



1839
1841

ACTS ✓

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PASSED IN THE FIFTH SESSION

OF THE

THIRTEENTH PROVINCIAL PARLIAMENT

OF

UPPER CANADA.

BEGUN and holden at *Toronto*, on the Third day of *December* 1839 and prorogued to the Tenth day of *February* 1840, in the Third Year of the Reign of **VICTORIA**, the *Royal Assent* to which was subsequently promulgated.



KINGSTON :

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to the Queen's Most Excellent Majesty.

1841.

1841

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QUARTO & QUINTO

VICTORIÆ REGINÆ.

C A P. LXXII.

An Act for the Relief of John Stuart.

[*Royal Assent promulgated on the 18th June, 1841.*]

FOR as much as John Stuart, of the Town of London, in the District of London, and Province of Upper Canada, Esquire, hath by his Petition humbly set forth, that he and Elizabeth Van Rensselaer Stuart, formerly Elizabeth Van Rensselaer Powell, are both natives of the said Province of Upper Canada; that a Marriage was in due form of law had and solemnized between them at the City of Toronto, in the said Province, in the year of our Lord, one thousand eight hundred and thirty four; that he has had three children, daughters, born to him by his said wife, all of whom are still living, who are between the ages of two and five years; that he continued to enjoy the comfort and assistance of his said wife, from the time of such marriage until on or about the twenty fifth day of June, now last past, when on a visit to her mother in the City of Toronto, aforesaid, being seduced by one John Grogan, then a Lieutenant in Her Majesty's Thirty-second Regiment of Foot

Preamble.

Foot, and at that time stationed in the said City of Toronto, and immediately before stationed at the Town of London, aforesaid, she, the said Elizabeth Van Rensselaer Stuart, committed adultery with the said John Grogan, and eloped from him, the said John Stuart, and has continued ever since to live apart from him the said John Stuart, and that the said John Stuart commenced an Action in Her Majesty's Court of Queen's Bench against the said John Grogan, for the said seduction of his said wife, in which such proceedings were had, that a judgment was therein rendered for him, the said John Stuart, against the said John Grogan, for the sum of Six Hundred and Seventy-one Pounds fourteen shillings and three pence damages and costs, as by the Record of the said Judgment, reference being thereunto had, will more fully appear, and hath humbly prayed, that he might be divorced *à vinculo matrimonii* from his said wife: And whereas the said John Stuart hath made proof of the facts above recited, and it is expedient that the prayer of the said Petitioner should be granted; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled *An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province*, and by the authority of the same, that the said Marriage between the said John Stuart and the said Elizabeth Van Rensselaer Stuart, his Wife, shall from henceforth be null and void, and the same is hereby declared, adjudged and enacted to be null and void to all intents and purposes whatsoever.

Marriage
annulled.

Right to con-
tract matrimo-
ny with other
parties.

II. And be it further enacted, by the authority aforesaid, that it shall and may be lawful for the said John Stuart, and the said Elizabeth Van Rensselaer, respectively, at any time hereafter to contract matrimony and to marry with any other woman or man, with whom either of them, might lawfully marry in case the said Marriage had not been solemnized.

Legitimacy
of Issue.

III. And be it further enacted, by the authority aforesaid, that nothing in this Act contained shall extend or be construed to extend to affect the legitimacy of Mary Sophia Stuart, Caroline Elizabeth Stuart and Agnes Grant Stuart, issue of the said John Stuart and his said wife, Elizabeth Van Rensselaer, but that the said Mary Sophia, Caroline Elizabeth and Agnes Grant, and each of them, is and are, to all intents and purposes, legitimate, and that the rights of them and each of them, and of their respective heirs as respects their, and each of their capacity to inherit, have, hold, enjoy, and transmit all and all manner of property, real or personal, of what nature or kind soever, from any person or persons whomsoever, to

any

any person or persons whomsoever, shall remain the same as they would have remained to all intents and purposes whatsoever as if this Act had not been passed.

IV. Provided always, and be it further enacted, by the authority aforesaid, that in case of the said John Stuart, and the said Elizabeth Van Rensselaer Stuart, or either of them, again contracting matrimony with any person or persons with whom it would have been lawful for them to contract matrimony, if they, the said John Stuart and Elizabeth Van Rensselaer Stuart, had not intermarried, and have any issue born to them or either of them, that the said issue so born, shall be, and are hereby declared to be to all intents and purposes legitimate, and that the rights of them, the said issue and each of them, and of their respective heirs, as respects their and each of their capacity, to inherit, have, hold, enjoy and transmit all and all manner of property, real or personal, of what nature or kind soever from any person or persons whomsoever, shall be and remain the same as they would have been to all intents and purposes whatsoever, as if the marriage between the said John Stuart and Elizabeth Van Rensselaer had never taken place.

Issue of New
Marriage,

C A P. LXXIII.

An Act to amend an Act passed in the ninth year of the Reign of King George the Fourth, chapter two, entitled *An Act for the relief of the Religious Societies therein mentioned.*

[Royal Assent promulgated 3rd December, 1841.]

WHEREAS it is expedient and desirable to allow the several Christian denominations recognized by the Statutes of this Province, to hold lands for the support of Public Worship, and the propagation of Christian Knowledge; And whereas an Act, passed in the ninth year of the Reign of His late Most Gracious Majesty King George the Fourth, entitled *An Act for the relief of the Religious Societies therein mentioned*, does not permit them to hold land for any other purpose than for the site of a Church, Meeting House, or Chapel, and Burying Ground, nor to a greater extent than five acres; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled *An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province*, and by the authority of the same, that so much of said Act as limits the powers of the several denominations

Preamble.

9 Geo. 4. c. 2.

Repealed.

denominations mentioned in said Act to the quantity of five acres, and to the purposes for which lands shall be held, be and the same is hereby repealed.

Religious Societies entitled to hold lands.

II. And be it further enacted, by the authority aforesaid, that the several religious Societies mentioned in the said Act, shall and are hereby authorized to hold lands in the manner specified in said Act for the support of Public Worship, and the propagation of Christian Knowledge, as well as for the purposes mentioned in said Act, any thing in the Statutes, commonly called the Statutes of Mortmain, to the contrary notwithstanding.

Roman Catholic Church.

III. And be it further enacted, by the authority aforesaid, that all the rights and privileges by this Act conferred upon the religious denominations in the first recited Act mentioned, shall be deemed and taken to extend in every respect to the Roman Catholic Church to be exercised according to the government of the said Church.

C A P. LXXIV.

An Act to make provision for the management of the temporalities of the United Church of England and Ireland in this Province, and for other purposes therein mentioned.

[*Royal Assent promulgated 3rd December, 1841.*]

Preamble.

WHEREAS it is desired on behalf of the United Church of England and Ireland, in the Province of Upper Canada, that provision should be made by law for the internal management by the members of the said Church of the temporalities thereof, and also for allowing the endowment thereof, and it is just and expedient that such provision should be made; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled *An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province*, and by the authority of the same, that from and after the passing of this Act the soil and freehold of all Churches of the communion of the said United Church of England and Ireland now erected or hereafter to be erected in the said Province, and of the Church Yards

Yards and Burying Grounds attached or belonging thereto respectively, shall be in the Parson or other Incumbent thereof, for the time being; and that the possession thereof shall be in the Incumbent for the time being, and the Church Wardens to be appointed as hereinafter is mentioned by whatever title the same may now be held, whether vested in Trustees for the use of the Church, or whether the legal Estate remains in the Crown by reason of no Patent having been issued, though set apart for the purposes of such Church, Church Yard or Burying Ground: Provided always, that nothing herein contained shall extend to affect the rights of any other Church or Body of Christians to any landed property or Church now erected, but that the same shall remain as if this Act had not been passed.

Freehold of Churches, &c. to vest in the Parson or Incumbent.

Proviso.

II. And be it further enacted, by the authority aforesaid, that all Pew holders in such Churches whether holding the same by purchase or lease, and all persons holding sittings therein by the same being let to them by Church Wardens, and holding a certificate from the Church Wardens of such sitting, shall form a Vestry for the purposes in this Act mentioned and declared.

Pew holders to form a Vestry.

III. And be it further enacted, by the authority aforesaid, that a meeting of such Vestry shall be holden on Monday, in Easter week, in each and every year, after due notice thereof, given during Divine Service on the morning of Easter Sunday, for the purpose of appointing Church-wardens for the ensuing year, and that at such meeting one Church-warden shall be nominated by the Incumbent of the Parsonage or Rectory, to which the said Church belongs, and the other shall be elected by a majority of those present and entitled to vote at such Vestry meeting as aforesaid: Provided nevertheless, that in case of such Incumbent declining or neglecting to nominate a Church-warden, then both of the said Church-wardens shall, for the current year, be elected in the manner aforesaid, and in case the members of such Vestry shall neglect to elect a Church-warden, then both of such Church-wardens shall, for the current year, be nominated by the Incumbent: Provided always, that if from any cause a Vestry meeting shall not take place at the time aforesaid, such appointment of Church-wardens may take place at any subsequent Vestry meeting, to be called in manner hereinafter provided; and in case of the death or change of residence to twenty miles or more from any such Church, of either of the said Church-wardens, a Vestry meeting shall be thereupon called for the election, by the said Vestry, of a new Church-warden, in case the one deceased or removed had been elected by the Vestry, or for the nomination of a new Church-warden by the Incumbent, in case the one deceased or removed had been nominated by the Incumbent.

Ordinary meetings and proceedings of Vestry.

IV. And be it further enacted, by the authority aforesaid, that no person shall be eligible to the office of Church-warden except members of the said Church of the

Church Wardens.

the full age of twenty-one years, and who shall also be members of such Vestry.

Church Wardens term of office.

V. And be it further enacted, by the authority aforesaid, that such Church-wardens shall hold their office for one year from the time of their appointment, or until the election of their successors, except in case of an appointment or nomination to fill up any vacancy occasioned by death or removal, as aforesaid, and in such case the person so appointed or nominated, shall hold the said office until the next annual election.

Powers of Church Wardens.

VI. And be it further enacted, by the authority aforesaid, that such Church-wardens so to be elected and appointed, as aforesaid, shall, during their term of office, be as a Corporation to represent the interest of such Church and of the members thereof, and shall and may sue and be sued, answer and be answered unto in all manner of suits and actions whatsoever and may prosecute indictments, presentments, and other criminal proceedings for and in respect of such Churches and Church Yards, and all matters and things appertaining thereto, and shall and may, in conjunction with the Rector or Incumbent, make and execute faculties or conveyances or other proper assurances in the Law to all Pew holders holding their Pews by purchase, or leases to those holding the same by lease, and shall and may grant certificates to those who shall have rented sittings, such conveyances, leases and certificates to be given within a reasonable time after demand made, and at the charges of the person applying for the same; and, further, it shall be the duty of such Church-wardens, from time to time, to sell, lease and rent pews and sittings upon such terms as may be settled and appointed at Vestry meetings to be holden for that purpose, as hereinafter provided: Provided always, that any such sale, lease or renting, shall be subject to such rent charge, or other rent as may from time to time be rated and assessed in respect thereof at such Vestry meetings.

Pews.

VII. And be it further enacted, by the authority aforesaid, that in case of the absolute purchase of any Pew in any such Church as aforesaid, the same shall be construed as a Freehold of Inheritance, not subject to forfeiture by change of residence, or by discontinuing to frequent the same, and the same may be bargained, sold and assigned to any purchaser thereof, being a member of the Church of England, and such purchaser, provided the same be duly assigned and conveyed to him, shall hold the same with the same rights, and subject to the same duties and charges as the original purchaser thereof.

Rights of Pew holders.

VIII. And be it further enacted, by the authority aforesaid, that any Pew-holder whether by purchase or lease, and any person renting a Pew or Sitting shall and

and may, during their rightful possession of such Pew or Sitting, have a right of action against any person injuring the same or disturbing him or his family in the possession thereof.

IX. And be it further enacted, by the authority aforesaid, that such Church-warden so to be appointed as aforesaid, shall yearly, and every year within fourteen days after other Church-wardens shall be nominated and appointed to succeed them deliver in to such succeeding Church-wardens a just, true and perfect account in writing (fairly entered in a Book or Books to be kept for that purpose, and signed by the said Church-wardens) of all sums of money by them received, and of all sums rated or assessed or otherwise due and not received, and also of all goods, chattels, and other property of such Church or Parish in their hands as such Church-wardens, and of all monies paid by such Church-wardens so accounting, and of all other things concerning their said office, and shall also pay and deliver over all sums of money, goods, chattels, and other things, which shall be in their hands, unto such succeeding Church-wardens, which said account shall be verified by oath before one or more of Her Majesty's Justices of the Peace, who are hereby authorized to administer the same, and the said Book or Books shall be carefully preserved by such Church-wardens, and they shall and are hereby required to permit any member of such Vestry, as aforesaid, to inspect the same at all reasonable times, paying one shilling for such inspection, and in case such Church-wardens shall make default in yielding such account as aforesaid, or in delivering over such money, goods, or other things as aforesaid, it shall be in the power of the succeeding Church-wardens to proceed against them at Law for such default, or to file a bill in Equity for discovery and relief; and in case of the re-appointment of the same Church-wardens, then such account as aforesaid shall, in like manner as is aforesaid, be made and rendered before an adjourned meeting of such Vestry, fourteen days after such re-appointment.

Church-War-
dens accounts.

Open to ins-
pection.

X. And be it further enacted, by the authority aforesaid, that it shall be in the power of the incumbent of any such Parsonage, Rectory, or Parish, as aforesaid, or of the Church-wardens thereof, to call a Vestry meeting whenever he or they shall think proper so to do, and it shall be his and their duty so to do upon application being made for that purpose in writing, by six at least of the members of such Vestry, as aforesaid; and in case, upon such written application being made as aforesaid, such Incumbent and Church-wardens shall refuse to call such meeting, then, one week after such demand made, it shall be in the power of any six of such members of the Vestry to call the same by notice to be affixed on the outer Church Door (or Church Doors, where more than one) at least one week previous to such intended meeting.

Extraordinary
meetings of
Vestry.

XI.

Chairman of
Vestry meet-
ings.

XI. And be it further enacted, by the authority aforesaid, that in all Vestry meetings, the Rector or Incumbent of the Church shall preside as Chairman when present, and in his absence such person as the majority present at such meeting shall name; and the Vestry Clerk, when there is one and present, or in case there be no Vestry Clerk, or he be absent, then such person as the Chairman shall name shall be Secretary of such Vestry meeting, and the proceedings of such Vestry meetings shall be entered in a Book to be kept for that purpose, and preserved in the custody of the Church-wardens.

Regulation of
Pew Rents.

XII. And be it further enacted, by the authority aforesaid, that the rent charge to be paid upon Pews holden in freehold, and the rent to be paid for Pews and Sitings in Pews, leased or rented, shall be regulated from time to time at such Vestry meetings as aforesaid: Provided nevertheless, that no alterations shall be made therein except at Vestry meetings called for such special purpose, and so expressed in the notice calling the same; and, further, that the charges to be made in respect of such conveyances, leases and certificates, shall, in like manner, be regulated at such Vestry meetings as aforesaid.

Appointment
of Clerk, Sex-
ton, &c.

XIII. And be it further enacted, by the authority aforesaid, that the Clerk of the Church, the Organist, the Vestry Clerk, the Sexton and other subordinate servants of the Church shall be nominated and appointed by the Church-wardens for the time being, and that their salary and wages shall be brought into the general account, to be rendered as aforesaid by such Church-wardens.

Fees.

XIV. And be it further enacted, by the authority aforesaid, that the fees on marriages, baptisms, and other services of the Church of the like nature, and the charges payable on breaking the ground in the cemeteries or church yards, and in the said Churches for burying the dead, shall be regulated by the Ordinary, or in case of there being no Ordinary, by the Bishop of the Diocese.

Vestry Bye-
Laws.

XV. And be it further enacted, by the authority aforesaid, that it shall be in the power of the members of such Vestries, at such Vestry meetings, as aforesaid, to make Bye-laws for the regulation of their proceedings, and the management of the temporalities of the Church or Parish to which they belong, so as the same be not repugnant to this Act, nor contrary to the canons of the said United Church of England and Ireland.

Grants of land
&c. for Church
uses to be valid;

XVI. And be it further enacted, by the authority aforesaid, that any Deed or Conveyance of Land or of Personalty that may be made to any Bishop of the said Church, in the said Province, and to his successors, for the endowment of his See, or for the general uses of the said Church, as such Bishop may appoint or other-
wise

wise, or for the use of any particular Church then erected, or thereafter to be erected, or for the endowment of a Parsonage, Rectory, or Living, or for other uses or purposes appurtenant to such Church in general, or to any particular Church or Parish to be named in such Deed, and any such Deed or Conveyance to any Parson or Rector, or other Incumbent and his successors, for the endowment of such Parsonage, Rectory or Living, or for other uses or purposes appurtenant thereto shall be valid and effectual to the uses and purposes in such Deed or Conveyance to be mentioned and set forth, the Acts of Parliament commonly called the Statutes of Mortmain or other Acts, Laws or Usages, to the contrary thereof notwithstanding: Provided always, that in order to the validity of such Deeds and Conveyances, the same shall be made and executed six months at the least before the death of the person conveying the same, and shall be registered not later than six months after his decease.

Notwithstanding the Statutes of Mortmain, &c.

XVII. And be it further enacted, by the authority aforesaid, that in the event of any person or persons, bodies politic or corporate, desiring to erect and found a Church or Churches, and to endow the same with a sufficiency for the maintenance of such Church, and of Divine Service therein, according to the rites of the said Church of England and Ireland, it shall and may be lawful for him or them to do so upon procuring the license of the Bishop under his hand and seal for that purpose; and thereupon after the erection of a suitable Church, and the appropriation by the founder thereof of such Church so erected, and of lands and hereditaments, or other property adequate to the maintenance thereof, and of an Incumbent, and adequate to the usual and ordinary charges attendant upon such Church such provision being made to the satisfaction of the Bishop, such founder, his heirs and assigns being members of the said Church of England, or such body politic or corporate, as the case may be, shall have the right of presentation to such Church as an advowson in fee presentative, according to the rules and canons of the said United Church of England and Ireland.

Church Endowments.

Bishop's License;

Advowson.

XVIII. And be it further enacted, by the authority aforesaid, that nothing in this Act contained shall extend or be construed to extend in any manner to confer any spiritual jurisdiction or ecclesiastical rights whatsoever upon any Bishop or Bishops, or other ecclesiastical person of the said Church, in the said Province of Upper Canada.

No spiritual jurisdiction conferred by this Act.