



1852.

No. 25.

*This act is taken from the  
Imperial act 18 & 19 Vict. c. 106.  
except the last section  
to read see 9.*

*An Act to amend the Law of Real Property.*

[Assented to 2nd December, 1852.]

**W**HEREAS it is expedient to amend the Laws relating to Real Property: Be it therefore Enacted by His Excellency the Lieutenant-Governor of South Australia, by and with the advice and consent of the Legislative Council thereof, and by the authority of the same, as follows, that is to say:

1. That after the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, all corporeal tenements and hereditaments in South Australia shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. The immediate freehold of corporeal tenements to lie in grant, as well as in livery.
2. That a feoffment made after the said first day of January, one thousand eight hundred and fifty-three, shall be void at law unless evidenced by deed, and that a partition and an exchange of any tenements or hereditaments, and a lease required by law to be in writing of any tenements or hereditaments, and an assignment of a chattel interest in any tenements or hereditaments, and a surrender in writing of any interest in any tenements or hereditaments, not being an interest which might by law have been created without writing, made after the said first day of January, one thousand eight hundred and fifty-three, shall also be void at law, unless made by deed. Feoffments, partitions, exchanges, leases, assignments and surrenders, required (subject to certain exceptions) to be by deed.
3. That a feoffment made after the said first day of January, one thousand eight hundred and fifty-three, shall not have any tortious operation, and that an exchange or a partition of any tenements or hereditaments made by deed executed after the said first day of January, one thousand eight hundred and fifty-three, shall Feoffments not to operate by wrong, nor exchanges, or partitions, to imply any condition, or give or grant any covenant.

shall imply any condition in law, and that the word "give" or the word "grant," in a deed executed after the same day, shall not imply any covenant in law in respect of any tenements or hereditaments.

Strangers may take immediately under an indenture, and a deed purporting to be an indenture shall take effect as such.

4. That under an Indenture executed after the first day of January, one thousand eight hundred and fifty-three, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments may be taken, although the taker thereof be not named a party to the same indenture; also, that a deed executed after the first day of January, one thousand eight hundred and fifty-three, purporting to be an indenture, shall have the effect of an indenture, although not actually indented.

Contingent and other like interests, also rights of entry made alienable by deed, saving estates in tail, and as regards married women, enjoining conformity to the Ordinance, No. 15, of 1845.

5. That after the first day of January, one thousand eight hundred and fifty-three, a contingent, an executory, and a future interest, and a possibility, coupled with an interest in any tenements or hereditaments of any tenure, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments in South Australia, may be disposed of by deed; but that no such disposition shall, by force only of this Act, defeat or enlarge an estate tail, and that every such disposition by a married woman shall be made conformably to the provisions, relative to dispositions by married women, of an Ordinance passed in the ninth year of the Reign of Her Majesty Queen Victoria, intituled "An Ordinance to render effectual conveyances by married women, and to declare the effect of certain deeds in relation to dower."

Capacity of married women to disclaim estates or interests by deed, extended to South Australia.

6. That after the first day of January, one thousand eight hundred and fifty-three, an estate or interest in any tenements or hereditaments in South Australia may be disclaimed by a married woman by deed, and that every such disclaimer shall be made conformably to the said provisions of the said Ordinance "To render effectual conveyances by married women, and to declare the effect of certain deeds in relation to dower."

Contingent remainders protected as from the first day of January, 1853, against the premature failure of a preceding estate.

7. That a contingent remainder existing at any time after the first day of January, one thousand eight hundred and fifty-three, shall be, and if created before the passing of this Act, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened.

When the reversion on a lease is gone, the next estate to be deemed the reversion.

8. That when the reversion expectant on a lease, made either before or after the passing of this Act, of any tenements or hereditaments of any tenure, shall after the said first day of January, one thousand eight hundred and fifty-three, be surrendered or

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or merge, the estate which shall for the time being confer as against the tenant under the same lease, the next vested right to the same tenements or hereditaments, shall to the extent and for the purpose of preserving such incidents to, and obligations on the same reversion, as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease.

9. That whenever after the said first day of January, one thousand eight hundred and fifty-three, any tenements or hereditaments shall be conveyed or devised to, or become vested in any person or persons, upon or with any express trust or power to sell or raise money, the receipt of the person or persons to whom any money shall be payable upon or under such trust or power, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or power.

Receipts of persons to whom money shall be payable under trusts, to sell or raise money, to be effectual discharges, unless the contrary be expressly declared.

10. That from and after the said first day of January, one thousand eight hundred and fifty-three, every conveyance of any freehold tenements or hereditaments, whether corporeal or incorporeal in South Australia, unless any exception be specially made therein, shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commonities, emouiments, and all other rights, easements and appurtenances whatsoever belonging or appertaining to the tenements and hereditaments therein comprised, and whether the same be strictly appurtenant to the same tenements and hereditaments, or appurtenant thereto only by reputation or enjoyment, and also the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of the same tenements and hereditaments, and of every part or parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, both at law and in equity, of the grantor or grantors, in, to, out of, or upon the same tenements and hereditaments, and every part and parcel thereof, with their and every of their appurtenances.

Conveyance of freehold tenements or hereditaments, to include all houses, &c., and the reversion, &c., and all the estate.

11. And whereas doubts exist whether an Act of the Imperial Parliament of Great Britain passed in the third and fourth years of His late Majesty King William the Fourth, intituled "An Act for the amendment of the law relating to dower," has the force of law in the Province of South Australia, and it is expedient that such doubts should be removed by a declaratory law, and that the general provisions of the said Act should in South Australia be extended in such manner as that the same may be applicable as well to the dower of women married on or before the first day of January, one thousand eight hundred and thirty-four, as to the dower of women married

That doubts exist whether 3rd and 4th. William the Fourth, cap. 105, is in force in South Australia, and that it is expedient to remove such doubts declaratory.

*It is not clear if the Act is in force in South Australia, and that it is expedient to remove such doubts declaratory.*

And that the provisions of the said Act shall apply to dower of all women.

And that it is expedient to repeal part of No. 15, of 1845.

That 3rd and 4th of William the Fourth, cap. 105, has been part of the law of South Australia from its foundation, and shall, except as after provided, continue to be so.

That in future the provisions of 3rd and 4th William the Fourth, cap. 105, shall extend to the dower of women married before 1834.

But this Act not to affect deeds, &c., made before the 1st of January, 1853.

married after that day: And whereas it is expedient to repeal such part of the said Ordinance to render effectual conveyances of married women, and to declare the effect of certain deeds in relation to dower as is hereinafter mentioned: Be it therefore further Enacted and declared, That the Act of Parliament for the amendment of the law relating to dower, has from the foundation of this Province been a part of the law thereof, and shall, save as hereinafter provided, continue to have the force of law, and be applied in this Province in like manner as other laws of England: Provided always, nevertheless, and be it Enacted, that in future the provisions of the same Act, shall, as regards this Province, extend to the dower of women married on or before the first day of January, one thousand eight hundred and thirty-four, as well as to the dower of women married after that date, and Provided also, that this enactment shall not give to any will, deed, contract, engagement, or charge, executed, entered into, or created before the said first day of January, one thousand eight hundred and fifty-three, the effect of defeating or prejudicing the right to dower of any woman married on or before the said first day of January, one thousand eight hundred and thirty-four: And be it further Enacted, That such part of the said Ordinance to render effectual conveyances of married women, and to declare the effect of certain deeds in relation to dower, as enacts that certain declarations in the said Act referred to, shall have the same force and effect in barring the right of dower of the widow of the person making such declaration as if the land or hereditaments mentioned in such deed had been conveyed to uses to bar dower, shall be, and the same is hereby repealed, but so as not to effect any deed or deeds containing any such declaration as aforesaid, which has been or shall be made and executed before the said first day of January, one thousand eight hundred and fifty-three.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this second day  
of December, one thousand eight hundred  
and fifty-two.*

F. C. SINGLETON,  
Clerk of the Legislative Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,  
Government House, Adelaide,  
December 2, 1852. Lieutenant-Governor.