The Law Commission

(LAW COM. No. 111)

PROPERTY LAW

RIGHTS OF REVERTER

REPORT ON A REFERENCE UNDER SECTION 3(1)(*e*)
OF THE LAW COMMISSIONS ACT 1965

Presented to Parliament by the Lord High Chancellor,
by Command of Her Majesty
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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

The Honourable Mr. Justice Ralph Gibson, *Chairman.**

Mr. Stephen M. Cretney.

Mr. Stephen Edell.

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*Mr Justice Ralph Gibson was appointed Chairman of the Law Commission as from 1 October 1981 in succession to Lord Justice Kerr.

†Mr. Davenport was appointed a Law Commissioner as from 14 September 1981 in place of the late Mr. W. A. B. Forbes, Q.C., who died on 4 May 1981.

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THE LAW COMMISSION

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To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord High Chancellor of Great Britain

Various 19th-century statutes contain provisions whereby the ownership of land granted for schools, churches and other charitable purposes is to revert when the land ceases to be used for those purposes. In 1977 representations were made to us by the Churches Main Committee and others to the effect that these "reverter" provisions contain defects and anomalies and give rise to serious practical problems. In particular, we were told that the difficulty of identifying those entitled under reverter provisions was resulting in the sterilisation of valuable areas of land.

Following these representations, you asked us to examine the relevant statutory provisions. Our other commitments did not allow of our conducting that examination ourselves, but it seemed to us that the substance of the work could be carried out by a working party formed under our aegis which would in due course report to us after conducting appropriate consultation. A working party was set up for this purpose in 1978 and has now reported to us. We append a list of the members of the working party and the text of their report.

The law on reverter is antiquated and obscure. We are satisfied that there is a clear case for its reform, and we commend the working party's report as a major step towards the promotion of this reform.

Some of the proposals in the working party's report (notably those for the discontinuance of the reverter of church sites and for the registration of reverters) require the taking of policy decisions by the Government. We hope that these issues will be speedily tackled by the departments concerned so that the momentum provided by the report can be sustained.

We are most grateful to the working party for the time and trouble they have spent on this difficult topic.

(*Signed*) MICHAEL KERR, *Chairman.*
STEPHEN M. CRETNEY.
STEPHEN EDELL.
PETER M. NORTH.

R. H. STREETEN, *Secretary*

31 *July* 1981.

MEMBERSHIP OF THE WORKING PARTY ON RIGHTS OF REVERTER

Mr. B. M. F. O'Brien* (Chairman)	Law Commission.
Mr. J. W. Cook	Official Solicitor to the Church Commissioners for England.
Mr. R. G. Fairbairn	Partner in Messrs. Ellis & Fairbairn, solicitors to the Baptist Union of Great Britain and Ireland.
Miss A. M. E. Jacobsen	Deputy Charity Commissioner.
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REPORT OF THE WORKING PARTY ON RIGHTS OF REVERTER

INTRODUCTION

1. Our terms of reference were:

"To consider the provisions for reverter contained in the School Sites Act 1841, the Literary and Scientific Institutions Act 1854, the Places of Worship Sites Act 1873 and any other similar Act affecting England and Wales; to make recommendations; and to report to the Law Commission."

2. We met seven times between June 1978 and January 1980, and by the latter date we had completed a draft report on which we could consult interested parties. Copies of the draft were sent to all those named in Appendix I hereto. We also caused the existence of the draft to be adverted to in *The Times*, the *Daily Telegraph, The Guardian*, the *Solicitors' Journal*, the *Guardian Gazette* and the *Church Times*, and copies were sent to a large number of people who asked for them. We met on a further four occasions between November 1980 and March 1981 in order to discuss the opinions expressed to us and to finalise our Report.

3. We have completed our task and report accordingly. Part I describes the background to our enquiry; Part II sets out the questions raised by the statutes; Part III discusses existing scheme-making powers relevant to our subject; and Part IV sets out our recommendations for reform of the law.

PART I

BACKGROUND

4. The nationwide provision of compulsory education at the public expense is a relatively modern development, dating as it does from the Elementary Education Act 1870. Before then, schools were endowed mainly from private sources but with some assistance from public funds. Many parts of the country were very inadequately provided with schools. By the beginning of the last century however the idea that elementary education should be more widely available had acquired considerable support. This was marked by the formation first in 1808 of the Society for Promoting the Royal British or Lancasterian System for the Education of the Poor (subsequently renamed the British and Foreign Schools Society), and then in 1811 the National Society for Promoting the Education of the Poor in the Principles of the Established Church throughout England and Wales (now generally known by its short title "the National Society"). Both these societies played a large part in encouraging and assisting in the provision of sites for schools for the poor

throughout the country.[1] In 1839 the Committee of the Privy Council on Education was established. This was the forerunner of the present Department of Education and Science. In 1840 the Schools Inspectorate was established.

5. The success of the voluntary movement to provide elementary education was to a considerable extent dependent on the availability of sites. Many charitably-minded landowners were willing to provide small sites on their estates or in their manors; but it was very generally found that in addition to the formalities required by the Charitable Uses Act 1735 (mortmain), there were legal obstacles in the way of their doing so (especially gratuitously) because a grant would interfere with the rights of successors under a settlement or the rights of commoners. The National Society pressed for legislative assistance and the School Sites Act 1836 resulted. This was soon replaced by the 1841 Act with which we are concerned. Briefly the 1841 Act facilitated the conveyance of sites of up to an acre in extent for schools (and school teachers' houses) in cases where the grantor was not the absolute owner of the land or was otherwise under disability; and it provided a simplified and inexpensive form of conveyance of which any grantor—including an absolute owner—could avail himself. It also usefully provided that where a site was conveyed to an incumbent and parish officers the grantees would be treated as a corporate body, so that the title vested in the grantees and their successors in office as *ex officio* trustees; that provision applied whether the grant was made under the authority of the Act or not. As an encouragement to private landowners to take advantage of the Act it also provided—and this is the provision which is of particular interest to us—*that if the land ceased to be used for the purposes for which it had been granted it would automatically revert.*[2] It is thought however that this does not apply to all grants under the Act.[3]

6. The 1841 Act[4] was intended to apply only to the provision of sites for or in connection with (elementary) schools for the poor—the class in which the National Society was interested. However, in 1852 a further School Sites Act extended the earlier provisions (with modifications, but preserving the

[1]From 1833 parliamentary grants were made in aid of the erection, equipment and running of voluntary schools in the hands of established bodies of trustees. A total of £1,767,034 was paid by way of building grants alone between 1833 and 1882, when the last grant was paid, and of this sum £1,515,385 was awarded to Church of England schools, the overwhelming majority of which were affiliated to the National Society. Conditions attached to these grants encouraged the adoption of model deeds by the two societies and other denominational bodies.

[2]The effect of this provision calls for extended discussion later in this report. The inclusion of such a condition in the grant itself would at that time have rendered the whole grant void, under s. 1 of the Charitable Uses Act 1735 (mortmain). In *Re Cawston's Conveyance* [1940] Ch. 27 Greene M. R. suggested that the condition was contained in the statute in order to save the reverter from being void for remoteness. That suggestion is perhaps open to doubt since it is not clear even today that the rule against perpetuities applies to a determinable fee (and the trustees' estate seems to be a determinable fee rather than a fee upon condition, because it is determined by the cesser of the use and not by the exercise by the grantor of a right of re-entry); and in 1841 the received view was that the rule did not apply to common law interests at all. The subject gave rise to an academic debate much later in the nineteenth century (and to a divergence between English and Irish law).

[3]See para. 39 below.

[4]Together with the explanatory School Sites Acts passed in 1844 and 1849.

provision for reverter) to "sons of yeomen and tradesmen and others" and to theological training colleges. These Acts provided a pattern which was followed in relation to sites for libraries and museums (the Literary and Scientific Institutions Act 1854) and for churches and chapels (the Places of Worship Sites Act 1873[5]).

7. As will appear in the course of this report the School Sites Act 1841 suffers from serious weaknesses in its drafting; and they naturally infect also the 1854 and 1873 Acts more or less based upon it. In practice, however, most of the problems have arisen in relation to schools, largely due to the Education Act 1944 and the restructuring of the education system thereby effected. Furthermore, the 1925 real property legislation raises some common questions in connection with the statutory right of reverter under all these Acts. It seems plain that the right is a special case; but it is not very clear whether the determinable interests resulting from the existence of these rights of reverter created by grants under the 1841, 1854 and 1873 Acts have been wholly excluded from the operation of the 1925 reforms.

8. The passage of time has also increased the difficulties and cost of interpreting the reverter provisions and carrying them into effect. The ascertainment of the person now entitled to a reverted site involves tracing title from the date of the original grant to the trustees; so the history of settlements, the destinations of estates of deceased persons and (perhaps) the title to neighbouring land may fall to be investigated over a period of a hundred years or more.

9. The problems naturally arise only if and when the building erected on the affected site ceases to be used as a school (or as the case may be). There is little evidence that the reverter provisions gave rise to many cases before 1914, although the books do include a few—all relating to schools, which were the most prone to closing down for lack of funds. But since the end of the 1914–1918 War a number of factors (including, in particular, the Education Act 1944) have led to the closure (or transfer to new sites) of many voluntary schools and to the closure of churches; and the process is likely to continue for some time. Because of the uncertainties in the legislation the trustees are often faced with worries over their possible continuing liability to preserve the buildings in a safe condition; and they do not know whether (or how) they can dispose of the property[6]—or what should be done with the proceeds. In the result there is a risk that sites may, in effect, become sterilised. Nobody knows how many sites are now affected by these Acts, but those of us who are in the best position to judge estimate that the number of voluntary schools within the Act and still on their original sites probably exceeds 2,000.[7]

[5]The 1873 Act was later extended in scope by the Places of Worship Sites Amendment Act 1882.

[6]In certain circumstances the Secretary of State for Education and Science or the Secretary of State for Wales may override the reverter provision affecting a school site (see now the Education Act 1973, s. 2(3)); but it may be difficult for a Secretary of State to be satisfied that the person entitled under the provision "cannot be found" if it is not clear where that person should be sought.

[7]The *Return as to Tenure of Voluntary Schools* (H.C. 178 of 1906) is a very valuable source of information about schools in existence early in the present century. Most of the schools with which we are concerned should appear in it.

10. Following representations made to the Law Commission we were appointed with the terms of reference set out above.

PART II

THE QUESTIONS RAISED BY THE STATUTES

A. *The nature of the trustees' interest and the questions raised by the 1925 real property legislation*

11. Before looking in detail at the relevant parts of the School Sites Act 1841, the Literary and Scientific Institutions Act 1854 and the Places of Worship Sites Act 1873 (which we will hereafter refer to as the Acts of 1841, 1854 and 1873 respectively) it will be convenient to examine the position in real property law of an interest subject to a right of reverter under one of these special Acts. For this purpose, there is no difference between the Acts, and that of 1841 may be taken as typical.

12. The language used in the 1841 Act[8] leaves us in no doubt that the estate or interest obtained by the charitable trustees is a "determinable estate (or interest)".[9] Under the old law (that is to say, before 1926) the effect of the happening of the determining event was automatically to shift the legal estate from the trustees to the person entitled on the reverter.[10] If the trustees remained in possession after the determining event (allowing the premises to be used for some purpose not strictly within the terms of their trust), they did so without title, and in due course of time they might obtain a good possessory title under the Statutes of Limitation, free from any risk of reverter.

13. The undocumented transfer of the legal title on the determination of a determinable estate was one of the features of the pre-1926 law which the 1925 legislation was generally designed to stop. The general rule is that a determinable interest is an equitable (and not a legal) interest,[11] and its creation sets up a settlement under the Settled Land Act 1925.[12] The occurrence of the determining event shifts the equitable ownership but the legal estate in the land remains vested in the estate owner under the Settled Land Act unless and until it is transferred in a documented form to the person entitled after the event (assuming that he is himself competent to hold the legal estate).

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[8]For ease of reference we reproduce in Appendix II the relevant parts of the principal statutes to which we refer, so far as not adequately reproduced in the text.

[9]As distinct, that is to say, from an "estate (or interest) upon condition". In either case, some prescribed event must occur before the estate ceases; but while a determinable interest comes to an end on the happening of the event, without more, an interest upon condition continues until it is brought to an end by re-entry by the person who has become entitled to possession (or by some act of his equivalent to re-entry).

[10]See e.g. *A.-G.* v. *Shadwell* [1910] 1 Ch. 92.

[11]Law of Property Act 1925, s. 1(3). The interest falls outside the description of legal estates and interests contained in sub-ss. (1) and (2) because a determinable interest is by definition not an absolute interest.

[12]Settled Land Act 1925, s. 1(1)(ii)(*c*).

14. Section 7(1) of the Law of Property Act 1925, however, contains a special provision for the Act of 1841 (and similar Acts). The trustees' fee simple is declared to be a fee simple absolute for the purposes of the Law of Property Act (notwithstanding its defeasibility, which is in terms confirmed). It is at first sight a matter of some surprise that there is no complementary provision in the Settled Land Act excluding determinable grants under the 1841 Act (and similar Acts) from the definition of settlements under that Act; but it is widely believed that so far as the Settled Land Act is concerned land held by charitable trustees is exhaustively dealt with in section 29 of that Act, and that the ordinary consequences of the title being determinable have no application to such land. In any event it would seem inappropriate, to say the least, to impose the Settled Land Act machinery on an owner who is said to have a fee simple absolute and it has always been taken for granted that section 7 of the Law of Property Act has the effect of negativing the establishment of a statutory settlement under the Settled Land Act. That that is the correct view is, we think, confirmed by the amendment to section 7 made by the Law of Property (Amendment) Act 1926. Shortly after the passing of the 1925 legislation fears were expressed that the existence of a rent owner's right of entry as a remedy for non-payment of the rentcharge[13] might mean that the owner of the land did not have an absolute interest—with the result that he had an equitable interest and the land fell within the Settled Land Act. Immediate steps were taken to remove this possibility: such cases were added to section 7 of the Law of Property Act (again without any corresponding adjustment of the definition of "determinable interest" in the Settled Land Act). The sole purpose of the 1926 amendment was to keep these properties subject to rights of entry out of the Settled Land Act, and if the section 7 formula does not do that the amendment was a complete air-shot.

15. The fact that the charitable trustees hold the legal estate may not, however, produce a complete answer to the question: what happens if the determining event (the cesser of the relevant use) occurs? Does the legal estate shift automatically to the person entitled on reverter, as under the old law; or is there only a passing of the beneficial interest, in equity, the trustees retaining the legal estate as trustees for the person entitled on reverter (instead of for the charity) until a normal transfer is demanded from them? Section 7(1) of the Law of Property Act itself is perhaps ambiguous, because it is not impossible for a fee simple (even a fee simple absolute) to divest in equity. In our opinion the words of the subsection are more naturally consistent with the view that Parliament intended to preserve the old law on divestment. The relevant words of the subsection appear to go further than would be necessary merely to confirm the defeasibility of the trustees' interest notwithstanding that it is deemed to be absolute for the purpose of preserving its legal quality. The words start with the word "and" rather than "but" and it is stated that the fee simple remains liable to be divested "as if this Act had not been passed". There is no doubt that if the Act had not been passed, the divestment would have been of the legal estate. We also note that section 7(3) of the Law of Property Act provides that certain statutes (of which the School Sites

[13]Law of Property Act 1925, s. 121.

Act 1841 is clearly one) shall "remain in full force", thereby suggesting that Parliament was not intending to bring about any fundamental alteration in their effect.[14]

16. On the other hand support for the opposite construction, which is more consistent with the general policy of the 1925 legislation, is to be found in section 3 of the Law of Property Act, subsection (3) of which provides that "where, by reason of a statutory . . . right of reverter . . . a person becomes entitled to require a legal estate to be vested in him, then . . . the estate owner . . . shall be bound to convey . . . such legal estate . . ." The reference in this subsection to statutory rights of reverter may be only to such rights contained in Acts of Parliament other than those named in section 7 (or "similar" Acts), and in particular to such rights contained in private Acts [15] (a class of legislation specially likely, perhaps, to contain them). We suggest further that if full weight is given to the words "as if this Act had not been passed" in section 7(1) there is no conflict between our construction of section 7(1) and section 3(3) because the latter should be disregarded. But if the reference in section 3(3) does indeed embrace rights under the "section 7" statutes, it is an indication that since 1925 the occurrence of the determining event does not by itself cause the legal estate to become vested in the person entitled on reverter: though as the absolute owner in equity he can demand a transfer in ordinary form.

17. Until recently such judicial authority as there was supported what we regard as the natural construction of section 7(1), namely, that on reverter the charitable trustees lose the entirety of their interest, including the legal estate. In *Re Ingleton Charity*[16] the facts were that a school (founded in 1846 on a site acquired under the Act of 1841) closed in 1929. No claim was made by anyone entitled by reverter and the trustees used the premises for various purposes until 1952 when they sold them. The question was whether the trustees could put the proceeds into a trust for general parochial purposes. Danckwerts J. held that although the trustees had obtained under the Limitation Act a title free from the right of reverter,[17] they had at all times been trustees for educational purposes and could not, accordingly, divert the funds to parochial purposes. That decision cannot possibly be squared with the proposition that the trustees became, in 1929, trustees for the person entitled on the reverter; and it is trite law that a trustee cannot obtain a title by long possession against his own beneficiaries.

18. We have also seen the transcript of the unreported judgment in *Re Chavasse's Conveyance* delivered by Harman J. in 1954. It is to the same

[14]It is this subsection which preserves e.g. the statutory conveyance of a bankrupt's legal estate to his trustee in bankruptcy. Such conveyances taking effect by operation of law are excepted from the normal requirement of a deed (Law of Property Act, 1925, s. 52(2)(*g*)).

[15]E.g. the right of reverter contained in s. 20 of the Public Schools Act 1868, relating to Westminster School.

[16][1956] Ch. 585.

[17]The original grantor's successors were not parties to the proceedings, but the judge was prepared to assume that the statutory limitation period (normally 12 years) had run: 27 years had elapsed since the closure of the school.

effect. The case related to a school formerly in Vincent Street, Balsall Heath, Birmingham. The school premises suffered severe bomb damage in 1940 but the trustees intended to rebuilt them after the war (and, indeed, applied to the War Damage Commission for a payment on a cost of works basis). The Birmingham Development Plan was however drawn up on the assumption that the Vincent Street area would be insufficiently populated for a school to be necessary and the Corporation took steps to acquire the school site by compulsory purchase. In due course there was a conveyance from the trustees to the Corporation and the purchase moneys were paid into Court. The trustees then applied to the Court for payment out to them, to defray the cost of establishing a new substitute Church of England school at some distance from Vincent Street. The application was refused on the ground[18] that the reverter provision attached to the original grant of the Vincent Street site had operated when it finally became clear that the school would not be re-opened[19] and that the trustees had, at the time of the conveyance, absolutely nothing to convey. They were accordingly not entitled to the money in court as no consideration had been given by them for it.

19. So far as we can tell section 3(3) of the Law of Property Act 1925 was not cited to the Court in either of the two cases just referred to in which the pre-1926 effect of reverter was treated as having survived. While we were considering the matter a further case came before the Court—*Re Clayton's Deed Poll, Williams Deacon's Bank Ltd.* v. *Kennedy*,[20] in which Whitford J. held that upon the happening of the relevant event there is a reverter of the beneficial interest (but not of the legal estate) and that the revertees are entitled to a conveyance under section 3(3) of the 1925 Act. This is tantamount to a decision that the Limitation Act does not apply in favour of the charitable trustees as against the revertees.[21] In those circumstances it is somewhat surprising to find that, so far from disagreeing with *Re Ingleton Charity* the judge regarded that case (among others)[22] as consistent with, or pointing towards, the view which he had formed.[23]

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[18]Another point relied on by the judge will fall for consideration later in this Report: see para. 43 and n. 45.

[19]This occurred at some stage in the compulsory purchase procedure and in any event not later than the notice to treat.

[20][1979] 3 W.L.R. 351. We have difficulty in seeing from the report where the dispute between the parties lay.

[21]In *Re Cawston's Conveyance* [1940] Ch. 27 Greene M.R. referred cryptically (at p. 39) to questions which might arise in relation to the trustees acquiring title under the Limitation Act. It may be that he saw that it could be argued that the 1925 legislation caused reverter to operate in a different way, viz. on the equitable title only.

[22]One of the cases referred to by the judge—*Bankes* v. *Salisbury Diocesan Council of Education Inc.* [1960] 1 Ch. 631—was a case not under the 1841 Act but under the earlier School Sites Act of 1836. The judge regarded the relevant provisions of the two Acts as "in all substantial respects comparable": but the 1836 Act contained no reverter proviso. It was common ground in the *Bankes* case that the legal estate was unaffected by the closure of the school; the question was whether the plaintiff was entitled under a resulting trust created by the original deed of grant.

[23]In relation to section 7 of the 1925 Act Whitford J. said that "an estate acquired pursuant to the Act of 1841 is just as liable to be divested now as it was before the passing of the 1925 Act". But the effect of the judgment is that the legal estate is not divested by the happening of the relevant event but passes by conveyance, if called for.

20. We have already indicated that as between the two views we prefer the one reflected in *Chavasse* and *Ingleton* to that adopted in *Clayton* as a matter of construction. We also consider that (given the present law in other respects) much can be said for the older view as a matter of convenience. In practical terms, the distinction is of little moment if the revertee is known, although acceptance of the *Clayton* approach means that a formal conveyance of the legal title from the trustees to the revertee should be made. The distinction is, however, vital if the identity of the revertee is not known. If the trustees remain in possession unchallenged, the right of reverter is capable (on the older view) of being barred in due course under the Limitation Act and all the problems arising from it would then disappear. The Limitation Act has however no application on the *Clayton* view.[24] If, on the other hand, the trustees have no funds and need to be relieved of all responsibility for the premises after reverter it seems that on the older view they can in the last resort simply abandon the premises. As neither owners nor occupiers the trustees would not, we think, be liable either for rates or for preventing the premises from becoming dangerous structures. But on the *Clayton* view the trustees cannot abandon the premises because they have become trustees of private trusts and they will have all the responsibilities of such trustees without any funds with which to meet them. Although they still hold the legal estate (so that they would have no problems over passing the title, from a conveyancing point of view) they are not trustees for sale and we do not believe that they can properly deal with their estate in order to raise money, without obtaining a Court Order. The retention of the legal estate does not, therefore, seem to us to be as advantageous as some of those who wrote to us supporting *Clayton* appeared to think.

B. *The questions arising directly on the wording of the 1841, 1854 and 1873 Acts*

21. We observe by way of introduction that the reverter proviso contained in section 2 of the 1841 Act shows some signs of not having been wholly drafted by a conveyancer. It speaks, for example, of "the said estate held in fee simple or otherwise, or of any manor or land as aforesaid" although there is no previous mention of any "estate" (as distinct from manors or lands); and it has been judicially held that the words "as if this Act had not been passed" are inaccurate.[25] In these circumstances it is perhaps not surprising to find that problems have emerged. The Act, we may add, seems to have passed all its stages in both Houses without debate.[26]

(i) *When does reverter occur?*

22. The 1841 and 1854 Acts provide for the reverter to take effect

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[24]If the *Clayton* view is upheld, questions of title may well arise in cases where, in the past, bona fide transactions have been effected (and schemes and orders made) on the basis that the right had been barred.

[25]*Re Cawston's Conveyance* [1940] Ch. 27 at p. 37 *per* Greene M.R. In fact, the words are taken to mean "as if the grant had not been made": as appears from the parallel reverter provisions in ss. 3 and 4 of the 1841 Act, relating to grants by the Royal Duchies.

[26]*Hansard's* Parliamentary Debates, 3rd Series, Vol. 58.

immediately upon the cesser of the relevant charitable use.[27] The 1873 Act is a little more sophisticated: it provides for reverter upon the land being used for any unauthorised purpose or (in the case of a place of worship or minister's residence[28]) upon the land having ceased to be used for the authorised purpose for a full year.

23. Cesser of use is a pure question of fact but there may well be room for argument as to what constitutes "cesser". Plainly, the 1841 Act (for example) does not envisage reverter of the site simply because the school has closed for holidays, or to enable repairs to be carried out. *Re Chavasse* indicates that "cesser" involves intentional permanent discontinuance of the charitable use: certainly, it was on that footing that Harman J. decided in that case that the relevant cesser took place not in 1940 (when the school premises were bombed) but after the War, when the trustees were obliged by the compulsory purchase proceedings to abandon hope of reopening the school. The same approach is visible in *A.-G.* v. *Price*[29] when the case reached the Court of Appeal. Although the school in that case closed (as an ordinary school) at the end of 1906, closure was followed by a long dispute about the terms of a charitable scheme to govern the use of the premises, and it seems to have been accepted that the charitable use had not relevantly "ceased" while there was a chance of establishing a scheme sufficiently close to the old use to be within the terms of the grant of the site. The scheme ultimately approved by the House of Lords appears to proceed on the basis that the trustees had not decided to abandon the authorised use, and that that use was in suspense rather than that it had ceased.

24. The point of time at which reverter takes effect will thus, in some cases, be a debatable question of fact. This directly affects not only the rights of the person entitled on reverter but also (if the decision in *Re Clayton's Deed Poll* is wrong) the operation of the Limitation Act in favour of the charity, if the charitable trustees remain in possession.[30] In the case of the 1873 Act any uncertainty as to the time when the premises cease to be used as a place of worship or minister's residence makes it uncertain when the year (which precedes reverter) elapses.

25. Although intentional or enforced permanent discontinuance of the authorised use must, we think, amount to "cesser" within the statutes, we consider that it would not be safe for trustees to rely on any lesser discon-

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[27]The words in the 1841 Act "for the purposes in this Act mentioned" have been judicially construed as meaning "for such of the purposes mentioned in the Act as are specified in the grant": *A.-G.* v. *Shadwell* [1910] 1 Ch. 92. The trustees are not free to depart from a use laid down by the grantor, even though the alternative is also within the purposes indicated in the Act: save perhaps under the authority of a scheme as in *Price* v. *A.-G.* [1914] A.C. 20.

[28]The Act appears to assume that while a burial place may be used for some other purpose it cannot simply cease to be used as a burial place.

[29][1912] 1 Ch. 667. But the revertee was not before the Court and its seems likely that neither party wanted the reversion to take place.

[30]In *Re Chavasse* the decision about the date of cesser was regarded as crucial: its postponement to a date after the end of the War meant that the trustees could not have acquired a good possessory title before the purported conveyance of the site.

tinuance not constituting "cesser". Let us suppose that a non-resident school teacher is appointed, so that the teacher's house is not in fact used as such; the trustees do not at that time know whether they will need the house for a school teacher at some future date; and as an interim measure the house is let. There is certainly no intentional (or enforced) permanent discontinuance on those facts: nevertheless it seems to us that it would be open to the court to find that the authorised use had ceased, and indeed that the court might well so find if it appeared that resumption of the authorised use in the future was unlikely or if the letting was for a substantial period. If we substitute "vicarage" for "teacher's house" in our example a further question arises because (as we have already noted) reverter under the 1873 Act attaches not only to cesser of use but also to use for an unauthorised purpose: and that may result from the letting. But again it is by no means clear what degree of unauthorised use would satisfy the statute and bring the reverter into effect.

26. Before leaving the question of what constitutes cesser of use we have to mention a special problem which arises in relating the reverter proviso in the 1841 Act to events which have occurred since, under statutory authority. The Elementary Education Act 1870, for example, authorised the transfer of a school to the school board or (later) the local education authority: with the result that a denominational school would cease to be denominational. Similarly, the Education (Administrative Provisions) Act 1907 authorised the appropriation of an elementary school to higher educational purposes. Further provisions of a like nature are contained in the Education Act 1944. The question is whether, notwithstanding the continued existence of the school, a change in the character of the effective trusts brought about by the exercise of such statutory powers causes the reverter proviso to operate if the new use cannot be reconciled with the trusts set out in the deed of grant. We understand that H.M. Land Registry takes the view that such a change causes the title to revert immediately; but we think it unlikely that the legislation under which the powers were granted was intended to be self-defeating in relation to schools whose premises were subject to reverter. On the footing that *Clayton* is incorrect, the question is largely academic so far as past changes under the statutory powers are concerned because even if reverter did occur when the powers were exercised, it occurred so long ago that the Limitation Act precludes the risk of claims by revertees. But if statutory alteration of the trusts brings about immediate reverter and *Clayton* is correct, the premises remain at risk however long ago the alteration occurred, because the Limitation Act cannot come to the rescue.

(ii) *What reverts?*

27. Under the 1841 Act, "upon the said land so granted . . . or any part thereof, ceasing to be used . . . the same shall . . . revert." The 1854 and 1873 Acts employ similar formulae. The first question which arises is, if the cesser of the relevant use relates to part of the land only, does "the same" refer to the land as a whole or only to the part? We understand that charitable trustees have put this question of construction to counsel on several occasions in the past—there has been no judicial decision on it—and have obtained conflicting opinions. We think the better view is that which accords with common sense, namely that part-cesser leads to part-reverter.

28. Another question arises under this head if the cesser of use is limited to part of a building erected on the site. Do different consequences flow from a division of the building (*a*) vertically (so that there is certainly a cesser of authorised use in respect of part of the actual site) and (*b*) horizontally? And, in the case of a horizontal division, does the outcome depend on whether the flat disposed of is on the upper or on the lower floors? The point here is that where the grant was of a site as such "the land so granted" primarily means the *site*; and although reverter of the site will carry with it any building on the site, it may be that there is no relevant "cesser of use" of "the land so granted or any part thereof" if the lower floors of a building (which actually occupy the site) are still in full use by the charitable institution. If that is right there are, of course, serious consequences to the charity if it parts with the whole of the ground floor, although it wishes to go on using the rest of the building. These questions arise very rarely in relation to schools (or, *a fortiori*, churches); but they arise more often in connection with associated residences and especially with large parsonage houses.

(iii) *To whom (or what) does the land revert?*

29. The statutory formulae are not quite the same: they are as follows:—

1841. ". . . revert to and become a portion of the said estate held in fee simple or otherwise, or of any manor or land as aforesaid. . ."

1854. ". . . revert to and become again a portion of the estate or manor. . ."

1873. ". . . revert to and become a portion of the lands from which the same was severed. . ."

What Parliament actually had in mind is a matter of pure speculation but the phraseology (especially perhaps that of 1873) suggests that it was expected that sites provided under the Acts would always constitute small parts of landowners' existing estates; and, moreover, that it was not anticipated that those estates would be broken up. If those expectations had been fulfilled it would be a matter of substantial indifference whether the site reverted to the ownership of the *grantor* (or his successors) or was rejoined to the *grantor's neighbouring land*; and the fact that the Acts express themselves in the latter manner would not give rise to problems. Unfortunately the conditions necessary for avoiding problems have not be satisfied.

30. The question whether reverter under the 1841 Act operates (and operates only) to rejoin the site to the grantor's land of which it had formed part was considered in *Re Cawston's Conveyance.*[31] The site of the redundant school in that case was an isolated one belonging absolutely to the grantor (i.e. it did not form *part* of land belonging to him) and it was argued on behalf of the charitable trustees that in such circumstances the reverter proviso had no application. This argument received very short shrift in the Court of Appeal, Greene M.R. (with whom Clauson and Goddard L.J.J. agreed) saying that it stood self-condemned and put much too narrow a construction on the language of the reverter proviso. The only reason directly given for this view was that the purpose of the Act would otherwise in some cases be defeated altogether—the proviso was, it seems, read as an integral part of

[31][1940] Ch. 27.

the section, so that if reverter did not apply because the site was not *part* of a land-holding, such a site could not be granted under the authority of the Act at all. The Court held that the reverter operated in favour of the grantor's personal representatives.

31. That decision produces a not unreasonable result in cases where isolated sites have been given to the trustees.[32] In the course of his judgment the Master of the Rolls may have prepared the ground for his decision on this point by paraphrasing the words ". . . revert to and become a portion of the said estate held in fee simple or otherwise, or of any manor or land as aforesaid" as "to come back and join up again with the estate *from which it was derived*"; and in the circumstances before him, the site had plainly been derived from Mr. Cawston's estate in a general sense rather than from a landed estate. But if that was his line of thought it seems to contain a slip: an "estate held in fee simple or otherwise" must refer to land, and cannot be a reference to a person's estate in a general sense.

32. On the whole we think that Greene M.R. was not intending to rely in any way on the presence of the word "estate" in the 1841 Act and that the Court's decision on the point rests squarely on its view of the policy of the Act. On that footing the decision is probably not restricted to 1841 Act cases but is equally applicable to cases affected by the Acts of 1854 and 1873.

33. What is not at all clear, however, is whether *Re Cawston's Conveyance* is authority for the proposition that the site always reverts to the grantor (or, if he had been only a limited owner, to the settlement under which he had held it); or whether it applies only to cases where the site was not part of a larger unit of land. We have heard of only one case in which the dispute has been between the grantor's heirs and the present owners of the "estate" from which the site had been severed. That related to a church in Wales and it was decided that the site reverted to the adjoining landowner.[33]

34. The main argument in favour of applying *Re Cawston's Conveyance* whether the site was part of a larger unit of land owned by the grantor or not seems to be that reverter is intended to restore the *status quo ante*; and that means that the site must go back to the grantor (or to his settlement). Even if the rest of the land from which the site was severed has since been disposed of, those dispositions are very unlikely to have included the site. Against that, however, are the express words of destination in the Acts, and it is perhaps particularly difficult to escape from the words used in 1873: "revert to and

[32]The merits in the particular case were not, perhaps, quite so obvious. Mr. Cawston had not given the land away, but had sold it to the trustees. It may, however, be noted that in cases where the land had been sold at less than full value or had been given to trustees, the decision might be consistent with one of the principles of the general law of charity. If a gift of property is made to a particular charity and it is clear that the gift is to endure for so long as that charity functions (and no longer), there will be a resulting trust in favour of the donor if he had no general charitable intent and the charity fails: see the line of cases following *In Re Randell* (1888) 38 Ch. D. 213 (and compare *Re Peel's Release* [1921] 2 Ch. 218).

[33]St. Andrew's Mission Church, Llanfairmathafarneithaf (Llangefni, Holyhead and Menai Bridge County Court. The case was decided in 1966).

become a portion of the lands from which the same was severed." It is worth noticing that Clauson L.J., who was party to the decision in *Re Cawston's Conveyance*, was the judge at first instance in the earlier case of *Dennis* v. *Malcolm*[34] and in the course of his judgment in that case he had said[35] "That summons was served on certain gentlemen who are the present trustees of the will of the original grantor. Whether or not they are persons of whom it can be predicated they are the owners of the estate part of which was granted by the deed of 1876, I do not know. On the evidence this is left in doubt." One can only infer from that statement that the judge considered that the proper claimants under the reverter were the present owners of the rest of the estate rather than the representatives of the grantor. The language used by Warrington J. in *A.-G.* v. *Shadwell*[36] also lends support to this view.

35. Whatever the answer, it may not be at all easy in any particular case to identify the person or persons entitled to the site under the reverter proviso. The majority of the conveyances under the Acts are without doubt pre-1914 in date, and tracing the grantor's heir (or the present entitlement under settlements which were thought to have been wound up long ago) may be a complicated matter—especially if there are intestacies at any stage in the devolution of the title.[37] But it seems to us that the practical problems inherent in adopting the view that reverter operates in favour of the owners of neighbouring land, in cases where the site was a severed part of an estate, are just as bad, if not worse. The basic problem is that the Acts provide no real guidance in identifying the unit of land constituting the rest of the "land or manor" to which the site reverts. This is a crucial question if the integrity of the estate as it stood at the date of the grant has not been preserved.

36. The phraseology of the Acts suggests that where the site was part of "land" owned by the grantor the maximum extent of the land referred to in the reverter proviso is an area round which a continuous fence could be placed. Any other land—in another county perhaps—which the grantor happened to own should be disregarded: the site was not and could not become again part of such land. It has, however, to be recognised that literal adherence to a "continuous fence" principle might sometimes be inappropriate. It would be perfectly natural to regard all the land in London belonging to one of the great landed families as a single estate unit, even if some parts of it constituted isolated sites. It may accordingly be difficult to decide whether a particular site is part of an "estate" or not.

37. But even if it is possible to exclude certain land from the relevant unit of land of which the site is to be regarded as having been part, we still do not have an answer to our question. Let us suppose that in 1850 a speculative builder acquired ten acres for development and decided to dispose, under the 1841 Act, of three-quarters of an acre to school trustees, because the existence of such an amenity would help him to sell the houses. The school is now

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[34][1934] Ch. 244.
[35]*Ibid.*, at p. 251.
[36][1912] 1 Ch. 92.
[37]We apprehend that where intestacies (or partial intestacies) are involved the devolution will be governed by the law as it was at the relevant time.

redundant. If one assumes that the original site does not revert to the builder, does its ownership pass to all the present freeholders of the nine and one-quarter acres,[38] in proportions determined by the sizes of their respective plots? Or does it pass to a limited number of them—for example to those whose plots actually abut on the site?[39] To questions of this sort the draftsmen of the Acts appear hardly to have addressed their minds: perhaps they were satisfied (as we are not) that the questions do not arise because the site would revert to the builder. Alternatively, it may have been thought that it was clear that the whole area constituted the unit because reverter should operate in relation to a site which was part of "land" in the same way as it would operate in the case of a site which was part of a "manor". A manor is (or at any rate would in the nineteenth century have been) a readily identifiable unit. All we can say is that if reverter operates in favour of the current freehold owners of neighbouring land, development of the neighbourhood since the grant to the charitable trustees will probably have produced serious difficulties in dealing with the affected site if the determining event occurs.[40]

(iv) *Do the trustees have any power of sale?*

38. The Places of Worship Sites Act contains no power of sale: this is not surprising, having regard to the subject-matter. There are however provisions relating to sale (or exchange) in both the School Sites Act 1841 and the Literary and Scientific Institutions Act 1854; but there are material differences between these two Acts in this connection.

39. One thing at least can be said about both Acts: it is not disputed that the charitable trustees cannot avail themselves of the sale provisions if the relevant reverter proviso has already taken effect: they then have no title (or at all events no beneficial title) to dispose of. That point is fundamental to any consideration of the working of the Acts with which we are concerned and it affects the shape of the reforms which we later suggest. The occurrence of reverter undermines the jurisdiction to make schemes under the powers to which we will in due course refer, because the land will no longer be held on relevant charitable trusts.

40. It is also clear from the terms of section 4 of the 1854 Act that a site given under that Act by either of the Royal Duchies cannot be sold or exchanged if the museum (for example) is moved to another site; but that a site *given* by anyone else for such a purpose can be sold or exchanged in such circumstances, and in that event the right of reverter disappears. The section thus leaves little or no room for doubt as to the scope of the power of sale under the 1854 Act or as to the effect of its exercise. What is not so clear is the corresponding position in relation to a school site granted under the 1841 Act.

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[38]Or, more precisely, to those of them whose plots were sold by the builder after the conveyance to the school. Plots disposed of earlier would not have been part of the grantor's land at the relevant time. This consideration merely adds to the difficulty in identifying the persons now entitled.

[39]And, if so, in what proportions?

[40]The Law of Property Act 1925 makes no provision for dealing with legal tenancies in common springing into being after 1925.

41. It is necessary for us to draw attention at this point to the fact that a right of reverter does not necessarily exist in relation to all grants under the 1841 Act. The Act deals separately with different classes of grantor: beneficial owners as private individuals in section 2, the Royal Duchies in sections 3 and 4[41] and others (especially persons holding land on public or charitable trusts) in section 6. Reverter provisos were firmly attached to sections 2, 3 and 4: opinions differ as to whether there is a right of reverter in the case of grants made by or on behalf of equitable owners and persons under disability under section 5; and there is no reverter provision in section 6.[42] The provision authorising sale or exchange (section 14) does not itself contain anything to suggest that its scope is restricted (so far as grants under the 1841 Act are concerned) to grants under section 6; but there is, at the same time, something a trifle odd in providing a power of sale in relation to sites granted under, for example, section 2 which *prima facie* revert if not used as schools.

42. The question whether the power of sale contained in section 14 applies at all to cases where a right of reverter exists is one of some difficulty. The reverter provisos end with the words "any thing herein contained to the contrary notwithstanding", and the answer to the question seems to depend on the proper construction of these words, and in particular of the word "herein". If it means "in this section", it does not affect section 14 (though it may be otiose); but if it means "in this Act" it would seem to disapply section 14. The point has not been raised in any of the reported cases and it is accordingly not possible to anticipate the answer which a court would give, after argument; but there is no doubt but that school trustees (and purchasers from them) have in countless cases assumed that section 14 provides a power of sale in appropriate circumstances, irrespective of the section under which the trustees acquired their title. The assumption is also to be found in the judgment of Clauson J. in *Dennis* v. *Malcolm*.[43] It has, of course, also been assumed that if a site is sold under section 14, any right of reverter is destroyed. There is nothing in the Act to support the view that it might be transferred to some other site,[44] or to the proceeds of sale.

43. In our view the merits of the case, at least, are on the side of the assumption: and that probably explains why it has not been challenged. The power of sale under section 14 is exercisable only in order to enable the trustees to move the school: it does not allow the trustees to close the school, as an institution. In the middle of the nineteenth century the population was

[41]Section 4 related to grants by the Duchy of Cornwall. The provision was substantially duplicated (less a right of reverter) in Acts of 1844 and 1863 relating specifically to that Duchy, and s. 4 was repealed by the Statute Law Revision Act 1874. For present purposes therefore we are concerned with only some of the grants made by the Duchy between 1841 and 1874, and with none made later.

[42]Or in s. 5 of the School Sites Act 1844, concerned with the similar case of grants of glebe land. The Court of Appeal appears to have accepted that no right of reverter exists in these cases (*Hornsey D.C.* v. *Smith* [1897] 1 Ch. 843) and this has long been the view adopted by the Education Department and its successors. H.M. Land Registry has, however, been known to refuse to register with absolute title a purchaser of a site originally granted under s. 6 of the 1841 Act.

[43][1934] Ch. 244 at p. 249.

[44]The right plainly attaches only to the site granted. Further, difficulties would plainly arise if the new site acquired in substitution for the old were larger and more valuable.

increasing and it was readily foreseeable that a school might outgrow its premises. Section 14 recognises not only that the site originally granted (which was by the statute limited in extent) might become too small, but also that there might not be available any adjacent land on which it could expand. The limited power of sale contained in section 14 was an almost essential feature of the 1841 Act if the general policy of the Act was not to be frustrated. By the same token, we believe that grantors would not have regarded the grant of the original site as an end in itself, but only as a means to an end, namely the establishment of a school; and, consistently with that approach, they would not have wished to recall their benefaction simply because their school was a success and had to move to larger premises. Of course, it would be quite different if the site ceased to be used for school purposes because their school ceased to exist. The grantor's right of reverter cannot be overriden by a sale under section 14 if education is thereafter provided not in the same school elsewhere but in a substitute school. Many grantors defined the school which they were helping to establish by reference to a locality and the fact that the new premises are a long way away from the old ones may well make the new school a different school for present purposes, if only because it is likely to have a fundamentally different catchment area.[45]

(v) *What is the effect of events occurring between the grant and the reverter?*

44. A common case in which the 1841 Act was resorted to was that where the intending donor was the tenant for life of an entailed estate. In such a case it would be equally common to find that at some time between the grant and the occurrence of the reverter the entail has been broken, and the settlement brought to an end. Does the site devolve as if the disentailment had applied to it? It is unlikely that the deed will have referred to the possibility of reverter—there may even be some doubt as to whether such a deed could effectively deal with a matter which was, at the time, not more than a possibility. A parallel problem may arise in connection with settlements brought to an end by the exercise of a power of appointment.

45. This question is not explicitly answered in the Act and it is, as far as we know, untouched by authority. On one view of the reverter proviso—namely, that the site joins up again with land—it may be a non-question, for it would then be possible to argue that a disentailment (or appointment) affecting the land of which the site was treated as being part would equally affect the site itself when it merged. But if that is not the correct view of the reverter proviso (or is not the view which should commend itself for the future), the question is one which merits consideration.[46]

46. A somewhat similar question arises in relation to rights in manorial land. The 1841 Act provides that if the school site was gratuitously granted

[45]It was for this reason that Harman J. held in *Re Chavasse* that the trustees could not in that case rely on section 14.

[46]In their comments on the draft of this Report, the Bar suggested that reverter should always be to the grantor (or his personal representatives) even if the grant was made out of settled property by a limited owner. On that footing the question is always a non-question; but the suggestion seems to breach the principle that reverter operates to restore the *status quo ante*, as if the grant had never been made.

by the lord of the manor out of waste or commonable land, the rights and interests of all persons in the land are "barred and divested". Do rights of common, lost by the grant, revive on reverter? If the general answer is yes, is the answer in any particular case affected by anything[47] which may have happened in the interval? It seems to us that although this is a very recondite area of the law the opportunity should be taken to clarify the point.

(vi) *What is the effect of reverter on the quasi-corporate status of ministers and churchwardens under section 7 of the 1841 Act?*

47. This is another point which could usefully be clarified, although it is now relevant only to the Church of England.[48] Under section 7 (as amended by the 1844 Act) the grant of a school site to an incumbent and his churchwardens upon trust for the education of poor persons[49] vests the site in those persons and their successors, thus avoiding the necessity of having formal appointments of new trustees from time to time. If reverter occurs (and *Clayton* was wrongly decided) the site will cease to be vested in such a quasi-corporation; but the minister and churchwardens at that date will in many cases remain in possession and, in due course, a good title may be acquired under the Limitation Act. *Re Ingleton Charity* decided that a title so acquired was held upon the original educational trusts and it may be that the quasi-corporate status of the incumbent and churchwardens should be regarded as persisting throughout the period since reverter occurred and as continuing when the good possessory title has been acquired. Be that as it may if, at a later date, the persons acting *de facto* as the trustees approach the Charity Commissioners for a scheme (on the footing that the site is held on charitable trusts and that the right of reverter has become barred by lapse of time), the Commissioners will, we understand, usually accept that they are the proper applicants. *Clayton*, however, appears to upset the position. If that decision is correct, the trustees at the date when reverter occurs cease to have any relationship of a charitable nature with the property; they are in possession as private trustees for the revertee. In those circumstances not only do the Charity Commissioners have no part to play but also the special grounds for giving the incumbent and churchwardens quasi-corporate status disappears. It would seem to follow that the trustees' title would devolve, after reverter, in accordance with the general law. The persons who were churchwardens at the date of reverter would become (and remain) trustees for the revertee in a personal (rather than in an *ex officio*) capacity, and their successors in office would not be concerned. It is perhaps an open question whether (on a *Clayton* basis) an incumbent's trusteeship would attach to the individual who was incumbent at the date of reverter. It is arguable that in his case the responsibilities remain attached to the office because the incumbent is a corporation sole under the general law; and if that be right the trusteeship would eventually vest in the incumbent for the time being alone, by survivorship. In our view, these questions need answers.

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[47]Including, for example, the Commons Registration Act 1965; and see also the Commons Registration (New Land) Regs., S.I. 1969, No. 1843.

[48]Since the disestablishment of the Church in Wales in 1914, School Sites Act property formerly vested in Welsh incumbents etc. under s. 7 of the 1841 Act has been vested in the Diocesan Trusts, and the problem does not arise in Wales.

[49]And sometimes also to the parish overseers of the poor.

48. There is a further question in relation to this quasi-corporation to which our attention has been drawn, namely whether the churchwardens can act alone in exercising any power of sale during a vacancy in the living. We ourselves have no doubt that the answer is in the affirmative but the question is important because a vacancy may be protracted—it probably will be if the benefice is under suspension—and a sale, to be effective, must take place before the school site ceases to be used for the trust purposes.

(vii) *What is the effect of consecration?—a problem peculiar to the 1873 Act*

49. Although, as we have noted earlier,[50] the relevant proviso in the Places of Worship Sites Act 1873 is not identical with that in the School Sites Act 1841, it is in such similar terms that the same questions of construction arise. What constitutes cesser of use? What exactly reverts? To whom (or what) does the property revert? So far as parsonage houses are concerned the position is, we think, really indistinguishable from that of school teachers' houses. Burial grounds, though they can be within the 1873 Act, appear not to have presented problems in practice probably because reverter cannot occur accidentally: once burials have taken place, the site will not "cease to be used" as a burial ground merely by closing it to further burials.[51] Nor do churches and chapels belonging to denominations other than the Church of England give rise to special problems because even if they are consecrated, consecration in their case does not have an effect similar to that operating within the established church. The consecration of a Church of England church or chapel, however, has a special effect in law and in the present context this complicates matters. The 1873 Act makes no provision for the removal of this effect if the site reverts.

50. As we understand it the position is that consecrated ground cannot be divested of its sacred character except by or under an Act of Parliament or Measure and that no judge has power to grant a faculty to sanction the use of such ground for secular purposes (or, at any rate, for wholly secular non-public purposes).[52] The act of consecration affects the land and not merely any buildings on it, so that the rule will continue to apply even if the church is demolished or becomes so ruinous that it would have to be substantially rebuilt if it were to be brought back into use for worship.[53]

51. To the best of our knowledge there is only one statute relating to the removal of the legal effect of consecration: the Pastoral Measure 1968.[54] This

[50]Paras. 22, 27 and 29.

[51]Clearance of the site would presumably constitute a relevant cesser of use but this brings other legal provisions into play.

[52]See *Sutton* v. *Bowden* [1913] 1 Ch. 518 at p. 551 *per* Farwell L.J. citing decisions of Dr. Lushington and Cockburn C.J. The judge noted that faculties had been granted to allow road-widening and the erection of Church of England schools in which there would be regular religious education.

[53]In such a case there may be a re-consecration, dedicating the new edifice. Whether this is called for depends on the extent of the rebuilding: see *Parker* v. *Leach* (1866) L.R. 1 P.C. 312.

[54]In addition, land acquired by a minister, a local authority or a statutory undertaker may, under s. 128 of the Town and Country Planning Act 1971, be used for secular purposes notwithstanding that it is (and remains) consecrated land. This provision is of no substantial value for our present purposes.

provision is part of the arrangements for redundant churches and it recognises that unless the land is freed from its ecclesiastical disability it would not be possible to give effect to the particular dispositions contained in pastoral or redundancy schemes made under the Measure. But if the site of a church is subject to reverter under the 1873 Act the Church Commissioners will not make such a scheme. The declaration of redundancy (which sets the scheme-making process in motion) would close the church; the church authorities would (after the lapse of a year) cease to own the land and any scheme would thereupon collapse.[55] Even if this were not so, pastoral schemes are designed to benefit the Church, and not revertees.

52. It seems to follow from what we have said that if any consecrated land reverts to the original owner of the site under the proviso in the 1873 Act the land will be sterilized in his hands. We find it difficult to believe that the effect of consecration would have been overlooked in 1873; but even if consecration largely defeats the purpose of the proviso it does not seem possible to say that as a matter of construction the proviso does not apply to consecrated land. Parliament may have assumed that the Act would not be greatly resorted to for Church of England purposes[56] and that, even if it were, churches and churchyards belonging to the established church would not fall out of use. The latter assumption, if made, has proved mistaken.

53. We should add, for the sake of completeness, that there is in relation to the subject-matter of the 1873 Act no statutory authority parallel to that in the Education Act 1973[57] for over-riding the right of reverter (as distinct from the legal effect of consecration) by Order. The position of parsonage houses provided by the 1873 Act is therefore marginally worse than that of teachers' houses, even though the special difficulties created by consecration do not arise.

C. *Other Acts incorporating reverter provisos on the same pattern*

54. We have discovered only two other statutes which expressly provide for the grant of land for particular purposes with a right of reverter modelled on that of the School Sites Act 1841.[58] The first is the Duchy of Cornwall Management Act 1863, section 36 of which authorises grants for churches, chapels, burial grounds, schools for the education of the poor and ministers' and teachers' residences. The reverter provision is interesting in that it applies only when the grant was gratuitous or for a limited period; and it does not

[55]Indeed, it is unlikely that a scheme would yet have been made; as the law now stands, a redundancy scheme may usually not be prepared until at least one year has elapsed since the making of the declaration of redundancy: s. 49 of the Measure.

[56]By 1874 most of the Church of England church building made necessary by urban expansion had already taken place under the earlier Church Building Acts and Gifts for Churches Acts. That legislation operated in favour of the established church only; but the 1873 Act was general in its application and it may have been that the other Christian denominations were seen as its principal beneficiaries.

[57]Discussed in Part III below.

[58]We are not concerned in this report with the reverter at common law of the surface of an abandoned highway in favour of the owner of the subsoil.

apply if the land has been consecrated. The second statute was the Volunteer Act 1863, section 33 of which provided for grants of land for rifle ranges on a reverter basis: and the purposes were subsequently enlarged.[59] That section (and the connected provisions in the later statutes) were repealed by the Military Lands Act 1892, and land has not, we think, been acquired for military purposes on those terms since then. Nevertheless, we understand that an appreciable amount of land was acquired (subject to reverter) by volunteer associations between 1863 and 1892 and that the Treasury Solicitor has on a number of occasions been faced with the difficulties surrounding the reverter provision, in connection with the disposal of assets belonging to disbanded Territorial Army units.

55. The editorial note at the head of the Consecration of Churchyards Act 1867 in *Halsbury's Statutes of England*[60] states that a conveyance of land under that Act for the enlargement of a churchyard is subject to a right of reverter, as under the School Sites Act. It is true that under section 4 of the 1867 Act the School Sites Acts are "deemed to apply"; but in our view the context shows that the reference to those Acts was introduced to indicate the classes of persons who should be entitled to make grants, but no more. Section 7 of the 1867 Act envisages that land conveyed under the Act might remain unused (and, indeed, unconsecrated) for a considerable period; and after the expiration of five years after the conveyance the churchyard owner is treated as having an absolute title, free from any claims whatever. It seems to us that section 7 points away from the existence of any right of reverter, and that the editorial note in *Halsbury* is probably mistaken. In any event the five-year rule contained in section 7 seems to render the point academic and we do not propose to notice the Consecration of Churchyards Act further.

PART III

POWERS OF THE COURT, OF THE CHARITY COMMISSIONERS AND OF THE SECRETARIES OF STATE

56. Before turning to consider proposals for reform of the law it is necessary that we should say something about the scheme-making powers exercisable by the Court, the Charity Commissioners and the Secretary of State for Education and Science and the Secretary of State for Wales. The Court and the Commissioners have very wide (though not identical) powers in relation to charities generally; and, as we shall see, the Secretaries of State have different (and in some respects more extensive) powers in relation to educational charities. It might therefore be thought that these authorities would be able to overcome many of the problems presented by the Acts which we have been discussing. The unfortunate truth is however that the presence of a right of reverter operates in practice as a very severe limitation on the exercise of these powers, which accordingly have relatively little impact on those problems. It is perhaps especially surprising that this should be so

[59]Regulation of the Forces Act 1871, s. 17; Drill Grounds Act 1886, s. 2; Barracks Act 1890, s. 3; and Ranges Act 1891, s. 10.

[60]3rd ed., Vol. 10, pp. 1120 et seq.

in relation to schools, having regard to the fact that there has been no lack of legislation directed to restructuring the educational system.

57. As it is in the educational context that schemes are most often called for, it will be convenient to deal first with the powers of the appropriate Secretary of State under the Education Acts. The relevant powers are now contained in section 2 of the Education Act 1973 (replacing section 86 of the Education Act 1944, which was substantially to the same effect). That section relates to voluntary denominational schools, that is to say to schools providing, under their trusts, religious education in accordance with the tenets of a particular religious denomination: it accordingly applies to (among others) all the Church of England schools established under the auspices of the National Society, and those are the schools which, above all others, are likely to have been set up under the 1841 Act. The section enables the Secretary of State by order to make new provision for the endowments of such schools which have closed, or are likely to close. Subsection (3) of the section provides for the sale of such land; and in that connection provides further that in the case of land liable to revert under the School Sites Act 1841 the Secretary of State may by order exclude the operation of the reverter proviso if he is satisfied either that the person to whom the land would revert cannot after due enquiry by found or that the revertee has agreed to relinquish his rights (with or without compensation).

58. The stated purpose[61] of making orders under section 2 of the 1973 Act is to enable the denominational authority—which in the vast majority of cases means the appropriate Church of England Diocesan Education Committee—to participate more effectively in the administration of the statutory education system; and such orders cannot be made unless applied for by that authority.[62]

59. Although at first sight the provision in section 2(3) of the 1973 Act relating to rights of reverter looks promising, on closer inspection it turns out to be of somewhat limited value in the present context. First, while it may be true that the majority of 1841 Act school sites were for schools of the sort falling within the section, we understand that a significant number of cases arise in which section 2 orders cannot be made because an attachment to a particular religious denomination is lacking.[63] Secondly, although the power to make new trust provisions is available whether the school is still in operation or not, the particular power by order to exclude the operation of a right of reverter must be exercised (if at all) *before* the school closes: that is to say while it can still properly be said that the land is "liable to revert" and while the revertee is still the person to whom it "would revert". It is not surprising that the power to exclude the operation of the reverter provision should be exercisable only while the premises are "liable to revert" (and not after they have reverted) because the section as a whole relates to the school's endow-

[61]Section 2(4) of the 1973 Act.
[62]Section 2(2).
[63]The trusts of schools founded by the British and Foreign Schools Society, for example, often required only "Christian" education.

ments, and once reverter has taken effect the premises cease to form part of those endowments. Thirdly, the power to extinguish the right of reverter is often exercisable in practice only if, after due enquiry, the revertee cannot be found. Little or no benefit would accrue to the denominational authority from an order, coupled with an obligation to compensate a known revertee, if the amount of the compensation equalled the net proceeds of sale.[64] And fourthly, we understand that denominational authorities sometimes decide not to apply for section 2 orders in relation to particular schools and the opportunity to extinguish the rights of reverter affecting them may thus be lost.

60. Of the various points mentioned in the previous paragraph, the second—that the exclusion of a right of reverter can only be ordered before the reverter takes effect—gives rise to special difficulty in practice. The problem stems from the fact that the Secretary of State has to perform a dual role in relation to the closure of a denominational school. His first duty is to consider the proposed closure on purely educational grounds; his second (which does not arise until the decision to close the school has been taken) is to consider whether he should exercise his powers under section 2 of the 1973 Act (assuming that he has been asked to do so). In exercising the first function he must comply with detailed requirements[65] for the publication of proposals to cease to maintain the school and for the consideration of objections. It is most desirable that this function should be seen to be exercised impartially by the Secretary of State and it would undermine his credibility in this respect if he were simultaneously making enquiries as to reversioners, from which the inference might be drawn that he had already decided that the school should be closed. In order that he might be seen to be acting fairly and impartially in the exercise of his basic educational function, the Secretary of State defers enquiries for reversioners until the decision as to the future of the school has been taken. By that time it is often too late to carry out the statutory procedure prescribed in section 2 of the 1973 Act and to make an order before the date fixed for closure.

61. We now turn to the powers of the Court and of the Charity Commissioners to make *cy-près* schemes for charitable purposes. This jurisdiction extends, of course, to charities generally and not only to schools.

62. At one time, *cy-près* schemes were not infrequently established by the High Court itself. The case of *A.-G.* v. *Price*,[66] although not typical, illustrates the exercise of this jurisdiction: it also demonstrates a significant limitation on its exercise imposed by the presence of a right of reverter—great care must be taken lest the scheme itself create the circumstances which would bring reverter about. But the existence of a right of reverter will very often have an even greater effect because the circumstances which give rise to the need for a scheme may well be the very circumstances which cause

[64]The land granted under the 1841 Act would often constitute the whole of the site occupied by the school; but it might happen that it did not and that the ability to sell the site as a whole might enhance the price attributable to the part in respect of which no compensation was payable.

[65]Education Act 1980, s. 12 (formerly in the Education Act 1944, s. 13).

[66]Reported in the Court of Appeal at [1912] 1 Ch. 667.

reverter to take effect. Once reverter has occurred the land is released from the charitable trusts to which it had been subject and it is too late to affect the revertee's rights by making a scheme. That, at least, is the position if the land is claimed by the revertee. In a number of instances, however, no such claim is made: the revertee may not be known or (as in *A.-G.* v. *Price*) may not wish to have the land back; and in such cases the Court has in the past sometimes felt able to take a benevolent view of the facts in favour of the charity and make a scheme upon the footing that the prescribed use of the land has not "ceased" but is merely in suspense, the scheme being formally limited to operate pending restoration of the prescribed use.[67] We do not know whether, since *Re Clayton's Deed Poll*, the courts will continue to adopt this approach, because if that decision is correct the Court has no scheme-making jurisdiction once reverter has in fact taken place, and the trustees' duties are clear (even if the identity of their beneficiary is not).

63. Under the Charities Act 1960 the Charity Commissioners have concurrent jurisdiction with the Court to make *cy-près* schemes either on the direct application of charitable trustees or in consequence of a direction by the Court to that effect. It is now more usual for the Court to adopt the latter course than to construct schemes itself. But the existence of a right of reverter places the Commissioners in the exercise of their ordinary jurisdiction under the same inhibitions in relation to *cy-près* as the Court and the general rule has been that they would not make a scheme which was liable to be upset by the appearance of the revertee. Furthermore, in order that there should not be any conflict, they would not act under their ordinary *cy-près* jurisdiction (or under their special powers contained in section 19 of the Charities Act) if or while the Secretary of State might make an order under section 2 of the Education Act 1973. Until recently, it was generally thought that if the trustees had remained in possession for twelve years or more after they had lost their title by reverter the problems associated with the right of reverter would have disappeared; and the Commissioners readily acceded to applications for schemes after the interval, if it was clear that no section 2 order could (or would) be applied for. A scheme at that stage was better than none, though it could not help trustees during the Limitation Act period[68]; but the decision in *Re Clayton's Deed Poll* has cast doubt on the relevance of the Limitation Act in this field and we understand that the Commissioners are not in any circumstances now making *cy-près* schemes after reverter has occurred.

64. We conclude this Part by drawing attention to an important difference in effect between section 2 orders under the Education Act 1973 and *cy-près*

[67]See the terms of the order made by the House of Lords in the Price case, reported *sub nom. Price & Ors.* v. *A.-G.* [1914] A.C. 20.

[68]Exceptionally, if the trustees had no alternative but to abandon the property in order to relieve themselves of a *damnosa hereditas*, the Charity Commissioners were usually prepared to authorise them to sell "such estate or interest as they may have" and subsequently to make a scheme for the application of the net proceeds. This procedure preserved the value of the property for charity in the not unlikely event of there being no adverse claim within the limitation period. The trustees were required to take out a policy of insurance indemnifying themselves against any successful claim. Surprisingly, purchasers appeared to be prepared to proceed on this basis. This procedure was not adopted if the Secretary of State had power to act: and the decision in *Clayton* seems to have undermined it altogether.

schemes made by the Court or by the Charity Commissioners. By definition the latter reflect the original trust purposes; and since the trusts on which 1841 Act sites are held are almost invariably tied to a particular locality (usually to a particular parish) trust purposes as varied by *cy-près* schemes tend to remain local in character. The jurisdiction of the Secretary of State is however not so restricted: orders under the Education Acts may make fundamental alterations in the trusts. In practice, the proceeds of sale of Church of England school premises, sold under a section 2 order, are generally applicable by the Diocesan Education Committee towards establishing new church schools, transferring existing schools to new sites, enlarging existing schools on their own sites or in maintaining school premises within the diocese. If the Church of England were deprived of such funds its ability to participate effectively in the statutory system of education would, we understand, be jeopardised and the statutory purpose behind section 2 would be defeated. This is a point which must be borne in mind in considering proposals for reform of the law.

PART IV

CONSIDERATION OF PROPOSALS FOR REFORM

65. It is, we hope, clear from what we have said so far that the law relating to the rights of reverter under the statutes with which we are concerned is in a highly unsatisfactory and confused state. This may not have mattered very much in the past but the reverter provisions are now operating with sufficient frequency to justify the effort required to introduce reforms. Our examination of the statutes in question raises three principal questions:—

(i) What is the value, today, of the 1841, 1854 and 1873 Acts? Should they be repealed?

(ii) Should all or some of the rights of reverter attached to past grants under the Acts be abolished?

(iii) If and to the extent that existing rights should be preserved, what can be done to clarify them and to improve the manner of their operation? In particular, what can be done to solve the acute problems which arise if the revertee cannot be readily identified when reverter occurs?

We accordingly proceed to consider possible reforms in the law under those three general heads.

(i) *The value of the 1841, 1854 and 1872 Acts today*

66. When these statutes were passed they served both social and legal ends. They encouraged grants of land for the charitable purposes specified in the Acts; and they helped to overcome technical legal difficulties created by the Mortmain Acts and by aspects of the law rendering many of the most likely grantors incompetent effectively to make such grants.

67. These purposes seem now to be irrelevant. It is no longer a significant matter of public policy to induce landowners to grant sites for these particular charitable purposes—indeed, it may be questionable whether a school would

now be established "for the education . . . of poor persons." The Mortmain Acts have passed into history; adult married women are now completely free to dispose of their own property; and tenants for life have adequate powers of disposal under the Settled Land Act 1925. In the latter connection we would draw attention in particular to section 55 of the Settled Land Act which to a large extent duplicates the power to make free grants contained in the earlier legislation with which we are concerned.

68. In these circumstances it seems to us that the School Sites Acts (viz., that of 1841, together with those extending, amending and explaining it), the Places of Worship Sites Act 1873 (together with the Places of Worship Sites Amendment Act 1882) and so much of the Literary and Scientific Institutions Act 1854 as relates to grants of land for the purpose of such an institution, could now be repealed without loss; and we so recommend. The repeal of the School Sites Act in their application to Scotland has already been effected.[69]

69. One effect of repealing the School Sites Act 1841 would be that the power of sale or exchange in section 14 would no longer be available to the trustees of school trusts. That there will continue to be a need for there to be a power of sale is something we accept: but the power actually contained in section 14 is far from satisfactory—it is not free from doubt to what cases it applies[70]—and it is open to question whether a separate power of sale as such is now required, having regard to the more comprehensive power enjoyed by charity trustees under section 29 of the Settled Land Act 1925. We discuss this in paragraphs 106 to 113 below. The objections to section 14 do not apply to the straightforward power of sale in the 1854 Act and we recommend that that should be preserved as a power attached to existing sites granted under that Act.

(ii) *Should all or some of the rights of reverter under past grants be abolished?*

70. The reverter provisions look extremely odd to modern eyes. We would have little difficulty in understanding (or indeed justifying) the existence of provisions which had the effect of reverting to their original owners sites given for purposes which, in the event, never took effect.[71] But the actual reverter provisos affecting schools and churches go a great deal further than that. They usually operate many years after the grant as a windfall. This is, perhaps, especially the case where churches are involved because we think that in the nineteenth century few if any grantors would have foreseen that churches, once built, would fall out of use. Furthermore, since any building erected on the site will revert with the site the revertee will often recover assets provided not by his predecessor (the original grantor) but by the charity itself (with or without assistance from public funds). If the building is a dwelling-house the value of the windfall may have been substantially enhanced in that way.

[69]Education (Scotland) Act 1945, Sch. 5 (Obsolete enactments).

[70]See para. 42 above.

[71]We understand that very occasionally a case is found where land given under s. 2 of the 1841 Act has never been used for a school, nor for any educational purpose. It is difficult to be sure that land which has never been used for a particular purpose can fairly be said to have "ceased" to be so used within the meaning of the Act.

71. A particularly remarkable feature of the reverter provisos under the 1841 and 1873 Acts is that they can operate not only where the site was freely granted but also where it was purchased by the charity or where it was acquired by exchange. It seems to us that the explanation sometimes given for the existence of these provisos, namely that they constituted an incentive to landowners to make sites available, is somewhat less plausible in relation to cases where the grantor received full consideration. The incentive was certainly over-generous in such cases.

72. In view of these features which can make at least some reverter claims distinctly unmeritorious we have given serious consideration to the suggestion that the simplest and best course would be to abrogate these rights of reverter altogether. There are however arguments both of principle and of social convenience which can be put against taking so drastic a course and a solution of the problems along such lines was not extensively advocated in consultation, even by those having responsibilities for education.[72]

73. First, abrogation means expropriation, and while it has for some thirty-five years[73] been accepted that this factor may fairly be left out of account if the revertee is unknown, it is noteworthy that successive Education Acts have not adopted so radical a solution to the inconvenient problems created by the presence of a right of reverter. A solution involving expropriation is never one to be adopted lightly. We expect that there are substantial numbers of revertees who could make good their claims without difficulty, because they are the direct successors in title to the settled estates out of which the grants were made. By no means all the family settled estates existing in the nineteenth century have been dispersed and it is worth remembering in this context that some of them gave up many separate sites, so that potential rights of a considerable total value would be at stake.

74. Secondly, just as reverter may sometimes operate in circumstances where it is inequitable that it should do so, so also may its operation sometimes work for the benefit of the inhabitants of the locality. Premises to which the Acts apply—and especially schools—often develop secondary uses: many village schools, for example, double as village halls. Redundancy of the premises for the specific purposes set out in the grant may result in the premises becoming no longer available for the secondary uses, whether or not a reverter provision applies. If there is no reverter that result will, we think, be the usual one because the owners of the premises will want to realise their value on the open market for the benefit of their educational or ecclesiastical activities elsewhere. If, however, the site and premises revert to the grantor's successor it is by no means unknown for him to settle the property on new trusts for the benefit of the locality (which in all probability would

[72]The point has however been made that if the rule against perpetuities had always been as it is now, most if not all of the existing rights of reverter would by now have become void as offending the rule, and the trustees' titles would have become absolute: see Perpetuities and Accumulations Act 1964, s. 12.

[73]Since the Education Act 1944.

preserve the established secondary use if there is one), and that is, of course, what the inhabitants of the locality want.[74]

75. In our draft report on which we consulted we recommended the adoption of a middle course which would abolish some rights of reverter forthwith and preserve others. The rights destined for abolition were (i) those in relation to school sites which had been *purchased* from the original owner and (ii) those in relation to church and chapel sites on which a church or chapel had been built, whether the trustees had acquired the site by purchase *or* by way of gift. It transpired on consultation that solicitors in general, and The Law Society in particular, were opposed to those suggestions, on the broad ground that they amounted to expropriation of existing rights: but it is a matter of interest to note that that point was not relied on by those who wrote to us on behalf of estates owning such rights.[75] The Bar's approach was somewhat different. For them, the statutory right of reverter can clearly be justified in those cases where, in analogous circumstances, the property would be held to revert on the basis of a resulting trust; and we infer from that that they do not hold strong views in relation to cases to which the doctrine of resulting trust is inapplicable. *Prima facie*, that doctrine does not apply in relation to purchased property. The Bar also recognised the existence of special considerations in relation to consecrated church property, and did not oppose our provisional recommendation so far as such property was concerned.

76. Having considered the opinions expressed to us in consultation, we have come to the conclusion that the provisional recommendations should be confirmed. In our view the applicability of the reverter provisos in the 1841 and 1873 Acts (but not, it will be noted, in that of 1854) to cases where the grantor received consideration for the grant is indefensible and we accordingly recommend that reverter should not take effect in such cases when premises cease in the future to be used for the purposes set out in the grant. Secondly, while it was clearly envisaged that sites provided for schools might cease to be used for such purposes—section 14 of the 1841 Act shows that—we do not believe that a donor would ever have contemplated such a fate overcoming a church site once the church had been built; and we accordingly recommend that a site granted for the purpose of building a church or chapel should not be liable to revert in future, even if the site was a gift. The adoption of that recommendation would effectively bring the 1873 Act into line with the provision relating to church sites in the Duchy of Cornwall Management Act 1863.[76] We would add that we very much doubt whether revertees of Church

[74]Revertees have also been known to waive their prospective rights in advance. We are not certain that such rights are capable of waiver but a revertee who purported to waive his rights would, we suppose, usually be estopped from denying the efficacy of his act if reverter occurs.

[75]The point was made on behalf of the Grosvenor Estate that a right of reverter gave the Estate control over future development of the site after the cesser of the existing use, and that that control would be lost if the right of reverter disappeared. While we acknowledge the point, it seems clear that all planning control would not be lost because development of such a site would require planning permission.

[76]In the nineteenth century it was not uncommon for Acts to accord "most favoured" treatment to the Crown and the Royal Duchies; it is rare indeed to find the position reversed.

of England church sites view the prospect of recovering consecrated land with much enthusiasm.

77. The elimination of church and chapel sites from the scope of the reverter proviso in the 1873 Act would, we believe, rob the provision of much of its content because that Act has not, so far as we are aware, been much used in connection with ministers' houses. Furthermore, in so far as it has been so used, the minister's house will often adjoin the church and the land for both will have been granted as a single dual-purpose site. In such cases commonsense (and certainly commercial sense) suggests that the elimination of the right of reverter should extend to the site as a whole. On that footing we believe that the proviso would have so little left in it in practice that we can without impropriety recommend, as an alternative to the elimination only of church and chapel sites from the scope of the proviso, that no site granted under the 1873 Act should any longer be liable to revert by virtue of the proviso. We prefer the latter alternative.

78. Our recommendation that sites acquired by school charities by purchase or exchange should no longer be subject to reverter, is intended to apply whatever the quantum of the consideration. We would admit only a small exception to that, namely that sites which had been sold to the original trustees for a purely nominal consideration (for example, for a peppercorn or for a sum of £1 or less) should be treated for this purpose as having been acquired by gift and not by purchase. We recognise that school sites may, if purchased, have been purchased at a favourable price and that there is a theoretical argument for extending the exception to all transactions at less than market price. However (and quite apart from the fact that part-consideration would seem to invite the comment that reverter should only be partial) we are satisfied that it would be impracticable to attempt to ascertain what the market value was at the date of the transaction, bearing in mind the widely different locations of the sites involved and differences in land values at different times. Difficulties of proof thus preclude any question of relating the recommendation to full open market consideration and it seems to us that the fact that the site was genuinely sold is a sufficient argument against reverter.

79. We also suggest that the right should be abolished in certain further cases where the site was originally manor land. If the site was sold by the then lord of the manor the case is, of course, covered already by our recommendations above: we are concerned here with free grants of manor land (particularly for school purposes). As will appear later, we support the view that where reverter occurs its effect should always be to vest entitlement to the land in the person or persons who would now be entitled to it if the grant had never been made. The application of that principle to manorial land would appear to vest entitlement in the present lord. While we are content with that result where the lordship has descended within the family of the lord of the manor who made the conveyance, it is difficult to commend it in cases where the lordship has been sold to strangers. The connection between lordships and actual land has for a long time been vestigial, and lordships have been brought and sold as, in substance, honorific titles only. We accordingly recommend that reverter should not occur where the title to the lordship

at the date of cesser of use includes a transfer on sale effected since 1925. It is only right to add that this recommendation did not feature in our draft report. We have added it of our own motion since considering the points made during consultation.

80. We considered the possibility of disposing of all the rights of reverter not affected by our three recommendations above on some compulsory basis on payment of compensation, but we did not find it difficult to conclude that that would not be feasible. Quite apart from the cost burden which any compulsory scheme of that sort would entail, there is the inherent impossibility of devising in this context a fair formula for the computation of the compensation. The value of a right of reverter will depend on an estimate of the probability or otherwise of the happening of the relevant event and that will usually be a matter of great uncertainty. There is no parallel with the enfranchisement schemes under the Places of Worship (Enfranchisement) Act 1920 or the Leasehold Reform Act 1967 which operate against the background of fixed terms.[77] A voluntary enfranchisement scheme, at the option of the trustees, would be beset by the same problems; moreover, the trustees would usually have little incentive to buy out the reverter until the risk of reverter had become a real one and it is at that stage that the value of the revertee's right reaches its high point and the trustees' cash resources, more often than not, a low one.

(iii) *Clarification and improvement of the law, and the problem of the unidentified revertee*

81. Part II of this Report is largely concerned with the substantial number of difficulties arising directly out of the statutes creating the rights of reverter with which we are concerned and other leglislation which touches them. We propose to make a number of recommendations designed to reduce the risk of difficulties of those sorts arising in the future in cases which survive the recommendations which we have already made in paragraphs 76, 77 and 79 above. But before doing so we wish to address ourselves to the problem which gives rise to the biggest worry in practice: what should happen if the identity of the revertee is not known, and is not readily ascertainable, at the date when reverter occurs?

82. The Department of Education and Science and the Charity Commission know that the "unknown revertee" situation is very common: they tend to see many of the cases. The legal professions, by contrast, tend not to see them because, *ex hypothesi*, these cases do not give rise to overt disputes. This substantially explains, we think, the professions' preference—which clearly emerged during consultation on our draft report—for the construction of the effect of section 7(1) of the Law of Property Act 1925 given in *Re Clayton's Deed Pool* over the traditional view (*Re Ingleton Charity* and *Re Chavasse*).[78] Other things being equal, *Clayton* produces the neater (and

[77]In rare cases trustees may have been granted a leasehold title only but the fact that the maximum extent of their estate is fixed does not help to determine how much they should pay to prevent their estate determining prematurely on cesser of use.

[78]See paras. 17–20 above.

perhaps more attractive) result, and certainly the result more generally consistent with the principles of modern real property law. But where the revertee is not known, other things are far from equal: the trustees are put in an extremely difficult position from which they cannot be rescued either by the lapse of time[79] or by a *cy-près* scheme.

83. Our draft report assumed that "unknown revertee" cases would continue to arise in considerable numbers; and that assumption led to the conclusion that the decision in *Clayton* was unacceptable. We accordingly put forward the view that the traditional construction of the effect of section 7(1) of the Law of Property Act 1925 should be reinstated and suggested that the trustees should be given a new and special power of sale to bridge the awkward gap between the date on which reverter occurred and the acquisition by the trustees of a good possessory title under the Limitation Act. That was easier said than done because the provisions to give effect to the suggestion were necessarily somewhat complex. To begin with, there is a conceptual difficulty in allowing the trustees to convey a title which, by definition, they do not possess. Furthermore, the scheme involved the taking of steps to protect the position of the revertee (in the event of his materialising) and it was forseeable that the trustees might be involved in expenditure, although they might be without resources. The scheme was not well received in consultation.

A Register

84. An entirely different solution emerged during consultation on our draft. This solution, which we have decided to adopt, is designed to attack the problem at its root by eliminating so far as possible the risk of the revertee becoming unknown and unascertainable.[80]

85. We propose that this result should be achieved through a register established on the principles of the Commons Register under the Commons Registration Act 1965. Upon the closure of the register after a sufficient (but limited) period, there would be in existence an exhaustive and exclusive list of claimants; and while it may occasionally be necessary, if and when reverter occurs at some future date, to go behind the register to test the validity of the claim, it would never be necessary to go further back than the register in order to identify the claimant.

86. Although we cite the Commons Register as a precedent for a Reverter Register,[81] we think it desirable to say at once that we believe that the administrative implications are of a totally different order. Rights of common are present rights which are enjoyed concurrently with the rights of the owners of the land, and the scheme for producing a conclusive list of such rights had to provide for the immediate resolution of disputes. Furthermore, those disputes are very likely to raise issues of fact. By contrast, rights of reverter

[79]Under the Limitation Act.

[80]We are indebted to Mr. J. F. Crowder of Messrs. Lee, Crowder & Co. (who acted for one of the parties in *Re Chavasse*) for advocating the adoption of a registration procedure.

[81]An earlier precedent may be found in the Coal (Registration of Ownership) Act 1937, read in conjunction with the Coal Act 1938.

are for all practical purposes future rights, and if there is a doubt as to the validity of a claim there is no need for that doubt to be resolved unless and until the reverter provision operates. Indeed, we would deprecate any suggestion that the question might be litigated at an earlier stage. A Reverter Register would not in our view call for the establishment of a special fact-finding tribunal because any dispute there may be as to the validity of a registered claim is more likely to raise issues of law. But the crucial difference in practice between the commons registration scheme and the one which we propose for rights of reverter is one simply of numbers. We would be surprised if the total number of sites potentially involved exceeds five or six thousand—and in that figure we include sites under the 1873 Act (which, if our earlier recommendations are implemented in full, would not be candidates for inclusion in the register) and sites under the Defence legislation referred to in paragraph 54 above (which could be included if the Ministry so wished).

87. It can hardly be doubted that the number of sites in respect of which claims would actually be registered would fall considerably short of potential. In some cases, known revertees may deliberately forgo their rights: these cases would correspond to those in which revertees now waive their rights when reverter occurs. But failure to register would usually reflect the "unknown revertee" situation and would accordingly correspond to the cases where under the existing law (or at any other rate under the law as it was understood to be before the decision in *Re Clayton's Deed Poll*) the right of reverter eventually disappears by virtue of the operation of the Limitation Act.[82] In short, a registration requirement such as we propose transfers the period during which the revertee has effectively to stake his claim from the stage following the occurrence of reverter to an earlier stage at which no inconvenience is caused.

88. We now turn to indicate the principal features of our registration proposal.

89. The Reverter Register which we have in mind would be "open" for a period of three years. During that period, an application to register a claim may be made by any person[83] who, if reverter had taken effect immediately before his application is made, would be the person in whom the legal estate had then vested. (We express the entitlement to apply in this way because, as we explain later, we are firmly of the opinion that the pre-*Clayton* view of the effect of reverter should be reinstated for all cases arising before the register is "closed".) Since the application would relate merely to a claim we recommend that formal proof of title should not be required, at least at that stage. However, in order to minimise the risk of wholly baseless claims being made, we consider that the application should be accompanied by a statutory declaration briefly indicating the descent of the title from the grantor to the applicant.

[82]Or more speedily if the case has been successfully brought within s. 2 of the Education Act 1973.

[83]We will use the singular form throughout but we appreciate that the applicant may (and often will) be a body of trustees, or personal representatives.

90. The effect of registration, and of failure to apply for registration, would be as follows:—

(*a*) The failure of any person to apply for registration of his claim before the register closed would, from the date of closure, bar the claim of that person and of any person deriving title from him. Consequently, if at the date of closure the register is clear as respects any particular land, the title of the trustees holding that land will become an indefeasible one in favour of the charity.

(*b*) A single registration in respect of any land would give the registered claimant an unimpeachable title on reverter as against all save the charitable trustees. We considered whether the claimant's title should be good even against those trustees but have come to the conclusion that the trustees should be entitled to challenge the claim if and when the reverter event occurs. They may know, for example, that although the claim has been registered against the whole of the site the ancestor from whom the claimant's title descends was the grantor of part only of the site, the remainder having been acquired under a different grant made by a different grantor. In an extreme case the trustees may have reason to believe that the claim is groundless, notwithstanding the statutory declaration.[84] In any such cases the trustees would indeed be under a duty to their charity to prevent the property wrongfully falling into other hands by default. We accordingly recommend that a single registered claimant should obtain a good title against the trustees only if the trustees do not serve notice on him within six months after reverter has occurred, calling upon him to prove his title strictly.[85] We would not expect trustees to take such a step lightly: if the issue came to be litigated the charity would be in the position of an ordinary litigant and should be on risk as regards costs. In practice, trustees would probably not challenge the claimant's title (save in a very clear case) unless they had the financial backing of the local education authority or diocesan authority.

(*c*) If more than one application to register is duly made in respect of particular land, each will be registered without enquiry: but when the register has been closed the registrar will notify each of the claimants of the existence of the others. This would give the claimants an opportunity to reconcile any conflicts there may be before the issue becomes material. In many cases they may find that no real inconsistency exists. For example, it may on enquiry become apparent to them that each is entitled to a separate part of the site; or that they are entitled beneficially to shares in the whole (the proper applicant being not themselves but the present persons in whom the legal estate would vest and who would be their trustees). If the register still contains more than one registered claim when reverter occurs the trustees should, if an agreed solution proves impossible, issue proceedings by way of originating summons to determine which

[84]It may for example be clear to the trustees that their site had not been granted under s. 2 of the 1841 Act at all.

[85]This would of course not prevent the trustees inviting the claimant to withdraw his registered claim at an earlier stage.

(if any) of them is entitled to the property. If none can make good his title, the trustees' title will become an absolute one; but as the proceedings have been rendered necessary by the presence of the rival claimants the trustees should in this case be regarded (for costs purposes) as being in the ordinary position of trustees rather than as litigants on their charity's behalf.

91. After the date of closure of the register the only permitted activity on the register would normally be (i) withdrawals of claims, (ii) amendments to the extent of claims, and (iii) alterations in the identity of the claimant or claimants. Applications for those purposes would be acceptable only from registered claimants or their successors in title, and in cases under head (iii) the necessary proof of transmission of title would have to be supported by a statutory declaration made by a solicitor. An application to change the identity of the registered claimant or claimants might be made, for example, in a case where two claimants subsequently discovered that the legal title would pass on reverter not to them but to a third party as their trustee; or it might be made simply to keep the register up to date. Exceptionally, we also envisage in two cases the rectification of the register by the cancellation of an entry on the application of the trustees: firstly, where the Secretary of State has, with the concurrence of the registered claimant, made an order under section 2(3) of the Education Act 1973 excluding the right of reverter and secondly, where the right of reverter has been excluded in the circumstances described in paragraph 97 below.

92. We do not think that it is necessary for us to make any positive recommendation as to who should maintain the register. We are satisfied that its maintenance would be an administrative burden of negligible significance: especially if it were undertaken by a body which already keeps registers of claims in relation to land. The finger inevitably points to the Land Charges Department of H.M. Land Registry. On the other hand if our earlier recommendations relating to the Places of Worship Sites Act 1873 are adopted in full, and if the Ministry of Defence do not wish to take advantage of the register for outstanding cases arising under the Volunteer Act 1863 etc., all the cases would fall within the general responsibilities of the Department of Education and Science and a view might be taken accordingly. We appreciate that some thought will have to be given to the details of the registration Rules but we consider that that cannot usefully be undertaken except in consultation with the Department which is to run the Register. We stress, however, our view that the Rules should be kept as simple as possible: perfect titles are not to be expected.

Ingleton/Clayton

93. The problem of the unknown revertee has arisen on countless occasions in the past. Some of the cases have been successfully disposed of by orders made under section 2(3) of the Education Act 1973 (or its legislative predecessor); and where the operation of the reverter proviso has been thus excluded there is no fear of its revival. That procedure was, however, not available before 1945 and many sites have been dealt with, before and since, on the footing that the revertees' rights have become unenforceable by virtue of the Limitation Act (or at least that they would become so unenforceable

in the fullness of time). Vendors and purchasers have relied on the proposition that the Law of Property Act 1925 did not alter the legal effect of reverter, and that reliance was supported by the judgment in *Re Ingleton Charity*. However, as we pointed out earlier in this report,[86] the view of the effect of the Law of Property Act expressed in *Re Clayton's Deed Poll* appears to leave no room for the operation of the Limitation Act, and it is accordingly not possible to be confident about the titles to the properties involved in any case where the sites ceased to be used in accordance with the original grants since 1925.[87]

94. We do not think that it should now be open to anyone to disturb titles which, before *Clayton*, were regarded as secure. We accordingly recommend that it be provided by statute that the effect of a reverter occurring before the closure of the register was (and for transitional cases will be) that obtaining under the pre-1926 law: namely, that the legal estate passes automatically to the revertee, and that the charitable trustees, if remaining in possession, may obtain a good possessory title for the charity under the Limitation Act.

95. A provision along those lines would make explicit what we believe to have been implicit throughout, namely that section 7(1) of the Law of Property Act introduces an exception to the general scheme of that Act. It is an exception which we strongly believe ought to be preserved until the register has closed, in the interests of existing titles. But exceptions to the scheme of the 1925 Act are in general to be deprecated and it would be unnecessary to preserve this one in relation to reverters occurring after the register has closed. By definition, the charitable trustees will then know (or will be able to discover with relative ease) who the revertee is and the merits of the matter will then point in favour of regarding the trustees as trustees for the registered revertee, *quoad* the reverted site, subject only to the trustees' right to challenge the revertee's title. In short, we recommend that as from the closure of the register (and subject as mentioned) the law should be as stated in *Re Clayton's Deed Poll.*

96. The adoption of the *Clayton* approach once the registration scheme is fully in force places new responsibilities on the trustees because it makes them trustees for the revertee, *quoad* the reverted property. In the majority of cases, however, those responsibilities should be short-lived because the trustees should be able to contact the registered claimant (or his successor) without difficulty and (if they accept his claim) transfer the legal estate to him. But in the course of time the register will itself become a rather remote root of title; and, in particular, difficulties may arise through the failure of successors in title to keep the register sufficiently up-to-date. We do not consider that the trustees should be obliged to seek out a claimant who cannot be reached by post on the basis of the information on the register. We therefore make two further recommendations, the first to deal specifically with cases where, notwithstanding registration, the claimant has effectively disappeared, and the second related to remoteness of title generally.

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[86]Paras. 19 and 20 above.

[87]The decision in *Clayton* cannot, we think, affect cases where reverter occurred before 1926 because there is no doubt about the legal effect of reverter before that date.

97. As soon as it is clear that reverter has occurred, the first duty of the trustees (now trustees of the property for the revertee) will be to inform the registered claimant (or claimants) of the event. This step should take the form of a Notice requiring the addressee within twelve months to call for a transfer of the legal estate under section 3(3) of the Law of Property Act 1925. We would not impose a requirement that the trustees send that Notice within any particular time, but they will be accountable to the registered revertee from the date of reverter and if they do not act within six months of reverter they will have lost the opportunity referred to in paragraph 90(*b*) above of including in the Notice a call upon the registered revertee to prove his title. The Notice should be sent to the registered claimant at the registered address by registered post (in order to provide proof of sending) and a copy should go to the registrar for noting on the register. If the registered revertee responds to the Notice within the year he should notify the registrar that he has done so (thus evidencing the fact) and the trustees must transfer the legal estate unless they are entitled to challenge the claim and do so successfully. If, on the other hand, there is no response to the Notice before the end of the year the claim to a right of reverter should forthwith be excluded as if it had never been registered. The registrar will know that this has happened and will accordingly accede to an application by the trustees to delete the registration. It will be seen from this recommendation that we envisage an entry in the Reverter Register as having in some respects a status similar to that of a "caution" in the registered land system. If rights protected by a caution are disposed of it is up to the disponee to ensure that they become protected by a caution in his name: if they are not, any "warning-off" notice may not reach him. It will similarly be in the interests of successors to registered claimants to ensure that the register is kept adequately up-to-date.

98. Secondly, we draw attention to the fact that a right of reverter created today is (by virtue of section 12 of the Perpetuities and Accumulations Act 1964) subject to the rule against perpetuities and becomes void if the event upon which reverter is to occur does not occur before the perpetuity period expires. We recommend the adoption of the principle of that provision to the existing rights of reverter with which we are concerned: registered rights should cease to exist altogether if reverter has not occurred before the eightieth anniversary of the Act creating the register. That date must mark the end of the problem.

Further recommendations aimed at clarifying or amending the operation of the reverter provisions

99. It is not reasonable to suppose that all the difficulties which may in practice arise in relation to these statutory rights of reverter can be removed by amendment of the statutes. It may, for example, not always be clear whether the relevant event has occurred, and although something can be done to resolve some of the doubts in that area the question is often one of pure fact. There may moreover be the question whether a right of reverter is attached to a particular grant at all, because such a right attaches only to a grant made under the relevant statute and the statute is not always referred to in the deed.[88] In such a case the existence of a right of reverter will depend

[88]Express reference to the statute is not a requirement under any of the Acts.

on whether reliance on the statute can be established as a matter of construction of the deed as a whole.[89] It will sometimes be clear that in one or more respects the grant which was in fact made could not have been validly made at the time without reliance on the statute; but in some cases there may be room for argument. The majority of us are satisfied that that argument cannot properly be foreclosed by providing (retrospectively) that any grant not expressly made pursuant to the relevant statute should be deemed not to have been made in pursuance of it. Such a provision would, it seems, have the effect in many cases of invalidating the grant *ab initio*, and the trustees could not rely on the Limitation Act to give them good possessory titles at once because the revertees' rights of action would accrue on the passing of the amending legislation, and not before. On the other hand, no such objection would seem to lie against the existence of such a statutory presumption in any case where, in addition to there being no reference to the Act, the deed contained nothing to indicate that the grantor was not the absolute beneficial owner.[90] Such a presumption would be highly likely to accord with the truth and as we understand that it would simplify matters in practice, we recommend its introduction.

100. Questions of fact and construction apart, there is much that can and should be done to improve the situation. In the first place there are statutory ambiguities to be resolved and there are so many of them that it would in our opinion be better to resolve them by statute than by waiting for decisions from the courts. Solving problems through litigation is an expensive process beyond the means of the trustees of the sort of property to which these Acts apply. Furthermore, with a subject-matter such as this, the process is also liable to be slow because cases tend to be settled and even if they do reach the court for a decision the decision may not be reported.

101. The repeal of the statutory provisions authorising grants of sites for the various purposes under discussion will not of course help to solve the problems created by the wording of those provisions (and, in particular, of the reverter provisions) which may arise in the future, both before the closure of the register which we have recommended should be established and (where claims have been registered) afterwards. The position would in our view be greatly improved by the enactment of a number of short provisions, some of which may be simply "for the avoidance of doubt" and others "rules of thumb". The recommendations which follow are intended to short-circuit questions which have all been stated at greater length in section B of Part II of this Report and the recommendations are not susceptible of much elaboration.

102. First, as to "cesser of use" within the meaning of the reverter provisions. This, as we have already said, is primarily a question of fact but

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[89]*Imperial Tobacco Co. (of Great Britain and Ireland) Ltd.* v. *Wilmot* [1964] 1 W.L.R. 902. The absence of any reference in the deed of grant to the enabling Act may be one of the relevant *indicia.*

[90]It would not be necessary to presume also that mortmain requirements had been satisfied: Charities Act 1960, s. 38(2).

the establishment of the following four rules would reduce the areas of uncertainty:—

(1) Without prejudice to the right of the revertee (or of the trustees) to claim that the trust use "ceased" at an earlier date, it shall be conclusively presumed that in any case where—

(*a*) the land has not in fact been used for those purposes for a continuous period of seven years or more: *and*
(*b*) the trustees have, either before or after the seven-year period has elapsed, granted a tenancy of the land;

the trust use "ceased" on the grant of the tenancy (or, if there have been more than one tenancy, on the grant of the first tenancy).

In our view it would be useful to limit the extent to which it is open to the parties to argue that the trust use is merely in suspense. The adoption of this rule would in appropriate cases fix the date on which the trustees become trustees for the registered revertee in accordance with paragraph 95 above. We would however add that if, contrary to our earlier recommendation, reverter continues to apply to ministers' houses granted under the 1873 Act, this rule should not apply to such houses which have been let on terms enabling them to be recovered under Case 15 in Schedule 15 to the Rent Act 1977.

(2) A change in the nature of a school carried on on an affected site made by or under the authority of any Education Act[91] or the substitution by or under such authority of a new school on that site does not constitute "cesser". The new educational use is substituted for that ordained by the deed of grant and reverter will occur if the substituted use (or further substituted use) ceases.

This rule represents a substantial abandonment of the decision in *A.-G.* v. *Shadwell*[92] and it is not consistent with the words used in the School Sites Act; but the adoption of the opposite view may result in a school finding that it has had "cesser" forced upon it by the education authorities and we cannot believe that any such consequence was intended. In effect, the rule would treat the creation of the subsequent statutory powers as having modified the School Sites Act.

(3) Where the trust use has undoubtedly ceased in respect of part only of the site granted that part (but only that part) reverts.

(4) Since reverter occurs on the cesser of the trust use of the *site*, the use for non-trust purposes of part of a building on the site, horizontally divided,[93] does not bring about reverter. (If a building on the site is

[91]E.g. under s. 16(2) of the 1944 Act.
[92][1910] 1 Ch. 92.
[93]As may have happened if a school teacher's house has been turned into flats only one of which is now occupied by a teacher.

vertically divided there may however be a reverter of part of the site, under rule (3).)

This pair of rules may not eliminate all difficulties in this area because buildings are not always so simply divided; but we assume that problems would be exceptional.

103. Secondly, as to the identity of the revertee we recommend that the law be clarified by declaring:

(i) that reverter operates in all cases in favour of the original donor (if he was absolutely entitled to the site) or to the settlement from which the site came, as if the grant had never been made. If the grant was expressed to be made by the lord of the manor as such the person who is lord of the manor at the date of cesser will be the revertee (unless the recommendation contained in paragraph 79 above applies).

(ii) that in any case where land reverts to a settlement which at the date of the grant contained a remainder in tail and there has since been a disentailment, that land is to be treated as having devolved as if the disentailment applied to it. The same principle should apply where the settlement has been brought to an end by the exercise of a power of appointment contained in the settlement.

(iii) that interests in waste or commonable land barred by the grant do not revive on reverter.

104. Thirdly, we think that if and when a site reverts there should be some means of recognising the fact that the property as it stands may be much more valuable than the site alone. We referred in paragraph 70 to this difference in value as a "windfall" and we agree with the Association of County Councils, who pressed the point on us in consultation, that the revertee should not automatically be entitled to any such windfall. It is, of course, quite likely that the amount of public money spent on erecting and maintaining a school building greatly exceeds the original value of the site given; but it would be wrong in principle to make crude comparisons of that sort, even if it were possible in practice accurately to state historic costs and values. To a large extent, the charity, and the local education authority, have had value for their money over the school's lifetime. But it is possible to compare the "cleared" value of the site with the value of the site-and-buildings at the date of reverter; and, to the extent that the latter exceeds the former, the difference can fairly be regarded as unexpended added value which should belong to the charity rather than to the revertee. We recommend that on reverter the charity trustees should be entitled to a sum secured on the property equal to the amount of that difference (if any) as certified by the District Valuer.

105. Finally, as to grants to ministers and churchwardens in accordance with section 7 of the School Sites Act, we would like to see it made plain that the quasi-corporation is not affected by the happening of the reverter event. Many of the doubts which have in the past been expressed in relation to the operation of this section will, we think, disappear with the establishment of

the register which we have recommended: when the new system is fully in force the function of the *ex officio* trustees immediately after the happening of the reverter event will be to transfer the legal title to the registered revertee as soon as possible, unless they succeed in challenging his title. But even if no lengthy period elapses between reverter and transfer there may be changes in personnel on the trustees' side, and we think it would be convenient if the *ex officio* quality of the trusteeship continued up to the date of transfer.

Power of sale or exchange before reverter

106. In paragraph 68 above we recommended the total repeal of the School Sites Act 1841 and in paragraph 69 we said that that would entail consideration of section 14 of the Act, the section which provides a power of sale in certain defined circumstances. To that matter we now finally turn.

107. It is first necessary to recapitulate the scope of section 14. It is expressed to apply not only to sites acquired under the 1841 Act but also to sites acquired by trustees under the earlier School Sites Act 1836 and also, indeed, to any site held on trust for the purposes outlined in the 1841 Act (even if not actually acquired thereunder). The section refers to sites acquired under the 1841 Act without distinguishing between those subject to a right of reverter (notably those granted under section 2) and those free from any such right (under section 6). Despite the doubt expressed in paragraph 42 above, it has always been assumed that section 2 sites are within the section 14 power of sale[94] and, moreover, that a sale under that section destroys the right of reverter (as, indeed, it would have to if the sale is to be effective).

108. The section 14 power is, however, not freely excercisable. The trustees can resort to it only if it is "deemed advisable to sell or exchange [the site] for any other more convenient or eligible site." The power clearly exists simply to facilitate the removal of the school (as an institution) from one location to another without effecting any other alteration.[95]

109. Charitable trustees now have a much more general power of sale under section 29(1) of the Settled Land Act 1925. Before exercising the power under that section, the trustees may well have to seek authorisation from the Charity Commissioners,[96] but there can be little doubt that such authority would be forthcoming in any case in which the trustees could properly rely on section 14 of the 1841 Act.

110. We understand that trustees of school sites to which no right of reverter attaches generally rely on section 29 of the Settled Land Act rather than on section 14, even if the occasion for the sale is that laid down in section 14. To that extent, therefore, section 14 is already unnecessary and the power of sale which it contains would not be missed if the section were repealed without replacement.

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[94]For convenience we will refer only to sales, but exchanges are throughout included.
[95]We ventured an explanation for the provision in para. 43 above.
[96]Settled Land Act 1925, s. 29(2).

111. Section 14, is, however, still relied on in cases where a right of reverter attaches to the trustees' title. This is not because section 29 does not give the trustees of such sites a power of sale: it is because as the law now stands a sale under section 29—unlike a sale under section 14—does not override the right of reverter. A sale under section 29 would bring the reverter proviso into operation and the transaction would accordingly be self-defeating.

112. We do not, however, believe that that means that it is necessary to replace section 14 by providing a power of sale distinct and separate from that in section 29, for use in cases where the site is liable to revert. We do not intend substantially to depart from the existing law in this field, or to give trustees powers overriding the right of reverter in circumstances which fall outside the spirit of section 14; but it seems to us that it would be simpler to provide that a sale under section 29 would override an existing right of reverter if the sale were effected for the purpose of facilitating (or financing) a removal of the educational establishment on the site in question to a new site. That purpose could generally be proved by showing that the move had been ordered by the Secretary of State,[97] but where no order had been made an appropriate authority (usually the local education authority) could usually furnish the trustees with a certificate of purpose if the facts warranted it.

113. We therefore recommend that section 14 of the 1841 Act should not be expressly replaced, but that the effect of a sale under section 29 of the Settled Land Act should, in corresponding circumstances, be the same.

114. There is one further matter for consideration in this context. In order to have the desired effect, a sale under section 14 has always had to be carried out before the closure of the school. This is because, once reverter has occurred, the trustees have no title (or at least have no beneficial title enabling them to employ the proceeds in furtherance of the purpose of the sale as set out in the section). Precisely the same position is reached by section 29 of the Settled Land Act: once reverter has occurred, the land is no longer "vested . . . in trustees on or for charitable . . . trusts or purposes" as required by the section, and the section is no longer applicable at all.

115. Not surprisingly, trustees do not always find it easy to effect a sale in time. Quite often they fail and the intention behind section 14 is frustrated; but we understand that they sometimes succeed by resorting to devices which cannot be desirable on educational grounds, such as keeping a single class in the old premises after the main move has taken place.

116. The requirement that the sale take place before reverter takes effect is obviously correct in principle; it is, however, equally obvious to us that the trustees need a period of time in which to sell. We recommend that wherever the trustees have obtained a Ministerial order to move (or an equivalent certificate, as mentioned in paragraph 112 above) reverter should not take effect earlier than two years from the date of the order (or certificate). There is, it may be remembered, a precedent for the postponement of the date on

[97]See Education Act 1944, s. 16(1).

which reverter actually takes effect after the relevant use has stopped: under the Places of Worship Sites Act 1873 the non-use must have continued for a year.

117. For the sake of completeness we might mention that we have considered whether a similar extension of time should be made in section 2 of the Education Act 1973 because, as mentioned earlier,[98] the same problem over time is one of the weaknesses affecting the Secretary of State's jurisdiction under that section in cases where a right of reverter exists. We have come to the conclusion that an extension of time in the context of section 2 would not be worthwhile: the creation of a Reverter Register will very much reduce the need to exercise the power in section 2(3) to exclude the operation of rights of reverter, and any change in the law relating to the exercise of that power would be of little more than temporary benefit.

118. We should, however, make it clear that nothing in our proposals has the effect of suspending the operation of section 2(3) during the period allowed for registration. It will therefore be of some advantage to a claimant to register his claim as soon as may be, because if he leaves registration to the last minute he may find that the Secretary of State has excluded his right in the meanwhile. Once the claimant is on the register the Secretary of State will seldom be able to make an order under section 2(3) without the claimant's agreement, because it will be difficult for him then to say that the claimant cannot, after enquiry, be found.[99]

PART V

CONCLUDING REMARKS

119. We feel that we ought to mention that the contents of this report may be of some (but perhaps only passing) interest in Scotland and Northern Ireland. While the Places of Worship Sites Act 1873 operates only in England and Wales, the School Sites Act 1841 extended to Scotland and the Literary and Scientific Institutions Act 1854 to Ireland (but not, it appears, to Scotland). Nevertheless, we doubt whether there is any real need to extend the legislative repairs recommended in this report beyond England and Wales. In the first place the problems deriving from the Law of Property Act 1925 (which have become urgent because of the conflict between *Re Ingleton Charity* and *Re Clayton's Deed Poll*) are naturally confined to England and Wales. Secondly, we gather that the School Sites Act was very little resorted to in Scotland and potential problems in relation to cases left behind by the repeal of the Act there may be too few to warrant legislative attention at this stage. The same may well be thought to apply to the Literary and Scientific Institutions Act so far as Northern Ireland is concerned.

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[98]Para. 59 above.

[99]Shortly before an order is made the Department (or Welsh Office) will have to search the register to see whether a claimant is to be found there. If the register is clear we think that the Secretary of State's order, if made within 14 days of the search, should have priority over applications to register.

120. Finally, we wish to express our gratitude to Mr. H. B. C. Horrell (formerly of the Department of Education and Science) and Mr. D. G. Lambert (an Assistant Solicitor in the Welsh Office) who attended many of our meetings; and particularly to our Secretary, Mr. A. E. L. Parnis. We should add that in addition to being our Secretary throughout Mr. Parnis was responsible, in his capacity as Secretary to the Churches Main Committee, for organising the approach to the Law Commission which led to our appointment.

PART VI

SUMMARY OF RECOMMENDATIONS

121. The main recommendations of this report are as follows:—

(i) The School Sites Acts 1841 to 1952, the Places of Worship Sites Act 1873 (together with the Places of Worship Sites Amendment Act 1882), and so much of the Literary and Scientific Institutions Act 1854 as relates to grants of land for the purpose of such institutions could now be repealed without loss (para. 68). The power of sale in the 1854 Act should, however, be preserved as a power attaching to existing sites granted under that Act (para. 69).

(ii) Where the grantor received consideration reverter should not take effect when the premises cease in the future to be used for the purposes set out in the grant (para. 76). This should apply whatever the quantum of the consideration unless the site had been sold to the original trustees for a purely nominal consideration, such as £1 or a peppercorn (para. 78).

(iii) A site granted for the purpose of building a church or chapel should not be liable to revert in future even if the site was a gift (para. 76). Alternatively (and preferably) *no* site granted under the 1873 Act should any longer be entitled to revert (para. 77).

(iv) In cases where manorial land was granted free by the then lord of the manor reverter should not occur where the title to the lordship at the date of cesser of use includes a transfer on sale effected since 1925 (para. 79).

(v) A register should be established on the principles of the Commons Register under the Commons Registration Act 1965 (para. 85).

(vi) This register should be "open" for three years, during which an application to register a claim might be made by any person or body of trustees who, if reverter had taken place immediately before their application was made, would be the person or body in whom the legal estate had then vested. Formal proof of title should not be required at that stage but the application should be accompanied by a statutory declaration briefly indicating the descent of title from the grantor to the applicant (para. 89).

(vii) Failure to apply for registration before the register closed should bar a person's claim (and that of any person deriving title from him) from the date of closure, and so give the trustees holding the site an indefeasible title in favour of the charity (para. 90(*a*)).

(viii) A single registered claimant should obtain an unimpeachable title on reverter against all save the charitable trustees; and against them also unless they serve notice on him within six months after reverter has occurred, calling upon him to prove his title (para. 90(*b*)).

(ix) If more than one application to register is made in respect of a particular piece of land, each should be registered without enquiry, but the claimants should be notified and given an opportunity to reconcile any conflicts (para. 90(*c*)).

(x) After closure the only permitted activity on the register would normally be withdrawals of claims, amendments of their extent, alterations in the identity of claimants, or cancellation of an entry where an order has been made under s. 2(3) of the Education Act 1973, or where a registered revertee has not responded within a year to a trustees' Notice calling upon him to prove his title (paras. 91 and 97).

(xi) It should be explicitly provided by statute that the effect of a reverter occurring before closure of the register is that the legal estate passes automatically to the revertee, so that the charitable trustees, if remaining in possession, may obtain a good title for the charity under the Limitation Act (para. 94).

(xii) Reverters occurring after closure of the register should be governed by the law as declared in *Re Clayton's Deed Poll* [1979] 3 W.L.R. 351 whereby the trustees hold the legal estate on trust for the revertee (para. 95); and as soon as reverter has occurred it should be the duty of the trustees to send the registered claimant a notice requiring him within a twelve-month period to call for transfer of the legal estate under s. 3(3) of the Law of Property Act 1925 (para. 97).

(xiii) Registered rights should cease to exist altogether if reverter has not occurred before the eightieth anniversary of the Act creating the register (para. 98).

(xiv) In any case where, in addition to there being no reference to the relevant Act, a deed contains nothing to indicate that the grantor was not the absolute beneficial owner, there should be a statutory presumption that the grant was not made in pursuance of that Act (para. 99).

(xv) Without prejudice to the right of the revertee (or of the trustees) to claim that the trust use "ceased" at any earlier date, it should be conclusively presumed that in any case where—

(*a*) the land has not in fact been used for those purposes for a continuous period of seven years or more; *and*

(*b*) the trustees have, either before or after the seven-year period has elapsed, granted a tenancy of the land;

the trust use "ceased" on the grant of the tenancy (or, if there have been more than one tenancy, on the grant of the first tenancy) (para. 102(1)).

(xvi) A change in the nature of a school carried on on an affected site made by or under the authority of any Education Act or the substitution by or under such authority of a new school on that site should not constitute "cesser". The new education use should be deemed to be substituted for that ordained by the deed of grant so that reverter will occur if the substituted use (or further substituted use) ceases (para. 102(2)).

(xvii) Where the trust use has undoubtedly ceased in respect of part only of the site granted, that part (but only that part) should revert (para. 102(3)).

(xviii) Since reverter occurs on the cesser of the trust use of the *site*, the use for non-trust purposes of part of a building on the site, horizontally divided, should not bring about reverter (para. 102(4)).

(xix) Reverter should operate in all cases in favour of the original donor (if he was absolutely entitled to the site) or to the settlement from which the site came, as if the grant had never been made. If the grant was expressed to be made by the lord of the manor as such, the person who is lord of the manor at the date of cesser will be the revertee (unless the recommendation contained in (iv) above applies) (para. 103(i)).

(xx) In any case where land reverts to a settlement which at the date of the grant contained a remainder in tail and there has since been a disentailment, that land should be treated as having devolved as if the disentailment applied to it. The same principle should apply where the settlement has been brought to an end by the exercise of a power of appointment contained in the settlement (para. 103(ii)).

(xxi) Interests in waste or commonable land barred by the grant should not revive on reverter (para. 103(iii)).

(xxii) On reverter, if the then value of the site-and-buildings exceeds the value of the cleared site, the charity trustees should have a first charge on the property equal to the amount of the difference, as certified by the District Valuer, between those two values (para. 104).

(xxiii) As to grants to ministers and churchwardens in accordance with section 7 of the School Sites Act 1841 it should be made plain that the quasi-corporation is not affected by the happening of the reverter event (para. 105).

(xxiv) Section 14 of the 1841 Act should not be expressly replaced, but

the effect of a sale under section 29 of the Settled Land Act 1925 should, in corresponding circumstances, be the same, viz: it would override an existing right of reverter if the sale were effected for the purpose of facilitating (or financing) a removal of the educational establishment on the site in question to a new site (paras. 112–113).

(xxv) Wherever the trustees have obtained a Ministerial order to move (or an equivalent certificate), reverter should be treated as not taking effect earlier than two years from the date of the order (or certificate) (para. 116).

(xxvi) The legislative proposals described above need not be extended beyond England and Wales (para. 119).

(*Signed*) BRIAN O'BRIEN (*Chairman*).
J. W. COOK.
R. G. FAIRBAIRN.
ANNE JACOBSEN.
G. T. JONES.
B. L. THORNE.
S. A. WILLIAMS.

A. E. L. PARNIS (*Secretary*)
Churches Main Committee,
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6 *April* 1981.

APPENDIX I

CONSULTEES AND EVIDENCE RECEIVED

The following were sent the draft report originally or on request. Those marked with an asterisk (*) submitted substantive evidence. The others did not reply, or had no comments.

(i) *Government Departments*

*Charity Commission
Department of Education and Science
Department of the Environment
*Duchy of Cornwall
*Duchy of Lancaster
HM Land Registry
Law Officers' Department
Lord Chancellor
Northern Ireland Office
Scottish Courts Administration
Scottish Law Commission
Treasury Solicitor
Welsh Office

(ii) *Local Authorities*

*Association of County Councils
*Association of Metropolitan Authorities
*Hampshire County Council
Inner London Education Authority
National Association of Local Councils
*West Yorkshire Metropolitan County Council

(iii) *Ecclesiastical Authorities*

Catholic Education Council
Church Commissioners for England
*Church of England Board of Education
Churches Main Committee
Church of Scotland
Church in Wales
Episcopal Church in Scotland
Free Church Federal Council
Legal Advisory Commission of the Church of England

(iv) *Legal Societies*

Association of Law Teachers
Chancery Bar Association
*Ecclesiastical Law Association
*Institute of Conveyancers
*Law Society
*Senate of the Inns of Court and the Bar
Society of Public Teachers of Law

(v) 136 individuals and others including:
Calthorpe Estate Office

*Mrs. S. Christie and Miss C. J. Allan
*Clayton & Co.
Cluttons
Country Landowners' Association
*Mr. F. E. Crowder
*Mr. J. F. Crowder
*Farrer & Co.
*Grosvenor Estate
Messrs. Gwynne Jones and Ealand
*Mr. M. J. Hall
*Professor A. Kiralfy
Library Association
Rt. Hon. Sir Robert Megarry
Meyrick Estates Management Ltd.
*Michelmores
National Farmers' Union
National Trust
Post Office

APPENDIX II

EXTRACTS FROM THE RELEVANT STATUTES

CHARITABLE USES ACT 1735 (repealed)

1. From and after 24th June 1736, no manors, lands . . . shall be given, granted . . . or . . . conveyed or settled to or upon any person or persons, bodies politick or corporate . . . for any estate or interest . . . in trust, or for the benefit of any charitable uses whatsoever, unless such gift, conveyance . . . be made by deed . . . in the presence of two or more credible witnesses, twelve kalendar months at least before the death of such donor or grantor . . . and be inrolled in . . . chancery within six kalendar months next after the execution thereof, . . . and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever for the benefit of the donor or grantor, or of any person or persons claiming under him.

SCHOOL SITES ACT 1841

Whereas it is expedient that greater facilities should be given for the erection of schools and buildings for the purposes of education:

2. Any person, being seised in fee simple, fee tail, or for life, of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein, or in Scotland being the proprietor in fee simple or under entail, and in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge; provided that no such grant made by any person seised only for life of and in any such manor or lands shall be valid, unless the person next entitled to the same in remainder, in fee simple or fee tail, (if legally competent,) shall be a party to and join in such grant: Provided also, that where any portion of waste or commonable land shall be gratuitously conveyed by any lord or lady of a manor for any such purposes as aforesaid, the rights and interests of all persons in the said land shall be barred and divested by such conveyance;

Provided also, that upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this Act mentioned, the same shall thereupon immediately revert to and become a portion of the said estate held in fee simple or otherwise, or of any manor or land as aforesaid, as fully to all intents and purposes as if this Act had not been passed, any thing herein contained to the contrary notwithstanding.

3. [Empowers grants for the same purposes made by the Chancellor and Council of the Duchy of Lancaster; with a similar reverter clause: ". . . the same shall thereupon immediately revert to and become again a portion of the possessions of the said duchy . . ."]

4. [Empowered grants for the same purposes out of Duchy of Cornwall land, with a reverter clause worded as in s. 3. This section was repealed in 1874, without prejudice to things already done or rights acquired.]

5. [Empowers conveyances by equitable owners without the trustees being made parties.]

6. [Empowers grants for the same purposes by corporations and by trustees for public or charitable purposes; conveyances by the latter to require execution by only a majority of those attending a meeting duly convened. NO REVERTER CLAUSE.]

7. [Makes a corporation of the minister and churchwardens, so that a grant to such operates as a grant to the minister and churchwardens for the time being.]

14. When any land or building shall have been or shall be given or acquired under the provisions of . . . this Act, or shall be held in trust for the purposes aforesaid, and it shall be deemed advisable to sell or exchange the same for any other more convenient or eligible site, it shall be lawful for the trustees in whom the legal estate in the said land or building shall be vested, by the direction or with the consent of the managers and directors of the said school, if any such there be, to sell or exchange the said land or building, or part thereof, for other land or building suitable to the purposes of their trust, and to receive on any exchange any sum of money by way of effecting an equality of exchange, and to apply the money arising from such sale or given on such exchange in the purchase of another site, or in the improvement of other premises used or to be used for the purposes of such trust; . . .

LITERARY AND SCIENTIFIC INSTITUTIONS ACT 1854

1. Any person in England, Wales, or Ireland, being seised in fee simple, fee tail, or for life, of and in any manor or lands of freehold, copyhold, or customary tenure, and having the present beneficial interest therein, may grant, convey, or enfranchise, by way of gift, sale, or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, whether built upon or not, as a site for any such institution as hereinafter described: Provided, that no such grant made by any person seised only for life of and in any such manor or lands shall be valid, unless, if there be any person next entitled to the same in remainder, in fee simple or fee tail, and if such person be legally competent, he shall be a party to and join in such grant: Provided also, that where any portion of waste or commonable land shall be gratuitously conveyed by any lord of a manor for any such purpose

as aforesaid, the rights of all commoners and others having interest of a like nature in the said land shall be barred and divested by such conveyance.

2. [Empowers grants of Duchy of Lancaster land]

3. [Empowers grants of Duchy of Cornwall land]

4. Provided, that upon any land so granted by way of gift as aforesaid, or any part thereof, ceasing to be used for the purposes of the institution, the same shall thereupon immediately revert to and become again a portion of the estate or manor, or possessions of the Duchy, as the case may be to all intents and purposes, as fully as if this Act or any such grant as aforesaid had not been passed or made; except that where the institution shall be removed to another site the land not originally part of the possessions of either of the Duchies aforesaid may be exchanged or sold for the benefit of the said institution, and the money received for equality of exchange or on the sale may be applied towards the erection or establishment of the institution upon the new site.

CONSECRATION OF CHURCHYARDS ACT 1867

4. And whereas by the School Sites Act, 1841, and by the School Sites Act, 1849, powers are given to persons being seised in fee simple, fee tail, or for life of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein, to grant, convey, or enfranchise, by way of gift, sale, or exchange, in fee simple or for term of years, any quantity not exceeding one acre of such land as a site for a school; and it is expedient that the same powers should be extended to persons willing to grant land for the enlargement of churchyards or burial places in England or Wales: Be it therefore enacted, that the said Acts shall be deemed to apply to all persons desirous of granting land for the purpose of such enlargement, in the same way as if the said land has been granted as a site for a school: Provided nevertheless, that no such grant shall be made otherwise than in fee simple, and may be made in the form hereinafter provided; and that every such grant made by any person seised only for life shall be valid without the concurrence therein of the person next entitled in remainder in fee simple or fee tail.

PLACES OF WORSHIP SITES ACT 1873

1. Any person or persons being seised or entitled in fee simple, fee tail, or for life or lives of or to any manor or lands of freehold tenure, and having the beneficial interest therein, and being in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange in fee simple, or for any term of years, any quantity not exceeding one acre of such land, not being part of a demesne or pleasure ground attached to any mansion house, as a site for a church, chapel, meeting house, or other place of divine worship, or for the residence of a minister officiating in such place of worship or in any place of worship within one mile of such site, or for a burial place,

or any number of such sites, provided that each such site does not exceed the extent of one acre: Provided also, that no such grant, conveyance, or enfranchisement made by any person seised or entitled only for life or lives of or to any such manor or lands shall be valid unless the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail (if legally competent) shall be a party to and join in the same, or if such person be a minor or person of unsound mind, unless the guardian or committee of such person respectively shall in like manner concur: Provided also, that in case the said land so granted, conveyed, or enfranchised as aforesaid, or any part thereof, shall at any time be used for any purpose other than as a site for such place of worship or residence, or burial place, or in the case of a place of worship or residence, shall cease for a year at one time to be used as such place of worship or residence, the same shall thereupon revert to and become a portion of the lands from which the same was severed, as fully to all intents and purposes as if this Act had not been passed, anything herein contained to the contrary notwithstanding . . .

LAW OF PROPERTY ACT 1925

3(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him, then and in any such case the estate owner whose estate is affected shall be bound to convey or create such legal estate as the case may require.

7.—(1) A fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested, is for the purposes of this Act a fee simple absolute, and remains liable to be divested as if this Act had not been passed . . .

(3) The provisions of—

. . . (*c*) any other statutes conferring special facilities or prescribing special modes (. . .) for disposing of or acquiring land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate (including the Crown);

shall remain in full force.

SETTLED LAND ACT 1925

29.—(1) For the purposes of this section, all land vested or to be vested in trustees on or for charitable, ecclesiastical, or public trusts or purposes shall be deemed to be settled land, and the trustees shall, without constituting them statutory owners, have in reference to the land, all the powers which are by this Act conferred on a tenant for life and on the trustees of a settlement.

2.—(1) Where the premises of a voluntary school have ceased (before or after the coming into force of this section) to be used for a voluntary school, or in the opinion of the Secretary of State it is likely they will cease to be so used, then subject to subsections (2) to (4) below he may by order made by statutory instrument make new provision as to the use of any endowment shown to his satisfaction to be or have been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religious denomination; and for purposes of this section "endowment" includes property not subject to any restriction on the expenditure of capital.

(3) An order under subsection (1) above may require or authorise the disposal by sale or otherwise of any land or other property forming part of an endowment affected by the order, including the premises of the school and any teacher's dwelling-house; and in the case of land liable to revert under the third proviso to section 2 of the School Sites Act 1841 the Secretary of State may by order exclude the operation of that proviso, if he is satisfied either—

(*a*) that the person to whom the land would revert in accordance with the proviso cannot after due enquiry be found; or

(*b*) that, if that person can be found, he has consented to relinquish his rights in relation to the land under the proviso and that, if he has consented so to do in consideration of the payment of a sum of money to him, adequate provision can be made for the payment to him of that sum out of the proceeds of disposal of the land.

(4) Subject to subsection (3) above and to any provision affecting the endowments of any public general Act of Parliament, an order under subsection (1) above shall establish and give effect, with a view to enabling the denomination concerned to participate more effectively in the administration of the statutory system of public education, to a scheme or schemes for the endowments dealt with by the order to be used for appropriate educational purposes, either in connection with voluntary schools or partly in connection with voluntary schools and partly in other ways related to the locality served or formerly served by the voluntary school at the premises that have gone or are to go out of use for such a school; and for this purpose "use for appropriate educational purposes" means use for educational purposes in connection with the provision of religious education in accordance with the tenets of the denomination concerned.

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