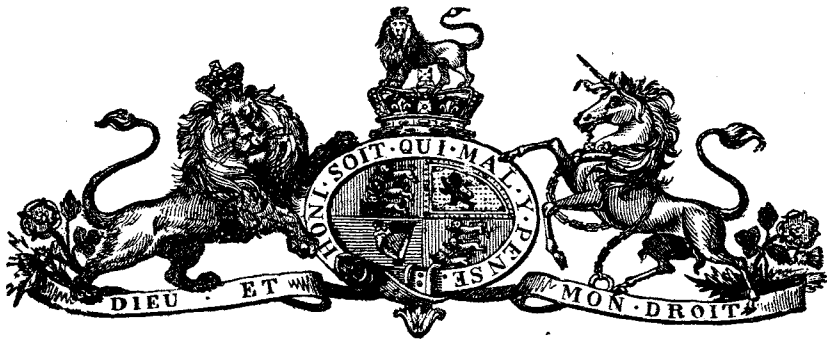


T A S M A N I A.



1856-7.

Repealed by 46 Vic. No 7.

ANNO VICESIMO

VICTORIÆ REGINÆ,

English
No. 29.
19 & 20 A. C. 120

Am. Co. 39 (O. No 3

AN ACT to facilitate Leases and Sales of settled Estates. [5 June, 1857.]

WHEREAS it is expedient that the Supreme Court of *Tasmania* should have power in certain cases to authorise Leases and Sales of settled Estates where it shall deem that such Leases or Sales would be proper and consistent with a due regard for the interests of all parties entitled under the settlement; and it is also expedient that persons in possession of land for certain limited interests should have power to grant agricultural or occupation Leases thereof, at rack rent, for a reasonable period: Be it therefore enacted by the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.

1 The word "settlement" as used in this Act shall signify any 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, 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; and 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 the subject of a settlement; and

Interpretation of the word "settlement."

Interpretation of the term "settled estates."

for the purposes of this Act a Tenant in tail after possibility of issue extinct shall be deemed a Tenant for life.

Power to Court to authorise Leases of settled Estates, subject to certain conditions.

2 It shall be lawful for the Supreme Court of *Tasmania*, so far as relates to estates in *Tasmania*, 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, to authorise 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 :—

First, 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, Seven years; for a mining Lease, or a Lease of water, water-mills, wayleaves, waterleaves, or other rights or easements, Fourteen years; and for a building Lease, Thirty 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 or other benefit in the nature of a fine :

Thirdly, where the Lease is of any earth, coal, 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; namely, 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, no such Lease shall authorise the felling of any trees, except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorised by the Lease, or for cultivation, or for building, repairing, or fencing, or for domestic purposes :

Fifthly, every such Lease shall be by deed, 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 not less than twenty-eight days after it becomes due.

Leases may contain special covenants.

3 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.

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

5 Any Leases granted under this Act may be surrendered, either for the purpose of obtaining a renewal of the same or not; and the power to authorise Leases conferred by this Act shall extend to authorise new Leases of the whole or any part of the hereditaments comprised in any surrendered Lease.

Leases may be surrendered and renewed.

6 The power to authorise Leases conferred by this Act shall extend to authorise preliminary contracts to grant any such Leases; and any of the terms of such contracts may be varied in the Leases.

Power to authorise Leases to extend to preliminary contracts.

7 The power to authorise 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 authorised.

8 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 authorised.

That evidence to be produced on an application to authorise Leases.

9 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 had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment or otherwise, as the Court shall direct.

After approval of Lease the Court to direct who shall be Lessor.

10 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 authorise 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.

Power of leasing may be vested in Trustees.

11 It shall be lawful for the said Supreme Court, 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, from time to time to authorise a Sale of the whole or any parts of any settled estates, or of any timber (not being ornamental timber) growing on any settled estates; and every such Sale shall be conducted 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.

Court may authorise Sales of settled estates and of timber.

12 When any land is sold for building purposes, it shall be lawful

Consideration for

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

for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve.

Minerals, &c. may be excepted from sales.

13 On any sale of land, any earth, coal, 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 authorise dedication of parts of settled estates for roads, &c.

14 It shall be lawful for the said Supreme Court, 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, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or water-courses, 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 and 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.

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

15 On every sale or dedication to be effected as hereinbefore mentioned, the said Court may direct what person or persons shall execute the deed of conveyance; and the deed 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.

Application by petition to exercise powers conferred by this Act.

16 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 on his death, or for an estate for life, or any greater estate, may apply to the Court by petition in a summary way to exercise the powers conferred by this Act.

With whose consent such application to be made.

17 Subject to the exception contained in the next Section, every application to the Court must be made with the concurrence or consent of the following parties; namely—

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 such 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 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.

Petition may be granted without consent, saving

18 Provided nevertheless, that unless there shall be a person entitled to an estate of inheritance whose consent or concurrence shall have been refused or cannot be obtained, it shall be lawful for the Court, if

it shall think fit, to give effect to any petition, subject to and so as not to affect the rights, estate, or interest of any person whose consent or concurrence has been refused or cannot be obtained, or whose rights, estate, or interest ought, in the opinion of the Court, to be excepted.

the rights of non consenting parties

19 Notice of any application to the said Court under this Act shall be served on all Trustees who are seised 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 served on all Trustees, &c.

20 Notice of any application to the said Court under this Act shall be inserted in such newspapers as the Court shall direct; and any person or body corporate, whether interested in the estate or not, may apply to the said Court by motion for leave to be heard in opposition to or in support of any application which may be made to the said Court under this Act; and the said Court is hereby authorised 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.

Notice of application to be given in the newspapers.

21 The said Court shall not be at liberty to grant any application under this Act in any case where the applicant, or any party entitled, has previously applied to either House of the Parliament of *Tasmania* for a Private Act to effect the same or a similar object and such application has been rejected on its merits.

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

22 The said Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on 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.

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

As to this & next sections see 536 N.O. 11 p. 8
23 All money 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, coal, 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 the Colonial Treasury to the credit of the Registrar of the said Supreme Court *ex parte* the applicant in the matter of this Act, and in either case such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes; namely,—

Court may appoint Trustees to receive and apply monies arising from Sales.

The discharge or redemption of any incumbrance 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 payment to any person becoming absolutely entitled.

24 The application of the money in manner aforesaid may, if the said 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

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

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.

Until money can be applied to be invested, interest or dividends to be paid to the parties entitled.

25 Until the money can be applied as aforesaid, the same shall be from time to time invested upon such Government or real securities in *Tasmania* as the Court shall think fit, and the interest and dividends arising from 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.

Court may exercise powers repeatedly, but may not exercise them if expressly negatived.

26 The said Court shall be at liberty to 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; but no such powers shall be exercised if any express declaration or manifest intention that they shall not be exercised is contained in the settlement, or may reasonably be inferred therefrom, or from extrinsic circumstances or evidence: Provided always, that 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 authorise any act which could not have been authorised by the settlor.

27 Nothing in this Act shall be construed to empower the Court to authorise any Lease, Sale, or other act beyond the extent to which, in the opinion of the Court, the same might have been authorised in and by the settlement by the settlor or settlers.

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

28 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 authorise the same, except that no such Lease, Sale, or other act shall have any effect against any person whose concurrence in or consent to the application ought to have been obtained and was not obtained.

Costs.

29 It shall be lawful for the Court, if it shall think fit, to 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.

Power to Court to make rules and orders.

30 The said Court may, if it shall think fit, from time to time make general rules and orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters; and such rules and orders may from time to time be rescinded or altered by the like authority; and all such rules and orders shall take effect as general orders of the Court.

Rules and orders

31 All general rules and orders made as aforesaid shall, imme-

diately after the making and issuing thereof, be laid before both Houses of the Parliament of *Tasmania* if Parliament be then sitting, or if Parliament be not then sitting within twenty-one days after the next meeting thereof; and it shall be lawful for either of the Houses of Parliament, by any resolution passed within thirty-six days after such rules or orders have been laid before it, to resolve that the same, or any part thereof, ought not to continue in force, and thereupon the same shall cease to be binding.

to be laid before Parliament.

32 It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life, or for a term of years determinable with his life, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise, and also for 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 seised in fee without any application to the Court, to demise the same or any part thereof from time to time for any term not exceeding seven years, to take effect in possession: Provided, that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, 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 for a period not less than twenty-eight days of the rent thereby reserved, and on non-observance of any of the covenants or conditions therein contained; and provided a counterpart of every deed of lease be executed by the Lessee.

Tenants for life, &c. may grant leases for 7 years.

33 Every demise authorised 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 case of unsettled estates 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 Lease shall be valid.

34 The execution of any Lease by the Lessor or Lessors shall 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 Lease by Lessee.

35 All powers given by this Act, and all applications to the Court under this Act, and consents to such applications, may be exercised, made, or given by guardians on behalf of infants, and by committees on behalf of lunatics, and by assignees of bankrupts or insolvents: Provided nevertheless, that in the cases of infants or lunatic tenants in tail no application to the Court, or consent to 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.

36 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

A married woman applying to the Court to be examined apart from her husband. No clause &c. in set-

tlement restraining anticipation to prevent Court from exercising powers of this Act.

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.

Mode of taking examination.

37 The examination of such married woman shall be made either by the Court or a Judge thereof, or by some person authorised to take the acknowledgment and examination of married women under the provisions of the Act in Council of this Colony, intituled *An Act to render Conveyances by Married Women effectual without Fine or Recovery*, or the Act in Council of this Colony, intituled *An Act to amend an Act intituled "An Act to render Conveyances by Married Women effectual without Fine or Recovery;"* and such Judge or other person shall certify under his hand that he has examined such married woman 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.

As to consent of married women under age.

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

No equity to compel any one to apply to the Court.

39 Nothing in this Act shall be construed to create any obligation at law or in equity on any person to make or consent to any application to the Court, or to exercise any power.

Tenants for life, &c., may exercise powers notwithstanding incumbrances.

40 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 incumbered 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 incumbrance 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.

To what settlements this Act to extend.

41 The provisions of this Act shall extend to all settlements, whether made before or after it shall come in force, except those as to demises to be made without application to the Court, which shall extend only to settlements made after this Act shall come in force.

Commencement of Act.

42 This Act shall come in force on the First day of *July*, 1857.