

Authorised Version No. 064

Settled Land Act 1958

No. 6367 of 1958

Authorised Version incorporating amendments as at
1 July 2015

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No. 6367 of 1958

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1 July 2015

An Act to consolidate the law relating to Settled Land.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title, commencement and Division

- (1) This Act may be cited as the **Settled Land Act 1958**, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette, and is divided into Parts and Divisions as follows:

Part I— General Preliminary Provisions ss 3–37	}	Division 1—Introductory ss 3–7
		Division 2—Settlements and Settled Land ss 8–11
		Division 3—Tenants for Life and Persons with Powers of Tenant for Life ss 12–29
		Division 4—Trustees of Settlement ss 30–37

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Part II—
Powers
of a Tenant
for Life
ss 38–72

- Division 1—Sale Exchange
and Partition ss 38–40
- Division 2—Leasing Powers
ss 41–43
- Division 3—Provision as to
Building and Mining Leases
ss 44–47
- Division 4—Miscellaneous
Powers ss 48–65
- Division 5—Provisions as to
Special Classes of Property
ss 66 and 67
- Division 6—Dealings as
between Tenants for Life and
the Estate s. 68
- Division 7—Incumbrances
ss 69 and 70
- Division 8—Raising of money
s. 71
- Division 9—Conveyances
s. 72

Part III—Investment or other Application of
Capital Money ss 73–82

Part IV—Improvements ss 83–89

Part V—Miscellaneous Provisions ss 90–93

Part VI—General Provisions as to Trustees
ss 94–103

Part VII—Restrictions Savings and Protection of
Purchasers ss 104–112

Part VIII—Procedure ss 113 and 114.

2 Repeal and savings

- (1) The Acts mentioned in the First Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;
 - (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any rule order appointment application disposition conveyance partition surrender apportionment trust settlement transaction contract tenancy dealing in land arrangement consent title notice charge security liability or right made effected issued granted given accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.

PART I—GENERAL PRELIMINARY PROVISIONS

Division 1—Introductory

3 Definitions

Nos 3771 s. 3,
4840 s. 2, 5286
s. 10(1)(a).

- (1) In this Act, unless inconsistent with the context or subject-matter—

building purposes includes 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 purpose or purposes connected therewith;

capital money arising under this Act means capital money arising under the powers and provisions of this Act or any corresponding previous enactment and receivable for the trusts and purposes of the settlement and includes securities representing capital money;

S. 3(1) def. of
Court
substituted by
No. 16/1986
s. 20(a).

Court means the Supreme Court and, in relation to land or an estate or interest in land the value of which land does not exceed the jurisdictional limit of the County Court, the Supreme Court or the County Court;

determinable fee means a fee determinable whether by limitation or condition;

disposition and *conveyance* include a mortgage, lease, assent, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and *dispose of* and *convey* have corresponding meanings;

hereditaments means real property which on an intestacy might under the law formerly in force have devolved on an heir;

income includes rents and profits;

instrument does not include a statute unless the statute creates a settlement;

land includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement right, privilege, or benefit in, over, or derived from land, and any estate or interest in land and also an undivided share in land;

legal practitioner means an Australian legal practitioner;

S. 3(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 98), amended by No. 17/2014 s. 160(Sch. 2 item 89).

limitation includes a trust, and ***trust*** includes an implied or constructive trust;

mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and ***mining purposes*** includes the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of

any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes; and a *mining lease* is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes;

notice includes constructive notice;

personal representative means the executor, original or by representation, or administrator, for the time being of a deceased person;

possession includes receipt of rents and profits, or the right to receive the same (if any);

property includes any thing in action, and any interest in real or personal property;

purchaser means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who in good faith acquires an interest in settled land for value;

rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, *payment* includes delivery; and *fine* includes premium or fore-gift, and any payment, consideration or benefit in the nature of a fine, premium or fore-gift;

securities include stocks, funds and shares;

settled land includes land which is deemed to be settled land; *settlement* includes an instrument or instruments which under this Act or the corresponding previous enactments is or are deemed to be or which together constitute a settlement, and a

settlement which is deemed to have been made by any person or to be subsisting for the purposes of this Act; *a settlement subsisting at the commencement of this Act* includes a settlement created by virtue of this Act immediately on the commencement thereof; and *trustees of the settlement* mean the trustees thereof for the purposes of this Act howsoever appointed or constituted;

¹*statutory owner* means the trustees of the settlement or other persons who at any time when there is no tenant for life have the powers of a tenant for life under this Act, but does not include the trustees of the settlement where by virtue of an order of the Court or otherwise the trustees have power to convey the settled land in the name of the tenant for life;

tenant for life includes a person (not being a statutory owner) who has the powers of a tenant for life under this Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life; and *tenant in tail* includes a person entitled to an entailed interest in any property; and *entailed interest* has the same meaning as in the **Property Law Act 1958**;

²*term of years absolute* means a term of years, taking effect either in possession or in reversion, with or without impeachment for waste, whether at a rent or not and whether subject or not to another legal estate, and whether certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event but does not include if created after the commencement of the **Settled Land**

Act 1928 a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by statute to take effect within that period; and in this definition the expression *term of years* includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

S. 3(1) def. of *trust for sale, trustees for sale and power to postpone a sale* amended by No. 29/2011 s. 3(Sch. 1 item 85).

trust for sale, trustees for sale and *power to postpone a sale* have the same meanings as in the **Property Law Act 1958**;

S. 3(1) def. of *trustee* amended by Nos 55/1987 s. 57(3)(Sch. 5 item 45), 45/1994 s. 42(Sch. item 8.1).

trustee includes a trustee company, and a trustee company shall be qualified to be appointed and to act as trustee of the settlement for the purposes of this Act;

S. 3(1) def. of *trustee company* amended by No. 10168 s. 3.

trustee company means a trustee company under the **Trustee Companies Act 1984**;

will includes codicil and every other testamentary instrument.

- (2) Where an equitable interest in or power over property arises by statute or operation of law, references to the *creation* of an interest or power include any interest or power so arising.

No. 3771 s. 4.

4 Application of Act

Subject to the savings referred to in section two hereof this Act shall except where otherwise specially provided apply to and in respect of

settlements and other instruments whether made before or after the commencement of this Act.

5 Application of Act to land etc. under Transfer of Land Act No. 3771 s. 5.

This Act shall in addition to its general application also apply to lands estates and interests under the **Transfer of Land Act 1958**. But in dealing with such lands estates and interests the procedure forms of instruments and general requirements and provisions of and prescribed by the said Act are so far as practicable to be followed used and complied with.

6 Limitation of powers of tenant for life and trustee No. 3771 s. 6.

There shall not by or under this Act be conferred upon any tenant for life or trustee of any land in Victoria any greater power or authority whatever than he would have if he were an owner in fee-simple of such land.

* * * * *

S. 7
repealed by
No. 16/1986
s. 20(b).

Division 2—Settlement and settled land

8 What constitutes a settlement No. 3771 s. 8.

(1) Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, after the commencement of this Act stands for the time being—

(a) limited to or in trust for any persons by way of succession; or

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S. 8(1)(b)(iv)
amended by
Nos 9075
s. 5(1), 9427
s. 5(Sch. 4
item 10).

- (b) limited to or in trust for any person in possession—
 - (i) for an entailed interest;
 - (ii) for an estate in fee-simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;
 - (iii) for a determinable fee;
 - (iv) being a minor, for an estate in fee-simple or for a term of years absolute;
or
- (c) limited to or in trust for any person for an estate in fee-simple or for a term of years absolute contingently on the happening of any event; or
- (d) ³limited to or in trust for a married woman of full age in possession for an estate in fee-simple or a term of years absolute or any other interest with a restraint on anticipation;
or
- (e) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance or otherwise for the benefit of any persons, with or without any term of years for securing or raising the same—

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create or is for the purposes of this Act settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires:

Provided that, where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

- (2) Where a minor is beneficially entitled to land for an estate in fee-simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the minor arises or is acquired a settlement shall be deemed to have been made by the intestate, or by the person whose interest the minor has acquired.
- (3) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.
- (4) Where—
- (a) a settlement creates an entailed interest or a determinable fee; or
 - (b) the subject of a settlement is an entailed interest, or a determinable fee—

S. 8(2)
amended by
Nos 9075
s. 5(1), 9427
s. 5(Sch. 4
item 10).

the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.

- No. 3771 s. 9.** **9 Exception of lands held on trust for sale⁴**
The last preceding section shall not apply to land held upon trust for sale.
- No. 3771 s. 10.** **10 What is settled land**
Land which is or is deemed to be the subject of a settlement is for the purposes of this Act settled land, and is in relation to the settlement referred to in this Act as the settled land.
- No. 3771 s. 11.** **11 Duration of settlements**
Land not held upon trust for sale which has been subject to a settlement shall be deemed for the purposes of this Act to remain and be settled land, and the settlement shall be deemed to be a subsisting settlement for the purposes of this Act so long as any limitation, charge, or power of charging under the settlement subsists, or is capable of being exercised.
- Division 3—Tenants for life and persons with powers of tenant for life**
- No. 3771 s. 12.** **12 Who is tenant for life**
The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life shall for the purposes of this Act be the tenant for life of that land and the tenant for life under that settlement.
- No. 3771 s. 13.** **13 Joint tenants etc.**
If in any case there are two or more persons of full age so entitled as tenants in common, or as joint tenants or for other concurrent estates or interests, they together shall constitute the tenant for life for the purposes of this Act.

14 Tenants for life of undivided shares

No. 3771 s. 14.

Where under a settlement land is settled in undivided shares the tenants for life of each of these shares shall in any case where the entirety of the land is to be dealt with and notwithstanding that the shares are separately settled be deemed to constitute together the tenant for life for the purposes of this Act.

15 Powers of tenant for life not affected by charges etc.⁵

No. 3771 s. 15

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, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest.

16 Other limited owners having powers of tenant for life

No. 3771 s. 16.

- (1) Each of the following persons being of full age shall when his estate or interest is in possession, have the powers of a tenant for life under this Act, namely—
 - (a) a tenant in tail, including a tenant in tail after possibility of issue extinct;
 - (b) a person entitled to land for an estate in fee-simple or for a term of years absolute with or subject to, in any of such cases, an executory limitation, gift, or disposition over on failure of his issue or in any other event;
 - (c) a person entitled to a determinable fee, although the reversion or right of reverter is in 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 any purpose;
 - (g) 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 or not subject to expenses of management or to a trust for accumulation of income for any purpose, or until sale of the land, or until forfeiture, cesser or determination by any means of his interest therein, unless the land is subject to an immediate binding trust for sale;
 - (h) a person beneficially entitled to land for an estate in fee-simple or for a term of years absolute subject to any estates, interest, charges, or powers of charging, subsisting or capable of being exercised under a settlement;
 - (i) ⁶a married woman entitled to land for an estate in fee-simple or for a term of years absolute subject to a restraint on anticipation.
- (2) In every such case as is mentioned in subsection (1) of this section, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, shall extend to each of the persons aforesaid, and 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 the estate or interest of the person on whom the powers of a tenant for life are conferred by this section.

- (3) Where the reversion or right of reverter or other reversionary right is in the Crown, the exercise by a person on whom the powers of a tenant for life are conferred by this section of his powers under this Act, binds the Crown.

17 Provisions applicable where interest in settled land is restored

No. 3771 s. 17.

Where by a disentailing assurance settled land is expressed to be limited (whether subject or not to any estates, interests, charges or powers expressly created or conferred thereby) upon the trusts subsisting with respect thereto immediately before the execution of such disentailing assurance, or any of such trusts, then, for the purposes of this Act and otherwise, a person entitled to any estate or interest in the settled land under any such previously subsisting trust is entitled thereto after the execution of such disentailing assurance as of his former estate or interest.

18 Resettlement by way of restoration

No. 3771 s. 18.

Where by a resettlement of settled land any estate or interest therein is expressed to be limited to any person (whether subject or not to any estate, interest, charge or power expressly created or conferred by the resettlement) in restoration or confirmation of his estate or interest under a prior settlement, then, for the purposes of this Act and otherwise, that person shall be entitled and shall be deemed always to have been entitled to the estate or interest so restored or confirmed as of his former estate or interest, and in addition to the

powers exercisable by him in respect of his former estate or interest, he shall be capable of exercising and shall be deemed always to have been capable of exercising all such further powers as he could have exercised by virtue of the resettlement, if his estate or interest under the prior settlement had not been so restored or confirmed, but he had been entitled under the resettlement only.

No. 3771 s. 19.

19 Powers of trustee etc. when there is no tenant for life

Where under a settlement there is no tenant for life nor, independently of this section, a person having by virtue of this Act the powers of a tenant for life then—

- (a) any person of full age on whom such powers are by the settlement expressed to be conferred; and
- (b) in any other case the trustees of the settlement—

shall have the powers of a tenant for life under this Act.

No. 3771 s. 20.

20 Provision where tenant for life is sole trustee of settlement

When the tenant for life is himself a trustee of the settlement and is or becomes the sole trustee, all and singular the powers which by this Act a tenant for life is empowered to exercise with the consent of the trustees or with the order of the Court shall be exercisable by him only with the order of the Court; but this restriction shall apply only to those powers in connexion with the exercise of which by the tenant for life the consent of the trustees or order of the Court is expressly mentioned in relation to the exercise of the powers.

21 As to a tenant for life who has parted with his interest

No. 3771 s. 21.

If it is shown to the satisfaction of the Court that a tenant for life, who has by reason of bankruptcy, insolvency, assignment, incumbrance, or otherwise ceased in the opinion of the Court to have a substantial interest in his estate or interest in the settled land or any part thereof, has unreasonably refused to exercise any of the powers conferred on him by this Act, or consents to an order under this section, the Court may, on the application of any person interested in the settled land or the part thereof affected, make an order authorizing the trustees of the settlement to exercise in the name and on behalf of the tenant for life, any of the powers of a tenant for life under this Act, in relation to the settled land or the part thereof affected, either generally and in such manner and for such period as the Court may think fit, or in a particular instance, and the Court may by the order direct that any documents of title in the possession of the tenant for life relating to the settled land be delivered to the trustees of the settlement.

22 Tenant for life not to exercise powers while order under preceding section in force

No. 3771 s. 22.

While any such order is in force, the tenant for life shall not, in relation to the settled land or the part thereof affected, exercise any of the powers thereby authorized to be exercised in his name and on his behalf.

23 When order may be made

No. 3771 s. 23.

Any such order may be made at any time after the estate or interest of the tenant for life under the settlement has taken effect in possession, and notwithstanding that he disposed thereof when it was an estate or interest in remainder or reversion.

No. 3771 s. 24.

24 Application of foregoing provisions to married woman⁷

The foregoing provisions of this Act 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.

No. 3771 s. 25.

25 Powers not affected by restraint on anticipation⁸

A restraint on anticipation in the settlement shall not prevent the exercise by a married woman of full age of any power under this Act.

Nos 3771
s. 26, 5286
s. 10(1)(b).

26 Trustees to exercise powers where tenant for life minor

S. 26(1)
amended by
Nos 9075
s. 5(1), 9427
s. 5(Sch. 4
item 10),
55/1987
s. 57(3)(Sch. 5
item 46),
45/1994
s. 42(Sch.
item 8.2).

(1) Where a minor is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute or would if of full age be a tenant for life or have the powers of a tenant for life over settled land all the powers conferred by this Act or by the settlement on a tenant for life and on the trustees of the settlement in reference to the settled land and to capital money may be exercised on his behalf by the trustees of the settlement, and if there is none then by such person or trustee company and in such manner as the Court on the application of a testamentary or other guardian or next friend of the minor either generally or in a particular instance orders.

S. 26(2)
amended by
No. 9075
s. 5(1).

(2) In this section *minor* includes a married woman not of full age.

27 Orders if tenant for life becomes a publicly represented person

- (1) If a tenant for life becomes a publicly represented person, the State Trust may under an order of the Court exercise on behalf of the publicly represented person the powers of a tenant for life under this Act (including the power to enter into complete dealings under section 68).
- (2) An order may be made on the application of any person interested in the settled land or the State Trust.
- (3) An order may be made either generally or in a particular instance.

* * * * *

Nos 3771
s. 27, 4654
s. 3.
S. 27
amended by
No. 7065
s. 2(Sch.),
substituted by
No. 55/1987
s. 57(3)(Sch. 5
item 47).

S. 28
repealed by
No. 55/1987
s. 57(3)(Sch. 5
item 47).

29 Concurrence in case of undivided shares

No. 3771 s. 29.

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 with the consent of the trustees of the settlement or order of the Court 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.

Division 4—Trustees of settlement

30 Who are trustees for purposes of Act

Nos 3771
s. 30, 5286
s. 10(1)(c).

- (1) Subject to the provisions of this Act, the following persons shall be trustees of a settlement for the purposes of this Act, and are in this Act referred to as the *trustees of the settlement* or *trustees of a settlement*, namely—
- (a) the persons (if any) who are for the time being under the settlement, trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then
 - (b) the persons (if any) for the time being, who are by the settlement declared to be trustees thereof for the purposes of the **Settled Land Act 1928** or any corresponding previous enactment, or this Act, or if there are no such persons; then
 - (c) the persons (if any) who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such a power of sale, or, if there are no such persons; then
 - (d) the persons (if any) who are for the time being under settlement trustees with future power of sale, or under a future trust for sale of the settled land, or with power of consent to or approval of the exercise of such future power of sale, and whether the power or trust

takes effect in all events or not, or, if there are no such persons; then

- (e) the persons (if any) appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of a power, to dispose of the settled land in equity for the whole estate the subject of the settlement.
- (2) Paragraphs (a)(c) and (d) of the last preceding subsection shall take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner.
- (3) Where a settlement is created by will, or a settlement has arisen by the effect of an intestacy,⁹ and apart from this subsection there would be no trustees for the purposes of this Act of such settlement, then the personal representatives of the deceased shall, until other trustees are appointed, be by virtue of this Act the trustees of the settlement, but where there is a sole personal representative, not being a trustee company, it shall be obligatory on him to appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the **Trustee Act 1958**, relating to the appointment of new trustees and the vesting of trust property shall apply accordingly.

S. 30(3)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 48),
45/1994
s. 42(Sch.
item 8.3(a)(b)).

31 As to trustees of compound settlements

No. 3771 s. 31.

- (1) Persons who are for the time being trustees for the purposes of this Act of an instrument which is a settlement, or is deemed to be a subsisting settlement for the purposes of this Act, shall be the trustees for the purposes of this Act of any settlement constituted by that instrument and any instruments subsequent in date or operation. Where there are trustees for the purposes of this

Act of the instrument under which there is a tenant for life, but there are no trustees for those purposes of a prior instrument, being one of the instruments by which a compound settlement is constituted, those trustees shall, unless and until trustees are appointed of the prior instrument or of the compound settlement, be the trustees for the purposes of this Act of the compound settlement.

- (2) This section shall apply to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the Court before such commencement of trustees of a settlement constituted by more than one instrument, and to the power of the Court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply to the settlement consisting of the instruments to which the appointment relates.

No. 3771 s. 32.

32 As to trustees of referential settlements

- (1) Where a settlement takes or has taken effect by reference to another settlement, the trustees for the time being of the settlement to which reference is made shall be the trustees of the settlement by reference, but this section shall not apply if the settlement by reference contains an appointment of trustees thereof for the purposes of the **Settled Land Act 1928** or any corresponding previous enactment or this Act.
- (2) This section shall apply to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the Court before such commencement of trustees of a settlement by reference or of the compound

settlement consisting of a settlement and any other settlement or settlements made by reference thereto, and to the power of the Court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply.

- (3) In this section *a settlement by reference to another settlement* means a settlement of property upon the limitations and subject to the powers and provisions of an existing settlement, with or without variation.

33 Continuance of trustees in office

No. 3771 s. 33.

Where any persons have been appointed or constituted trustees of a settlement, whether by an order of the Court or otherwise, or have by reason of any power of sale, or trust for sale, or by a reason of a power of consent to, or approval of, the exercise of a power of sale, or by virtue of this Act, or otherwise at any time become trustees of a settlement for the purposes of the **Settled Land Act 1928** or any corresponding previous enactment or this Act then those persons or their successors in office shall remain and be trustees of the settlement as long as that settlement is subsisting or deemed to be subsisting for the purposes of this Act.

In this section *successors in office* means the persons who, by appointment or otherwise, have become trustees for the purposes aforesaid.

No. 3771 s. 34.

**34 Title of person to whom disposition made
unimpeachable in certain cases of compound
settlements**

Where settled land is or has been expressed to be disposed of under a compound settlement of which trustees were appointed by the Court, and the capital money (if any) arising on the disposition is or was paid to the persons who by virtue of the order or any subsequent appointment appear to be or to have been the trustees of that settlement, and where the person by or on whose behalf the disposition is or was made is or was the tenant for life or statutory owner of the land disposed of under an instrument mentioned in the order as constituting part of such compound settlement (in this section called *the principal instrument*) then the title of the person to whom the disposition is made shall not be impeachable on the ground—

- (a) that the instruments mentioned in the order did not constitute a compound settlement; or
- (b) that those instruments were not all the instruments at the date of the order or of the disposition constituting the compound settlement of the land disposed of; or
- (c) that any of the instruments mentioned in the order did not form part of the settlement of the land disposed of, or had ceased to form part of the settlement at the date of the disposition—

but nothing in this section shall prejudice the rights of any person in respect of any estate, interest or charge under any instrument existing at the date of the order and not mentioned therein which would not have been overreached if the disposition had been made by or on behalf of the tenant for life or statutory owner under the

principal instrument as such, and there had been trustees of that instrument for the purposes of the **Settled Land Act 1928** or any corresponding previous enactment or this Act and the capital money (if any) arising on the disposition had been paid to the trustees.

35 Confirmation of dispositions made before commencement of this Act

No. 3771 s. 35.

The provisions of the last two preceding sections shall operate to confirm all such dispositions made before the commencement of this Act, but not so as to render invalid or prejudice any order of the Court, or any title or right acquired before the commencement of this Act, and shall operate without prejudice to any appointment already made by the Court of trustees of a settlement, and to the power of the Court in any case hereafter to make any such appointment.

36 Appointment of trustees by Court

No. 3771 s. 36.

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 the 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, statutory owner 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 of the settlement for the purposes of this Act.

No. 3771 s. 37.

37 Survivors etc. of persons appointed to be trustees of settlement

The persons appointed by the Court to be trustees of a settlement for the purposes of this Act, 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 become and be the trustees or trustee of the settlement.

PART II—POWERS OF A TENANT FOR LIFE

Division 1—Sale, exchange and partition

38 Powers of sale and exchange

No. 3771 s. 38.

A tenant for life with the consent of the trustees of the settlement or order of the Court—

- (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 land;
- (b) may make an exchange of the settled land, or any part thereof, or of any easement, right or privilege of any kind, whether or not newly created, over or in relation to the settled land, or any part thereof, for other land, or for any easement, right or privilege of any kind, whether or not newly created, over or in relation to other land, including an exchange in consideration of money paid for equality of exchange;
- (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.

39 Regulations respecting sales

No. 3771 s. 39.

- (1) ¹⁰Save as hereinafter provided every sale shall be made for the best consideration in money that can reasonably be obtained.
- (2) A sale may be made in consideration wholly or partially of a perpetual rent, or a terminable rent consisting of principle and interest combined, payable yearly or half-yearly to be secured upon the land sold, or the land to which the easement,

right or privilege sold is to be annexed in enjoyment or an adequate part thereof.

In the case of a terminable rent, the conveyance shall distinguish the part attributable to principal and that attributable to interest, and the part attributable to principal shall be capital money arising under this Act:

Provided that, unless the part of the terminable rent attributable to interest varies according to the amount of the principal repaid, the trustees of the settlement shall, during the subsistence of the rent, accumulate the income of the said capital money in the way of compound interest by investing it and the resulting income thereof in securities authorized for the investment of capital money and shall add the accumulations to capital.

- (3) The rent to be reserved on any such sale shall be the best rent that can reasonably be obtained, regard being had to any money paid as part of the consideration, or laid out, or to be laid out, for the benefit of the settled land, and generally to the circumstances of the case, but a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable during any period not exceeding five years from the date of the conveyance.
- (4) Where a sale is made in consideration of a rent, the following provisions shall have effect:
 - (a) ¹¹The conveyance shall contain a covenant by the purchaser for payment of the rent, and the statutory powers and remedies for the recovery of rent shall apply;
 - (b) A duplicate of the conveyance shall be executed by the purchaser and delivered to the tenant for life, or statutory owner of which execution and delivery the execution

of the conveyance by the tenant for life shall be sufficient evidence;

- (c) A statement, contained in the conveyance or in an indorsement thereon, signed by the tenant for life, or statutory owner respecting any matter of fact or of calculation under this Act in relation to the sale, shall, in favour of the purchaser and of those claiming under him, be sufficient evidence of the matter stated.
- (5) A sale may be made in one lot or in several lots, and either by auction or by private contract, and may be made subject to any stipulations respecting title, or evidence of title, or other things.
- (6) On a sale the tenant for life may fix reserve biddings and may buy in at an auction but the amount of such reserve together with the conditions and terms of sale must be submitted by him to the trustees before they consent to the sale.

40 Regulations respecting exchanges and partitions

No. 3771 s. 40.

- (1) ¹²Save as in this Part provided, every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.
- (2) An exchange or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.
- (3) On a partition an easement right or privilege of any kind may be given or taken for land or for any other easement right or privilege of any kind.
- (4) Settled land in Victoria shall not be given in exchange for land out of Victoria.

Division 2—Leasing powers

No. 3771 s. 41. 41 Power to lease for ordinary or building or mining or forestry purposes

A tenant for life may with the consent of the trustees of the settlement or order of the Court but subject to the provisions and requirements of any Act or Acts of the Parliament of Victoria dealing with or applicable to a lease of the nature proposed to be made by him, lease the settled land, or any part thereof, or any easement, right or privilege of any kind over or in relation to any land, for any purpose whatever, whether involving waste or not, for any term not exceeding—

- (a) in case of a building lease, fifty years;
- (b) in case of a mining lease, sixty years;
- (c) in case of any other lease, twenty-one years.

No. 3771 s. 42. 42 Regulations respecting leases generally

- (1) ¹³Save as hereinafter provided, every lease—
- (a) shall be by deed, and be made to take effect in possession not later than twelve months after its date, or in reversion after an existing lease having not more than three years to run at the date of the new lease;
 - (b) 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 paid out for the benefit of the settled land, and generally to the circumstances of the case;
 - (c) 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.

- (2) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life or statutory owner of which execution and delivery the execution of the lease by the tenant for life or statutory owner shall be sufficient evidence.
- (3) A statement contained in a lease or in an indorsement thereon, signed by the tenant for life or statutory owner respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and those claiming under him, be sufficient evidence of the matter stated.
- (4) A fine received on the grant of a lease under any power conferred by this Act shall be deemed to be capital money arising under this Act.
- (5) A lease at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made—
 - (a) where the term does not exceed twenty-one years—
 - (i) ¹⁴without any notice of an intention to make the lease having been given under this Act; and
 - (ii) without the consent of the trustees or order of the Court; and
 - (iii) notwithstanding that there are no trustees of the settlement; and
 - (b) ¹⁵where the term does not extend beyond three years from the date of the writing, by any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent.

No. 3771 s. 43.

43 Leasing powers for special objects

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

S. 43(a)
amended by
No. 8181
s. 2(1)(Sch.
item 167).

- (a) a lease for giving effect (in such manner and so far as the law permits) to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
- (b) a lease confirming, as far as may be, 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 any corresponding previous enactment or otherwise, as the case requires.

Division 3—Provisions as to building and mining leases

No. 3771 s. 4.

44 Regulations respecting building leases

- (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 connexion with building purposes.
- (2) A peppercorn rent or a nominal rent 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:

Provided that—

- (a) the annual rent reserved by any lease shall not be less than \$1; and
- (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.

45 Regulations respecting mining leases

No. 3771 s. 45.

- (1) In a mining lease—

- (a) the rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and
- (b) the rent may also be made to vary according to the price of the minerals or substances gotten, or any of them, and such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a

reference to arbitration), or may be an average of any such prices or values taken during a specified period; and

(c) a fixed or minimum rent may be payable, with or without power of the lessee, in case the rent, according to acreage or quantity or otherwise, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2) A lease may be made partly in consideration of the lessee having executed, or agreeing to execute, on the land leased an improvement authorized by this Act, for or in connexion with mining purposes.

No. 3771 s. 46.

46 Variation of building or mining lease according to circumstances of district

(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 for building or mining 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 the Court may, if it thinks fit, authorize generally the tenant for life or statutory owner to make from time to time leases of or affecting the settled land in that district, or parts thereof, for any term or on any conditions as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life or statutory owner to make any such lease in any particular case.

(2) Thereupon the tenant for life or statutory owner 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 statutory owner may make in any case, or in the particular case, a lease

of the settled land, or part thereof, in conformity with the order.

47 Capitalisation of part of mining rent

No. 3771 s. 47.

Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely: Where the tenant for life or statutory owner is impeachable for waste in respect of minerals, three-fourth parts of the rent, and otherwise one-fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Division 4—Miscellaneous powers

48 Power on dispositions to impose restrictions and make reservations and stipulations

No. 3771 s. 48.

On a sale, exchange, partition or other disposition or dealing under the powers of this Act—

- (a) any easement, right or privilege of any kind may be reserved or granted over or in relation to the settled land or any part thereof or other land, including the land disposed of and, in the case of an exchange, the land taken in exchange; and
- (b) any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, 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 or statutory owner and the settled land or any part thereof, or on the

- other party and any land disposed of to him;
and
- (c) the whole or any part of any capital or annual sum (and in the case of an annual sum whether temporary or perpetual) charged on or payable out of the land disposed of, or any part thereof, and other land subject to the settlement, may as between the tenant for life or statutory owner and his successors in title, and the other party and persons deriving title under or in succession to him (but without prejudice to the rights of the person entitled to such capital or annual sum) be charged exclusively on the land disposed of, or any part thereof, or such other land as aforesaid, or any part thereof, in exoneration of the rest of the land on or out of which such capital or annual sum is charged or payable; and
- (d) ¹⁶ where the sale, exchange, partition or other disposition or dealing is made with the consent of the trustees of the settlement the purchase and other consideration moneys shall be payable and paid to and received by the trustees and not the tenant for life or statutory owner and if made with the order of the Court then as the Court directs.

No. 3771 s. 49.

49 Sale subject to stipulation as to timber

- (1) A sale of land may be made subject to a stipulation that all or any of the timber and other trees, pollards, tellers, underwood, saplings and plantations on the land sold (in this section referred to as *timber*) or any articles attached to the land (in this section referred to as *fixtures*) shall be taken by the purchaser at a valuation, and the amount of the valuation shall form part of the price of the land, and shall be capital money accordingly.

- (2) 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.

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.

50 Separate dealing with surface and minerals with or without wayleaves etc. No. 3771 s. 50.

A sale, exchange, partition, lease or other authorised disposition, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights-of-way, rights of water and drainage, and other powers, easements, rights and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

51 Reservation of undivided share in mines No. 3771 s. 51.

An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Nos 3771
s. 52, 4191
s. 2.

52 Surrenders and regrants

- (1) A tenant for life may with the consent of the trustees of the settlement or order of the Court accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, or a regrant of any land granted in fee-simple, whether under this Act or not, in respect of the whole land leased or granted, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them, and with or without an exception of any easement, right or privilege of any kind over or in relation to the land surrendered or regranted.
- (2) On a surrender of a lease, or a regrant of land granted in fee-simple, in respect of part only of the land or mines and minerals leased or granted, the rent or rentcharge may be apportioned.
- (3) On a surrender or regrant the tenant for life may with the like consent or order in relation to the land or mines and minerals surrendered or regranted, or of any part thereof, make a new or other lease, or grant in fee-simple, or new or other leases, or grants in fee-simple, in lots.
- (4) A new or other lease, or grant in fee-simple, may comprise additional land or mines and minerals, and may reserve any apportioned or other rent or rentcharge.
- (5) On a surrender or regrant, and the making of a new or other lease, whether for the same or for any extended or other term, or of a new or other grant in fee-simple, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's or grantee's interest in the lease surrendered, or the land regranted, may be taken into account in the determination of the amount of the rent or

rentcharge to be reserved, and of any fine or consideration in money to be taken, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease or grant in fee-simple.

- (6) Every new or other lease, or grant in fee-simple, shall be in conformity with this Act.
- (7) All money, not being rent or a rentcharge, received on the exercise by the tenant for life of the powers conferred by this section, shall, unless the court, on an application made within six months after the receipt thereof or within such further time as the Court may in special circumstances allow, otherwise directs, be capital money arising under this Act.
- (8) A grant shall be made to the trustees of the settlement or if there are no trustees of the settlement as the Court directs.
- (9) In this section *land granted in fee-simple* means land so granted with or subject to a reservation thereout of a perpetual or terminable rentcharge which is or forms part of the settled land, and *grant in fee-simple* has a corresponding meaning.

53 Acceptance of leases

No. 3771 s. 53.

- (1) A tenant for life may, with the consent of the trustees of the settlement or order of the Court, arrange for the acceptance of a lease of any land or of any mines and minerals or of any easement right or privilege convenient to be held or worked with or annexed in enjoyment to the settled land or any part thereof for such period and upon such terms and conditions as are agreed upon: Provided that no fine shall be paid out of capital money in respect of such lease.
- (2) The lease shall be granted to the trustees of the settlement.

- (3) The lease may contain an option to purchase the reversion expectant on the term thereby granted.

No. 3771 s. 54.

54 Power to grant water rights to statutory bodies

- (1) For the development, improvement or general benefit of the settled land, or any part thereof, a tenant for life may with consent of the trustees of the settlement or order of the Court make a grant in fee-simple or absolutely, or a lease for any term of years absolute, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained, or gratuitously, to any statutory authority, of any water or streams or springs of water in, upon or under the settled land, and of any rights of taking, using, enjoying and conveying water, and of laying, constructing, maintaining and repairing mains, pipes, reservoirs, dams, weirs and other works of any kind proper for the supply and distribution of water, and of any part of the settled land required as a site for any of the aforesaid works, and of any easement, right or privilege over or in relation to the settled land or any part thereof in connexion with any of the aforesaid works.
- (2) This section does not authorize the creation of any greater rights than could have been created by a person absolutely entitled for his own benefit to the settled land affected.
- (3) In this section *statutory authority* means an authority or company for the time being empowered by or under any Act of Parliament to provide with a supply of water any town or place in which the settled land or any part thereof is situated.
- (4) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

55 Power to grant land for public and charitable purposes

No. 3771 s. 55.

(1) For the development, improvement or general benefit of the settled land, or any part thereof, a tenant for life may with the consent of the trustees of the settlement or order of the Court make a grant in fee-simple, or absolutely, or a lease for any term of years absolute, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained, or gratuitously, of any part of the settled land, with or without any easement, right or privilege over or in relation to the settled land or any part thereof, for all or any one or more of the following purposes namely:

- (a) For the site, or the extension of any existing site, of a place of religious worship, residence for a minister of religion, school house, town hall, market house, public library, public baths, museum, hospital, infirmary, or other public building, literary or scientific institution, drill hall, workingmen's club, parish room, reading room or village institute, with or without in any case any yard, garden or other ground to be held with any such building; or
- (b) For the construction, enlargement, or improvement of any railway, canal, road (public or private), dock, sea-wall, embankment, drain, waterway or reservoir; or
- (c) For any other public or charitable purpose in connexion with the settled land, or any part thereof, or tending to the benefit of the persons residing, or for whom dwellings may be erected, on the settled land, or any part thereof.

S. 55(1)(a)
amended by
No. 6961 s. 2.

S. 55(1)(b)
amended by
No. 81/1989
s. 3(Sch. item
46.1).

Not more than one acre shall in any particular case be conveyed for any purpose mentioned in paragraphs (a) and (c) of this subsection, nor more than five acres for any purpose mentioned in paragraph (b) of this subsection, unless the full consideration be paid or reserved in respect of the excess.

- (2) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

No. 3771 s. 56.

56 Dedication for streets, open spaces etc.

- (1) On or after or in connexion with a sale or grant for building purposes, or a building lease, or the development as a building estate of the settled land, or any part thereof, or at any other reasonable time, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof but subject to the provisions and requirements of any Act or Acts of the Parliament of Victoria dealing with or applicable to any such appropriation or use as is hereinafter mentioned—
- (a) may with the consent of the trustees of the settlement or order of the court 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, water-courses, fencing, paving or other works necessary or proper in connexion therewith; and
- (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.
- (2) In regard to the dedication of land for the public purposes aforesaid, a tenant for life shall, subject to such consent or order having been obtained, be in the same position as if he were an absolute owner.
- (3) A tenant for life with the like consent or order may—
- (a) enter into any agreement for the recompense to be made for any part of the settled land which is required for the widening of a highway under any Act;
 - (b) consent to the diversion of any highway over the settled land under any Act—
- and any agreement or consent by a tenant for life so made or given shall be as valid and effectual, for all purposes, as if made or given by an absolute owner of the settled land.
- (4) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

No. 3771 s. 57.

57 Power to compromise claims and release restrictions etc.

A tenant for life may with the consent of the trustees of the settlement or order of the Court, either with or without giving or taking any consideration in money or otherwise, compromise, compound, abandon, submit to arbitration, or otherwise settle any claim, dispute or question whatsoever relating to the settled land, or any part thereof, including in particular claims, disputes or questions as to boundaries, the ownership of mines and minerals, rights and powers of working mines and minerals, local laws and customs relative to the working of mines and minerals and other matters, easements, and restrictive covenants, and for any of those purposes may enter into, give, execute and do such agreements, assurances, releases and other things as the tenant for life may, with such consent or order as aforesaid, think proper.

No. 3771 s. 58.

58 Power to release covenants etc.

A tenant for life may, with the consent of the trustees of the settlement or order of the Court, at any time, by deed or writing, either with or without consideration in money or otherwise, release, waive or modify, or agree to release, waive or modify, any covenant, agreement or restriction imposed on any other land for the benefit of the settled land, or any part thereof, or release, or agree to release, any other land from any easement, right or privilege, including a right of pre-emption, affecting the same for the benefit of the settled land, or any part thereof.

59 Power to vary leases and grants and to give licences and consents No. 3771 s. 59.

- (1) A tenant for life may with the consent of the trustees of the settlement or order of the Court, at any time, by deed, either with or without consideration in money or otherwise, vary, release, waive or modify, either absolutely or otherwise, the terms of any lease whenever made of the settled land or any part thereof, or any covenants or conditions contained in any grant in fee-simple whenever made of land with or subject to a reservation thereout of a rent which is or forms part of the settled land, and in either case in respect of the whole or any part of the land comprised in any such lease or grant, but so that every such lease or grant shall, after such variation, release, waiver or modification as aforesaid, be such a lease or grant as might then have been lawfully made under this Act if the lease had been surrendered, or the land comprised in the grant had never been so comprised, or had been regranted.
- (2) Where land is or has been disposed of subject to any covenant requiring the licence, consent or approval of the covenantee or his successors in title as to—
 - (a) the user of the land in any manner; or
 - (b) the erection, construction, or alteration of or addition to buildings or works of any description on the land; or
 - (c) the plans or elevations of any proposed buildings or other works on the land; or
 - (d) any other act, matter or thing relating to the land, or any buildings or works thereon; or

- (e) any assignment, under-letting or parting with the possession of all or any part of the property comprised in any lease affecting the settled land—

and the covenant enures for the benefit of settled land (including where the disposition is a lease, the reversion expectant of the determination thereof), the licence, consent or approval may (with the consent of the trustees of the settlement or order of the Court) be given by the tenant for life of the settled land affected.

No. 3771 s. 60.

60 Powers to apportion rents

- (1) A tenant for life may with the consent of the trustees of the settlement or order of the Court, at any time, by deed, either with or without consideration in money or otherwise, agree for the apportionment of any rent reserved or created by any such lease or grant as mentioned in the last preceding section, or any rent being or forming part of the settled land, so that the apportioned parts of such rent shall thenceforth be payable exclusively out of or in respect of such respective portions of the land subject thereto as may be thought proper, and also agree that any covenants, agreements, powers or remedies for securing such rent and any other covenant or agreements by the lessee or grantee and any conditions shall also be apportioned and made applicable exclusively to the respective portions of the land out of or in respect of which the apportioned parts of such rent shall thenceforth be payable.
- (2) Where the settled land, or any part thereof, is held or derived under a lease, or under a grant reserving rent, or subject to covenants, agreements or conditions, whether such lease or grant comprises other land or not, the tenant for life may with the consent of the trustees of the

settlement or order of the Court at any time by deed, with or without giving or taking any consideration in money or otherwise, procure the variation, release, waiver or modification, either absolutely or otherwise, of the terms covenants agreements or conditions contained in such lease or grant, in respect of the whole or any part of the settled land comprised therein, including the apportionment of any rent, covenants, agreements, conditions and provisions reserved, or created by, or contained in, such lease or grant.

- (3) This section applies to leases or grants made either before or after the commencement of this Act.

61 Provisions as to consideration

No. 3771 s. 61.

All money, not being rent, payable by the tenant for life in respect of any transaction to which any of the last three preceding sections relates shall be paid out of capital money arising under this Act, and all money not being rent, received on the exercise by the tenant for life of the powers conferred by any of those sections, shall, unless the Court, on an application made within six months after the receipt thereof or within such further time as the court may in special circumstances allow, otherwise directs, be capital money arising under this Act.

62 Definition

No. 3771 s. 62.

For the purpose of the last four preceding sections *consideration in money or otherwise* means—

- (a) a capital sum of money or a rent;
- (b) land being freehold or leasehold for any term of years whereof not less than sixty years shall be unexpired;

- (c) any easement, right or privilege over or in relation to the settled land, or any part thereof, or any other land;
- (d) the benefit of any restrictive covenant or condition; and
- (e) the release of the settled land, or any part thereof, or any other land, from any easement, right or privilege, including a right of pre-emption, or from the burden of any restrictive covenant or condition affecting the same.

No. 3771 s. 63.

63 Power to complete predecessor's contracts

A tenant for life may with the consent of the trustees of the settlement or order of the Court make any disposition which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by that predecessor would have been valid as against his successors in title.

No. 3771 s. 64.

64 Tenant for life to effect any transaction under an order given by Court

Any transaction affecting or concerning the settled land or any part thereof, or any other land (not being a transaction otherwise authorized by this Act, or by the settlement) which in the opinion of the Court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the Court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner.

65 Definitions

No. 3771 s. 65.

In the last preceding section *transaction* includes any sale, exchange, partition, assurance, grant, lease, surrender, reconveyance, release, reservation or other disposition, and any purchase or other acquisition, and any covenant, contract, or option, and any application of capital money (except as hereinafter mentioned), and any compromise or other dealing or arrangement; but does not include an application of capital money in payment for any improvement not authorized by this Act, or by the settlement; and *effected* has the meaning appropriate to the particular transaction; and the references to *land* include references to restrictions and burdens affecting land.

Division 5—Provisions as to special classes of property

66 Cutting and sale of timber and capitalisation of part of proceeds

No. 3771 s. 66.

- (1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and 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.
- (3) For the purpose of this section the expression *timber* includes trees of any species or size growing or standing on the settled land which at the date of such consent or order and in their then condition have a market value for their wood for any use or purpose whatsoever.

Nos 3771
s. 67, 5217
s. 2.

67 Sale and purchase of heirlooms under order of Court

- (1) Where personal chattels are settled so as to devolve with settled land, or to devolve therewith as nearly as may be in accordance with the law in force at the date of settlement, or are settled upon trusts declared by reference to the trusts affecting land, a tenant for life of the land with the consent of the trustees of the settlement or the order of the Court 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 the consent of the trustees of the settlement or an order of the Court.

Division 6—Dealing as between tenants for life and the estate

No. 3771 s. 68.

68 Provision enabling dealings with tenant for life

- (1) In the manner mentioned and subject to the provisions contained in this section—
 - (a) as sale, grant, lease, mortgage, charge or other disposition of settled land, or of any easement, right or privilege over the same may be made to the tenant for life; or
 - (b) capital money may be advanced on mortgage to him; or

- (c) a purchase may be made from him of land to be made subject to the limitations of the settlement; or
 - (d) an exchange may be made with him of settled land for other land; or
 - (e) a partition may be made with him of land an undivided share of which is subject to the limitations of the settlement; and
 - (f) any such disposition, advance, purchase, exchange or partition as aforesaid may be made to, from or with any persons of whom the tenant for life is one.
- (2) In every such case the trustees of the settlement shall, in addition to their powers as trustees, have all the powers of a tenant for life in reference to negotiating and completing the transaction, and shall have power to enforce any covenants by the tenant for life, or, where the tenant for life is himself one of the trustees, then the other or others of them shall have such power, and the said powers of a tenant for life may be exercised by the trustees of the settlement in the name and on behalf of the tenant for life.
- (3) ¹⁷This section shall apply, notwithstanding that the tenant for life is one of the trustees of the settlement, or that an order has been made authorizing the trustees to act on his behalf, or that he is a lunatic, or a person of unsound mind, and shall apply to dealings with any body of persons which includes a trustee of the settlement.
- (4) A transaction under this section shall be deemed not to be effectuated until either previously or subsequently to its being entered into it is approved by the Court.

Division 7—Incumbrances

No. 3771 s. 69.

69 Shifting of incumbrances

Where there is an incumbrance affecting any part of the settled land (whether capable of being overreached on the exercise by the tenant for life of his powers under this Act or not), the tenant for life may with the consent of the incumbrancer and with the consent of the trustees of the settlement or order of the Court charge that incumbrance on any other part of the settled land, or on all or any part of the capital money or securities representing capital money subject or to become subject to the settlement, whether already charged therewith or not, in exoneration of the first mentioned part, and, by a mortgage, or otherwise, make provision accordingly.

No. 3771 s. 70.

70 Power to vary provisions of an incumbrance and to charge by way of additional security

- (1) Where an incumbrance affects any part of the settled land, the tenant for life may, with the consent of the incumbrancer, and with the consent of the trustees of the settlement or order of the Court, vary the rate of interest charged and any of the other provisions of the instrument (if any) creating the incumbrance, and with the like consents or with the like consent and order charge that incumbrance on any part of the settled land, whether already charged therewith or not, or on all or any part of the capital money or securities representing capital money subject or to become subject to the settlement, by way of additional security, or of consolidation of securities, and by mortgage or otherwise make provision accordingly.

- (2) *Incumbrance* in this section includes any annual sum payable during a life or lives or during a term of years absolute or determinable, but in such case an additional security shall be effected so as only to create a charge or security similar to the original charge or security.

Division 8—Raising of money

71 Power to raise money by mortgage

No. 3771 s. 71.

- (1) Where money is required for any of the following purposes, namely:
- (a) Discharging an incumbrance on the settled land or part thereof;
 - (b) Paying for any improvement authorized by this Act or by the settlement;
 - (c) Equality of exchange or partition;
 - (d) Payment of the cost of any transaction authorized by this section or either of the last two preceding sections—

the tenant for life may with the consent of the trustees of the settlement or order of the Court raise the money so required, on the security of the settled land, or of any part thereof on mortgage of the settled land or of any part thereof by mortgage or otherwise and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

- (2) *Incumbrance* in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.
- (3) In relation to the question of giving such consent or making such order with respect to an improvement regard shall be had to the nature of the improvement and the consent or order may be given or made on condition that the whole or any

part of the amount advanced shall be repaid within a fixed time as capital money to the trustees of the settlement out of the income of the settled land or on any other reasonable conditions, and the tenant for life shall give effect to the conditions so imposed and is by this section authorized to do all acts required for giving effect to such conditions.

Division 9—Conveyance

No. 3771 s. 72.

72 Completion of transactions by conveyance

- (1) On a sale, exchange, partition, lease, mortgage, charge or other disposition, the tenant for life may, as regards land sold, given in exchange, or on partition, leased, mortgaged, charged, or otherwise disposed of, or intended so to be, or as regards easements, or other rights or privileges sold, given in exchange, or on partition, leased, mortgaged, or otherwise disposed of, or intended so to be, effect the transaction 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, charge or other disposition.
- (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, privileges, or other interests 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; and

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- (b) all such other 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 at fee-farm rents or otherwise, and all grants of easements, or other rights or privileges which were before the date of the deed granted or made for value in money or money's worth, or agreed so to be, by the tenant for life, or statutory owner or by any of his predecessors in title, or any trustees for him or them, under the settlement, or under any statutory power, or are at that date otherwise binding on the successors in title of the tenant for life or statutory owner.
- (3) ¹⁸Where a lease is by this Act authorized to be made by writing under hand only, such writing shall have the same operation under this section as if it had been a deed.

S. 72(3)
amended by
No. 6505 s. 2.

**PART III—INVESTMENT OR OTHER APPLICATION OF
CAPITAL MONEY**

No. 3771 s. 73.

73 Modes of investment of application

- (1) Capital money arising under this Act, subject to payment of claims properly payable thereout and to the application thereof for any special authorized object for which the capital money 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 in Government securities, or in other securities in 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 whole estate the subject of the settlement, Crown rent, chief rent, or quit rent, 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 freehold reversion in fee of any part of the settled land, being leasehold land held for years or life or years determinable on life or land held under lease or licence from the Crown;

- (f) In purchase of land in fee-simple, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;
- (g) In purchase either in fee-simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right or privilege convenient to be held with the settled land for mining or other purposes;
- (h) In the purchase, with the leave of the Court, of any leasehold interest where the immediate reversion is settled land, so as to merge the leasehold interest (unless the Court otherwise directs) in the reversion, and notwithstanding that the leasehold interest may have less than sixty years to run;
- (i) In payment to a local or other authority of such sum as may be agreed in consideration of such authority taking over and becoming liable to repair a private road on the settled land;
- (j) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;
- (k) 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 including the costs and expenses incidental to any of the matters referred to in this section;

- (l) ¹⁹In redemption of an improvement security that is to say any mortgage or other security given whether before or after the commencement of this Act in pursuance of any Act of Parliament with the object of defraying the expenses of an improvement of any kind authorized by Part I of the Second Schedule to this Act;
 - (m) In any other mode authorized by the settlement with respect to money produced by the sale of the settled land.
- (2) Notwithstanding anything in this section capital money arising under this Act from settled land in Victoria shall not be applied in the purchase of land out of Victoria, unless the settlement expressly authorizes the same.

No. 3771 s. 74.

74 Power to acquire land subject to certain incumbrances

- (1) Land may be acquired on a purchase or exchange to be made subject to a settlement, notwithstanding that the land is subject to any Crown rent, quit rent, chief rent, or other incident of tenure, or to any easement, right or privilege, or to any restrictive covenant, or to any liability to maintain or repair walls, fences, sea-walls, river banks, dykes, roads, streets, sewers or drains, or to any improvement security ²⁰which is capable under this Act of being redeemed out of capital money.
- (2) The acquisition on a purchase or exchange before the commencement of this Act of any land subject to any such burden as aforesaid is hereby confirmed.

75 Regulations respecting investment, devolution and income of securities etc.

No. 3771 s. 75.

- (1) Except in cases under section 48(d) 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 in all cases (whether under the said paragraph or not) 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 by the trustees according to their discretion, but 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 subsistence of the beneficial interest of the tenant for life be altered without his consent except upon an order of the Court made on the application of the trustees.
- (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 treated as land, and 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

S. 75(1)
amended by
No. 10087
s. 3(1)(Sch. 1
item 217).

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.
- (8) All or any part of any capital money paid into court may, if the Court thinks fit, be at any time paid out to the trustees of the settlement.

No. 3771 s. 76.

76 Application of money in court under this Act and other Acts

Where, under any Act, money is at the commencement of this Act in court, or is afterwards 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.

77 Application of money in hands of trustees under powers of settlement No. 3771 s. 77.

Where, under a settlement coming into operation either before or after the commencement of this Act 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.

78 Personal estate settled by reference to capital money or trusts No. 3771 s. 78.

- (1) Where money or securities or the proceeds of sale of any property is or are by any instrument coming into operation either before or after the commencement of this Act directed to be held on trusts declared by reference to capital money arising under this Act or any corresponding previous enactment from land settled by that instrument or any other instrument, the money, securities or proceeds shall be held on the like trusts as if the same had been or represented money which had actually arisen under this Act from the settled land. This subsection operates without prejudice to the rights of any person claiming under a disposition for valuable consideration of any such money, securities or proceeds made before the commencement of the **Settled Land Act 1928**.
- (2) Where money or securities or the proceeds of sale of any property is or are by any instrument coming into operation after the commencement of the **Settled Land Act 1928** directed to be held on the same trusts as, or on trusts corresponding as nearly as may be with the limitations of land settled by that instrument or any other instrument,

the money, securities or proceeds shall be held on the like trusts as if the same had been or represented capital money arising under this Act from the settled land.

- (3) Such money, securities or proceeds of sale shall be paid or transferred to or retained by the trustees of the settlement of the settled land, or paid or transferred into court, and invested or applied accordingly.
- (4) Where the settled land includes freehold land, the money, securities or proceeds of sale aforesaid shall be held on the like trusts as if the same had been or represented capital money arising from the freehold land.
- (5) This section shall have effect notwithstanding any direction in the instrument creating the trust that the trust property is not to vest absolutely in any tenant in tail or in tail male or in tail female under the limitations of the settled land who dies under a specified age, or before the happening of a specified event, but, save as aforesaid, shall have effect with any variations and subject to any contrary intention expressed in the instrument creating the trust.

No. 3771 s. 79.

79 Application of money to be paid for lease or reversion

Where capital money arising under this Act or any corresponding previous enactment is purchase-money paid in respect of—

- (a) a lease for years or life or years determinable on life; or
- (b) any other estate or interest in land less than the fee-simple; or

(c) 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.

80 As to money received by way of damages for breach of covenant No. 3771 s. 80.

- (1) Money, not being rent, received by way of damages or compensation for breach of any covenant by a lessee or grantee contained in any lease or grant of settled land shall, unless in any case the Court on the application of the tenant for life or the trustees of the settlement otherwise directs, be deemed to be capital money arising under this Act, and shall be paid to or retained by the trustees of the settlement, or paid into court, and invested or applied, accordingly.
- (2) In addition to the other modes in which capital money may be applied under this Act or the settlement, money so received as aforesaid or any part thereof may, if the circumstances permit, be applied at any time within twelve months after such receipt, or such extended period as the Court may allow, in or towards payment of the costs of making good in whole or in part the breach of covenant in respect of which it was so received, or the consequences thereof, and the trustees of the settlement, if they think fit, may require any

money so received or any part thereof to be so applied.

- (3) In the application of any such money in or towards payment of the cost of making good any such breach or the consequences of any such breach as aforesaid, the work required to be done for the purpose shall be deemed to be an improvement authorized by Part I of the Second Schedule of this Act.
- (4) This section shall not apply to money received by way of damages or compensation for the breach of a covenant to repay to the lessor or grantor money laid out or expended by him, or to any case in which if the money received were applied in making good the breach of covenant or the consequences thereof such application would not enure for the benefit of the settled land, or any buildings thereon.
- (5) This section shall not apply to money received by way of damages or compensation before the commencement of this Act, but shall apply whether the lease or grant was made before or after the commencement of this Act, and whether or not under the powers conferred by the **Settled Land Act 1928** or any corresponding previous enactment or this Act.
- (6) The provisions of this section shall apply only if and as far as a contrary intention is not expressed in the settlement, and shall have effect subject to the terms of the settlement, and to any provisions therein contained, but a contrary intention shall not be deemed to be expressed merely by words negating impeachment for waste.

81 As to capital arising otherwise than under the Act

No. 3771 s. 81.

Any money which after the commencement of this Act arises from settled land otherwise than under this Act, as well as any money or securities in the names or under the control of the tenant for life or the trustees of the settlement, being or representing money which had arisen before the commencement of this Act from the settled land otherwise than under the **Settled Land Act 1928** or any corresponding previous enactment, and which ought, as between the persons interested in the settled land, to be or to have been treated as capital, shall (without prejudice to any other statutory provisions affecting the same) be deemed to be or represent capital money arising under this Act, and shall be paid or transferred to or retained by the trustees of the settlement, or paid or transferred into court, and invested or applied, accordingly.

82 Settlement of acquired land

No. 3771 s. 82.

- (1) Land acquired by purchase or in exchange or on partition or otherwise under the powers of this Act shall be made subject to the settlement in manner provided by 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 and provisions to on and subject to which freehold land is to be conveyed as aforesaid.
- (4) Land acquired as aforesaid may be made a substituted security for any charge 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, partition or other disposition:
- Provided that, where a charge does not affect the whole of the settled land, 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.
- (5) 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 shall not be concerned to inquire whether or not it is proper that the land should be subjected to the charge.
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PART IV—IMPROVEMENTS

Improvements with Capital Money

83 Description of improvements authorized by Act

No. 3771 s. 83.

Improvements authorized by this Act are the making or execution on, or in connexion with, and for the benefit of settled land, of any of the works mentioned in the Second Schedule to this Act, or of any works for any of the purposes mentioned in that Schedule, 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.

84 Mode of application of capital money

No. 3771 s. 84.

- (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 the trustees of the settlement, then, after a scheme is approved by them, they may apply that money in or towards payment for the whole or any part of any work or operation comprised in the improvement, on—
 - (a) a certificate to be furnished by a competent engineer or able practical surveyor nominated by the trustees or approved by the Court, certifying that the work or operation comprised in the improvement or some specific part thereof has been properly executed, and what amount is properly

payable 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 so to apply a specified portion of the capital money:

Provided that—

- (a) in the case of improvements not authorized by Part I of the Second Schedule to this Act or by the settlement, the trustees may, if they think fit, and shall if so directed by the Court, before they make any such application of capital money require that that money, or any part thereof, shall be repaid to them out of the income of the settled land by not more than fifty half-yearly instalments, the first of such instalments to be paid or to be deemed to have become payable at the expiration of six months from the date when the work or operation, in payment for which the money is to be applied, was completed.
 - (b) no capital money shall be applied by the trustees in payment for improvements not authorized by Parts I and II of the Second Schedule to this Act, or by the settlement, except subject to provision for the repayment thereof being made in manner mentioned in the preceding paragraph of this proviso.
- (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 any part of any work or operation comprised in the improvement.

- (4) Where the Court authorizes capital money to be applied in payment for any improvement or intended improvement not authorized by Part I of the Second Schedule to this Act or by the settlement, the Court, as a condition of making the order, may in any case require that the capital money or any part thereof, and shall as respects an improvement mentioned in Part III of that Schedule (unless the improvement is authorized by the settlement), require that the whole of the capital money shall be repaid to the trustees of the settlement out of the income of the settled land by a fixed number of periodical instalments to be paid at the times appointed by the Court, and may require that any incumbrancer of the estate or interest of the tenant for life shall be served with notice of the proceedings.
- (5) All money received by the trustees of the settlement in respect of any instalments under this section shall be held by them as capital money arising from freehold land under the settlement unless the Court otherwise directs.

85 Creation of rent charges to discharge instalments

No. 3771 s. 85.

- (1) When the tenant for life is required by the trustees to repay by instalments the capital money expended, or any part thereof, the tenant for life is by this section authorized to create out of the settled land, or any part thereof, a yearly rentcharge in favour of the trustees of the settlement sufficient in amount to discharge the said half-yearly instalments.

- (2) Where an order is made requiring repayment by instalments, the settled land shall stand charged with the payment to the trustees of the settlement of a yearly rentcharge sufficient in amount to discharge the periodical instalments, and the rentcharge shall accrue from day to day, and be payable at the times appointed for payment of the periodical instalments, and shall have effect as if limited by the settlement prior to the estate of the tenant for life, and the trustees of the settlement shall have all statutory and other powers for recovery thereof.
- (3) A rentcharge created by or under this section shall not be redeemed out of capital money, but may be overreached in like manner as if the same were limited by the settlement, and shall cease if and when the land affected by the improvement ceases to be settled or is sold or exchanged, but if part of the land so affected remains subject to the settlement the rentcharge shall remain in force in regard to the settled land.

Sundry Provisions as to Improvements

No. 3771 s. 86.

86 Concurrence in improvements

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

87 Court may order payment for improvements executed

No. 3771 s. 87.

The Court may, in any case where it appears proper, make an order directing or authorizing capital money to be applied in or towards payment for any improvement authorized by this Act or any corresponding previous enactment notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by this Act or any such enactment, to the trustees of the settlement or to the Court, and notwithstanding that no capital money is immediately available for the purpose.

88 Obligation on tenant for life and successors to maintain, insure etc.

No. 3771 s. 88.

- (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 order in any case prescribes, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act or any corresponding previous enactment, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall at his own expense insure and keep insured the improvement in such amount (if any) as the Court by order 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, or under any corresponding previous enactment.

- (3) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the trustees of the settlement 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 trustees the state of every improvement executed under this Act or under any corresponding previous enactment and the fact and particulars of fire insurance (if any).
- (4) The Court may vary any order made by the Court under this section in such manner or to such extent as circumstances appear 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.
- (6) Where in connexion with any improvement an improvement security as defined in paragraph (1) of subsection (1) of section seventy-three has been given and that security has been redeemed out of capital money this section shall apply to the improvement as if it had been an improvement executed under this Act.

89 Protection as regards waste in execution and repair of improvements

No. 3771 s. 89.

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 from time to time 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 do, make and use on the settled land, 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 V—MISCELLANEOUS PROVISIONS

No. 3771 s. 90. 90 Power for tenant for life to enter into contracts

- (1) A tenant for life with the consent of the trustees of the settlement or order of the Court—
- (a) may contract to make any sale, exchange, partition, mortgage, charge or other disposition authorized by this Act; and
 - (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
 - (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; and
 - (d) ²¹ may accept a surrender of a contract for a lease or a grant in fee-simple at a rent, in like manner and on the like terms in and on which he might accept a surrender of a lease or a regrant, and thereupon may make a new or other contract for or relative to a lease or leases, or grant or grants in fee-simple at a rent, in like manner and on the like terms in and on which he might make a new or other lease or grant, or new or other leases or grants, where a lease or a grant in fee-simple at a rent had been executed; and
 - (e) may enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind any such contract; and

S. 90(1)(d)
amended by
No. 6505 s. 2.

- (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 any such contract.
- (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, or statutory owner 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 statutory owner or of any such successor as aforesaid, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying or rescinding thereof.
- (4) A 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.
- (5) All money, not being rent, received on the exercise by the tenant for life or statutory owner of the powers conferred by subsection (1) of this section, shall, unless the Court on an application made within six months after the receipt of the money, or within such further time as the Court may in special circumstances allow, otherwise directs, be capital money arising under this Act.

No. 3771 s. 91.

91 Provisions as to different estates settled upon the same limitations

- (1) Where estates are settled by different settlements upon the same limitations, whether by reference or otherwise, the following provisions shall have effect:
- (a) The estates or any two or more of them, as the case may require, may be treated as one aggregate estate, in which case the aggregate estate shall be the settled land for all the purposes of this Act;
 - (b) Where the trustees for the purposes of this Act of the two or several settlements are the same persons they shall be the trustees of the settlement of the aggregate estate for all the purposes of this Act, and all or any part of the capital money arising from one of the estates may be applied by the direction of the tenant for life or statutory owner as if the same had arisen from any other of the estates;
 - (c) Where the trustees for the purposes of this Act of the settlements or of any two or more of them are not the same persons—
 - (i) any notice required to be given by this Act to the trustees of the settlement and to the legal practitioner of such trustees shall be given to the trustees of every settlement which comprises any part of the land to which such notice relates and to the legal practitioner of such trustees;

S. 91(1)(c)(i)
amended by
No. 35/1996
s. 453(Sch. 1
item 75).

- (ii) any capital money arising on any sale, exchange, lease, mortgage, charge or other disposition of land comprised in more than one settlement or any partition of land undivided shares in which are comprised in more than one settlement, shall be apportioned between the trustees of the different settlements in such manner as the tenant for life or statutory owner thinks fit;
 - (iii) all or any part of the capital money arising from the land comprised in one of the settlements may be paid by the trustees of that settlement, by such direction as aforesaid, to the trustees of any of the other settlements, to be applied by such last-mentioned trustees as if the same had arisen from land comprised in that other settlement;
 - (d) For the purposes of this subsection, money liable to be paid out in the purchase of land to be settled upon the same limitations as other land may be applied and dealt with in like manner in all respects as if land had been purchased and settled, and the money were capital money arising therefrom.
- (2) Estates shall be deemed to be settled upon the same limitations, notwithstanding that any of them may be subject to incumbrances, charges, or powers of charging to which the other or others of them may not be subject:

Provided that, in any such case as last aforesaid, the powers of this section shall not be exercisable without an order of the Court.

S. 91(3)
amended by
No. 6961 s. 2.

- (3) This section shall have effect without prejudice to any appointment made by the Court before the commencement of this Act of trustees of the settlement of an aggregate estate, and to the power of the Court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement, or is made thereafter, this section shall have effect as if the trustees so appointed and their successors in office were the trustees for the purposes of this Act of each of the settlements constituting the settlement of the aggregate estate, and there were no other trustees thereof for the purposes of this Act.
- (4) In this section *estate* means the land, capital money and securities representing capital money for the time being subject to a particular settlement.

No. 3771 s. 92.

92 Proceedings for protection or recovery of land settled or claimed as settled

- (1) 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 the protection of settled land, or of any action or proceeding taken or proposed to be taken for the recovery of the 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.
- (2) If a question arises or a doubt is entertained—
- (a) respecting the exercise or intended exercise of any of the powers conferred by this Act, or any corresponding previous enactment, or the settlement, or any matter relating thereto; or

(b) otherwise in relation to property subject to a settlement—

the tenant for life, or statutory owner or the trustees of the settlement, or any other person interested under the settlement, may apply to the Court for its decision or directions thereon, or for the sanction of the Court to any conditional contract, and the Court may make such order or give such directions respecting the matter as the Court thinks fit.

93 Trustees not to withhold consent arbitrarily

No. 3771 s. 93.

Without limiting the generality of the last preceding section—

- (a) the trustees of the settlement in giving or withholding their consent to any act or thing proposed to be done by the tenant for life and in exercising any power or right under this Act shall have regard to the interests of all parties under the settlement and are not to withhold their consent arbitrarily;
- (b) a tenant for life dissatisfied at the consent being withheld may apply to the Court for an order authorizing him to do that particular act or thing in respect of which the consent was withheld without such consent, and the Court shall have full power and discretion to make such order and give such directions respecting the subject-matter of the application and in respect of the costs of the application as the Court thinks fit;
- (c) if at any time whether before or after the consent has been withheld or has been dispensed with under this subsection any other difference arises between a tenant for life and the trustees of the settlement respecting the exercise of any powers under

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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.

PART VI—GENERAL PROVISIONS AS TO TRUSTEES

94 Number of trustees to act

- (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 trustee is a trustee company or unless the settlement authorizes the receipt of such money by one such trustee.
- (2) Subject as aforesaid and to section twenty the provisions of this Act referring to the trustees of a settlement shall apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Nos 3771
s. 94, 5286
s. 10(1)(d).

S. 94(1)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 49),
45/1994
s. 42(Sch.
item 8.4).

95 Trustees' receipts

The receipt or direction in writing of or by the trustees of the settlement, or where one trustee is empowered to act or is a trustee company, of or by that trustee, or of or by the personal representatives of the last surviving or continuing trustee, for or relating to any money or securities, paid or transferred to or by the direction of the trustees, trustee or representatives (as the case may be) shall effectually discharge the payer or transferor 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.

Nos 3771
s. 95, 5286
s. 10(1)(b).

S. 95
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 50),
45/1994
s. 42(Sch.
item 8.5).

No. 3771 s. 96.

96 Protection of each trustee individually

Each person who is for the time being a trustee of a settlement shall be 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 shall not be answerable in respect of those of another 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.

No. 3771 s. 97.

97 Protection of trustees generally

The trustees of a settlement, or any of them—

- (a) shall not be liable for giving or withholding 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
- (b) in case of a purchase of land with capital money arising under this Act, or of an exchange, partition, lease or other disposition, shall not be liable for any contract made by the tenant for life, or statutory owner or answerable as regards any price, consideration or fine; and
- (c) shall not be 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; and
- (d) shall not be liable in respect of purchase money paid by them by the direction of the tenant for life or statutory owner 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 the direction of the tenant for life or statutory owner on the purchase, exchange, partition, lease or other disposition.

98 Protection of trustees in particular cases

No. 3771 s. 98.

The trustees of the settlement shall not be liable for paying or applying any capital money by the direction of the tenant for life or statutory owner for any authorized purpose.

99 Trustees not liable where documents of title to land in possession of tenant for life

No. 3771 s. 99.

- (1) The trustees of the settlement shall not be liable in any way on account of the documents of title relating to the settled land, other than securities for capital money, being placed in the possession of the tenant for life or statutory owner.
- (2) This and the last preceding section shall apply to dealings and matters effected before as well as after the commencement of this Act.

100 Trustee's reimbursements

No. 3771
s. 100.

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

101 Notice to trustees

Nos 3771
s. 101, 5286
s. 10(1)(f),
5602 s. 2.

- (1) ²²Save as otherwise expressly provided by this Act, a tenant for life, or statutory owner when intending to make a sale, exchange, partition, lease, mortgage or charge—
 - (a) shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees severally, each at his usual or last known place of abode; and

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S. 101(1)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 75).

(b) shall give a like notice to the legal practitioner for the trustees, if any such legal practitioner is known to the tenant for life, or statutory owner, by posting a registered letter containing the notice, addressed to the legal practitioner at his place of business—

every letter under this section being posted not less than one month before the time proposed by the tenant for life for the making or granting by the tenant for life or statutory owner of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same:

S. 101(1)
Proviso
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 51),
45/1994
s. 42(Sch.
item 8.6).

Provided that a notice under this section shall not be valid unless at the date thereof the trustee is a trustee company, or the number of trustees is not less than two.

- (2) The notice shall be accompanied by a statement signed by the tenant for life or statutory owner setting out such particulars and information respecting the proposed transaction as is sufficient to enable the trustees to decide whether they will give or withhold their consent to the particular transaction the subject of the notice.
- (3) The tenant for life or statutory owner shall upon request by a trustee of the settlement, furnish to him such particulars and information as may reasonably be required by him from time to time with reference to any sale, exchange, partition, lease, mortgage, charge or contract effected, or in progress, or immediately intended.
- (4) Any trustee by writing under his hand, may waive notice in any particular case, and may accept less than one month's notice.

- (5) A person dealing in good faith with the tenant for life shall not be concerned to inquire respecting the giving of any such notice as is required by this section, but only as to the consent of the trustees of the settlement or order of the Court, as the case may require.

102 Management of land during minority or pending contingency²³

No. 3771
s. 102.

- (1) If and as long as any person who is entitled to a beneficial interest in possession affecting land is a minor, the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the Court whereby they or their predecessors in office were appointed to be such trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the Court on the application of a guardian or next friend of the minor, may enter into and continue in possession of the land on behalf of the minor, and in every such case the subsequent provisions of this section shall apply.

S. 102(1)
amended by
Nos 9075
s. 5(1), 9427
s. 5(Sch. 4
item 10).

- (2) The trustees shall manage or superintend the management of the land, with full power—
- (a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise; and
 - (b) to erect, pull down, rebuild, and repair houses and other buildings and erections; and
 - (c) to continue the working of mines, minerals and quarries which have usually been worked; and
 - (d) to drain or otherwise improve the land or any part thereof; and

- (e) to insure against loss by fire; and
- (f) to make allowances to and arrangements with tenants and others; and
- (g) to determine tenancies, and to accept surrenders of leases and tenancies; and
- (h) generally to deal with the land in a proper and due course of management—

but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

- (3) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum charged on the land.
- (4) Where the infant's estate or interest is in an undivided share of land the powers of this section relative to the land may be exercised jointly with persons entitled to possession of or having power to act in relation to the other undivided share or shares.
- (5) This section shall have effect subject to an express appointment by the settlement, or the Court, of trustees for the purposes of this section or of any corresponding previous enactment.
- (6) Where any person is contingently entitled to land, this section shall, subject to any prior interests or charges affecting that land, apply until his interest vests, or, if his interest vests during his minority, until he attains the age of eighteen years.

S. 102(6)
amended by
No. 9075
s. 5(2).

This subsection shall apply only where a person becomes contingently entitled under an instrument coming into operation after the commencement of the **Settled Land Act 1928**.

103 Application of last section

The last preceding section shall apply only if and as far as a contrary intention is not expressed in the instrument (if any) under which the interest of the minor or person contingently entitled as aforesaid arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

No. 3771
s. 103.
S. 103
amended by
No. 9075
s. 5(1).

**PART VII—RESTRICTIONS, SAVINGS, AND PROTECTION
OF PURCHASERS**

No. 3771
s. 104.

**104 Powers not assignable and contract not to exercise
powers void**

- (1) The powers under this Act of a tenant for life shall not be capable of assignment or release, and shall not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and shall 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.

This subsection shall apply notwithstanding that the estate or interest of the tenant for life under the settlement was not in possession when the assignment was made or took effect by operation of law.

- (2) A contract by a tenant for life not to exercise his powers under this Act or any of them shall be void.
- (3) Where an assignment for value of the estate or interest of the tenant for life was made before the commencement of the **Settled Land Act 1928**, this section shall operate without prejudice to the rights of the assignee, and in that case the assignee's rights shall not be affected without his consent, except that—
- (a) unless the assignee is actually in possession of the settled land or the part thereof affected, his consent shall not be requisite for the making of leases thereof by the tenant for life or statutory owner 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; and

- (b) the consent of the assignee shall not be required to an investment of capital money for the time being affected by the assignment in securities authorized by statute for the investment of trust money.
- (4) Where such an assignment for value is made or comes into operation after the commencement of the **Settled Land Act 1928**, the consent of the assignee shall not be requisite for the exercise by the tenant for life of any of the powers conferred by this Act:

Provided that—

- (a) the assignee shall be entitled to the same or the like estate or interest in or charge on the land, money or securities for the time being representing the land money or securities comprised in the assignment, as he had by virtue of the assignment in the last-mentioned land money or securities; and
- (b) if the assignment so provides, or if it takes effect by operation of the law of bankruptcy or insolvency, and after notice thereof to the trustees of the settlement, no investment or application of capital money for the time being affected by the assignment shall be made without the consent of the assignee, except an investment in securities authorized by statute for the investment of trust money; and
- (c) notice of the intended transaction shall, unless the assignment otherwise provides, be given to the assignee, but a purchaser shall not be concerned to see or inquire whether such notice has been given.

- (5) Where such an assignment for value was made before the commencement of the **Settled Land Act 1928**, then on the exercise by the tenant for life after such commencement of any of the powers conferred by this Act—
- (a) a purchaser shall not be concerned to see or inquire whether the consent of the assignee has been obtained; and
 - (b) the provisions of paragraph (a) of the last preceding subsection shall apply for the benefit of the assignee.
- (6) A trustee or personal representative who is an assignee for value shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital moneys as aforesaid, and (subject to subsection (13) of this section) to bind by such consent all persons interested in the trust estate, or the estate of the testator or intestate.
- (7) If by the original assignment, or by any subsequent disposition, the estate or interest assigned or created by the original assignment, or any part thereof, or any derivative interest is settled on persons in succession, whether subject to any prior charge or not, and there is no trustee or personal representative in whom the entirety of the estate or interest so settled is vested, then the person for the time being entitled in possession under the limitations of that settlement, whether as trustee or beneficiary, or who would, if of full age, be so entitled, and notwithstanding any charge or incumbrance subsisting or to arise under such settlement, shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and (subject to subsection (13) of this section) to bind by such

consent all persons interested or to become interested under such settlement.

- (8) Where an assignee for value or any person who has power to consent as aforesaid under this section, is an infant, the consent may be given on his behalf by his parents or parent or testamentary or other guardian in the order named.
- (9) The Court shall have power to authorize any person interested under any assignment to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, on behalf of himself and all other persons interested, or who become interested under such assignment.
- (10) An assignment by operation of the law of bankruptcy, where the assignment comes into operation after the commencement of the **Settled Land Act 1928**, shall be deemed to be an assignment for value for the purposes of this section.
- (11) An instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement shall be deemed one of the instruments creating the settlement, and not an assignment for value for the purposes of this section:

Provided that this subsection shall not have effect with respect to any disposition made before the first day of January One thousand nine hundred and ten, if inconsistent with the nature or terms of the disposition.

- (12) This section shall extend to assignments made or coming into operation 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, *assignee* has a corresponding meaning, and *assignee for value* includes persons deriving title under the original assignee.
- (13) Nothing in this section shall be construed as dispensing with the necessity for procuring the consent of the trustees of the settlement or the order of the Court to the exercise by the tenant for life of any powers under this Act where if there had been no assignment such consent or order would be necessary.

No. 3771
s. 105.

105 Effect of surrender of life estate to the next remainder-man

- (1) Where the estate or interest of a tenant for life under the settlement has been or is absolutely assured with intent to extinguish the same, either before or after the commencement of this Act, to the person next entitled in remainder or reversion under the settlement, then, the statutory powers of the tenant for life under this Act shall, in reference to the property affected by the assurance, and notwithstanding the provisions of the last preceding section, cease to be exercisable by him, and the statutory powers shall thenceforth become exercisable as if he were dead, but without prejudice to any incumbrance affecting the estate or interest assured and to the rights to which any incumbrancer would have been entitled if those powers had remained exercisable by the tenant for life.

This subsection shall apply whether or not any term of years or charge intervenes, or the estate of the remainderman or reversioner is liable to be defeated, and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance.

This subsection shall not prejudice anything done by the tenant for life before the commencement of this Act, in exercise of any power operating under the **Settled Land Act 1928** or any corresponding previous enactment, or, unless the assurance provides to the contrary, operate to accelerate any such intervening term of years or charge as aforesaid.

- (2) In this section *assurance* means any surrender, conveyance, assignment or appointment under a power (whether vested in any person solely, or jointly in two or more persons) which operates in equity to extinguish the estate or interest of the tenant for life, and *assured* has a corresponding meaning.

106 Prohibition or limitation against exercise of powers void

No. 3771
s. 106.

- (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—
- (a) purporting or attempting, by way of direction, declaration or otherwise, to forbid a tenant for life or statutory owner to exercise any power under this Act; or

(b) 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 whatsoever, 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 such power or right as aforesaid 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 or right, discharged from liability to determination or cesser by or on his exercising the same.
- (3) Notwithstanding anything in a settlement, the exercise by the tenant for life or statutory owner of any power under this Act shall not occasion a forfeiture.

No. 3771
s. 107.

107 Tenant for life trustee for all parties interested

A tenant for life or statutory owner 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.

108 Saving for and exercise of other powers

No. 3771
s. 108.

- (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) 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 or statutory owner 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 or statutory owner²⁴ shall by virtue of this Part be necessary to the exercise by the trustees of the settlement or other persons of any power conferred by the settlement exercisable for any purpose provided for in this Act: Provided that where two or more persons constitute the tenant for life or statutory owner the consent of one only of such persons is to be deemed necessary for the exercise of any such power.
- (3) If a question arises or a doubt is entertained respecting any matter within this section, the tenant for life, or statutory owner or the trustees of the settlement, or any other person interested, under the settlement may apply to the Court for its decision, opinion, advice or direction thereon, and the Court may make such order respecting the matter as the Court thinks fit.

No. 3771
s. 109.

109 Saving for additional or larger powers under settlement

- (1) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or on 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.

No. 3771
s. 110.

110 Protection of purchases etc.

On a sale, exchange, partition, lease, mortgage, charge or other disposition, made in accordance with the provisions of this Act a purchaser dealing in good faith with a tenant for life or statutory owner 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 or statutory owner, and to have complied with all the requisitions of this Act.

No. 3771
s. 111.

111 Powers exercisable from time to time

Powers and authorities conferred by this Act on a tenant for life or trustees or the Court are exercisable from time to time.

112 Exercise of powers; limitation of provisions etc.

No. 3771
s. 112.

- (1) Where a power of sale, exchange, partition, leasing, mortgaging, charging or other power is exercised by a tenant for life or statutory owner 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.
 - (2) Where any provision in this Act refers to sale, purchase, exchange, partition, mortgaging, charging, leasing or other disposition or dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act or transaction, it shall (unless the contrary appears) be construed as extending only to sales, purchases, exchanges, partitions, mortgages, charges, leases, dispositions, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts and transactions under this Act.
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PART VIII—PROCEDURE

No. 3771
s. 113.

113 Application of Trustee Act 1958

S. 113(1)
repealed by
No. 19/1989
s. 16(Sch.
item 48).

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S. 113(2)–(5)
repealed by
No. 110/1986
s. 140(2).

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- (6) The provisions of the **Trustee Act 1958**, relating to vesting orders and orders appointing a person to convey shall apply to all vesting orders authorized to be made by this Act.

No. 3771
s. 114.

114 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—

- (a) 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
- (b) out of securities representing such money, or out of income of any such money or securities; or
- (c) out of any accumulations of income of land money or securities; or

- (d) 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
- (e) by means of a mortgage of the settled land or any part thereof to be made by such person as the Court directs—

or partly in one of those modes and partly in another or others or in any such other mode as the Court thinks fit.

Settled Land Act 1958
No. 6367 of 1958
Schedules

SCHEDULES

Section 2.

FIRST SCHEDULE

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
3771	Settled Land Act 1928	The whole
4191	Statute Law Revision Act 1933	Item in Schedule referring to Settled Land Act 1928
4654	Public Trustee Act 1939	Clause 11 of Schedule
4840	Statute Law Revision Act 1941	Item in Schedule referring to Settled Land Act 1928
5217	Statute Law Revision Act 1947	Item in Schedule referring to Settled Land Act 1928
5286	Public Trustee Act 1948	Section 10
5602	Statute Law Revision Act 1951	Item in Schedule referring to Settled Land Act 1928

SECOND SCHEDULE

PART I

**IMPROVEMENTS, THE COSTS OF WHICH ARE NOT
LIABLE TO BE REPLACED BY INSTALMENTS**

- (i) Drainage, including the straightening, widening, or deepening of drains, and waterways:
- (ii) Bridges:
- (iii) Irrigation; warping:
- (iv) Drains, pipes and machinery for supply and distribution of sewage as manure:
- (v) Embanking or weiring from waterway or lake, or from the sea or a tidal water:
- (vi) Groynes; sea walls; defences against water:
- (vii) Inclosing; straightening of fences; re-division of fields or paddocks:
- (viii) Reclamation; dry warping:
- (ix) Roads:
- (x) Clearing; trenching; planting:
- (xi) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:
- (xii) Farmhouses, offices, and outbuildings, and other buildings for farm purposes:
- (xiii) Saw-mills, scutch-mills, 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:
- (xiv) Reservoirs, tanks, conduits, waterways, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural,

Sections 73,
80, 83, 84.
Sch. 2
amended by
No. 81/1989
s. 3(Sch.
items 46.2(a)-
(e)).

manufacturing or other purposes, or for domestic or other consumption:

- (xv) Tramways; railways; canals; docks:
- (xvi) Jetties, piers, and landing places on waterways, 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:
- (xvii) 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 connexion with the conversion of land into building land:
- (xviii) Sewers, drains, waterways, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:
- (xix) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines:
- (xx) Reconstruction, enlargement, or improvement of any of the works mentioned in the preceding paragraphs:
- (xxi) Additions to or alterations in buildings reasonably necessary or proper to enable the same to be let:
- (xxii) Erection of buildings in substitution for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof:
- (xxiii) Any improvement or other work required to be done by any Act of the Parliament of Victoria

whether on freehold land or land held on licence or lease from the Crown.

PART II

IMPROVEMENTS, THE COSTS OF WHICH THE TRUSTEES OF THE SETTLEMENT OR THE COURT MAY REQUIRE TO BE REPLACED BY INSTALMENTS

- (i) Residential houses for land or minerals agents, managers, clerks, bailiffs, woodmen, gamekeepers and other persons employed on the settled land, or in connexion with the management or development thereof:
- (ii) Any offices, workshops and other buildings of a permanent nature required in connexion with the management or development of the settled land or any part thereof:
- (iii) The erection and building of dwelling houses, shops, buildings for religious, educational, literary, scientific, or public purposes, market places, market houses, places of amusement and entertainment, gasworks, electric light or power works, or any other works necessary or proper in connexion with the development of the settled land, or any part thereof as a building estate:
- (iv) Restoration or reconstruction of buildings damaged or destroyed by dry rot ants borers or other insects:
- (v) Structural additions to or alterations in buildings reasonably required, whether the buildings are intended to be let or not, or are already let:
- (vi) Boring for water and other preliminary works in connexion therewith.

PART III

**IMPROVEMENTS, THE COSTS OF WHICH THE TRUSTEES
OF THE SETTLEMENT AND THE COURT MUST REQUIRE
TO BE REPLACED BY INSTALMENTS**

- (i) Heating, hydraulic or electric power apparatus for buildings, and engines, pumps, lifts, rams, boilers, flues, and other works required or used in connexion therewith:
 - (ii) Engine houses, engines, gasometers, dynamos, accumulators, cables, pipes, wiring, switchboards, plant and other works required for the installation of electric, gas, or other artificial light, in connexion with any principal mansion house or other house or buildings; but not electric lamps, gas fittings, or decorative fittings required in any such house or building:
 - (iii) Steam rollers, traction engines, motor lorries and moveable machinery for farming or other purposes.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Settled Land Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 p. 893.

2 Table of Amendments

This publication incorporates amendments made to the **Settled Land Act 1958** by Acts and subordinate instruments.

Statute Law Revision Act 1959, No. 6505/1959

Assent Date: 5.5.59
Commencement Date: 1.4.59: s. 1(2)
Current State: All of Act in operation

Statute Law (Further Revision) Act 1962, No. 6961/1962

Assent Date: 18.12.62
Commencement Date: 18.12.62
Current State: All of Act in operation

Statute Law Revision Act 1963, No. 7065/1963

Assent Date: 3.12.63
Commencement Date: 3.12.63
Current State: All of Act in operation

Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71: subject to s. 2(2)
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80: subject to s. 6(2)
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Trustee Companies Act 1984, No. 10168/1984

Assent Date: 20.11.84
Commencement Date: 5.12.84: Government Gazette 5.12.84 p. 4329
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government Gazette 7.10.87 p. 2701
Current State: All of Act in operation

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Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: S. 42(Sch. items 8.1–8.6) on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: This information relates only to the provision/s amending the **Settled Land Act 1958**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 75) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Settled Land Act 1958**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 98) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Settled Land Act 1958**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 85) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Settled Land Act 1958**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 89) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Settled Land Act 1958**

3 Amendments Not in Operation

Not updated for this publication.

4 Explanatory details

- ¹ S. 3(1) def. of *statutory owner*: See sections 19–21.
- ² S. 3(1) def. of *term of years absolute*: See **Property Law Act 1958**, section 149(3).
- ³ S. 8(1)(d): See **Marriage Act 1958**, section 157.
- ⁴ S. 9: See **Property Law Act 1958**, sections 31 and following.
- ⁵ S. 15: See sections 104, 105.
- ⁶ S. 16(1)(i): See note 3.
- ⁷ S. 24: See **Marriage Act 1958**, Part 8.
- ⁸ S. 25: See note 7.
- ⁹ S. 30(3): See section 26.
- ¹⁰ S. 39(1): See sections 54–56 and **Trustee Act 1958**, section 16.
- ¹¹ S. 39(4)(a): See **Property Law Act 1958**, section 125.
- ¹² S. 40(1): See note 11.
- ¹³ S. 42(1): See subsection (5) of this section.
- ¹⁴ S. 42(5)(a)(i): See section 101.
- ¹⁵ S. 42(5)(b): See **Property Law Act 1958**, section 54(2).
- ¹⁶ S. 48(d): See section 75 as to the investment of capital money.
- ¹⁷ S. 68(3): See section 27.
- ¹⁸ S. 72(3): See section 42(5)(b).
- ¹⁹ S. 73(1)(l): See section 88(6).
- ²⁰ S. 74(1): See section 73(1)(e) and 88(6).
- ²¹ S. 90(1)(d): See sections 39 and 52.
- ²² S. 101(1): See section 42(5).
- ²³ S. 102: See **Trustee Act 1958**, section 37 as to application of income for maintenance.
- ²⁴ S. 108(2): Compare **Trustee Act 1958**, section 13(3).