

Act No. 17, 1898.

An Act to consolidate the Statutes relating to  
Conveyances, Assignments, and Titles to  
Lands. [27th July, 1898.]

CONVEYANCING  
AND LAW  
OF PROPERTY.

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

1. (1) This Act may be cited as the "Conveyancing and Law of Property Act, 1898," and is divided into parts, as follows:—

PART I.—*Titles to Crown grants*—ss. 1-15.

PART II.—*Claims to grants of land*—ss. 16-25.

PART III.—*The conveyance and assignment of property*—ss. 26-36.

PART IV.—*Leases and sales of settled estates and estates of infants*—  
ss. 37-81.

PART V.—*Renewable leaseholds of persons under disability and persons out of the jurisdiction*—ss. 82-90.

PART VI.—*Mortgages*—

(a) *Implied powers of mortgagees*—ss. 91-104.

(b) *Discharge and reconveyance*—ss. 105-108.

(c) *Mortgaged lands of deceased persons*—s. 109.

(d) *The title of mortgagors*—s. 110.

PART

*Conveyancing and Law of Property.*PART VII.—*Covenants to insure*—ss. 111–116.PART VIII.—*Miscellaneous provisions*—ss. 117–120.

(2) Nothing in this Act contained shall be taken in any way to alter or modify the provisions of the Married Women's Property Act of 1893, but this Act shall take effect only so far as it is not inconsistent with the said Married Women's Property Act of 1893.

First Schedule.

2. (1) The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All rules of Court made under the authority of any Act or section hereby repealed and being in force at the passing of this Act shall be deemed to have been made under the authority of this Act.

## PART I.

*Titles to Crown grants.**Errors in Crown grants.*

Certain conveyances to pass the fee to purchaser notwithstanding the omission of words of inheritance.  
22 Vic. No. 1, s. 1.

3. In every case where, before the first day of July, one thousand eight hundred and fifty-eight, any person seised of or entitled to any land in fee, or entitled to have a Crown grant thereof made to him in fee, has sold and has conveyed or contracted to convey such land to a purchaser, the purchaser shall be deemed as against the vendor, his heirs, executors, administrators, and assigns, to have taken or to be entitled to (as the case may be) an estate in fee in such land notwithstanding the absence of any words of inheritance in the instrument of conveyance or contract (as the case may be), unless a contrary intention appears by such instrument or otherwise.

For remedy of insufficient descriptions in grants.  
*Ibid.* s. 4.

4. No Crown grant of land issued previously to the first day of July, one thousand eight hundred and fifty-eight, and no deed in which the description of the land corresponds with that contained in such grant shall be void for want of certainty in such description in any case where the Governor has, since the last-mentioned date, by an instrument in writing under his hand and the seal of the Colony, described, or shall hereafter by a similar instrument describe, with sufficient certainty the land intended to have been comprised in such grant; but in every such case the land so described as last aforesaid shall be taken to be the land described in the grant and in every such deed as aforesaid, and to have been granted and conveyed thereby respectively.

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5. Nothing in the preceding section shall prejudice any person who was on the first day of July, one thousand eight hundred and fifty-eight, in possession of the land or any part thereof claiming adversely to the grantee, his heirs or assigns, or shall affect any grant of the same land or any part thereof issued by the Crown subsequently to the first grant or any title to the land claimed under such subsequent grant.

Proviso to protect subsequent grants and adverse holders.  
22 Vic. No. 1, s. 5.

6. (1) No such instrument shall be signed unless the intention to make and sign the same has been notified under the hand of the Minister for Lands by three separate publications in the Government Gazette and in some newspaper circulating in the district in which the land is situated, three months at the least before the time of such signing, containing therein the name of the grantee and of the party applying for such instrument, and the description in the grant as well as that proposed to be substituted.

New description to be advertised, &c.  
*Ibid.* s. 6.  
24 Vic. No. 3, s. 1.

(2) Every such instrument shall be countersigned by the Minister for Lands and enrolled in the office for the registration of deeds.

7. The like proceedings may be taken in respect of any Crown grant issued previously to the first day of January, one thousand eight hundred and sixty-three, in which there is any misnomer of the grantee, or misdescription of the land granted, and in every case where an instrument in writing has been or shall be so signed and enrolled as aforesaid, stating therein the matters intended to be corrected, and the name or or description substituted or intended so to be, such name or description shall be taken to have been inserted originally in the grant and in every deed containing the erroneous name or description, and such grant and every such deed shall operate and be construed accordingly.

The like provisions in case of error in names.  
22 Vic. No. 1, s. 7.

8. Any such instrument as aforesaid may be by separate writing or be endorsed on the grant to which it relates, and it shall be sufficient in any suit or action for the party adducing any such instrument to prove its enrolment without showing compliance with any other provision of the preceding section.

Proof of instrument.  
*Ibid.* s. 8.

9. For any of the purposes contemplated by the five last preceding sections, or any of them, the Governor may cause inquiry to be made as to the interests of any person who may be affected or who represents that he will be affected by any proposed new description or correction of any error as aforesaid before the Commissioners for claims to grants of land appointed under Part II of this Act, and may refer accordingly any application for any such instrument as aforesaid, and any claim or caveat in opposition thereto, for the report thereupon of such Commissioners at the cost of the parties as in the case of persons applying for or entering a caveat against the issue of a grant, and such

Cases may be referred to Commissioners for claims to grants.  
*Ibid.* s. 9.

Commissioners

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Commissioners shall thereupon have power to summon and examine the parties and all witnesses where evidence may be deemed necessary, and to report to the Governor upon the matters as fully and in the same manner as upon an inquiry authorised in terms by Part II of this Act.

*Conditions in grants.*

Conditions in grants.  
22 Vic. No. 1, s. 10.  
24 Vic. No. 3, s. 1.

**10.** (1) No title to the land shall be held bad either at law or equity by reason of the breach or non-performance of any condition contained in the Crown grant of such land, in any case where it appears by any proclamation or by writing under the hand of the Governor, countersigned by the Minister for Lands, that no proceedings will be at any time taken on behalf of the Crown for avoiding the grant by reason of such breach or non-performance.

(2) Every such proclamation may be in general terms applying to all conditions, or may be limited to conditions of particular classes, or a particular class of cases only.

Protection to bona fide purchasers against persons claiming against grantees by matter of prior date.  
22 Vic. No. 1, s. 11.

**11.** In every case where, before the first day of July, one thousand eight hundred and fifty-eight, any Crown grant of land was issued containing a proviso purporting to reserve or hold harmless the rights of all parties other than the grantee, such proviso shall as against every bona fide purchaser or mortgagee for valuable consideration (whether before or after the passing of this Act), without actual notice of some adverse claim and against all persons claiming under such purchaser or mortgagee, be inoperative and void.

Protection to bona fide purchaser from grantee in possession  
*Ibid.* s. 12.

**12.** In all other cases of land granted previously to the first day of July, one thousand eight hundred and fifty-eight, and being on such date in the possession of the grantee, his heirs or assigns, the rights of all parties claiming adversely to such grantee by matter before the date of the grant shall, as against every bona fide purchaser or mortgagee for valuable consideration without actual notice of the adverse claim, and against all persons claiming under such purchaser or mortgagee, be barred and extinguished both at law and in equity.

The like in certain other cases.  
*Ibid.* s. 13.

**13.** In every case of land granted by the Crown between the thirtieth day of June, one thousand eight hundred and fifty-eight, and the first day of January, one thousand eight hundred and sixty-three, the rights of all parties claiming the same land, adversely to the grantee by matter before the date of the grant, shall as against every bona fide purchaser or mortgagee for valuable consideration, without actual notice of the adverse claim, and against all persons claiming under such purchaser or mortgagee, be barred and extinguished both at law and in equity, whether there be such a proviso or reservation as aforesaid in the grant or not.

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14. (1) Every promise made previously to the first day of July, one thousand eight hundred and fifty-eight, by any Governor of New South Wales, of a grant of land in fee to any person shall (except as against the Crown) be deemed to have conferred upon him an interest in such land, devisable by will or alienable by contract, in like manner as equitable estates in land are devisable or alienable. Proclamations promising Crown grants. 22 Vic. No. 1, s. 14.

(2) Every such promise may be evidenced by any proclamation, or by writing under the hand of the Governor or Colonial Secretary, or by recital or statement in any Crown grant.

(3) This section shall not prejudice or affect the title of any person in possession of the land under any Crown grant, or claiming adversely to the person first referred to, his heirs, executors, administrators, or assigns.

*Lands of Crown debtors.*

15. (1) For the protection of purchasers and mortgagees under Crown debtors or accountants to the Crown, the Auditor-General may at any time take and pass the accounts of any such debtor or accountant, and upon satisfaction thereof may certify the same under his hand, and thereupon the Governor may, by writing, under his hand, countersigned by the Colonial Secretary or Colonial Treasurer, release all or any of the lands of such debtor or accountant in respect of all claims of the Crown against him up to the date of such release. Lands of debtors or accountants to the Crown. Ibid. s. 16.

(2) Every such release shall have the effect of an absolute discharge of all the then lands of such debtor or accountant, or of the particular lands specified, as the case may be, in the hands of any bona fide purchaser or mortgagee in respect of such claims.

## PART II.

*Claims to grants of land.*

16. (1) The Governor may issue one or more Commission or Commissions under the Great Seal as the same may become necessary, and may thereby nominate and appoint three or more persons to be "Commissioners for examining and reporting upon claims to grants of land within the Colony of New South Wales," and one of the said persons shall be appointed by the Governor to be President of the said Commission. Appointment of Commissioners for claims to Crown grants. 5 Wm. IV No. 21, s. 1.

(2) The said Commissioners, or any two of them, of whom the President shall be one, shall have full power and authority to hear, examine, Powers of Commissioners.

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examine, and report upon all applications for grants of land under the Great Seal that may be referred to them under and by virtue of the provisions of this Act.

Oaths.

Second Schedule.

(3) Each of the said Commissioners shall, before proceeding to act as such, take and subscribe before one of the Judges of the Supreme Court the oath set forth in the Second Schedule to this Act, and the Colonial Secretary shall cause the said oaths so subscribed to be recorded in his office.

(4) The Commissioners appointed under the Act fifth William IV number twenty-one, and in office at the passing of this Act, shall continue to be Commissioners under this Act without reappointment and without taking the abovementioned oath, and shall have and exercise the same powers and duties in all respects as if they had been appointed under this Act and had taken the said oath.

Appointment of Secretary.

5 Wm. IV No. 21, s. 2.

Oath.

Third Schedule.

**17.** (1) The Governor may appoint some person to perform the duties of Secretary to the said Commissioners.

(2) The Secretary shall, before exercising any of the duties of his office, take and subscribe before one of the Judges of the Supreme Court the oath set forth in the Third Schedule to this Act, and the Colonial Secretary shall cause the said oath so subscribed to be recorded in his office.

(3) The Secretary appointed under the Act fifth William IV number twenty-one, and in office at the passing of this Act, shall continue to be Secretary under this Act without reappointment and without taking the said oath, and shall have and exercise the same powers and duties in all respects as if he had been appointed under this Act and had taken the said oath.

Governor as often as he shall see fit to refer all claims to grants of land to Commissioners.

*Ibid.* s. 3.

**18.** (1) The Governor may, as often as to him seems fit, refer the claims of all persons to have grants of land in due form of law executed to them, in virtue and in performance of the promise of any Governor for the time being, to the said Commissioners, to the end that all such claims may be duly examined and reported upon for the information and guidance of the Governor.

(2) The said Commissioners, or any two of them, of whom the President shall be one, shall proceed to hear, examine, and report thereon in manner hereinafter mentioned.

(3) Nothing herein contained shall authorise the said Commissioners to receive or report upon any claims but such as are referred to them by the Governor as aforesaid.

Commissioners to be guided by the real justice and good conscience of the case.

*Ibid.* s. 4.

**19.** (1) In hearing and examining all claims to grants as aforesaid the said Commissioners shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities, and shall direct themselves by the best evidence that they can procure, or that is laid before them, whether the same be such evidence as the law would require in other cases or not. (2)

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(2) If the Commissioners, or any two of them, are satisfied that the person claiming such lands or any part thereof is entitled in equity and good conscience to hold the said lands and to have a grant thereof made and delivered to such person under the Great Seal, they shall report the same and the grounds thereof to the Governor accordingly, and shall set forth the situation, measurement, and boundaries by which the said lands shall be described in every such grant.

(3) Nothing herein contained shall be held to oblige the Governor to make and deliver any such grant as aforesaid unless he deems proper so to do.

**20.** The meetings of the Commissioners shall be holden at such place as the Governor from time to time appoints, and the Commissioners shall proceed with all due dispatch to investigate and report upon the claims referred.

Meetings of the Commissioners. 5 Wm. IV No. 21, s. 5.

**21.** (1) The Commissioners upon receiving any such claim for report as aforesaid, may appoint a day by notice in the Gazette for hearing such claim, and may issue summonses requiring all such persons as are therein named to appear before the Commissioners at the day and time therein appointed to give evidence as to all matters and things known to any such person respecting any claim as aforesaid, and to produce in evidence all deeds, instruments, or writings in the possession or control of any such persons which they might by law be required and compelled to give evidence of or to produce in evidence in any cause respecting the like matters depending in the Supreme Court, in so far as the evidence of such persons and the production of such deeds, instruments, and writings are necessary for the due investigation of any such claim as aforesaid depending before the Commissioners.

Power of Commissioners to summon witnesses. Ibid. s. 6.

(2) All such evidence shall be taken down in writing in the presence of the witnesses respectively giving the same, and shall at the time be signed by them or, in case of their refusing or being unable to sign, by the Secretary to the Commissioners; and all such evidence shall be given on oath, which oath the Commissioners shall administer to every person appearing before them to give evidence.

Taking of evidence.

(3) Any person taking a false oath in any case wherein an oath is required to be taken by this Act shall be deemed guilty of perjury, and being thereof duly convicted shall be liable to such pains and penalties as any person convicted of perjury is subject and liable to.

False swearing to be perjury.

**22.** (1) Whenever any person, who is duly summoned to give evidence before the Commissioners as aforesaid, his reasonable expenses having been paid or tendered, and not having any lawful impediment allowed by the Commissioners, fails to appear at the time and place specified

Witnesses not appearing or refusing to give evidence. Ibid. s. 7

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specified in such summons, or after appearing refuses to be sworn or to answer any lawful question, or to produce any deed, instrument, or writing which he may lawfully be required to produce, or without leave obtained from the Commissioners wilfully withdraws from further examination, then, and in every such case, the Commissioners shall cause such default, or refusal, or wilful withdrawing to be certified in writing.

(2) The person at whose instance or on whose behalf such summons as aforesaid was issued may thereupon take out the process of the Supreme Court for summoning such last-mentioned person to appear before the said Court at the time therein specified summarily, to show cause why he should not be attached, fined, or imprisoned for such default, refusal, or wilful withdrawing as aforesaid.

(3) If such person having such last-mentioned summons duly served upon him, fails at the time therein specified to show cause for his said default, refusal, or withdrawing, to the satisfaction of the said Court, the said Court on proof by the return of the officers serving the same, or by affidavit of the due service of the said summons to give evidence and of the said summons to show cause, and on production of a copy of the said certificate under the hand of the Secretary of the Commissioners, may grant a warrant to apprehend the person so failing to show cause, and may commit him to prison, and there to remain without bail until he submits to be sworn and to answer all such questions, and to produce all such deeds, instruments, or writings as aforesaid in so far as is lawfully required of him, and further may set such fine upon such person as the said Court thinks meet, and unless the same is forthwith paid may grant process for levying the amount thereof upon the property of such person.

(4) Every such fine or the amount thereof which is levied, shall forthwith be paid to the chief clerk of the said Court, and the said chief clerk shall forthwith out of the amount of such fine pay to the person at whose instance the sentence imposing the fine was obtained the expenses incurred in summoning the person fined and in obtaining such sentence as taxed by the said chief clerk, and shall account for and pay over the residue of such fine in like manner as he is by law required and directed to account for and pay over fees or fines received by him as chief clerk of such Court.

Effect of mortgages  
and judgments prior  
to actual grant.  
5 Wm. IV No. 21,  
s. 8.

**23.** All mortgages and judgments which would have bound the said lands or any part of them in case grants thereof had been given under the Great Seal, before such mortgages or judgments were made or given, shall have the same force and effect with respect to such lands after grants thereof have been made and delivered in pursuance of the provisions of this part of this Act as if the same had been made and delivered previous to the dates of such mortgages or judgments as aforesaid, any law to the contrary in anywise notwithstanding.

**24.**

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**24.** (1) The Commissioners shall respectively receive for their own use, for every final report made by them in the manner and form prescribed by this part of this Act upon any claim to a grant of land, the sum of two guineas. Remuneration of Commissioners 18 Vic. No. 11, s. 2.

(2) The Secretary to the Commissioners shall receive, for every case referred to the Commissioners, the sum of two pounds. and secretary.

(3) The sums aforesaid shall be the whole remuneration of the Commissioners and their Secretary in respect of their offices, and the Governor shall by warrant under his hand direct such sums to be paid out of the Treasury.

**25.** (1) There shall be paid to the Secretary of the Commissioners, by every person making a claim to a grant of land, which is referred by the Governor to the Commissioners for examination as hereinbefore is provided, the several fees specified in the Fourth Schedule to this Act. Fees to be taken by Secretary to Commissioners. Fourth Schedule. 5 Wm. IV No. 21, s. 10.

(2) The Secretary shall duly account for the fees so paid to him as aforesaid, and shall pay the same into the hands of the Colonial Treasurer on the last day of every month, to be appropriated to public uses.

(3) The Commissioners, or any two of them, of whom the President shall be one, may admit any poor person to appear and prosecute his claim as aforesaid without the payment of any fees if it appears to the Commissioners that such person is poor and not in a condition to pay the same.

## PART III.

*The conveyance and assignment of property.**Acknowledgment of deeds.*

**26.** (1) Every deed, conveyance, or other instrument in writing made and executed by any married woman prior to the first day of January, one thousand eight hundred and forty-four, of and concerning any lands, tenements, or hereditaments situated in New South Wales, and acknowledged in the form and manner appointed and directed by the proclamation of the Governor bearing date the sixth day of March, one thousand eight hundred and nineteen (a true copy whereof is set forth in the Sixth Schedule of this Act), shall be and be taken to be valid and effectual to pass and convey all the right, title, and interest of such married woman to and in all such lands, tenements, or hereditaments intended to be alienated and conveyed by such deed or other instrument. Deeds executed by married woman under proclamation of the 6th March, 1819, valid. 7 Vic. No. 16, s. 16. Sixth Schedule.

(2)

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- Acknowledged deeds substituted for fines and recoveries.  
7 Vic. No. 16, s. 16.
- (2) Any deed in due form of law, made and executed by any party from whom any estate, right, title, or interest in any lands, tenements, or hereditaments situated in New South Wales, is or may be intended to be passed, and duly acknowledged by such party in the manner hereinafter provided, shall be as valid and effectual to pass all the estate, right, title, interest, and claim of the respective parties to such deed, in or to all and every such lands, tenements, or hereditaments in such deed mentioned and intended to be conveyed, and to transfer and convey the same to the grantee, bargainee, or other person therein mentioned, his heirs and assigns for ever, according to the several estates and interests by such deed conveyed and limited as if a fine with proclamations had been levied, or a common recovery suffered, of such lands, tenements, or hereditaments, or as if such lands tenements, or hereditaments intended to be conveyed had been conveyed by the firmest and most regular deeds, conveyances, and instruments.
- Who may take acknowledgments
- (3) All deeds shall be deemed to be and to have been duly acknowledged when the acknowledgment has been or purports to have been received and certified as follows, that is to say—
- Ibid.* ss. 16, 17.  
13 Vic. No. 45, s. 8.  
20 Vic. No. 27, s. 4.  
22 Vic. No. 1, s. 21.  
in New South Wales ;
- (a) in New South Wales by—
- (i) any Judge of the Supreme Court ; or
  - (ii) the Registrar-General or his deputy ; or
  - (iii) any commissioner of the Supreme Court authorised to take affidavits and not residing within five miles of the city of Sydney ; or
  - (iv) any person authorised by a commission under the hand and seal of the Judges of the Supreme Court, or any of them, to take and receive acknowledgments for the purposes of this Act ; or
- in other parts of Her Majesty's dominions ;
- (b) in any part of Her Majesty's dominions other than New South Wales by—
- (i) any Judge exercising jurisdiction in such part ; or
  - (ii) the Mayor or Chief Magistrate of any city or town in such part ; or
  - (iii) any commissioner of the Supreme Court of New South Wales for taking affidavits ; or
- in foreign countries ;
- (c) in any foreign country by—
- (i) the British Consul or Vice-Consul ; or
  - (ii) any commissioner of the Supreme Court of New South Wales for taking affidavits.
- Course to be pursued when married woman party to a deed.  
7 Vic. No. 16, s. 16.
- (4) If a married woman is a party to any such deed she shall be examined privately and apart from her husband by the person before whom such acknowledgment is made as aforesaid, and shall confess that she executed the same freely and voluntarily and without the fear, menace, or coercion of her husband.

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(5) Every such acknowledgment and confession shall be certified as aforesaid under seal or otherwise by the person before whom the same is made, and such certificate shall be endorsed or affixed to the deed, and shall be in the form or to the effect of the form in the Fifth Schedule to this Act, and shall be deemed and taken as sufficient proof of every such acknowledgment or confession as aforesaid.

Certificate of person taking acknowledgment.  
Fifth Schedule.  
7 Vic. No. 16, s. 16.  
Schedule A.  
22 Vic. No. 1, s. 21.

(6) Every deed affecting or intended to affect land in New South Wales, which has been executed by any married woman or tenant in tail, and which purports to have been acknowledged by such woman or tenant before some person having authority in that behalf, shall be valid and effectual in its intended operation to all intents and purposes, notwithstanding that the acknowledgment endorsed on such deed may not have been taken or certified in due form.

Validation of informal acknowledgments.  
*Ibid.* s. 20.

(7) No such acknowledgment shall be taken before the person employed to prepare the deed acknowledged, or before a person being a party thereto.

(8) This section shall not prejudice the rights of any person under any decree, order, or judgment of any Court of competent jurisdiction made prior to the passing of this Act, or in any suit, action, or other judicial proceeding pending at the passing of this Act.

**27.** The original instrument to which any such acknowledgment as aforesaid relates shall be produced to the person before whom the same is made, and in case such instrument appears to have been executed by any party unable to write, such person shall refuse to complete such acknowledgment by certifying the same, unless the execution by such party is attested by some justice of the peace, barrister, attorney, or notary public other than the person by whom such instrument has been prepared, whose attestation shall contain a certificate that the contents of such instrument were previously explained to the party so unable to write, and that the nature and effect thereof were, at the time of such attestation, to the best of the belief of such justice of the peace, barrister, attorney, or notary public understood by such party.

Acknowledgment of deeds where marksman is a party.  
7 Vic. No. 16, s. 18.

**28.** (1) When any deed acknowledged as aforesaid is received into the office of the Registrar-General for registration, or when any deed is acknowledged as aforesaid before the Registrar-General or his deputy, the Registrar-General or his deputy shall demand and take for every acknowledgment before whomsoever made the sum of ten shillings.

Fees payable  
*Ibid.* ss. 19, 20.  
Schedule B.  
20 Vic. No. 27, s. 4.

(2) The moneys so received shall be regularly accounted for and paid over by the Registrar-General to the Treasury.

(3) Every commissioner for taking affidavits, and every commissioner for taking acknowledgments appointed under this Act (except at Sydney), may demand and have for his own use for the taking and certifying

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certifying by him as aforesaid of every acknowledgment under this Act the sum of five shillings, which shall be paid in addition to the sum of ten shillings payable to the Registrar-General or his deputy as aforesaid.

*Validation of voluntary settlements.*

Voluntary settlement of land not to be deemed fraudulent.

55 Vic. No. 8,  
ss. 1-3.

**29.** (1) Notwithstanding anything in the Act twenty-seventh Elizabeth, chapter four, contained, no settlement of land duly registered under the Registration of Deeds Act 1897 or any Act thereby repealed, or under the Real Property Act or any Act amending or consolidating the same, shall, in favour of a purchaser taking under any contract, deed, or other instrument made subsequent to such registration, be deemed fraudulent by reason only that such settlement was not made for valuable consideration.

Interpretation of "settlement."

*Ibid.* s. 2.

(2) The word "settlement" in this section shall include conveyance, assignment, lease, mortgage, charge, limitation of uses, declaration of trusts, transfer, and other instruments creating or transferring any estate or interest in land, whether under the provisions of the Real Property Act, or otherwise.

Rights of purchasers previously to the 30th December, 1891, not affected.

*Ibid.* s. 4.

(3) This section shall not affect the rights of any purchaser under any contract, deed, or other instrument entered into or made before the thirtieth day of December, one thousand eight hundred and ninety-one.

*Purchase of reversionary interests.*

No purchase of reversionary interest made bona fide to be set aside merely on the ground of under value.

48 Vic. No. 23,  
ss. 1, 2.

**30.** (1) No purchase made bona fide and without fraud or unfair dealing of any reversionary interest in real or personal estate shall hereafter be opened or set aside merely on the ground of under value.

(2) The word "purchase" in this section shall include every kind of contract, conveyance, or assignment under or by which any beneficial interest in any kind of property may be acquired, and the words "reversionary interest" shall include any estate or interest in remainder or expectancy.

*Deeds of feoffment.*

Registration of deed of feoffment equivalent to livery of seisin.

7 Vic. No. 16, s. 25.

**31.** The due registration in the office of the Registrar-General of any deed of feoffment executed since the first day of January, one thousand eight hundred and forty-four, or hereafter executed, shall operate as and be for all purposes equivalent to livery of seisin as to the lands and hereditaments comprised in and intended to be conveyed by such deed of feoffment, the same in all respects as if there had been livery of seisin actually made and given of the same lands and hereditaments in the most valid and effectual form and manner.

*Releases.*

*Conveyancing and Law of Property.**Releases.*

**32.** Every deed or instrument of release executed after the passing of this Act shall be as effectual as if the releasing parties who have executed the same had also executed a lease or bargain and sale for a year for giving effect to such release, although no such lease or bargain and sale has been executed, and the recital or mention of a lease or bargain and sale in a release executed before the first day of January, one thousand eight hundred and forty-four, shall be conclusive evidence of the execution of such lease or bargain and sale.

Release equivalent to lease and release.  
7 Vic. No. 16, s. 26.

*Future and contingent uses.*

**33.** Where by any instrument, whether executed before or after the passing of this Act, any hereditaments are limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future or contingent or executory or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses, and the continued existence in him or elsewhere of any seisin to uses or scintilla juris shall not be deemed necessary for the support of or to give effect to future or contingent or executory uses, nor shall any such seisin to uses or scintilla juris be deemed to be suspended or to remain or to subsist in him or elsewhere.

Provision for cases of future and contingent uses.  
26 Vic. No. 12, s. 19.

*Assignment of personalty to self and another.*

**34.** Any person may assign personal property now by law assignable, including chattels real, directly to himself and another person by the like means as he might assign same to another.

Assignment of personalty to self and another.  
*Ibid.* s. 22.

*Execution of powers.*

**35.** (1) A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it has been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity.

Mode of execution of powers.  
*Ibid.* s. 12.

(2) This provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument.

(3)

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(3) Nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

Sale under power not to be avoided by reason of mistaken payment to tenant for life.  
26 Vic. No. 12, s. 12.

**36.** (1) Where, under a power of sale, a bona fide sale is made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, the Supreme Court in its equitable jurisdiction, upon any claim or application in a summary way as the case may require or permit, may declare that upon payment by the purchaser or the claimant under him of the full value of the timber and articles at the time of sale, with such interest thereon as the said Court directs, and the settlement of the said principal, moneys, and interest under the direction of the said Court upon such parties as in the opinion of the said Court are entitled thereto, the said sale ought to be established.

(2) Upon such payment and settlement being made accordingly, the said Court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed.

(3) The costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

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PART IV.

*Leases and sales of settled estates and estates of infants.*

*Interpretation of terms used.*

Interpretation of "settlement" and "settled estates."  
50 Vic. No. 20, s. 2.

**37.** (1) The word "settlement," as used in this part of this Act, shall signify any Act of Parliament, deed, agreement, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments or any estate or interest in land stand for the time being limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

(2) The term "settled estates" as used in this part of this Act shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments which are the subject of a settlement.

(3)

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(3) For the purposes of this part of this Act, a tenant in tail after possibility of issue extinct shall be deemed to be a tenant for life.

(4) All estates or interests in remainder or reversion not disposed of by the settlement and reverting to the settlor or descending to the heir of a testator or passing to his personal representatives or next of kin under the law relating to the descent and distribution of the real estate of intestates shall be deemed to be estates coming to such settlor, heir, personal representative, or next of kin under and by virtue of the settlement.

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

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

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

(8) The expression "The Court" in this part of this Act shall mean the Supreme Court in its equitable jurisdiction.

Interpretation of "The Court."

50 Vic. No. 20, s. 3.

(9) For the purposes of this part of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of settled land, although his estate may be charged or encumbered either by himself or by the settlor or otherwise howsoever to any extent, but the estates or interests of the parties entitled to any such charge or encumbrance shall not be affected by the acts of the persons entitled to the possession or to the receipt of the rents and profits as aforesaid unless they concur therein.

Tenants for life to be deemed entitled notwithstanding encumbrances.

*Ibid.* s. 47.

*Leases.*

**38.** The Court may, if it deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this part of this Act contained, authorise leases of any settled estates or of any rights or privileges over or affecting any settled estates for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed:—

The Court's power of making leases

*Ibid.* s. 4.

- (1) Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation

Term of lease.

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- occupation lease ten years, and for a mining lease forty years, and for a repairing lease fifteen years, and for a building lease thirty years.
- Rent, (2) (a) On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, without taking any fine or other benefit in the nature of a fine.
- (b) In the case of a mining lease a nominal rent, or any smaller rent than the rent to be ultimately made payable, may, if the Court thinks fit so to direct, be made payable during all or any part of the first five years of the lease.
- (c) In case of a mining lease, the rent reserved may be in part by way of royalty on the minerals raised, or on the gross or net produce thereof.
- Leases of minerals, &c. (3) (a) Where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who, by reason of his estate or by virtue of any declaration in the settlement, is entitled to work such earth, coal, stone, or mineral for his own benefit, one-fourth part of such rent, and otherwise three-fourths part thereof.
- (b) In every such lease sufficient provision shall be made to insure such application of the aforesaid portion of the rent by the appointment of trustees, or otherwise as the Court deems expedient.
- Leases to be by deed. (4) Every such lease shall be by deed, and the lessee shall execute a counterpart thereof.
- Condition for re-entry. (5) Every such lease shall contain a condition for re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf.
- Leases may contain special covenants. 50 Vic. No. 20, s. 5. **39.** Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions, and stipulations as the Court deems expedient with reference to the special circumstances of the demise.
- Parts of settled land may be leased. *Ibid.* s. 6. **40.** The power to authorise leases conferred by this part of this Act shall extend to authorise leases either of the whole or any part of the settled land, and may be exercised from time to time.
- Leases may be surrendered and renewed. *Ibid.* s. 7. **41.** Any leases, whether granted in pursuance of this part of this Act or otherwise, may be surrendered, either for the purpose of obtaining a renewal of the same or not; and the power to authorise leases

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leases conferred by this part of this Act shall extend to authorise new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

**42.** The power to authorise leases conferred by this part of this Act shall extend to authorise preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases.

Power to authorise leases to extend to preliminary contracts.

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

50 Vic. No. 20, s. 8.  
Modes in which leases may be authorised.  
*Ibid.* s. 9.

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

What evidence to be produced on an application to authorise leases.  
*Ibid.* s. 10.

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

After approval of a lease Court to direct who shall be the lessor.  
*Ibid.* s. 11.

**46.** (1) Where the Court deems it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or in any other persons, and such powers when exercised by such trustees shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court directs.

Powers of leasing may be vested in trustees.  
*Ibid.* s. 12.

(2) In every such case the Court may impose any conditions as to consents or otherwise on the exercise of such power, and may also authorise the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

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

Minerals may be excepted from leases.  
*Ibid.* s. 15.

*Sales*

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*Sales and dedications.*

Court may authorise sale of settled estates.

50 Vic. No. 20, s. 13.

**48.** (1) The Court may, if it deems it proper and consistent with a due regard for the interest of all parties entitled under the settlement and subject to the provisions and restrictions in this part of this Act contained, from time to time authorise a sale of the whole or any parts of any settled estates.

(2) Every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court.

(3) The Court may authorise any such sale to be conducted out of Court upon such terms and conditions and subject to such restrictions as to the Court may seem fit.

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

*Ibid.* s. 14.

**49.** When any land is sold for building purposes, the Court may allow the whole or any part of the consideration to be a rent issuing out of such land which may be secured and settled in such manner as the Court approves.

Minerals, & c., may be excepted from sales.

*Ibid.* s. 15.

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

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

*Ibid.* s. 16.

**51.** The Court may, if it deems it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this part of this Act contained, from time to time direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not, and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required as by the Court are deemed advisable.

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

*Ibid.* s. 17.

**52.** (1) Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto, respectively be made and executed, and that all or any part of the expenses in relation to such laying out, and making and execution, be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates, or any part thereof, or out of any moneys or investments representing

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representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income.

(2) The Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works out of any such rents, profits, income, or accumulations during such periods of time as to the Court seems advisable.

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

How sales and dedications are to be effected under the direction of the Court.  
50 Vic. No. 20, s. 18.

*Applications to the Court and parties thereto.*

54. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who, but for such assignment, would be entitled to such settled estate for a term of years determinable with any life, or for an estate for any life, or any greater estate may apply to the Court by petition in a summary way to exercise the powers conferred by this part of this Act.

Application by petition to exercise powers conferred by this Act.  
Ibid. s. 19.

55. Subject to the exceptions hereinafter contained every application to the Court must be made with the concurrence or consent of the following parties, namely :---

With whose consent such application to be made.  
Ibid. s. 20.

- (1) Where there is a tenant in tail under the settlement in existence and of full age then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenants or tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail.
- (2) And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

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Court may dispense with consent in respect of certain estates.  
50 Vic. No. 20, s. 21.

**56.** Where an infant is tenant in tail under the settlement, the Court may dispense with the concurrence or consent of all or any of the persons entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant.

Notice to be given to persons who do not concur or consent to the application.  
*Ibid.* s. 22.

**57.** (1) Where, on an application under this part of this Act, the concurrence or consent of any such person as aforesaid has not been obtained notice shall be given to such person in such manner as the Court directs requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court.

(2) Every such notice shall specify to whom and in what manner such notification is to be delivered or left.

(3) In case no notification is delivered or left in accordance with the notice, and within the time thereby limited, the person to or for whom such notice has been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with notice under certain circumstances and may if it think fit refer to Master for report.  
*Ibid.* s. 23.

**58.** (1) Where, on an application under this part of this Act, the concurrence or consent of any such person as aforesaid has not been obtained, and in case such person cannot be found, or in case it is uncertain whether he be living or dead, or in case it appears to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject-matter of the application, then and in any such case the Court may, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person, or on any other ground, by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

(2) In order to ascertain who are the persons having right to assent or dissent, or submit as herein provided, the Court may direct the Master in Equity to make enquiry in that behalf as in the case of suits for partition, and the Master's report shall, if approved by the Court, be conclusive for the purposes of such application, and any person having any interest who is not mentioned in the report, and does not make claim to the Court before the order on such application has been made shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with consent having regard to the number and interests of parties.  
*Ibid.* s. 24.

**59.** An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid has not been obtained or has been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom, or who submit or are to be deemed to submit their rights or interests to be dealt with by

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by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made, and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

**60.** The Court may nevertheless give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought in the opinion of the Court to be excepted.

Petition may be granted without consent, saving rights of non-consenting parties. 50 Vic. No. 20, s. 25.

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

Notice of application to be served on all trustees, &c. *Ibid.* s. 26.

**62.** Notice of any application to the Court under this part of this Act shall, if the Court so directs, but not otherwise, be inserted in such newspapers as the Court directs, and any person, whether interested in the estate or not, may apply to the Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this part of this Act, and the Court is hereby authorised to permit such person to appear and be heard in opposition to or in support of any such application on such terms as to costs or otherwise and in such manner as it thinks fit.

Notice of application to be given in newspapers if Court direct. *Ibid.* s. 27.

*The application and investment of moneys.*

**63.** All money to be received on any sale effected under the authority of this part of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid may, if the Court thinks fit, be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into Court ex parte the applicant in the matter of this part of this Act, and such money shall be invested, deposited, or otherwise applied as the Court shall from time to time direct in some one or more of the following modes, namely—

Payment and application of moneys arising from sales or set aside out of rent, &c. *Ibid.* s. 29.

- (a) In investment in Government securities, or other securities on which trustees are by law authorised to invest trust moneys, or on which the trustees of the settlement are by the settlement authorised so to invest :

Provided that in case of investment in terminable securities provision shall be made by way of sinking fund or otherwise in respect of any premiums or discount so as to secure the full capital for persons having remoter interests.

(b)

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- (b) By deposit at interest in the Colonial Treasury or in any bank as authorised by the present or any future rules of Court.
- (c) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement, or affecting any other hereditaments subject to the same uses or trusts.
- (d) In purchase of the reversion in fee of any part of the settled land being leasehold land for years or life or years determinable on life.
- (e) In purchase of land in fee simple, or of leasehold land held for sixty years or more unexpired at the time of purchase, to be settled in the same manner as the hereditaments in respect of which the money was paid, or as near thereto as the different nature of the property purchased may admit.
- (f) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge.
- (g) 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 part of this Act.
- (h) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Transmission and devolution of capital money.

50 Vic. No. 20, s. 30.

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

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

*Ibid.* s. 31.

**65.** The application of the money in manner aforesaid may, if the Court so directs, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would have been entitled to the possession or the receipt of the rents and profits of the settled estates.

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

*Ibid.* s. 32.

**66.** Until the money can be applied as aforesaid the same shall be invested as the Court directs in some or one of the investments in which cash under the control of the Court is for the time being authorised to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

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

Court may direct application of money in respect of leases or reversions as may appear just.  
50 Vic. No. 20, s. 33.

*Leases by tenants for life.*

**68.** (1) Any of the following persons, that is to say —

(a) A person entitled either in his own right or in right of his wife to the receipt of the rents and profits of any settled estates—

(i) for an estate for any life ; or

(ii) for a term of years determinable with any life or lives ; or

(iii) for any greater estate

(unless the settlement expressly declares that such person may not make such demise) ; and

(b) A person entitled to the possession or to the receipt of the rents and profits of any unsettled estates—

(i) as tenant in tail after possibility of issue extinct ; or

(ii) as tenant by the courtesy ; or

(iii) in right of a wife who is seised in fee,

may, without any application to the Court, demise the same or any part thereof from time to time for any term not exceeding ten years, to take effect in possession at or within one year next after the making thereof.

Leases by tenants for life of settled estates ;  
*Ibid.* s. 39.

(2) Every such demise shall be made by deed, and the best rent that can reasonably be obtained shall be thereby reserved without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion.

Leases to be by deed.

(3) Such demise shall not be made without impeachment of waste, and shall contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor thinks fit, and also a condition of re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf.

Term of lease.

(4) A counterpart of every deed of lease shall be executed by the lessee.

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Against whom such  
leases shall be valid.  
50 Vic. No. 20, s. 40.

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

*Applications, &c., by persons under disability.*

Provisions as to  
infants, lunatics, &c.  
*Ibid.* s. 42.

**70.** (1) All powers given by this part of this Act and all applications to the Court under this part of this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this part of this Act may be given to guardians on behalf of infants, and by or to committees or other persons entrusted with the care, control, and management of their estates on behalf of lunatics, insane or incapable persons or insane patients, and by or to trustees or assignees of the property of bankrupts or insolvents.

(2) In the case of any tenant in tail who is an infant, or lunatic, or an insane or incapable person, or insane patient, no application or consent to, or notification respecting any application may be made or given by any guardian or committee, or other such persons as aforesaid, without the special direction of the Court.

Married women  
applying to the  
Court consenting to  
be examined apart  
from her husband.  
*Ibid.* s. 43.

**71.** (1) Where a married woman applies to the Court or consents to an application to the Court under this part of this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application.

(2) Such examination shall be made whether the hereditaments which are the subject of the application are settled in trust for the separate use of such married woman independently of her husband or not.

(3) No clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it thinks fit, any of the powers given by this part of this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

Examination of  
married women, how  
to be made when  
residing within the  
jurisdiction of the  
Court, and how  
when residing out of  
such jurisdiction.  
*Ibid.* s. 44.

**72.** (1) The examination of such married woman when resident within the jurisdiction shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose, who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same.

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

(3) The appointment of any such person not being a solicitor of the Court shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction.

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

As to application by or consent of infant married women.

50 Vic. No. 20. s. 45.

**74.** Nothing in this part of this Act shall be construed to create any obligation on any person to make or consent to any application to the Court, or to exercise any power.

No obligation to make or consent to application, &c.

*Ibid.* s. 46.

*Miscellaneous provisions.*

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

Evidence of execution of counterpart lease by lessee.

*Ibid.* s. 41.

**76.** The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this part of this Act shall be placed on the settlement, or on any copies thereof, or otherwise recorded in any way it may think proper in all cases where it appears to the Court to be practicable and expedient for preventing fraud or mistake.

Record of the exercise of the powers conferred.

*Ibid.* s. 28.

**77.** (1) The Court may exercise any of the powers conferred on it by this part of this Act whether the Court has already exercised any of such powers in respect of the same property or not.

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

*Ibid.* s. 34.

(2) The powers conferred on the Court by this part of this Act may be exercised if the Court thinks fit, notwithstanding any express declaration is contained in the settlement that they should not be exercised.

(3) If in any settlement a provision is inserted purporting or attempting by way of direction, declaration, or otherwise to prevent or forbid the exercise by the Court of any of such powers, or attempting or tending, or intended by a limitation gift, or disposition over of settled land, or by a limitation gift or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever to prohibit or prevent any person entitled under this part of this Act to apply to the Court to exercise such powers from so applying, or to induce such persons to abstain from so applying that provision, so far as it purports or attempts, or tends, or is intended to have, or would or might have the operation aforesaid, shall be deemed to be void.

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(4) An estate or interest limited to continue so long only as a person abstains from applying to the Court to exercise any of such powers, or so long only as any of such powers shall remain unexercised, shall be, and take effect as an estate, or interest to continue for the period for which it would continue if that person were to abstain from so applying, or if any such power were not exercised discharged from liability to determination or cesser by or on such persons so applying, or by or on any such power being exercised.

Court not to authorise any act which could not have been authorised by the settlor.  
50 Vic. No. 20, s. 35.

**78.** Nothing in this part of this Act shall be construed to empower the Court to authorise any lease, sale, or other act beyond the extent to which, in the opinion of the Court, the same might have been authorised in and by the settlement by the settlor or settlors.

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

*Ibid.* s. 36.

**79.** After the completion of any lease or sale or other act under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorise the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

Costs.

*Ibid.* s. 37.

**80.** (1) The Court may order that all or any costs or expenses of all or any parties of and incident to any application under this part of this Act shall be a charge on the hereditaments which is the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations, or on any capital money arising under this part of this Act, or on any securities on which an investment of any such money is made.

(2) The Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of any such hereditaments, or paid out of the rents and profits thereof, or out of any securities taken under this part of this Act or the income thereof, such costs and expenses to be taxed as the Court directs.

Rules and orders.

*Ibid.* s. 38.

**81.** (1) The Judges of the Supreme Court, or any three of them, may make general rules and orders for carrying into effect the purposes of this part of this Act, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters.

(2) All such rules and orders shall be laid before each House of Parliament within fourteen days after the making thereof if Parliament is then sitting, or if not within fourteen days after the commencement of the then next ensuing session.

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## PART V.

*Renewable leaseholds of persons under disability.*

**82.** Where an infant or married woman is entitled to a lease made or granted for a life or for any term of years, either absolute or determinable on a death or otherwise, such infant or married woman, or the guardian of such infant, or some other person on behalf of such infant or married woman, may apply to the Supreme Court in its equitable jurisdiction by motion or summons, and by the order and direction of the said Court such infant or married woman or guardian, or any person appointed in the place of such infant or married woman by the said Court, may be enabled from time to time by deed to surrender such lease, and accept and take in the place and for the benefit of such infant or married woman a new lease of the premises in such lease surrendered as aforesaid for and during such number of lives, or for such term of years either absolute or determinable as aforesaid as was mentioned in the surrendered lease, or otherwise as the said Court directs.

Infant's or married woman's leaseholds may be surrendered and renewed by order of the Court.  
11 G. IV and 1 Wm. IV, c. 65, s. 12.

**83.** (1) Every sum of money and other consideration paid by any guardian, trustee, or other person as or in the nature of a fine, premium, or income, for the renewal of such lease, and all reasonable charges incident thereto shall be paid out of the estate or effects of the infant for whose benefit the lease is renewed, or shall be a charge upon the leasehold premises, together with interest for the same as the said Court directs.

Charges attending renewal to be charged on estates as the Court directs.  
*Ibid.* s. 14.

(2) If the fine or consideration of a lease made upon a surrender by a married woman, and the reasonable charges are not otherwise secured, the same, together with interest, shall be a charge upon such leasehold premises for the benefit of the person who advances the same.

**84.** Every lease so renewed shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devices, and conditions, as the lease surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

New leases shall be to the same uses.  
*Ibid.* s. 15.

**85.** Where any infant or married woman might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life of any person or for any term of years absolute or determinable on a death, such infant, or his guardian in the name of such infant, or such married woman, may by the direction of the Supreme Court in its equitable jurisdiction, to be signified by an order to be made in a summary way upon the petition of such infant, or his guardian, or of such married woman, or of any person entitled to such renewal, from time to time accept a surrender of such lease, and make and execute a new lease of the premises comprised

Infants empowered to grant renewals of leases.  
*Ibid.* s. 16.

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in such lease for and during such number of lives, or for such term of years determinable upon such number of lives, or for such term of years absolute, as was mentioned in the lease so surrendered or otherwise as the Court by such order directs.

If persons bound to renew are out of the jurisdiction of the Court, the renewals may be made by a person appointed by the Court of Equity in the name of the person who ought to have renewed.

11 G. IV and 1 Wm. IV, c. 65, s. 12.

**86.** (1) Where any person who, in pursuance of any covenant or agreement in writing, might, if within the jurisdiction and amenable to the process of the Supreme Court, be compelled to execute any lease by way of renewal, is not within the jurisdiction or not amenable to the process of the said Court, the said Court in its equitable jurisdiction may, by an order to be made upon the petition of any of the persons entitled to such renewal (whether such person be or be not under any disability), direct such person as the said Court thinks proper to appoint for that purpose, to accept a surrender of the subsisting lease, and make and execute a new lease in the name of the person who ought to have renewed the same.

(2) Such deed, executed by the person appointed as aforesaid, shall be as valid as if the person in whose name the same is made had executed the same, and had been alive and not under any disability.

(3) In every such case the said Court may, if under the circumstances it seems requisite, direct a suit to be instituted to establish the right of the party seeking the renewal, and not make the order for such new lease unless by the decree made in such cause, or until after such decree has been made.

Fines to be paid before renewals executed.

*Ibid.* s. 20.

**87.** (1) No renewed lease shall be executed by virtue of this part of this Act, in pursuance of any covenant or agreement, unless the fine (if any) or such other sum (if any) as ought to be paid on such renewal, and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid and performed.

(2) Counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee.

Premiums, how to be paid.

*Ibid.* s. 21.

**88.** All fines, premiums, and sums of money had, received, or paid for, or on account of, the renewal of any lease, after deduction of all necessary incidental charges and expenses, shall be paid in the manner following:—

- (a) If the renewal is made by, or in the name of an infant, to his guardian, to be applied and disposed of for the benefit of the infant as the said Court directs.
- (b) If the renewal is made by a married woman, to such person or in such manner as the said Court directs for her benefit.
- (c) If the renewal is made in the name of a person out of the jurisdiction or not amenable as aforesaid, to such person, and in such manner, or to such account in court as the said Court directs.

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89. Every surrender, lease, or other disposition granted, accepted, executed, or made by virtue of this part of this Act shall be as valid to all intents and purposes as if the person by whom, or in whose place, or on whose behalf the same respectively is granted, accepted, executed, or made had been of full age and unmarried, and had granted, accepted, executed, and made the same.

Surrender and leases deemed valid.  
11 G. IV and 1 Wm. IV, c. 65, s. 12.

90. The said Court may order the costs and expenses of and relating to the applications, orders, directions, and transfers made in pursuance of this part of this Act, or any of them, to be paid and raised out of or from the lands or the rents in respect of which the same respectively are made, in such manner as the said Court thinks proper.

Costs.  
Ibid. s. 35.

## PART VI.

## MORTGAGES.

*Implied powers of mortgagees.*

91. Where any principal money is secured or charged by deed on any hereditaments of any tenure or on any interest therein, the person to whom such money is for the time being payable, his executors, administrators, and assigns, shall at any time after the expiration of one year from the time when such principal money has become payable according to the terms of the deed, or after any interest on such principal money has been in arrear for six months, or after any omission to pay any premium on any insurance, which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

Powers incident to mortgages.  
26 Vic. No. 12, s. 47.

- (a) A power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property from time to time in like manner.
- (b) A power to insure and keep insured from loss or damage by fire, the whole or any part of the property (whether affixed to the freehold or not) which is in its nature insurable, and to add the premiums paid for any such insurance to the principal money secured at the same rate of interest.
- (c) A power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

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Receipts for purchase money sufficient discharge.  
26 Vic. No. 12, s. 48.

**92.** Receipts for purchase money given by the person exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase money.

Notice to be given before sale, but purchaser relieved from inquiry as to circumstances of sale.  
*Ibid.* s. 49.

**93.** (1) No such sale as aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge by serving such notice personally upon such person, or by leaving the same at his usual or last known place of abode or business.

(2) When a sale has been effected in professed exercise of the powers hereby conferred the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorise the exercise of such power, or that no such notice as aforesaid had been given, but any person damnified by any such unauthorised exercise of such power shall have his remedy in damages against the person selling.

Application of purchase money  
*Ibid.* s. 50.

**94.** The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

- (a) First in payment of all the expenses incident to the sale or incurred in any attempted sale.
- (b) Secondly in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made.
- (c) Thirdly in discharge of all the principal moneys then due in respect of such charge.
- (d) Fourthly in payment of the residue of such money to the person entitled to the property, subject to the charge, his heirs, executors, administrators, or assigns, as the case may be.

Conveyance to the purchaser.  
*Ibid.* s. 51.

**95.** The person exercising any power of sale hereby conferred shall have power to convey or assign by deed to and vest in the purchaser the property sold for all the estate and interest therein which the person who created the charge had power to dispose of.

Owner of charge may call for title deeds and conveyance of legal estate.  
*Ibid.* s. 52.

**96.** (1) At any time after the power of sale hereby conferred has become exercisable the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his possession or power relating to the same property or to the title thereto which he would have been entitled to demand and recover if the same property had been conveyed, appointed, surrendered, or assigned to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of.

(2) Where the legal estate is outstanding in a trustee the person entitled to a charge created by a person equitably entitled or any purchaser from such person shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

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**97.** Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time if any person has been named in the deed of charge for that purpose appoint any such person to be receiver, or if no person be so named then may by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition then may in writing appoint as receiver any person he may think fit.

Appointment of receiver.  
26 Vic. No. 12, s. 53.

**98.** Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for the acts or defaults of such receiver unless otherwise provided for in the charge.

Receiver deemed to be the agent of the mortgagor.  
*Ibid.* s. 54.

**99.** Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver, by action, suit, distress, or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

Powers of receiver.  
*Ibid.* s. 55.

**100.** Every receiver appointed as aforesaid may be removed by the like authority or on the like requisition as hereinbefore provided with respect to the original appointment of a receiver, and a new receiver may be appointed from time to time.

Receiver may be removed.  
*Ibid.* s. 56.

**101.** Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding eight per centum on the gross amount of all money received, as is specified in his appointment, and if no amount is so specified then four per centum on such gross amount.

Commission to receiver.  
*Ibid.* s. 57.

**102.** Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him the whole or any part of the property included in the charge (whether affixed to the freehold or not) which is in its nature insurable.

Receiver to insure required.  
*Ibid.* s. 58.

**103.** Every receiver appointed as aforesaid shall pay and apply all the money received by him—

Application of money received by him.  
*Ibid.* s. 59.

- (a) First in discharge of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any ;
- (b) Secondly in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof

(c)

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(c) Thirdly in payment of all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.

Interpretation.  
26 Vic. No. 12,  
ss. 60, 69.

**104.** (1) The foregoing powers and provisions in this part of this Act relate only to mortgages or charges made as well before as after the passing of this Act to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

*Ibid.* s. 67.

(2) None of the powers conferred by the preceding sections of this part of this Act shall be exercisable if it is declared in the mortgage that they shall not be exercisable, and where there is no such declaration but the mortgage contains any variation or limitation of the said powers, or any of them, then such power shall only be exercisable subject to such variation or limitation.

*Ibid.* s. 68.

(3) The powers conferred by the preceding sections of this part of this Act shall have the same force and effect as express powers to the same effect in the mortgage would have had and no more.

*(b) The reconveyance and discharge of mortgages.*

Acknowledgments  
endorsed on mort-  
gages when  
registered to re-vest  
the legal estate.  
57 Vic. No. 4, ss. 2, 3.

**105.** (1) Whenever a person entitled to recover or receive payment of money secured by mortgage of real or leasehold property (not subject to the provisions of the Real Property Act or any Act amending or consolidating the same) signs personally, or by attorney, any acknowledgment endorsed on such mortgage to the effect that the mortgage has been satisfied, such acknowledgment shall upon registration in the office of the Registrar-General, but as from the date of such acknowledgment, operate as a discharge of the mortgage, and without any further instrument or assurance vest the estate in the property under such mortgage in the person for the time being entitled to the equity of redemption to the uses and for the estates and interests, and subject to the powers and trusts to, for, and subject to which the equity of redemption at the date of such acknowledgment stood limited or subject:

Provided that in case there is any subsequent subsisting mortgage on the property at the date of such acknowledgment, the legal estate in the property under the discharged mortgage shall vest in the person in whom that subsequent mortgage is vested, or in the event of there being more than one such mortgage then in the person who has the prior right to call for an assurance of such legal estate.

To apply to  
acknowledgments  
made before as well  
as after passing  
of Act.

(2) This section shall apply to acknowledgments signed as aforesaid, before as well as to those signed after, the passing of this Act: Provided that in the case of acknowledgments signed previously to the thirteenth day of December, one thousand eight hundred and ninety-three, nothing contained in this section shall invalidate or affect any estate, right, or interest which has been acquired subsequent to such signing, or any other act or thing that would have been valid if this section had not been passed.

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**106.** Where an action of ejectment is brought by any mortgagee, his heirs, executors, administrators, or assignees for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit is then pending in equity for or touching the foreclosing or redeeming of such mortgaged premises if the person having right to redeem, and who appears and becomes defendant in such action, pays to such mortgagee at any time pending such action, or in case of his refusal brings into Court all the principal, moneys, and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the Court or the proper officer in that behalf), the moneys so paid to such mortgagee or brought into Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall discharge every such mortgagor or defendant of and from the same accordingly, and shall, by rule of the same Court, compel such mortgagee at the costs and charges of such mortgagor to assign, surrender, or reconvey such mortgaged premises and such estate and interest as such mortgagee has therein, and deliver up all deeds, evidences, and writings in his custody relating to the title of such mortgaged premises unto such mortgagor who has paid or brought such moneys into Court, his heirs, executors, or administrators, or to such other person or persons as he or they shall for that purpose nominate or appoint.

In ejectment by mortgagee the mortgagor's rendering the principal, interest, and costs in Court shall be deemed a full satisfaction, and the Court may compel the mortgagee to reconvey.  
17 Vic. No. 21, s. 169.

**107.** (1) Nothing in the preceding section contained shall extend to any case where—

Not to extend to cases where the right of redemption is controverted or the money due not adjusted.  
*Ibid.* s. 170.

- (a) the person against whom the redemption is prayed shall (by writing under his hand, or the hand of his agent or solicitor, to be delivered before the money is brought into Court to the solicitor for the other side) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or are admitted on the other side; or

- (b) the right of redemption to the mortgaged lands and premises in question in any cause or suit is controverted or questioned by or between different defendants in the same cause or suit.

(2) Nothing in the preceding section contained shall prejudice any subsequent mortgage or subsequent encumbrance.

Or to prejudice any subsequent mortgage.

**108.** (1) When any person entitled to receive payment of the whole or part of any debt secured by mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the Supreme Court in its equitable jurisdiction, upon petition by the person entitled to redeem the mortgaged premises, may order the amount

Facilitation of redemption in case of absent or unknown mortgagees.  
16 Vic. No. 19, ss. 53, 54.  
22 Vic. No. 1, s. 24.

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of such debt or of such part thereof to be ascertained in such manner as the said Court thinks fit, and direct the amount so ascertained to be paid into Court.

(2) A certificate of the Master in Equity that such payment was allowed and has been made may be registered in the office of the Registrar-General, and thereupon the amount so paid into court shall be a discharge of the mortgage debt, or such part thereof, to the extent of the money paid in, but any amount which is eventually shown by the person entitled to the mortgage debt, or such part thereof, to have been in fact due or payable over and above the amount so paid into court shall continue to be a debt due upon the mortgage.

(3) The said Court shall order the amount so paid into court to be paid to the person entitled, upon the petition of such person, but no such amount shall be so paid until the Master in Equity is satisfied that the deed or instrument of mortgage, and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same, or in connection therewith, have been delivered up to the person by whom the amount was so paid into court, or his executors, administrators, or assigns.

(4) Where the amount of principal and interest due on any mortgage is paid into court under the foregoing provisions, and is afterwards paid under the order of the said Court to the person mentioned in such order, such payment into court shall operate as a reconveyance of the land comprised in such mortgage to the person who at the time of such payment is entitled to the equity of redemption thereof:

Provided that such order be registered in the office of the Registrar-General before such payment into court shall take effect.

*(c) Mortgaged lands of deceased persons.*

Mortgaged land primarily liable for mortgage debts of deceased person.  
19 Vic. No. 1, s. 1.

**109.** (1) Where any person hereafter dies seised of or entitled to any estate or interest in any land or other hereditaments which, at the time of his death, are charged with the payment of any sum of money by way of mortgage, and such person has not by his will or deed or other document signified any contrary or other intention, the devisee to whom such land or hereditaments are devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of the mortgage debts with which the same are charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2)

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(2) Nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise.

(3) Nothing herein contained shall affect the right of any person claiming under or by virtue of any will, deed, or document made before the first day of January, one thousand eight hundred and fifty-six.

*(d) Estate of mortgagors in mortgaged premises.*

**110.** (1) All mortgages of real or personal estate shall be deemed at law as now in equity pledges only of the property thereby mortgaged, and nothing in any such mortgage shall prevent the title of any mortgagor or person claiming and being in possession from being deemed a good title at law, subject to such pledge as against all persons other than the mortgagee and those claiming under him.

Mortgages to be pledges at law.  
26 Vic. No. 12, s. 25.

(2) Nothing in this section shall interfere with or prejudice the legal rights and remedies of mortgagees and those claiming under them for the preservation and enforcement of their securities.

PART VII.

*Covenants to insure.*

**111.** The Supreme Court in its equitable jurisdiction may, upon such terms as may seem fit, relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire where no loss or damage by fire has happened, and the breach has in the opinion of the Court been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure.

Relief against forfeiture for breach of covenant to insure in certain cases  
*Ibid.* s. 5.

**112.** The said Court, where relief is so granted, shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise.

Record of relief granted.  
*Ibid.* s. 6.

**113.** The said Court shall not have power under this Act so to relieve the same person more than once in respect of the same covenant or condition, nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought has been already waived out of Court in favour of the person seeking the relief.

Court not to relieve more than once in respect of same covenant, &c.  
*Ibid.* s. 7.

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Lessor to have benefit of an informal insurance.  
26 Vic. No. 12, s. 8.

**114.** The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance, relating to the buildings or other property covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him, but not affected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.  
*Ibid.* s. 9.

**115.** (1) Where, on the bona fide purchase after the passing of this Act of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser, or any person claiming under him, shall not be subject to any liability by way of forfeiture or damages or otherwise in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase.

(2) This provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

Preceding provisions to apply to leases for a term of years absolute, &c.  
*Ibid.* s. 10.

**116.** The provisions contained in this part of this Act are applicable to leases for a term of years absolute or determinable on a life or otherwise, and also to a lease for the life of the lessee or the life of any other person.

## PART VIII.

*Miscellaneous provisions.*

Punishment of vendor, &c., for fraudulent concealment of deeds, &c., or falsifying pedigree.

**117.** (1) Any seller or mortgagor of land or of any chattels, real or personal, or choses in action, conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagor who, after the passing of this Act, conceals any settlement, deed, will, or other instrument material to the title or any encumbrance from the purchaser or mortgagee, or falsifies any pedigree upon which the title does or may depend in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud, shall be guilty of a misdemeanour, and being found guilty shall be liable at the discretion of the said Court, to suffer such punishment by fine or imprisonment

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imprisonment for any time not exceeding two years with or without hard labour, or by both as the said Court awards, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee or those claiming under the purchaser or mortgagee for any loss sustained by them or either or any of them in consequence of the settlement, deed, will, or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree.

(2) In estimating such damages where the estate is recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land.

(3) No prosecution for any offence included in this section against any seller or mortgagor, or any solicitor or agent, shall be commenced without the sanction of Her Majesty's Attorney-General or, in case that the office be vacant, of Her Majesty's Solicitor-General.

(4) No such sanction shall be given without previous notice of the application for leave to prosecute to the person intended to be prosecuted in such form as the Attorney-General or the Solicitor-General (as the case may be) directs.

**118.** A covenant or undertaking, whether now or hereafter entered into, to produce to any purchaser, lessee, or mortgagee of land, or his assigns, any deed of or relating to such land, shall be satisfied by a deposit of the deed permanently in the office of the Registrar-General, who shall give a receipt for and keep in his office a list of all deeds so deposited, and shall permit any person, on payment of the proper fees, to inspect and obtain copies of every such deed.

Covenants to produce deeds.  
22 Vic. No. 1, s. 25

**119.** In all cases where two or more persons have died under circumstances rendering it uncertain which of them survived, the deaths shall for all purposes affecting the title to land be presumed to have taken place in order of seniority, and the younger be deemed to have survived the elder.

Presumption of survivorship.  
*Ibid.* s. 26.

**120.** The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

Release of part of land from rent charge not to extinguish whole charge.  
26 Vic. No. 12, s. 11.

## Act No. 17, 1898.

*Conveyancing and Law of Property.*

## SCHEDULES.

## SCHEDULE I.

Date of Act.	Name of Act.	Extent of Repeal.
5 Wm. IV No. 8.	Adoption of English Statutes ..	So much of the Act as adopted the Act 11 G. IV and 1 Wm. IV, c. 65, ss. 1-31, 33, 34, 36-42.
5 Wm. IV No. 21	Claims to Grants .. .. .	Whole Act.
6 Vic. No. 11 ..	Claims to Grants Amendment ..	Whole Act.
7 Vic. No. 16 ..	Registration of Deeds .. .. .	Sections 16, 17, 23, 25, 26, 31, Schedule A, and so much of sections 18 and 20 and of Schedule B as relates to the acknowledgment of deeds.
13 Vic. No. 45..	Registration of Deeds Amendment	Section 8.
16 Vic. No. 19..	Trustees .. .. .	Sections 53, 54.
18 Vic. No. 11..	Claims to Grants Amendment ..	Whole Act.
17 Vic. No. 21..	Common Law Procedure .. .. .	Sections 169, 170.
19 Vic. No. 1 ..	Deceased Persons' Estates (Locke King's Act).	Whole Act.
20 Vic. No. 27..	Transfer of Registry .. .. .	Section 4.
22 Vic. No. 1 ..	Titles to Land .. .. .	Sections 1, 4-16 (both inclusive), 19-21 (both inclusive), 24-27 (both inclusive).
24 Vic. No. 3 ..	Titles to Land Amendment ..	Whole Act.
25 Vic. No. 12..	Trust Property .. .. .	Sections 5-13 (both inclusive), 19, 22, 23, 25, 47-60 (both inclusive).
48 Vic. No. 23..	Purchase of Reversions .. .. .	Whole Act.
50 Vic. No. 20..	Settled Estates .. .. .	Whole Act.
55 Vic. No. 8 ..	Voluntary Conveyances Amend- ment.	Whole Act.
57 Vic. No. 4 ..	Mortgages Extinguishment ..	Whole Act.

## SCHEDULE II.

*Commissioner's Oath.*

I, \_\_\_\_\_ do solemnly swear that faithfully, diligently, and impartially, to the best of my ability, I will execute the duties of a Commissioner appointed under and by virtue of Part II of The Conveyancing and Law of Property Act, 1898, and that I will not myself, directly or indirectly, take or receive, or knowingly permit any other to take or receive, any fee or reward for anything done or performed under and by virtue of any of the provisions of the said part of the said Act other than and except such as is authorised by the said part of the said Act.

So help me, God.

A.B.

Sworn before me this  
day of \_\_\_\_\_ 18 \_\_\_\_ .  
Judge of the Supreme Court.

SCHEDULE

*Conveyancing and Law of Property.*

SCHEDULE III.

*Secretary's Oath.*

I, do solemnly swear that faithfully, diligently, and impartially, to the best of my ability, I will execute the duties of Secretary to the Commissioners appointed under and by virtue of Part II of The Conveyancing and Law of Property Act, 1898, and that I will not myself, directly or indirectly, take or receive, or knowingly permit any other to take or receive, any fee or reward for anything done or performed under and by virtue of any of the provisions of the said part of the said Act, and that I will duly account for and pay over to the Colonial Treasurer on the last day of every month all fees previously received by me as in the said part of the said Act directed.

So help me, God.

C.D.

Sworn before me this

day of 18 .

Judge of the Supreme Court.

SCHEDULE IV.

*Fees to be received by the Secretary to the Commissioners.*

	£	s.	d.
For every summons for witnesses, each summons containing four names by the party requiring the same .. .. .	0	2	6
For every witness examined or document or voucher produced in evidence by the party on whose behalf examined or produced .. .. .	0	1	0
For taking down the examination of any witness .. .. .	0	1	0
For every one hundred words after the first hundred additional .. .. .	0	1	0
For every certificate granted by Commissioners of default, refusal to answer, or wilful withdrawing of any witness .. .. .	1	0	0
For every final report, to be paid by the party or parties in whose favour report made .. .. .	8	6	0

SCHEDULE V.

THIS is to certify that A.B., the wife of the within named W.B., came before me, A.B., a Judge of the Supreme Court of New South Wales—(or before me, C.D., Registrar-General of the Colony of New South Wales)—(or before me, E.F., a commissioner appointed by the Supreme Court of New South Wales for taking affidavits not resident within five miles of Sydney, and not being the person employed to prepare the within deed, not being a party thereto) (or as the case may be)—and she being by me examined apart from her said husband, acknowledged that the within instrument was executed by her, and that she was acquainted with and understood the nature and effect thereof, and she declared that she had executed the same freely and voluntarily without menace, force, or coercion, either on the part of her husband or any other person.

Witness my hand and seal at the day of 18 .

C.D. (L.S.)

Judge, Registrar, or Commissioner, as the case may be.

N.B.—Where the acknowledgment is not by a married woman, it will extend only to the fact of execution, and that the party knew the nature and effect of the instrument, and the above form must be altered accordingly, and where the acknowledgment is taken before a Judge, the Registrar, or a commissioner, or other person, the above form must be adapted accordingly.

SCHEDULE

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*Liquor.*

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## SCHEDULE VI.

*Proclamation of the Governor of the sixth day of March, one thousand eight hundred and nineteen.*

WHEREAS by the law of England every wife is entitled as of Common right to Dower of all Lands and Tenements of which her husband was at any time during the marriage seized: And whereas writs out of the King's Court in England do not run into this Territory or its Dependencies whereby Fines and Recoveries cannot be here levied and offered in Bar of such Dower: Be it therefore and it is hereby ordered, declared, and directed by the Authority aforesaid that if any married woman be minded to alien her Jointure Dower or other Estate of Freehold or Inheritance in this Territory and its Dependencies, whether it be Joint or in Severalty, she must convey the same by writing under her hand and seal and acknowledge it before the Judge Advocate of this Territory or the Deputy Judge Advocate of Van Diemen's Land, who is to acquaint her what she is to convey by that Writing and for what estate; and he shall demand of her in private whether she is willing to do the same and doth it freely and voluntarily and not for fear or by reason of any Threats or Menaces; and if she then confess that she doth it freely and un-compelled by fear or otherwise, then her Acknowledgment of the said writing shall be received, and the Day of such Acknowledgment with the Judge Advocate's or Deputy Judge Advocate's name, before whom such Acknowledgment was taken, shall be endorsed and subscribed; and thenceforth such writing shall become valid and firm against her, and all that claim the Lands, Tenements, or Hereditaments therein mentioned to be granted for or under her or in Right of her: Provided always, that if the wife shall reside in England, Scotland, or Ireland, or any other of His Majesty's Dominions the said Conveyance may be acknowledged before, and the aforesaid Examination made, indorsed, and subscribed by a Judge of any Court of Law or Equity where the said wife resides.

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