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Settled Land Act 1884



Settled Land Act 1884

An Act for facilitating sales, leases, and other disposition of settled land, and for promoting the execution of improvements thereon

[Royal Assent 27 October 1884]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I - Preliminary

1. Short title: Commencement

[Section 1 Amended by 25 Geo. V No. 78]

- (1) This Act may be cited as the Settled Land Act 1884 .
- (2) This Act shall commence on the first day of January 1885.

PART II - Definitions

2. Definitions

[Section 2 Amended by 25 Geo. V No. 78]

(1) *[Section 2 Subsection (1) amended by 2 Geo. V No. 33, s. 15]*Any deed, will, agreement for a settlement, or other agreement, Act, or other instrument, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, or is so limited that no person is presently entitled beneficially in possession or to the receipt of the rents and profits thereof, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or any person deriving title under him, is, for purposes of this Act, an estate or interest coming to the settlor or such person under or by virtue of the settlement, and comprised in the subject of the settlement.

(3) Land, and any estate or interest therein which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4) The determination of the question whether land is settled land for purposes of this Act or not is governed by the state of facts and the limitations of the settlement at the time of the settlement taking effect.

(5) The person who is for the time being under a settlement beneficially entitled to possession of settled land for his life is for purposes of this Act the tenant for life of that land and the tenant for life under that settlement.

(6) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that under the settlement or otherwise the settled land, or his estate or interest therein, is encumbered or charged in any manner or to any extent.

(8) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10) *[Section 2 Subsection (10) amended by No. 75 of 1973, s. 2 and Sched. 1]*In this Act –

(a) **building purposes** include the erecting and the improving of, and the adding to, and the repairing of buildings; and a **building lease** is a lease for any building purposes or purposes connected therewith;

(b) **land** includes incorporeal hereditaments, also an undivided share in land; **income** includes rents and profits; and **possession** includes receipt of income;

(c) **rent** includes yearly or other rent, and toll, duty, royalty, or other reservation by the hectare, or the tonne, or otherwise; and, in relation to rent, **payment** includes delivery; and **fine** includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;

(d) **securities** include Government debentures and any debentures or securities the principal or interest of which is guaranteed by the Government of Tasmania, Treasury Bills, and shares;

(e) **the Court** means the Supreme Court or a judge;

(f) **timber**, unless a contrary intention appears, includes all indigenous and foreign trees, the wood of which is ordinarily used for building or manufacturing purposes, and the bark of such trees, but does not include brushwood, scrub, or underwood;

(g) *will* includes codicil and other testamentary instrument, and a writing in the nature of a will.

PART III - Sale: Exchange: Partition

3. Power of tenant for life to sell, exchange, or concur in partition

*[Section 3 Amended by 25 Geo. V No. 78]*A tenant for life –

- (a) may sell the settled land, or any part thereof, or any easement, right, or privilege of any kind over or in relation to the same;
- (b) may make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (c) where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

4. Regulations respecting sale, exchange, and partition

[Section 4 Amended by 25 Geo. V No. 78]

- (1) Every sale shall be made at the best price that can reasonably be obtained.
- (2) Every exchange and every partition shall be made for the best consideration in land, or in land and money, that can reasonably be obtained.
- (3) A sale may be made in one lot or in several lots, but before any sale shall take place by private contract, the lot or lots shall be submitted for sale by public auction.
- (4) On a sale the tenant for life may fix reserve biddings and buy in at an auction.
- (5) A sale, exchange, or partition may be made subject to any stipulations respecting title or evidence of title or other things.
- (6) On a sale, exchange, or partition any restriction or reservation with respect to building on or other user of land or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.
- (7) Settled land in Tasmania shall not be given in exchange for land out of Tasmania.

5. Powers of tenant for life in relation to incumbrances

Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise make provision accordingly.

PART IV - Leases

6. Power of tenant for life to lease for ordinary or building purposes

[Section 6 Amended by 25 Geo. V No. 78] A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding –

- (a) in case of a building lease, ninety-nine years;
- (b) in case of any other lease, twenty-one years.

7. Regulations respecting leases generally

- (1) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.
- (2) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.
- (3) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.
- (4) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.
- (5) A statement, contained in a lease or in an endorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

8. Regulations respecting building leases

[Section 8 Amended by 25 Geo. V No. 78]

- (1) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person having erected, or agreeing to erect, buildings new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed or agreeing to execute on the land leased an improvement authorized by this Act, for or in connection with building purposes.
- (2) A peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.
- (3) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that –
 - (a) the annual rent reserved by any lease shall not be less than \$1;
 - (b) the total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and
 - (c) the rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease, with the buildings thereon when completed.

9.

[Section 9 Repealed by 25 Geo. V No. 78].

10. Variation of building leases according to circumstances of district

[Section 10 Amended by 25 Geo. V No. 78]

(1) Where it is shown to the Court with respect to the district in which any settled land is situate, that it is difficult to make leases or grants for building purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity, the Court may, if it thinks fit, authorize generally the tenant for life to make leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at such rents, secured by condition of re-entry or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

11. Part of compensation for mining to be set aside

[Section 11 Amended by 25 Geo. V No. 78] Where a mining lease is granted under the Mining Act 1929, in respect of any land which is subject to this Act, unless a contrary intention is expressed in the settlement, there shall be set aside, as capital money arising under this Act, part of any compensation received in respect thereof, as follows, namely: Where the tenant for life is impeachable for waste in respect of minerals, three-fourth parts of such compensation, and otherwise one-fourth part thereof, and in every such case the residue of such compensation shall go as rents and profits.

12. Leasing power of tenant for life

The leasing power of a tenant for life extends to the making of –

- (a) a lease for giving effect to a contract entered into by any of his predecessors in title for making a lease which, if made by the predecessor, would have been binding on the successors in title;
- (b) a lease for giving effect to a covenant of renewal performance whereof could be enforced against the owner for the time being of the settled land; and
- (c) a lease for confirming as far as may be of a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act, or otherwise, as the case may require.

13. Power of tenant for life to accept surrender of lease and grant new leases

[Section 13 Amended by 25 Geo. V No. 78]

- (1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof.
- (2) On a surrender of a lease in respect of part only of the land leased, the rent may be apportioned.
- (3) On a surrender, the tenant for life may make of the land surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.
- (4) A new or other lease may comprise additional land, and may reserve any apportioned or other rent.
- (5) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.
- (6) Every new or other lease shall be in conformity with this Act.

PART V - Sales, Leases, and Other Dispositions

14. Power of tenant for life, on sale or grant for building purposes to provide for streets, open spaces, &c., and for use thereof

[Section 14 Amended by 25 Geo. V No. 78] On or in connection with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof –

- (a) may cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connection therewith;
- (b) may provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets, and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
- (c) may execute any general or other deed necessary or proper for giving effect to the provisions of this section, and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

15. Moneys erroneously paid in relation to timber

[Section 15 Amended by 25 Geo. V No. 78]

- (1) Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to a tenant for life or other person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the Court may direct, to the trustees of the settlement or other persons entitled thereto or into Court, the Court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had, at the date thereof, been duly paid to the trustees of the settlement or other persons entitled to receive the same.
- (2) The person not entitled to receive the same, to whom the consideration is paid, and his estate and effects, shall remain liable to make good any loss attributable to the mistake.

16. Mortgage for money required for equality of exchange or partition

Where money is required for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

17. Concurrence in exercise of powers as to undivided share

Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

18. Completion of sale, lease, &c., may be by deed: Effect of deed

[Section 18 Amended by 25 Geo. V No. 78]

- (1) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange, or on partition, leased, mortgaged, or charged, or intended so to be, including leasehold land

vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(a) all estates, interests, and charges having priority to the settlement;

(b) all such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(c) all leases and grants and all grants of easements or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

PART VI - Investment or Other Application of Capital Trust Money

19. Capital money under Act: How to be invested and applied

[Section 19 Amended by 25 Geo. V No. 78] Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes, namely:

- (a) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, with power to vary the investment into or for any other such securities;
- (b) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, charged on or payable out of the settled land;
- (c) In payment for any improvement authorized by this Act;
- (d) In payment for equality of exchange or partition of settled land;
- (e) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life or years determinable on life;
- (f) In purchase of land in fee simple or of leasehold land held for sixty years or more unexpired at the time of purchase;
- (g) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;
- (h) 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;
- (i) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

20. Capital money to be paid either to trustees or into Court

- (1) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.
- (2) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.
- (3) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.
- (4) Any investment or other application shall not during the life of the tenant for life be altered without his consent.
- (5) 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.
- (6) The income of those 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.
- (7) Those securities may be converted into money, which shall be capital money arising under this Act.

21. Capital money not to be applied in purchase of land outside Tasmania unless settlement expressly authorizes

Capital money arising under this Act from settled land in Tasmania shall not be applied in the purchase of land out of Tasmania unless the settlement expressly authorizes the same.

22. Land acquired by purchase, exchange, or partition: How to be made subject to settlement

(1) Land acquired by purchase or in exchange or on partition shall be made subject to the settlement in manner directed in this section.

(2) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3) Leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to, on, and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7) *[Section 22 Subsection (7) omitted by 25 Geo V No. 78].*

PART VII - Improvements

23. Description of improvements authorized by Act

[Section 23 Amended by 25 Geo. V No. 78] Improvements authorized by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes, namely:

- (a) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses;
- (b) Irrigation; warping;
- (c) Drains, pipes, and machinery for supply and distribution of sewage as manure;
- (d) Embanking or weiring from a river or lake, or from the sea, or a tidal water;
- (e) Groynes; sea walls; defences against water;
- (f) Enclosing; straightening of fences; redivision of fields;
- (g) Reclamation; dry warping;
- (h) Farm roads; private roads; roads or streets in villages or towns;
- (i) Clearing; trenching; planting;
- (j) Cottages for labourers, farm servants, and artisans, employed on the settled land or not;
- (k) Farm-houses, offices, and out-buildings, and other buildings for farm purposes;
- (l) Sawmills and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise;
- (m) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption;
- (n) Tramways; railways; canals; docks;
- (o) Jetties, piers, and landing-places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes;
- (p) Markets and market-places;
- (q) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land;
- (r) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid;
- (s) Reconstruction, enlargement, or improvement of any of those works.

24. Approval by trustees or by Court of scheme for improvement and expenditure thereon

[Section 24 Amended by 25 Geo. V No. 78]

(1) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on –

(a) a certificate of a competent engineer or able practical surveyor nominated by the trustees, and approved by the Court certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or

(b) an order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

25. Concurrence with other person interested in scheme for improvement

The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

26. Tenant for life to maintain, repair, and insure improvements

(1) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Court by certificate in any case prescribes, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Court by certificate in any case prescribes.

(2) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3) The tenant for life, and each of his successors as aforesaid, shall, if required by the Court, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Court the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4) The Court may vary any certificate made under this section, in such manner or to such extent as circumstances appear to the Court to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

27. Protection as regards waste in execution and repair of improvements

The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other

substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

PART VIII - Contracts

28. Powers of tenant for life as to contracts regarding settled land

[Section 28 Amended by 25 Geo. V No. 78]

(1) A tenant for life –

- (a) may contract to make any sale, exchange, partition, mortgage, or charge;
- (b) may vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act;
- (c) may contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act;
- (d) may accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease where a lease had been surrendered;
- (e) may enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and
- (f) may, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

PART IX - Miscellaneous Provisions

29. Application of Act to money in Court under other Acts

[Section 29 Amended by 25 Geo. V No. 78] [Section 29 Amended by No. 24 of 1993, s. 3 and Sched. 1] Where, under an Act incorporating or applying, wholly or in part, the Land Acquisition Act 1993 , or under any other Act, money is paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

30. Application of Act to money in hands of trustees under a settlement

Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

31. Application of money paid for lease or reversion, &c.

Where capital money arising under this Act is purchase-money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

32. Cutting and sale of timber by tenant for life, impeachable for waste, and setting aside part of proceeds

(1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2) Three-fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

33. Proceedings for protection and recovery of land settled or alleged to be settled

The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, Parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

34. Sale of heirlooms by tenant for life and application of proceeds

(1) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3) A sale or purchase of chattels under this section shall not be made without an order of the Court.

PART X - Trustees

35. Appointment of trustees by Court

(1) If at any time there are no trustees of a settlement within the definition of this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life, or of any other person having under the settlement an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary, or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee shall for the purposes of this Act become and be the trustees or trustee of the settlement.

36. Minimum number of trustees

[Section 36 Amended by 25 Geo. V No. 78]

(1) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee, or unless the sole trustee is a company authorized by law to act as a trustee.

(2) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

(3) Any company authorized by law to act as a trustee may be appointed as sole trustee of any settlement whenever made, for the purposes of this Act; and any such trustee whenever appointed may lawfully act as trustee of any such settlement.

37. Trustees' receipts

*[Section 37 Amended by 25 Geo. V No. 78]*The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees or representatives, as the case may be, effectually discharges the payer or transferrer therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

38. Protection of trustees individually

Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

39. Protection of trustees generally

The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as

giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

40. Trustees' reimbursement

The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

40A. Power of trustees in certain cases to exercise powers of tenant for life

[Section 40A Inserted by 2 Geo. V No. 33, s. 16] Where no person is tenant for life of, or but for this section would have the powers of a tenant for life in regard to, the settled land, then the trustees of the settlement shall have the powers of a tenant for life in respect of the settled land.

41. Reference of differences to Court

If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

42. Notice to trustees by tenant for life intending to deal with land

[Section 42 Amended by 25 Geo. V No. 78]

(1) *[Section 42 Subsection (1) amended by No. 66 of 2007, Sched. 1, Applied:31 Dec 2008]* A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement by registered post to the trustees, severally, and shall give like notice to the Australian legal practitioner for the trustees if any such Australian legal practitioner is known to the tenant for life, by registered post, to the Australian legal practitioner at his place of business in Tasmania, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2) At the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement, or unless the sole trustee is a company authorized by law to act as a trustee.

(3) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

(4) The notice required by this section may be a notice of a general intention to make a sale, exchange, partition, lease, mortgage, or charge.

(5) The tenant for life, upon request by a trustee of the settlement, shall furnish to him such particulars as may be reasonably required by him, with reference to any sale, exchange, partition, lease, mortgage, or charge effected or in progress or immediately intended.

(6) Any trustee may, by writing under his hand, waive notice, either in any particular case or generally, and may accept less than one month's notice.

**PART XI - *[Part XI Heading amended by 25 Geo. V No. 78]* Court: Procedure:
Costs**

43. Procedural provisions

[Section 43 Amended by 25 Geo. V No. 78]

- (1) The procedure in respect of all matters within the jurisdiction of the Court under this Act shall be in accordance with the Rules of Court under the Supreme Court Civil Procedure Act 1932 .
- (2) Payment of money into Court effectually exonerates therefrom the person making payment.
- (3) Every application to the Court shall be by petition or by summons at chambers.
- (4) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.
- (5) On any application notice shall be served on such persons, if any, as the Court thinks fit.
- (6) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application or proceeding, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.
- (7) *[Section 43 Subsection (7) omitted by 25 Geo. V No. 78].*

44. Payment of costs out of settled property

Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money, or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement, and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

PART XII - Restrictions, Savings, and General Provisions

45. Powers of tenant for life not assignable

(1) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

(2) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3) *[Section 45 Subsection (3) amended by 25 Geo. V No. 78]* This section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's right shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

46. Prohibition or limitation against exercise of powers void

(1) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act, a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under 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 him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as 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.

(2) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power 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 exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

47. Provision against forfeiture

Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

48. Tenant for life trustee for all parties interested

A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

49. General protection of purchasers, &c.

On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

50. Exercise of powers

(1) *[Section 50 Subsection (1) omitted by 25 Geo. V No. 78].*

(2) Where a power of sale, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary, or proper in that behalf.

(3) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts and transactions under this Act.

51. Saving other powers

(1) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act.

(3) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

52. Additional or larger powers by settlement

(1) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

PART XIII - Limited Owners Generally

53. Other limited owners who are to have powers of tenant for life

[Section 53 Amended by 25 Geo. V No. 78]

(1) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act, namely:

- (a) A tenant in tail;
- (b) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event;
- (c) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown;
- (d) A tenant for years determinable on life, not holding merely under a lease at a rent;
- (e) A tenant for the life of another, not holding merely under a lease at a rent;
- (f) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose;
- (g) A tenant in tail after possibility of issue extinct;
- (h) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

PART XIV - Infants: Married Women: Lunatics

54. Infant absolutely entitled deemed tenant for life

Where a person who is in his own right seised of or entitled in possession to land, is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

55. Powers of infant tenant for life may be exercised by trustees or by person ordered by Court

Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

56. Married woman: How affected by Act

[Section 56 Amended by 25 Geo. V No. 78]

(1) The foregoing provisions of this Act shall apply to a married woman of full age, whether or not she is entitled to her estate or interest for her separate use or as her separate property, and she, without her husband, may exercise the powers of a tenant for life under this Act.

(2) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

57.

[Section 57 Repealed by No. 63 of 1963, s. 2 and Sched. 1].

PART XV - Repeals

58.

[Section 58 Repealed by 25 Geo. V No. 78].

SCHEDULE 1

[Schedule Repealed by 25 Geo. V No. 78]