
A BILL

To further amend the Law of Property and to relieve Trustees.

(Presented by the ATTORNEY GENERAL, 3 October, 1860.)

WHEREAS it is expedient further to amend the Law of Property Preamble.
and to relieve Trustees Be it enacted by the Queen's Most
Excellent Majesty by and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in Parliament
5 assembled and by the authority of the same as follows:—

LEASES.

1. Where any license to do any act which without such license Restriction on effect
of license to alien.
would create a forfeiture or give a right to re-enter under a condition or
power reserved in any lease heretofore granted or to be hereafter granted
10 shall at any time after the passing of this Act be given to any lessee or
his assigns every such license shall unless otherwise expressed extend only
to the permission actually given or to any specific breach of any proviso
or covenant made or to be made or to the actual assignment under lease
or other matter thereby specifically authorized to be done but not so as to
15 prevent any proceeding for any subsequent breach (unless otherwise
specified in such license) and all rights under covenants and powers of
forfeiture and re-entry in the lease contained shall remain in full force and
virtue and shall be available as against any subsequent breach of covenant
or condition assignment under lease or other matter not specifically
20 authorized or made punishable by such license in the same manner as
if no such license had been given and the condition or right of re-entry
shall be and remain in all respects as if such license had not been given
except in respect of the particular matter authorized to be done.

2. Where in any lease heretofore granted or to be hereafter Restricted operation
of partial licenses.
25 granted there is or shall be a power or condition of re-entry on assigning
or under-letting or doing any other specified act without license and a
license at any time after the passing of this Act shall be given to one of
several lessees or co-owners to assign or under-let his share or interest
or to do any other act prohibited to be done without license or shall be
30 given to any lessee or owner or any one of several lessees or owners to

assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property or by the lessee or owner of the rest of the 5 property as the case may be over or in respect of such shares or interests or remaining property but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of entry in certain cases.

3. Where the reversion upon a lease is severed and the rent or 10 other reservation is legally apportioned the assignee of each part of the reversion shall in respect of the apportioned rent or other reservation allotted or belonging to him be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been 15 reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

POLICIES OF INSURANCE.

Relief against forfeiture for breach of covenant to insure in certain cases.

4. A Court of Equity shall have power upon such terms as to the Court may seem fit to relieve against a forfeiture for breach of a 20 covenant or condition to insure against loss or damage by fire where no loss or damage by fire has happened and the breach has in the opinion of the Court been committed through accident or mistake or otherwise without fraud or gross negligence and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to 25 insure.

Record of relief granted.

5. The Court where relief shall be granted shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise.

Court not to relieve more than once in respect of same covenant &c.

6. The Court shall not have power under this Act to relieve the 30 same person more than once in respect of the same covenant or condition nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of Court in favor of the person seeking the relief.

35

Lessor to have benefit of an informal insurance.

7. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall on loss or damage by fire happening have the same advantage from any then subsisting insurance relating to the building covenanted to be insured effected

executed and attested shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional 5 or other form of execution or attestation or solemnity Provided always that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution or that any act shall be performed in order to give validity to any appointment having no relation to the mode 10 of executing and attesting the instrument and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed and to any such execution of a power this provision shall not extend. 15

Sale under power not to be avoided by reason of mistaken payment to tenant for life.

13. Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon or any other articles attached thereto and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles it shall be lawful for 20 the Supreme Court in its Equitable Jurisdiction upon any bill or claim or application in a summary way as the case may require or permit to declare that upon payment by the purchaser or the claimant under him of the full value of the timber and articles at the time of sale with such interest thereon as the Court shall direct and the settlement of the said principal 25 moneys and interest under the direction of the Court upon such parties as in the opinion of the Court shall be entitled thereto the said sale ought to be established And upon such payment and settlement being made accordingly the Court may declare that the said sale is valid and thereupon the legal estate shall vest and go in like manner as if the power had been 30 duly executed and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

Devisee in trust may raise money by sale notwithstanding want of express power in the will.

14. Where by any will which shall come into operation after the passing of this Act the testator shall have charged his real estate or any specific portion thereof with the payment of his debts or with the payment 35 of any legacy or other specific sum of money and shall have devised the estate so charged to any trustee for the whole of his estate or interest therein and shall not have made any express provision for the raising of such debt legacy or sum of money out of such estate it shall

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be lawful for the said devisee in trust notwithstanding any trusts actually declared by the testator to raise such debts legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and any deed of mortgage so executed may reserve such rate of interest and fix such period of repayment as the person executing the same shall think proper.

15. The powers conferred by the last section shall extend to all and every person in whom the estate devised shall for the time being be vested by survivorship descent or devise or to any person who may be appointed under any power in the will or by the Supreme Court in its Equitable Jurisdiction to succeed to the trusteeship vested in such devisee in trust aforesaid.

Powers given by last section extended to survivors devisees &c.

16. If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee the executor for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee in trust for the said hereditaments and such power shall from time to time devolve to and become vested in the person (if any) in whom the executorship shall for the time being be vested but any sale or mortgage under this Act shall operate only on the estate and interest whether legal or equitable of the testator and shall not prevent the necessity for getting in any outstanding subsisting legal estate.

Executor in certain cases vested with like power as devisee in trust as respects raising money.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections fourteen fifteen and sixteen of this Act or either of them shall have been duly and correctly exercised by any person acting in virtue thereof.

Purchasers &c. not bound to inquire as to powers.

18. The provisions contained in sections fourteen fifteen and sixteen shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the passing of this Act but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed and the said several sections shall not extend to a devise to any person in fee or in tail or for the testator's whole estate and interest charged with debts or legacies nor shall they affect the power of any such devisee to sell or mortgage as he may by law now do.

Sections 14 15 and 16 not to affect certain sales &c. nor to extend to devisees in fee or in tail.

INHERITANCE.

Descent how to be traced.

19. Where there shall be a total failure of heirs of the purchaser or where any land shall be descendible as if an ancestor had been the purchaser thereof and there shall be a total failure of the heirs of such ancestor then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the lands as if he had been the purchaser thereof.

Preceding section incorporated with 3 and 4 Wm. 4 c. 106.

20. The last preceding section shall be read as part of the Act Third and Fourth William the Fourth Chapter one hundred and six adopted in this Colony by the Act Seventh William the Fourth number 10 eight.

ASSIGNMENT OF PERSONALTY.

Assignment to self and others.

21. Any person shall have power to assign personal property now by law assignable including chattels real directly to himself and another person or other persons or corporation by the like means as he might assign the same to another.

PURCHASERS.

Punishment of vendor &c. for fraudulent concealment of deeds &c. or falsifying pedigree.

22. Any seller or mortgagor of land or of any chattels real or personal or choses in action conveyed or assigned to a purchaser or the solicitor or agent of any such seller or mortgagor who shall after the passing of this Act conceal any settlement deed will or other instrument material to the title or any incumbrance from the purchaser or falsify any pedigree upon which the title does or may depend in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud shall be guilty of a misdemeanor and being found guilty shall be liable at the discretion of the Court to suffer such punishment by fine or imprisonment for any time not exceeding two years with or without hard labor or by both as the Court shall award and shall also be liable to an action for damages at the suit of the purchaser or mortgagor of those claiming under the purchaser or mortgagee for any loss sustained by them or either or any of them in consequence of the settlement deed will or other instrument or incumbrance so concealed or of any claim made by any person under such pedigree but whose right was concealed by the falsification of such pedigree And in estimating such damages where the estate shall be recovered from such purchaser or mortgagee or from those claiming under the purchaser or mortgagee regard shall be had to any expenditure by them or either or any of them in improvements on the land but no prosecution for any offence included in this section against any seller or mortgagor or any solicitor or agent shall

shall be commenced without the sanction of Her Majesty's Attorney General or in case that office be vacant of Her Majesty's Solicitor General and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted
5 as the Attorney General or the Solicitor General (as the case may be) shall direct.

23. In the construction of this Act the term "mortgage" shall be
taken to include every instrument by virtue whereof land is in any manner conveyed assigned pledged or charged as security for the repayment of
10 money or money's worth lent and to be reconveyed reassigned or released on satisfaction of the debt and the term "mortgagor" shall be taken to include every person by whom any such conveyance assignment pledge or charge as aforesaid shall be made and the term "mortgagee" shall be taken to include every person to whom or in whose favor any such con-
15 veyance assignment pledge or charge as aforesaid is made or transferred and the term "judgment" shall be taken to include registered decrees orders of Courts of Equity and Insolvency and other orders having the operation of judgments.

Interpretation of terms.

TRUSTEES AND EXECUTORS.

20 24. No trustee executor or administrator making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney shall be liable for the moneys so paid or the act so done by reason that the person who gave the power of attorney was dead at the time of such payment or act or had done some act to avoid the power provided that the
25 fact of the death or of the doing of such act as last aforesaid at the time of such payment or act *bonâ fide* done as aforesaid by such trustee executor or administrator was not known to him. Provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such pay-
30 ment shall have been made but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee executor or administrator if the money had not been paid away under such power of attorney.

Trustee &c. making payment under power of attorney not to be liable by reason of death of party giving such power.

25. Where an executor or administrator liable as such to the
35 rents covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned and shall have set
apart

As to liability of executor or administrator in respect of rents covenants or agreements.

apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised although the period for laying out the same may not have arrived and shall have assigned the lease or agreement for a lease to a purchaser 5 thereof he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease and the executor or administrator 10 so distributing the residuary estate shall not after having assigned the said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease but nothing herein contained shall prejudice the right of the lessor or those claiming 15 under him to follow the assets of the deceased into the hands of the persons to or amongst whom the said assets may have been distributed.

As to liability of executor &c. in respect of rents &c. in conveyances on rents charge.

26. In like manner where an executor or administrator liable as such to the rent covenants or agreements contained in any conveyance on chief rents or rent charges whether any such rent be by limitation 20 of use grant or reservation or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereafter 25 mentioned and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived and shall have conveyed such property or 30 assigned the said agreement for such conveyance as aforesaid to a purchaser thereof he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future 35 liability under the said conveyance or agreement for a conveyance and the executor or administrator so distributing the residuary estate shall not after having made or executed such conveyance or assignment and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said con- 40
veyance

veyance or agreement for conveyance but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the persons to or among whom the said assets may have been distributed.

5 27. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the Supreme Court in its Equitable Jurisdiction in an administration suit for creditors and others to send in to the executor or administrators their 10 claims against the estate of the testator or intestate such executor or administrator shall at the expiration of the time named in the said notices or the last of the said notices for sending in such claims be at liberty to distribute the assets of the testator or intestate or any part thereof amongst the parties entitled thereto having regard to the claims 15 of which such executor or administrator has then notice and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof as the case may be but nothing in the present Act contained shall prejudice 20 the right of any creditor or claimant to follow the assets or any part thereof into the hands of any person who may have received the same respectively.

As to distribution of the assets of testator or intestate after notice given by executor or administrator.

28. Any trustee executor or administrator shall be at liberty without the institution of a suit to apply by petition or by summons 25 upon a written statement to the Primary Judge in Equity for the opinion advice or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate such application to be served upon or the hearing thereof to be attended by all persons interested in such application 30 or such of them as the said Judge shall think expedient and the trustee executor or administrator acting upon the opinion advice or direction given by the said Judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee executor or administrator in the subject matter of the said application Provided 35 nevertheless that this Act shall not extend to indemnify any trustee executor or administrator in respect of any act done in accordance with such opinion advice or direction and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

Trustee executor &c. may apply by petition to Judge of Chancery for opinion advice &c. in management &c. of trust property.

Every trust instrument to be deemed to contain clauses for the indemnity and re-imbusement of the trustees.

29. Every deed will or other instrument creating a trust either expressly or by implication shall without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following that is to say:—"That the trustees or trustee for the time being of the said deed will or other instrument shall be respectively chargeable only for such moneys stocks funds and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts receipts neglects or defaults and not for those of each other nor for any banker broker or other person with whom any trust moneys or securities may be deposited nor for the insufficiency or deficiency of any stocks funds or securities nor for any other loss unless the same shall happen through their own wilful default respectively and also that it shall be lawful for the trustees or trustee for the time being of the said deed will or other instrument to re-imburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed will or other instrument."

As to investments by trustees.

30. When a trustee executor or administrator shall not by some instrument creating his trust be expressly forbidden to invest any trust fund or real securities in any part of the Colony of New South Wales or in the Government Stock of the said Colony it shall be lawful for such trustee executor or administrator to invest such trust fund on such securities or stock and he shall not be liable on that account as for a breach of trust provided that such investment shall in other respects be reasonable and proper.

Investment in England may be substituted for investments in this Colony under certain limitations.

31. Any person who under or by virtue of any direction trust or power already or hereafter given created or reserved in any last will or other testamentary disposition marriage or other settlement of real or personal property or other deed agreement or writing is or shall be expressly authorized or directed to lend money at interest on real or Government securities in New South Wales or on real or Government securities in England may in like manner as so authorized and directed in all other respects lend the same or any part thereof at interest on real or Government securities in England or in New South Wales *mutatis mutandis* and such person shall not on account of so lending money be deemed in a Court of Equity guilty of any breach of trust or held accountable further or otherwise than if the money had been laid out by him on real or Government securities where so expressly authorized or directed. Provided that every such loan in which any minor or unborn child or person

person of unsound mind is or may be interested shall be made under the order of the Supreme Court in its Equitable Jurisdiction made in a summary way upon petition or motion with proper notice. Provided also that no such loan shall be made without the consent of any person whose
5 consent may be required to the investment so expressly authorized or directed testified in the manner required by such direction trust or power. Provided further that this enactment shall not apply to any case in which such direction trust or power as aforesaid doth or shall contain any express restriction against the investment of such money as
10 hereby authorized. And provided lastly that nothing herein contained shall be construed to relieve any person intrusted or clothed with such direction trust or power as aforesaid from any responsibility as to title security or otherwise either at law or in equity save as aforesaid.

32. This Act shall be styled and may be cited as the "Property Short Title.
15 "Law and Trustees Relief Act of 1860."

The first part of the report is devoted to a description of the general character of the country, and to a statement of the principal occupations of the people. It is then divided into two parts, the first of which is devoted to a description of the principal cities and towns, and the second to a description of the principal villages and hamlets. The report is then divided into three parts, the first of which is devoted to a description of the principal rivers and streams, and the second to a description of the principal lakes and ponds, and the third to a description of the principal mountains and hills. The report is then divided into four parts, the first of which is devoted to a description of the principal forests, and the second to a description of the principal fisheries, and the third to a description of the principal mines, and the fourth to a description of the principal manufactures. The report is then divided into five parts, the first of which is devoted to a description of the principal public buildings, and the second to a description of the principal public works, and the third to a description of the principal public institutions, and the fourth to a description of the principal public charities, and the fifth to a description of the principal public offices.

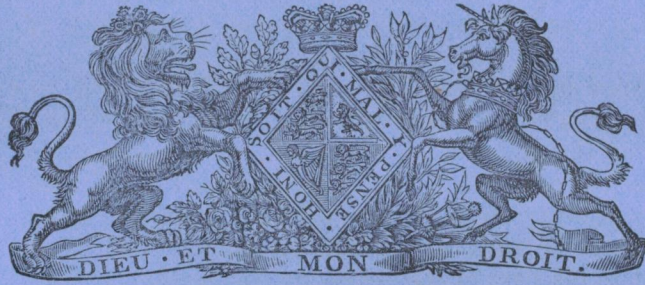
By order of the Board of Commissioners, J. H. [Name]

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber, }
Sydney, 17 October, 1860. }*

R. O'CONNOR,
Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act to further amend the Law of Property and to relieve Trustees.

WHEREAS it is expedient further to amend the Law of Property Preamble.
and to relieve Trustees Be it enacted by the Queen's Most
Excellent Majesty by and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in Parliament
5 assembled and by the authority of the same as follows:—

LEASES.

1. Where any license to do any act which without such license Restriction on effect of license to alien.
would create a forfeiture or give a right to re-enter under a condition or
power reserved in any lease heretofore granted or to be hereafter granted
10 shall at any time after the passing of this Act be given to any lessee or
his assigns every such license shall unless otherwise expressed extend only
to the permission actually given or to any specific breach of any proviso
or covenant made or to be made or to the actual assignment under lease
or other matter thereby specifically authorized to be done but not so as to
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specified in such license) and all rights under covenants and powers of
forfeiture and re-entry in the lease contained shall remain in full force and
virtue and shall be available as against any subsequent breach of covenant
or condition assignment under lease or other matter not specifically
20 authorized or made dispunishable by such license in the same manner as
if no such license had been given and the condition or right of re-entry
shall be and remain in all respects as if such license had not been given
except in respect of the particular matter authorized to be done.

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2.

2. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or under-letting or doing any other specified act without license and a license at any time after the passing of this Act shall be given to one of
 5 several lessees or co-owners to assign or under-let his share or interest or to do any other act prohibited to be done without license or shall be given to any lessee or owner or any one of several lessees or owners to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property such license shall not
 10 operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property or by the lessee or owner of the rest of the property as the case may be over or in respect of such shares or interests or remaining property but such right of re-entry shall remain in full force
 15 over or in respect of the shares or interests or property not the subject of such license.

Restricted operation of partial licenses.

3. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned the assignee of each part of the reversion shall in respect of the apportioned rent or other reservation
 20 allotted or belonging to him be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Apportionment of conditions of entry in certain cases.

25 POLICIES OF INSURANCE.

4. A Court of Equity shall have power upon such terms as to the Court may seem fit to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire where no
 30 loss or damage by fire has happened and the breach has in the opinion of the Court been committed through accident or mistake or otherwise without fraud or gross negligence and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure.

Relief against forfeiture for breach of covenant to insure in certain cases.

5. The Court where relief shall be granted shall direct a record of
 35 such relief having been granted to be made by indorsement on the lease or otherwise.

Record of relief granted.

6. The Court shall not have power under this Act to relieve the same person more than once in respect of the same covenant or condition nor shall it have power to grant any relief under this Act where a
 40 forfeiture under the covenant in respect of which relief is sought shall have been already waived out of Court in favor of the person seeking the relief.

Court not to relieve more than once in respect of same covenant &c.

7. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall on
 45 loss or damage by fire happening have the same advantage from any then subsisting insurance relating to the building covenanted to be insured effected by the lessee or mortgagor in respect of his interest under the lease or in the property or by any person claiming under him but not effected in conformity with the covenant as he would have from an
 50 insurance effected in conformity with the covenant.

Lessor to have benefit of an informal insurance.

8. Where on the *bonâ fide* purchase after the passing of this Act of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire the purchaser is furnished with the written receipt of the person entitled to receive the rent
 55 or his agent for the last payment of rent accrued due before the completion of the purchase and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damages or otherwise in respect of any breach of the
 covenant

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.

covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

9. The preceding provisions shall be applicable to leases for a term of years absolute or determinable on a life or lives or otherwise and also to a lease for the life of the lessee or the life or lives of any other person or persons.

Preceding provisions to apply to leases for a term of years absolute &c.

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RENT CHARGES.

10. The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent charge but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

Release of part of land charged not to be an extinguishment.

JUDGMENTS.

11. The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased or as to any other property not specifically released without prejudice nevertheless to the rights of all persons interested in the hereditaments or property remaining unreleased and not concurring in or confirming the release.

Release of part of land charged not to affect judgment.

POWERS.

12. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity Provided always that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution or that any act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed and to any such execution of a power this provision shall not extend.

Mode of execution of powers.

13. Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon or any other articles attached thereto and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles it shall be lawful for the Supreme Court in its Equitable Jurisdiction upon any bill or claim or application in a summary way as the case may require or permit to declare that upon payment by the purchaser or the claimant under him of the full value of the timber and articles at the time of sale with such interest thereon as the Court shall direct and the settlement of the said principal moneys and interest under the direction of the Court upon such parties as in the opinion of the Court shall be entitled thereto the said sale ought to be established And upon such payment and settlement being made accordingly the Court may declare that the said sale is valid and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

Sale under power not to be avoided by reason of mistaken payment to tenant for life.

14.

14. Where by any will which shall come into operation after the passing of this Act the testator shall have charged his real estate or any specific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money and shall have devised the estate so charged to any trustee for the whole of his estate or interest therein and shall not have made any express provision for the raising of such debt legacy or sum of money out of such estate it shall be lawful for the said devisee in trust notwithstanding any trusts actually declared by the testator to raise such debts legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and any deed of mortgage so executed may reserve such rate of interest and fix such period of repayment as the person executing the same shall think proper.

Devisee in trust may raise money by sale notwithstanding want of express power in the will.

15. The powers conferred by the last section shall extend to all and every person in whom the estate devised shall for the time being be vested by survivorship descent or devise or to any person who may be appointed under any power in the will or by the Supreme Court in its Equitable Jurisdiction to succeed to the trusteeship vested in such devisee in trust aforesaid.

Powers given by last section extended to survivors devisees &c.

16. If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee the executor for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee in trust for the said hereditaments and such power shall from time to time devolve to and become vested in the person (if any) in whom the executorship shall for the time being be vested but any sale or mortgage under this Act shall operate only on the estate and interest whether legal or equitable of the testator and shall not prevent the necessity for getting in any outstanding subsisting legal estate.

Executor in certain cases vested with like power as devisee in trust as respects raising money.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections fourteen fifteen and sixteen of this Act or either of them shall have been duly and correctly exercised by any person acting in virtue thereof.

Purchasers &c. not bound to inquire as to powers.

18. The provisions contained in sections fourteen fifteen and sixteen shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the passing of this Act but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed and the said several sections shall not extend to a devise to any person in fee or in tail or for the testator's whole estate and interest charged with debts or legacies nor shall they affect the power of any such devisee to sell or mortgage as he may by law now do.

Sections 14 15 and 16 not to affect certain sales &c. nor to extend to devisees in fee or in tail.

INHERITANCE.

19. Where there shall be a total failure of heirs of the purchaser or where any land shall be descendible as if an ancestor had been the purchaser thereof and there shall be a total failure of the heirs of such ancestor then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the lands as if he had been the purchaser thereof.

Descent how to be traced.

20. The last preceding section shall be read as part of the Act Third and Fourth William the Fourth Chapter one hundred and six adopted in this Colony by the Act Seventh William the Fourth number eight.

Preceding section incorporated with 3 and 4 Wm. 4 c. 106.

ASSIGNMENT OF PERSONALTY.

21. Any person shall have power to assign personal property now by law assignable including chattels real directly to himself and another person or other persons or corporation by the like means as he might assign the same to another.

Assignment to self and others.

PURCHASERS

PURCHASERS.

22. Any seller or mortgagor of land or of any chattels real or personal or choses in action conveyed or assigned to a purchaser or the solicitor or agent of any such seller or mortgagor who shall after the passing of this Act conceal any settlement deed will or other instrument material to the title or any incumbrance from the purchaser or falsify any pedigree upon which the title does or may depend in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud shall be guilty of a misdemeanor and being found guilty shall be liable at the discretion of the Court to suffer such punishment by fine or imprisonment for any time not exceeding two years with or without hard labor or by both as the Court shall award and shall also be liable to an action for damages at the suit of the purchaser or mortgagor of those claiming under the purchaser or mortgagee for any loss sustained by them or either or any of them in consequence of the settlement deed will or other instrument or incumbrance so concealed or of any claim made by any person under such pedigree but whose right was concealed by the falsification of such pedigree And in estimating such damages where the estate shall be recovered from such purchaser or mortgagee or from those claiming under the purchaser or mortgagee regard shall be had to any expenditure by them or either or any of them in improvements on the land but no prosecution for any offence included in this section against any seller or mortgagor or any solicitor or agent shall be commenced without the sanction of Her Majesty's Attorney General or in case that office be vacant of Her Majesty's Solicitor General and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney General or the Solicitor General (as the case may be) shall direct.
23. In the construction of this Act the term "mortgage" shall be taken to include every instrument by virtue whereof land is in any manner conveyed assigned pledged or charged as security for the repayment of money or money's worth lent and to be reconveyed reassigned or released on satisfaction of the debt and the term "mortgagor" shall be taken to include every person by whom any such conveyance assignment pledge or charge as aforesaid shall be made and the term "mortgagee" shall be taken to include every person to whom or in whose favor any such conveyance assignment pledge or charge as aforesaid is made or transferred and the term "judgment" shall be taken to include registered decrees orders of Courts of Equity and Insolvency and other orders having the operation of judgments.

Punishment of vendor &c. for fraudulent concealment of deeds &c. or falsifying pedigree.

Interpretation of terms.

TRUSTEES AND EXECUTORS.

24. No trustee executor or administrator making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney shall be liable for the moneys so paid or the act so done by reason that the person who gave the power of attorney was dead at the time of such payment or act or had done some act to avoid the power provided that the fact of the death or of the doing of such act as last aforesaid at the time of such payment or act *bonâ fide* done as aforesaid by such trustee executor or administrator was not known to him Provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee executor or administrator if the money had not been paid away under such power of attorney.

Trustee &c. making payment under power of attorney not to be liable by reason of death of party giving such power.

25. Where an executor or administrator liable as such to the rents covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being

As to liability of executor or administrator in respect of rents covenants or agreements.

being administered shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned and shall have set apart a sufficient fund to answer any future claim that may be made in
 5 respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised although the period for laying out the same may not have arrived and shall have assigned the lease or agreement for a lease to a purchaser thereof he shall be at liberty to distribute the residuary personal estate
 10 of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease and the executor or administrator so distributing the residuary estate shall not after having assigned the
 15 said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the
 20 persons to or amongst whom the said assets may have been distributed.

26. In like manner where an executor or administrator liable
 as such to the rent covenants or agreements contained in any conveyance on chief rents or rent charges whether any such rent be by limitation of use grant or reservation or agreement for such conveyance granted
 25 or assigned to or made and entered into with the testator or intestate whose estate is being administered shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereafter mentioned and shall have set apart a sufficient fund to answer any
 30 future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived and shall have conveyed such property or assigned the said agreement for such conveyance as aforesaid to a
 35 purchaser thereof he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance and
 40 the executor or administrator so distributing the residuary estate shall not after having made or executed such conveyance or assignment and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance but nothing herein contained shall
 45 prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the persons to or among whom the said assets may have been distributed.

As to liability of executor &c. in respect of rents &c. in conveyances on rents charge.

27. Where an executor or administrator shall have given such or
 the like notices as in the opinion of the Court in which such executor or
 50 administrator is sought to be charged would have been given by the Supreme Court in its Equitable Jurisdiction in an administration suit for creditors and others to send in to the executor or administrators their claims against the estate of the testator or intestate such executor or administrator shall at the expiration of the time named in the said
 55 notices or the last of the said notices for sending in such claims be at liberty to distribute the assets of the testator or intestate or any part thereof amongst the parties entitled thereto having regard to the claims of which such executor or administrator has then notice and shall not be liable for the assets or any part thereof so distributed to any person
 60 of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof as the
 case

As to distribution of the assets of testator or intestate after notice given by executor or administrator.

case may be but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of any person who may have received the same respectively.

5 28. Any trustee executor or administrator shall be at liberty without the institution of a suit to apply by petition or by summons upon a written statement to the Primary Judge in Equity for the opinion advice or direction of such Judge on any question respecting the management or administration of the trust property or the assets
10 of any testator or intestate such application to be served upon or the hearing thereof to be attended by all persons interested in such application or such of them as the said Judge shall think expedient and the trustee executor or administrator acting upon the opinion advice or direction given by the said Judge shall be deemed so far as regards his
15 own responsibility to have discharged his duty as such trustee executor or administrator in the subject matter of the said application Provided nevertheless that this Act shall not extend to indemnify any trustee executor or administrator in respect of any act done in accordance with such opinion advice or direction and the costs of such application as
20 aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

Trustee executor &c. may apply by petition for opinion advice, &c. in management &c. of trust property.

29. Every deed will or other instrument creating a trust either expressly or by implication shall without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the
25 effect following that is to say:—"That the trustees or trustee for the time being of the said deed will or other instrument shall be respectively chargeable only for such moneys stocks funds and securities
"as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be
30 "answerable and accountable only for their own acts receipts neglects or defaults and not for those of each other nor for any banker broker or other person with whom any trust moneys or securities may be deposited
"nor for the insufficiency or deficiency of any stocks funds or securities
"nor for any other loss unless the same shall happen through their own
35 "wilful default respectively and also that it shall be lawful for the trustees or trustee for the time being of the said deed will or other instrument
"to re-imburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts
"or powers of the said deed will or other instrument."

Every trust instrument to be deemed to contain clauses for the indemnity and re-imburement of the trustees.

40 30. When a trustee executor or administrator shall not by some instrument creating his trust be expressly forbidden to invest any trust fund or real securities in any part of the Colony of New South Wales or in the Government Stock of the said Colony it shall be lawful for such trustee executor or administrator to invest such trust fund on such
45 securities or stock and he shall not be liable on that account as for a breach of trust provided that such investment shall in other respects be reasonable and proper.

As to investments by trustees.

31. Any person who under or by virtue of any direction trust or power already or hereafter given created or reserved in any last will or
50 other testamentary disposition marriage or other settlement of real or personal property or other deed agreement or writing is or shall be expressly authorized or directed to lend money at interest on real or Government securities in New South Wales or on real or Government securities in England may in like manner as so authorized and directed
55 in all other respects lend the same or any part thereof at interest on real or Government securities in England or in New South Wales *mutatis mutandis* and such person shall not on account of so lending money be deemed in a Court of Equity guilty of any breach of trust or held accountable further or otherwise than if the money had been laid out by him on real or Government securities where so expressly authorized or directed Provided that every such loan in which any minor or unborn child or person

Investment in England may be substituted for investments in this Colony under certain limitations and vice versa.

person of unsound mind is or may be interested shall be made under the order of the Supreme Court in its Equitable Jurisdiction made in a summary way upon petition or motion with proper notice. Provided also that no such loan shall be made without the consent of any person whose consent may be required to the investment so expressly authorized or directed testified in the manner required by such direction trust or power. Provided further that this enactment shall not apply to any case in which such direction trust or power as aforesaid doth or shall contain any express restriction against the investment of such money as hereby authorized. And provided lastly that nothing herein contained shall be construed to relieve any person intrusted or clothed with such direction trust or power as aforesaid from any responsibility as to title security or otherwise either at law or in equity save as aforesaid.

32. This Act shall be styled and may be cited as the "Property Short Title. Law and Trustees Relief Act of 1860."

[Price, 1s. 1d.]

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