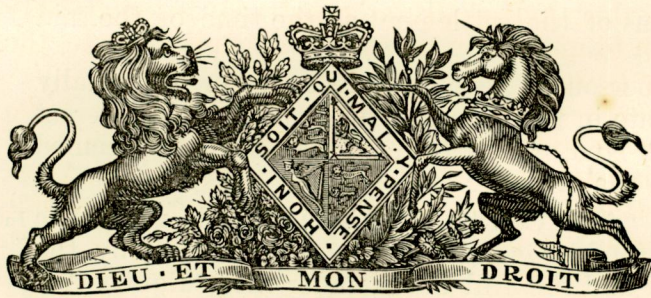


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
Sydney, 29 September, 1886. }

F. W. WEBB,
Acting Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. .

An Act for facilitating Sales Leases and other dispositions of Settled Estates.

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 assembled and by the authority of the same as follows:—

5 1. This Act may be cited as the "Settled Estates Act 1886" and shall commence and take effect from and immediately after the passing thereof. Short title and commencement of Act.

Definitions.

10 2. (i) 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 hereditaments or any estate or interest in land stand for the time-being limited to or in trust for any persons by way of succession including any such instruments affecting the estates of any one or 15 more of such persons exclusively. Interpretation of settlement and settled estates.

(ii) The term "Settled Estates" as used in this Act shall signify all hereditaments 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 20 extinct shall be deemed to be a tenant for life.

Settled Estates.

(III) All estates or interests in remainder or reversion not disposed of by the settlement and reverting to the settlor or descending to the heir of a testator or passing to his personal representatives or next of kin under the Act twenty-sixth Victoria number twenty or
 5 any other Act that may be passed with regard to the real estate of Intestates shall be deemed to be estates coming to such settlor heir personal representative or next of kin under and by virtue of the settlement.

(IV) Land and any estate or interest therein which is the
 10 subject of a settlement is for the purposes of this Act settled land.

(V) In determining what are settled estates within the meaning of this Act the Court shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

15 (VI) Where a person in his own right seised or beneficially entitled to land for an estate in fee-simple or for any leasehold interest at a rent is an infant such land or leasehold interest shall be deemed to be settled estate within the meaning of this Act.

3. The expression "The Court" in this Act shall mean the
 20 Supreme Court in its equitable jurisdiction as administered by the Primary Judge in Equity and the full Court under the "Equity Act of 1880" or any other Act that may be passed for regulating such equitable jurisdiction Provided that any other Judge of the Court may act primarily under this Act with the concurrence of the Primary
 25 Judge in Equity.

Interpretation of
 "The Court."

4. It shall be lawful for the 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
 30 rights or privileges over or affecting any settled estates for any purpose whatsoever whether involving waste or not provided the following conditions be observed :—

Power to authorize
 leases of settled
 estates.

(I) Every such lease shall be made to take effect in possession at
 or within one year next after the making thereof and shall be
 35 for a term of years not exceeding for an agricultural or occupation lease ten years and for a mining lease forty years and for a repairing lease fifteen years and for a building lease thirty years.

(II) On every such lease shall be reserved the best rent or
 40 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 Provided that in the case of a mining lease a nominal rent or any smaller rent than the rent to be
 45 ultimately made payable may if the Court shall think fit so to direct be made payable during all or any part of the first five years of the lease Provided also that in case of a mining lease the rent reserved may be in part by way of royalty on the minerals raised or on the gross or net produce thereof.

(III) Where the lease is of any earth coal stone or mineral a
 50 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
 55 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 and in every such lease sufficient
 provision

Settled Estates.

provision shall be made to insure such application of the aforesaid portion of the rent by the appointment of Trustees or otherwise as the Court shall deem expedient.

5 (iv) 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 of twenty-eight days after it becomes due or for some less period to be specified in that behalf.

10 5. 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. Leases may contain special covenants.

15 6. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of the settled land and may be exercised from time to time. Parts of settled land may be leased.

20 7. Any leases whether granted in pursuance of 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. Leases may be surrendered and renewed.

8. 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. Power to authorize leases to extend to preliminary contracts.

25 9. 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. Modes in which leases may be authorized.

30 10. 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.

35 11. 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 40 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.

45 12. Where 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 50 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 55 to time for the purpose of exercising such powers of leasing as aforesaid. Powers of leasing may be vested in Trustees.

13. It shall be lawful for the 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 60 any Court may authorize sale of settled estates.

Settled Estates.

any parts of 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 Provided always that it shall be
 5 lawful for the Court if it thinks fit to authorize any such sale to be conducted out of Court upon such terms and conditions and subject to such restrictions as to the Court may seem fit.

14. When any land is sold for building purposes it shall be
 10 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.

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

Minerals &c. may be excepted from sales and leases.

16. It shall be lawful for the 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
 20 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 or vested in any other Trustees upon such trusts for securing the
 25 continued appropriation thereof to the purposes aforesaid in all respects and with such provisions for the appointment of new Trustees when required as by the Court shall be deemed advisable.

Court may authorize dedication of any part of settled land for streets roads and other works.

17. Where any part of any settled estates is directed to be laid
 out for such purposes as aforesaid the Court may direct that any such
 30 streets roads paths squares gardens or other open spaces sewers drains or watercourses including all necessary or proper fences pavings connections and other works incidental thereto respectively be made and executed and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means
 35 of a sale or mortgage of or charge upon all or any part of the settled estates or be raised and paid out of the rents and profits of the settled estates or any part thereof or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates or out of the
 40 income of such moneys or investments or out of any accumulations of rents profits or income and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets roads paths squares gardens or other open spaces sewers drains or watercourses or other works out of any such rents profits income
 45 or accumulations during such period or periods of time as to the Court shall seem advisable.

As to laying out and making and executing and maintaining streets roads and other works and expenses thereof.

18. On every sale or dedication to be effected as hereinbefore
 mentioned the Court may direct what person or persons shall execute
 50 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.

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

19. Any person entitled to the possession or to the receipt of
 55 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 and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who but for such assignment would be entitled to such settled
 estates

Application by petition to exercise powers conferred by this Act.

Settled Estates.

estates for a term of years determinable with any life or for an estate for any life or any greater estate may apply to the Court by petition in a summary way to exercise the powers conferred by this Act.

5 20. Subject to the exceptions hereinafter contained every application to the Court must be made with the concurrence or consent of the following parties namely— With whose consent such application to be made.

10 (I) Where there is a tenant in tail under the settlement in existence 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 tenants or 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.

15 (II) 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 21. Provided always that where an infant is tenant in tail under the settlement it shall be lawful for the Court if it shall think fit to dispense with the concurrence or consent of the person if only one or all or any of the persons if more than one entitled whether beneficially or otherwise to any estate or interest subsequent to the estate tail of such infant. Court may dispense with consent in respect of certain estates.

25 22. Provided always that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained notice shall be given to such person in such manner as the Court shall direct requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court. Notice to be given to persons who do not concur or consent to the application.

30 23. Provided also that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained and in case such person cannot be found or in case it shall be uncertain whether he be living or dead or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject matter of the application then and in any such case the Court if it shall think fit either on the ground of the rights or interests of such person being small or remote or being similar to the rights or interests of any other person or persons or on any other ground may by order dispense with notice to such person and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court. Provided that in order to ascertain who are the persons having right to assent or dissent or submit as herein provided the Court may if it shall think fit direct the Master in Equity to make enquiry in that behalf as in the case of suits for partition and the Master's report shall if approved by the Court be conclusive for the purposes of such application and any person having any interest who shall not be mentioned in the report and who shall not make claim to Court may dispense with notice under certain circumstances and may if it think fit refer to Master for report.

Settled Estates.

to the Court before the order on such application shall have been made shall be deemed to have submitted his rights and interests to be dealt with by the Court.

24. An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained or shall have been refused but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

Court may dispense with consent having regard to the number and interests of parties.

25. Provided nevertheless that 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 concurrence or consent has been refused or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court or whose rights estate or interest ought in the opinion of the Court to be excepted.

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

26. 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.

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

27. Notice of any application to the Court under this Act shall if the Court shall so direct but not otherwise 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 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 in support of any such application on such terms as to costs or otherwise and in such manner as it shall think fit.

Notice of application to be given in newspapers if Court direct.

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

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

29. All money to be received on any sale effected under the authority of this Act or to be set aside out of the 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 Court *ex parte* the applicant in the matter of this Act and such money shall be invested deposited or otherwise applied as the Court shall from time to time direct in some one or more of the following modes namely—

Payment and application of moneys arising from sales or set aside out of rent &c.

(I) In investment in Government securities or on other securities on which Trustees are by law authorized to invest trust moneys or on which the Trustees of the settlement are by the settlement authorized so to invest Provided that in case of investment in terminable securities provision shall be made by way of sinking fund or otherwise in respect of any premiums or discount so as to secure the full capital for persons having remoter interests.

(II) By deposit at interest in the Colonial Treasury or in any Bank as authorized by the present or any future rules of Court.

(III)

Settled Estates.

- (III) In discharge purchase or redemption of incumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement or affecting any other hereditaments subject to the same uses or trusts.
- 5 (IV) In purchase of the reversion in fee of any part of the settled land being leasehold land held for years or life or years determinable on life.
- (V) In purchase of land in fee simple or of leasehold land held for sixty years or more unexpired at the time of purchase to be settled in the same manner as the hereditaments in respect of which the money was paid or as near thereto as the different nature of the property purchased may admit.
- 10 (VI) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge.
- 15 (VII) In payment of costs charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of this Act.
- (VIII) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.
- 20 30. Capital money arising under this Act while remaining uninvested or unapplied and securities on which an investment of any such capital money is made shall for all purposes of disposition transmission and devolution be considered as land and the same shall be held for and go to the same persons successively in the same manner and for and on the same estates interests and trusts as the land wherefrom the money arises would if not disposed of have been held and have gone under the settlement and the income of such capital money and such securities shall be paid or applied as the income of that land if not disposed of would have been payable or applicable under the settlement.
- 25 31. 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 have been entitled to the possession or the receipt of the rents and profits of the settled estates.
- 30 32. Until the money can be applied as aforesaid the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time being authorized to be invested and the interest and dividends of such investments 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.
- 35 33. Where any purchase money paid into Court under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years or for a life or lives and years or any estate in lands less than the whole fee simple thereof or of any reversion dependent on any such lease or estate it shall be lawful for the Court on the petition of any party interested in such money to order that the same shall be laid out invested accumulated and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease estate or reversion in respect of which such money shall have been paid or as near thereto as may be.
- 40 34. 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 and such powers may be exercised if the Court shall think fit notwithstanding any express declaration is contained in the settlement that they shall not be exercised and if in any settlement a provision is inserted purporting or attempting by way of direction
- Transmission and devolution of capital money.
- 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.
- Court may direct application of money in respect of leases or reversions as may appear just.
- Court may exercise powers repeatedly and may exercise them notwithstanding any declaration to the contrary by the settlers.

Settled Estates.

declaration or otherwise to prevent or forbid the exercise by the Court of any of the powers conferred on it by this Act or attempting or tending or intended by a limitation gift or disposition over of settled land or by a limitation gift or disposition of other real or any personal
 5 property or by the imposition of any condition or by forfeiture or in any other manner whatever to prohibit or prevent any person entitled under this Act to apply to the Court to exercise the powers conferred by this Act from so applying or to induce such persons to abstain from so applying that provision so far as it purports or attempts or tends or
 10 is intended to have or would or might have the operation aforesaid shall be deemed to be void And an estate or interest limited to continue so long only as a person abstains from applying to the Court to exercise any of such powers or so long only as any of such powers shall remain unexercised shall be and take effect as an estate or
 15 interest to continue for the period for which it would continue if that person were to abstain from so applying or if any such power were not exercised discharged from liability to determination or cesser by or on such persons so applying or by or on any such power being exercised.

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

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

36. After the completion of any lease or sale or other act
 under the authority of the Court and purporting to be in pursuance of
 25 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 such person as herein mentioned whose concurrence or consent ought to be obtained or who ought to be served with notice or in respect of whom due order
 30 dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

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

37. 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
 35 to any application under this Act shall be a charge on the hereditaments which is the subject of the application or on any other hereditaments included in the same settlement and subject to the same limitations or on any capital money arising under this Act or on any securities on which an investment of any such money is made And
 40 the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of any such hereditaments or paid out of the rents and profits thereof or out of any securities taken under this Act or the income thereof such costs and expenses to be taxed as the Court shall direct.

Costs.

45 38. The Judges of the Supreme Court shall have full power to make general rules and orders for carrying into effect the purposes of this Act and for regulating the times and form and mode of procedure and generally the practice of the Court in respect of the matters to which this Act relates and for regulating the fees and allowances to
 50 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 Judges Provided that all such rules and orders shall be laid before each House of Parliament within twenty-one days after the making thereof if Parliament is then sitting or if not within twenty-one days
 55 after the commencement of the then next ensuing session.

Rules and orders.

39. 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 any life or for a term of years determinable with any life or
 lives or for any greater estate either in his own right or in right of
 his

Leases by tenants for life without recourse to the Court.

Settled Estates.

- 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 in tail after possibility of issue extinct or as tenant by the curtesy 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 from time to time for any term not exceeding ten years to take effect in possession at or within one year next after the making thereof 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 of the rent for a period of twenty-eight days after it becomes due or for some less period to be specified in that behalf and provided a counterpart of every deed of lease be executed by the lessee.
40. 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 and in the case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife and against all persons claiming through or under the wife (as the case may be) of the person granting the same.
41. 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.
42. All powers given by this Act and all applications to the Court under this Act and consents to and notifications respecting such applications may be executed made or given by and all notices under this Act may be given to guardians on behalf of infants and by or to committees on behalf of lunatics and by or to Trustees or assignees of the property of bankrupts or insolvents Provided nevertheless that in the cases of infants or lunatic tenants in tail no application or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the Court.
43. 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 any thing in the settlement contained to the contrary notwithstanding.
44. The examination of such married woman when resident within the jurisdiction of the Court 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 And when the married woman is resident out of the
- Against whom such leases shall be valid.
- Evidence of execution of counterpart lease by lessee.
- Provisions as to infants lunatics &c.
- Married women applying to the Court consenting to be examined apart from her husband.
- Examination of married women how to be made when residing within the jurisdiction of the Court and how when residing out of such jurisdiction.

Settled Estates.

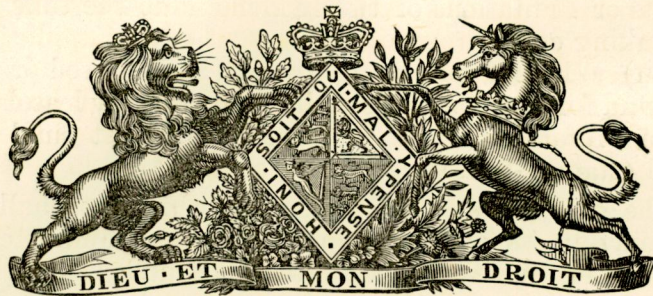
jurisdiction of the Court (to which such application is made) her examination may be made by any person appointed for that purpose by the Court whether he is or is not a Solicitor of the Court and such person shall certify under his hand to the effect hereinbefore provided 5 in respect of the examination of a married woman resident within the jurisdiction 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 resident out of the jurisdiction of the Court.

10 45. Subject to such examination as aforesaid married women may make or consent to any applications whether they be of full age or infants. As to application by or consent of.

15 46. Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the Court or to exercise any power. No obligation to make or consent to application &c.

20 47. 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 settled land although his estate may be charged or encumbered either by himself or by the settler or otherwise howsoever to any extent but the estates or interests of the parties entitled to any such charge or encumbrance shall not be affected by the acts of the persons entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein. Tenants for life to be deemed entitled notwithstanding encumbrances.

New South Wales.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. XX.

An Act for facilitating Sales Leases and other dispositions of Settled Estates. [Assented to, 14th October, 1886.]

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 assembled and by the authority of the same as follows:—

1. This Act may be cited as the "Settled Estates Act 1886" and shall commence and take effect from and immediately after the passing thereof. Short title and commencement of Act.

Definitions.

2. (I) 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 hereditaments or any estate or interest in land stand for the time-being 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. Interpretation of settlement and settled estates.

(II) The term "Settled Estates" as used in this Act shall signify all hereditaments 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 be a tenant for life.

Settled Estates.

(III) All estates or interests in remainder or reversion not disposed of by the settlement and reverting to the settlor or descending to the heir of a testator or passing to his personal representatives or next of kin under the Act twenty-sixth Victoria number twenty or any other Act that may be passed with regard to the real estate of Intestates shall be deemed to be estates coming to such settlor heir personal representative or next of kin under and by virtue of the settlement.

(IV) Land and any estate or interest therein which is the subject of a settlement is for the purposes of this Act settled land.

(V) In determining what are settled estates within the meaning of this Act the Court shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

(VI) Where a person in his own right seised or beneficially entitled to land for an estate in fee-simple or for any leasehold interest at a rent is an infant such land or leasehold interest shall be deemed to be settled estate within the meaning of this Act.

Interpretation of
"The Court."

3. The expression "The Court" in this Act shall mean the Supreme Court in its equitable jurisdiction as administered by the Primary Judge in Equity and the full Court under the "Equity Act of 1880" or any other Act that may be passed for regulating such equitable jurisdiction. Provided that any other Judge of the Court may act primarily under this Act with the concurrence of the Primary Judge in Equity.

Power to authorize
leases of settled
estates.

4. It shall be lawful for the 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:—

- (I) 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 ten years and for a mining lease forty years and for a repairing lease fifteen years and for a building lease thirty years.
- (II) 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. Provided that in the case of a mining lease a nominal rent or any smaller rent than the rent to be ultimately made payable may if the Court shall think fit so to direct be made payable during all or any part of the first five years of the lease. Provided also that in case of a mining lease the rent reserved may be in part by way of royalty on the minerals raised or on the gross or net produce thereof.
- (III) 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 and in every such lease sufficient provision

Settled Estates.

provision shall be made to insure such application of the aforesaid portion of the rent by the appointment of Trustees or otherwise as the Court shall deem expedient.

- (IV) 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 of twenty-eight days after it becomes due or for some less period to be specified in that behalf.

5. 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. Leases may contain special covenants.

6. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of the settled land and may be exercised from time to time. Parts of settled land may be leased.

7. Any leases whether granted in pursuance of 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. Leases may be surrendered and renewed.

8. 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. Power to authorize leases to extend to preliminary contracts.

9. 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. Modes in which leases may be authorized.

10. 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.

11. 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.

12. Where 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.

13. It shall be lawful for the 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 Court may authorize sale of settled estates.

any

Settled Estates.

any parts of 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. Provided always that it shall be lawful for the Court if it thinks fit to authorize any such sale to be conducted out of Court upon such terms and conditions and subject to such restrictions as to the Court may seem fit.

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

14. 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.

Minerals &c. may be excepted from sales and leases.

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

Court may authorize dedication of any part of settled land for streets roads and other works.

16. It shall be lawful for the 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 or vested in any other Trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects and with such provisions for the appointment of new Trustees when required as by the Court shall be deemed advisable.

As to laying out and making and executing and maintaining streets roads and other works and expenses thereof.

17. Where any part of any settled estates is directed to be laid out for such purposes as aforesaid the Court may direct that any such streets roads paths squares gardens or other open spaces sewers drains or watercourses including all necessary or proper fences pavings connections and other works incidental thereto respectively be made and executed and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates or be raised and paid out of the rents and profits of the settled estates or any part thereof or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates or out of the income of such moneys or investments or out of any accumulations of rents profits or income and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets roads paths squares gardens or other open spaces sewers drains or watercourses or other works out of any such rents profits income or accumulations during such period or periods of time as to the Court shall seem advisable.

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

18. 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.

Application by petition to exercise powers conferred by this Act.

19. 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 and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who but for such assignment would be entitled to such settled estates

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estates for a term of years determinable with any life or for an estate for any life or any greater estate may apply to the Court by petition in a summary way to exercise the powers conferred by this Act.

20. Subject to the exceptions hereinafter contained every application to the Court must be made with the concurrence or consent of the following parties namely—

With whose consent such application to be made.

(i) Where there is a tenant in tail under the settlement in existence 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 tenants or 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.

(ii) 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.

21. Provided always that where an infant is tenant in tail under the settlement it shall be lawful for the Court if it shall think fit to dispense with the concurrence or consent of the person if only one or all or any of the persons if more than one entitled whether beneficially or otherwise to any estate or interest subsequent to the estate tail of such infant.

Court may dispense with consent in respect of certain estates.

22. Provided always that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained notice shall be given to such person in such manner as the Court shall direct requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Notice to be given to persons who do not concur or consent to the application.

23. Provided also that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained and in case such person cannot be found or in case it shall be uncertain whether he be living or dead or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject matter of the application then and in any such case the Court if it shall think fit either on the ground of the rights or interests of such person being small or remote or being similar to the rights or interests of any other person or persons or on any other ground may by order dispense with notice to such person and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court. Provided that in order to ascertain who are the persons having right to assent or dissent or submit as herein provided the Court may if it shall think fit direct the Master in Equity to make enquiry in that behalf as in the case of suits for partition and the Master's report shall if approved by the Court be conclusive for the purposes of such application and any person having any interest who shall not be mentioned in the report and who shall not make claim

Court may dispense with notice under certain circumstances and may if it think fit refer to Master for report.

to

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to the Court before the order on such application shall have been made shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with consent having regard to the number and interests of parties.

24. An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained or shall have been refused but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

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

25. Provided nevertheless that 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 concurrence or consent has been refused or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court or whose rights estate or interest ought in the opinion of the Court to be excepted.

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

26. 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.

Notice of application to be given in newspapers if Court direct.

27. Notice of any application to the Court under this Act shall if the Court shall so direct but not otherwise 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 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 in support of any such application on such terms as to costs or otherwise and in such manner as it shall think fit.

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

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

Payment and application of moneys arising from sales or set aside out of rent &c.

29. All money to be received on any sale effected under the authority of this Act or to be set aside out of the 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 Court *ex parte* the applicant in the matter of this Act and such money shall be invested deposited or otherwise applied as the Court shall from time to time direct in some one or more of the following modes namely—

(I) In investment in Government securities or on other securities on which Trustees are by law authorized to invest trust moneys or on which the Trustees of the settlement are by the settlement authorized so to invest Provided that in case of investment in terminable securities provision shall be made by way of sinking fund or otherwise in respect of any premiums or discount so as to secure the full capital for persons having remoter interests.

(II) By deposit at interest in the Colonial Treasury or in any Bank as authorized by the present or any future rules of Court.

(III)

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- (III) In discharge purchase or redemption of incumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement or affecting any other hereditaments subject to the same uses or trusts.
- (IV) In purchase of the reversion in fee of any part of the settled land being leasehold land held for years or life or years determinable on life.
- (V) In purchase of land in fee simple or of leasehold land held for sixty years or more unexpired at the time of purchase to be settled in the same manner as the hereditaments in respect of which the money was paid or as near thereto as the different nature of the property purchased may admit.
- (VI) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge.
- (VII) In payment of costs charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of this Act.
- (VIII) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

30. Capital money arising under this Act while remaining uninvested or unapplied and securities on which an investment of any such capital money is made shall for all purposes of disposition transmission and devolution be considered as land and the same shall be held for and go to the same persons successively in the same manner and for and on the same estates interests and trusts as the land wherefrom the money arises would if not disposed of have been held and have gone under the settlement and the income of such capital money and such securities shall be paid or applied as the income of that land if not disposed of would have been payable or applicable under the settlement.

Transmission and devolution of capital money.

31. 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 have been entitled to the possession or the receipt of the rents and profits of the settled estates.

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

32. Until the money can be applied as aforesaid the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time being authorized to be invested and the interest and dividends of such investments 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.

33. Where any purchase money paid into Court under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years or for a life or lives and years or any estate in lands less than the whole fee simple thereof or of any reversion dependent on any such lease or estate it shall be lawful for the Court on the petition of any party interested in such money to order that the same shall be laid out invested accumulated and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease estate or reversion in respect of which such money shall have been paid or as near thereto as may be.

Court may direct application of money in respect of leases or reversions as may appear just.

34. 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 and such powers may be exercised if the Court shall think fit notwithstanding any express declaration is contained in the settlement that they shall not be exercised and if in any settlement a provision is inserted purporting or attempting by way of direction

Court may exercise powers repeatedly and may exercise them notwithstanding any declaration to the contrary by the settlers.

declaration

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declaration or otherwise to prevent or forbid the exercise by the Court of any of the powers conferred on it by this Act or attempting or tending or intended by a limitation gift or disposition over of settled land or by a limitation gift or disposition of other real or any personal property or by the imposition of any condition or by forfeiture or in any other manner whatever to prohibit or prevent any person entitled under this Act to apply to the Court to exercise the powers conferred by this Act from so applying or to induce such persons to abstain from so applying that provision so far as it purports or attempts or tends or is intended to have or would or might have the operation aforesaid shall be deemed to be void And an estate or interest limited to continue so long only as a person abstains from applying to the Court to exercise any of such powers or so long only as any of such powers shall remain unexercised shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from so applying or if any such power were not exercised discharged from liability to determination or cesser by or on such persons so applying or by or on any such power being exercised.

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

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

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

36. 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 such person as herein mentioned whose concurrence or consent ought to be obtained or who ought to be served with notice or in respect of whom due order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

Costs.

37. 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 is the subject of the application or on any other hereditaments included in the same settlement and subject to the same limitations or on any capital money arising under this Act or on any securities on which an investment of any such money is made And the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of any such hereditaments or paid out of the rents and profits thereof or out of any securities taken under this Act or the income thereof such costs and expenses to be taxed as the Court shall direct.

Rules and orders.

38. The Judges of the Supreme Court shall have full power to make general rules and orders for carrying into effect the purposes of this Act and for regulating the times and form and mode of procedure and generally the practice of the Court in respect of the matters to which this Act relates 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 Judges Provided that all such rules and orders shall be laid before each House of Parliament within twenty-one days after the making thereof if Parliament is then sitting or if not within twenty-one days after the commencement of the then next ensuing session.

Leases by tenants for life without recourse to the Court.

39. 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 any life or for a term of years determinable with any life or lives or for any greater estate either in his own right or in right of his

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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 in tail after possibility of issue extinct or as tenant by the curtesy 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 from time to time for any term not exceeding ten years to take effect in possession at or within one year next after the making thereof 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 of the rent for a period of twenty-eight days after it becomes due or for some less period to be specified in that behalf and provided a counterpart of every deed of lease be executed by the lessee.

40. 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 and in the case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife and against all persons claiming through or under the wife (as the case may be) of the person granting the same.

Against whom such leases shall be valid.

41. 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.

Evidence of execution of counterpart lease by lessee.

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

Provisions as to infants lunatics &c.

43. 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 any thing in the settlement contained to the contrary notwithstanding.

Married women applying to the Court consenting to be examined apart from her husband.

44. The examination of such married woman when resident within the jurisdiction of the Court 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 And when the married woman is resident out of the

Examination of married women how to be made when residing within the jurisdiction of the Court and how when residing out of such jurisdiction.

Settled Estates.

jurisdiction of the Court (to which such application is made) 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 such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction 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 resident out of the jurisdiction of the Court.

As to application by
or consent of.

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

No obligation to
make or consent to
application &c.

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

Tenants for life
to be deemed
entitled notwith-
standing encum-
brances.

47. 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 settled land although his estate may be charged or encumbered either by himself or by the settler or otherwise howsoever to any extent but the estates or interests of the parties entitled to any such charge or encumbrance shall not be affected by the acts of the persons entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

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[9d.]