

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1917.

A BILL

For facilitating sales, leases, and other dispositions of settled land, and for promoting the execution of improvements thereon.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

1. This Act may be cited as the "Settled Land Act, 191," and shall commence and come into operation on the day of one thousand nine hundred and

Short title.
Commence-
ment.

91839

301—A (2)

2.

2. This Act is divided into Parts as follows :—

Division into
Parts.

PART I.—DEFINITIONS AND INTERPRETATION—
ss. 1-11.

PART II.—POWERS OF TENANT FOR LIFE—ss.
12-34.

PART III.—INVESTMENT OR OTHER APPLICATION
OF CAPITAL TRUST MONEY—IMPROVEMENTS—
ss. 35-44.

PART IV.—MODE OF EXERCISE OF POWERS—
PROCEDURE—ss. 45-51.

PART V.—TRUSTEES — SECURITY — INDEMNITY,
&c.—ss. 52-58.

PART VI. — MISCELLANEOUS PROVISIONS — ss
59-73.

PART VII.—SETTLEMENTS BY WAY OF TRUST
FOR SALE—ss. 74-77.

PART VIII.—APPLICATION OF ACT TO LAND
HELD UNDER THE REAL PROPERTY ACT,
1900—ss. 78-79.

Repeal.

3. (1) The Acts mentioned in the Schedule to this ^{Repeal of} Act, to the extent to which the same are there expressed ^{Acts.} to be repealed, are hereby repealed.

(2) All rules of court made under the authority of any Act hereby repealed and being in force at the commencement of this Act shall, so far as applicable, be deemed to have been made under the authority of this Act.

PART

PART I.

DEFINITIONS AND INTERPRETATION.

4. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Administrator” means administrator within the meaning of the Wills, Probate and Administration Act, 1898, and includes the Public Trustee acting as collector under an order to collect.

Interpretation of terms.

See 45 & 46 Vic., c. 38, s. 2 (10).

“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 purposes or purposes connected therewith.

“Court” means the Supreme Court in its equitable jurisdiction.

“Executor” means the executor to whom probate has been granted, and includes an executor by right of representation.

“Income” includes rent and profits; and “possession” includes receipt of income.

“Land” includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein, whether vested or contingent, freehold or leasehold, and whether at law or in equity.

“Legal representative” means executor or administrator.

“Mines and minerals” means mines and minerals whether already opened or in work, or not, and includes all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and the term “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

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 license for any mining purposes.

"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.

"Trustee company" means a company authorised by Act of Parliament to act as trustee in New South Wales.

"Will" includes a codicil, and any other testamentary instrument, and a writing in the nature of a will.

Settlement.

5. (1) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, 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 stands for the time being limited to or in trust for any persons by way of succession, is a settlement for the purposes of this Act, or creates such a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case may be.

Definition of settlement.
See 45 & 46 Vic., c. 38, s. 2.

(2) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor, or descending to the heir of a testator, or passing to his executors or administrators under the law relating to the descent and distribution of the real estate of intestates, is for the purposes of this Act an estate or interest coming to the settlor, heir, executors, or administrators, under or by virtue of the settlement, and comprised in the subject of the settlement. (3)

Undisposed of remainder or reversion.

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

(4) Land settled by a settlement shall be deemed for the purpose of this Act to remain and be settled land so long as any charge or power of charging under the settlement subsists or is capable of being exercised; and the trustees of the settlement for the purposes of this Act shall remain and be trustees thereof for those purposes so long as the land is deemed to be settled land as aforesaid.

Tenant for life.

6. (1) The person who is for the time being, under a Tenant for life. settlement, beneficially entitled to possession of settled land for his life is for the purposes of this Act the tenant 45 & 46 Vic., c. 33, s. 2 (5). for life of that land, and the tenant for life under that settlement.

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

(3) 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 incumbered or charged in any manner or to any extent.

7. (1) Each person as follows shall, when the estate or interest of each of them is in possession, have the Enumeration of other limited owners, to have powers of tenant for life. powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act, namely,—

- (a) a person entitled to land for an estate in fee simple, or for any leasehold interest with or subject to, in any such case an executory limitation, gift, or disposition over, on failure of his issue, or in any other event;
- (b) a tenant for years determinable on life, not holding merely under a lease at a rent;

(c)

- (c) a tenant for the life of another, not holding merely under a lease at a rent ;
- (d) a tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose ;
- (e) a tenant in tail after possibility of issue extinct ;
- (f) a person entitled to the income of land under a trust (including an implied or constructive trust) or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or to a trust for accumulation of income for any purpose, or not, or until sale of the land, or until cesser or determination by any means of his interest therein on bankruptcy or other event.

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

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

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

Infant absolutely entitled to be as tenant for life.
See 45 & 46 Vic., c. 38, s. 59.

Trustees.

9. For the purposes of this Act the term "trustees of the settlement" means the persons (if any) who are for the time being, under a settlement, trustees of settled land with power of sale, or with power to consent to or approve

Trustees of the settlement.
Ibid. s. 2 (8).

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

10. Where there are for the time being no "trustees of the settlement" within the last preceding section, the following persons shall for the purposes of this Act be trustees of the settlement, namely,—

Trustees for the purposes of the Act.
53 & 54 Vic., c. 69, s. 16.
50 Vic., No. 13 (Queens.), s. 8.

- (a) 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—
- (b) the persons (if any) who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such a 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—
- (c) the persons (if any) in whom the settled land is vested upon the trusts of the settlement.

Capital money.

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

Capital money.
45 & 46 Vic., c. 38, s. 2 (9).

A fine received on the grant of a lease under any power conferred by this Act is to be deemed capital money arising under this Act.

47 & 48 Vic., c. 18, s. 4.

PART II.

POWERS OF TENANT FOR LIFE.

Sale—Exchange—Partition.

- 12.** A tenant for life—
- (a) may sell the land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; Powers to tenant for life to sell, &c. See 45 & 46 Vic., c. 38, s. 3.
- (b) may make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and 50 Vic. No. 13 (Queens.), s. 10.
- (c) where the settlement comprises an undivided share in land, or the settled land has under the settlement 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.
- 13.** (1) Every sale shall be made at the best price that can reasonably be obtained for cash or on such terms as on a sale by a trustee under section , sub-section , of the Trustee Act, 1917. Regulations respecting sale, exchange, and partition. See 45 & 46 Vic., c. 38, s. 4.
- (2) Every exchange and every partition shall be made for the best consideration in land, or in land and money that can reasonably be obtained. See 45 & 46 Vic., c. 38, s. 4.
- (3) A sale may be made in one lot or in several lots, and either by auction or by private contract.
- (4) On a sale the tenant for life may fix reserve biddings and buy in at an auction.
- (5) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.
- (6) On a sale, exchange, or partition, any restriction or reservation with respect to—
- (a) building on or other user of land; or
- (b) mines and minerals; or
- (c) the more beneficial working of mines and minerals; or
- (d) any other thing,
- may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him. (7)

(7) Settled land in New South Wales shall not be given in exchange for land out of New South Wales.

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

Transfer of incumbrances on land sold, &c.
45 & 46 Vic.,
c. 38, s. 5.

15. Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life, and shall, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the transaction.

Provision enabling dealings with tenant for life.
53 & 54 Vic.,
c. 69, s. 12.

16. On an exchange or partition any easement, right, or privilege of any kind may be reserved or may be granted over or in relation to the settled land or any part thereof, or other land or an easement, right, or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right, or privilege of any kind.

Creation of easements on exchange or partition.
Ibid. s. 5.

Leases.

17. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

Power of tenant for life to lease for ordinary or building or mining purposes.
See 45 & 46 Vic.,
c. 38, s. 6.

- (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.

Vict. Act, No.
2725, s. 55.

18.

18. (1) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date. Regulations respecting leases generally.

(2) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case. See 45 & 46 Vic., c. 38, s. 7.

(3) Every lease shall contain a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days, and the covenants implied by section seventy of the Conveyancing and Law of Property Act, 1917, shall not be excluded therefrom.

(4) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5) A statement contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Building and mining leases.

19. (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 authorised by this Act, for or in connection with building purposes. Regulations respecting building leases. Ibid. s. 8.

(2) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(3)

(3) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

- (a) the annual rent reserved by any lease shall not be less than ten shillings;
- (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.

20. (1) Any building lease, and any agreement for granting building leases, under this Act may contain an option, to be exercised at any time within an agreed number of years not exceeding ten, for the lessee to purchase the land leased at a price fixed at the time of the making of the lease or agreement for a lease, such price to be the best which having regard to the rent reserved can reasonably be obtained, and to be either a fixed sum of money or such a sum of money as shall be equal to a stated number of years' purchase of the highest reserved by the lease or agreement.

Option of purchase in building lease.
52 & 53 Vic., c. 36, s. 2.

(2) Such price when received shall for all purposes be capital money arising under this Act.

Price to be capital money:
Ibid. s. 3.

21. (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

Regulations respecting mining leases.
45 & 46 Vic., c. 38, s. 9.

- (b) a fixed or minimum rent may be made payable, with or without power for the lessee, in case
the

the rent, according to acreage or quantity, 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 ;

- (c) (i) the rent may be made to vary according to ^{52 & 53 Vic.,} the price of the minerals or substances gotten ^{c. 36, s. 8.} or any of them ;
- (ii) 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.

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

22. In the case of a mining lease, whether the mines or minerals leased are already opened or in work or not, there shall, unless a contrary intention is expressed in the settlement, 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 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.

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

- (a) a lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title ;
- (b) a lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land ; and
- (c)

- (c) a lease for 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 otherwise as the case may require.

24. (1) Any lease not otherwise authorised by this Act may be made for any term or purpose, and subject to any rent and conditions which the Court may by order, either generally or in any particular instance, approve.

Power to grant special leases under an order of the Court.

(2) The tenant for life may in conformity with the order make any lease so approved of the settled land, or part thereof, or of any easement, right, or privilege over or in relation to the same or any part thereof.

Surrenders.

25. (1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land whether made under this Act or not, in respect of the whole land leased, or any part thereof, 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.

Surrender and new grant of leases.
45 & 46 Vic., c. 38, s. 13.

(2) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3) On a surrender, the tenant for life may make of the land, or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4) A new or other lease may comprise additional land, or mines and minerals, and may reserve any apportioned or other rent.

(5) On a surrender, and the making of a new or other lease, whether for the same, or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be

be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6) Every new or other lease shall be in conformity with this Act.

Streets and open spaces.

26. On or in connexion with a sale for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or any part thereof—

Dedication of streets, open spaces, &c.
45 & 46 Vic.,
c. 38, s. 16.

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

Surface

Surface and minerals apart.

27. (1) A sale, exchange, partition, or mining lease 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.

Separate dealing with surface and minerals, with or without wayleaves, &c.
45 & 46 Vic., c. 38, s. 17.

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

The raising of money.

28. (1) Where money is required—

- (a) for equality of exchange or partition, or
- (b) for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required, and also the amount properly required for payment of the costs of the transaction on mortgage of the fee simple or other estate or interest the subject of the settlement or any part of the settled land, or by creation of a term of years in the settled land, or any part thereof, or otherwise, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

Mortgage for equality money or discharge of incumbrance.
Ibid. s. 18.
53 & 54 Vic., c. 69, s. 11.

(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.

Undivided share.

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 join or concur, in any manner

Concurrence in exercise of powers as to undivided share.
45 & 46 Vic., c. 38, s. 19.

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.

Conveyance.

30. (1) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by all proper assurances, for the estate or interest the subject of the settlement, or for any less estate or interest, and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

Completion of sale, lease, &c., by conveyance. See 45 & 46 Vic., c. 38, s. 20.

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

- (a) all estates, interests, and charges having priority to the settlement;
- (b) all such other (if any) estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the assurance; and
- (c) all leases and grants at fee-farm rents or otherwise and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the assurance, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title or the tenant for life.

(5)

31. Where, on a grant for building purposes by a tenant for life, the land is conveyed in fee simple with or subject to a reservation thereof of a perpetual rent or rent charge, the reservation shall operate to create a rent charge in fee simple issuing out of the land conveyed, and having incident thereto all powers and remedies for recovery thereof conferred by section 19 of the Conveyancing and Law of Property Act, and the rent charge so created shall go and remain on the trusts and subject to the powers and provisions which immediately before the conveyance were subsisting with respect to the land out of which it is reserved.

Power to reserve a rent charge on a grant in fee simple.
See 53 & 54 Vic., c. 69, s. 9.

Contracts.

32. (1) For the purposes and subject to the provisions of this Act, a tenant for life—

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

Power for tenant for life to enter into contracts.
45 & 46 Vic., c. 38, s. 31.

- (e) may enter into a contract for or relating to the execution of any improvement authorised by this Act, and may vary or rescind the same; and
- (f) may, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

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

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

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

33. A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title.

Power to complete predecessor's contract. 53 & 54 Vic., c. 69, s. 6.

Infants, married women, lunatics.

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

Tenant for life infant. 45 & 46 Vic., c. 38, s. 60.

testamentary or other guardian or next friend of the infant, either generally or in a particular instance, may order.

35. In the application of this Act to married women, Married woman, how to be affected. See 45 & 46 Vic., c. 38, s. 61. the following provisions shall have effect :—

- (1) Where a married woman is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a femme sole, then she, without her husband, shall be a tenant for life under this Act.
- (2) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.
- (3) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and the land therein comprised.
- (4) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.
- (5) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act—
 - (a) Where a married woman is restrained from anticipation in respect of land, which, if she were not so restrained, could be disposed of by her, then she, without her husband, shall have the powers of a tenant for life.
 - (b) The instrument creating the restraint on anticipation shall be deemed the settlement, or one of the instruments creating the settlement, as the case may require.

36. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an insane person or an incapable person within the meaning of the Lunacy Act of 1898, the Master in Lunacy or the Tenant for life, insane. Ibid., s. 62. committee

committee of his estate, as the case may be, may, in his name and on his behalf, under an order of the Court, exercise the powers of a tenant for life under this Act; and the order may be made on the application of any person interested in the settled land, or of the Master or of the committee of the estate.

37. Where under a settlement there is no tenant for life, or no person who but for this section would have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of any person beneficially entitled under the settlement to the whole or any part of the income of the settled land, either in possession, remainder, or otherwise, either generally or in a particular instance may order.

Where no tenant for life how powers may be exercised. cf. 1898, No. 17, s. 54.

PART III.

INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY—IMPROVEMENTS.

38. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes, namely:—

Capital money under Act; investment, &c., by trustees or court. See 45 & 46 Vic., c. 38, s. 21.

- (a) In investment on Government securities of the United Kingdom or of the Commonwealth of Australia or any of the States thereof or of New Zealand, or on mortgage of unencumbered freehold property in New South Wales, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, with power to vary the investment into or for any other such securities. (b)

50 Vic. No. 13 (Queens.), s. 31.

- (b) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement.
- (c) In discharge of any charge on the settled land or any part thereof created under section nineteen of the Rural Tenants' Improvements Act, 1916.
- (d) In payment for any improvement authorised by this Act.
- (e) In payment for equality of exchange or partition of settled land.
- (f) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life.
- (g) 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.
- (h) In purchase, either in fee-simple, or for a term of forty 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.
- (i) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge.
- (j) 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.
- (k) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

39. (1) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

Regulations
respecting
investment,
devolution,
and income
of securities,
&c.

45 & 46 Vic.,
c. 38, s. 22.

(2) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

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

(6) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7) Those securities may be converted into money, which shall be capital money arising under this Act.

(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 for the purposes of this Act.

53 & 54 Vic.,
c. 69, s. 14.

40. Capital money arising under this Act from settled land in New South Wales shall not be applied in the purchase of land out of New South Wales unless the settlement expressly authorises such application.

Investment in land in New South Wales. 45 & 46 Vic., c. 33, s. 23.

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

Settlement of land purchased, taken in exchange, &c. See *Ibid.* s. 24.

(2) Freehold land shall be conveyed 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 trusts, powers, 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 in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

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

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

(7) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

Improvements

- (o) jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes ;
- (p) streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land ;
- (q) sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid ;
- (r) trial pits for mines, and other preliminary works necessary or proper in connection with development of mines ;
- (s) bridges ;
- (t) making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let ;
- (u) erection of buildings in substitution for buildings taken by a local or other public authority, or 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 ;
- (v) reconstruction, enlargement, or improvement of any of such works, whether executed under the provisions of this Act or already existing ;
- (w) any improvement or other work required to be done by any Act of Parliament whether on freehold or other tenure under the Crown Lands Acts ;
- (x) in payment of any money expended and costs incurred by a landlord under or in pursuance of the Rural Tenants' Improvements Act, 1916, in or about the execution of any improvement comprised in Part I or Part II of the First Schedule to that Act.

53 & 54 Vic.,
c. 69, s. 13.

[See Vict.
Act, No. 2725,
s. 34 (xxiii)].

[8 Edw. VII,
c. 28, s. 20.]

43. (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 authorised 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.

Approval by Court of scheme for improvement and payment thereon.

See 45 & 46 Vic., c. 33, s. 26.

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

- (a) an order of the Court declaring that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which order shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or
- (b) a certificate to the like effect of a competent engineer, surveyor, builder, or architect nominated by the trustees and approved by the Court, which certificate shall be conclusive as aforesaid; or
- (c) an order of the Court directing or authorising the trustees to so apply a specified portion of the capital money.

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

[See 53 & 54 Vic., c. 69, s. 15.]

Mortgage

Mortgage or sale for improvements.

44. (1) The Court may, upon the application of the tenant for life, or a person having the powers of a tenant for life under this Act, or the trustees of the settlement, authorise the expenditure of a specified sum—

- (a) in any improvements authorised by this Act; or
 (b) in any such other improvements or repairs on or in connection with and for the benefit of the settled land,

Power of Court to order mortgage or sale for improvements, &c.

See 1902, No. 98, s. 10.

as the Court thinks expedient, having due regard to the interest of all persons beneficially interested in the settled land, although such expenditure may not be necessary for the purpose of salvage.

(2) The Court may authorise the money so authorised to be expended, and also the amount properly required for payment of the costs of the transaction to be paid out of any capital money arising under this Act in the hands of trustees or in Court or to be raised by the tenant for life on mortgage or sale of the fee-simple or other estate or interest, the subject of the settlement in the settled land, or any part thereof, or by creation of a term of years in the settled land or otherwise, or to pay or raise such money partly in one or partly and another of the said modes as to the Court seems fit.

(3) When the money required is authorised to be raised by mortgage the Court may give directions how the principal and interest are to be paid, and may require a sinking fund to be provided for, so as to enable any such mortgage to be paid off at any stated period, according to the nature of the object for which the money is required, and in every case the Court shall give such directions as appear necessary and proper, so as to throw upon the respective interests of the persons beneficially interested their proper proportion of the moneys to be expended, and in any case where money is authorised to be expended upon leasehold lands, such direction may include provision for a sinking fund.

(4) The money so raised on mortgage or sale, or by creation of a term of years, shall be capital money for that purpose, and may be paid or applied accordingly.

(5)

(5) No purchaser or mortgagee paying or advancing money upon any sale or mortgage authorised by the Court under this section shall be required to see to the application of the purchase money or mortgage money.

Execution and repair of improvements.

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

Concurrence in improvements.
See 45 & 46 Vic.,
c. 38, s. 27.

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

Obligation on tenant for life and successors to maintain, insure, &c.
Ibid. s. 28.

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

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

(4) The Court may vary any order made by it 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 requirements

requirements 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.

47. 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, execute thereon any improvement authorised 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.

Protection as regards waste in execution and repair of improvements.

45 & 46 Vic., s. 38.

PART IV.

MODE OF EXERCISE OF POWERS—PROCEDURE.

48. When the tenant for life is the sole trustee of the settlement, or the tenants for life, being two or more, are the sole trustees of the settlement, or there is no trustee of the settlement, the powers conferred by this Act on a tenant for life shall only be exercised with the sanction of the Court.

When tenant for life is sole trustee of the settlement, sanction of the Court necessary. See 50 Vic. No. 13 (Queensland), s. 39.

49.

49. When there are more tenants for life than one, and they do not concur, or one or more of them is or are from disability or otherwise unable to concur, in any dealing with the settled land proposed by one or more of them, the Court may on the application of any of them direct that any of the powers conferred by this Act on a tenant for life shall be exercised by one or more of such tenants for life, and on such conditions as the Court thinks fit.

50. (1) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, or a contract for a sale, exchange, partition, lease, mortgage, or charge, shall, subject to the provisions of the next succeeding section, give notice of his intention in that behalf to each of the trustees of the settlement (other than himself if he is one of the trustees), by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in New South Wales, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in New South Wales.

Such letter shall be posted not less than three months before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or the contract for the same.

(2) Provided that at the date of notice given the number of trustees must not be less than two, unless one trustee only is appointed by the settlement, or a contrary intention is expressed in the settlement or the sole trustee is the public trustee or a trustee company.

(3) The notice may be notice of a general intention in that behalf.

(4) The tenant for life must, 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 sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.

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

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

51. A lease for a term not exceeding fourteen years 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 by a tenant for life—

- (a) without any notice of an intention to make the same having been given under the last preceding section; and
- (b) notwithstanding that there are no trustees of the settlement for the purposes of this Act; and
- (c) by any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent in cases where the term does not extend beyond three years from the date of the writing.

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

53. (1) Every application to the Court under this Act shall be by summons at chambers.

(2) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(3) On any application notice shall be served on such persons (if any) as the Court thinks fit.

(4) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(5)

45 & 46 Vic.,
c. 38, s. 45.

Provision as
to leases for
fourteen
years.

See 53 & 54
Vic., c. 69,
s. 7.

Reference of
differences to
Court.

45 & 46 Vic.,
c. 38, s. 44.

Regulations
respecting
applications,
&c.; Rules.

See *Ibid.*
s. 46.

(5) The Judges of the Supreme Court or any three of them may make such general rules as from time to time may seem necessary for better carrying the provisions and objects of this Act into effect, and for regulating the practice and procedure under this Act.

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

Payment of costs out of settled property.
45 & 46 Vic., c. 38, s. 47.

PART V.

TRUSTEES—SECURITY—INDEMNITY, &c.

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

Appointment of trustees by Court.
45 & 46 Vic., c. 38, s. 38.

(2)

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

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

Number of trustees to act.
45 & 46 Vic., c. 38, s. 39.

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

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

Trustees' receipts.
Ibid. s. 40.

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

Protection of each trustee individually
Ibid. s. 41.

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

Protection
of trustees
generally.
45 & 46 Vic.,
c. 38, s. 42.

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

Trustees'
reimburse-
ment.
Ibid. s. 43.

61. The Court may authorise the trustees of a settlement to retain for their own use out of the income of the trust property, or in case of a sale by the trustees out of the proceeds of the trust property, a reasonable sum by way of commission for their pains and trouble in the management or sale of the property; but no such commission shall be allowed at a higher rate than five pounds per centum of the income or proceeds.

Commission
to trustees.
50 Vic. No.
13 (Queens.),
s. 51.

PART VI.

MISCELLANEOUS PROVISIONS.

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

Powers not assignable; contract not to exercise powers void. 45 & 46 Vic., c. 38, s. 50.

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

(3) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided that the leases are made at the best rent that can reasonably be obtained, without fine, and are in other respects in conformity with this Act.

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

63. (1) Every 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 is to be deemed one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within the meaning or operation of the last preceding section.

Instrument in consideration of marriage, &c., to be part of settlement. 53 & 54 Vic., c. 69, s. 4.

(2)

(2) This section applies and has effect with respect to every disposition before as well as after the commencement of this Act, unless inconsistent with the nature or terms of the disposition.

64. (1) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

Prohibition
or limitation
against
exercise of
powers void.
45 & 46 Vic.,
c. 38, s. 5.1

(2) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

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

Provision
against
forfeiture.
Ibid. s. 52.

66. A tenant for life shall, in exercising any power under the Act, have regard to the interests of all parties entitled under this 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.

Tenant for
life trustee
for all parties
interested.
Ibid. s. 53.

67. A tenant for life, or a person having the powers of a tenant for life, or the trustees of the settlement, or any

Applications
to Court for
advice.

any other person entitled to exercise any powers under this Act, may make an application to the Court for advice and directions as to the exercise of any such powers.

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

69. (1) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court may be exercised from time to time.

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

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

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

(2) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the

General
protection of
purchasers,
&c.
45 & 46 Vic.,
c. 38, s. 54.

Exercise of
power ;
limitation of
provisions,
&c.
See *Ibid.* s. 55.

Saving for
other powers.
Ibid. s. 56.

the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act.

(3) Where two or more persons together constitute the tenant for life, the consent of one only of those persons shall be necessary. 47 & 48 Vic., c. 18, s. 6 (2).

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

71. (1) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act. Additional or larger powers by settlement. 45 & 46 Vic., c. 38, s. 57.

(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.

72. Where under Part IV of the Conveyancing and Law of Property Act, 1898, or under any other 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 authorised 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 authorised by this Act were authorised by the Act under which the money is in Court. Application of certain money in Court. See *Ibid.* s. 32.

73.

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

Application of money in hands of trustees under powers of settlement. 45 & 46 Vic., c. 38, s. 33.

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

Application of money paid for lease or reversion. *Ibid.* s. 34.

75. (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.

Cutting and sale of timber, and part of proceeds to be set aside. *Ibid.* s. 35.

(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.

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

Proceedings for protection or recovery of land settled or claimed as settled. *Ibid.*, s. 36.

77.

77. (1) Where personal chattels are settled on trust so as to devolve with land and to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

Heirlooms.
45 & 46 Vic.,
c. 38, s. 37.

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

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

78. Payment of money into Court effectually exonerates therefrom the person making the payment.

Payment into
Court.
Ibid., s. 46(2).

PART VII.

SETTLEMENT BY WAY OF TRUST FOR SALE.

79. (1) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, 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, is subject to a trust or direction for sale of land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts

Provision for
case of trust
to sell and re-
invest in land.
Ibid., s. 63.

debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons (if any) who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons (if any) for the time being, who are by the settlement declared to be trustees thereof for the purposes of this Act, are for the purposes of this Act the trustees of the settlement.

(2) In every case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided, that is to say:—

- (a) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from the sale of land, or the income of that money, or the income of the land, until sale (as the case may require).
- (b) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised

authorised by this Act, be applied in any mode in which capital money arising under the settlement of any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(c) Capital money arising under this Act from the settled land and the securities in which the same is invested shall not for the purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(d) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

(3) In the case of a settlement within the meaning of this section, any consent not required by the terms of the settlement is not by force of anything contained in this Act to be deemed necessary to enable the trustees of the settlement or any other person to execute any of the trusts or powers created by the settlement.

As to
consents of
tenants for
life.

47 & 48 Vic.,
c. 18, s. 6 (1).

80. (1) Where a settlement within the meaning of the last preceding section, or other settlement of property as personal estate, contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees in trust for sale, with power to postpone the sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly inserted in personal estate.

As to dispositions or trust for sale.
1 & 2 Geo. V, c. 37, s. 10.

(2) This section applies only to settlements coming into operation after the commencement of this Act.

81. (1) Where land has either before or after the commencement of this Act become subject to an express or implied trust for sale, such trust is, so far as regards the safety or protection of any purchase thereunder, to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale.

Powers of sale to be subsistent.
Ibid.

(2) This section applies to sales made before as well as after the commencement of this Act, but without prejudice to the order of any Court restraining a sale.

82. With respect to the powers conferred by the preceding sections of this Part of this Act the following provisions shall have effect:—

- (a) Those powers are not to be exercised without the leave of the Court.
- (b) The Court may, by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given.
- (c) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.
- (d) So long as an order under this section is in force, neither the trustees of the settlement, nor any other person other than the person having the leave, shall execute any trust or power

Powers given by preceding sections of this Part to be exercised only with leave of Court.
See 47 & 48 Vic., c. 18, s. 7.

power created by the settlement, for any purpose for which leave is by the order given to exercise a power conferred by this Act.

- (e) The Court shall direct that some sufficient notice of any order under this section shall be placed on the settlement, or one of the instruments constituting the same, or on any copies thereof, or otherwise recorded in any way it thinks proper. See 1908, No. 17, s 76.
- (f) Any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until notice thereof is so recorded as aforesaid.
- (g) An application to the Court under this section may be made by the tenant for life, or by the persons or one or more of the persons who together constitute the tenant for life, within the meaning of the last preceding section but one.
- (h) An application to rescind or vary an order, or to make any new or further order under this section may be made also by the trustees of the settlement, or by any person beneficially interested under the settlement.
- (i) The person or persons to whom leave is given by an order under this section shall be deemed the proper person or persons to exercise the powers conferred by section seventy-nine of this Act, and shall have and may exercise those powers accordingly.
- (j) This section is not to affect any dealing which has taken place before the commencement of this Act under any trust or power to which this section applies.

PART

PART VIII.

APPLICATION OF ACT TO LAND HELD UNDER THE
REAL PROPERTY ACT, 1900.

83. In the application of this Act to settled land held under the provisions of the Real Property Act, 1900, the following provisions shall have effect:—

- Application of Act to land held under Real Property Act, 1900. 50 Vic., No. 13 (Queensland), 69.
- (1) If any person or persons is or are the registered proprietor or the registered proprietors of the land for an estate in fee simple in possession, such person or persons shall be deemed to be the trustee or trustees of the settlement.
 - (2) Where under this Act any power or authority is conferred upon a tenant for life, then upon the written request of the tenant for life, and upon the performance by the tenant for life of the conditions imposed by this Act upon the exercise of such a power or authority by a tenant for life, the registered proprietor or registered proprietors shall have and shall and may exercise that power or authority.
 - (3) Where under this Act any instrument is to be executed by a tenant for life in order to the exercise of any such power or authority, that instrument shall be executed by the registered proprietor or registered proprietors, and such execution shall have the same operation as the execution of such an instrument by a tenant for life is declared to have under this Act.
 - (4) A registered proprietor or registered proprietors executing a power or authority in accordance with the provisions of this Act upon the written request of the tenant for life, or with the sanction of the Court if, being the tenant or the tenants for life, he is himself or they are themselves the sole trustee or trustees of the settlement, shall not by reason thereof incur any personal liability, to his or their beneficiaries or to any other person, and no such registered proprietor or registered proprietors shall

shall, for the purpose of executing any such power or authority or complying with any such request, be bound to enter into any personal covenant or contract.

- (5) Where under this Act it is provided that land shall be conveyed to any uses or trusts, that expression shall be taken to mean that the land shall be transferred to trustees, and shall be held by them as trustees upon such uses or trusts.
- (6) Where under this Act it is provided that a contract made by a tenant for life shall be binding on the settled land, that expression shall be taken also to mean that the contract shall be binding on the registered proprietor, and that he shall be bound to give effect thereto in the same manner as if he had made it himself, subject, however, to the provisions of this Act.
- (8) The term "deed" includes any instrument executed and registered in pursuance of the provisions of the Real Property Act, 1900, and "conveyance" includes any transfer in pursuance of the provisions of the said Act.

84. Nothing herein contained shall be taken to require any person dealing with a registered proprietor of land held under the provisions of the said last-mentioned Act to inquire whether all or any of the provisions of this Act have been complied with in respect of the proposed dealing.

Persons dealing with registered proprietor not bound to inquire.

SCHEDULE.

Reference to Act.	Subject or Short Title.	Extent of Repeal.
1898, No. 17..	Conveyancing and Law of Property Act, 1898.	Part IV (leases and sales of settled estates and estates of infants); sections 37 to 81 inclusive.
1901, No. 37..	Conveyancing and Law of Property (Supplemental) Act, 1901.	Sections 1, 2, and 4, being the unrepealed sections.
1902, No. 98..	Trustee Act Amendment Act, 1902.	Section 10.