

Conveyancing and Law of Property Act 1898 No 17

[1898-17]



New South Wales

Status Information

Currency of version

Current version for 7 July 1999 to date (accessed 27 November 2024 at 21:08)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Responsible Minister

- Minister for Customer Service and Digital Government

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 July 1999

Conveyancing and Law of Property Act 1898 No 17



New South Wales

Contents

Long title	6
Part 1A Preliminary	6
1 Name of Act.....	6
2 First Schedule	6
2A Definition.....	6
Part 1 Titles to Crown grants	6
3 Certain conveyances to pass the fee to purchaser notwithstanding the omission of words of inheritance	6
4 For remedy of insufficient descriptions in grants	7
5 Proviso to protect subsequent grants and adverse holders.....	7
6 New description to be advertised etc	7
7 The like provisions in case of error in names.....	7
8 Proof of instrument.....	8
9 Cases may be referred to Commissioners for claims to grants.....	8
10 Conditions in grants.....	8
11 Protection to bona fide purchasers against persons claiming against grantees by matter of prior date	8
12 Protection to bona fide purchaser from grantee in possession	9
13 The like in certain other cases.....	9
14 Proclamations promising Crown grants	9

15 Lands of debtors or accountants to the Crown	9
Part 2 Claims to grants of land	10
16 Appointment etc of Commissioners for claims to Crown grants	10
17 Appointment of Secretary	10
18 Governor as often as he shall see fit to refer all claims to grants of land to Commissioners.....	11
19 Commissioners to be guided by the real justice and good conscience of the case	11
20 Meetings of the Commissioners.....	11
21 Power of Commissioners to summon witnesses	11
22 Offences	12
23 Effect of mortgages and judgments prior to actual grant.....	12
24 Remuneration of Commissioners and Secretary	12
25 Fees to be taken by Secretary to Commissioners	13
Part 3 The conveyance and assignment of property	13
26 Deeds executed by married woman under proclamation of 6 March 1819 valid	13
27 Acknowledgment of deeds where marksman is a party	15
28 Fees payable	15
29, 30 (Repealed)	15
31 Registration of deed of feoffment equivalent to livery of seisin	15
32 Release equivalent to lease and release	16
33 Provision for cases of future and contingent uses	16
34-36 (Repealed)	16
Part 4 Leases and sales of settled estates and estates of minors.....	16
37 Interpretation	16
38 The Court's power of making leases.....	17
39 Leases may contain special covenants.....	18
40 Parts of settled land may be leased.....	18
41 Leases may be surrendered and renewed	18
42 Power to authorise leases to extend to preliminary contracts.....	18
43 Modes in which leases may be authorised	18
44 What evidence to be produced on an application to authorise leases.....	19
45 After approval of a lease Court to direct who shall be the lessor.....	19
46 Powers of leasing may be vested in trustees.....	19

47 Minerals may be excepted from leases	19
48 Court may authorise sale of settled estates	19
49 Consideration for land sold for building may be a fee-farm rent	20
50 Minerals etc may be excepted from sales	20
51 Court may authorise dedication of any part of settled land for streets, roads, and other works	20
52 As to laying out and making and executing and maintaining streets, roads, and other works and expenses thereof	20
53 How sales and dedications are to be effected under the direction of the Court	21
54 Application to exercise powers conferred by this Act	21
55 With whose consent such application to be made	21
56 (Repealed)	21
57 Notice to be given to persons who do not concur or consent to the application	21
58 Court may dispense with notice under certain circumstances	22
59 Court may dispense with consent having regard to the number and interests of parties	22
60 Application may be granted, without consent, saving rights of non-consenting parties	23
61 Notice of application to be served on all trustees etc	23
62 Notice of application to be given in newspapers if Court directs	23
63 Payment and application of moneys arising from sales or set aside out of rent	23
64 Transmission and devolution of capital money	24
65 Trustees may apply moneys in certain cases without application to Court	24
66 Until money can be applied to be invested and dividends to be paid to parties entitled	24
67 Court may direct application of money in respect of leases or reversions as may appear just	24
68 Leases by tenants for life of settled estates	25
69 Against whom such leases shall be valid	26
70 Minors, mentally ill persons etc	26
71 Powers of Court in certain circumstances	26
72 (Repealed)	26
73 Application by or consent of married woman	26
74 No obligation to make or consent to application etc	26
75 Evidence of execution of counterpart lease by lessee	26
76 Record of the exercise of the powers conferred	27
77 Court may exercise powers repeatedly and may exercise them notwithstanding any declaration to the contrary by the settlors	27

78 Court not to authorise any act which could not have been authorised by the settlor	27
79 Acts of Court in professed pursuance of this Act not to be invalidated	27
80 Costs	28
81 Rules of Court	28
Part 5 Renewable leaseholds	28
82 Surrender and renewal of leasehold of minor	28
83 Charges attending renewal to be charged on estates as the Court directs	28
84 New leases shall be to the same uses	29
85 Renewal of lease for minor	29
86 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 in the name of the person who ought to have renewed	29
87 Fines to be paid before renewals executed.....	30
88 Premiums, how to be paid	30
89 Surrender and leases deemed valid	30
90 Costs	30
Part 6 Mortgages.....	30
91-110 (Repealed)	30
Parts 7, 8 (Repealed)	30
Schedule 1.....	31
Schedule 2 Commissioner’s Oath	31
Schedule 3 Secretary’s Oath	32
Schedule 4 Fees to be received by the Secretary to the Commissioners	32
Schedule 5.....	32
Schedule 6 Proclamation of the Governor of the sixth day of March, one thousand eight hundred and nineteen	33

Conveyancing and Law of Property Act 1898 No 17



New South Wales

An Act to consolidate the Statutes relating to Conveyances, Assignments, and Titles to Lands.

Part 1A Preliminary

1 Name of Act

- (1) This Act may be cited as the *Conveyancing and Law of Property Act 1898*.
- (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*.

2 First Schedule

- (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.

2A Definition

In this Act, unless the context or subject matter otherwise indicates or requires:

minor means a person under the age of eighteen years.

Part 1 Titles to Crown grants

3 Certain conveyances to pass the fee to purchaser notwithstanding the omission of words of inheritance

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:

Provided that this section shall not prejudice the title of any person in possession of the land on the thirtieth day of June, one thousand eight hundred and fifty-eight, and claiming under such vendor.

4 For remedy of insufficient descriptions in grants

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.

5 Proviso to protect subsequent grants and adverse holders

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.

6 New description to be advertised etc

- (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.
- (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 provisions in case of error in names

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 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.

8 Proof of instrument

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 proceedings for the party adducing any such instrument to prove its enrolment without showing compliance with any other provision of the preceding section.

9 Cases may be referred to Commissioners for claims to grants

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 2, 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 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 2.

10 Conditions in grants

- (1) No title to land shall be held bad either at law or in equity by reason of the breach or non-performance of any condition imposed by the Crown and contained in a Crown grant of the land, an instrument of transfer of the land or a folio of the Register kept under the *Real Property Act 1900*, created in respect of the 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 or the title to the land 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.

11 Protection to bona fide purchasers against persons claiming against grantees by matter of prior date

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.

12 Protection to bona fide purchaser from grantee in possession

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.

13 The like in certain other cases

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.

14 Proclamations promising Crown grants

- (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.
- (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.

15 Lands of debtors or accountants to the Crown

- (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.

- (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 2 Claims to grants of land

16 Appointment etc of Commissioners for claims to Crown grants

- (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.
- (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, 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.
- (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, 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.

17 Appointment of Secretary

- (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, 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.

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

- (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.

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

- (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) 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 Meetings of the Commissioners

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.

21 Power of Commissioners to summon witnesses

- (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 attend 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.

- (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.
- (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.

22 Offences

Part 3 of the [Royal Commissions Act 1923](#) has effect as if the Commissioners were a commission within the meaning of that Act.

23 Effect of mortgages and judgments prior to actual grant

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 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 Remuneration of Commissioners and Secretary

- (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 upon any claim to a grant of land, the sum of four dollars twenty cents.
- (2) The Secretary to the Commissioners shall receive, for every case referred to the Commissioners, the sum of four dollars.
- (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 Fees to be taken by Secretary to Commissioners

- (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.
- (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 3 The conveyance and assignment of property

26 Deeds executed by married woman under proclamation of 6 March 1819 valid

- (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), 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.
- (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.
- (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:

(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

(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

(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.

- (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.
- (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, and shall be deemed and taken as sufficient proof of every such acknowledgment or confession as aforesaid.
- (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.

- (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 Acknowledgment of deeds where marksman is a party

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.

28 Fees payable

- (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 one dollar.
- (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 by him as aforesaid of every acknowledgment under this Act the sum of fifty cents, which shall be paid in addition to the sum of one dollar payable to the Registrar-General or his deputy as aforesaid.

29, 30 (Repealed)

31 Registration of deed of feoffment equivalent to livery of seisin

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.

32 Release equivalent to lease and release

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.

33 Provision for cases of future and contingent uses

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.

34-36 (Repealed)

Part 4 Leases and sales of settled estates and estates of minors

37 Interpretation

- (1) The word **settlement** as used in this part 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 shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments which are the subject of a settlement.
- (3) For the purposes of this part 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 settled land.
- (6) In determining what are settled estates within the meaning of this part 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 a minor, such land or leasehold interest shall be deemed to be settled estate within the meaning of this part.
- (8) The expression **The Court** in this part shall mean the Supreme Court.
- (9) For the purposes of this part 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.

38 The Court's power of making leases

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 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:

- (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 lease ten years, and for a mining lease forty years, and for a repairing lease fifteen years, and for a building lease thirty years.
- (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.

(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-fourth parts 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.

(4) Every such lease shall be by deed, and the lessee shall execute a counterpart thereof.

(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.

39 Leases may contain special covenants

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.

40 Parts of settled land may be leased

The power to authorise leases conferred by this part shall extend to authorise leases either of the whole or any parts of the settled land, and may be exercised from time to time.

41 Leases may be surrendered and renewed

Any leases, whether granted in pursuance of this part or otherwise, may be surrendered, either for the purpose of obtaining a renewal of the same or not; and the power to authorise leases conferred by this part shall extend to authorise new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

42 Power to authorise leases to extend to preliminary contracts

The power to authorise leases conferred by this part 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.

43 Modes in which leases may be authorised

The power to authorise leases conferred by this part 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 shall be vested in trustees in manner hereinafter mentioned.

44 What evidence to be produced on an application to authorise leases

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.

45 After approval of a lease Court to direct who shall be the lessor

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.

46 Powers of leasing may be vested in trustees

- (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.
- (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 Minerals may be excepted from leases

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.

48 Court may authorise sale of settled estates

- (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 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 an order 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.

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

When any land is sold for building purposes the Court may allow the whole of 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.

50 Minerals etc may be excepted from sales

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.

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

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 contained, from time to time direct that any part of any settled estates may 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.

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

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

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.

54 Application to exercise powers conferred by this Act

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 to exercise the powers conferred by this part.

55 With whose consent such application to be made

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

- (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.

56 (Repealed)

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

- (1) Where, on an application under this part, 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.

58 Court may dispense with notice under certain circumstances

- (1) Where, on an application under this part, 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) The Court may determine who are the persons having right to assent or dissent, or submit as herein provided, and the determination of the Court shall be conclusive for the purposes of such application, and any other person having any interest, who 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.

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

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 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 Application may be granted, without consent, saving rights of non-consenting parties

The Court may nevertheless give effect to any application 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.

61 Notice of application to be served on all trustees etc

Notice of any application to the Court under this part 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.

62 Notice of application to be given in newspapers if Court directs

Notice of any application to the Court under this part 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 for leave to be heard in opposition to or in support of any application which may be made to the Court under this part, 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.

63 Payment and application of moneys arising from sales or set aside out of rent

All money to be received on any sale effected under the authority of this part, 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 as prescribed by rules of the Court, 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:

- (a) In investment in Government securities, or on 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) By deposit at interest in the Colonial Treasury or in any bank, building society or credit union 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.
- (h) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

64 Transmission and devolution of capital money

Capital money arising under this part 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.

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

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 application of the person who would have been entitled to the possession or the receipt of the rents and profits of the settled estates.

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

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.

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

just

Where any purchase money paid into Court under the provisions of this part 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 application 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.

68 Leases by tenants for life of settled estates

- (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 possession or 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.
- (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.
- (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.

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

69 Against whom such leases shall be valid

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.

70 Minors, mentally ill persons etc

All powers given by this Part and all applications to the Court under this Part, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Part may be given to guardians on behalf of minors, and by or to committees or other persons entrusted with the care, control, and management of their estates on behalf of persons of the following descriptions within the meaning of the *Mental Health Act 1958*, namely, mentally ill persons, incapable persons and protected persons.

71 Powers of Court in certain circumstances

(1), (2) (Repealed)

(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, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

72 (Repealed)

73 Application by or consent of married woman

A married woman may make or consent to an application whether or not she is a minor.

74 No obligation to make or consent to application etc

Nothing in this part 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.

75 Evidence of execution of counterpart lease by lessee

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.

76 Record of the exercise of the powers conferred

The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this part 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.

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

- (1) The Court may exercise any of the powers conferred on it by this part whether the Court has already exercised any of such powers in respect of the same property or not.
- (2) The powers conferred on the Court by this part may be exercised if the Court thinks fit, notwithstanding any express declaration is contained in the settlement that they shall 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 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.
- (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.

78 Court not to authorise any act which could not have been authorised by the settlor

Nothing in this part 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.

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

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.

80 Costs

- (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 shall be a charge on the hereditaments which is subject to 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, 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 or the income thereof, such costs and expenses to be taxed as the Court directs.

81 Rules of Court

- (1) Rules of Court may be made under the [Supreme Court Act 1970](#) for carrying into effect the purposes of this part and for regulating the fees and allowances to all solicitors of the Court in respect to such matters.
- (2) Subsection (1) does not limit the rule-making powers conferred by the [Supreme Court Act 1970](#).

Part 5 Renewable leaseholds

82 Surrender and renewal of leasehold of minor

Where a minor 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, the minor or his guardian, or some other person on behalf of the minor, may apply to the Supreme Court, and by the order and direction of the Court the minor or his guardian, or any person appointed in the place of the minor by the Court, may be enabled from time to time to surrender the lease, and accept and take in the place and for the benefit of the minor a new lease of the premises in the surrendered lease 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 Court directs.

83 Charges attending renewal to be charged on estates as the Court directs

- (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 any such lease, and all reasonable charges incident thereto shall be paid out of the estate or effects of the minor 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.

(2) (Repealed)

84 New leases shall be to the same uses

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.

85 Renewal of lease for minor

Where any minor 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, the minor, or his guardian in the name of the minor, may, by the direction of the Supreme Court on the application of the minor, or his guardian, or of any person entitled to the renewal, from time to time accept a surrender of the lease, and make and execute a new lease of the premises comprised in the surrendered 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 surrendered lease or otherwise as the Court by order directs.

86 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 in the name of the person who ought to have renewed

(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 may, by an order to be made upon the application 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) (Repealed)

87 Fines to be paid before renewals executed

- (1) No renewed lease shall be executed by virtue of this part, 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.

88 Premiums, how to be paid

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 a minor, to his guardian, to be applied and disposed of for the benefit of the minor as the said Court directs.
- (b) (Repealed)
- (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.

89 Surrender and leases deemed valid

Every surrender, lease, or other disposition granted, accepted, executed, or made by virtue of this part 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 had granted, accepted, executed, or made the same.

90 Costs

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, 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.

Part 6 Mortgages

91-110 (Repealed)

Parts 7, 8

111-120 (Repealed)

Schedule 1

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 GIV 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.
26 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 Amendment	Whole Act.
57 Vic No 4	Mortgages Extinguishment	Whole Act.

Schedule 2 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 2 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 3 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 2 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 4 Fees to be received by the Secretary to the Commissioners

	\$
For every summons for witnesses, each summons containing four names by the party requiring the same	0.25
For every witness examined or document or voucher produced in evidence by the party on whose behalf examined or produced	0.10
For taking down the examination of any witness	0.10
For every one hundred words after the first hundred additional	0.10
For every certificate granted by Commissioners of default, refusal to answer, or wilful withdrawing of any witness	2.00
For every final report, to be paid by the party or parties in whose favour report made	16.60

Schedule 5

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, nor 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 6 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 Dieman'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 or any Threats or Menaces; and if she then confess that she doth it freely and uncompelled 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 or 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.