

# New Zealand.

ANNO VICESIMO OCTAVO

## VICTORIÆ REGINÆ.

No. —

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### A BILL INTITLED

## AN ACT to facilitate Leases and Sales of Settled Estates.

**WHEREAS** it is expedient that the Supreme Court shall have power in certain cases to authorise leases and sales of Settled Estates where it shall be deemed 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 parties 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 General Assembly of New Zealand in Parliament assembled and by the authority thereof as follows:—

I. The word "settlement" as used in this Act shall signify any Act of the General Assembly deed agreement will or other instrument or

Interpretation of certain terms.



ordering that powers of leasing in conformity with this Act shall be vested in trustees in manner hereinafter mentioned.

VIII. 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.

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

IX. Where 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.

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

X. 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 invest any such power accordingly either in the existing trustees of the settlement or in any other persons and such powers where 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 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.

Powers of leasing may be vested in trustees.

XI. It shall be lawful for the Supreme Court 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 to authorise a sale of the whole or any part of any settled estates or of any timber growing upon such estates and every such sale shall be conducted and confirmed in the same manner 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.

XII. When any land is sold for building purposes it shall be lawful 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.

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

XIII. On any sale of land any earth stone coal 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.

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

XIV. 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 any estate for life or for 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.

XV. 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:—

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 persons 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 to 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 of rights of non-consenting parties.

XVI. 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 estates 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.

Notice of application to be served on all trustees, &c.

XVII. 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 on any other parties who in the opinion of the Court ought to be served unless the Court shall think fit to dispense with such notice.

Notice of application to be given in newspapers.

XVIII. Notice of any application to the Court under this Act shall be inserted in such newspapers as the Court shall direct and any person or any body corporate whether interested in the estate or not may apply to the Court 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 authorised to allow such person or corporation to appear and be heard in opposition to or in support of any such application on such terms as to costs or otherwise and in such manner as it shall think fit.

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

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

Court may appoint trustees to receive and apply money arising from sales.

XX. All monies received under any sale to be effected under the authority of this Act or to be set aside out of the rent and payments reserved on any lease of earth coal stone or mineral as aforesaid may if the Court shall think fit be paid to any trustees of whom it shall approve to be applied from time to time as the Court shall direct to one or both of the following purposes:—

- (1) The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid: or
- (2) The payment to any person becoming absolutely entitled.

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

XXI. The application of the money in manner aforesaid may if the Court shall so deem 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.

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

XXII. Until the money can be applied as aforesaid the same shall be from time to time invested in such manner as the Court shall direct and the interest thereof shall be paid to the person who would have been invested in the purchase of land.

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

XXIII. The 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 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 circumstances 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.

XXIV. 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 settlors.

Court not to authorise any act which could not have been authorised by the settlor.

XXV. After the completion of any lease 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 consent to or concurrence in the application ought to have been obtained and was not obtained.

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

XXVI. 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 incidental to any application under this Act shall be a charge on the hereditaments which are the subject of the application or of 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 and profits thereof such costs and expenses to be taxed as the Court shall direct.

Costs.

XXVII. The Judges of the Supreme Court may if they 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 of such matters and such rules and orders may from time to time be rescinded and altered by the like authorities.

Powers to Judges, &c., to make rules and orders.

XXVIII. 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 who is entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy or in dower or 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 period not exceeding twenty-one 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 the payment of rent and such other usual and proper covenants as the lessor shall think fit and also a condition for 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 twenty-one years.

XXIX. 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 estates of such persons under or by virtue of the same settlement if the estates be settled and in the 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 leases shall be valid.

Evidence of execution of leases by lessee.

XXX. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease was duly executed by the lessee or lessees thereof.

Powers given by this Act may be exercised by guardians on behalf of lunatics.

XXXI. All powers given by this Act and all applications to the Court under this Act and consent to such application may be exercised made or given by guardians on behalf of lunatics and by trustees under deed of assignment or compensation for the benefit of creditors on behalf of such creditors: Provided nevertheless that in the case of lunatics or infant 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 consent of the Court.

A married woman applying to this Court to be examined apart from her husband.

XXXII. Where a married woman shall apply to the Court or consent to any 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 a 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 or anything in the settlement contained to the contrary notwithstanding.

No clause, &c., in settlement restraining anticipation to prevent Court from exercising powers of this Act.

Such examination to be either by the Court or by a solicitor.

XXXIII. The examination of such married woman shall be made either by the Court or by the Registrar of the Court or by some solicitor duly appointed by the Court for that purpose and the said Registrar or the said Solicitor (as the case may be) 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.

As to consent of married woman under age.

XXXIV. 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.

XXXV. Nothing in this Act shall be construed to avert any obligation 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 encumbrances.

XXXVI. 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 effected 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.

XXXVII. The provisions of this Act shall extend to all settlements whether made before or after it shall come in force.

Title of Act.

XXXVIII. This Act may be cited for all purposes as "The Leases and Sales of Settled Estates Act 1864."