THE
SETTLED LAND ACT of 1886
50 Vic. No. 13

Amended by
Acts Citation Act of 1903, 3 Edw. 7 No. 10
Statute Law Revision Act of 1908, 8 Edw. 7 No. 18
Married Women (Restraint upon Anticipation) Act of 1952, 1 Eliz. 2 No. 36

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

[Assented to 30 September 1886]

[Preamble repealed by The Statute Law Revision Act of 1908, s. 2]

PART I—PRELIMINARY

1. Division of Act into Parts. This Act is divided into Parts as follows:—
   PART I—PRELIMINARY;
   PART II—DEFINITIONS;
   PART III—POWERS OF TENANT FOR LIFE;
   PART IV—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY—IMPROVEMENTS;
   PART V—MODE OF EXERCISE OF POWERS—PROCEDURE;
   PART VI—TRUSTEES—SECURITY—INDEMNITY, ETC.;
   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.”

2. Short title. This Act may be cited as “The Settled Land Act of 1886.”

PART II—DEFINITIONS

3. (1) Definition of settlement. 45 & 46 Vic., c. 38, s. 2. 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.

(2) Undisposed of remainder or reversion. 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.
(3) **Settled land.** 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.

(4) **Estate of tenant by curtesy.** 47 & 48 Vic., c. 18, s. 8. 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.

Acts referred to:
- Settled Land Act, 1882, 45 & 46 Vic. c. 38 (Imperial).
- Settled Land Act, 1884, 47 & 48 Vic. c. 18 (Imperial).

The Acts referred to have been replaced by the Settled Land Act, 1925, for which see 23 Halsbury's Statutes of England, 2nd ed., p. 12.

Curtesy was abolished by Intestacy Act of 1877, s. 28, title SUCCESSION.

The words "limited to or in trust for any persons by way of succession" do not include limitations to, or in trust for, one and the same person for various estates and interests by way of succession, Re Pocock and Prankerd's Contract, [1896] 1 Ch. 302, nor the case of an owner in fee simple whose estate is charged with an annuity, Re Collis' Estate, [1911] 1 I.R. 267; Union Trustee Co. of Australia Ltd. v. Allnutt, [1914] V.L.R. 420.

A disposition of land to trustees in trust for a life tenant, and after his death to sell the land and divide the proceeds, is a settlement, Re Ready's Estate, [1920] St. R. Qd. 87. Compare Re Stevens and Dunsby's Contract, [1928] W.N. (Eng.) 187.

If there is to be enjoyment of an estate by way of succession, there is a settlement, even though no actual term is limited or trust expressed to secure the succession, Re Trafford's Settled Estate, [1915] 1 Ch. 9.

As to a provision in a will for conversion of realty as from testator's death, see Re Ford, [1921] N.Z.L.R. 875.

The powers conferred by this Act cannot be restricted or excluded by the settlement, but this Act does not affect the powers contained in the settlement. See ss. 58, 59, 53, 54.


Settled Land—By virtue of subsection (2), where a reversion is left in a settlor, a tenant for life, or a person having the powers of a tenant for life, can sell and make a good title to the fee simple, Re Hunter and Hewlett's Contract, [1907] 1 Ch. 46.

The fact that part of an estate is settled land does not make the whole of the estate settled land, Re Bective Estate (1891), 27 L.R. Ir. 364.

For what is settled land, see also s. 7 (land to which an infant is entitled), and s. 66 (land subject to trust for sale and to apply proceeds for benefit of a person for a limited period).


4. In this Act—

"Income" includes rents and profits; and "Possession" includes receipt of income;

"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;
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;

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 license for any mining purposes;

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

"Securities" include stocks, funds, and shares;

"Court" means the Supreme Court of Queensland.

"Possession"—The term is used in distinction from remainder or reversion, not as opposed to possession by another or the existence of encumbrances, *Re Morgan* (1883), 24 Ch. D. 114; *Re Jones* (1884), 26 Ch. D. 736; *Re Bird*, [1927] 1 Ch. 210.

"Rent"—As to "other reservation", see *Re Moody and Yates' Contract* (1885), 30 Ch. D. 344.

A fine is a sum of money which is to go irrevocably into the pocket of the lessor, *Re Cosh's Contract*, [1897] 1 Ch. 9.

"Building Lease"—See also s. 15 (1).

Other terms—As to "settlement" and "settled land", see s. 3, and ss. 7, 66.

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.

For "settlement" and "settled land", see ss. 3, 7, 66. For "possession", see s. 4.

Where the tenant for life is an infant, see s. 27; where a married woman, see s. 28; where mentally ill, see s. 29.

Where several tenants for life cannot agree, see s. 40.

As to land under the Real Property Acts, 1861 to 1963, title REAL PROPERTY, Vol. 14, p. 633, see s. 69 (2).

With respect to prohibitions in the settlement against exercise of powers, see ss. 53, 54.
The tenant for life may assign his estate, but not his powers s. 52, which he must exercise as trustee for all persons interested, s. 55.

A person to whom trustees may in their absolute discretion pay the income or any part thereof of settled property during a life has not the powers of a tenant for life, *Re Toohey's Settled Estate* (1887), 3 Q.L.J. 39.

A tenant for life is not constituted by the several objects of a discretionary trust for distribution of the rents and profits during the life of one of them, *Re Atkinson* (1886), 31 Ch. D. 577. Compare *Re Frewen*, [1926] Ch. 580. For a case in which it was held that a testator's widow, children, and a third person, together constituted a tenant for life notwithstanding that the interests of each under the will were different, and notwithstanding that there were trusts for management, see *Re Snowball's Will*, [1912] V.L.R. 176. Several persons entitled to income until the death of the last survivor have the powers of a tenant for life, *Re Jones, Hocking v. Queensland Trustees Ltd.*, [1917] St. R. Qd. 74. For a case in which the court appointed a person to convey, where the tenant for life was, at the time of conveyance, constituted by numerous and unascertained persons, see *Re Jenkin*, [1932] V.L.R. 314.

A mere annuitant is not a tenant for life, *Re Bird*, [1927] 1 Ch. 210, at p. 217.

A direction to permit a person to reside at a house, or occupy certain property, makes him tenant for life of the property which becomes settled land, *Re Hanson*, [1928] 1 Ch. 96; *Re Paget's Settled Estate* (1885), 30 Ch. D. 161; *Re Clarke* (1913), 11 Tas. L. R. 169; *Re Addis' Settled Estates*, [1920] V.L.R. 437; *Queensland Trustees Ltd.* v. Finney, [1905] St. R. Qd. 98 (option to have property sold and enjoy income of proceeds). For a case where it was held that a wife was a tenant for life, though she had never exercised her right to reside on property left by her husband, and had remarried, see *Re Clarke, supra*. But a person who has a right to reside intended to be purely personal is not a life tenant, *Trustees, Executors, and Agency Co. Ltd.* v. Wallace, [1921] V.L.R. 446. Where a person was life tenant by virtue of a right to reside on the estate on making a periodical payment, but failed to make the payment, it was held that his interest had determined by breach of the condition, *Re Flack* (1918), 14 Tas. L.R. 55; *Re Haynes* (1887), 37 Ch. D. 306; [1886-90] All E.R. Rep. 545. But see *Re Paget's Settled Estate* (1885), 30 Ch. D. 161; *Re Gibbons*, [1920] 1 Ch. 372, at p. 377; *Re Acklom*, [1929] 1 Ch. 195. With respect to a right to reside in a house selected by the devisee, see *Re Clarke, supra; Re Bond* (1904), 48 Sol. Jo. 192.


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

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

(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.

Possession is used as distinguished from remainder of reversion, Re Morgan (1883), 24 Ch. D. 114; Re Jones (1884), 26 Ch. D. 736, and not as opposed to possession by a guardian, Re Morgan, supra, or to the existence of incumbrances, Re Jones, supra. "Possession" includes receipt of income, s. 4; In the Will of Sullivan (1923), 19 Tas. L.R. 41.

Persons entitled in expectancy or on a contingency are not entitled within these provisions, Re Astor, [1922] 1 Ch. 364.

Subsection 1 (b) applies to the case where there is a condition of personal residence, Re Richardson, [1904] 2 Ch. 777. This paragraph was applied in In the Will of Sullivan (1923), 19 Tas. L.R. 41.

As to subsection (1) (d), see Re Hazel's Settled Estate (1885), 29 Ch. D. 78.

The interests dealt with in subsection 1 (e), are beneficial interests, and so a limitation to trustees during the life of A on certain trusts was held not to bring the trustees within this section; Re Jemmett and Guest's Contract, [1907] 1 Ch. 629.

A gift of an estate to a woman during widowhood brings her within subsection 1 (f), Re Follock, [1906] 1 Ch. 146. See also Re McKenzie Deceased, [1968] Q.W.N. 5.

Tenancy by the curtesy has been abolished, Intestacy Act of 1877, s. 28, title SUCCESSION.

In subsection 1 (i), trust does not include an implied or constructive trust, Re Llanover, [1907] 1 Ch. 635. A mere expectancy such as the interest of an heir-at-law, where trustees have a discretionary trust over the whole income, is not within the paragraph, Re Astor [1922] 1 Ch. 364, and the objects of a discretionary trust are not within it; Re Atkinson (1886), 31 Ch. D. 577; Re Toohey's Settled Estate (1887), 3 Q.L.I. 39.

As to subsection (2), see Re Warren's Settlement, [1924] V.L.R. 326.

See also 40 English and Empire Digest (Rpl.) p. 796; 34 Halsbury's Laws of England, 3rd ed., p. 517.

7. Infant absolutely entitled to be as tenant for life. 45 & 46 Vic., c. 38, s. 59. Where a person who is in his own right seised of or entitled in possession to land, or beneficially entitled to the whole interest in land, is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

As to exercise of the powers of a tenant for life, see s. 27.

The estate must not be contingent, Re Horne's Settled Estate (1888), 39 Ch. D. 84; but an infant who has a vested equitable estate in land, liable to be divested on death under the age of twenty-one, is within this provision, Re James (1884), 51 L.T. 596.
TRUSTEES

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

As to land subject to a trust for sale and application of the proceeds or income of the proceeds for the benefit of a person for a limited period, see s. 66.

With respect to land under the Real Property Acts, 1861 to 1963, title REAL PROPERTY, Vol. 14, p. 633, see s. 69 (1), post.

Where the tenant for life is sole trustee of the settlement, see s. 39.

Generally as to trustees of the settlement, see ss. 45-51, and Trustees and Executors Acts, 1897 to 1964, s. 47, title TRUSTEES AND EXECUTORS.

Trustees, for the purposes of the Act, are trustees of the settlement, not of the land subject thereto, Re Arran, [1912] 2 Ch. 141.

The existence of a power of sale, or of a power to consent to or approve of a sale, must be shown to be in the trustees, Re Ngawakakuke No. 3 Block (1905), 25 N.Z.L.R. 320.

See also Constable v. Constable (1886), 32 Ch. D. 233 (power exercisable with consent of life tenant, sufficient); Re Johnstone’s Settlement (1886), 17 L.R. Ir. 172 (power exercisable with consent of person not life tenant, which consent not obtainable, held insufficient); Re Coull’s Settled Estates, [1905] 1 Ch. 712 (power exercisable on a contingency and for a particular purpose, not sufficient); Re Carne’s Settled Estates, [1899] 1 Ch. 324; [1895-9] All E.R. Rep. 357 (power to raise money by mortgage or other means, not sufficient).

CAPITAL MONEY

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

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

As to what is “capital money arising under this Act”, see also ss. 17, 23, 26 (1) (b), 31 (7), 60, 64 (2).

The application of capital money arising under this Act is governed by ss. 30 et seq.

Compare hereon Re Lindsay’s Settlement (No. 1), [1941] 1 Ch. 170; [1941] 1 All E.R. 104 (damages for acts done to the property held to belong to the tenant for life).

“Fine” is defined by s. 4. A fine on a lease is not prevented from being capital money by a direction that the life tenant shall enjoy all income to be derived from the property, Re Ready’s Estate, [1920] St. R. Qd. 87.

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

Where the principal mansion house is sought to be sold, see s. 20.

For power to contract, see s. 26 (1) (a).

Sanction of the court is necessary in certain cases, s. 39. Notice must be given to trustees of the settlement, s. 41. Differences between the tenant for life and trustees of the settlement may be referred to the court, s. 42.

There is no provision in this Act authorising the court to sanction the sale by a trustee to himself or a co-trustee. The Act confers on tenants for life themselves the power to dispose of or deal with settled land, and except where a tenant for life is an infant or a person of unsound mind, the trustees act merely as depositories of capital money arising from the exercise of such power. See Re Marris' Settlement, [1966] Q.W.N. 13.

There is no provision in the Act permitting dealings as between tenants for life and the estate and permitting the powers of a tenant for life to be exercised by the trustee of the settlement, ibid.

For a suggested correct procedure, see ibid.

See Re Prior (deceased), [1965] Q.W.N. 46, noted to s. 7.

As to partition, see the title PARTITION, Vol. 13, p. 399.

The tenant for life's motive for selling is immaterial, Hampden v. Buckinghamshire, [1893] 2 Ch. 531, even if speculative, Thomas v. Williams (1883), 24 Ch. D. 558. Nor does it matter that the remainderman has sold his reversionary interest, Wheelwright v. Walker (1883), 23 Ch. D. 752. The tenant for life may sell the subsoil without the surface, e.g., to a railway company for the purpose of a tunnel, Re Pearson's Will (1900), 83 L.T. 626.

In the case of Re Frampton, [1943] Q.W.N. 29, it was held that the tenant for life was entitled to sell to the wife of the surviving trustee.

The fact that the powers of a tenant for life under this Act are available to an applicant is a relevant matter for consideration in deciding whether the testator has failed in a moral duty to make adequate provision for him. See Re Platt, [1952] Q.W.N. 3.

See also Re Kiepe, [1966] Q.W.N. 22; Re Smith (deceased), [1964] 38.

See also 34 Halsbury's Laws of England, 3rd cd., p. 554; 40 English and Empire Digest (Rpl.) p. 824.

11. Regulations respecting sale, exchange, and partition. 45 & 46 Vic., c. 38, s. 4. (1) Every sale shall be made at the best price that can reasonably be obtained.

(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.
(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.

As to obtaining the best price, see also s. 56.

As to the right of a purchaser to have rates which are a charge on the land paid off out of purchase money, see Re Watkins' Settled Estate, [1902] St. R. Qd. 65.

In authorising a sale the court has power to authorise a sale on terms. So held by Macrossan, C.J., in Re Henry's Trusts, [1950] Q.W.N. 8 (not following Re Boyd's Trusts, [1904] Q.W.N. 15).

For an example of leave given to sell on terms and for a form of order consequent thereon, see Re Thomson's Trusts, [1952] Q.W.N. 40.


An injunction was granted on the application of a purchaser from a remainderman of his interest to restrain a sale at a lower price than the purchaser was willing to give, Wheelwright v. Walker (No. 2), [1883] W.N. (Eng.) 154.

A conveyance should recite the contract for sale, the conditions of sale, and that it was carried out as part of the conditions, Re Judd and Poland's Contract, [1906] 1 Ch. 684, at p. 690.

See also 40 English and Empire Digest (Rpl.) p. 824; 34 Halsbury's Laws of England, 3rd ed., p. 554.

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

    See also s. 33 (4), (5).
    "Incumbrance" includes an annuity, Re Pedley, [1927] 2 Ch. 168.
    See 40 English and Empire Digest (Rpl.) p. 838.

LEASES

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

For "building lease" and "mining lease", see s. 4.
For extent of leasing powers, see also s. 18.
As to lease of the principal mansion house, see s. 20.
For power to contract, see s. 26 (1) (e).
As to notice to trustees, see s. 41. Differences between life tenant and trustees may be settled by reference to the court, s. 42.

Where the tenant for life is sole trustee of the settlement, see s. 39.

An equitable tenant for life was held entitled to exercise the power under a similar section, *Dodd v. Bogue*, [1922] N.Z.L.R. 18.

The court will not interfere with the discretion given to the tenant for life by this section unless the exercise of that discretion is manifestly wrong, *Re Meadmore*, [1942] Q.W.N. 46. See *Chirnside v. Chirnside*, [1947] V.L.R. 183.

For an example of an improper exercise of the power of leasing (because on the facts the lease was in substance a lease granted by two beneficiaries who had the powers of a tenant for life under the law of Victoria to themselves), see *Re O'Shea: National Trustees Executors and Agency Co. of Australasia Ltd. v. O'Shea*, [1957] V.R. 352; [1957] A.L.R. 876.

The tenant for life cannot lease to his wife in order to confer a benefit on her, *Sutherland v. Sutherland*, [1893] 3 Ch. 169, but if he leases to her bona fide in exercise of his powers the lease is good, *Gilbey v. Rush*, [1906] 1 Ch. 11. See s. 55.

As to protection of lessees, see also s. 56.

With regard to the stipulation that the best rent must be reserved, see *Carter v. Shipley*, [1921] N.Z.L.R. 1065. To upset a lease, the inadequacy must be substantial, *Sutherland v. Sutherland*, [1893] 3 Ch. 169, at p. 195.

As to how far a lease may contain a covenant for renewal, see *King v. Bird*, [1909] I K.B. 837; *Gaslight and Coke Co. v. Tawse* (1887), 35 Ch. D. 519; *Re Farnell's Settled Estate* (1886), 33 Ch. D. 599.

See also 40 English and Empire Digest (Rpl.) p. 829; 34 Halsbury's Laws of England, 3rd ed., p. 559; 40 English and Empire Digest (Rpl.) p. 829.

**14. Regulations respecting leases generally. 45 & 46 Vic., c. 38, s. 7.**

(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.

As to protection of lessees, see also s. 56.

**15. Regulations respecting building leases. 45 & 46 Vic., c. 38, s. 8.**

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

(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 one dollar;
(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.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

For what constitutes a building lease and building purpose, see s. 4. Building leases include a lease containing an agreement to lay out a fixed sum in improvements and repairs, Re Daniell's Settled Estates, [1894] 3 Ch. 503.

For improvements authorized by this Act, see s. 34.


16. Regulations respecting mining leases. 45 & 46 Vic., c. 38, s. 9. (1) In a mining lease—

(a) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(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 authorised by this Act, for or in connection with mining purposes.

For “mining lease”, “mines and minerals” and “mining purposes”, see s. 4.

See also s. 22.

For improvements authorized by this Act, see s. 34.

As to ownership of minerals, see Mining on Private Land Acts, 1909 to 1965, s. 6, title MINING, Vol. 13, p. 127.

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

For “mining lease” and “mines and minerals”, see s. 4.

As to capital money arising under this Act, see s. 9, and ss. 30 et seq.

The question as to setting aside capital only arises when a lease is granted under the powers conferred by this Act, Re Hall, [1916] 2 Ch. 488, and not where the lease has been granted by the settlor as absolute owner, Re Kemeys-Tynte, [1892] 2 Ch. 211, or where a grant is made by the tenant for life to take effect only out of his interest, Lloyd Jones v. Clarke Lloyd, [1919] 1 Ch. 424.

To determine whether a contrary intention is expressed, the whole settlement must be regarded, and the section will not apply if the provision of the settlement lead to the conclusion that the settlor intended that it should not apply, Re Hanbury's Settled Estate, [1913] 2 Ch. 357, at p. 364. See also Re Daniels, [1912] 2 Ch. 90.

See 33 English and Empire Digest (Rpl.) p. 772.

18. Leasing powers for special objects. 45 & 46 Vic., c. 38, s. 12. The leasing power of a tenant for life extends to the making of—

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

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

(c) 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.

See s. 13.

As to effect of this section, see Re Kemeys-Tynte, [1892] 2 Ch. 211.

SURRENDERS

19. Surrender and new grant of leases. 45 & 46 Vic., c. 38, s. 13. (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. For "settled land" see s. 3.

As to acceptance of surrender of contract for a lease, see s. 26 (1) (d).

Money paid by the lessee as consideration for acceptance of a surrender is capital money, Re Rodes, [1909] 1 Ch. 815, [1908-10] All E.R. Rep. 315.

See 40 English and Empire Digest (Rpl.) p. 838.

MANSION AND PARK

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

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.

For form of summons, see R.S.C. (1900), Schedule I, Part 16, forms 435, 436, title SUPREME COURT AND PRACTICE.

For powers of the court, see ibid., Order 77, rule 8.

STREETS AND OPEN SPACES

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

On or in connection 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—

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

(b) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and

(c) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (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.

See also s. 34 (h), (p), (q).

As to opening of streets and roads, see now Local Government Acts, 1936 to 1967, ss. 3 (1), 34 ("road"), title LOCAL AUTHORITIES, Vol. 10, pp. 320, 452.

Apart from this section in order to dedicate settled land the concurrence of the tenant for life and the remainderman would be required, Farquhar v. Newbury R.D.C., [1909] 1 Ch. 12.
SURFACE AND MINERALS APART

22. Separate dealings with surface and minerals, with or without way-leaves, etc. 45 & 46 Vic., c. 38, s. 17. (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.

For "mines and minerals", see s. 4. As to property in minerals, see Mining on Private Land Acts, 1909 to 1965, s. 6, title MINING, Vol. 13, p. 127.

MORTGAGE

23. Mortgage for equality money, etc. 45 & 46 Vic., c. 38, s. 18. 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.

Power to exchange and join in a partition of the settled land is given by s. 10. As to capital money arising under this Act, see s. 9, and ss. 30 et seq.

"Required" means reasonably required. See Re Clifford, [1902] 1 Ch. 87; Re Bruce, [1905] 2 Ch. 372.

The costs and expenses of an exchange were allowed to be raised by mortgage under a section corresponding to s. 48 of Trustees and Executors Acts, 1897 to 1964, title TRUSTEES AND EXECUTORS, Re Read's Settlement (1922), 17 Tas. L.R. 4. But see Re Hallam (1908), 4 Tas. L.R. 59.

UNDIVIDED SHARE

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

As to partition, see s. 10 (c).

CONVEYANCE

25. Completion of sale, lease, etc., by conveyance. 45 & 46 Vic., c. 38, s. 20. (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.
(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 easements, 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.

See also ss. 57 (2), 69.

For obligation of trustees of the settlement to convey, see Re Watkin's Settled Estate, [1902] St. R. Qd. 65.

By virtue of s. 3 (2), the words "the estate or interest the subject of the settlement" include a reversion which is separated from the particular estate by the settlement itself and remains vested in the grantor, Re Hunter and Hewlett's Contract, [1907] 1 Ch. 46.

A lease granted by a tenant for life purporting to be made in his own right, but which he has no power to grant except under this Act, may take effect under this Act, Mogridge v. Clapp, [1892] 3 Ch. 382; Re Gladstone, [1900] 2 Ch. 101. In determining whether a conveyance by trustees is for the purpose of carrying into effect a valid sale by a tenant for life under this Act or is made under the trustees' power of sale in the trust instrument, extrinsic evidence is admissible to show the truth or otherwise of the facts alleged in the recitals. In such a case ambiguous recitals inconsistent with the operative words were held not to be capable of modifying the operative words, Hamilton v. Cockayne (1914), 10 Tas., L.R. 37.


CONTRACTS

26. Power for tenant for life to enter into contracts. 45 & 46 Vic., c. 38, s. 31. (1) For the purposes and subject to the provisions of this Act, a tenant for life—

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

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

(c) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act;
(d) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted;

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

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

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

(3) The Court may, on the application of the tenant for life, or of any 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.

Where the tenant for life is sale trustee of the settlement, sanction of the court is necessary s. 39.

For improvements authorised by this Act, see s. 34.

The court cannot adjudicate on the claims of persons not parties to the contract, Re Aylesbury Settled Estates (1893), 62 L.J. Ch. 1012.

INFANTS, MARRIED WOMEN, LUNATICS

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

See ss. 5-7.

For who are trustees of the settlement, see s. 8.

The court declined to appoint a person who was co-owner of the property, Re Greenville Estate (1883), 11 L.R. Ir. 138.

See In the Will of Thomson, [1946] Q.W.N. 7 (guardian of infant authorized by the court to exercise power of sale). In Re Bowen, [1949] Q.W.N. 6, Philp, J., appointed the father of an infant (who with him was a tenant in common) to exercise on her behalf the powers of a tenant for life to the extent of completing the sale of her interest in pursuance of a contract of sale and ordered him to pay into court three-fourths of the purchase price. See also Re Francis, [1949] Q.W.N. 45, where Townley, J., appointed the executor to exercise on behalf of an infant devisee the powers of a tenant for life to the extent of enabling a sale of the land
to be completed and the infant's interest in an unencumbered estate in fee-simple to be conveyed to the purchaser. For form of order in such cases, see Re Henry's Trusts, [1950] Q.W.N. 8, where the court authorized a sale upon terms. See also Re Holland, [1950] Q.W.N. 34 (application by father as next friend), noted also under s. 65, and Re Willmott, [1948] St. R. Qd. 256, where Philip, J., not following Re McGill (Infant), [1944] Q.W.N. 31, held that an infant who had contracted to sell his lands and had received the purchase moneys was not a trustee within the meaning of this section.

In Re Rolfe, [1955] Q.W.N. 42, Townley, J., ordered the executors of a will as to which a partial intestacy had arisen to sell certain land forming part of the estate in which an infant, one of the next of kin, was interested, and to invest his share of the proceeds in authorized securities.

See also Re Pinsker, [1956] Q.W.N. 38. In that case Mansfield, C.J., upon an application on behalf of an infant by her father as next friend, made an order approving of a transfer of her share and interest in certain land which had been purchased by one Scriven out of his own funds in his and her joint names, and a transfer registered accordingly. Scriven had covenanted that upon her attaining the age of 21 years he would transfer in registrable form the fee simple to himself and to her as joint tenants, in the meantime having executed a declaration of trust that he would hold it as trustee for himself and her as joint tenants on being registered as proprietor of the land absolutely. The order appointed the next friend as the person to exercise on behalf of his daughter the powers of a tenant for life under this legislation and directed him to join with Scriven in conveying his daughter's interest to Scriven without payment of monetary consideration.

For circumstances in which it was directed that capital money arising by virtue of the exercise of the power of sale on behalf of infants, tenants for life of land under the Act, be laid out in the purchase of an estate in fee simple in other land situated in Queensland, see Re Kiepe, [1966] Q.W.N. 22.

See Re Morris' Settlement, [1966] Q.W.N. 13, noted to s. 10.

See Re Prior (deceased), [1965] Q.W.N. 46, noted to s. 7.

Where a freehold interest in land comprising a house property formed part of the estate of an intestate in respect of which the widow and infant children were the only beneficiaries, upon an application under s. 24 of the Intestacy Act of 1877, title SUCCESION, leave was given to the widow (who was the administratrix of the estate) to sell the house property (the former matrimonial home) and leave was also given to the widow under this s. 27 to use the share of the infant children in the proceeds of such sale, together with her own share, in the purchase of another house property. See Re Smith (deceased), [1964] Q.W.N. 38.

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

(1) Where a married woman who, if she had not been a married woman, would have been an 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.

As amended by Married Women (Restrain upon Anticipation) Act of 1952, 1 Eliz. 2 No. 36, s. 8.

For tenants for life and persons having the powers of a tenant for life, see ss. 5, 6.

As to separate property of a married woman, see Married Women's Property Acts 1890 to 1952, ss. 8-10, title MARRIAGE AND DIVORCE, Vol. 11, p. 400.

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

For tenants for life and persons having the powers of a tenant for life, see ss. 5, 6.

The office of Curator in Insanity has been replaced by that of the Public Curator, Public Curator Acts, 1915 to 1957, s. 7 (1), title TRUSTEES AND EXECUTORS.

"Insane person"—This is now to be taken as a reference to a patient under the provisions of the Mental Health Acts, 1962 to 1964. See ibid., s. 4 (3) (h), title MENTAL HEALTH, Vol. 11, p. 717.

See Re Marris' Settlement, [1966] Q.W.N. 13 (noted to s. 10).

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

30. Capital money under Act; investment, etc., by trustees or Court. 45 & 46 Vic., c. 38, s. 21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes, namely:—

(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 authorised 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 authorised 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.

For power of the court in relation to capital money arising on sale of a lease or reversion, see s. 61.

For what is “capital money arising under this Act”, see s. 9, and provisions cited thereunder.

The court has power to restrain a tenant for life from directing an investment on a security which is not suitable, even though it is one described by the words of the power, Re Hunt's Settled Estates, [1905] 2 Ch. 418; [1904-7] All E.R. Rep. 736; [1906] 2 Ch. 11. But there will be no interference by the court where the tenant for life really and honestly exercises his discretion, Re Coleridge's Settlement, [1895] 2 Ch. 704; [1895-9] All E.R. Rep. 861. See also s. 55, and notes thereto.

Paragraph (a)—For securities in which trustees may invest, see Trustees and Executors Acts, 1897 to 1964, s. 4, title TRUSTEES AND EXECUTORS.

Paragraph (b)—“Affecting the whole estate” does not necessarily mean that the whole estate must be vested in the mortgagee, Re Frewen (1888), 38 Ch. D. 383.


A mortgage on one part of the estate may be paid off out of money arising from another part, Re Chaytor's Settled Estate (1884), 25 Ch. D. 651.

Paragraph (c)—For authorized improvements, see s. 34.

Paragraph (d)—As to costs and expenses of an exchange of trust property, see paragraph (i), supra: Re Read's Settlement (1922), 17 Tas. L.R. 4, noted to s. 23.

Paragraph (e)—See Re Smith (deceased), [1964] Q.W.N. 38.


Paragraph (h)—The words “any person . . . empowered to give an absolute discharge” allow of payment out to trustees for purposes of the Act, Re Smith (1888), 40 Ch. D. 386, who, if necessary, are appointed for the purpose of receiving the money, Re Wright's Trustees (1883), 24 Ch. D. 662.

Paragraph (j)—A testator may add to the methods of applying capital, but he cannot limit the discretion given to the tenant for life by this Act, s. 55: Re Richardson, [1900] 2 Ch. 778.


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

Differences between life tenant and trustees of the settlement may be determined by the court under s. 42.

As to trustees, see ss. 46-48.

As to the right of a tenant for life to receive the purchase money where he holds under a devise to trustees to permit the tenant for life to receive the income, see Re Watkins' Settled Estate, [1903] Q.W.N. 72.

As to payment into court and investment of money paid into court, see R.S.C. (1900), Order 77, rules 9-12, title SUPREME COURT.

See Re Willmott, [1948] St. R. Qd. 256, where Philp, J., held that, since the money received by the infant could not be paid into court, this Act, though in general applicable to infants' land held under the Real Property Acts, was not operable in the circumstances of this case.

As to how far the discretion of the tenant for life to direct investment can be controlled by the court, see s. 55, and notes to s. 30.


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

Compare s. 11 (7).

33. Settlement of land purchased, taken in exchange, etc. 45 & 46 Vic., c. 38, s. 24. (1) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(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 circum-
stances permit, but not so as to increase or multiply charges or powers
of charging.

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

As to subsections (4), (5), see also s. 12.

The word “charge” in subsection (5) is not limited to charges existing in
priority to the settlement, Re Stamford's Settled Estates (1889), 43 Ch. D. 84.

As to payment of expenses of alterations and improvements required by a
statutory body, for example a local authority, cf. Re Lindsay's Settlement (No. 2),
[1941] 1 Ch. 119; [1941] 1 All E.R. 143.

IMPROVEMENTS WITH CAPITAL TRUST MONEY

34. Description of improvements authorised by Act. 45 & 46 Vic., c. 38,
s. 25. Improvements authorised by this Act are the making or execution
on, or in connection 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 weir ing from a river or lake, or from the sea, or a tidal water;
(e) Groynes, sea walls, defences against water;
(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 connection with the conversion of land into building land;
(q) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid;
(r) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines;
(s) Reconstruction, enlargement, or improvement of any of such works, whether executed under the provisions of this Act or already existing.

Capital money may be applied in payment for improvements authorized by this Act, s. 30 (c). For power to contract for execution of such improvements, see s. 26 (1) (e).

The Trustees and Executors Acts, 1897 to 1964, s. 48, title TRUSTEES AND EXECUTOR S, so far as it empowers trustees to raise money for improvements by mortgage does not apply to settled land, Re Hallam (1908), 4 Tas. L.R. 59. But see Re Read's Settlement (1922), 17 Tas. L.R. 4.

With paragraphs (h), (p), (q), cf. s. 21 (a)

The view that the improvements specified in the Act are exhaustive, and that they will not be extended except in cases of salvage, has often been expressed. See Re Blagrave's Settled Estate, [1903] 1 Ch. 560, at p. 565; [1900-3] All E.R. Rep. 319;
Re Smith, [1930] 1 Ch. 88. The words “securing the full benefit” were held to authorize a beneficial improvement though not in the list of authorized improvements, Re De Crespigny's Settled Estate, [1914] 1 Ch. 227.


35. Approval by Court of scheme for improvement and payment thereon. 45 & 46 Vic., c. 38, s. 26. (1) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorised by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(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 authorising the trustees to so apply a specified portion of the capital money.

(3) Where the capital money to be expended is in Court, then, 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.

See s. 31 (1).

For “capital money arising under this Act”, see s. 9, and provisions cited thereunder.

For “improvements authorised by this Act”, see s. 34.

A scheme was approved by the court in Re Will of Buchanan (1887), 3 Q.L.J. 42.

It is the duty of the trustees of the settlement to see that a scheme of improvement is authorized by the Act, that it is proper for carrying out the improvements, that the tenant for life is acting bona fide under competent advice, and that they have the certificate or order required by the Act, Re Egmont's Settled Estate, [1906] 2 Ch. 151; [1904-7] All E.R. Rep. 1035.

Where an application is made to the court under subsection (2) (c), the court has a discretion, and it is not enough to show that the trustees approve the improvement, Re Keck's Settlement, [1904] 2 Ch. 22.

36. Concurrence in improvements. 45 & 46 Vic., c. 38, s. 27. The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Act, or in contributing to the cost thereof.

For improvements authorized by this Act, see s. 34.

This section is confined to improvements, and a joint lease of mines under adjacent estates has been held to be improper, Tolson v. Sheard (1877), 5 Ch. D. 19. And see King v. Bird, [1909] 1 K.B. 837.

37. Obligation on tenant for life and successors to maintain, insure, etc. 45 and 46 Vic., c. 38, s. 28. (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.

(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.

For tenants for life, see ss. 5, 6.

As to cutting and sale of timber, see also s. 62.

Semble, in the absence of direction by the testator, the tenant for life is not bound to insure the inheritance except to the extent prescribed by this section, Re Kate Brown, [1940] St. R. Qd. 154.

38. Protection as regards waste in execution and repair of improvements. 45 & 46 Vic., c. 38, s. 29. The tenant for life, and each of his successors in title having under the settlement a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any
remainderman or reversioner, execute thereon any improvement authorised by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, do, make, and use on the settled land, all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

For improvements authorized by this Act, see s. 34.

PART V—MODE OF EXERCISE OF POWERS—PROCEDURE

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

For who are trustees of the settlement, see s. 8.

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

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

(3) 47 & 48 Vic., c. 18, s. 5. The notice may be notice of a general intention in that behalf.

(4) The tenant for life must, upon request by a trustee of the settlement, furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.
(5) Any trustee by writing under his hand may waive notice, either in any particular case or generally, and may accept less than three months’ notice.

(6) 45 & 46 Vic., c. 38, s. 45. 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.

If there are no trustees, and capital money arises out of the transaction, the tenant for life may be restrained from exercising his powers until trustees are appointed, Wheelwright v. Walker (1883), 23 Ch. D. 752; Re Taylor, (1883) W.N. (Eng.) 95.

S_semble_ the ceremonial requirements of this section are satisfied where the notice, although sent by ordinary post, has been received by the trustees within the time limited. See Sharpley and Manby’s Arbitration, [1942] 1 K.B. 217; 58 T.L.R. 91; [1942] 1 All E.R. 66. Compare Re Meadmore, [1942] Q.W.N. 46.

This section applies to the persons having the powers of a tenant for life under s. 6, Re Warren’s Settlement, [1924] V.L.R. 326.

Failure to give notice to the trustees will not prevent a dealing from being effective under the powers in this Act, Re Ready’s Estate, [1920] St. R. Qd. 87.


42. Reference of differences to Court. 45 & 46 Vic., c. 38, s. 44. 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.

For practice on applications to the court, see s. 43, and R.S.C. (1900), Order 77, title SUPREME COURT AND PRACTICE.

Compare Re Mayo; Mayo v. Mayo, [1943] 1 Ch. 302; [1943] 2 All E.R. 440 (trust for sale).

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

(1) Every application to the Court shall be by petition, or by summons 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 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 may be made for the purposes of this Act accordingly.

See also R.S.C. (1900), Order 64, rule 1 (5); Order 77; Schedule I, Part 16, title SUPREME COURT AND PRACTICE.

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

See also s. 30 (1).

PART VI—TRUSTEES—SECURITY—INDEMNITY, ETC.

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

(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.

As to who are trustees of the settlement, see s. 8.

As to power to appoint new trustees and retirement and discharge of trustees, see Trustees and Executors Acts, 1897 to 1964, s. 47, title TRUSTEES AND EXECUTORS.

The court will not appoint the tenant for life or any person who may become tenant for life, Re Harrop (1883), 24 Ch. D. 717; In the Will of Benjamin, [1920] V.L.R. 393; or the solicitor of the tenant for life, Re Kemp's Settled Estate (1883), 24 Ch. D. 485; Re Earl of Stamford, [1896] 1 Ch. 288; or two relatives, Re Knowles' Settled Estate (1884), 27 Ch. D. 707; or the husband of a tenant for life, Re Norris (1884), 27 Ch. D. 333; or the partner of a trustee, Re Thompson (1909), 28 N.Z.L.R. 356. But these persons may be appointed out of court, Re Earl of Stamford, supra; Re Davies and Kent's Contract, [1910] 2 Ch. 35.

For form of order of the court appointing trustees for the purpose of this statute, see Re Hoffman, [1943] Q.W.N. 13, and Re Summer's Settlement, [1946] V.L.R. 389.

See, for example, Re Wilson, deceased, [1958] Q.W.N. 12.

Executors of the settlor were appointed trustees of the settlement in Re Hogan, [1902] Q.W.N. 28, and In the Will of Fitzgerald, [1939] Q.W.N. 44.


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

For what is capital money arising under this Act, see s. 9, and provisions cited thereunder. As to payment of capital money, see s. 31 (1).

For trustees of the settlement, see s. 8.

The trustees are the only persons who can give a discharge and must act in concurrence, Re Norton and Las Casas, [1909] 2 Ch. 59.

For a form of order in a case where capital money to arise under an agreement for sale was directed to be paid to the registered proprietor and by him invested as trustee for an infant, his son, during his minority, see Re Archer's Trust, [1952] Q.W.N. 27.

See, for example, Re Wilson, deceased, [1958] Q.W.N. 12.

See 40 English and Empire Digest (Rpl.) p. 858.

47. Trustees' receipts. 45 & 46 Vic., c. 38, s. 40. 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.

Compare Trustees and Executors Acts, 1897 to 1964, s. 19, title TRUSTEES AND EXECUTORS.

48. Protection of each trustee individually. 45 & 46 Vic., c. 38, s. 41 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.

Compare Trustees and Executors Acts, 1897 to 1964, s. 25, title TRUSTEES AND EXECUTORS.

A trustee paying money to a solicitor for investment must see that it is invested, Bostock v. Floyer (1865), L.R. 1 Eq. 26. A trustee employing in the ordinary course of business a broker whom he believes to be competent is protected notwithstanding the broker's default, Spight v. Gaunt (1883), 9 App. Cas. 1, but he is not protected if he acts on erroneous legal advice, National Trustees Co. v. General Finance Co., [1905] A.C. 373.

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

For the rights of trustees in case of dealings with the estate, see Re Theobald (1903), 19 T.L.R. 536 (purchase of property); Re Hotham, [1902] 2 Ch. 575 (investment on mortgage); Re Egmont's Settled Estate, [1906] 2 Ch. 151, at p. 165; [1904-7] All E.R. Rep. 1035 (improvements).

50. Trustees’ reimbursement. 45 & 46 Vic., c. 38, s. 43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

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

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.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

See also Trustees and Executors Acts, 1897 to 1964, s. 55, title TRUSTEES AND EXECUTORS; R.S.C. (1900), Order 74, title SUPREME COURT AND PRACTICE.

As to applications to pass accounts of executors, see R.S.C. (1900), Order 73.

This section did not apply in respect of services rendered prior to commencement of this Act, Re Will of Owens (1886), 2 Q.L.J. 179.

PART VII—MISCELLANEOUS PROVISIONS

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

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

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

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

A tenant for life may exercise his powers of leasing after he has assigned his life interest, Lonsdale v. Lowther, [1900] 2 Ch. 687. The assignment of his beneficial interest under a settlement by the donee of a power does not prevent him from exercising it, Alexander v. Mills (1870), 6 Ch. App. 124, but if the exercise of the power derogates from the assignment the consent of the assignee is required, Re Cooper (1884), 27 Ch. D. 565.

See 40 English and Empire Digest (Rpl.) p. 809.

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

This section does not render void conditions that a life tenant reside on the land and make payment therefor which do not interfere with his powers under this Act, Re Flack (1918), 14 Tas. L.R. 55; Re Haynes (1887), 37 Ch. D. 306; [1886-89] All E.R. Rep. 545. But a gift over on ceasing to reside may be defeated by the exercise of the power of sale, Re Paget's Settled Estate (1885), 30 Ch. D. 161.

For an example of the application of this section, see Re Herbert. Herbert v. Lord Bicester, [1946] 1 All E.R. 421, following Re Ames, [1893] 2 Ch. 479.

A clause forbidding a tenant for life to sell or sublet is void, Re McCabe (1909), 28 N.Z.L.R. 780; Re Patten, [1929] 2 Ch. 276; [1929] All E.R. Rep. 416.

See cases in 40 English and Empire Digest (Rpl.) p. 809.

54. Provision against forfeiture. 45 & 46 Vic., c. 38, s. 52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

55. Tenant for life trustee for all parties interested. 45 & 46 Vic., c. 38, s. 53. 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.

This section was verbally corrected by the Acts Citation Act of 1903, s. 10.

In exercising his powers the tenant for life should consider the interests of all persons concerned, including the tenants on the estate, Bruce v. Ailesbury, [1892] A.C. 356, and he is not justified in trying to preserve a heavily incumbered estate by mortgaging it under the powers conferred by the Acts if he thereby sacrifices the interests of existing incumbrancers, Hampden v. Buckinghamshire, [1893] 2 Ch.
531, but this is the farthest that the court has gone in controlling his discretion, *Re Richardson*, [1900] 2 Ch. 778, at p. 790. The fact that the tenant for life will derive a benefit personally from exercising his powers is no objection to his doing so, *Re Stamford's Estate* (1887), 56 L.T. 484; *Re Wix*, [1916] 1 Ch. 279; [1916-17] All E.R. Rep. 1096, providing he acts honestly, *Re Richardson*, [1900] 2 Ch. 778. And see notes to s. 30.

The effect of this section is to put the life tenant, in respect of the exercise of his powers under the Act, in exactly the same position as an ordinary trustee, and so to impose upon him the duties which a court of equity will enforce against such a trustee. His discretion as to the mode of exercising a power is thus subject to the control of the court, which will prevent him from exercising it wrongly or unreasonably, *Chirnside v. Chirnside*, [1947] V.L.R. 183; 40 Q.L.R. 315, applying *Re Hunt's Estates*, [1905] 2 Ch. 418; [1904-7] All E.R. Rep. 736; [1906] 2 Ch. 11, and *Tempest v. Lord Camoys* (1882), 21 Ch. 571; [1881-5] All E.R. Rep. 836; *Sutton v. Jones* (1809), 15 Ves. 584 at p. 588; 33 E.R. 875 at 877.

See also 40 English and Empire Digest (Rpl.) p. 808; 34 Halsbury's Laws of England, 3rd ed., p. 528.

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

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.

See ss. 11 (1), (2), 14 (2), and s. 70.


57. Exercise of powers, limitation of provisions, etc. 45 & 46 Vic., c. 38, s. 55. (1) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court may be exercised from time to time.

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

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

As to subsection (2), see also s. 25.

58. Saving for other powers. 45 & 46 Vic., c. 38, s. 56. (1) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

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

If a tenant for life has one power under the statute, and the trustees have another power under the settlement, there is a "conflict" between the settlement and the statute. The tenant for life's power is paramount, Clarke v. Thornton (1887), 35 Ch. D. 307; Re Thomas, [1900] 1 Ch. 319, and can be exercised free from any restraint imposed by the settlement, Re Chaytor's Settled Estate (1884), 25 Ch. D. 651. The consent of the tenant for life is required for the exercise by the trustees of any power conferred by the settlement which embraces any of the objects embraced by any of the statutory powers, Re Newcastle's Estates (1883), 24 Ch. D. 129; Re Atherton, [1891] W.N. (Eng.) 85.


59. Additional or larger powers by settlement. 45 & 46 Vic., c. 38, s. 57.

(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.

(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.

See s. 58, and notes thereto.

60. Application of money in hands of trustees under powers of settlement. 45 & 46 Vic., c. 38, s. 33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

As to application of capital money arising under this Act, see ss. 30 et seq.

The tenant for life can direct how the money is to be applied, Re Gee, [1895] W.N. (Eng.) 90, and may enter into contracts to be paid for out of money to which this section applies, Clarke v. Thornton (1887), 35 Ch. D. 307.

For moneys coming within this section, see Re Sudbury, [1893] 3 Ch. 74; Re Hill, [1896] 1 Ch. 962; Re Soltau's Trusts, [1898] 2 Ch. 629; Re Thomas, [1900] 1 Ch. 319.

See 40 English and Empire Digest (Rpl.) p. 806.

61. Application of money paid for lease or reversion. 45 & 46 Vic., c. 38, s. 34. 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.

See 40 English and Empire Digest (Rpl.) p. 823.

62. Cutting and sale of timber, and part of proceeds to be set aside. 45 & 46 Vic., c. 38, s. 35. (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.

See also s. 37 (2).


63. Proceedings for protection or recovery of land settled or claimed as settled. 45 & 46 Vic., c. 38, s. 36. 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.

The tenant for life is not bound to obtain the sanction of the court before commencing proceedings, but, if he fails to do so, it is at the risk of having payment of his costs out of capital refused, Re Yorke, [1911] 1 Ch. 370.

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

As to application of capital money arising under this Act, see ss. 30 et seq.

See 40 English and Empire Digest, (Rpl.) p. 824.

65. Payment into court. 45 & 46 Vic., c. 38, s. 46 (2). Payment of money into Court effectually exonerates therefrom the person making the payment.

As amended by Statute Law Revision Act of 1908, s. 5.

In Re Holland, [1950] Q.W.N. 34, O'Hagan, A.J., ordered inter alia that the next friend's costs of and incidental to the application be taxed and paid from the moneys paid into court pursuant to an order made under the provisions of s. 27.

As to payment into Court, see also Trustees and Executors Acts, 1897 to 1964, s. 41, title TRUSTEES AND EXECUTORS.
PART VIII—SETTLEMENTS BY WAY OF TRUST FOR SALE

66. Provision for case of trust to sell and reinvest in land. 45 & 46 Vic., c. 38, s. 63. (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.

(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:

(a) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversions 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 authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised 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.

See also ss. 67, 68.

If an estate is given upon trust for sale and to maintain infants out of the income and accumulate the residue for their benefit, they are tenants for life under this provision, Re Powell, [1884] W.N. (Eng.) 67; but see Re Horne's Settled Estate (1888), 39 Ch. D. 84.

If there is no person entitled, under the instrument creating the trust for sale, to the income of the land till sale or the income of the proceeds of sale, there is no tenant for life, Re Earle and Webster's Contract (1883), 24 Ch. D. 144. If the instrument does not dispose of the land till sale, but makes a tenant for life of the proceeds of sale, such person, being by implication entitled to the income of the land till sale, Casamajor v. Strode (1809), 19 Ves. 390, n., is deemed to be tenant for life, Re Searle, [1900] 2 Ch. 829; Re Darnley (1906), 95 L.T. 706.

See Re Marris' Settlement, [1966] Q.W.N. 13, noted s. 10.

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

68. Powers given by s. 66 to be exercised only with leave of Court. 47 & 48 Vic., c. 18, s. 7. With respect to the powers conferred by the last preceding section but one the following provisions shall have effect:—

(a) Those powers are not to be exercised without the leave of the Court;

(b) The Court may, by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given;

(c) The Court may from time to time rescind, or vary, any order made under this section, or may make any new or further order;

(d) So long as an order under this section is in force, neither the trustees of the settlement, nor any other person other than the person having the leave, shall execute any trust or power 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 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"

69. Application of Act to land held under "Real Property Act of 1861." In the application of this Act to settled land held under the provisions of "The Real Property Act of 1861" 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 may exercise that power or authority;

(3) Where under this Act any instrument is to be executed by a tenant for life in order to the exercise of any such power or authority, that instrument shall be executed by the registered proprietor or registered proprietors, and such execution shall have the same operation as the execution of such an instrument by a tenant for life is declared to have under this Act;

(4) A registered proprietor or registered proprietors executing a power or authority in accordance with the provisions of this Act upon the written request of the tenant for life, or with the sanction of the Court if, being the tenant or the tenants for life, he is himself or they are themselves the sole trustee or
trustees of the settlement, shall not by reason thereof incur any personal liability to his or their beneficiaries or to any other person, and no such registered proprietor or registered proprietors shall, 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" 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."

Acts referred to:


For obligation of trustees of the settlement to transfer, see Re Watkins' Settled Estate, [1902] St. R. Qd. 65.

In Re Willmott, [1948] St. R. Qd. 256, Philp, J., held that paragraph 1 of this section is not applicable to land of which an infant is the absolute owner.

70. Persons dealing with registered proprietor not bound to inquire.

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.

See also s. 56.