

THE SETTLED LAND ACT OF 1886⁽¹⁾ (QUEENSLAND, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF PAPUA.

An Act for Facilitating Sales Leases and other Dispositions of Settled Land and for Promoting the execution of Improvements thereon.

* * * * *

Preamble repealed by No. 3 of 1914, s. 2 and First Schedule.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows:—

PART I.—PRELIMINARY.

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

Division of Act into Parts.

- Part I.—Preliminary;
- Part II.—Definitions;
- Part III.—Powers of Tenant for Life;
- Part IV.—Investment or Other Application of Capital Trust Money—Improvements;

(1) *The Settled Land Act of 1886*, of Queensland in its application to the Territory of Papua comprises the original *The Settled Land Act of 1886*, of Queensland, referred to in Part I of the following Table, as amended by the Ordinance of the Territory of Papua referred to in Part II of the following Table:—

TABLE.
PART I.—ACT OF THE STATE OF QUEENSLAND.

Citation of Act.	Ordinance by which adopted.	Date on which adoption took effect.
<i>The Settled Land Act of 1886</i> (50 Vic. No. 13) ^(a)	<i>The Courts and Laws Adopting Ordinance (Amended) of 1889</i> (No. 6 of 1889)	23.11.1889 (Supplement to British N.G. Govt. Gaz. of 23.11.1889)

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*.

PART II.—ORDINANCE OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz.	Date on which came into operation.
<i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914)	14.8.1913	4.2.1914	4.2.1914 (<i>Papua Govt. Gaz.</i> of 4.2.1914)

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- Part V.—Mode of Exercise of Powers—Procedure;
- Part VI.—Trustees—Security—Indemnity, &c.;
- Part VII.—Miscellaneous Provisions;
- Part VIII.—Settlements by Way of Trust for Sale;
- Part IX.—Application of Act to Land held under
“*The Real Property Act of 1861.*”

Short title.

2. This Act may be cited as “*The Settled Land Act of 1886.*”(1)

PART II.—DEFINITIONS.

Definition of settlement.

Imp. 45 & 46
Vic. c. 38, s. 2.

3.—(1.) Any deed will agreement for a settlement or other agreement covenant to surrender Act of Parliament or other instrument or any number of instruments whether made or passed before or after or partly before and partly after the commencement of this Act under or by virtue of which instrument or instruments any land or any estate or interest in land stands for the time being limited to or in trust for any persons by way of succession or under or by virtue of which any persons are beneficially entitled in succession to any land or any estate or interest in land is a settlement for the purposes of this Act or creates such a settlement and is in this Act referred to as a settlement or as the settlement as the case may be.

Undisposed of remainder or reversion.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement and reverting to the settlor or descending to the testator’s heir is for the purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement and comprised in the subject of the settlement.

Settled land.

(3.) Land and any estate or interest therein which is the subject of a settlement is for the purposes of this Act settled land and is in relation to the settlement referred to in this Act as the settled land.

The determination of the question whether land is settled land for the purposes of this Act or not is governed by the state of the facts and the limitations of the settlement at the time of the settlement taking effect.

Estate of tenant by curtesy.

Imp. 47 & 48
Vic. c. 18, s. 8.

(4.) For the purposes of this Act the estate of a tenant by the curtesy is to 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.

Income, possession.

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

4. In this Act—

“Income” includes rents and profits and “Possession” includes receipt of income;

(1) See footnote (1) printed on p. 2719.

The Settled Land Act of 1886 (Queensland, adopted).

- “Rent” includes yearly or other rent and toll duty royalty or other reservation by the acre or the ton or otherwise and in relation to rent “Payment” includes delivery and “Fine” includes premium or fore-gift and any payment consideration or benefit in the nature of a fine premium or fore-gift; Rent, payment, fine.
- The term “Building purposes” includes the erecting and the improving of and the adding to and the repairing of buildings and a “Building Lease” is a lease for any building purposes or purposes connected therewith; Building purposes, building lease.
- The term “Mines and Minerals” means mines and minerals whether already opened or in work or not and includes all minerals and substances in on or under the land obtainable by underground or by surface working and the term “Mining purposes” includes the sinking and searching for winning working getting making merchantable smelting or otherwise converting or working for the purposes of any manufacture carrying away and disposing of mines and minerals in or under the settled land or any other land and the erection of buildings and the execution of engineering and other works suitable for those purposes and a “Mining Lease” is a lease for any mining purposes or purposes connected therewith and includes a grant or licence for any mining purposes; Mines and minerals, mining purposes, mining lease.
- “Will” includes a codicil and any other testamentary instrument and a writing in the nature of a will; Will.
- “Securities” include stocks funds and shares; Securities.
- “Court” means the Supreme Court of Queensland. Court.

Tenant for life.

5. The person who is for the time being under a settlement beneficially entitled to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement. Tenant for life.
Imp. 45 & 46
Vic. c. 38, s.
2(5).

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

A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that under the settlement or otherwise the settled land or his estate or interest therein is incumbered or charged in any manner or to any extent.

Enumeration of other limited owners to have powers of tenant for life.

Imp. 45 & 46
Vic. c. 38, s. 58.

6.—(1.) Each person as follows shall when the estate or interest of each of them is in possession have the powers of a tenant for life under this Act as if each of them were a tenant for life as defined in this Act namely:—

- (a) A tenant in tail;
- (b) A tenant in fee-simple with an executory limitation gift or disposition over on failure of his issue or in any other event;
- (c) A person entitled to a base fee although the reversion is in the Crown and so that the exercise by him of his powers under this Act shall bind the Crown;
- (d) A tenant for years determinable on life not holding merely under a lease at a rent;
- (e) A tenant for the life of another not holding merely under a lease at a rent;
- (f) A tenant for his own or any other life or for years determinable on life whose estate is liable to cease in any event during that life whether by expiration of the estate or by conditional limitation or otherwise or to be defeated by an executory limitation gift or disposition over or is subject to a trust for accumulation of income for payment of debts or other purpose;
- (g) A tenant in tail after possibility of issue extinct;
- (h) A tenant by the curtesy;
- (i) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life whether subject to expenses of management or not or until sale of the land or until forfeiture of his interest therein on insolvency or other event.

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

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

Infant absolutely entitled to be as tenant for life.
Imp. 1b. s. 59.

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

Trustees.

8. For the purposes of this Act the term "trustees of the settlement" means the persons if any who are for the time being under a settlement trustees of settled land with power of sale or with power to consent to or approve of the exercise of such a power of sale or if there are no such trustees under a settlement then the persons if any for the time being who are by the settlement declared to be trustees thereof for the purposes of this Act or if there are no such persons then the persons if any in whom the settled land is vested upon the trusts of the settlement.

Trustees of the settlement.
Imp. 45 & 46
Vic. c. 38,
s. 2 (8).

Capital Money.

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

Capital money.
Imp. 1b. s. 2 (9).

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

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

PART III.—POWERS OF TENANT FOR LIFE.

Sale—Exchange—Partition.

10. A tenant for life—

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

Powers to tenant for life to sell, &c.
Imp. 45 & 46
Vic. c. 38, s. 3.

11.—(1.) Every sale shall be made at the best price that can reasonably be obtained.

Regulations respecting sale, exchange, and partition.
Imp. 1b. s. 4.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots and either by auction or by private contract.

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(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale exchange or partition may be made subject to any stipulations respecting title or evidence of title or other things.

(6.) On a sale exchange or partition any restriction or reservation with respect to—

- (a) Building on or other user of land; or
- (b) Mines and minerals; or
- (c) The more beneficial working of mines and minerals; or
- (d) Any other thing

may be imposed or reserved and made binding as far as the law permits by covenant condition or otherwise on the tenant for life and the settled land or any part thereof or on the other party and any land sold or given in exchange or on partition to him.

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

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

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

Leases.

Power of tenant
for life to lease
for ordinary
or building or
mining purposes.
Imp. *Ib.* s. 6.

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

- (a) In case of a building lease thirty years;
- (b) In case of a mining lease twenty-one years;
- (c) In case of any other lease fourteen years.

Regulations
respecting leases
generally.
Imp. *Ib.* s. 7.

14.—(1.) Every lease shall be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent that can reasonably be obtained regard being had to any fine taken and to any money laid out or to be laid out for the benefit of the settled land and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding sixty days.

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

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

Building and Mining Leases.

15.—(1.) Every building lease shall be made partly in consideration of the lessee or some person by whose direction the lease is granted or some other person having erected or agreeing to erect buildings new or additional or having improved or repaired or agreeing to improve or repair buildings or having executed or agreeing to execute on the land leased an improvement authorized by this Act for or in connection with building purposes.

Regulations
respecting
building leases.
Imp. 45 & 46
Vic. c. 88, s. 8.

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

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

- (a) The annual rent reserved by any lease shall not be less than ten shillings;
- (b) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which in order that the leases may be in conformity with this Act ought to be reserved in respect of the whole land for the time being leased; and
- (c) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

16.—(1.) In a mining lease—

- (a) The rent may be made to be ascertainable by or to vary according to the acreage worked or by or according to the quantities of any mineral or substance gotten

Regulations
respecting
mining leases.
Imp. 17, s. 9.

made merchantable converted carried away or disposed of in or from the settled land or any other land or by or according to any facilities given in that behalf; and

- (b) A fixed or minimum rent may be made 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 his agreeing to execute on the land leased an improvement authorized by this Act for or in connection with mining purposes.

Part of mining rent to be set aside.
Imp. 45 & 46
Vic. c. 38, s. 11.

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

Leasing powers for special objects.
Imp. 17. s. 12.

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

- (a) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease which if made by the predecessors would have been binding on the successors in title;
- (b) A lease for giving effect to a covenant of renewal performance whereof could be enforced against the owner for the time being of the settled land; and
- (c) A lease for confirming as far as may be a previous lease being void or voidable but so that every lease as and when confirmed shall be such a lease as might at the date of the original lease have been lawfully granted under this Act or otherwise as the case may require.

Surrenders.

Surrender and new grant of leases.
Imp. 17. s. 13.

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

and minerals therein or in respect of mines and minerals or any of them.

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

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

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

(5.) On a surrender and the making of a new or other lease whether for the same or for any extended or other term and whether or not subject to the same or to any other covenants provisions or conditions the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved and of any fine to be taken and of the nature of the covenants provisions and conditions to be inserted in the new or other lease.

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

Mansion and Park.

20. Notwithstanding anything in this Act the principal mansion house on any settled land and the demesnes thereof and other lands usually occupied therewith shall not be sold or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court.

Restriction as to
mansion house,
park, &c.
Imp. 45 & 46
Vic. c. 38, s. 15.

Streets and open Spaces.

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

Dedication of
streets, open
spaces, &c.
Imp. *Ib.* s. 16.

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

(b) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement or other trustees or any company or public body on trusts or subject to provisions for securing the continued appropriation thereof to the purposes afore-

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said and the continued repair or maintenance of streets and other places and works aforesaid with or without provision for appointment of new trustees when required; and

- (c) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be enrolled in the office of the Registrar of Titles) and thereby declare the mode terms and conditions of the appropriation and the manner in which and the persons by whom the benefit thereof is to be enjoyed and the nature and extent of the privileges and conveniences granted.

Surface and Minerals Apart.

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

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

Mortgage.

23. Where money is required for equality of exchange or partition the tenant for life may raise the same on mortgage of the settled land or of any part thereof by conveyance of the fee-simple or other estate or interest the subject of the settlement or by creation of a term of years in the settled land or otherwise and the money raised shall be capital money arising under this Act.

Undivided Share.

24. Where the settled land comprises an undivided share in land or under the settlement the settled land has come to be held in undivided shares the tenant for life of an undivided share may join or concur in any manner and to any extent necessary or proper for any purpose of this Act with any person entitled to or having power or right of disposition of or over another undivided share.

Separate dealing with surface and minerals, with or without way-leaves, &c.
Imp. 45 & 46
Vic. c. 38, s. 17.

Mortgage for equality money, &c.
Imp. 1b. s. 18.

Concurrence in exercise of powers as to undivided share.
Imp. 1b. s. 19.

Conveyance.

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

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

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

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

Contracts.

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

Power for tenant
for life to enter
into contracts.
Imp. 17. s. 31.

- (a) May contract to make any sale exchange partition mortgage or charge;
- (b) May vary or rescind with or without consideration the contract in the like cases and manner in which if he were absolute owner of the settled land he might lawfully vary or rescind the same but so that the contract as varied be in conformity with this Act and any such consideration if paid in money shall be capital money arising under this Act;

- (c) May contract to make any lease and in making the lease may vary the terms with or without consideration but so that the lease be in conformity with this Act;
- (d) May accept a surrender of a contract for a lease in like manner and on the like terms in and on which he might accept a surrender of a lease and thereupon may make a new or other contract or new or other contracts for or relative to a lease or leases in like manner and on the like terms in and on which he might make a new or other lease or new or other leases where a lease had been granted;
- (e) May enter into a contract for or relating to the execution of any improvement authorized by this Act and may vary or rescind the same; and
- (f) May in any other case enter into a contract to do any act for carrying into effect any of the purposes of this Act and may vary or rescind the same.

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

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

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

Infants, Married Women, Lunatics.

27. Where a tenant for life or a person having the powers of a tenant for life under this Act is an infant or an infant would if he were of full age be a tenant for life or have the powers of a tenant for life under this Act the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement and if there are none then by such person and in such manner as the Court on the application of a testamentary or other guardian or next friend of the infant either generally or in a particular instance may order.

28. In the application of this Act to married women the following provisions shall have effect:—

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

Married woman,
how to be affected.
Imp. 15. s. 61.

The Settled Land Act of 1886 (Queensland, adopted).

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

29. 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 Insanity Act of 1884*"⁽²⁾ or any Act amending or in substitution for that Act the committee of his estate or the Curator in Insanity as the case may be may in his name and on his behalf under an order of the Court exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land or of the committee of the estate or of the Curator.

Tenant for life,
insane.
Imp. 45 & 46 Vic.
c. 38, s. 62.

PART IV.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST
MONEY—IMPROVEMENTS.

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

Capital money
under Act,
investment, &c.,
by trustees or
Court.
Imp. 17. s. 21.

(2) *The Insanity Act of 1884* of Queensland was adopted in British New Guinea by *The Courts and Laws Adopting Ordinance (Amended) of 1889* and continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*. It was repealed and replaced in the Territory of Papua by the *Insanity Ordinance, 1912*.

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- (a) In investment on Government securities of the United Kingdom or any one of the Australasian Colonies or on mortgage of unencumbered freehold property in Queensland or on 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;
- (b) In discharge purchase or redemption of incumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement;
- (c) In payment for any improvement authorized by this Act;
- (d) In payment for equality of exchange or partition of settled land;
- (e) In purchase of the reversion or freehold in fee of any part of the settled land being leasehold land held for years or life or years determinable on life;
- (f) In purchase of land in fee-simple or of leasehold land held for forty years or more unexpired at the time of purchase subject or not to any exception or reservation of or in respect of mines or minerals therein or of or in respect of rights or powers relative to the working of mines or minerals therein or in other land;
- (g) In purchase either in fee-simple or for a term of forty years or more of mines and minerals convenient to be held or worked with the settled land or of any easement right or privilege convenient to be held with the settled land for mining or other purposes;
- (h) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;
- (i) In payment of costs charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of this Act;
- (j) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations
respecting
investment,
devolution,
and income of
securities, &c.
Imp. 45 & 46
Vic. c. 38, s. 22.

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

The Settled Land Act of 1886 (Queensland, adopted).

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

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

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

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

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

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

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

Investment
in land in
Queensland.
Imp. 45 & 46
Vic. c. 38, s. 23.

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

Settlement of
land purchased,
taken in
exchange, &c.
Imp. 1b. s. 24.

(2.) Freehold land shall be conveyed to the uses on the trusts and subject to the powers and provisions which under the settlement or by reason of the exercise of any power of charging therein contained are subsisting with respect to the settled land or as near thereto as circumstances permit but not so as to increase or multiply charges or powers of charging.

(3.) Leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding as nearly as the law and circumstances

LAND—

permit with the uses trusts powers and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail or in tail male or in tail female and who dies under the age of twenty-one years but shall on the death of that person under that age go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised and remaining unpaid from which the settled land or any part thereof or any undivided share therein has theretofore been released on the occasion and in order to the completion of a sale exchange or partition.

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

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

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

Improvements with Capital Trust Money.

34. Improvements authorized by this Act are the making or execution on or in connexion with and for the benefit of settled land of any of the following works or of any works for any of the following purposes and any operation incident to or necessary or proper in the execution of any of those works or necessary or proper for carrying into effect any of those purposes or for securing the full benefit of any of those works or purposes namely:—

- (a) Drainage including the straightening widening or deepening of drains streams and watercourses;
- (b) Irrigation warping;
- (c) Drains pipes and machinery for supply and distribution of sewage as manure;
- (d) Embanking or weiring from a river or lake or from the sea or a tidal water;
- (e) Groynes sea walls defences against water;

Description of
improvements
authorized by
Act.
Imp. 45 & 46
Vic. c. 38, s. 25.

The Settled Land Act of 1886 (Queensland, adopted).

- (f) Inclosing straightening of fences re-division of fields;
- (g) Reclamation dry warping;
- (h) Farm roads private roads roads or streets in villages or towns;
- (i) Clearing trenching planting;
- (j) Cottages for labourers farm-servants and artisans employed on the settled land or not;
- (k) Dwelling-houses warehouses offices out-buildings and other buildings;
- (l) Saw-mills scutch-mills and other mills water-wheels engine-houses and kilns which will increase the value of the settled land for agricultural or pastoral purposes or as woodland or otherwise;
- (m) Reservoirs tanks conduits watercourses pipes wells ponds shafts dams weirs sluices and other works and machinery for supply and distribution of water for agricultural pastoral manufacturing or other purposes or for domestic or other consumption;
- (n) Tramways railways canals docks;
- (o) Jetties piers and landing places on rivers lakes the sea or tidal waters for facilitating transport of persons and of agricultural stock and produce and of manure and other things required for agricultural purposes and of minerals and of things required for mining purposes;
- (p) Streets roads paths squares gardens or other open spaces for the use gratuitously or on payment of the public or of individuals or for dedication to the public the same being necessary or proper in connexion with the conversion of land into building land;
- (q) Sewers drains watercourses pipe-making fencing paving brick-making tile-making and other works necessary or proper in connexion with any of the objects aforesaid;
- (r) Trial pits for mines and other preliminary works necessary or proper in connexion with development of mines;
- (s) Reconstruction enlargement or improvement of any of such works whether executed under the provisions of this Act or already existing.

35.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act he may submit for approval to the trustees of the settlement or to the Court as

Approval by
Court of
scheme for
improvement
and payment
thereon.

Imp. 45 & 46
Vic. c. 38, s. 26.

the case may require a scheme for the execution of the improvement showing the proposed expenditure thereon.

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

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

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

Execution and Repair of Improvements.

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

37.—(1.) The tenant for life and each of his successors in title having under the settlement a limited estate or interest only in the settled land shall maintain and repair at his own expense every improvement executed under the foregoing provisions of this Act and where a building or work in its nature insurable against damage by fire is comprised in the improvement shall insure and keep insured the same at his own expense in such amount, if any, as the Court by order in any case prescribes.

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

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

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

The Settled Land Act of 1886 (Queensland, adopted).

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

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

(5.) If the tenant for life or any of his successors as aforesaid fails in any respect to comply with the requirements of this section or does any act in contravention thereof any person having under the settlement any estate or interest in the settled land in possession remainder or reversion shall have a right of action in respect of that default or act against the tenant for life and the estate of the tenant for life after his death shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

38. The tenant for life and each of his successors in title having under the settlement a limited estate or interest only in the settled land and all persons employed by or under contract with the tenant for life or any such successor may from time to time enter on the settled land and without impeachment of waste by any remainderman or reversioner execute thereon any improvement authorized by this Act or inspect maintain and repair the same and for the purposes thereof do make and use on the settled land all acts works and conveniences proper for the execution maintenance repair and use thereof and get and work freestone limestone clay sand and other substances and make tramways and other ways and burn and make bricks tiles and other things and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Protection as regards waste in execution and repair of improvements.
Imp. 45 & 46
Vic. c. 38, s. 29.

PART V.—MODE OF EXERCISE OF POWERS—PROCEDURE.

39. When the tenant for life is the sole trustee of the settlement or the tenants for life being two or more are the sole trustees of the settlement or there is no trustee of the settlement the powers conferred by this Act on a tenant for life shall not be exercised without the sanction of the Court.

When tenant for life is sole trustee of the settlement, sanction of the Court necessary.

40. When there are more tenants for life than one and they do not concur or one or more of them is or are from disability or otherwise unable to concur in any dealing with the settled land

Provision where several tenants for life who do not agree.

proposed by one or more of them the Court may on the application of any of them direct that any of the powers conferred by this Act on a tenant for life shall be exercised by one or more of such tenants for life and on such conditions as the Court thinks fit.

Notice to trustees.
Imp. 45 & 46
Vic. c. 38, s. 45.

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

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

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

Imp. 47 & 48
Vic. c. 18, s. 5.

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

(4.) The tenant for life must upon request by a trustee of the settlement furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales exchanges partitions or leases effected or in progress or immediately intended.

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

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

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

Reference of differences to Court.
Imp. 1b. s. 44.

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

43.—(1.) Every application to the Court shall be by petition or by summons in Chambers.

Regulations
respecting
applications, &c.
Imp. 45 & 46
Vic. c. 38, s. 46.

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

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

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

(5.) General Rules⁽³⁾ may be made for the purposes of this Act accordingly.

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

Payment of costs
out of settled
property.
Imp. *ib.* s. 47.

PART VI.—TRUSTEES—SECURITY—INDEMNITY &C.

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

Appointment of
trustees by Court.
Imp. *ib.* s. 38.

(3) See *The Settled Land Act of 1886 Rules of 1886 (Queensland, adopted)*, printed on p. 2750.

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

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

46.—(1.) Notwithstanding anything in this Act capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement unless the settlement authorises the receipt of capital trust money of the settlement by one trustee or 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.

Trustees' receipts.
Imp. 17. s. 40.

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

Protection of each trustee individually.
Imp. 17. s. 41.

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

Protection of trustees generally.
Imp. 17. s. 42.

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

in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party or as giving a receipt for the purchase-money or in any other character or in respect of any other money paid by them by direction of the tenant for life on the purchase exchange partition or lease.

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

Trustees' reimbursement.
Imp. 45 & 46
Vic. c. 38, s. 43.

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

Commission to trustees.

An order under this section may be made upon summons or petition or if the settlement is a will and the executors are also the trustees of the settlement upon an application to pass the accounts of the executors.⁽⁴⁾

PART VII.—MISCELLANEOUS PROVISIONS.

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

Powers not assignable; contract not to exercise powers void.
Imp. *ib.* s. 50.

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

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

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section "assignment" includes

(4) See the *Trustees and Executors Ordinance, 1912.*

assignment by way of mortgage and any partial or qualified assignment and any charge or incumbrance; and "assignee" has a meaning corresponding with that of assignment.

Prohibition or limitation against exercise of powers, void.
Imp. 45 & 46
Vic. c. 38, s. 51.

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

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

Provision against forfeiture.
Imp. *Ib.* s. 52.

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

Tenant for life trustee for all parties interested.
Imp. *Ib.* s. 53.

55. A tenant for life shall in exercising any power under the Act have regard to the interests of all parties entitled under the settlement and shall in relation to the exercise thereof by him be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protection of purchasers, &c.
Imp. *Ib.* s. 54.

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

Exercise of powers, limitation of provisions, &c.
Imp. *Ib.* s. 55.

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

The Settled Land Act of 1886 (Queensland, adopted).

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

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

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

Saving for other powers.
Imp. 45 & 46
Vic. c. 38, s. 56.

(2.) But in case of conflict between the provisions of a settlement and the provisions of this Act relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act the provisions of this Act shall prevail; and accordingly notwithstanding anything in the settlement the consent of the tenant for life shall by virtue of this Act be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act.

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

59.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life or the trustees of the settlement any powers additional to or larger than those conferred by this Act.

Additional or larger powers by settlement.
Imp. 17. s. 57.

(2.) Any additional or larger powers so conferred shall as far as may be notwithstanding anything in this Act operate and be exercisable in the like manner and with all the like incidents effects and consequences as if they were conferred by this Act unless a contrary intention is expressed in the settlement.

60. 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 sub-

Application of money in hands of trustees under powers of settlement.
Imp. 17. s. 33.

ject to the settlement then in addition to such powers of dealing therewith as the trustees have independently of this Act they may at the option of the tenant for life invest or apply the same as capital money arising under this Act.

Application of money paid for lease or reversion.

Imp. 45 & 46
Vic. c. 38, s. 34.

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

Cutting and sale of timber, and part of proceeds to be set aside.

Imp. *Ib.* s. 35.

62.—(1.) Where a tenant for life is impeachable for waste in respect of timber and there is on the settled land timber ripe and fit for cutting the tenant for life on obtaining the consent of the trustees of the settlement or an order of the Court may cut and sell that timber or any part thereof.

(2.) Three-fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act and the other fourth part shall go as rents and profits.

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

Imp. *Ib.* s. 36.

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

Heirlooms.

Imp. *Ib.* s. 37.

64.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act and shall be paid invested or applied and

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

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

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

Payment into court.
Imp. 45 & 46
Vic. c. 38, s. 46(2).

PART VIII.—SETTLEMENTS BY WAY OF TRUST FOR SALE.

66.—(1.) Any land or any estate or interest in land which under or by virtue of any deed will or agreement covenant to surrender Act of Parliament or other instrument or any number of instruments whether made or passed before or after or partly before and partly after the commencement of this Act is subject to a trust or direction for sale of that land estate or interest and for the application or disposal of the money to arise from the sale or the income of that money or the income of the land until sale or any part of that money or income for the benefit of any person for his life or any other limited period or for the benefit of two or more persons concurrently for any limited period and whether absolutely or subject to a trust for accumulation of income for payment of debts or other purpose or to any other restriction shall be deemed to be settled land and the instrument or instruments under which the trust arises shall be deemed to be a settlement and the person for the time being beneficially entitled to the income of the land estate or interest aforesaid until sale whether absolutely or subject as aforesaid shall be deemed to be tenant for life thereof or if two or more persons are so entitled concurrently then those persons shall be deemed to constitute together the tenant for life thereof and the persons if any who are for the time being under the settlement trustees for sale of the settled land or having power of consent to or approval of or control over the sale or if under the settlement there are no such trustees then the persons if any for the time being who are by the settlement declared to be trustees thereof for the purposes of this Act are for the purposes of this Act the trustees of the settlement.

Provision for case of trust to sell and reinvest in land.
Imp. *Ib.* s. 63.

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

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- (a) Any reference in this Act to the predecessors or successors in title of the tenant for life or to the remaindermen or reversioners or other persons interested in the settled land shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land or the income of that money or the income of the land until sale (as the case may require);
- (b) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land but may in addition to any other mode of application authorized by this Act be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement;
- (c) Capital money arising under this Act from the settled land and the securities in which the same is invested shall not for the purpose of disposition transmission or devolution be considered as land unless the same would if arising under the settlement from a sale or disposition of the settled land have been so considered and the same shall be held in trust for and shall go to the same persons successively in the same manner and for and on the same estates interests and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land and the income of such capital money and securities shall be paid or applied accordingly;
- (d) Land of whatever tenure acquired under this Act by purchase or in exchange or on partition shall be conveyed to and vested in the trustees of the settlement on the trusts and subject to the powers and provisions which under the settlement or by reason of the exercise of any power of appointment or charging therein contained are subsisting with respect to the settled land or would be so subsisting if the same had not been sold or as near thereto as circumstances permit but so as not to increase or multiply charges or powers of charging.

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

As to consents of tenants for life.
Imp. 47 & 48
Vic. c. 18, s. 6(1).

68. With respect to the powers conferred by the last preceding section but one the following provisions shall have effect—

Powers given by s. 66 to be exercised only with leave of Court.
Imp. *Ib.* s. 7.

- (a) Those powers are not to be exercised without the leave of the Court;
- (b) The Court may by order in any case in which it thinks fit give leave to exercise all or any of those powers and the order is to name the person or persons to whom leave is given;
- (c) The Court may from time to time rescind or vary any order made under this section or may make any new or further order;
- (d) So long as an order under this section is in force neither the trustees of the settlement nor any other person other than the person having the leave shall execute any trust or power created by the settlement for any purpose for which leave is by the order given to exercise a power conferred by this Act;
- (e) An order under this section may be registered in the office of the Registrar of Titles;
- (f) Any person dealing with the trustees from time to time or with any other person acting under the trusts or powers of the settlement is not to be affected by an order under this section unless and until the order is duly registered;
- (g) An application to the Court under this section may be made by the tenant for life or by the persons or one or more of the persons who together constitute the tenant for life within the meaning of the last preceding section but one;
- (h) An application to rescind or vary an order or to make any new or further order under this section may be made also by the trustees of the settlement or by any person beneficially interested under the settlement;
- (i) The person or persons to whom leave is given by an order under this section shall be deemed the proper

LAND—

person or persons to exercise the powers conferred by the last preceding section but one and shall have and may exercise those powers accordingly;

- (j) This section is not to affect any dealing which has taken place before the passing of this Act under any trust or power to which this section applies.

PART IX.—APPLICATION OF ACT TO LAND HELD UNDER “THE REAL PROPERTY ACT OF 1861.”⁽⁵⁾

Application of Act to land held under “*The Real Property Act of 1861.*”

69. In the application of this Act to settled land held under the provisions of “*The Real Property Act of 1861*”⁽⁵⁾ the following provisions shall have effect—

- (1) If any person or persons is or are the registered proprietor or the registered proprietors of the land for an estate in fee-simple in possession such person or persons shall be deemed to be the trustee or trustees of the settlement;
- (2) Where under this Act any power or authority is conferred upon a tenant for life then upon the written request of the tenant for life and upon the performance by the tenant for life of the conditions imposed by this Act upon the exercise of such a power or authority by a tenant for life the registered proprietor or registered proprietors shall have and shall and may exercise that power or authority;
- (3) Where under this Act any instrument is to be executed by a tenant for life in order to the exercise of any such power or authority that instrument shall be executed by the registered proprietor or registered proprietors and such execution shall have the same operation as the execution of such an instrument by a tenant for life is declared to have under this Act;
- (4) A registered proprietor or registered proprietors executing a power or authority in accordance with the provisions of this Act upon the written request of the tenant for life or with the sanction of the Court if being the tenant or the tenants for life he is himself or they are themselves the sole trustee or trustees of the settlement shall not by reason thereof

(5) *The Real Property Act of 1861* of Queensland was adopted in British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889, and continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*. It was repealed and replaced in the Territory of Papua by the *Real Property Ordinance, 1913-1939*.

The Settled Land Act of 1886 (Queensland, adopted).

incur any personal liability to his or their beneficiaries or to any other person and no such registered proprietor or registered proprietors shall for the purpose of executing any such power or authority or complying with any such request be bound to enter into any personal covenant or contract;

- (5) Where under this Act it is provided that land shall be conveyed to any uses or trusts that expression shall be taken to mean that the land shall be transferred to trustees and shall be held by them as trustees upon such uses or trusts;
- (6) Where under this Act it is provided that a contract made by a tenant for life shall be binding on the settled land that expression shall be taken also to mean that the contract shall be binding on the registered proprietor and that he shall be bound to give effect thereto in the same manner as if he had made it himself subject however to the provisions of this Act;
- (7) The provisions of the thirty-first section of "*The Real Property Act of 1877*"⁽⁶⁾ shall not apply to a lease of settled land made by a tenant for life under this Act;
- (8) The term "Deed" shall include any instrument executed in pursuance of the provisions of "*The Real Property Act of 1861*."⁽⁵⁾

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

Persons dealing with registered proprietor not bound to inquire.

(5) *The Real Property Act of 1861* of Queensland was adopted in British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889, and continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*. It was repealed and replaced in the Territory of Papua by the *Real Property Ordinance, 1913-1939*.

(6) *The Real Property Act of 1877* of Queensland was adopted in British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889 and continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*. It was repealed and replaced in the Territory of Papua, by the *Real Property Ordinance, 1913-1939*. See, now, Section 77 of the *Real Property Ordinance, 1913-1939*.