Easter Term
[2021] UKSC 13
On appeal from: [2019] EWCA Civ 200

JUDGMENT

Rittson-Thomas and others (Respondents) *v* Oxfordshire County Council (Appellant)

before

Lord Lloyd-Jones
Lady Arden
Lord Sales
Lord Burrows
Lord Stephens

JUDGMENT GIVEN ON

23 April 2021

Heard on 18 February 2021

Appellant	*Respondents*
Christopher McCall QC	Simon Taube QC
Nigel Thomas	Matthew Smith
(Instructed by Oxfordshire County Council Legal Services)	(Instructed by Lee Bolton Monier-Williams)

LADY ARDEN AND LORD BURROWS: (with whom Lord Lloyd-Jones, Lord Sales and Lord Stephens agree)

1. The provision of sites under the School Sites Act 1841 and the issue in this appeal

1. Few would have predicted that the School Sites Act 1841 ("the 1841 Act"), the statute at the heart of this appeal, would still have been a source of activity in the courts and in Parliament in the late 20th and early 21st centuries. Yet this appeal is a further instance of that activity. Section 2 of the 1841 Act gave landowners, who were willing to provide land, of up to one acre, for a school for poor children (or for the other educational purposes set out in the 1841 Act), an easy way of doing so by means of a statutory charitable trust. This was coupled with an assurance, by a proviso in section 2, that, if the land ceased to be used for the school (or the other purposes set out in the 1841 Act), it would be returned to the landowner, or his/her heirs, by operation of law, that is by a statutory reverter (which, for reasons explained in para 9 below, we shall refer to as a "section 2 reverter"). Furthermore, by section 14 of the 1841 Act, it was laid down that, should the school need new premises, the trustees would have the power to sell or exchange the land which had been given for the school so as to enable the school to move to a more appropriate site.

2. This appeal is about a sale of the original site granted for the use of a school under the 1841 Act. It raises the important question of the sequence of events which must occur to take advantage of the power in section 14. It is not in dispute that section 14 can be used if, at the time of the sale, the school is still operating on the original site (ie if it has not fully and permanently closed on that site). But can the trustees sell the land with vacant possession, and apply the proceeds of sale to pay off the costs of acquiring or improving a new site, *after* the school has moved to the new site? Or is the position, in that scenario, that the section 2 reverter will have been activated so that the trustees will no longer be able to sell and apply the proceeds of sale for meeting those costs?

3. There has been little case law or commentary on the interaction between a change of site under section 14 and the section 2 reverter. However, the decision of the House of Lords in *Fraser v Canterbury Diocesan Board of Finance (No 2)* [2005] UKHL 65; [2006] 1 AC 377 ("*Fraser (No 2)*") is of central importance to what we have to decide because it laid down the correct approach to the interpretation of section 2 of the 1841 Act.

2. Overview of this appeal and summary of our conclusion

4. This appeal concerns Nettlebed School in Oxfordshire. In 1914 and 1928, under the 1841 Act, the late Robert Fleming ("Mr Fleming") conveyed land in Nettlebed to Oxfordshire County Council (the defendant and appellant, who we shall refer to as "the defendant" or "the County Council") as a site for an elementary school. Although such a school had existed prior to 1914, the benefactions from Mr Fleming enabled a new school building to be erected. The school operated on the site donated by Mr Fleming (we shall refer to this as the "Fleming site") until 2006. In the 1990s the County Council decided to relocate the school to a new building with improved facilities on land already owned by the County Council which was adjacent to the Fleming site; and the pupils moved across to the new school building in or about February 2006. The documented plan of the County Council was to sell the Fleming site to help pay off the costs of the new school building. In line with that plan, almost all of the Fleming site was subsequently sold to a property developer in September 2007 for £1,243,819.50.

5. The dispute is whether the County Council is legally permitted to use that money, as planned, to pay off the costs of the new school building; or whether, by reason of the 1841 Act, the statutory charitable trust of the land came to an end in February 2006 when the school started to operate from the new site so that the sum of £1,243,819.50 is held for the benefit of, and must be transferred to, the heirs of Mr Fleming. Four of those heirs are the claimants and respondents.

6. Richard Spearman QC, sitting as a Deputy Judge of the Chancery Division, decided that section 14 of the 1841 Act did not require the site to be sold before the school was moved. This was because, in his view, prior to its sale, the Fleming site had not ceased to be used for the purposes in the 1841 Act. But his decision was reversed by the Court of Appeal. Patten LJ gave the leading judgment, with which Hamblen and Nicola Davies LJJ agreed. Patten LJ held that, on the true interpretation of the 1841 Act, the land had ceased to be used for the purposes in the 1841 Act prior to its sale; and that the trustees could not keep the Fleming site vacant pending sale and then seek to apply section 14. The County Council now appeals to this court against that decision.

7. Christopher McCall QC for the County Council submits that, on these facts, the Fleming site did not cease to be used for the purposes in the 1841 Act because the sale proceeds from the site were to be used to pay off expenses for the new Nettlebed school building. The sale was part of a pre-conceived plan to relocate the school and section 14 of the 1841 Act permitted the use of those sale proceeds in that way. Simon Taube QC for the claimants submits that the Fleming site did cease to be used for the purposes in the 1841 Act as soon as the Fleming site was no longer being used as a site for the school which occurred in or about February 2006. There

was a section 2 reverter in favour of the claimants at that point and section 14 did not here apply.

8. In our judgment, for the reasons given below, sections 2 and 14 of the 1841 Act must be read as a coherent whole and interpreted so as to further the purposes of the Act. Applied to the facts, the correct interpretation of the statute permitted the sale of the Fleming site and use of the proceeds without triggering the section 2 reverter. We would therefore allow the appeal.

3. A preliminary point about reverter under section 2 of the 1841 Act

9. It should be explained at the outset that, subsequent to reforms made by the Reverter of Sites Act 1987 ("the 1987 Act") (which implemented some of the recommendations of a Working Party of the Law Commission in its 1981 Report, *Property Law: Rights of Reverter* (Law Com No 111, Cmnd 8410)), it is strictly speaking inaccurate to talk of a statutory reverter under the 1841 Act. That is because, by section 1 of the 1987 Act, that statutory reverter (and the analogous reverter of sites in other statutes) was replaced by a statutory trust for the benefit of those who, prior to the 1987 Act, would have been entitled to the reverter; and this is deemed always to have been the position. However, it would be cumbersome to have to refer throughout this judgment to the statutory trust that has replaced statutory reverter. For shorthand purposes, therefore, we use the term "section 2 reverter" to refer to the reverter in section 2 of the 1841 Act that has been replaced by the statutory trust arising under section 1 of the 1987 Act.

4. The essential facts

10. The facts in this case are straightforward and there is no dispute about them. Mr Fleming made two gifts of land expressed to be made under the School Sites Act 1841. By the first conveyance dated 29 September 1914, he freely and voluntarily conveyed without any valuable consideration to the defendant certain land already "forming a portion of the playground of the school at Nettlebed" to the defendant "for the purposes of the [1841 Act] and to be applied as a part of the playground of the said School and for no other purpose whatever." This first site comprised about 0.13 acres of land. By a second conveyance dated 5 April 1928, Mr Fleming freely and voluntarily conveyed without any valuable consideration to the defendant further land "for the purposes of the [1841 Act] and to be applied as a site for a public elementary school for children of and in the Parish of Nettlebed and adjacent Parishes and for the residence of the School Master (or School Mistress) of the said School or for other purposes of the said School and for no other purposes whatsoever." These purposes reflect two of the three statutory purposes set out in section 2 of the 1841 Act (see para 18 below). This second site comprised about 0.79

acres of land. Together the two sites comprise what we are referring to as the "Fleming site".

11. The school was in existence prior to 1914. The 1928 conveyance enabled a new school building to be erected on the Fleming site while the pre-1928 school site continued in use as the school's kitchen and dining room. Although permitted by the grant, none of the Fleming site was used for accommodation for the teaching staff. Mr Fleming died on 31 July 1933.

12. The defendant decided to relocate the school to its present site in the 1990s. A letter dated 18 April 2000 from the defendant's then Joint Head of Legal Services to Currey & Co, solicitors for the trustees of the will of the late NPV Fleming (another member of the Fleming family who had in the 1980s sold land to the defendant which was used by it as part of the site for the new school), refers to the defendant's "proposals for the school which will include the sale of the area edged red on the attached plan in order to raise the capital required to build a new primary school on the area edged blue thereon".

13. The scheme for the "Nettlebed Replacement School" was also an agenda item for the meeting of the defendant's Executive Committee on 22 July 2003. The defendant's revised detailed project appraisal at that time envisaged that total expenditure of £2,035,000 would be incurred in 2004/5, which would be funded as to £1,702,000 by borrowing, as to £193,000 by contributions from third parties, and as to £140,000 by grants; and that this would be defrayed in part by anticipated capital receipts of £1,300,000 in 2005/6, representing the proceeds of sale of land on which the school had operated prior to its relocation to the new site.

14. The defendant implemented these plans, by (a) building new (and improved) school facilities on land which it already owned, adjacent to the existing premises, (b) in or about February 2006, transferring the children who attended the school to the new premises, and (c) marketing and selling the old premises.

15. On 28 September 2007, the defendant sold 0.844 acres of land to a property developer, Bluespace Property Nineteen Ltd, for the sum of £1,355,000 pursuant to an agreement for sale dated 1 August 2007. That land comprised almost all of the Fleming site. The claimants' surveyor has calculated that 93.17% of the land sold to the property developer had been given to the defendant by Mr Fleming under the 1914 and 1928 conveyances. Based on that calculation, the claimants contend that, since September 2007, 93.17% of £1,335,000 (ie £1,243,819.50) has been held on trust for them (and for Mr Fleming's other heirs, who have been given notice of these proceedings but have chosen not to take part in them). The defendant accepts that calculation but disputes that there was any section 2 reverter.

16. The defendant explained the basis upon which it had proceeded in a letter from its solicitor dated 18 August 2010 to the claimants' solicitors. This included the statements that: "It was at all relevant times the Council's firm and settled intention to apply the proceeds of sale of the former school site towards the construction of buildings for the school on an alternative site" and "In practical terms, the pupils of the old site need somewhere to receive their education and therefore they need the new buildings to move into before the old site [is] sold".

17. In a further letter dated 24 September 2010 passing between the same parties the defendant stated (among other things) that "the closure, sale and use of proceeds is an event or series of events which does not cause a reverter to arise under the 1841 and 1987 Acts. The holding of a school site pending a planned section 14 sale is, in the Council's position, entirely in accordance with the statutory purposes set out in section 2 of the 1841 Act and set out in the relevant conveyances."

5. The relevant provisions of the 1841 Act

18. There were several School Sites Acts in the 19th century (in 1841, 1844, 1849, 1851 and 1852) but we are concerned only with the 1841 Act. The section of the 1841 Act that we first need to look at is section 2. This enables the grantor to transfer the site, specifies the three purposes for which the land may be provided and, in a proviso, sets out the section 2 reverter.

> "**2. Landlords empowered to convey land to be used as sites for schools, &c.**
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> 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, ... 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 *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." (Emphasis added)

19. Section 14 goes on to provide a power for the trustees to sell or exchange the site. It was this power which was invoked in the present case.

> "**14. Trustees empowered to sell or exchange lands or buildings**
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> 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 …"

20. As we shall see, it is clear that the ambit of this power must be consistent with the section 2 reverter. Sale or exchange under section 14 can only occur if there has not already been a section 2 reverter. The issue in this case is whether, reading those two sections together, the permanent closure of the school on the Fleming site in preparation for sale ended the statutory charitable trust with the effect that the trustees cannot apply the sale proceeds in the improvement (by buildings or otherwise) of the adjacent new school premises.

6. The relevant provisions of the Reverter of Sites Act 1987

21. The law on reverter of title under the 1841 Act (and some analogous statutes) was reformed by the 1987 Act. Although some of the provisions of that Act are not easy to interpret, we are satisfied that, as far as the essential questions that we have to decide in this case are concerned, nothing turns on the reforms made by the 1987 Act. Nevertheless, the 1987 Act is important and relevant in understanding the effect today of the 1841 Act. The relevant provisions of the 1987 Act are as follows.

> "**1. Right of reverter replaced by trust**
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> (1) Where any relevant enactment provides for land to revert to the ownership of any person at any time, being a time when the land ceases, or has ceased for a specified period, to be used for particular purposes, that enactment shall have effect, and (subject to subsection (4) below) shall be deemed always to have had effect, as if it provided (instead of for the reverter) for the land to be vested after that time, on the trust arising under this section, in the persons in whom it was vested immediately before that time.
>
> (2) Subject to the following provisions of this Act, the trust arising under this section in relation to any land is a trust for the persons who (but for this Act) would from time to time be entitled to the ownership of the land by virtue of its reverter with a power, without consulting them, to sell the land and to stand possessed of the net proceeds of sale (after payment of costs and expenses) and of the net rents and profits until sale (after payment of rates, taxes, costs of insurance, repairs and other outgoings) in trust for those persons; but they shall not be entitled by reason of their interest to occupy the land.
>
> …
>
> (4) This section shall not confer any right on any person as a beneficiary -
>
> > (a) in relation to any property in respect of which that person's claim was statute-barred before the commencement of this Act, or in relation to any property derived from any such property; or

(b) in relation to any rents or profits received, or breach of trust committed, before the commencement of this Act;

and anything validly done before the commencement of this Act in relation to any land which by virtue of this section is deemed to have been held at the time in trust shall, if done by the beneficiaries, be deemed, so far as necessary for preserving its validity, to have been done by the trustees."

"**6. Clarification of status etc of land before reverter**

…

(2) It is hereby declared -

(a) that the power conferred by section 14 of the School Sites Act 1841 (power of sale etc) is exercisable at any time in relation to land in relation to which (but for the exercise of the power) a trust might subsequently arise under section 1 above; and

(b) that the exercise of that power in respect of any land prevents any trust from arising under section 1 above in relation to that land or any land representing the proceeds of sale of that land."

22. It is sufficient to make the following points about those provisions of the 1987 Act:

(i) Section 1(1) provides that (after 17 August 1987 when the Act came into force) on an event that would have occasioned a section 2 reverter, there is no longer a reverter. The land continues to be vested in the grantees but, instead of a reverter, there is a statutory trust in favour of those who would have been entitled on the reverter. Moreover, subject to some important savings in section 1(4), the statutory trust is deemed always to have had effect in place of the reverter in section 2 of the 1841 Act.

(ii) Although this is not explicitly spelt out, the consequence of there being a statutory trust in section 1(1) instead of a statutory reverter is that

there can be no acquisition of title by the grantees (or their successors) by adverse possession. This is because, as was explained by the Working Party of the Law Commission in *Rights of Reverter*, at para 17, "it is trite law that a trustee cannot obtain a title by long possession against his own beneficiaries". However, by section 1(4), if title has already been acquired by the grantees by adverse possession before 17 August 1987, that title remains valid.

(iii) Section 6(2) is a declaratory provision which clarifies, for the avoidance of doubt, that the replacement of the section 2 reverter by a statutory trust does not undermine section 14 of the 1841 Act. That is, just as the section 2 reverter was avoided where the trustees exercised the power to sell the land in accordance with section 14, so the statutory trust, which replaces the section 2 reverter, is avoided where the trustees exercise the power under section 14.

23. It should be added for completeness that, since the coming into effect of the Trusts of Land and Appointment of Trustees Act 1996, the relevant statutory trust, that replaces the section 2 reverter by reason of section 1 of the 1987 Act, is a trust of land with power to sell rather than a trust for sale.

7. The judgments below

24. Richard Spearman QC held that the defendant was entitled to use the proceeds of sale of the Fleming site to pay off the expenses of the new school building and that the claim therefore failed: [2018] EWHC 455 (Ch). His essential reasoning, in what we consider to have been an excellent judgment, was as follows:

(i) Applying the words of Lord Walker giving the leading speech in *Fraser (No 2)*, one should take a "broad and practical approach" (para 46 of *Fraser (No 2)*) to the interpretation of section 2 of the 1841 Act; and there was no reason why the same approach should not be applied to the interpretation of section 14 of the 1841 Act.

(ii) Reading sections 2 and 14 together, and taking a broad and practical approach, the correct interpretation of section 2 was that, although the school had been moved from the Fleming site, that site was still being used for the purposes of the public elementary school at Nettlebed because it was being sold to raise money to pay for the cost of the new buildings. That interpretation was consistent with the correct interpretation of section 14 which "does not require the trust property to be sold first and the money

realised from the sale only then to be applied towards the cost of purchase or improvement of other suitable new land or buildings" (para 71).

(iii) The Working Party of the Law Commission, in its Report *Rights of Reverter*, was incorrect to assume, at para 114, that, in order to avoid the statutory reverter, a sale under section 14 always had to be carried out before the closure of the school. This was not only because this interpretation had not been tested in any decided case but also because it might encourage educationally undesirable devices to circumvent the difficulties. It would also be contrary to the wishes of grantors who "would not have wished to recall their benefaction simply because their school was a success and had to move to larger premises" (para 69).

(iv) The correct approach is consistent with the clearly accurate proposition that reverter is an event and once it occurs it is automatic and irrevocable.

25. That judgment was overturned by the Court of Appeal: [2019] EWCA Civ 200; [2019] Ch 435. Patten LJ's essential reasoning was as follows:

(i) As the sale of the Fleming site post-dated the removal of the school by more than a year, one could not say that, applying section 2 of the 1841 Act, the land continued to be used as a site for a school or otherwise for the purposes of education. In Patten LJ's words at para 22:

> "Since the sale of the old site post-dated the removal of the school to the new site by more than a year it is unrealistic to say, as a matter of ordinary language, even on a broad and practical approach to that issue, that the land continued to be used as a site for a school or otherwise for the purposes of education."

(ii) A provision for the divestment of an estate must be clear and identifiable and that was inconsistent with reverter turning on the continuing intention of the education authority. As Patten LJ expressed it at para 21:

> "[It is an accepted] principle of trust law that a provision for the divestment of an estate should be clearly and distinctly identifiable and, consistently with that, it is difficult to see how the possibility of a reverter under section 2 can depend upon the continuing intention of the education authority as to the

> ultimate use of the proceeds of sale even if that is sufficiently documented."

(iii) The view of the Law Commission, at para 114 of its Report *Rights of Reverter*, was consistent with *Dennis v Malcolm* [1934] Ch 244 and was correct in assuming that, for the purposes of section 14 of the 1841 Act, there must be a sale of the existing site prior to the closure of the school.

(iv) Patten LJ concluded as follows at para 23:

> "Expenditure on the improvement of other premises used for the purposes of the trust is a permissible use of the proceeds from the sale of the existing school site under section 14. But that power is only exercisable up to the moment when the land ceases to be used for those statutory purposes … I am unable to accept that, by keeping the old site vacant pending a sale, the County Council continued either to use the land as a site for a school or to use it for educational purposes. Both require the active use of the land for the education of children. I would accept that this could include ancillary activities such as the use of the site as a playground or for meals. But, in this case, the old site remained vacant with no further possible use for educational purposes."

8. The important decision of the House of Lords in *Fraser (No 2)*

26. The most important past case that we need to examine is *Fraser (No 2)*. This concerned a claim by the assignees of heirs to the grantor of the original school site. This site was conveyed under the 1841 Act to be used as a school "for the education of children and adults of the labouring manufacturing and other poorer classes" in the relevant district. The school was closed down and the site sold in 1995. The question was whether the site had ceased to be used for the purposes laid down by the grantor, so that there had been a section 2 reverter, prior to 17 August 1975. That was the critical date because, before the coming into force of the 1987 Act (on 17 August 1987), the trustees could acquire title by adverse possession of 12 years. Therefore, if the reverter had occurred prior to 17 August 1975, the trustees would have acquired title by adverse possession. It was held that there had been no section 2 reverter prior to 17 August 1975. The fact that by then the intake of the school was not confined to poor pupils did not mean that the site was no longer being used for the first statutory purpose ("as a site for a school for the education of poor persons") specified in section 2 of the 1841 Act.

27. In understanding the full context of the decision of the House of Lords, it should be explained that there was an earlier decision, in relation to a different donation of land and a different school, by the Court of Appeal (Peter Gibson, Mummery and Latham LJJ) in *Fraser v Canterbury Diocesan Board of Finance* [2001] Ch 669 ("*Fraser (No 1)*"). It was decided in that case that where the grantor, by the terms of the grant, had limited the statutory purpose specified (as he had done in that case by requiring that the school be run in accordance with the Anglican principles of the National Society), it was the terms of the deed, not the statutory purposes, that were determinative in determining whether the land had ceased to be used "for the purposes in this Act" under section 2 of the 1841 Act. In *Fraser (No 2)* the lower courts, Lewison J at first instance and the Court of Appeal (Potter and Arden LJJ and Wilson J), proceeded on the basis that *Fraser (No 1)* was correct. But the House of Lords in *Fraser (No 2)* unanimously held that both prior decisions of the Court of Appeal had been wrong. Lord Walker gave the leading speech and Lord Hoffmann also gave a reasoned speech agreeing with Lord Walker; Lord Nicholls, Lord Hope and Lord Brown agreed with them both. There were two particular points of importance decided by the House of Lords.

28. First, for the section 2 reverter to arise, the site had to cease to be used for the relevant purpose or purposes set out in the 1841 Act, not for any narrower purposes set out in the original deed of grant (see Lord Hoffmann at para 18 and Lord Walker at para 57). The relevant purpose of the Act meant one or more of the three purposes set out in the Act depending on which of those three purposes the grantor had specified. Any narrower purposes in the deed of grant were irrelevant in determining whether there had been a section 2 reverter. *Fraser (No 1)* had been wrong to hold otherwise.

29. Secondly, and of central importance to the present case, Lord Walker dealt with the interpretation of section 2 of the 1841 Act more generally. He accepted that section 2 did not admit of "very close linguistic analysis" (para 45). But the section operated "through the medium of a charitable trust" (para 45) and should be interpreted in line with the recognition that charity law gives effect to a "general charitable purpose (or intention)" (para 45) in a situation where particular directions given by the charity's founder are (or become) impracticable. In addition, under the general law of trusts a provision providing for the determination of trust by a reverter should be a clear event and not a process. It followed from all these considerations that it was appropriate to adopt "a broad and practical approach" to whether, under section 2, a site had ceased to be used for the purposes in the 1841 Act. It is helpful to set out Lord Walker's precise words at paras 45-46:

> "45. … Neither section 2 of the 1841 Act nor the trust deed admits of very close linguistic analysis … But some general principles are clear. It is clear that both the statute and the trust deed were intended to set up arrangements capable of lasting

> for a very long time-potentially for ever. Both were intended to operate through the medium of a charitable trust. Charity law has for centuries required that a general charitable purpose (or intention) should be recognised and given effect to, even though some particular directions given by the charity's founder are (or become) impracticable: see for instance the explanation given by Buckley J in *In re Lysaght, decd* [1966] Ch 191, 201-202. It is also a well-established principle of trust law that any provision determining or divesting an estate 'must be such that the court can see from the beginning, precisely and distinctly, upon the happening of what event it was that the preceding vested estate was to determine' (Lord Cranworth in *Clavering v Ellison* (1859) 7 HLCas 707, 725, cited in *Sifton v Sifton* [1938] AC 656, 670, and in *Clayton v Ramsden* [1943] AC 320, 326). As Mr Nugee put it in his written submissions, reverter is an event, not a process (and if it occurs, it is automatic and irrevocable.)
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> 46. All these considerations suggest that the court should take a broad and practical approach to the question whether a school has (in the words of the third proviso) ceased 'to be used for the purposes in this Act mentioned' (and that it is not simply a coincidence that all the reported cases are concerned with schools which had closed permanently). …"

30. To complete the story of the *Fraser* litigation, there was a further round of litigation dealing with when exactly the section 2 reverter did occur on the facts of *Fraser (No 2)* (accepting that, as the House of Lords had decided, it was not prior to 17 August 1975). Blackburne J held that the date of the section 2 reverter was when the school was closed in 1995: *Fraser v Canterbury Diocesan Board of Finance (No 3)* [2007] EWHC 1590 (Ch).

31. The central importance of *Fraser (No 2)* for this case is in laying down, with explanatory reasoning, the "broad and practical" approach required in interpreting section 2 of the 1841 Act and we would add, for the same reasons, in interpreting section 14. Furthermore, consistently with what was said in *Fraser (No 2)*, we think it important to highlight, in the next two sections, two additional general factors that should guide our approach. The first is the recognition that the courts should adopt a purposive interpretation where possible; and the second is the balance struck in the 1841 Act between the grantor's interest and the public interest.

32. But before moving on from *Fraser (No 2)* there is one additional point about what Lord Walker said in para 45 (set out above) that should not be overlooked. He made reference to it being a general principle of trusts law (or one might say, more

generally, of property law) that the section 2 reverter must be an event, that is clear, and not a process. In our view, what this means is that, provided the event is conceptually clear (eg the permanent closure of a school), it does not matter that, evidentially, it may be difficult to find out when that event occurred (eg when permanent closure occurred). As is stated in Megarry & Wade, *The Law of Real Property*, 9th ed (2019) (eds Bridge, Cooke and Dixon) at para 3-034, citing *In re Gape, decd* [1952] Ch 743 (in the context of a forfeiture of property):

> "The question is one of certainty of concept and not ease of application, so that a sufficiently certain condition is not invalidated merely by possible difficulties in ascertaining whether events have occurred which give rise to a forfeiture."

9. Purposive statutory interpretation

33. We have seen that *Fraser (No 2)* made clear that in determining whether there was a section 2 reverter the focus should be on the purposes of the 1841 Act (rather than any narrower purposes in the deed of gift). Mr McCall submitted, and we agree, that this emphasis on the purposes of the Act is in line with the now well-settled view that the courts should adopt a purposive approach to statutory interpretation where possible. In *Inland Revenue Comrs v McGuckian* [1997] 1 WLR 991, 999, Lord Steyn said of the approach to statutory interpretation in English law:

> "… there has been a shift away from literalist to purposive methods of construction … the modern emphasis is on a contextual approach designed to identify the purpose of a statute and to give effect to it."

In Lord Bingham's words in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687, para 8:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

See similarly, in the same case, Lord Steyn at para 21; and to the same effect, in a case to which we were referred on this point by Mr McCall, *Attorney General's*

Reference (No 5 of 2002) [2004] UKHL 40; [2005] 1 AC 167, Lord Steyn at para 31.

34. Moreover, as the quotation from Lord Bingham makes clear, the courts should avoid interpreting statutory provisions in isolation from other relevant provisions. The context includes the statute taken as a whole. Reading an Act as a whole may reveal that a proposition in one part of the Act sheds light on the meaning of provisions elsewhere in the Act. Hence in this case, we must seek to interpret sections 2 and 14 as forming part of a coherent legislative scheme.

35. There is another general aspect of statutory interpretation which supports taking a broad approach to the interpretation of the words in the 1841 Act. This is because the Act was drafted in the less rigorous style which was normal before the creation of the Office of the Parliamentary Counsel in 1869 and the adoption of more precise forms of drafting which followed: see *R (Andrews) v Secretary of State for Environment, Food and Rural Affairs* [2015] EWCA Civ 669; [2016] PTSR 112, para 30; *TW Logistics Ltd v Essex County Council* [2021] UKSC 4; [2021] 2 WLR 383, para 80.

36. It is worth adding here that as an illustration of what, in his oral submissions, Mr McCall referred to as the 1841 Act "betray[ing] a lack of careful thought" was the potential windfall that might accrue as a consequence of the section 2 reverter. This is because section 2 provides for reverter without any compensation being paid to the trustees for any improvements that have been made to the land; and/or, if the land was originally sold by the grantor (as contemplated by sections 2 and 10 of the 1841 Act and as occurred in *In re Cawston's Conveyance and the School Sites Act 1841* [1940] Ch 27) without any return of the contract price.

10. The balance struck in the 1841 Act between the grantor's interest and the public interest

37. The focus on the purpose of the 1841 Act requires an appreciation of the balance that the Act struck between the potentially conflicting interests of the grantor and of the public. At one time it appears to have been thought that the protection of the grantor's interests should prevail so that the primary focus was on protecting the section 2 reverter. This may be regarded as implicit in the following passage from Sir Wilfrid Greene MR in *In re Cawston's Conveyance and the School Sites Act 1841* [1940] Ch 27, 33-34:

> "One can see that the provision with regard to reverter would have been and no doubt was considered by the legislature to be a very useful encouragement to charitably minded persons,

> particularly if they were the owners of an estate or life tenants of a settled estate, to make grants for purposes such as these, because such persons might very well be satisfied to have the village school built upon the family estate, but would strongly object to the site on which such a school had been built being diverted later on to other purposes; therefore, as I have said, *that proviso as to reverter must have been a very valuable encouragement, because landowners by reason of it were thus enabled to ensure that the site should be used in perpetuity for school purposes or, if it ceased to be used for school purposes, that they would get it back*. The common sense of that is obvious." (Emphasis added)

That is accurate if one looks only at section 2 of the 1841 Act. But it requires qualification once one looks also at section 14 because, albeit within its limited parameters, section 14 clearly envisaged that the trustees might dispose of the site free of the section 2 reverter. Section 14 undermines the idea that the section 2 reverter ensured that the grantor could keep the land out of third party ownership or development. On the other hand, one may say that section 14 was consistent with grantors' intentions in the different sense that, as it was put by the Working Party of the Law Commission, in its Report *Rights of Reverter* at para 43, "[grantors] would not have wished to recall their benefaction simply because their school was a success and had to move to larger premises".

38. There are two further aspects of the reasoning in *Fraser (No 2)*, referred to earlier, which indicate that the 1841 Act envisaged that the grantor's interest might be outweighed by the public interest in the provision of education. The first is that the section 2 reverter only operates if the site has ceased to be used for the relevant *statutory* purpose. That statutory purpose is not to be read as being subject to any restrictions imposed by the grantor. Any restrictions the grantor imposed might in principle be enforceable (by an action for breach of trust) but non-compliance would not result in there being a section 2 reverter if the relevant statutory purpose were still being pursued. So, for example, the grantor's imposition of limitations on the type of education that pupils were to be given (eg in accordance with Anglican principles) would not prevail over the general purpose of education.

39. Secondly, Lord Walker tied section 2 of the 1841 Act into the general framework of charitable trust law. One aspect of this is that, in general terms, the courts will seek, in the general public interest, to uphold a charitable gift and prevent it failing, if necessary by applying it cy-près (and note that in cases of initial, as opposed to subsequent, failure, general charitable intention must be shown: see *Tudor on Charities*, 10th ed (2015), paras 9-001 - 9-035, 10-048, 10-070 - 10-074). See, generally, the recent discussion in *Children's Investment Fund Foundation (UK) v Attorney General* (judgment delivered in this Court sub nom *Lehtimäki v*

Cooper) [2020] UKSC 33; [2020] 3 WLR 461, paras 53 to 55. In line with this, the courts should lean towards the continuation of the purposes set out in section 2 of the 1841 Act rather than being astute to find that those purposes have failed thereby triggering a section 2 reverter.

11. Four other past cases

40. In addition to *Fraser (No 2)*, which both counsel relied on, and the other two cases in the *Fraser* litigation, we were referred to four cases on the 1841 Act. These were *Attorney General v Shadwell* [1910] 1 Ch 92; *Attorney General v Price* [1912] 1 Ch 667; *Dennis v Malcolm* [1934] Ch 244; and *In re Chavasse*, an unreported decision of Harman J dated 14 April 1954. We shall now look briefly at these four cases. Although they provide useful background, none of the four deals directly with the issue that we are deciding in this case.

41. In *Attorney General v Shadwell* a site had been donated for a school under the 1841 Act. After operating for some years, the school had permanently closed down, another school having been opened by the local authority nearby. But the building continued to be used once a week, as it had been before the school closed down, as a Sunday School. The question was whether there was a section 2 reverter. It was held by Warrington J that there was such a reverter because to use the building just as a Sunday School was outside the purposes of the 1841 Act. Of the three statutory purposes, the grantor had chosen the first (for a school for the education of the poor) and not the third (otherwise for the education of the poor in religious and useful knowledge). Once the specified statutory purpose failed, the section 2 reverter was triggered. This decision was approved by the House of Lords in *Fraser (No 2)*. Stressing that *Shadwell* was not dealing with the question as to the relationship between the statutory purposes and the purposes set out by the grantor in the deed, Lord Hoffmann said the following, at para 18:

> "[*Shadwell*] may be regarded as having glossed the statutory language. But it has stood without criticism for nearly a century and I would not cast any doubt upon it. … It does not say that the 'purposes in the Act mentioned' means the purposes in the deed mentioned. It says that if the grantor has chosen one of the three statutory purposes and the land ceases to be used for that statutory purpose, a reverter is not avoided because it can still be used for one of the other two statutory purposes."

42. In *Attorney General v Price* land had been donated under the 1841 Act as a school for poor children in the district of Caerphilly. The grantor had specified in the deed that the school should be conducted in accordance with the principles of the National Society for Promoting the Education of the Poor in the Principles of the

Established Church. It became impractical to run the school on those religious lines. The Court of Appeal accepted that a (cy-près) scheme was appropriate under which the school could be run on a secular basis by the local authority. It rejected the argument that the school could instead be let out for a rent which could be applied for the purposes of the local church. More generally, Fletcher Moulton LJ said the following about letting out the site, at p 684:

> "Section 2 of the Schools Sites Act 1841 does not in my opinion permit persons to dedicate plots of land for educational purposes in the sense that the rental value of such land is to be applied to educational purposes, and what cannot be done directly cannot be done indirectly through the failure of the original trusts. … [T]he land is to be used as a site for schools (whether for religious or secular education) or their appurtenances, and not as a means of revenue for educational purposes."

43. Mr Taube placed direct reliance on those words. He submitted that the bar on using the site "as a means of revenue for educational purposes" meant that the County Council in the instant case could not sell off the Fleming site, after the school had been moved, so as to finance the new school building. But it is plain that Fletcher Moulton LJ was not dealing with the situation which we face in this case. He was making the obvious point that section 2 does not permit a site to be rented out even for educational purposes. Rather the site must be directly used for one of the three purposes set out in section 2 although, at p 684, Fletcher Moulton LJ went on to confirm that renting out would be possible where it did not interfere with the primary use of the site for those purposes. His reasoning says nothing about section 14 and nothing about the issue we face in this case.

44. In *Dennis v Malcolm*, a site had been donated for a school under the 1841 Act but, after operating for some years, the school had permanently closed down. The question facing Clauson J was whether the trustees of the school could be registered as having legal title and hence whether they could pass on good title by selling the land. It was held not. Once the school had been closed down, there was a section 2 reverter to the heirs of the grantor. We have seen, at para 25(iii) above, that Patten LJ in the Court of Appeal in the instant case thought that *Dennis v Malcolm* was consistent with the view of the Working Party of the Law Commission that the school had to remain in operation on the site being sold at the time of the sale in order to avoid a section 2 reverter. But that may not be the only possible interpretation of the relevant passage in Clauson J's judgment and, in any event, what Clauson J said on this issue was obiter dicta.

45. Finally, in *In re Chavasse*, an unreported decision of Harman J, dated 14 April 1954, the primary question was whether the trustees of a school in

Birmingham, set up in 1855 under the 1841 Act, had acquired title by adverse possession (prior to selling the land in 1953) or whether, instead, there had been a section 2 reverter to the heirs of the grantor. The school had been destroyed by bombing in 1940 during the Second World War. But it was held that the site had not ceased to be used for the school at that time because there was an intention to rebuild. That cesser of use only occurred several years later in 1947 when, following a compulsory purchase order, the plan was to abandon the site and use the funds for a new school five miles out of the parish. It was only at that later date that one could say that the school had permanently closed and it followed that there had not been 12 years' adverse possession so that the sale proceeds were held for the benefit of those entitled under the section 2 reverter.

46. Harman J did briefly consider section 14 but regarded it as being "of no help at all" because "[i]t could not possibly justify … selling the site in order to convert the money to something five miles outside the parish". But his judgment is particularly helpful in illustrating that, while the permanent closing down of a school is the relevant conceptually certain event, there may be evidential difficulties in determining when this has happened not least because it turns on the intentions of those involved. In the words of Harman J:

> "It is said that directly the bomb fell and the school became unusable there was a reverter, because the school had ceased to be used for these purposes. So it had in a sense ceased to be used for these purposes; but the words cannot mean, in my judgment, a mere stopping of the user. Supposing, for instance, there was a fire and it were burned down in peacetime, it could not, in my judgment, be argued that the right of reverter arose because it took two years or whatever it was to rebuild the school. Here, as it appears, the intention had been to rebuild, because the cost of works was, so to speak, in the offing, and would have been effected at any cost. … In my judgment, there is no evidence at all of any permanent intention to abandon this site as a place for a Church of England school, at any rate before the order made in December 1946, for the compulsory acquisition of the land. Whether it was made then or whether it was made rather later, … in 1947, does not matter; the reverter had not occurred, in my view, until the Managers' project for using the site for school purposes must necessarily be taken to have been abandoned, and I think probably … August 1947 is as good a date to take as another, and, on that event happening, the site had ceased to be used for the purposes aforesaid … and, therefore, the rights of the family revive ..."

12. Alternative courses of action to avoid a section 2 reverter

47. Mr Taube submitted that for section 14 to apply, the correct sequence of events must be observed. That correct sequence of events did not include moving the school to a different site and then selling the original site with vacant possession. But there were other ways in which the sale of the Fleming site to the developer could have been completed without any risk of triggering the section 2 reverter. These included, Mr Taube submitted, staggering the move from one site to the other, deferring completion of the contract to sell the land until the new site was ready to use, or selling the land on condition that the purchaser granted a licence for the continued use of the site for the school until the new school was ready for the pupils to move into. The first of these is similar to Patten LJ's suggestion, at para 23 in the Court of Appeal (see para 25(iv) above), that there would be no section 2 reverter if the site continued to be used for ancillary activities such as a playground or for meals.

48. Apart from the fact that the need for such courses of action is likely to catch out those without the benefit of expert advice, Mr McCall submitted that these devices have potentially undesirable effects of two types. First, the idea of staggering the move or retaining the site for ancillary activities may be contrary to what is educationally desirable for the pupils. Secondly, the suggestions made as to deals that might be struck with the purchaser would be likely to deflate the sale price thereby depriving the school of funds. We agree with these submissions of Mr McCall so that, unless the words preclude us from doing so, it would be preferable to interpret sections 2 and 14 in a way that would render such courses of action unnecessary.

13. The essential reasons why the appeal should be allowed

49. We are now in a position to pull the threads together. It is our view that, applying the correct interpretation of sections 2 and 14 of the 1841 Act to the facts of this case, the Fleming site was not "ceasing to be used" for the purposes of Nettlebed school, and hence for the purposes of the Act, when the school moved to the new adjacent site in or about February 2006. It was not ceasing to be used for the purposes of Nettlebed school because there was an intention throughout by the County Council, as made clear by relevant documentation, to apply the proceeds of sale of the land in the improvement (by buildings or otherwise) of the adjacent new school premises. Section 14 here permitted the Fleming site to be sold with vacant possession and the proceeds to be used to pay off the costs of developing the new site. No section 2 reverter was triggered.

50. Our essential reasons for why that is the correct interpretation of sections 2 and 14 of the 1841 Act can be set out as follows:

(i) In general terms, in line with *Fraser (No 2)*, the court must apply a "broad and practical" approach to interpreting both sections 2 and 14 of the 1841 Act. This is consistent with a purposive approach to the interpretation of the 1841 Act. Moreover, the two sections should be read as a coherent whole. Additionally, the court should recognise that, because the 1841 Act operates through the creation of a statutory charitable trust, the court should lean in favour of the charitable trust continuing rather than being ended by a section 2 reverter. This in turn reflects the balance struck in the 1841 Act between the public interest and the interest of the grantor.

(ii) In deciding on the correct purposive interpretation of the 1841 Act, we have found persuasive the following paragraph of the Working Party of the Law Commission in its Report *Rights of Reverter* at para 43:

> "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 overridden 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." (Emphasis added)

In our view, to interpret sections 2 and 14 as meaning that, on the facts of this case, there has been a section 2 reverter would indeed frustrate the general policy of the Act. Moreover, the contrary conclusion merely serves to encourage devices that might have potentially unfortunate effects whether educationally or financially (see para 48 above).

(iii) There is nothing in section 14 that expressly or impliedly excludes the power to sell where the school site is being sold with vacant possession. Indeed, if there were such an exclusion, one might have expected it to have been spelt out in clear terms in the statute given that the usual sale of land is one with vacant possession.

(iv) A relatively straightforward interpretation of section 14 is possible, permitting sale with vacant possession, by focussing on the following words: "When … it shall be deemed advisable to sell … the [land] … it shall be lawful for the trustees … by the direction or with the consent of the managers and directors of the said school, if any such there be, to sell … the said land … and to apply the money arising from such sale … in the purchase of another site, or in the improvement of other premises used or to be used for the purposes of such trust …". The words "used or to be used" directly support the interpretation that it was acceptable within section 14 for the school to have moved to the new site before the sale was completed.

(v) Just as there is nothing in the 1841 Act, nor is there any case law, requiring that the correct sequence of events for section 14 to operate is one that precludes a sale of the site with vacant possession. The Working Party of the Law Commission in its Report *Rights of Reverter* at para 114 was simply incorrect (as Richard Spearman QC made clear at first instance: see para 24(iii) above) to assume that, in order to avoid a section 2 reverter, a sale under section 14 always had to be carried out before the closure of the school.

(vi) We do not agree with Mr Taube's submission (or the view of Patten LJ in the Court of Appeal at para 21, to which we refer at para 25(ii) above) that the interpretation we are taking contradicts the need for a section 2 reverter to be triggered by an event, that is certain, rather than a process. Certainly, it is incorrect to think that the triggering event cannot be dependent on the relevant intentions of the County Council. So, for example, it is not in dispute that there would have been a section 2 reverter had Nettlebed School been permanently closed down in February 2006. But whether there has been a permanent closure may itself be dependent on the intentions of those running the school as was shown so clearly by the reasoning of Harman J in *In re Chavasse*. The permanent closing down of a school is a conceptually certain event even if evidentially there may be some difficulty in pin-pointing when that occurred (because it may have rested on a party's intentions).

(vii) In summary, therefore, one can usefully link the relevant words of sections 2 and 14 of the 1841 Act to produce the following general proposition. The site of a school does not cease to be used for the purposes of the 1841 Act (section 2) where at all material times it is considered advisable to sell the site and, with the consent of the managers and directors

of the school, if any, to apply the money arising from the sale in the purchase of another site, or in the improvement of other premises, used or to be used for the school (section 14). Taking a broad and practical approach to the statutory words, as required by *Fraser (No 2)*, the power in section 14 is to be interpreted as including a power of sale of the most usual kind, namely a power to sell with vacant possession. We think it implicit in the statutory words that, as on the facts of this case, the intention to use the sale proceeds, for the purchase of another site or in the improvement of other premises, must be present prior to, or at the time of, the school being permanently moved from the former site and at the time that that site is sold; but, out of an abundance of caution, we have inserted the words "at all material times" (which do not appear in the 1841 Act) to make this clear.

14. Conclusion

51. We conclude that, having regard to the purposes of the 1841 Act, Richard Spearman QC, at first instance, was correct to hold that, when section 14 is invoked, it is not necessary for the site to be sold before the school is moved to another site and closed on the site given by the grantor. Accordingly, we would allow this appeal.