

New Zealand.

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. 3.

ANALYSIS.

- Title.
- Preamble.
1. Interpretation of certain terms.
2. Power to Court to authorise leases of settled estates subject to certain conditions.
3. Leases may contain special covenants.
4. Parts of settled estates may be leased.
5. Leases may be surrendered and renewed.
6. Power to authorise leases to extend to preliminary contracts.
7. Mode in which leases may be authorised.
8. What evidence to be produced on an application to authorise leases.
9. After approval of a lease Court to direct who shall be the lessor.
10. Powers of leasing may be vested in trustees.
11. Court may authorise sales of settled estates and of timber.
12. Consideration for land sold for building may be a fee-farm rent.
13. Minerals &c. may be excepted from sales.
14. Court may direct that part of settled estates may be laid out in streets squares roads &c. to be dedicated to public or not.
15. On sale or dedication Court to direct what person shall convey.
16. Application by petition to exercise powers conferred by this Act.
17. With whose consent such application to be made.
18. Petition may be granted without consent saving of rights of non-consenting parties.
19. Notice of application to be served on all trustees &c.
20. Notice of application to be given in newspapers.
21. Notice of the exercise of powers to be given by the Court.
22. Court may appoint trustees to receive and apply money arising from sales.
23. Trustees may apply money in certain cases without application to the Court
24. Until money can be applied to be invested and interest to be paid to parties entitled.
25. Court may exercise powers repeatedly but may not exercise them if expressly negatived.
26. Court not to authorise any act which could not have been authorised by the settlor.
27. Acts of the Court in professed pursuance of this Act not to be invalidated.
28. Costs.
29. Power to Judges &c. to make rules and orders.
30. Tenants for life may grant leases for twenty-one years.
31. Against whom such leases shall be valid.
32. Evidence of execution of leases by lessee.
33. Powers given by this Act may be exercised by guardians on behalf of infants and by committees on behalf of lunatics.
34. Repeal of the 32 Henry VIII. c. 28.
35. A married woman applying to the Court to be examined apart from her husband. No clause &c. in settlement restraining anticipation to prevent Court from exercising powers of this Act.
36. Such examination to be either by the Court Registrar or a Solicitor or if out of Colony by any person appointed by Court.
37. As to consent of married women under age.
38. No equity to compel any one to apply to the Court.
39. Tenants for life &c. may exercise powers notwithstanding encumbrance.
40. To what settlements this Act to extend.
41. Provisions of conveyancing Ordinance.
42. Short Title.

AN ACT to facilitate Leases and Sales of Title. Settled Estates. [25th August, 1865.]

WHEREAS it is expedient that the Supreme Court shall have Preamble
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 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 General Assembly of New Zealand
in Parliament assembled and by the authority thereof as follows—

I. The word "Court" in this Act shall mean the Supreme Court of Interpretation of cer-
New Zealand and the term "settlement" as used in this Act shall tain terms.

Leases and Sales of Settled Estates.

signify any Act of the General Assembly deed agreement will or other instrument or any number of such instruments under or by virtue of which any hereditaments or any estates or interests in any 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 and all estates or interests in any hereditaments which are the subject of a settlement And for the purposes of the said definitions of the terms "settlements" and "settled estates" 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 And for the purposes of this Act a tenant in tail after possibility of issue extinct shall be deemed to be a tenant for life.

Power to Court to authorise leases of settled estates subject to certain conditions.

II. It shall be lawful for the Supreme Court of New Zealand 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—

- (1) That every such lease shall be made to take effect in possession 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 water water mills wayleaves water leaves or other right or easements forty years or for a building lease ninety-nine years and for a repairing lease sixty years.
- (2) 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.
- (3) 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 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.
- (4) Every such lease shall be by deed and every 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.

III. Subject and in addition to the conditions hereinbefore contained every such lease shall contain such covenants stipulations and conditions as the Court shall decree expedient with reference to the special circumstances of the demise.

Parts of settled estates may be leased.

IV. The power to authorise leases conferred by this Act shall extend

Leases and Sales of Settled Estates.

to authorise leases of the whole or any parts of the settled estates and may be exercised from time to time.

V. Any leases whether granted under this Act or not 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 the surrendered leases. Leases may be surrendered and renewed.

VI. 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.

VII. 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 this Act shall be vested in trustees in manner hereinafter mentioned. Mode in which leases may be authorised.

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 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.

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 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 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.

XI. It shall be lawful for the 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 (not being ornamental timber) growing upon 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.

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 pur- Minerals &c. may be excepted from sales.

Leases and Sales of Settled Estates.

authorised by the settlor.

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 Act not to be invalidated.

XXVII. 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.

Costs.

XXVIII. It shall be lawful for the Court if it shall think fit to order that all or any cost 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 or profits thereof such costs and expenses to be taxed as the Court shall direct.

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

XXIX. The Judges of the Supreme Court or any two of them of whom the Chief Justice shall be one 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 authority.

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

XXX. 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 seized 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.

Against whom such leases shall be valid.

XXXI. 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 also against the wife of any husband making such demise of estates to which he is entitled in right of such wife.

Leases and Sales of Settled Estates.

XXXII. 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 or lessees thereof. Evidence of execution of leases by lessee.

XXXIII. 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 trustees or assignees of bankrupts or insolvent debtors 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. Powers given by this Act may be exercised by guardians on behalf of infants and by committees on behalf of lunatics.

XXXIV. The Act of the thirty-second of Henry the Eighth intituled "Lessees to enjoy the farm against the tenants in tail" is hereby repealed. Repeal of the 32 Henry VIII. c. 28.

XXXV. Where a married woman shall apply 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 this Court to be examined apart from her husband. No clause &c. in settlement restraining anticipation to prevent Court from exercising powers of this Act.

XXXVI. The examination of such married woman shall be made either by the Court or by the Registrar of the Court or by some Solicitor of the Court duly appointed by the Court for that purpose or if such married woman is resident out of the Colony by any person whether a solicitor or not appointed by the Court for that purpose and such registrar solicitor or other person (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 and the appointment by the Court of any person to make such examination of a married woman out of the Colony shall afford conclusive evidence that the married woman was at the time of such examination out of the Colony and jurisdiction of the Court. Such examination to be either by the Court Registrar or a Solicitor or if out of the Colony by any person appointed by Court.

XXXVII. 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.

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

XXXIX. 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. Tenants for life &c. may exercise powers notwithstanding encumbrance.

XL. The provisions of this Act shall extend to all settlements whether made before or after it shall come in force except those provisions as to demises to be made without application to the Court which shall extend only to settlements made after this Act shall come into force This Act shall not extend or apply to any lands to and over which the native title has not been extinguished. To what settlements this Act to extend.

Leases and Sales of Settled Estates.

Provisions of convey-
ancing Ordinance.

XLI. Nothing in this Act contained shall be deemed to repeal or in any manner affect any of the provisions contained in the Ordinance of the Governor and Legislative Council of New Zealand made and passed in fifth year of the reign of Her present Majesty and numbered X of the second Session and intituled "An Ordinance to facilitate the Transfer of Real Property and to simplify the Law relating thereto."

Short Title.

XLII. This Act may be cited for all purposes as "The Leases and Sales of Settled Estates Act 1865."