

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 200.

Settled Land.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was not specifically vested in any Minister. It seems likely, therefore, that under the Constitution, Section 148(2), the Prime Minister was politically responsible.

This Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 200.

Settled Land Act (Papua).

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 200

Settled Land Act (Papua).

Being an Act applying in and to the former Territory of Papua for facilitating sales, leases and other dispositions of settled land, and for promoting the execution of improvements on settled land.

PART I.—PRELIMINARY.

1. Constitutional limitation on application of Act.

By virtue of Section Sch.2.6(2) (*adoption of pre-Independence laws*) of the Constitution, this Act applies in relation to the area that, immediately before Independence Day, formed the Territory of Papua.

2. Interpretation.

(1) In this Act, unless the contrary intention appears—

“building lease” means a lease for any building purposes or purposes connected with building;

“building purposes” includes the erecting and the improving of, and the adding to and the repairing of, buildings;

“capital money arising under this Act”, in relation to a settlement, means money arising under this Act and receivable for the trusts and purposes of the settlement, and includes a fine received on the grant of a lease under any power conferred by this Act;

“the Court” means the National Court;

“fine” in relation to rent, includes premium or fore-gift and any payment, consideration or benefit in the nature of a fine, premium or fore-gift;

“income” includes rents and profits;

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

“mining lease” means a lease for any mining purposes or purposes connected with mining, and includes a grant or licence for any mining purposes;

“mining purposes” includes—

(a) the sinking and searching for, winning, working, taking, making merchantable, smelting, or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals in or under any land; and

(b) the erection of buildings and the execution of engineering and other works suitable for any of the purposes referred to in Paragraph (a);

“payment”, in relation to rent, includes delivery;

“possession” includes receipt of income;

“rent” includes a yearly or other rent and a toll, duty, royalty or other reservation;

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"securities" includes stocks, funds and shares;

"settled land" means any land, or any estate or interest in any land, that is the subject of a settlement, and includes any land, and any estate or interest in any land, that is deemed, by virtue of Section 5, 6 or 63 to be settled land for the purposes of this Act;

"settlement" means any deed, will, agreement for a settlement or other agreement, covenant to surrender, Act or other instrument, or a number of instruments, together (whenever made) under or by virtue of which—

(a) any land is for the time being limited to or in trust for any persons by way of succession; or

(b) any persons are beneficially entitled in succession to any land,

and includes any instrument or any instruments together that is or are deemed, by virtue of Section 6 or 64, to be settlements;

"tenant for life", in relation to any settled land, means—

(a) the person who is beneficially entitled under a settlement to possession of the land for his life, or if there are two or more persons so entitled as tenants in common or as joint tenants or for other concurrent estates or interests, those persons together; and

(b) includes any person, or any persons together, who is or are deemed, by virtue of Section 5 or 6, to be the tenant for life;

"trustees of the settlement", in relation to a settlement, means—

(a) the persons (if any) who are, under the settlement, trustees of the settled land with power of sale or with power to consent to or approve of the exercise of a power of sale; or

(b) if there are no such persons as are referred to in Paragraph (a), the persons (if any) who are declared by the settlement to be trustees for the purposes of this Act; or

(c) if there are no such persons as are referred to in Paragraph (a) and (b), the person (if any) in whom the settled land is vested on the trusts of the settlement,

and includes any persons who are, by virtue of Section 66 or 73, to be the trustees of the settlement;

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

(2) Whether land is settled land for the purposes of this Act or not is to be determined by reference to the facts and the limitations of the settlement at the time at which the settlement takes effect.

3. Remainder or reversion undisposed of.

For the purposes of this Act, an estate or interest in remainder or reversion that—

(a) is not disposed of by a settlement; and

(b) reverts to the settlor or descends to the heir of the settlor,
shall be deemed to be an estate or interest that—

(c) comes to the settlor, or to the heir of the settlor, as the case may be, under
or by virtue of the settlement; and

(d) is comprised in the settlement.

4. Estate of tenant by the curtesy.

For the purposes of this Act, the estate of a tenant by the curtesy shall be deemed to be an estate arising under a settlement made by his wife comprising the land of which he is tenant by the curtesy.

5. Estates of certain infants.

For the purposes of this Act, where a person who is in his own right—

(a) seized of or entitled in possession to land; or

(b) beneficially entitled to the whole interest in land,

is an infant, then—

(c) the land is settled land; and

(d) he shall be deemed to be the tenant for life of it.

6. Limited owners with powers of tenant for life.

(1) When his estate or interest is in possession, each of the following persons shall be deemed for the purposes of this Act to be a tenant for life, and to have the powers of a tenant for life under this Act :—

(a) a tenant in fee-simple with an executory limitation, gift or disposition over on failure of his issue or in any other event; and

(b) a person entitled to a base fee even if the reversion is in the State; and

(c) a tenant for years determinable on life not holding merely under a lease at a rent; and

(d) a tenant for the life of another not holding merely under a lease at a rent; and

(e) a tenant for his own or any other life, or for years determinable on life, whose estate—

(i) is liable to cease in any event during that life by expiration of the estate or by conditional limitation, or otherwise; or

(ii) is liable to be defeated by an executory limitation, gift or disposition over; or

(iii) is subject to a trust for accumulation of income for payment of debts or any other purpose; and

(f) a tenant by the curtesy; and

(g) a person entitled to the income of land under trust or direction for payment of the income to him—

(i) during his own or any other life, whether subject to expenses of management or not; or

(ii) until sale of the land; or

(iii) until forfeiture of his interest on insolvency or any other event.

(2) For the purposes of this Act—

- (a) the instrument under which the estate or interest by reference to which a person is deemed under Subsection (1) to be for the purposes of this Act, a tenant for life shall be deemed to be a settlement; and
- (b) the land comprised in that instrument shall be deemed to be settled land.

(3) Any reference in this Act to death in relation to a tenant for life shall, where necessary, be read in relation to a person who is deemed under Subsection (1) to be, for the purposes of this Act, a tenant for life as a reference to the determination by death or otherwise of the estate or interest by reference to which he is so deemed.

(4) In a case referred to in Subsection (1)(b), the exercise by the person entitled of his powers as tenant for life under this Act binds the State.

PART II.—POWERS OF TENANT FOR LIFE.

Division 1.—Sale—Exchange—Partition.

7. Power of tenant for life to sell, etc.

A tenant for life may—

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

8. Sale, exchange, and partition.

- (1) A sale shall be made at the best price that can reasonably be obtained.
- (2) An exchange and a partition shall be made for the best consideration in land, or in land and money, that can reasonably be obtained.
- (3) A sale may be made in one lot or in several lots, by auction or by private contract.
- (4) On a sale, the tenant for life may fix reserve biddings and buy in at an auction.
- (5) A sale, exchange or partition may be made subject to any stipulations respecting title, evidence of title or other things.
- (6) On a sale, exchange or partition, any restriction or reservation with respect to—
 - (a) buildings on or other use of land; or
 - (b) mines and minerals; or
 - (c) the more beneficial working of mines and minerals; or

(d) any other thing,

may be imposed or reserved, and made binding as far as the law permits, by covenant, condition or otherwise—

(e) on the tenant for life, and the settled land or any part of it; or

(f) on the other party, and any land sold or given in exchange or on partition to him.

(7) Settled land in the country shall not be given in exchange for land out of the country.

9. Transfer of encumbrances on land sold, etc.

Where on a sale, exchange or partition there is an encumbrance affecting land sold or given in exchange or on partition, the tenant for life may—

(a) with the consent of the encumbrancer, charge the encumbrance on any other part of the settled land, whether or not already charged with the encumbrance, in exoneration of the part sold or given; and

(b) make provision accordingly—

(i) by conveyance of the fee-simple or other estate or interest the subject of the settlement; or

(ii) by the creation of a term of years in the settled land, or otherwise.

Division 2.—Leases.

Subdivision A.—General.

10. Power of tenant for life to lease.

A tenant for life may lease—

(a) the settled land or any part of it; or

(b) any easement, right or privilege of any kind over or in relation to it,

for any purpose whether or not involving waste, for any term not exceeding—

(c) in the case of a building lease—30 years; and

(d) in the case of a mining lease—21 years; and

(e) in the case of any other lease—14 years.

11. Leases generally.

(1) A lease shall be made to take effect in possession not later than 12 months after the date of the lease.

(2) Every lease shall reserve the best rent that can reasonably be obtained regard being had—

(a) to any fine taken; and

(b) to any money laid out or to be laid out for the benefit of the settled land; and

(c) generally to the circumstances of the case.

(3) Every lease shall contain—

(a) a covenant by the lessee for payment of the rent; and

(b) a condition of re-entry on non-payment of rent within a time, not exceeding 60 days, specified in the lease.

(4) A duplicate of every lease shall be executed by the lessee and delivered to the tenant for life.

(5) The execution of the lease by the tenant for life is sufficient evidence of execution and delivery in accordance with Subsection (4).

(6) A statement in a lease or in an endorsement on a lease signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease is, in favour of the lessee and of persons claiming under him, sufficient evidence of the matter stated.

Subdivision B.—Building and Mining Leases.

12. Building leases.

(1) A building lease shall be made partly in consideration of the lessee or some person by whose direction the lease is granted, or some other person—

- (a) having erected, or agreeing to erect, new or additional buildings; or
- (b) having improved or repaired, or agreeing to improve or repair, buildings; or
- (c) having executed, or agreeing to execute, on the leased land an improvement authorized by this Act for or in connexion with building purposes.

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

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

- (a) the annual rent reserved by any lease shall not be less than K1.00; and
- (b) the total amount of the rents reserved on all leases being granted shall not be less than the total amount of the rents that, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and
- (c) the rent reserved by a lease shall not exceed 20% of the full annual value of—
 - (i) the land comprised in the lease; and
 - (ii) the buildings on it, when completed.

13. Mining leases.

(1) In a mining lease—

- (a) the rent may be made to be ascertainable by, or to vary according to—
 - (i) the acreage worked; or
 - (ii) the quantities of any mineral or substance taken, made merchantable, converted, carried away or disposed of, in or from the settled land or any other land; or
 - (iii) any facilities given for the purpose of Subparagraph (ii); and
- (b) a fixed or minimum rent may be payable, with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the fixed or minimum rent, to

make up the deficiency in any subsequent specified period free of rent other than the fixed or minimum rent.

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

14. Appropriation of mining rent.

Whether or not the mines or minerals leased are already opened or in work, in the case of a mining lease there shall be, unless the contrary intention appears in the settlement, set aside from time to time as capital money arising under this Act—

(a) where the tenant for life is impeachable for waste in respect of minerals—
75%; and

(b) where he is not impeachable—25%,

of the rent, and the residue shall go as rents and profits.

15. Leasing powers for special objects.

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

(a) a lease for giving effect to a contract entered into by any of his predecessors in title for making a lease that, if made by the predecessors, would have been binding on the successors in title; and

(b) a lease for giving effect to a covenant of renewal, performance of which could be enforced against the owner for the time being of the settled land; and

(c) a lease for confirming as far as may be a previous void or voidable lease, but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act or otherwise, as the case requires.

16. Surrender and new grant of leases.

(1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether or not made under this Act, in respect of the whole of the leased land or any part of it, with or without an exception of all or any of the mines and minerals in the land, or in respect of mines and minerals, or any of them.

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

(3) On a surrender, the tenant for life may make—

(a) a new or other lease; or

(b) new or other leases, in lots,

of the land or mines and minerals surrendered or of any part of it.

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

(5) On a surrender and the making of a new or other lease—

(a) whether for the same term, or for an extended or other term; and

- (b) whether or not subject to the same or to any other covenants, provisions or conditions,

the value of the lessee's interest in the lease surrendered may be taken into account in the determination of—

- (c) the amount of the rent to be reserved and of any fine to be taken by; and
 (d) the nature of the covenants, provisions and conditions to be inserted in,

the new or other lease.

17. Dwelling-house, park, etc.

Notwithstanding this Act, the principal dwelling-house on any settled land, and the lands attached to and held with it, and other lands usually occupied with it, shall not be sold or leased by the tenant for life except with—

- (a) the consent of the trustees of the settlement; or
 (b) an order of the Court.

18. Dedication of streets, open spaces, etc.

(1) On or in connexion with a sale for building purposes or a building lease, the tenant for life may, for the general benefit of the residents on the settled land or on any part of it—

- (a) cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens or other open spaces for the use gratuitously, or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving or other works necessary or proper in connexion with them; and

- (b) provide that the parts so appropriated shall be conveyed to or vested in—

- (i) the trustees of the settlement; or
 (ii) other trustees; or
 (iii) any company or public body,

on trusts or subject to provisions for securing—

- (iv) the continued appropriation of the land to the purpose specified in Paragraph (a); and
 (v) the continued repair or maintenance of streets and other places and works,

with or without provision for appointment of new trustees when required; and

- (c) execute any general or other deed necessary or proper for giving effect to this subsection and by the deed declare—

- (i) the manner, terms and conditions of the appropriation; and
 (ii) the manner in which and the persons by whom the benefit is to be enjoyed; and
 (iii) the nature and extent of the privileges and conveniences granted.

(2) A deed referred to in Subsection (1)(c) may be enrolled in the office of the Registrar of Titles.

19. Separate dealing with surface and minerals.

(1) A sale, exchange, partition or mining lease may be made—

- (a) of land with or without an exception or reservation of all or any of the mines and minerals in it; or
- (b) of any mines and minerals.

(2) A sale, exchange, partition or lease referred to in Subsection (1) may be made with or without a grant or reservation of—

- (a) powers of working; or
- (b) wayleaves or rights of way; or
- (c) rights of water and drainage; or
- (d) other powers, easements, rights and privileges,

for or incident to or connected with mining purposes in relation to the settled land or any part of it, or to any other land.

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

20. Mortgage for equality money, etc.

Where money is required for equality of exchange or partition, the tenant for life may raise it on mortgage of the settled land or of any part of it, and the money raised is capital money arising under this Act.

21. Exercise of powers as to undivided share.

Where—

- (a) the settled land comprises an undivided share in land; or
- (b) under the settlement the settled land has come to be held in undivided shares,

the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to, or having a power or right of disposition of or over, another undivided share.

22. Completion of sale, lease, etc., by conveyance.

(1) On a sale, exchange, partition, lease, mortgage or charge, the tenant for life may, as regards—

- (a) land sold, given in exchange or on partition, leased, mortgaged or charged, or intended to be so, including leasehold land vested in trustees; or
- (b) easements or other rights or privileges sold or leased, or intended to be so,

convey or create it or them by deed—

- (c) for the estate or interest the subject of the settlement; or
- (d) for any less estate or interest,

to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage or charge.

(2) To the extent and in the manner to and in which it—

- (a) is expressed or intended to operate; and

(b) can operate under this Act,

a deed referred to in Subsection (1) is effectual to pass the land conveyed, or the easement, rights or privileges created, discharged from—

(c) all the limitations, powers and provisions of the settlement; and

(d) all estates, interests and charges subsisting or to arise under it,

but subject to and with the exception of—

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

(f) any other estates, interests and charges that have been conveyed or created for securing money actually raised at the date of the deed; and

(g) all leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common or other rights or privileges granted or made for value in money or money's worth or agreed to be so granted or made before the date of the deed by—

(i) the tenant for life; or

(ii) any of his predecessors in title; or

(iii) any trustees for him or them,

under the settlement or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

23. Contracts by tenant for life.

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

(a) contract to make any sale, exchange, partition, mortgage or charge; and

(b) vary or rescind, with or without consideration, the contract in the cases and in the manner in which he might lawfully vary or rescind the contract if he were the absolute owner of the settled land; and

(c) contract to make a lease, and in making the lease may vary the terms, with or without consideration; and

(d) accept a surrender of a contract for a lease in the manner and on the terms in and on which he might accept a surrender of a lease, and then make a new or other contract or new or other contracts for or relative to a lease or leases in the manner and on the terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(e) enter into a contract for or relating to the execution of any improvement authorized by this Act, and vary or rescind it; and

(f) in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and vary or rescind the contract.

(2) Where a contract is made or varied under Subsection (1)(b) or (c), the contract as varied shall be in conformity with this Act.

(3) Where a contract is varied or rescinded under Subsection (1)(b) any consideration for the variation or rescission that is paid in money is capital money arising under this Act.

(4) Every contract under Subsection (1) is binding on, and enures for the benefit of, the settled land, and—

(a) is enforceable by and against every successor in title of the tenant for life; and

(b) may be carried into effect by any such successor in title, and may be varied or rescinded by any such successor in the same cases and in the same manner (if any) as if it had been made by himself.

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

(6) Any preliminary contract under this Act for or relating to a lease is not part of the title, and is not evidence of the title, of any person to the lease or to the benefit of the lease.

Subdivision C.—Infants, Married Women, Lunatics.

24. Infants as tenants for life.

Where—

(a) a tenant for life or a person having the powers of a tenant for life under this Act is an infant; or

(b) an infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life under this Act,

the powers of a tenant for life under this Act may be exercised on his behalf—

(c) by the trustees of the settlement; and

(d) if there are no such trustees, then by such person and in such manner as the Court, on the application of a guardian or next friend of the infant, orders, generally or in a particular instance.

25. Married women.

(1) Where a married woman who, if she had not been a married woman would—

(a) have been a tenant for life; or

(b) have had the powers of a tenant for life under this Act,

is entitled for her separate use or is entitled under any Act passed or to be passed for her separate property or as a *feme sole*, she has, without her husband, the powers of a tenant for life under this Act.

(2) Where a married woman is entitled otherwise than as set out in Subsection (1), she and her husband together have the powers of a tenant for life under this Act.

(3) The provisions of this Act referring to a tenant for life and a settlement and settled land extend—

(a) to the married woman without her husband, or to her and her husband together, as the case requires; and

(b) to the instrument under which her estate or interest arises and the land comprised in it.

(4) A married woman may execute, make and do all deeds instruments and things necessary or proper for giving effect to this section.

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

26. Insane tenants for life.

(1) Where a tenant for life or a person having the powers of a tenant for life under this Act is an insane person within the meaning of the *Public Health Act*, the committee of his

estate or the Public Curator, as the case may be, may, in his name and on his behalf under an order of the Court exercise the powers of a tenant for life under this Act.

- (2) An order under Subsection (1) may be made on the petition of—
- (a) any person interested in the settled land; or
 - (b) the committee of the estate; or
 - (c) the Public Curator.

PART III.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

27. *Investment, etc., of capital money by trustees or Court.*

Subject to payment of claims properly payable out of it, and to the application of it for any special authorized object for which it was raised, any capital money arising under this Act shall, when received, be invested or otherwise applied—

- (a) in investment—
 - (i) on securities of the Government or the Government of the United Kingdom, New Zealand or State of Australia; or
 - (ii) on mortgage of unencumbered freehold of property in the country; or
 - (iii) on any other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement,
 with power to vary the investment into or for any other such securities; and
- (b) in the discharge, purchase or redemption of encumbrances affecting the whole estate the subject of the settlement or the inheritance of the settled land; and
- (c) in payment for any improvement authorized by this Act; and
- (d) in payment for equality of exchange or partition of settled land; and
- (e) in purchase of the reversion or of the freehold of any part of the settled land that is leasehold land held for years or a life, or for years determinable on a life; and
- (f) in the purchase of—
 - (i) land in fee-simple; or
 - (ii) leasehold held for not less than 40 years unexpired at the time of purchase,
 subject or not to any exception or reservation of or in respect of—
 - (iii) mines or minerals in the land; or
 - (iv) rights or powers relative to the working of mines or minerals in the land or in other land; and
- (g) in the purchase—
 - (i) in fee-simple; or
 - (ii) for a term of not less than 40 years,
 of mines and minerals convenient to be held or worked with the settled land, or of any easement right or privilege convenient to be held with the settled land for mining or other purposes; and
- (h) in payment to any person becoming entitled or empowered to give an absolute discharge; and

- (i) in payment of costs, charges and expenses of or incidental to the exercise of any of the powers conferred by, or the execution of any of the provisions of, this Act; and
- (j) in any other manner in which money produced by the exercise of a power of sale in the settlement is applicable,

or in all or any of these ways.

28. Investment, devolution, and income of securities, etc.

(1) For the purposes of its being invested or applied in accordance with Section 27 capital money arising under this Act shall be paid, at the option of the tenant for life, either—

- (a) to the trustees of the settlement; or
- (b) into the Court,

and shall be invested or applied by the trustees or under the direction of the Court, as the case may be.

(2) The investment or other application by the trustees shall be made—

- (a) according to the direction of the tenant for life; and
- (b) in default, according to the direction of the trustees.

(3) The investment or application under Subsection (2)(b) is subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement.

(4) Any investment under Subsection (2) shall be in the names or under the control of the trustees.

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

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

(7) Capital money arising under this Act remaining uninvested or unapplied, and any securities on which an investment of any such capital money is made, shall for all purposes of disposition, transmission and devolution—

- (a) be considered as land; and
- (b) 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 from which the money arises would, if not disposed of, have been held and have gone under the settlement.

(8) The income of the securities referred to in Subsection (7)—

- (a) shall be paid or applied in the same way as the income of the land, if not disposed of, would have been payable or applicable under the settlement; or
- (b) may be converted into money which shall be capital money arising under this Act.

29. Investment in land.

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

30. Settlement of land purchased, etc.

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

(2) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions that—

(a) under the settlement; or

(b) by reason of the exercise of any power of charging in the settlement,

subsist with respect to the settled land, or as near to them as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3) Leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts, subject to powers and provisions, corresponding as nearly as the law and circumstances permit with the uses, trusts, powers and provisions to, on and subject to which freehold land is to be conveyed under Subsection (2).

(4) Land acquired under Subsection (3) may be made a substituted security for any charge in respect of money actually raised and remaining unpaid from which the settled land or any part of it, or any undivided share in it has previously been released on the occasion of, and for the purpose of the completion of, a sale, exchange or partition.

(5) Where a charge does not affect the whole of the settled land, the land acquired shall not be subjected to a charge under Subsection (4) unless the land is acquired—

(a) by purchase with money arising from the sale of land that was, before the sale, subject to the charge; or

(b) by an exchange or partition of land which or an undivided share in which was, before the exchange or partition subject to the charge.

(6) On the acquisition under this section of any land, a person who, by the direction of the tenant for life, conveys the land in accordance with this section in such a way as to subject it to a charge is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

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

PART IV.—IMPROVEMENTS.

31. Authorized improvements.

(1) Improvements authorized by this Act are the making or execution on or in connexion with, and for the benefit of, settled land of—

(a) any of the works; or

(b) any works for any of the purposes,

set out in Subsection (2), and of any operation—

(c) incident to or necessary or proper in the execution of any of those works; or

(d) for carrying into effect any of those purposes; or

(e) for securing the full benefit of any of those works or purposes.

(2) The works and purposes referred to in Subsection (1) are—

(a) drainage, including the straightening, widening or deepening of drains, streams and watercourses; and

(b) irrigation warping; and

- (c) drains, pipes and machinery for the supply and distribution of sewage as manure; and
- (d) embanking or weiring from a river or lake, or from the sea or a tidal water; and
- (e) groynes, sea walls and defences against water; and
- (f) the enclosing or straightening of fences, and the re-division of fields; and
- (g) reclamation and dry warping; and
- (h) farm roads, private roads and roads or streets in villages or towns; and
- (i) clearing, trenching and planting; and
- (j) cottages for labourers, farm-servants and artisans, whether or not employed on the settled land; and
- (k) dwelling-houses, warehouses, offices, out-buildings and other buildings; and
- (l) saw-mills, scutch-mills and other mills, water-wheels engine-houses and kilns, that will increase the value of the settled land for agricultural or pastoral purposes or as woodland, or otherwise; and
- (m) reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices and other works and machinery for the supply and distribution of water for agricultural, pastoral, manufacturing or other purposes, or for domestic or other consumption; and
- (n) tramways, railways, canals and docks; and
- (o) jetties, piers and landing places on rivers, lakes the sea or tidal waters, for facilitating the transport of—
 - (i) persons; and
 - (ii) agricultural stock and produce; and
 - (iii) manure and other things required for agricultural purposes; and
 - (iv) minerals and of things required for mining purposes; and
- (p) any streets, roads, paths, squares, gardens or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, that are necessary or proper in connexion with the conversion of land into building land; and
- (q) sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making and other works necessary or proper in connexion with any of the objects set out in the previous provisions of this section; and
- (r) trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines; and
- (s) the reconstruction, enlargement or improvement of any of such works, whether executed under the provisions of this Act or already existing.

32. Approval by Court of scheme for improvement.

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

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

- (a) an order of the Court declaring that—
 - (i) the work or operation, or some specified part of it, has been properly executed; and
 - (ii) the amount is properly payable by the trustees in respect of it; or
- (b) a certificate to the same effect of a competent engineer or practical surveyor, nominated by the trustees and approved by the Court; or
- (c) an order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3) An order under Subsection (2)(a), or a certificate under Subsection (2)(b), is conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance of the order or certificate.

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

33. Concurrence in improvements.

The tenant for life may join or concur with any other person interested—

- (a) in executing any improvement authorized by this Act; or
- (b) in contributing to the cost of the improvement.

34. Maintenance, insurance, etc., by tenant for life.

(1) The tenant for life and each of his successors in title who have under the settlement a limited estate or interest only in the settled land shall—

- (a) maintain and repair at his own expense every improvement executed under this Act; and
- (b) where a building or work in its nature insurable against damage by fire is comprised in the improvement, insure it and keep it insured at his own expense in such amount (if any) as the Court by order in any case directs.

(2) The tenant for life or any of his successors referred to in Subsection (1) shall not, except in proper thinning, cut down, or knowingly permit to be cut down, any trees planted as an improvement under this Act.

(3) The tenant for life and each of his successors referred to in Subsection (1) shall, if required by the Court on or without the suggestion of any person having under the settlement any estate or interest in possession, remainder or otherwise in the settled land report to the Court the state of every improvement executed under this Act and the fact of, and the particulars of, any fire insurance.

(4) The Court may vary any order made by it under this section in such manner or to such extent as circumstances appear to require, but not so as to increase the liabilities of the tenant for life or any of his successors referred to in Subsection (1).

(5) If the tenant for life or any of his successors referred to in Subsection (1)—

(a) fails to comply with the requirements of this section; or

(b) does any act in contravention of those requirements,

any person having under the settlement any estate or interest in possession, remainder or reversion in the settled land has a right of action against the tenant for life in respect of the default or act and after his death the estate of the tenant for life is liable to make good to the persons entitled under the settlement any damages occasioned by the default or act.

35. Waste in execution and repair of improvements.

The tenant for life and each of his successors in title who have under the settlement a limited estate or interest only in the settled land, and all persons employed by or under contract with him, may enter on the settled land, and without impeachment of waste by any remainderman or reversioner—

(a) execute on it any improvement authorized by this Act; or

(b) inspect, maintain and repair any such improvements; and

(c) for the purpose of doing so—

(i) do, make and use on the settled land all acts, works and conveniences proper for the execution, maintenance, repair, and use of such improvements; and

(ii) get and work freestone, limestone, clay, sand and other substances; and

(iii) make tramways and other ways; and

(iv) burn and make bricks tiles and other things; and

(v) cut down and use timber and other trees not planted or left standing for shelter or ornament.

PART V.—EXERCISE OF POWERS.

36. Tenant for life as sole trustee, and lack of trustees.

When—

(a) the tenant for life is the sole trustee of the settlement; or

(b) the tenants for life are the sole trustees of the settlement; or

(c) there is no trustee of the settlement,

the powers conferred by this Act on a tenant for life shall not be exercised without the sanction of the Court.

37. Disagreement between tenants for life.

Where there are more tenants for life than one and—

(a) they do not concur; or

(b) any of them is from disability or otherwise unable to concur,

in any dealing with the settled land proposed by any of them, the Court may, on the application of any of them, direct that any of the powers conferred by this Act on a tenant for life shall be exercised by one or more of those tenants for life, on such conditions as the Court thinks proper.

38. Notice to trustees.

(1) Subject to Subsection (3), a tenant for life who intends to make, or to make a contract for, a sale, exchange, partition, lease, mortgage or charge shall give notice of his intention—

(a) to each of the trustees of the settlement by posting registered letters containing the notice addressed to the trustees severally each at his usual or last-known place of abode in the country; and

(b) to the lawyer for the trustees, if any such lawyer is known to the tenant for life, by posting a registered letter containing the notice addressed to the lawyer at his place of business in the country.

(2) The letter referred to in Subsection (1) shall be posted not less than three months before the making by the tenant for life of the sale, exchange, partition, lease, mortgage or charge, or the contract for it.

(3) A notice under Subsection (1) is not valid unless—

(a) at the date of the giving of the notice the number of trustees is not less than two; or

(b) one trustee only is appointed by the settlement; or

(c) a contrary intention is expressed in the settlement.

(4) The notice may be a notice of a general intention.

(5) The tenant for life must, on request by a trustee of the settlement, furnish to him such particulars and information as he reasonably requires concerning sales, exchanges, partitions or leases effected or in progress, or immediately intended.

(6) A trustee may, by writing under his hand—

(a) waive notice in any particular case or generally; and

(b) accept less than three months' notice.

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

PART VI.—APPLICATIONS TO THE NATIONAL COURT, ETC.

39. Reference of differences to Court.

If at any time a difference arises between a tenant for life and the trustees of the settlement respecting—

(a) the exercise of any of the powers conferred by this Act; or

(b) any matter relating to those powers,

the Court may, on the application of either party, give such directions respecting—

(c) the matter in difference; and

(d) the costs of the application,

as the Court thinks proper.

40. Applications, etc.

(1) An application to the Court shall be made in Chambers.

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

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

(4) The Court may, in its discretion—

- (a) make such order as it thinks proper respecting the costs, charges or expenses of all or any of the parties to any application; and
- (b) if it thinks proper, order that all or any of the costs, charges or expenses be paid out of property subject to the settlement.

41. Payment of costs out of settled property.

Where the Court directs that any costs, charges or expenses be paid out of property subject to a settlement, they shall, subject to and in accordance with the directions of the Court, be raised and paid—

- (a) out of capital money arising under this Act; or
- (b) out of other money liable to be laid out in the purchase of land to be made subject to the settlement; or
- (c) out of investments representing any such money; or
- (d) out of income of any such money or investments; or
- (e) out of any accumulations of income of land, money or investment; or
- (f) by means of a sale of—
 - (i) part of the settled land in respect of which the costs, charges or expenses are incurred; or
 - (ii) other settled land comprised in the same settlement and subject to the same limitations; or
- (g) by means of—
 - (i) mortgage of the settled land or any part of it to be made by such person as the Court directs; or
 - (ii) a charge on the settled land or any part of it, or partly in one such way and partly in another or others; or
- (h) in any other manner that the Court thinks proper.

PART VII.—TRUSTEES.

42. Appointment of trustees by Court.

(1) Where—

- (a) there are no trustees of a settlement within the meaning of this Act; or
- (b) in any other case it is expedient for the purposes of this Act that new trustees of a settlement should be appointed,

the Court may, if it thinks proper, on the application of—

- (c) the tenant for life or any other person having under the settlement an estate or interest, in possession, remainder or otherwise in the settled land; or
- (d) in the case of an infant his testamentary or other guardian or next friend,

appoint fit persons to be trustees under the settlement for the purposes of this Act.

(2) The person appointed under Subsection (1) and if more than one—

- (a) the survivors of them while continuing to be trustees; and

- (b) until the appointment of new trustees—the personal representative of the last surviving or continuing trustee,

becomes for the purposes of this Act the trustees or trustee of the settlement.

43. Number of trustees required to Act.

(1) Notwithstanding this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement unless—

- (a) the settlement authorizes the receipt of capital trust money of the settlement by one trustee; or
- (b) by order of the Court.

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

44. Trustees' receipts.

The written receipt—

- (a) of the trustees of a settlement; or
- (b) where one trustee is empowered to act—of one trustee; or
- (c) of the personal representative of the last surviving or continuing trustee,

for any money or securities paid or transferred to the trustee or representative, as the case may be, effectually discharges—

- (d) the payer or transferor from liability for it or them and from being bound to see to the application, or being answerable for any loss or misapplication, of it or them; and
- (e) a mortgagee or other person advancing money from being concerned to see that—
 - (i) any money advanced by him is wanted for any purposes of this Act; or
 - (ii) no more than is wanted is raised.

45. Protection of trustees individually.

Each trustee of a settlement is answerable only for—

- (a) what he actually receives, notwithstanding his signing any receipt for conformity; and
- (b) his own acts, receipts and defaults,

and is not answerable—

- (c) in respect of an act, receipt or default of any other trustee, or of any banker, broker or other person; or
- (d) for the insufficiency or deficiency of any securities; or
- (e) for any loss not happening through his own wilful default.

46. Protection of trustees generally.

The trustees of a settlement are not liable—

- (a) for giving any consent; or

(b) for not making, bringing, taking or doing any application, action, proceeding or thing that they might make, bring, take or do,
and in the case of a purchase of land with capital money arising under this Act or of an exchange partition or lease they are not—

- (c) liable for adopting any contract made by the tenant for life; or
- (d) bound to inquire as to the propriety of the purchase, exchange, partition or lease; or
- (e) answerable as regards any price, consideration or fine; or
- (f) liable to see to, or answerable for, the investigation of the title or answerable for a conveyance of land if the conveyance purports to convey the land in a proper manner; or
- (g) liable in respect of purchase-money—
 - (i) for the payment by them, by direction of the tenant for life, to any person joining in the conveyance as a conveying party; or
 - (ii) as giving a receipt for the purchase-money; or
 - (iii) in any other character; or
- (h) liable in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition or lease.

47. Reimbursement of trustees.

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

PART VIII.—MISCELLANEOUS PROVISIONS.

48. Assignment of statutory powers of tenant for life.

- (1) In this section, "assignment" includes—
 - (a) an assignment by way of mortgage; and
 - (b) a partial or qualified assignment; and
 - (c) a charge or encumbrance.
- (2) The powers under this Act of a tenant for life—
 - (a) are not capable of assignment or release and do not pass to a person as being by operation of law or otherwise an assignee of a tenant for life; and
 - (b) remain exercisable by him after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.
- (3) A contract by a tenant for life not to exercise any of his powers under this Act is void.
- (4) This section operates without prejudice to the rights of an assignee for value of the estate or interest of the tenant for life, and the assignee's rights shall not be affected without his consent except that, unless the assignee is actually in possession of the settled land or part of it, his consent is not required for the making of leases of it by the tenant for life if the leases are made at the best rent that can reasonably be obtained without fine and are in other respects in conformity with this Act.

49. Prohibition or limitation against exercise of powers.

(1) If in a settlement, will, assurance or other instrument whenever executed or made a provision is inserted purporting or attempting, by way of direction, declaration or otherwise—

- (a) to forbid a tenant for life to exercise any power conferred by this Act; or
- (b) attempting, tending or intended—
 - (i) by a limitation, gift or disposition over of settled land; or
 - (ii) by a limitation, gift or disposition of other property; or
 - (iii) by the imposition of a condition; or
 - (iv) by forfeiture; or
 - (v) in any other manner,

to prohibit or prevent a tenant for life from exercising, to induce him to abstain from exercising or to put him into a position inconsistent with his exercising any power conferred by this Act,

the provision is void so far as it purports or attempts or tends, or is intended to have, or would or might have, that effect.

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

50. Forfeiture by exercise of statutory power.

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

51. Tenant for life trustee for all parties interested.

A tenant for life—

- (a) shall have regard, in exercising any power conferred by this Act, to the interests of all parties entitled under the settlement; and
- (b) in relation to the exercise of any power by him, shall be deemed—
 - (i) to be in the position; and
 - (ii) to have the duties and liabilities,of a trustee for those parties.

52. General protection of purchasers, etc.

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

53. Exercise of powers, etc.

(1) Where a power of sale, exchange, partition, leasing, mortgaging or charging, or any other power, is exercised by a tenant for life or by the trustees of a settlement, he and

they may respectively execute, make and do all deeds, instruments and things necessary or proper for that purpose.

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

54. Saving of other powers.

(1) This Act does not derogate any power under a settlement or by statute, or that is otherwise exercisable—

(a) by a tenant for life; or

(b) by trustees with his consent, on his request or, by his direction or otherwise,

and the powers given by this Act are cumulative.

(2) In case of a conflict between the provisions of a settlement and the provisions of this Act relative to any matter in respect of which the tenant for life exercises, or contracts or intends to exercise, any power conferred by this Act—

(a) this Act prevails; and

(b) notwithstanding anything in the settlement, the consent of the tenant for life is necessary for the exercise by the trustees of the settlement or any other person of any power conferred by the settlement that is exercisable for any purpose provided for in this Act.

(3) If a question arises or a doubt is entertained concerning any matter within this section, the Court may, on the application of—

(a) the trustees of the settlement; or

(b) the tenant for life; or

(c) any other person interested,

give its decision, opinion, advice or direction on the question.

55. Additional or larger powers by settlement.

(1) This Act does not prevent a settlor from conferring on the tenant for life or the trustees of the settlement any powers additional to or larger than those conferred by this Act.

(2) Notwithstanding this Act, any additional or larger powers referred to in Subsection (1) operate and are exercisable as far as may be, in the like manner and with all the like incidents, effects and consequences as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

56. Application of money in hands of trustees.

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

57. Money paid for lease or reversion.

Where capital money arising under this Act is purchase money paid in respect of—

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

the trustees of the settlement, or the Court on the application of any party interested in the money, may, notwithstanding anything in this Act, cause the money to be laid out, invested, accumulated and paid in such manner as, in the judgement of the trustees or of the Court, as the case may be, will give to the parties interested in the money the same benefit as they might have had from the lease, estate, interest or reversion in respect of which the money was paid, or as near to that benefit as possible.

58. Cutting and sale of timber.

(1) Where—

- (a) a tenant for life is impeachable for waste in respect of timber; and
- (b) there is on the settled land timber ripe and fit for cutting,

the tenant for life may, with the consent of the trustees of the settlement or an order of the Court, cut and sell the timber or any part of it.

(2) Of the net proceeds of a sale under Subsection (1), 75% shall be set aside as capital money arising under this Act, and the residue shall go as rents and profits.

59. Protection or recovery of land settled or claimed as settled.

If it thinks fit the Court may—

- (a) approve of—
 - (i) any action, defence, petition to the Parliament, parliamentary opposition or other proceeding taken or proposed to be taken for the protection of settled land; or
 - (ii) any action or proceeding taken or proposed to be taken for the recovery of land being, or alleged to be, subject to a settlement; and
- (b) direct that any costs, charges or expenses incurred or to be incurred in relation to it or any part of it be paid out of property subject to the settlement.

60. Heirlooms.

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

(2) The money arising by the sale is capital money arising under this Act, and—

- (a) shall be paid, invested or applied and otherwise dealt with in the manner directed by this Act with respect to other capital money arising under this Act; or
- (b) may be invested in the purchase of other chattels of the same or any other nature which when purchased shall—
 - (i) be settled and held on the same trusts; and

- (ii) devolve in the same manner,
as the chattels sold.

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

61. Payments into Court.

Payment of money into Court exonerates the person making the payment.

PART IX.—SPECIAL PROVISION IN RELATION TO CERTAIN LAND HELD ON TRUST FOR SALE.

62. Interpretation of Part IX.

In this Part—

“land to which this Part applies” means any land, or any estate or interest in land, that, under or by virtue of any deed, will, agreement, covenant to surrender, Act of the Parliament or other instrument, or a number of such instruments, is subject to a trust to which this Part applies;

“the proceeds of the land”, in relation to any land to which this Part applies, means—

- (a) the money to arise from the sale of the land in accordance with the trust to which this Part applies relating to the land; or
- (b) the income of the money; or
- (c) the income of the land until sale in accordance with the trust referred to in Paragraph (a);

“trust to which this Part applies”, in relation to any land to which this Part applies, means a trust or direction for—

- (a) the sale of the land; and
- (b) the application or disposal of the proceeds of the land for the benefit of—
 - (i) any person for his life or other limited period; or
 - (ii) two or more persons concurrently for a limited period,
whether absolutely or subject to—
 - (iii) a trust for accumulation of income, payment of debts or other purposes; or
 - (iv) any other restrictions.

63. Status of land to which Part IX. applies.

For the purposes of this Act, any land to which this Part applies shall be deemed to be settled land.

64. Trust instruments deemed to be settlements.

For the purposes of this Act, the deed, will, agreement, covenant to surrender, Act of the Parliament or other instrument, or the combination of such instruments, by which any land to which this Part applies is made subject to a trust to which this Part applies shall be deemed to be, or to constitute a settlement of the land.

65. Tenant for life of land to which Part IX. applies.

For the purposes of this Act, the person who is entitled to the income until sale of any land to which this Part applies, or if more persons than one are concurrently entitled to that income those persons together, shall be deemed to be, or to constitute, the tenant for life of the land.

66. Trustees of land to which Part IX. applies.

For the purposes of this Act, the trustees of a settlement by virtue of Section 64 shall be deemed to be—

- (a) the persons (if any) who are, under the instrument or instruments comprising the settlement, trustees for sale of the land concerned, or have power to consent to, approve of or control the sale; or
- (b) if there are no such persons as are referred to in Paragraph (a), the persons (if any) who are declared by the instrument or instruments comprising the settlement to be trustees of it or them.

67. Effect of certain references in this Act.

In relation to any land that is deemed by virtue of Section 63 to be settled land, any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen or reversioners or other persons interested in settled land, shall be deemed to be a reference to the persons interested, in succession or otherwise, in the proceeds of the land.

68. Application of capital money.

(1) Capital money arising under this Act from any land that is deemed by virtue of Section 63 to be settled land shall not be applied in the purchase of land unless the application is authorized by the settlement in the case of capital money arising under it from sales or other dispositions of the settled land.

(2) In addition to any other manner of application that is authorized by this Act, capital money referred to in Subsection (1) may, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement, be applied in any manner in which, under the settlement, capital money arising under it from any sale or disposition of the land may be applied.

69. Disposition, etc., of capital money.

Capital money arising under this Act for any land that is deemed by virtue of Section 63 to be settled land, and any securities in which it is invested—

- (a) shall not, for the purpose of disposition, transmission or devolution, be considered as land unless if it arose under the settlement from a sale or disposition of the land it would have been so considered; and
- (b) shall be held in trust for and go to the same persons successively, and in the same manner and for and on the same estates, interests and trusts, as would have been the case if it had arisen under the settlement from a sale or disposition of the land,

and the income of that capital money and securities shall be paid or applied accordingly.

70. Settlement of land purchased, etc.

Land of any tenure acquired under this Act in relation to a settlement by virtue of Section 64, by purchase, in exchange or on partition, shall be conveyed to and vested in the trustees of the settlement on the trusts and subject to the powers and provisions which—

- (a) under the settlement; or
- (b) by reason of the exercise of any power of appointment or of charging in the settlement,

subsist with respect to the settled land or would have subsisted if it had not been sold, or as near to them as circumstances permit, but not so as to increase or multiply charges or powers of charging.

71. Exercise of powers conferred by Part IX.

(1) This section applies to the powers conferred by the preceding provisions of this Part.

(2) The powers to which this section applies may not be exercised without the leave of the Court.

(3) The Court, may, by order, give leave to a person named in the order to exercise any power to which this section applies.

(4) The Court may rescind or vary any order under Subsection (3), or make a new or further order.

(5) While an order under this section is in force, neither the trustees of the settlement nor any other person (other than the person to whom leave is given) may execute, for any purpose for which the leave was given, any trust or power created by the settlement.

(6) An order under this section may be registered in the office of the Registrar of Titles.

(7) A person dealing with the trustees or with any other person acting under the trusts or powers of the settlement is not affected by an order under this section until it has been duly registered in accordance with Subsection (6).

(8) An application for an order under Subsection (3) may be made by the tenant for life.

(9) An application for the rescission or variation of an order under Subsection (3), or for a new or further order under Subsection (4), may be made by—

- (a) the tenant for life; or
- (b) the trustees of the settlement; or
- (c) any person beneficially interested under the settlement.

(10) The person to whom leave is given by an order under this section shall be deemed to be the proper person to exercise the powers to which this section applies, and may exercise those powers accordingly.

72. Consent of tenant for life.

In the case of a settlement by virtue of Section 64, no consent that is not required by the terms of the settlement is required by this Act to enable the trustees of the settlement or any other person to execute any of the trusts or powers created by the settlement.

PART X.—SPECIAL PROVISIONS IN RELATION TO REGISTERED LAND.

73. Application of Act to registered land.

In the application of this Act to settled land held under the *Real Property Act, 1913* of the former Territory of Papua (Adopted)—

- (a) if any person is the registered proprietor of the land for an estate in fee-simple in possession, he shall be deemed to be the trustee of the settlement; and
- (b) where under this Act any power or authority is conferred on a tenant for life, then on—
 - (i) the written request of the tenant for life; and
 - (ii) the performance by the tenant for life of the conditions imposed by this Act on the exercise of such a power or authority by a tenant for life,the registered proprietor has and may exercise that power or authority; and
- (c) where under this Act any instrument is to be executed by a tenant for life for the purpose of the exercise of any such power or authority, the instrument shall be executed by the registered proprietor and the execution has the same effect as the execution of such an instrument by a tenant for life is declared to have under this Act; and
- (d) if a registered proprietor executing a power or authority in accordance with this Act on the written request of the tenant for life or with the sanction of the Court is both—
 - (i) the tenant for life; and
 - (ii) the trustee of the settlement,he does not by reason of executing it incur any personal liability to his beneficiaries or to any other person, and no such registered proprietor is bound to enter into any personal covenant or contract for the purpose of executing any such power or authority or complying with any such request; and
- (e) where under this Act it is provided that land shall be conveyed to any uses or trusts, that expression shall be taken to mean that the land shall—
 - (i) be transferred to trustees; and
 - (ii) be held by them as trustees on those uses or trusts; and
- (f) where under this Act it is provided that a contract made by a tenant for life is binding on the settled land that expression shall be taken also to mean that, subject to this Act—
 - (i) the contract is binding on the registered proprietor; and
 - (ii) he is bound to give effect to it in the same manner as if he had made it himself; and
- (g) the provisions of Section 77 of that Act do not apply to a lease of settled land made by a tenant for life under this Act; and
- (h) the expression "Deed" includes any instrument executed under the provisions of that Act.

74. Persons dealing with registered proprietor.

This Part does not require any person dealing with a registered proprietor of land held under the *Real Property Act, 1913* of the former Territory of Papua (Adopted) to inquire whether all or any of the provisions of this Act have been complied with in respect of the proposed dealing.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 200.

Settled Land (Papua).

APPENDIX.

SOURCE OF THE SETTLED LAND ACT (PAPUA).

Part A.—Previous Legislation.

The Settled Land Act of 1886 (Queensland, adopted) of the Territory of Papua as amended by—

Ordinance Revision Act, 1913, of the Territory of Papua (No. 3 of 1914).

Part B.—Cross References.

| Section, etc., in Revised Edition. | Previous Reference ¹ . | Section, etc., in Revised Edition. | Previous Reference ¹ . |
|--|--------------------------------------|--|--------------------------------------|
| 1 | — | 31 | 34 |
| 2 | 4, 9 and <i>passim</i> | 32 | 35 |
| 3 | 3(2) | 33 | 36 |
| 4 | 3(4) | 34 | 37 |
| 5 | 7 | 35 | 38 |
| 6 | 6 | 36 | 39 |
| 7 | 10 | 37 | 40 |
| 8 | 11 | 38 | 41 |
| 9 | 12 | 39 | 42 |
| 10 | 13 | 40 | 43 |
| 11 | 14 | 41 | 44 |
| 12 | 15 | 42 | 45 |
| 13 | 16 | 43 | 46 |
| 14 | 17 | 44 | 47 |
| 15 | 18 | 45 | 48 |
| 16 | 19 | 46 | 49 |
| 17 | 20 | 47 | 50 |
| 18 | 21 | 48 | 52 |
| 19 | 22 | 49 | 53 |
| 20 | 23 | 50 | 54 |
| 21 | 24 | 51 | 55 |
| 22 | 25 | 52 | 56 |
| 23 | 26 | 53 | 57(2), (3) |
| 24 | 27 | 54 | 58 |
| 25 | 28 | 55 | 59 |
| 26 | 29 | 56 | 60 |
| 27 | 30 | 57 | 61 |
| 28 | 31 | 58 | 62 |
| 29 | 32 | 59 | 63 |
| 30 | 33 | 60 | 64 |

¹ Unless otherwise indicated, references are to the Act set out in Part A.

Settled Land

Part B.—Cross References—*continued.*

| Section, etc., in Revised Edition. | Previous Reference. | Section, etc., in Revised Edition. | Previous Reference. |
|--|------------------------|--|------------------------|
| 61 | 65 | 68 | 66(2)(b) |
| 62 | 66(1) | 69 | 66(2)(c) |
| 63 | 66(1) | 70 | 66(2)(d) |
| 64 | 66(1) | 71 | 68 |
| 65 | 66(1) | 72 | 67 |
| 66 | 66(1) | 73 | 69 |
| 67 | 66(2)(a) | 74 | 70 |