county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for the holding of petty "sessions of the peace in boroughs, and for providing places for the holding of such "petty session in counties and boroughs:"

"Locomotive" means a locomotive propelled by steam or by other than animal power:

"Person" includes a body of persons corporate or unincorporate.

CHAPTER 78.

An Act to further amend the provisions of the Law of Scotland on the subject of Education, and for other purposes connected therewith.

[16th August 1878.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. 35 & 36 Vict. c. 62.

1. This Act may be cited as the Education (Scotland) Act, 1878, and this Act and the Education (Scotland) Act, 1872, (in this Act referred to as the principal Act,) may be cited together as the Education (Scotland) Acts, 1872 and 1878.

Extent of Act.

2. This Act shall extend to Scotland only.

Commencement of Act

3. This Act shall, except in so far as herein-after provided, come into operation on the first day of October one thousand eight hundred and seventy-eight (which day is in this Act referred to as the commencement of this Act).

Construction of Act.

4. This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to include this Act.

Regulation as to employment of child under 10, and certificate of knowledge being condition of employment of child over 10.

5. A person shall not, after the commencement of this Act, take into his employment (except as herein-after in this Act mentioned) any child—

(1.) Who is under the age of ten years; or

(2.) Who, being of the age of ten years, and not more than fourteen years, has not obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic in terms of section seventy-three of the principal Act, unless such child being of the age of ten years or upwards is employed and is attending school in accordance with the provisions of any Act of Parliament regulating the education of children employed in labour, or of any minute of the Scotch Education Department fixing the standard of education to be required for the partial exemption of children from the obligation to attend school.

Restriction on casual employment of children.

6. After the commencement of this Act no child under the age of ten years shall, save as herein-after mentioned, be employed in any casual employment, and no child who is above the age of ten years but under the age of fourteen years, shall, save as aforesaid, unless he has obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic in terms of section seventy-three of the principal Act, be employed in any casual employment after nine o'clock at night, from the first day of April to the first day of October, and after seven o'clock at night from the first day of October to the first day of April.

Casual employment shall mean employment for purposes of gain in streets or other places in vending or exposing for sale any article whatsoever, and also employment of any other kind, outside the child's own home, not being employment the lawful period whereof is regulated by any Act of Parliament.

A school board may, by writing under the hand of the clerk, exempt from the prohibitions of this section any child for a period or periods named in such writing, and not exceeding in the whole six weeks, between the first day of January and the thirty-first day of December in any year.

Exception to prohibition of employment of children.

7. A person shall not be deemed to have taken any child into his employment contrary to the provisions of this Act, if it is proved to the satisfaction of the sheriff either—

(1.) That during the employment there is not within three miles, measured according to the nearest road, from the residence of such child any inspected school open which the child can attend; or

(2.) That such employment is during the school holidays, or during the hours during which the school is not open, not being hours during which casual employment is herein-before prohibited; or

(3.) That the employment is exempted by the notice of the school board herein-after next mentioned; (that is to say,)

The school board may, if it thinks fit, issue a notice exempting from the prohibitions and restrictions of this Act the employment of children above the age of eight years, for the necessary operations of husbandry and the ingathering of crops or to give assistance in the fisheries for the period to be named in such notice: Provided that the period or periods so named by any such school board shall not exceed in the whole six weeks between the first day of January and the thirty-first day of December in any year.

The school board shall cause a copy of every notice so issued to be affixed to the door of all churches and schools in the district.

Penalty for employing a child in contravention of Act.

8. Every person who takes a child into his employment in contravention of this Act shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

Definition of employment in case of parent.

9. A parent of a child who employs such child in any labour exercised by way of trade or for the purposes of gain, or who permits such child to be engaged in any such labour on its own behalf, shall be deemed for the purposes of this Act to take such child into his employment.

Enforcement of Act by school board or by inspectors of factories, &c.

10. The provisions of this Act respecting the employment of children shall be enforced in the district of every school board by that board, provided that it shall be the duty of the inspectors and sub-inspectors acting under the Acts regulating factories, workshops, and mines respectively, and not of the school board, to enforce the observance by the employers of children of the provisions of this Act respecting the employment of children in such factories, workshops, and mines; but it shall be the duty of the school board to assist the said inspectors and sub-inspectors in the performance of their duty by information and otherwise.

Certificates of birth for purposes of Acts.

11. Where the age of any child is required to be ascertained or proved for the purposes of this Act, any person, on presenting a written requisition in such form, and containing such particulars as may be from time to time prescribed by a Secretary of State, and on payment of such fee, not exceeding one shilling, as a Secretary of State from time to time fixes, shall be entitled to obtain an extract under the hand of the registrar, under the Act of the seventeenth and eighteenth years of Her present Majesty, chapter eighty, and any Acts amending the same, of the entry in the registry kept under those Acts.

Power of officer of school board to enter place of employment.

12. If it appears to any sheriff, on the complaint of an officer of a school board acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such sheriff may by order under his hand empower an officer of the school board to enter such place at any reasonable time within forty-eight hours from the date of the order, and examine such place, and any person found therein touching the employment of any child therein.

Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction before the sheriff to a penalty not exceeding twenty pounds.

Exemption of employer on proof of guilt of some other person.

13. Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

Where a child is taken into employment in contravention of this Act on the production by, or with the privity of, the parent of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

Where an employer charged with taking a child into his employment in contravention of this Act proves that he has used due diligence to enforce the observance of this Act, and either that some agent or workman of his employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate, and under the belief in good faith in the genuineness and truth of such certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of this Act, and under the belief in good faith in such representation, the employer shall be exempt from any penalty.

Where an employer satisfies the school board, or other person about to institute a prosecution that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against, and convicting such agent, workman, or parent, such school board, or person, shall institute proceedings against such agent, workman, or parent, and not against the employer.

Temporary modification as to application of Act.

14. The provisions of this Act shall, during twelve months after the commencement of this Act, apply to children of the age of nine years and upwards as if they were of the age of ten years and upwards.

Resignation of member of school board, and supplying vacancy.

15. A member of a school board may resign on giving to the board one month's previous notice in writing of his intention so to do. The vacancy so caused shall, where a quorum remains, be supplied by the school board in the manner provided in section thirteen of the principal Act; and if the school board fail for eight weeks to fill up the vacancy, the Scotch Education Department may nominate a person to fill such vacancy, or may issue an order for an election of a person to fill such vacancy at such time and place and in such manner as the said department shall determine.

Disqualification of member of school board for non-attendance.

16. If a member of a school board absents himself during six successive months from all meetings of the board, except from temporary illness or other cause to be approved by the board, such person shall cease to be a member of the school board, and his office shall thereupon be vacant.

Proceedings where quorum fails by death, &c.

17. If by the death, resignation, or disqualification of any member or members of a school board there shall cease to be a quorum, the Scotch Education Department may nominate as many persons as shall be necessary to make up the full number of members, or may issue an order for an election of such number of members at such time and place and in such manner as the said department shall determine.

Expenses of higher class school buildings may be paid out of school fund and charged on rates.

18. A school board having the management of any school which is a higher class public school within the meaning of the principal Act shall maintain the buildings thereof out of the school fund in the same manner in which it is bound to maintain the buildings of any other school under its management, and shall be empowered to pay from the school fund such other expenses for the promotion of efficient education in the said school as are not provided for by the revenues stated in section sixty-two of the principal Act: Provided that no expenditure under this section shall be incurred without the consent of the Scotch Education Department; and provided that nothing contained in this section shall in any way affect the powers of borrowing from the Public Works Loan Commissioners conferred on school boards by the principal Act.

Examination of higher class schools.

19. When an authority other than a school board having under its management a public or other school in which the education given does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but of instruction in Latin, Greek, modern

languages, mathematics, natural science, and generally in the higher branches of knowledge, shall apply to the Scotch Education Department for the examination of such school, with a view to ascertain its general efficiency, and with reference to the higher branches of knowledge taught therein, and shall undertake to pay towards the expenses incident to such examination such sum as the Scotch Education Department may fix, it shall be lawful for the Scotch Education Department to make provision for such examination either by one or more of Her Majesty's inspectors of schools or by such other person or persons as the Scotch Education Department may appoint for the purpose.

Examination of higher class schools under management of school boards.

20. When a school board having under its management a public or other school in which the education given does not consist chiefly of elementary instruction in reading, writing and arithmetic, but of instruction in Latin, Greek, modern languages, mathematics, natural science, and generally in the higher branches of knowledge, shall apply to the Scotch Education Department for the examination of such school, with a view to ascertain its general efficiency, and with reference to the higher branches of knowledge taught therein, it shall be lawful for the Scotch Education Department to make provision for such examination either by one or more of Her Majesty's Inspectors of Schools, or by such other person or persons as the Scotch Education Department may appoint for the purpose. When a higher class public school shall have been examined under the provisions of this section, such examination shall come in place of an examination under section sixty-two of the principal Act.

Office under board to disqualify from being member of school board.

21. No person holding an office of profit under a school board in any parish or burgh shall be eligible or shall be capable of acting as a member of such school board or as a manager under section twenty-two of the principal Act.

Procedure where parochial board refuse to pay school fees.

22. If a parent is unable from poverty to pay for the elementary education in reading, writing, and arithmetic of his child or children between five and thirteen years of age, and if, upon application, the parochial board of the parish or burgh in which he resides refuses to pay out of the poor fund the ordinary and reasonable fees of such child or children, it shall be the duty of the school board to apply to the sheriff, who, after inquiry, may, if he shall think fit, grant an order on such parochial board to pay the said fees, and such order may dispose of all question of expense.

Mode of procedure and expenses of prosecutions. 27 & 28 Vict. c. 53.

23. Every prosecution for penalties or other proceedings under the principal Act, or this Act, may take place before the sheriff (whose judgment shall be final) under the provisions of the Summary Procedure Act, 1864, and in all proceedings under the principal Act or this Act any person appointed by the school board, or any inspector or sub-inspector of factories, workshops, or mines, may appear before the sheriff and conduct such proceedings.

Where proceedings shall be taken under sections seventy and seventy-one of the principal Act, or under this Act, it shall not be lawful to award expenses against (1) any person appointed by the school board to prosecute, whether that person is or is not a procurator fiscal; or (2) against any inspector or sub-inspector acting under the Acts regulating factories, workshops, or mines respectively. Any prosecution for penalties under the principal Act or this Act which may take place before the sheriff may take place also before any two justices of the peace sitting in open court, and any order which under this Act may be made by the sheriff may be made by such justices, whose judgments and orders shall be final, and not subject to review.

In the principal Act and this Act "sheriff" shall include "sheriff substitute."

Removal of doubt as to right of certain schoolmasters to the franchise.

24. Whereas doubts have arisen as to the right of a teacher of a public school under a school board, who holds office at the pleasure of the board, and who occupies as part of the emoluments of his office lands and heritages under the school board, to be registered as a voter and to vote at elections for a Member or Members to serve in Parliament, in respect of the qualification afforded by such lands and heritages: And whereas it is expedient that such doubts should be removed, be it enacted, that from and after the passing of this Act it shall be no objection to the name of any such teacher being placed on the register of voters for the burgh or county within which such lands and heritages are situate, that

the lands and heritages occupied by him, and on which his claim to the franchise rests, are held as part of the emoluments of his office, and at the pleasure of the school board: Provided, that the rental of such lands and heritages, according to the valuation roll, shall be of sufficient annual value to qualify a voter.

School board to have access to valuation roll free of charge.

25. The clerk of supply of a county or town clerk of a burgh or other officer who shall have in his possession or under his control any valuation roll shall at all times give, free of charge, reasonable access to such roll, either in his official chambers or where no such chambers are provided in such public place as the sheriff shall appoint, to the clerk or other person or persons appointed by the school board of any parish within such county or of such burgh for the purpose of making a copy of such roll or of any entries therein.

Amendment of 35 & 36 Vict. c. 62. sch. B.

26. The principal Act shall be construed as if there were substituted for the rule numbered four in Schedule B. to the principal Act the rule in the schedule to this Act.

Effect of schedules.

27. The schedules to the principal Act and to this Act shall be of the same force as if they were enacted in these Acts respectively.

Amendment of clause 70 of principal Act.

28. The principal Act shall be construed as if the words "one month" were substituted for the words "three months" in clause seventy of that Act.

Union of school board.

29. It shall be lawful for the Scotch Education Department at any time after the passing of this Act, upon the application of the school board of any parish in which no school has been erected by such Board, and of the School Board of any adjoining burgh, to order, that from and after the period specified in the order such parish shall cease, for the purposes of the principal Act and this Act, to be a parish, and shall be esteemed to be a part of such burgh within the meaning and for the purposes of the principal Act and this Act, and a school board shall be elected therefor in pursuance of the order, and the Scotch Education Department shall frame and issue all proper rules and directions for carrying such order into execution.

Extension of burghs for municipal purposes not to alter school board areas unless otherwise ordered by Scotch Education Department.

30. Where by any local Act, or under the powers of any public general Act, the area of any burgh shall hereafter be extended for municipal or police purposes, such extension shall not alter for the purposes of the principal Act or this Act the area of such burgh, or the area of any parish from which any district shall be taken for such extension; and the valuation roll of such extended burgh, so far as it relates to such district, shall, for the purposes of the principal Act and this Act, be held to be a part of the valuation roll of the county applicable to such parish, unless and until such district be annexed to the said burgh for those purposes in manner herein-after mentioned: Provided always, that the Scotch Education Department may at any time, after due inquiry, order such district to be annexed to such burgh for the purposes of the principal Act and this Act, upon such terms and subject to such arrangements as the said department may determine.

Compulsory purchase of sites. 41 & 42 Vict. c. 78. 8 & 9 Vict. c. 19.

31. With respect to the purchase of land by school boards for the purposes of the Education (Scotland) Acts, 1872 and 1878, the following provisions shall have effect; (that is to say,)

(1.) The Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions relating to access to the special Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean the principal Act and this Act, together with the confirming Act herein-after mentioned, and the promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include any right over land:

Regulations as to the purchase of land compulsorily.

(2.) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

Publication notices.

(*a.*) Publish during three consecutive weeks in the months of October and November, or either of them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require, and shall further,—

Service of notices.

(*b.*) After such publication, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land;

(*c.*) Such notice shall be served—

(a.) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent; or

(b.) By leaving the same at the usual or last known place of abode of such person as aforesaid, or by forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person:

Petition to Education Department.

(3.) Upon compliance with the provisions contained in this section with respect to notices, the school board may, if they think fit, present a petition to the Scotch Education Department (herein-after called "the department"), praying that an order may be made authorising the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned; the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and shall be supported by such evidence as the department may from time to time require:

(4.) If on consideration of the petition and proof of the publication and service of the proper notices the department think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry:

(5.) After such consideration and proof, and after receiving a report made upon any such inquiry, the department may make the order prayed for, authorising the school board to put in force with reference to the land referred to in such order the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as they may think fit; and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served:

No order valid until confirmed by Parliament.

(6.) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament, and it shall be lawful for the department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order (herein called the confirming Act) shall be deemed to be a public general Act of Parliament:

Costs how to be defrayed.

(7.) The department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively:

(8.) All costs, charges, and expenses incurred by the department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the department as aforesaid, shall become a charge upon the school fund of the parish or burgh to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury or to such person respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such direction of the said Commissioners or allowance of such costs, charges, and expenses respectively upon so much of the principal sum due

in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

Parochial board to pay over school rate without deduction

32. When, under section forty-four of the principal Act, a parochial board is required by a school board to levy by means of a local rate any sum required to meet a deficiency in the school fund, or to levy an amount of rate on each pound of rental as school rate, the parochial board shall pay over to the school board such sum or the produce of such rate, as the case may be, without any deduction on account of the cost of levying and collecting such sum or rate.

SCHEDULE.

The triennial election of a school board for any parish or burgh shall be held at such time and in such manner and in accordance with such regulations as the Scotch Education Department may from time to time by order prescribe; and the Scotch Education Department may by order appoint or direct the appointment, and make regulations as to the duties, remuneration, and expenses, of any officers requisite for the purpose of such election, and make regulations respecting all other necessary things preliminary or incidental to such election, and revoke or alter any previous order.

CHAPTER 79.

An Act for further promoting the Revision of the Statute Law by repealing certain Enactments which have ceased to be in force or have become unnecessary. [16th August 1878.]

WHEREAS, with a view to the revision of the Statute Law, and particularly to the preparation of the Revised Edition of the Statutes now in progress, it is expedient that certain enactments (mentioned in the First Schedule to this Act) which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have, by lapse of time and change of circumstances, become unnecessary, should be expressly and specifically repealed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Enactments in first schedule repealed.

1. The enactments described in the First Schedule to this Act are hereby repealed, subject to the exceptions and qualifications in the said schedule mentioned:

Savings.

Provided, that where any enactment not comprised in the said schedule has been repealed, confirmed, revived, or perpetuated by any enactment hereby repealed, such repeal, confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act;

and the repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated, or referred to;

nor shall such repeal of any enactment affect any right to any hereditary revenues of the Crown, or affect any charges thereupon, or prevent any such enactment from being put in force for the collection of any such revenues, or otherwise in relation thereto;

and this Act shall not affect the validity, invalidity, effect, or consequences of anything already done or suffered,—or any existing status or capacity,—or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof,—or any release or discharge of or from any debt, penalty, claim, or demand,—or any indemnity,—or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law or equity, or established jurisdiction, form or course of pleading, practice, or procedure, or existing usage, franchise, liberty, custom, privilege, restriction, exemption, office, appointment, payment, allowance, or emolument,