

4. Every deed made in this Island on behalf of any such incorporated company, and executed under the hand and seal of any person empowered by instrument in writing under the common seal of such company, either generally or in respect of any specified matters as its attorney to execute deeds on its behalf in this Island shall be binding on such company, and have the same effect as if it were under the common seal of the company.

As to deeds of incorporated companies executed in this Island.

Passed in Council this first day of November, in the year of our Lord one thousand eight hundred and sixty-five.

DAVID B. HORSFORD,  
*Acting Clerk of the Council.*

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## No. 26.—1865.

*1st November.*

AN ORDINANCE to facilitate Leases and Sales of Settled Estates.

(L. S.) J. H. T. MANNERS-SUTTON.

*November 18, 1865.*

**W**HEREAS it is expedient that the Supreme Civil Court 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 enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows:

1. The word "Settlement," as used by this Ordinance, shall signify any deed, agreement, will, or other instrument, or any number of such instruments, under or by

*Interpretation of certain terms.*

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 estate of any one or more of such persons exclusively, and the term "settled estates," as used in this Ordinance, shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments which are the subject of a settlement, and for the purposes of this Ordinance a tenant in tail, after possibility of issue extinct, shall be deemed to be a tenant for life, and all estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor, or descending to the heir of a testator shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement.

Power of  
Supreme Civil  
Court to  
authorise  
leases of  
settled estates,  
subject to  
certain con-  
ditions.

2. It shall be lawful for the Supreme Civil 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 Ordinance contained, to 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 :—

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 twenty-one years, for a mining lease, or a lease of easements forty years, 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 or other benefit in the nature of a fine.

Thirdly.—When 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, 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, 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, and 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.

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. Leases may contain special covenants.

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

5. Any leases, whether granted under this Ordinance or otherwise, 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 Ordinance shall extend to authorise new leases of the whole, or of 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 Ordinance 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.

Mode in which leases may be authorised.

7. The power to authorise leases conferred by this Ordinance 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 Ordinance, shall be vested in trustees in manner hereinafter mentioned.

What evidence to be produced on application to authorise leases.

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.

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

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 of the use or otherwise as the Court shall direct.

Powers of leasing may be vested in trustees.

10. Where the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Ordinance 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.

11. It shall be lawful for the 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 Ordinance contained, from time to time to authorize a sale of the whole, or any parts of 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.

12. 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 rent issuing out of such land.

13. 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.

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

14. It shall be lawful for the Court, if it shall deem it proper and consistent, with a due regard to the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Ordinance 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 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 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.

Court may authorise dedication of parts of settled estates for roads, &c.

15. On every sale or dedication to be effected as hereinbefore mentioned, the 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

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

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 Ordinance.

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 Ordinance.

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, reserving rights of non-consenting parties.

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.

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

19. Notice of any application to the Court under this Ordinance 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; and a service of such notice on any person resident out of this Island shall be sufficient notice under this Ordinance.

20. Notice of any application to the Court under this Ordinance 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 Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Ordinance, and the Court is hereby authorised to permit 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 application to be given in newspapers.

21. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Ordinance shall be placed on the settlement 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 powers to be given by the Court.

22. All money to be received on any sale effected under the authority of this Ordinance, 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 the Colonial Treasury to the account of the Registrar of the Court, *ex parte* the applicant in the matter of this Ordinance; 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):— 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 payment to any person becoming absolutely entitled.

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

23. The application of the money in manner aforesaid may, if the Court shall so direct, be made by the

Trustees may apply moneys in certain

cases without application to the Court.

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 interests to be paid to parties-entitled.

24. Until the money can be applied as aforesaid, the same shall be from time to time invested in such securities as the Court shall think fit, and the interests or dividends of such securities 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.

25. The Court shall be at liberty to exercise any of the powers conferred on it by this Ordinance, whether the Court shall have already exercised any of the powers conferred by this Ordinance in respect of the same property or not; but no such powers shall be exercised if an 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 Ordinance, 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.

26. Nothing in this Ordinance 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.

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

27. 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 Ordinance, 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.

28. It shall be lawful for the Court, if it shall think Costs. fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Ordinance 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.

29. The Court may, if it shall think fit, from time to time make general rules and orders for carrying the purposes of this Ordinance 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 Ordinance 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. Court may make general rules and orders.

30. All general rules and orders made as aforesaid shall immediately after the making and issuing thereof be laid before the Legislative Council, and it shall be lawful for the Legislative Council to resolve that the same or any part thereof ought not to continue in force; and thereupon the same shall cease to be binding. Rules and orders to be laid before the Legislative Council.

31. 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 as tenant by the courtesy or in dower, or in right of a wife who is seized 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 twenty-one years to take effect in possession; Tenants for life, &c., may grant leases for twenty-one years.

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.

Against whom such leases shall be valid.

32. 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 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, and against the wife of any husband making such demise of estates to which he is entitled in right of such wife.

Provisions as to infants, lunatics, &c.

33. All powers given by this Ordinance, and all applications to the Court under this Ordinance, 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 case of infant 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.

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

34. Where a married woman shall apply to the Court or consent to an application to the Court under this Ordinance, 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 Ordinance, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

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

35. The examination of such married woman, where made in this Island, shall be made by the Court, and where made out of this Island shall be made by some person 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.

Such examination to be either by the Court or some person appointed by the Court.

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

As to consent of married women under age.

37. Nothing in this Ordinance 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.

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

38. For the purposes of this Ordinance, 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.

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

39. The provisions of this Ordinance 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 Ordinance shall come in force.

To what settlements this Act to extend.

Passed in Council this first day of November, in the year of our Lord one thousand eight hundred and sixty-five.

DAVID B. HORSFORD,  
*Acting Clerk of the Council.*