

Legislative Council.

30^o VICTORIÆ, 1866.

A BILL

To facilitate Leases and Sales of Settled Estates.

[SIR W. M. MANNING ;—19 *September*, 1866.]

WHEREAS it is expedient that the Supreme Court should have ^{Preamble.} power in certain cases to authorize leases and sales of settled estates where it shall deem that such leases or sales would be proper and consistent with a due regard for the interests of all parties entitled **5** under the settlement And it is also expedient that persons in possession of land for certain limited interests should have power to grant agricultural or occupation leases thereof at rack-rent for a reasonable period Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council **10** and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1 The word "settlement" as used in this Act shall signify any Act of Parliament deed agreement will or other instrument or any number of such instruments under or by virtue of which any heredita- ^{Interpretation of certain terms.} **15** ments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession including any such instruments affecting the estates of any one or more of such persons exclusively And the term "settled estates and settlement" as used in this Act shall signify all hereditaments **20** of any tenure and all estates or interests in any such hereditaments which are the subject of a settlement And for the purposes of this Act a tenant in tail after possibility of issue extinct shall be deemed to

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be tenant for life and all estates or interests in remainder or reversion not disposed of by the settlement and reverting to a settlor or descending to the heir of a testator shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement The term "building lease" shall be deemed to include a repairing lease so that no repairing lease shall be made for a term exceeding sixty years The terms "Supreme Court" and "Court" shall mean the Supreme Court or the Primary Judge in Equity. 5

Power to Supreme Court to authorize leases of settled estates subject to certain conditions.

2. It shall be lawful for the Supreme Court if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Act contained to authorize leases of any settled estates or of any rights or privileges over or affecting any settled estates for any purpose whatsoever whether involving waste or not Provided the following conditions be observed :— 10 15

(1.) Every such lease shall be made to take effect in possession at or within one year next after the making thereof and shall be for a term of years not exceeding—for an agricultural or occupation lease twenty-one years—for a mining lease or a lease of water water-mills or other rights or easements forty years—and for a building lease ninety-nine years. 20

(2.) On every such lease shall be reserved the best rent or reservation in the nature of rent either uniform or not that can be reasonably obtained to be made payable half-yearly or oftener without taking any fine or other benefit in the nature of a fine. 25

(3.) Where the lease is of any earth coal stone or mineral a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned namely—when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth coal stone or mineral for his own benefit one-fourth part of such rent and otherwise three-fourth parts thereof. 30 35

(4.) Every such lease shall be by deed and the lessee shall execute a counterpart thereof and every such lease shall contain a condition for re-entry on non-payment of the rent for a period not less than twenty-eight days after it becomes due. 40

Leases may contain special covenants.

3. Subject and in addition to the conditions hereinbefore mentioned every such lease shall contain such covenants conditions and stipulations as the Court shall deem expedient with reference to the special circumstances of the demise.

Parts of settled estates may be leased.

4. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of the settled estates and may be exercised from time to time. 45

Leases may be surrendered and renewed.

5. Any leases whether granted under this Act or otherwise may be surrendered either for the purpose of obtaining a renewal of the same or not and the power to authorize leases conferred by this Act shall extend to authorize new leases of the whole or any part of the hereditaments comprised in any surrendered lease. 50

Power to authorize leases to extend to preliminary contracts.

6. The power to authorize leases conferred by this Act shall extend to authorize preliminary contracts to grant any such leases and any of the terms of such contracts may be varied in the leases. 55

Mode in which leases may be authorized.

7. The power to authorize leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing in conformity with the provisions of this Act shall be vested in trustees in manner hereinafter mentioned. 8.

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8. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorized.

What evidence to be produced on an application to authorize leases.

9. When a particular lease or contract for a lease has been approved by the Court the Court shall direct what person or persons shall execute the same as lessor and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement and had immediately afterwards settled the same according to the settlement and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court shall direct.

After approval of a lease Court to direct who shall be the lessor.

10. When the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees it may by order vest any such power accordingly either in the existing trustees of the settlement or in any other persons and such powers when exercised by such trustees shall take effect in all respects as if the power so vested in them had been originally contained in the settlement and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court shall direct. And in every such case the Court if it shall think fit may impose any conditions as to consents or otherwise on the exercise of such power and the Court may also authorize the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Powers of leasing may be vested in trustees.

11. It shall be lawful for the Supreme Court if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Act contained from time to time to authorize a sale of the whole or any parts of any settled estates or of any timber not being ornamental timber growing on any settled estates. And every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court unless the Court shall in any case think that the same may with safety and propriety be conducted by the trustees of the settlement in which case it may give to such trustees the necessary authority upon and subject to such terms and conditions as it may think fit.

Court may authorize sales of settled estates and of timber.

12. When any land is sold for building purposes it shall be lawful for the Court if it shall see fit to allow the whole or any part of the consideration to be a rent issuing out of such land which may be secured and settled in such manner as the Court shall approve.

Consideration for land sold for building may be a fee-farm rent.

13. On any sale of land any earth coal stone or mineral may be excepted and any rights or privileges may be reserved and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

Minerals &c. may be excepted from sales.

14. It shall be lawful for the Supreme Court if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Act contained from time to time to direct that any part of any settled estates be laid out for streets roads paths squares gardens or other open spaces sewers drains or watercourses either to be dedicated to the public or not. And the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement or be conveyed to and vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid

Court may authorize dedication of parts of settled estates for roads &c.

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in all respects and with such provisions for the appointment of new trustees when required as by the Court shall be deemed advisable.

How sales and dedications are to be effected under the direction of the Court.

15. On every sale or dedication to be effected as hereinbefore mentioned the Court may direct what person or persons shall execute the deed of conveyance and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court shall direct. 5

Application by petition to exercise powers conferred by this Act.

16. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death or for an estate for life or any greater estate may apply to the Court by petition in a summary way to exercise the powers conferred by this Act. 10

With whose consent such application to be made.

17. Subject to the exception contained in the next section every application to the Court must be made with the concurrence or consent of the following parties namely—where there is a tenant in tail under the settlement and of full age then the parties to concur or consent shall be such tenant in tail or if there is more than one such tenant in tail then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail. And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement and also all trustees having any estate or interest on behalf of any unborn child. 20 25

Petition may be granted without consent saving rights of non-consenting parties.

18. Provided nevertheless that unless there shall be a person entitled to an estate of inheritance whose consent or concurrence shall have been refused or cannot be obtained it shall be lawful for the Court if it shall think fit to give effect to any petition subject to and so as not to affect the rights estate or interest of any person whose consent or concurrence has been refused or cannot be obtained or whose rights estate or interest ought in the opinion of the Court to be excepted. 30 35

Notice of application to be served on all trustees &c.

19. Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required and on any other parties who in the opinion of the Court ought to be so served unless the Court shall think fit to dispense with such notice. 40

Notice of application to be given in newspapers.

20. Notice of any application to the Court under this Act shall be inserted in such newspapers as the Court shall direct and any person or body corporate whether interested in the estate or not may apply to the Supreme Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act and the Court is hereby authorized to permit such person or corporation to appear and be heard in opposition to or support of any such application on such terms as to costs or otherwise and in such manner as it shall think fit. 45 50

No application under this Act to be granted where a similar application has been rejected by Parliament.

21. The Court shall not be at liberty to grant any application under this Act in any case where the applicant or any party entitled has previously applied to either House of Parliament for a private Act to effect the same or a similar object and such application has been rejected on its merits or reported. 55

Notice of the exercise of powers to be given by the Court.

22. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof or otherwise recorded. 5

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recorded in any way it may think proper in all cases when it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

23. All money to be received on any sale effected under the authority of this Act or to be set aside out of any rent or payments reserved on any lease of earth coal stone or minerals as aforesaid may if the Court shall think fit be paid to any trustees of whom it shall approve or otherwise the same shall be paid into a bank to the account of the Master in Equity *ex parte* the applicant in the matter of this Act. And in either case such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes namely—

Court may appoint trustees to receive and apply moneys arising from sales.

15 The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid or affecting any other hereditaments subject to the same uses or trusts or—

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid or—

20 The payment to any person becoming absolutely entitled.

24. The application of the money in manner aforesaid may if the Court shall so direct be made by the trustees (if any) without any application to the Court or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipts of the rents and profits of the land if the money had been invested in the purchase of land.

Trustees may apply moneys in certain cases without application to Court.

25. Until the money can be applied as aforesaid the same shall be from time to time invested in Government debentures or other public securities as the Court shall think fit and the interest and dividends of such Government debentures or other public securities shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Until money can be applied to be invested and dividends to be paid to parties entitled.

26. The Court shall be at liberty to exercise any of the powers conferred on it by this Act whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not but no such powers shall be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement or may reasonably be inferred therefrom or from extrinsic circumstances or evidence. Provided always that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act if it shall think that the powers contained in the settlement ought to be extended.

Court may exercise powers repeatedly but may not exercise them if expressly negatived.

27. Nothing in this Act shall be construed to empower the Court to authorize any lease sale or other act beyond the extent to which in the opinion of the Court the same might have been authorized in and by the settlement by the settlor or settlors.

Court not to authorize any act which could not have been authorized by the settlors.

28. After the completion of any lease or sale or other act under the authority of the Court and purporting to be in pursuance of this Act the same shall not be invalidated on the ground that the Court was not hereby empowered to authorize the same except that no such lease sale or other act shall have any effect against any person whose concurrence in or consent to the application ought to have been obtained and was not obtained.

Acts of the Court in professed pursuance of this Act not to be invalidated.

29. It shall be lawful for the Court if it shall think fit to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application or any other hereditaments

Costs.

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ments included in the same settlement and subject to the same limitations and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments or out of the rents or profits thereof such costs and expenses to be taxed as the Court shall direct.

Power to Supreme Court to make rules and orders.

30. The Judges of the Supreme Court may if they think fit from time to time make general rules and orders for carrying the purposes of this Act into effect and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters and such rules and orders may from time to time be rescinded or altered by the like authorities and all such rules and orders shall take effect as general orders of the Court and such rules or orders may so far as may be found expedient alter the procedure prescribed by this Act.

Rules and orders to be laid before Parliament.

31. All general rules and orders made as aforesaid shall immediately after the making and issuing thereof be laid before both Houses of Parliament if Parliament be then sitting or if Parliament be not then sitting within twenty-one days after the next meeting thereof and it shall be lawful for either of the Houses of Parliament by any resolution passed within thirty-six days after such rules or orders have been laid before it to resolve that the same or any part thereof ought not to continue in force and thereupon the same shall cease to be binding.

Tenants for life &c. may grant leases for twenty-one years.

32. It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life or for a term of years determinable with his life or for any greater estate either in his own right or in right of his wife unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy or in dower or in right of a wife who is seised in fee without any application to the Court to demise the same or any part thereof except the principal mansion house and demesne thereof and other lands usually occupied therewith from time to time for any term not exceeding twenty-one years to take in possession Provided that every such demise be made by deed and the best rent that can reasonably be obtained be thereby reserved without any fine or other benefit in the nature of a fine which rent shall be incident to the immediate reversion and provided that such demise be not made without impeachment of waste and do contain a covenant for payment of the rent and such other usual and proper covenants as the lessor shall think fit and also a condition of re-entry on non-payment for a period not less than twenty-eight days of the rent thereby reserved and on non-observance of any of the covenants or conditions therein contained and provided a counterpart of every deed of lease be executed by the lessee.

Against whom such leases shall be valid.

33. Every demise authorized by the last preceding section shall be valid against the person granting the same and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement if the estates be settled in the case of unsettled estates against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same and against the wife of any husband making such demise of estates to which he is entitled in right of such wife.

Evidence of execution of lease by lessee.

34. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Provision as to infants lunatics &c.

35. All powers given by this Act and all applications to the Court under this Act and consents to such applications may be exercised

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exercised made or given by guardians on behalf of the infants and by committees on behalf of lunatics and by assignees of bankrupts or insolvents. Provided nevertheless that in the cases of infant or lunatic tenants in tail no application to the Court or consent to any application
5 may be made or given by any guardian or committee without the special direction of the Court.

36. Where a married woman shall apply to the Court or consent to an application to the Court under this Act she shall first be examined apart from her husband touching her knowledge of the
10 nature and effect of the application and it shall be ascertained that she freely desires to make or consent to such application and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband or not and no
15 clause or provision in any settlement restraining²² anticipation shall prevent the Court from exercising if it shall think fit any of the powers given by this Act and no such exercise shall occasion any forfeiture anything in the settlement contained to the contrary notwithstanding.

A married woman applying to the Court to be examined apart from her husband.

No clause &c. in settlement restraining anticipation to prevent Court from exercising powers of this Act.

37. The examination of such married woman shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application and that she freely
25 desires to make or consent to the same. Provided that whenever a married woman is resident out of the jurisdiction of the Court her examination may be made by any person appointed for that purpose by the Court whether he is or is not a solicitor of the Court and the appointment of any such person not being a solicitor shall afford
30 conclusive evidence that the married woman was at the time of such examination out of the jurisdiction of the Court.

As to taking examinations of married woman.

38. Subject to such examination as aforesaid married women may make or consent to any application whether they be of full age
or infants.

As to consent of married women under age.

39. Nothing in this Act shall be construed to create any obligation at law or in equity on any person to make or consent to
35 any application to the Court or to exercise any power.

No equity to compel any one to apply to the Court.

40. For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits
40 of estates although his estate may be charged or incumbered either by himself or by the settlor or otherwise howsoever to any extent but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid
45 unless they shall concur therein.

Tenants for life &c. may exercise powers notwithstanding incumbrance.

41. Provided always that nothing in this Act contained shall authorize any sale or lease beyond the term of twenty-one years of any settled estates where the reversion is vested in the Crown.

Exception as to the Crown.

42. The provisions of this Act shall extend to all settlements
50 whether made before or after it shall come in force except those as to demises to be made without application to the Court which shall extend only to settlements made after this Act shall come in force.

To what settlements this Act to extend.

Journal of the Proceedings of the

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for the Year 1870

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(As Amended in Committee of the Whole Council.)

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- (1.) Every such lease shall be made to take effect in possession at or within one year next after the making thereof and shall be for a term of years not exceeding—for an agricultural or occupation lease twenty-one years—for a mining lease or a lease of water water-mills or other rights or easements forty years—and for a building lease ninety-nine years. 20
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- (3.) Where the lease is of any earth coal stone or mineral a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned namely—when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth coal stone or mineral for his own benefit one-fourth part of such rent and otherwise three-fourth parts thereof. 35
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17. Subject to the exception contained in the next section every application to the Court must be made with the concurrence or consent of the following parties namely—where there is a tenant in tail under the settlement and of full age then the parties to concur or consent shall be such tenant in tail or if there is more than one such tenant in tail then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement and also all trustees having any estate or interest on behalf of any unborn child. 15 20 25

Petition may be granted without consent saving rights of non-consenting parties.

18. Provided nevertheless that unless there shall be a person entitled to an estate of inheritance whose consent or concurrence shall have been refused or cannot be obtained it shall be lawful for the Court if it shall think fit to give effect to any petition subject to and so as not to affect the rights estate or interest of any person whose consent or concurrence has been refused or cannot be obtained or whose rights estate or interest ought in the opinion of the Court to be excepted. 30 35

Notice of application to be served on all trustees &c.

19. Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required and on any other parties who in the opinion of the Court ought to be so served unless the Court shall think fit to dispense with such notice. 40

Notice of application to be given in newspapers.

20. Notice of any application to the Court under this Act shall be inserted in such newspapers as the Court shall direct and any person or body corporate whether interested in the estate or not may apply to the Supreme Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act and the Court is hereby authorized to permit such person or corporation to appear and be heard in opposition to or support of any such application on such terms as to costs or otherwise and in such manner as it shall think fit. 45 50

No application under this Act to be granted where a similar application has been rejected by Parliament.

21. The Court shall not be at liberty to grant any application under this Act in any case where the applicant or any party entitled has previously applied to either House of Parliament for a private Act to effect the same or a similar object and such application has been rejected on its merits or reported. 55

Notice of the exercise of powers to be given by the Court.

22. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof or otherwise recorded. 5

Leases and Sales of Settled Estates Facilitation.

recorded in any way it may think proper in all cases when it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

23. All money to be received on any sale effected under the authority of this Act or to be set aside out of any rent or payments reserved on any lease of earth coal stone or minerals as aforesaid may if the Court shall think fit be paid to any trustees of whom it shall approve or otherwise the same shall be paid into a bank to the account of the Master in Equity *ex parte* the applicant in the matter of this Act And in either case such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes namely—

Court may appoint trustees to receive and apply moneys arising from sales.

15 The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid or affecting any other hereditaments subject to the same uses or trusts or—

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid or—

20 The payment to any person becoming absolutely entitled.

24. The application of the money in manner aforesaid may if the Court shall so direct be made by the trustees (if any) without any application to the Court or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipts of the rents and profits of the land if the money had been invested in the purchase of land.

Trustees may apply moneys in certain cases without application to Court.

25. Until the money can be applied as aforesaid the same shall be from time to time invested in Government debentures or other public securities as the Court shall think fit and the interest and dividends of such Government debentures or other public securities shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Until money can be applied to be invested and dividends to be paid to parties entitled.

26. The Court shall be at liberty to exercise any of the powers conferred on it by this Act whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not but no such powers shall be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement or may reasonably be inferred therefrom or from extrinsic circumstances or evidence Provided always that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act if it shall think that the powers contained in the settlement ought to be extended.

Court may exercise powers repeatedly but may not exercise them if expressly negatived.

27. Nothing in this Act shall be construed to empower the Court to authorize any lease sale or other act beyond the extent to which in the opinion of the Court the same might have been authorized in and by the settlement by the settlor or settlors.

Court not to authorize any act which could not have been authorized by the settlors.

28. After the completion of any lease or sale or other act under the authority of the Court and purporting to be in pursuance of this Act the same shall not be invalidated on the ground that the Court was not hereby empowered to authorize the same except that no such lease sale or other act shall have any effect against any person whose concurrence in or consent to the application ought to have been obtained and was not obtained.

Acts of the Court in professed pursuance of this Act not to be invalidated.

29. It shall be lawful for the Court if it shall think fit to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application or any other hereditaments

Costs.

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ments included in the same settlement and subject to the same limitations and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments or out of the rents or profits thereof such costs and expenses to be taxed as the Court shall direct.

Power to Supreme Court to make rules and orders.

30. The Judges of the Supreme Court may if they think fit from time to time make general rules and orders for carrying the purposes of this Act into effect and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters and such rules and orders may from time to time be rescinded 10 or altered by the like authorities and all such rules and orders shall take effect as general orders of the Court and such rules or orders may so far as may be found expedient alter the procedure prescribed by this Act.

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Rules and orders to be laid before Parliament.

31. All general rules and orders made as aforesaid shall 15 immediately after the making and issuing thereof be laid before both Houses of Parliament if Parliament be then sitting or if Parliament be not then sitting within twenty-one days after the next meeting thereof and it shall be lawful for either of the Houses of Parliament by any resolution passed within thirty-six days after such rules or orders 20 have been laid before it to resolve that the same or any part thereof ought not to continue in force and thereupon the same shall cease to be binding.

Provision as to infants lunatics &c.

32. All powers given by this Act and all applications to the Court under this Act and consents to such applications may be 25 exercised made or given by guardians on behalf of the infants and by committees on behalf of lunatics and by assignees of bankrupts or insolvents Provided nevertheless that in the cases of infant or lunatic tenants in tail no application to the Court or consent to any application may be made or given by any guardian or committee without the 30 special direction of the Court.

A married woman applying to the Court to be examined apart from her husband.

33. Where a married woman shall apply to the Court or consent to an application to the Court under this Act she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application and it shall be ascertained that 35 she freely desires to make or consent to such application and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband or not and no clause or provision in any settlement restraining anticipation shall 40 prevent the Court from exercising if it shall think fit any of the powers given by this Act and no such exercise shall occasion any forfeiture anything in the settlement contained to the contrary notwithstanding.

No clause &c. in settlement restraining anticipation to prevent Court from exercising powers of this Act.

As to taking examinations of married woman.

34. The examination of such married woman shall be made 45 either by the Court or by some solicitor duly appointed by the Court for that purpose who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application and that she freely desires to make or consent to the same Provided that whenever a 50 married woman is resident out of the jurisdiction of the Court her examination may be made by any person appointed for that purpose by the Court whether he is or is not a solicitor of the Court and the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was at the time of such 55 examination out of the jurisdiction of the Court.

As to consent of married women under age.

35. Subject to such examination as aforesaid married women may make or consent to any application whether they be of full age or infants.

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36. Nothing in this Act shall be construed to create any obligation at law or in equity on any person to make or consent to any application to the Court or to exercise any power.

No equity to compel any one to apply to the Court.

37. For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates although his estate may be charged or incumbered either by himself or by the settlor or otherwise howsoever to any extent but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

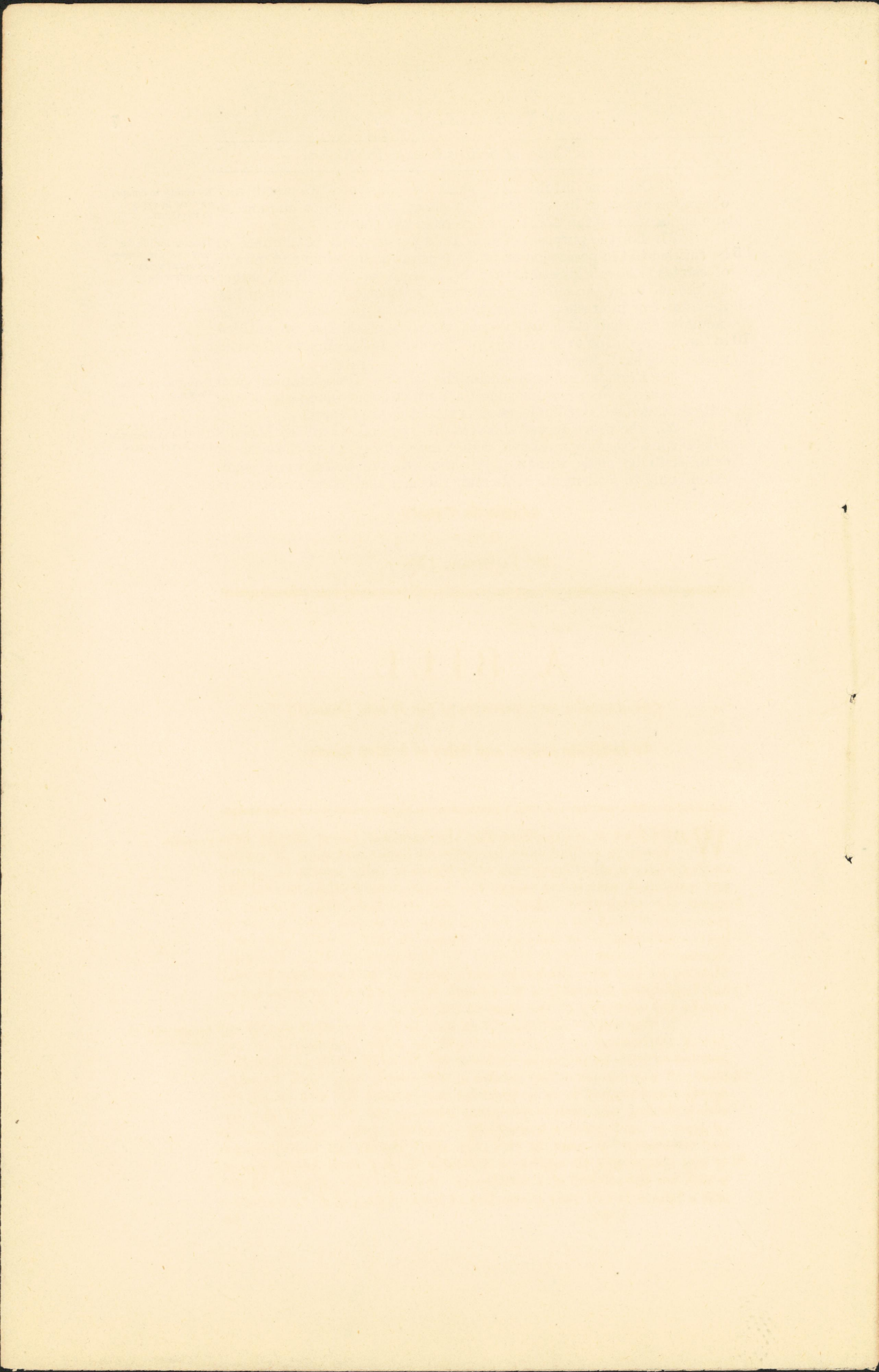
Tenants for life &c. may exercise powers notwithstanding incumbrance.

38. Provided always that nothing in this Act contained shall authorize any sale or lease beyond the term of twenty-one years of any settled estates where the reversion is vested in the Crown.

Exception as to the Crown.

39. The provisions of this Act shall extend to all settlements whether made before or after it shall come in force except those as to demises to be made without application to the Court which shall extend only to settlements made after this Act shall come in force.

To what settlements this Act to extend.

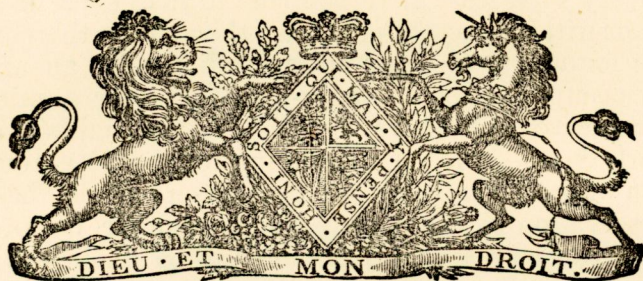


This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber, }
Sydney, 17th October, 1866.*

R. O'CONNOR,
Clerk of the Parliaments.

New South Wales.



ANNO TRICESIMO

VICTORIÆ REGINÆ.

No. .

An Act to facilitate Leases and Sales of Settled Estates.

WHEREAS it is expedient that the Supreme Court should have Preamble.
power in certain cases to authorize leases and sales of settled
estates where it shall deem that such leases or sales would be proper
and consistent with a due regard for the interests of all parties entitled
5 under the settlement And it is also expedient that persons in
possession of land for certain limited interests should have power to
grant agricultural or occupation leases thereof at rack-rent for a
reasonable period Be it enacted by the Queen's Most Excellent
Majesty by and with the advice and consent of the Legislative Council
10 and Legislative Assembly of New South Wales in Parliament assembled
and by the authority of the same as follows:—

1. The word "settlement" as used in this Act shall signify any Interpretation of
certain terms.
Act of Parliament deed agreement will or other instrument or any
number of such instruments under or by virtue of which any heredita-
15 ments of any tenure or any estates or interests in any such heredita-
ments stand limited to or in trust for any persons by way of succes-
sion including any such instruments affecting the estates of any one
or more of such persons exclusively And the term "settled estates
and settlement" as used in this Act shall signify all hereditaments
20 of any tenure and all estates or interests in any such hereditaments
which are the subject of a settlement And for the purposes of this
Act a tenant in tail after possibility of issue extinct shall be deemed to

Leases and Sales of Settled Estates Facilitation.

be tenant for life and all estates or interests in remainder or reversion not disposed of by the settlement and reverting to a settlor or descending to the heir of a testator shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement The term "building lease" shall be deemed to include a repairing lease so that no repairing lease shall be made for a term exceeding sixty years The terms "Supreme Court" and "Court" shall mean the Supreme Court or the Primary Judge in Equity. 5

Power to Supreme Court to authorize leases of settled estates subject to certain conditions.

2. It shall be lawful for the Supreme Court if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Act contained to authorize leases of any settled estates or of any rights or privileges over or affecting any settled estates for any purpose whatsoever whether involving waste or not Provided the following conditions be observed :— 15

- (1.) Every such lease shall be made to take effect in possession at or within one year next after the making thereof and shall be for a term of years not exceeding—for an agricultural or occupation lease twenty-one years—for a mining lease or a lease of water water-mills or other rights or easements forty years—and for a building lease ninety-nine years. 20
- (2.) On every such lease shall be reserved the best rent or reservation in the nature of rent either uniform or not that can be reasonably obtained to be made payable half-yearly or oftener without taking any fine or other benefit in the nature of a fine. 25
- (3.) Where the lease is of any earth coal stone or mineral a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned namely—when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth coal stone or mineral for his own benefit one-fourth part of such rent and otherwise three-fourth parts thereof. 35
- (4.) Every such lease shall be by deed and the lessee shall execute a counterpart thereof and every such lease shall contain a condition for re-entry on non-payment of the rent for a period not less than twenty-eight days after it becomes due. 40

Leases may contain special covenants.

3. Subject and in addition to the conditions hereinbefore mentioned every such lease shall contain such covenants conditions and stipulations as the Court shall deem expedient with reference to the special circumstances of the demise.

Parts of settled estates may be leased.

4. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of the settled estates and may be exercised from time to time. 45

Leases may be surrendered and renewed.

5. Any leases whether granted under this Act or otherwise may be surrendered either for the purpose of obtaining a renewal of the same or not and the power to authorize leases conferred by this Act shall extend to authorize new leases of the whole or any part of the hereditaments comprised in any surrendered lease. 50

Power to authorize leases to extend to preliminary contracts.

6. The power to authorize leases conferred by this Act shall extend to authorize preliminary contracts to grant any such leases and any of the terms of such contracts may be varied in the leases. 55

Mode in which leases may be authorized.

7. The power to authorize leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing in conformity with the provisions of this Act shall be vested in trustees in manner hereinafter mentioned. 8.

Leases and Sales of Settled Estates Facilitation.

8. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorized.

What evidence to be produced on an application to authorize leases.

9. When a particular lease or contract for a lease has been approved by the Court the Court shall direct what person or persons shall execute the same as lessor and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement and had immediately afterwards settled the same according to the settlement and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court shall direct.

After approval of a lease Court to direct who shall be the lessor.

10. When the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees it may by order vest any such power accordingly either in the existing trustees of the settlement or in any other persons and such powers when exercised by such trustees shall take effect in all respects as if the power so vested in them had been originally contained in the settlement and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court shall direct. And in every such case the Court if it shall think fit may impose any conditions as to consents or otherwise on the exercise of such power and the Court may also authorize the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Powers of leasing may be vested in trustees.

11. It shall be lawful for the Supreme Court if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Act contained from time to time to authorize a sale of the whole or any parts of any settled estates or of any timber not being ornamental timber growing on any settled estates. And every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court unless the Court shall in any case think that the same may with safety and propriety be conducted by the trustees of the settlement in which case it may give to such trustees the necessary authority upon and subject to such terms and conditions as it may think fit.

Court may authorize sales of settled estates and of timber.

12. When any land is sold for building purposes it shall be lawful for the Court if it shall see fit to allow the whole or any part of the consideration to be a rent issuing out of such land which may be secured and settled in such manner as the Court shall approve.

Consideration for land sold for building may be a fee—farm rent.

13. On any sale of land any earth coal stone or mineral may be excepted and any rights or privileges may be reserved and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

Minerals &c. may be excepted from sales.

14. It shall be lawful for the Supreme Court if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Act contained from time to time to direct that any part of any settled estates be laid out for streets roads paths squares gardens or other open spaces sewers drains or watercourses either to be dedicated to the public or not. And the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement or be conveyed to and vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid

Court may authorize dedication of parts of settled estates for roads &c.

in

Leases and Sales of Settled Estates Facilitation.

in all respects and with such provisions for the appointment of new trustees when required as by the Court shall be deemed advisable.

How sales and dedications are to be effected under the direction of the Court.

15. On every sale or dedication to be effected as hereinbefore mentioned the Court may direct what person or persons shall execute the deed of conveyance and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court shall direct. 5

Application by petition to exercise powers conferred by this Act.

16. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death or for an estate for life or any greater estate may apply to the Court by petition in a summary way to exercise the powers conferred by this Act. 10

With whose consent such application to be made.

17. Subject to the exception contained in the next section every application to the Court must be made with the concurrence or consent of the following parties namely—where there is a tenant in tail under the settlement and of full age then the parties to concur or consent shall be such tenant in tail or if there is more than one such tenant in tail then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail. And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement and also all trustees having any estate or interest on behalf of any unborn child. 15 20 25

Petition may be granted without consent saving rights of non-consenting parties.

18. Provided nevertheless that unless there shall be a person entitled to an estate of inheritance whose consent or concurrence shall have been refused or cannot be obtained it shall be lawful for the Court if it shall think fit to give effect to any petition subject to and so as not to affect the rights estate or interest of any person whose consent or concurrence has been refused or cannot be obtained or whose rights estate or interest ought in the opinion of the Court to be excepted. 30 35

Notice of application to be served on all trustees &c.

19. Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required and on any other parties who in the opinion of the Court ought to be so served unless the Court shall think fit to dispense with such notice. 40

Notice of application to be given in newspapers.

20. Notice of any application to the Court under this Act shall be inserted in such newspapers as the Court shall direct and any person or body corporate whether interested in the estate or not may apply to the Supreme Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act and the Court is hereby authorized to permit such person or corporation to appear and be heard in opposition to or support of any such application on such terms as to costs or otherwise and in such manner as it shall think fit. 50

No application under this Act to be granted where a similar application has been rejected by Parliament.

21. The Court shall not be at liberty to grant any application under this Act in any case where the applicant or any party entitled has previously applied to either House of Parliament for a private Act to effect the same or a similar object and such application has been rejected on its merits or reported. 55

Notice of the exercise of powers to be given by the Court.

22. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof or otherwise recorded 55

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recorded in any way it may think proper in all cases when it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

23. All money to be received on any sale effected under the authority of this Act or to be set aside out of any rent or payments reserved on any lease of earth coal stone or minerals as aforesaid may if the Court shall think fit be paid to any trustees of whom it shall approve or otherwise the same shall be paid into a bank to the account of the Master in Equity *ex parte* the applicant in the matter of this Act And in either case such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes namely—

15 The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid or affecting any other hereditaments subject to the same uses or trusts or—

20 The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid or—

20 The payment to any person becoming absolutely entitled.

24. The application of the money in manner aforesaid may if the Court shall so direct be made by the trustees (if any) without any application to the Court or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipts of the rents and profits of the land if the money had been invested in the purchase of land.

25. Until the money can be applied as aforesaid the same shall be from time to time invested in Government debentures or other public securities as the Court shall think fit and the interest and dividends of such Government debentures or other public securities shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

26. The Court shall be at liberty to exercise any of the powers conferred on it by this Act whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not but no such powers shall be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement or may reasonably be inferred therefrom or from extrinsic circumstances or evidence Provided always that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act if it shall think that the powers contained in the settlement ought to be extended.

27. Nothing in this Act shall be construed to empower the Court to authorize any lease sale or other act beyond the extent to which in the opinion of the Court the same might have been authorized in and by the settlement by the settlor or settlors.

28. After the completion of any lease or sale or other act under the authority of the Court and purporting to be in pursuance of this Act the same shall not be invalidated on the ground that the Court was not hereby empowered to authorize the same except that no such lease sale or other act shall have any effect against any person whose concurrence in or consent to the application ought to have been obtained and was not obtained.

29. It shall be lawful for the Court if it shall think fit to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application or any other hereditaments

Court may appoint trustees to receive and apply moneys arising from sales.

Trustees may apply moneys in certain cases without application to Court.

Until money can be applied to be invested and dividends to be paid to parties entitled.

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Court not to authorize any act which could not have been authorized by the settlors.

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Costs.

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Power to Supreme Court to make rules and orders.

30. The Judges of the Supreme Court may if they think fit from time to time make general rules and orders for carrying the purposes of this Act into effect and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters and such rules and orders may from time to time be rescinded or altered by the like authorities and all such rules and orders shall take effect as general orders of the Court and such rules or orders may so far as may be found expedient alter the procedure prescribed by this Act.

Rules and orders to be laid before Parliament.

31. All general rules and orders made as aforesaid shall immediately after the making and issuing thereof be laid before both Houses of Parliament if Parliament be then sitting or if Parliament be not then sitting within twenty-one days after the next meeting thereof and it shall be lawful for either of the Houses of Parliament by any resolution passed within thirty-six days after such rules or orders have been laid before it to resolve that the same or any part thereof ought not to continue in force and thereupon the same shall cease to be binding.

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32. All powers given by this Act and all applications to the Court under this Act and consents to such applications may be exercised made or given by guardians on behalf of the infants and by committees on behalf of lunatics and by assignees of bankrupts or insolvents Provided nevertheless that in the cases of infant or lunatic tenants in tail no application to the Court or consent to any application may be made or given by any guardian or committee without the special direction of the Court.

A married woman applying to the Court to be examined apart from her husband.

33. Where a married woman shall apply to the Court or consent to an application to the Court under this Act she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application and it shall be ascertained that she freely desires to make or consent to such application and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband or not and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising if it shall think fit any of the powers given by this Act and no such exercise shall occasion any forfeiture anything in the settlement contained to the contrary notwithstanding.

No clause &c. in settlement restraining anticipation to prevent Court from exercising powers of this Act.

As to taking examinations of married woman.

34. The examination of such married woman shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application and that she freely desires to make or consent to the same Provided that whenever a married woman is resident out of the jurisdiction of the Court her examination may be made by any person appointed for that purpose by the Court whether he is or is not a solicitor of the Court and the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was at the time of such examination out of the jurisdiction of the Court.

As to consent of married women under age.

35. Subject to such examination as aforesaid married women may make or consent to any application whether they be of full age or infants.

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36. Nothing in this Act shall be construed to create any obligation at law or in equity on any person to make or consent to any application to the Court or to exercise any power.

No equity to compel any one to apply to the Court.

37. For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates although his estate may be charged or incumbered either by himself or by the settlor or otherwise howsoever to any extent but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

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To what settlements this Act to extend.

