, to such extent as may be agreed upon between the General Assembly and such deacons court, form a primary charge on the sums received by such deacons court as aforesaid: Provided also, that no part of the capital sums arising from the free proceeds of sale of school properties shall be applied to any of the aforesaid purposes except the establishment of schools or libraries; but, except so far as applied to the last-mentioned purposes, such capital sums shall be invested by the General Assembly or the respective deacons courts, as the case may be, upon deposit in any bank carrying on business in Great Britain and incorporated under Act of Parliament or by Royal charter, or upon heritable security, or in the purchase of Government stocks, Exchequer bills, feu duties, or ground annuals, or of mortgages, debentures, debenture stock, or guaranteed or preference shares or stock of any company carrying on business in Great Britain incorporated by Act of Parliament and paying dividend on their ordinary share capital, or of any dock, harbour, or navigation trust, or municipal authority in Great Britain; and the interest or other annual income of such capital sums may be applied to any of the purposes herein-before specified.

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11. Nothing contained in this Act shall be construed as requiring the application to educational purposes of any school properties, or of the proceeds of sale or rents of any school properties, held under titles which do not require the same to be used for such purposes, nor as requiring the consent of the General Assembly to the exercise with respect to any school property of any power of sale

General
saving.

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Not to affect
ss. 37-39 of
35 & 36 Vict.
c. 62.

12. Nothing contained in this Act shall affect the provisions contained in the thirty-seventh, thirty-eighth, and thirty-ninth sections of the Education Act.

Expenses of
Act.

13. The costs, charges, and expenses of and incident to preparing for, obtaining, and passing this Act, or otherwise in relation thereto, shall be paid in the first instance by the General Assembly, who may charge the same upon the proceeds of the sales of school properties, when realised by the several deacons courts, in such proportions as the General Assembly may consider just.

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