

# SETTLED ESTATES ACT, 1880-1943

## SUMMARY OF PROVISIONS

	Preamble
Section	
1	Short title.
2	Interpretation of "settlement" and "settled estates".
3	Interpretation of "the Court".
4	Power to authorize leases of settled estates.
5	Leases may contain special covenants.
6	Parts of settled estates may be leased.
7	Leases may be surrendered and renewed.
8	Power to authorize leases to extend to preliminary contracts.
9	Mode in which leases may be authorized.
10	What evidence to be produced on an application to authorize leases.
11	After approval of a lease Court to direct who shall be the lessor.
12	Powers of leasing may be vested in trustees.
13	Conditions that leases be settled by the Court not to be inserted in orders made under this Act.
14	Conditions where inserted may be struck out.
15	Court may authorize sales of settled estates and of timber.
16	Proceedings for protection.
17	Consideration for land sold for building may be a fee-farm rent.
18	Minerals, &c., may be excepted from sales.
19	Court may authorize dedication of any part of settled estates for streets, roads, and other works.
20	As to laying out and making, and executing, and maintaining streets, roads, and other works, and expenses thereof.
21	How sales and dedications are to be effected under the direction of the court.
22	Application by petition to exercise powers conferred by this Act.
23	With whose consent such application to be made.
24	Court may dispense with consent in respect of certain estates.
25	Notice to be given to persons who do not consent to or concur in the application.
26	Court may dispense with notice under certain circumstances.
27	Court may dispense with consent, having regard to the number and interests of parties.
28	Petition may be granted without consent, saving rights of non-consenting parties.
29	Notice of application to be served on all trustees.
30	Notice of application to be given in <i>Gazette</i> and newspapers as the Court directs.
31	No application under this Act to be granted where a similar application has been rejected by Parliament.
32	Notice of the exercise of powers to be given as directed by the Court.
33	Registrar-General to carry out orders of Court.
34	Payment and application of moneys arising from sales, or set aside out of rent, etc., reserved on mining leases.
35	Trustees may apply moneys in certain cases without application to Court.
36	Until money can be so applied to be invested and dividends to be paid to parties entitled.
37	Court may direct application of money in respect of leases or reversions as may appear just.
38	Court may exercise powers repeatedly.
39	Court not to authorize any act which could not have been authorized by the settlor.
40	Acts of the Court in professed pursuance of this Act not to be invalidated.
41	Costs.
42	Rules and orders.
43	Rules and orders to be laid before Parliament.
44	Tenants for life, etc., may grant leases for twenty-one years.
45	Against whom such leases shall be valid.
46	Evidence of execution of counterpart lease by lessee.
47	Provision as to infants, lunatics, &c.
48	Married woman applying to the Court or consenting to be examined apart from her husband.
49	Examination of married woman, how to be made when residing within the jurisdiction of the Court, and how when residing outside such jurisdiction.
50	Consent of married woman.
51	No obligation to make or consent to application, &c.
52	Tenants for life, &c., to be deemed entitled, notwithstanding encumbrance.

## SETTLED ESTATES ACT, 1880-1943<sup>1</sup>

being

The Settled Estates Act, 1880, No. 182 of 1880 [Assented to 25th October, 1880]<sup>1</sup>;

as amended by

Settled Estates Act Amendment Act, 1943, No. 17 of 1943 [Assented to 9th December, 1943]<sup>2</sup>.

### An Act to amend the law relating to leases and sales of settled estates.

WHEREAS it is expedient to amend the law relating to the leasing and sale of settled estates in South Australia in manner hereinafter provided—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Preamble.

1. This Act may be cited for all purposes as the “Settled Estates Act, 1880-1943”.

Short title.  
Citation  
amended by 17,  
1943, s. 1 (2).

2. The word “settlement”, as used in this Act, shall signify any Act of Parliament, deed, agreement, will, or other instrument, or any number of such instruments under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments now or at any time stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

Interpretation  
of “settle-  
ment” and  
“settled  
estates”.

The term “settled estates”, as used in this Act, shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments which are or shall be the subject of a settlement; and for the purpose of this Act a tenant-in-tail after possibility of issue extinct shall be deemed to be a tenant for life.

All estates or interests in remainder or reversion not disposed of by the settlement, or reverting to a settlor, or descending to the heirs, executors, or administrators of a testator, shall be deemed to be estates coming to such settlor, or heirs, executors, or administrators under and by virtue of the settlement.

In determining what are settled estates within the meaning of this Act, the court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

3. The expression “the court” in this Act shall mean the Supreme Court of the State<sup>3</sup> of South Australia, or a judge thereof.

Interpretation  
of “the Court”.

<sup>1</sup> S. 1 of The Settled Estates Act Amendment Act, 1889 provides, *inter alia*, that that Act shall be incorporated and read as one with The Settled Estates Act, 1880.

<sup>2</sup> S. 3 (2) of Act No. 17 of 1943 provided that the amendments made by that section should be deemed to have been made at the time of the passing of the Principal Act.

<sup>3</sup> In a previous reprint of this Act pursuant to the Acts Republication Act, 1934, the word “Province” had been altered to “State”.

Power to authorize leases of settled estates.

4. The court may, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, authorize leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed—

Firstly—Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation lease twenty-one years, and for a mining lease forty years, and for a repairing lease sixty years, and for a building lease ninety-nine years:

Secondly—On every such lease shall be reserved the best rent, or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener without taking any fine, premium, or foregift, or other benefit in the nature of a fine, premium, or foregift: Provided always that in the case of a mining lease, a repairing lease, or a building lease, a peppercorn rent, or any smaller rent than the rent to be ultimately made payable may, if the court shall think fit so to direct, be made payable during all or any part of the first five years of the term of the lease:

Thirdly—Where the lease is of any earth, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, that is to say, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth, coal, stone, or mineral for his own benefit, one-fourth part of such rent, and otherwise three-fourth parts thereof; and in every such lease sufficient provision shall be made to ensure such application of the aforesaid portion of the rent by the appointment of trustees or otherwise, as the court shall deem expedient:

Fourthly—Every such lease shall be by deed or by duly registered memorandum of lease, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf.

Leases may contain special covenants.

5. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions, and stipulations as the court shall deem expedient with reference to the special circumstances of the demise.

Parts of settled estates may be leased.

6. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of the settled estates, and may be exercised from time to time.

Leases may be surrendered and renewed.

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

Power to authorize leases to extend to preliminary contracts.

8. The power to authorize leases conferred by this Act shall extend to authorize preliminary contracts to grant any leases, and any of the terms of such contracts may be varied in the leases.

9. The power to authorize leases conferred by this Act may be exercised by the court either by approving of particular leases or by ordering that powers of leasing, in conformity with the provisions of this Act, shall be vested in trustees in manner hereinafter mentioned.

Mode in which leases may be authorized.

10. When application is made to the court either to approve of a particular lease, or to vest any powers of leasing in trustees, the court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorized.

What evidence to be produced on an application to authorize leases.

11. When a particular lease or contract for a lease has been approved by the court, the court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were, at the time of the execution thereof, absolutely entitled to the whole estate or interest which is bound by the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the court shall direct.

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

12. Where the court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement, or in any other persons; and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the court shall direct; and in every such case the court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the court may also authorize the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Powers of leasing may be vested in trustees.

13. Provided that in orders under this Act for vesting any powers of leasing in any trustees or other persons, no conditions shall be inserted requiring that the leases thereby authorized shall be submitted to or be settled by the court or a judge thereof, or be made conformable with the model lease deposited in the judge's chambers, save only in any case in which the parties applying for the order may desire to have any such condition inserted, or in which it shall appear to the court that there is some special reason rendering the insertion of such a condition necessary or expedient.

Conditions that leases be settled by the Court not to be inserted in orders made under this Act.

14. Provided also, that in all cases of orders under this Act in which any such condition as last aforesaid shall have been inserted, any party interested may apply to the court to alter and amend such order by striking out such condition, and the court shall have full power to alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state; but nothing herein contained shall make it obligatory on the court to act under this provision in any case in which from the evidence which was before it when the order sought to be altered was made, or from any other evidence, it shall appear to the court that there is any special reason why in the case in question such a condition is necessary or expedient.

Conditions where inserted may be struck out.

15. The court may, if it shall deem it proper and consistent with a due regard for the interest of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time authorize a sale of the whole or any parts of any settled estates, or of any timber growing on any settled estates, and every such sale shall be conducted

Court may authorize sales of settled estates and of timber.

and confirmed in the same manner as by the rules and practice of the court for the time being, is or shall be required in the sale of lands sold under a decree of the court.

Proceedings for protection.

**16.** The court may, if it shall deem it proper and consistent with a due regard for the interests of all parties who are or may hereafter be entitled under the settlement, and subject to the provisions and restrictions in this Act contained, sanction any action, defence, petition to Parliament, parliamentary opposition, or other proceedings appearing to the court necessary for the protection of any settled estate, and to order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of, or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments, to be settled in the same manner as the settled estate, or out of the income of such moneys or investments, or out of any accumulations of rent, profits, or income.

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

**17.** When any land is sold for building purposes, the court may allow the whole or any part of the consideration to be a rent issuing out of the same, which rent may be secured and settled in such manner as the court shall approve.

Minerals, &c., may be excepted from sales.

**18.** On any sale of land, any earth, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants, or submit to any restrictions which the court may deem advisable.

Court may authorize dedication of any part of settled estates for streets, roads, and other works.

**19.** The court may, if it shall deem it proper and consistent with a due regard for the interests of parties entitled under the settlement, and subject to the provisions and restrictions in the Act contained, from time to time direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees, upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the court shall be deemed advisable.

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

**20.** Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution, be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys, liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulation of rent, profits, or income, and the court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, and out of any such rents, profits, income or accumulations during such period or periods of time as to the court may seem advisable.

21. On every sale or dedication to be effected as herein beforementioned, the court may direct what person or persons shall execute the deed of conveyance or memorandum of transfer, and the deed of conveyance or memorandum of transfer executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the court shall direct.

How sales and dedications are to be effected under the direction of the court.

22. Any person either legally or equitably entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life, or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable with any life, or for an estate for any life or any greater estate, may apply to the court by petition in a summary way to exercise the powers conferred by this Act.

Application by petition to exercise powers conferred by this Act.

23. Subject to the exceptions hereinafter contained every application to the court must be made with the concurrence or consent of the following parties, namely—

With whose consent such application to be made.

Where there is a tenant-in-tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant-in-tail, or if there is more than one tenant-in-tail, then the first of such tenants-in-tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant-in-tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of any such tenant-in-tail:

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

24. Provided, that where an infant is tenant-in-tail under the settlement, the court may dispense with the concurrence or consent of the person, if only one, or all or any of the persons, if more than one, entitled, beneficially or otherwise, to any estate or interest subsequent to the estate-tail of such infant.

Court may dispense with consent in respect of certain estates.

25. Provided that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the court shall direct, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interest, so far as they may be affected by such application, to be dealt with by the court, and every such notice shall specify to whom, and in what manner, such notification shall be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the court.

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

26. Provided also, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained and in case it shall be uncertain whether he be living or dead, or in case it shall appear to the court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject matter of the application, then, and in any such case, the court, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interest of any other person or persons, or on any other

Court may dispense with notice under certain circumstances.

grounds, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the court.

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

27. An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained, or shall have been refused; but the court in considering the application shall have regard to the number of persons who concur in or consent to the application, and who dissent therefrom or who submit or are deemed to submit, their rights or interest to be dealt with by the court, and the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

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

28. Provided, nevertheless, that the court may, to give effect to any petition, subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted, or is not deemed to have submitted, his rights or interest to be dealt with by the court, or whose rights, estate, or interest ought, in the opinion of the court, to be excepted.

Notice of application to be served on all trustees.

29. Notice of any application to the court under this Act shall be served on all trustees who are seized or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who, in the opinion of the court, ought to be so served, unless the court shall think fit to dispense with such notice.

Notice of application to be given in newspapers if Court direct.

30. Notice of any application to the court under this Act shall, if the court shall so direct, but not otherwise, be inserted in the *Government Gazette* and such other newspapers as the court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the court by summons or motion for leave to be heard in opposition to, or in support of, any application which may be made to the court under this Act, and the court is hereby authorized to permit such person or corporation to appear and be heard in opposition to or support of any such application, on such terms as to costs or otherwise and in such manner as it shall think fit.

No application under this Act to be granted where a similar application has been rejected by Parliament.

31. The court shall not grant any application under this Act in any case where the applicant, or any party entitled, has previously applied to either House of Parliament for a Private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges or select committee to whom the bill may have been referred.

Notice of the exercise of powers to be given as directed by the Court.

32. The court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed in the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the court to be practicable and expedient for preventing fraud or mistake.

Registrar-General to carry out orders of Court.

33. The Registrar-General, in cases where any land dealt with under this Act shall be under the operation of The Real Property Act 1886<sup>1</sup>, and any Acts amending the same, shall give effect to every order of the court by registering any transfer, lease, or other documents executed pursuant to such order; and no such order shall have any effect on the title to any such land

<sup>1</sup> Now Real Property Act, 1886-1975.

unless and until such transfer, lease, or other document shall have been so registered.

34. (1) All moneys to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, stone, or minerals as aforesaid, may, if the court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into court *ex parte* the applicant in the matter of this Act, and such money shall be applied as the court shall from time to time direct to some one or more of the following purposes, namely:—The discharge or redemption of any encumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments, subject to the same uses or trusts, or the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid or the purchase of trustee securities; or the payment to any person becoming absolutely entitled.

Payment and application of moneys arising from sales, or set aside out of rent, etc., reserved on mining leases. S. 34 amended by 17, 1943, s. 3 (1) (a)<sup>1</sup>; redesignated s. 34 (1) by 17, 1943, s. 3 (1) (b)<sup>1</sup>.

(2) Securities purchased pursuant to subsection (1) of this section 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 in the same estates interests and trusts as the land wherefrom the money arises would, if not disposed of, have been held and gone under the settlement.

Cf. U.K. 45 & 46 Vict. c.38, s. 22 (part). Subsec. (2) inserted by 17, 1943, s. 3 (1) (b)<sup>1</sup>.

(3) 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.

Subsec. (3) inserted by 17, 1943, s. 3 (1) (b)<sup>1</sup>.

(4) Those securities may be converted into money, which shall be deemed to be money arising in the same way as the money out of which the securities were purchased.

Subsec. (4) inserted by 17, 1943, s. 3 (1) (b)<sup>1</sup>.

(5) In this section "trustee securities" means securities in which a trustee is for the time being authorized by the statutes relating to trustees to invest trust money.

Subsec. (5) inserted by 17, 1943, s. 3 (1) (b)<sup>1</sup>.

35. The application of the money in manner aforesaid may, if the court shall so direct, be made by the trustees (if any) without any application to the court, or otherwise upon an order of the court, upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

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

36. Until the money shall be directed by the court to be applied as aforesaid, the same shall be invested as the court shall direct in some or one of the investments in which cash under the control of the court is for the time being authorized to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

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

37. Where any purchase-money paid into court under the provisions of this Act shall have been paid in respect of any lease or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, the court may, on the petition of any party interested in such money, order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully

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

<sup>1</sup> S. 3 (2) of Act No. 17 of 1943 provides as follows:—

(2) The amendments made by this section shall be deemed to have been made at the time of the passing of the principal Act.



have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court may exercise powers repeatedly.

38. The court may exercise any of the powers conferred on it by this Act, whether the court shall have already exercised any of the powers conferred by this Act in respect of the same property or not; and the circumstance of the settlement containing powers to effect similar purposes shall not preclude the court from exercising any of the powers conferred by this Act, if it shall think that the powers contained in the settlement ought to be extended.

Court not to authorize any act which could not have been authorized by the settlor.

39. Nothing in this Act shall be construed to empower the court to authorize any lease, sale, or other act beyond the extent to which in the opinion of the court the same might have been authorized in and by the settlement by the settlor or settlors.

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

40<sup>1</sup>. After the completion of any lease or sale, or other act under the authority of the court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the court was not hereby empowered to authorize the same, except that no such lease, sale, or other act, shall have any effect against such person as herein mentioned, whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained, and such service has not been made or dispensed with.

Costs.

41. The court may order that all or any costs or expenses of all or any parties of and incident to any application under this Act, shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations; and the court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the court shall direct.

Rules and orders.

42. General rules and orders of court for carrying into effect the purposes of this Act, and for regulating the times, and form, and mode of procedure and generally the practice of the court and the mode of procedure and practice of the Registrar-General in respect of the matters to which the Act relates, and for regulating the fees and allowances to all officers and solicitors of the court in respect to such matters shall be made by the judges of the Supreme Court; and such rules and orders may from time to time be rescinded or altered by the like authorities, and all such rules and orders shall take effect as general rules or orders of the court.

Rules and orders to be laid before Parliament.

43. All general rules and orders made as aforesaid shall be laid before each House of Parliament within thirty days after the making thereof if Parliament is then sitting, or if not, within thirty days after the commencement of the then next ensuing session; and if an address is presented to the Governor by either House of Parliament within the next subsequent thirty days on which such House shall have sat, praying that any such rule or order may be annulled, the Governor may thereupon annul the same, and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

<sup>1</sup> s. 40. As to the validity of acts done under the authority of the court, see also The Settled Estates Act Amendment Act, 1889, s. 2.

44. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for any life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right or in the right of his wife (unless the settlement shall contain an express declaration that it shall not be lawful for such person to make any demise); and also any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates in right of a wife who is seized in fee, without any application to the court, may demise the same or any part thereof, from time to time, for any term not exceeding twenty-one years, to take effect in possession at or within one year next after the making thereof: Provided that every such demise be made by deed or duly registered memorandum of lease and the best rent that can reasonably be obtained be thereby reserved, without any fine, premium, or foregift, or other benefit in the nature of a fine, premium, or foregift, which rent shall be incident to the immediate reversion: and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf: and provided a counterpart of every such lease be executed by the lessee.

Tenants for life, etc., may grant leases for twenty-one years.

45. Every lease authorized by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement, if the estates be settled; and, in the case of unsettled estates, against the wife of any husband granting such lease of estates to which he is entitled in right of such wife, and against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

Against whom such leases shall be valid.

46. The execution of any lease by the lessor or lessors shall, on behalf of the lessee or any person claiming under him, be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Evidence of execution of counterpart lease by lessee.

47. All powers given by this Act, and all applications to the court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Act may be given to guardians on behalf of infants, and by or to committees on behalf of lunatics, and by or to trustees or assignees of estates of insolvents, or estates assigned under the law of insolvency: Provided, nevertheless, that in the cases of infant or lunatic tenant-in-tail no application to the court or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the court.

Provision as to infants, lunatics, &c.

48. Where a married woman shall apply to the court, or consent to an application to the court under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments, which are the subject of the application, shall be settled in trust for the separate use of such married woman independently of her husband or not, and no clause or provision in any settlement restraining anticipation shall prevent the court from exercising, if it shall think fit, any of the powers given by this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

A married woman applying to the Court or consenting to be examined apart from her husband.

Examination of married woman, how to be made when residing within the jurisdiction of the Court, and how when residing without such jurisdiction.

**49.** The examination of such married woman, when resident within the jurisdiction of the court, shall be made either by the court or by some solicitor duly appointed by the court for that purpose, who shall certify under his hand that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same; and when the married woman is resident out of the jurisdiction of the court, her examination may be made by any person appointed for that purpose by the court, and such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction; and the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was, at the time of such examination, resident out of the jurisdiction of the court.

Consent of married woman.

**50.** Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.

No obligation to make or consent to application, &c.

**51.** Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the court or to exercise any power.

Tenants for life, &c., to be deemed entitled, notwithstanding encumbrance.

**52.** For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or encumbered either by himself or by the settlor, or otherwise howsoever to any extent, but the estates or interests of the parties entitled to any such charge or encumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid, unless they shall concur therein.

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