

ANNO UNDECIMO & DUODECIMO

VICTORIÆ REGINÆ.

****

CAP. XLVIII.

An Act to facilitate the Sale of Incumbered Estates in *Ireland*. [14th *August* 1848.]

WHEREAS it is expedient to grant Facilities for the Sale of Estates situate in that Part of the United Kingdom of *Great Britain* and *Ireland* called *Ireland* which may be charged with Incumbrances, as after mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in the Construction of this Act (except where the Context or other Provisions of the Act require a different Construction) the Word "Land" shall extend to Manors, Advowsons, Rectories, Messuages, Lands, Tenements, Rents, and Hereditaments of any Tenure, whether subject to any Fee Farm or other perpetual Rent, with or without Condition of Re-entry for securing the same, or otherwise, and whether corporeal or incorporeal, and any undivided Share thereof; and the Word "Estate" shall extend to an Estate in Equity as well as at Law, and to the Benefit of any Covenant or Contract for or Right of Renewal; and the Word "Lease" shall include an Agreement for a Lease, and the Estate or Interest created or agreed to be created by such Lease or Agreement in the whole or any Part of the Land therein comprised; and the Expression "Lease

Construction of Terms, &c. in this Act.

"Land."

"Estate."

"Lease."

"Lease in perpetuity."

"Lease in Perpetuity" shall mean any Lease or Grant for One or more Life or Lives, with or without a Term of Years, or for Years determinable on One or more Life or Lives, or for Years absolute, with a Covenant or Agreement in any of such Cases, whether in the same or in any other Instrument, for the perpetual Renewal of such Lease or Grant, whether such Lease shall be derived out of the Inheritance or by way of Underlease out of any Lease or other Estate; and the Word "Incumbrance" shall mean any legal or equitable Mortgage in Fee, or for any less Estate, and also any Money secured by a Trust, or by Judgment, Decree, or Order of any Superior Court of Law or Equity duly registered, and also any Legacy, Portion, Lien, or other Charge, whereby a gross Sum of Money is secured to be paid on an Event or at a Time certain, and also any annual Charge which by the Instrument creating the same, or by any other Instrument, is made re-purchaseable on Payment of a gross Sum of Money; and the Word "Incumbrancer" shall mean any Person entitled to such Incumbrance, or entitled to require the Payment or Discharge thereof; and the Word "Possession" shall include the Receipt of the Rents and Profits; and the Word "Owner," as applied to any Land, shall include any Person entitled in possession in Fee Simple or in Tail, or quasi in Tail, and any Person entitled in possession for a Life or Lives, or for a Term of Years determinable on the dropping of any Life or Lives, or for a Term of Years of which not less than Ninety-nine Years are unexpired, not being a Lessee at a Rent, and also any Person entitled in possession as Tenant by the Curtesy, whether at Law or in Equity, and any Person entitled in possession to the Equity of Redemption or the Property subject to the Incumbrance, or to a Trust for Payment of the Incumbrance, in any Land, whether in Fee or for any lesser Estate as aforesaid, and any Feoffees or Trustees for charitable or other Purposes, entitled in possession; and the Word "Owner," as applied to a Lease in perpetuity or other Lease, shall include any Person entitled in possession to the Land comprised in such Lease for the whole Estate created or agreed to be created by such Lease, or for any derivative Estate (created by Settlement, or testamentary or other Disposition thereof), quasi in Tail, or for Life or Lives, or for Years determinable on the dropping of a Life or Lives, or for Years of which not less than Fifty Years are unexpired, not being an Underlease at a Rent derived out of such Lease, and any Person entitled in possession to the Equity of Redemption or the Property subject to the Incumbrance, or to a Trust for Payment of the Incumbrance, in any such Lease in perpetuity or other Lease, absolutely, or for any such derivative Estate as aforesaid; and the Word "Person" and the Word "Owner" shall extend to a Body Politic or Corporate as well as to an Individual; and the Word "Month" shall mean Calendar Month; and the Word "Court" shall mean the High Court of Chancery in *Ireland;* and the Word "Master" shall mean the Master for the Time being having the Conduct of the Reference; and every Word importing the Singular Number only shall extend to several Persons or Things, and every Word importing the Plural Number shall apply to One Person or Thing; and every Word importing the Masculine Gender only shall extend to a Female; and Words importing Sale and selling shall include

"Incumbrance."

"Incumbrancer."

"Possession."

"Owner."

"Owner."

"Person" and "Owner."

"Month."

"Court."

"Master."

Number.

Gender.

Sale and selling.

include the carrying into execution any Contract for a Sale under the Provisions of this Act; and where any Act is authorized or directed to be done by or with respect to any Person, or any Consent is authorized to be given by any Person, such Act or Consent may be done or given by the Guardian of such Person being an Infant, or by the Committee of the Estate of such Person being an Idiot or Lunatic, or by the Husband of such Person being a married Woman (except that a married Woman entitled to any Land, Estate, or Incumbrance for her separate Use for Life, or for any greater Estate, with or without Power of Anticipation, shall for the Purposes of this Act be considered as a Feme Sole); and this Act shall operate as well with respect to any Estate or Incumbrance created before the passing of this Act as with respect to any Estate or Incumbrance to be hereafter created.

Where Land, &c. in Ireland is subject to Incumbrance, Owner may, subject to Approbation of Court, contract to sell the same.

II. And be it enacted, That where any Land in *Ireland* shall be subject to any Incumbrance it shall be lawful for the Owner of such Land to contract (subject to the Approbation of the Court) for the Sale thereof, freed from all Incumbrances, and such Sale, if approved by the Court, shall be carried into effect under the Provisions of this Act; and that any such Owner, or any Person being the first Incumbrancer on any such Land, or any Person being an Incumbrancer on any such Land in possession of the Title Deeds and Writings relating thereto, without having so contracted, may apply to the Court for the Sale of such Land under the Provisions of this Act.

Lands not deemed subject to Incumbrance unless same affect a Term of not less than 50 Years unexpired, &c.

III. And be it enacted, That for the Purposes of this Act the Land shall not be deemed subject to an Incumbrance unless the same shall affect a Term of not less than Fifty Years absolute unexpired, or a greater Estate in such Land, nor unless such Incumbrance shall have been created by the Owner of an Estate of Inheritance, but an Incumbrance charged under a Power created by the Owner of an Estate of Inheritance shall be deemed to have been created by such Owner.

Where Leases in perpetuity and long Terms subject to Incumbrance Owner may, subject to Approbation of Court, sell the same.

IV. And be it enacted, That where any Lease in perpetuity of Land in *Ireland*, or any Lease of Land in *Ireland* for a Term whereof not less than Sixty Years shall be unexpired at the Time of such Application as herein-after mentioned, shall be subject to any Incumbrance, it shall be lawful for the Owner of such Lease in perpetuity or other Lease as aforesaid to contract, subject to the Approbation of the Court, for the Sale thereof, freed from all Incumbrances, and such Sale, if approved by the Court, shall be carried into effect under the Provisions of this Act; and that any such Owner of a Lease in perpetuity or other Lease as aforesaid, and also any Person being the first Incumbrancer on any such Lease in perpetuity or other Lease as aforesaid, or any Person being an Incumbrancer on any such Lease in perpetuity or other Lease as aforesaid, and being in possession of the Title Deeds and Writings relating thereto without having so contracted, may apply to the Court for the Sale of such Lease in perpetuity or other Lease as aforesaid under the Provisions of this Act.

V. And

Leases in perpetuity, &c. to be subject to Incumbrances only in certain Cases.

V. And be it enacted, That, as well for the Purposes aforesaid as for the Purposes of Sales without the Order of the Court, and for the other Purposes of this Act, such Lease in perpetuity or other Lease as aforesaid shall not be deemed subject to an Incumbrance where the same shall affect a derivative Estate or Interest only, or less than the whole Estate created or agreed to be created by such Lease in perpetuity or other Lease as aforesaid, unless such Incumbrance shall have been created by the Owner of or Person entitled to the whole Estate created or agreed to be created by such Lease in perpetuity or other Lease as aforesaid, but any Incumbrance charged under a Power created by the Owner of or Person entitled to such whole Estate as aforesaid shall be deemed to have been created by such Owner or Person so entitled.

Owner, &c. having contracted for Sale may apply to the Lord Chancellor of Ireland to confirm the Sale or Contract for Sale.

VI. And be it enacted, That every such Owner having contracted for Sale as aforesaid, and every such Owner or such first or other Incumbrancer being desirous to sell as aforesaid, may apply by Petition in a summary Way to the Lord Chancellor of *Ireland* for the confirming and carrying into effect such Contract for Sale, or for the Sale of such Land or Lease, as the Case may be; and every such Petition, and every subsequent Petition and other Proceeding arising out of the same, shall be entitled "In the Matter of the Act to facilitate the Sale of Incumbered Estates in *Ireland*," *ex parte* the Person who shall have presented such Petition.

Petition to set forth Incumbrances, &c., and to be verified.

VII. And be it enacted, That every Petition for the confirming and carrying into effect such Contract for Sale, or for the Sale of such Land or Lease in perpetuity or other Lease as aforesaid, shall set forth the Estate or Interest of the Petitioner in such Land or Lease in perpetuity or other Lease as aforesaid, and the Uses or Limitations and the Trusts, if any, to which the Land or Lease stands limited or settled, and the Incumbrances and other Charges affecting the same respectively, including the Crown Rents and Quit Rents, if any, subject to which such Land or Lease is contracted or proposed to be sold, and such Petition shall be verified as the Court shall direct or approve.

Lord Chancellor, &c. of Ireland may make Rules, &c. for carrying this Act into effect.

VIII. And be it enacted, That it shall be lawful for the Lord Chancellor of *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, from Time to Time to make any Rules or Orders which may be considered expedient for the better carrying this Act into effect, and for the Conduct of the Proceedings to be taken under this Act, and in order that the same may be done with the least Cost, and as speedily as may be consistent with a due Observance of the Provisions hereof, and also for fixing the Fees to be paid upon any Proceedings, and the Cost thereof, so that such Fees and Costs shall never exceed such as are or may be lawfully received on similar Matters: Provided always, that such Rules and Orders shall be laid before both Houses of Parliament within One Month from the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within One Month from the Commencement of the then next Session of Parliament; and any Rule and Order so made shall from the making thereof for all Purposes

Rules, &c. to be laid before Parliament.

Purposes be deemed and taken to be a general Rule and Order of the Court.

Lord Chancellor, &c. may alter Rules from Time to Time.

IX. Provided always, and be it enacted, That it shall be lawful for the Lord Chancellor of *Ireland*, with the Advice and Consent aforesaid, from Time to Time, in like Manner and subject to the like Provision as aforesaid, to make any Rules or Orders rescinding or altering any former Rules or Orders.

Upon Presentation of Petition for Sale the Court may refer the same to a Master in Chancery, who shall inquire into the Particulars, and report.

X. And be it enacted, That upon the Presentation of such Petition as aforesaid it shall be lawful for the Court, either by an *ex parte* Order or on Notice to such Parties as it may consider ought to have Notice, to refer it to One of the Masters of the Court to inquire as to the Estate or Interest (if any) of the Petitioner in such Land or Lease, and as to the Uses or Limitations and Trusts, if any, to which such Land or Lease stands limited or settled, and as to the Incumbrances and other Charges affecting the same (including as well such as are claimed by the Parties who shall come in under the said Order as all such others as shall appear from the Title Deeds or on Search or otherwise, as far as the same can be ascertained, and including also Debts and Incumbrances and other Charges due or belonging to Her Majesty, Her Heirs and Successors), and as to the Persons entitled under such Uses or Limitations and Trusts, and the Persons in whom such Incumbrances and Charges shall be vested, and as to the Order and Priority of such Incumbrances and Charges, and the Amount due thereon respectively, distinguishing Principal Monies from Interest, and making all just Allowances, and in case of a Mortgagee or other Creditor in possession taking all just Accounts, and with or without Rests, as shall be just, and as to the Value of the Land or Lease which shall have been contracted or shall be desired to be sold, and also whether any such Incumbrances or Charges shall affect any Land or Estate other than the Land or Lease which shall have been contracted or be desired to be sold, and whether such other Land or Estate shall be liable in priority or in equal Degree or in posteriority, and as to the Title to the Land or Lease contracted or desired to be sold, and to the Incumbrances, and as to the Expediency of Sale, and if a Part only of any incumbered Land or Lease shall have been contracted or be desired to be sold, whether such Part shall be proper to be sold, or to make such of the above Inquiries, and to make such other Inquiries relating to or affecting such Land or Lease, and the Incumbrances and Charges thereon, as the Court shall think requisite, and to report upon the same; and the Master shall have Authority to direct Searches to be made for Judgments, and Searches of the Registry, and in all other Places, and Inquiries as to the Identity of any Person or Property; and in such Report the Master may state any Circumstances specially as the Court shall direct or as he shall see fit; and the Master shall be at liberty, at his Discretion or by Order of the Court, to make a separate Report as to any of the Matters referred to him; and for any of the Purposes of this Act the said Court shall have Power to compel the Production before the Master of all Deeds and other Writings relating to any Property in question: Provided always, that no Incumbrancer, or other Person being in

possession of any Title Deeds or Writings of or relating to any Property (and showing Right to hold the same as a Security for a Debt or Charge) or Lien shall be compellable to produce the same, unless or until it shall have been ascertained by the Report of the Master that the Money to be produced by the Sale of the Property, and applicable to the Payment of such Debt or Charge, will be sufficient to pay the same; but such Incumbrancer or other Person shall, on the Order of the Court, furnish Copies or Abstracts of any such Deeds or Writings; and in every Case in which such Incumbrancer or other Person having Right as aforesaid shall be required to produce such Deeds or Writings, or to furnish such Copies or Abstracts, the reasonable Costs and Charges of such Production or such Copies or Abstracts as aforesaid shall be previously paid or tendered by the Party requiring the same, or otherwise as the Court shall direct; and all Orders for the Production and for the furnishing of Copies and Abstracts of any such Deeds or Writings may be made on Persons residing or being in *England*, or elsewhere out of the Jurisdiction of the Court; and all Notices to be given or served under any of the Provisions of this Act may be given and served in *England*, or elsewhere out of the Jurisdiction of the Court; and the Powers, Provisions, and Directions of an Act passed in the Forty-first Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for the more speedy and effectual Recovery of Debts due to His Majesty, His Heirs and Successors, in right of the Crown of the United Kingdom of* Great Britain *and* Ireland, *and for the better Administration of Justice within the same*, shall extend and be applied to all Orders to be made by the Court under this Act.

41 G. 3. c. 90.

Rules, &c. in force with respect to certain Proceedings for Payment of Incumbrances, &c. not inconsistent with this Act, shall apply to Proceedings under this Act.

Court to apportion Costs as it may think fit.

XI. And be it enacted, That all the Laws, Rules, Orders, discretionary Powers, and Practice in force or which shall be in force with respect to Proceedings in the Court in a Suit for Foreclosure or Redemption of a Mortgage, or for Sale of Estates for Payment of Incumbrances or Debts, not being inconsistent with the Provisions of this Act, or with any Rule or Order to be made by the Lord Chancellor of *Ireland* as aforesaid, shall apply to the several Proceedings under this Act, so far as Circumstances will admit; and all such Proceedings by way or in the Nature of Further Directions and otherwise, in case of a Sale under this Act, shall and may be had and taken as in Case of a Decree for Sale as aforesaid, so far as is consistent with the Provisions of this Act, and as Circumstances will admit; and in every Proceeding under this Act the Court shall (except in the Case herein-before mentioned and provided for) have full Power and Discretion as to the giving or withholding Costs and Expenses, and as to the Persons by whom and the Funds out of which the same shall in the first instance or ultimately be paid, repaid, and borne, and shall and may apportion the same amongst such Parties, and in respect of Interest or Principal, and in respect of Rents or Income and Corpus, as it shall see fit; and that under every Reference which shall be made to the Master under any of the Provisions of this Act he shall, so far as may be consistent with the Provisions of this Act, or with any Rule or Order to be made by the Lord Chancellor of *Ireland* as aforesaid, or with any special Order of the Court under this Act, proceed in like Manner and with the like

Powers and Authorities in all respects, and all Orders and Proceedings of and before the Master shall be enforcible in like Manner, as in case of a Reference made to the Master under such Decree as aforesaid, so far as Circumstances will admit; and all Persons who shall become Parties to any Proceedings under this Act, by contracting for the Purchase of any Land or Lease, or by making any Application to the Court, or by submitting to the Jurisdiction of the Court, or by attending before the Master in the course of such Proceedings, or by otherwise concurring in any such Proceedings, and the Representatives of such Persons, and all Persons claiming under them, by their Act or by Act of Law subsequent to their becoming subject, as next herein-after mentioned, shall for the Purposes of this Act be subject to the Jurisdiction of the Court, and to all Orders of the Court and of the Master, in the course of any such Proceedings, in like Manner and as fully as Parties to a Cause pending in the Court are subject to the Jurisdiction of the Court in such Cause.

All Persons becoming Parties to be subject to the Jurisdiction of the Court, &c.

XII. Provided always, and be it enacted, That it shall not be necessary for any Person thinking himself aggrieved by any Report of the Master to take Exceptions to such Report; but it shall be incumbent on all Persons Parties to Proceedings, or coming in before the Master, to carry in Objections, in the usual Manner and in the usual Cases, to the Draft of the Report, in case they shall think themselves aggrieved thereby; and any such Person omitting so to object in such Cases shall not afterwards be heard against the Report without special Leave of the Court; and every Proceeding before the Court under this Act shall be carried on by Petition or Motion in a summary Way, or as the Court may from Time to Time order; and Proceedings under this Act shall not abate nor be suspended by any Death, Transmission, or Change of Interest, except so far as it shall be deemed necessary for the carrying on of any such Proceedings that any Person not before the Court shall have Notice of or be required to attend such Proceedings.

Persons feeling aggrieved by Report of the Master not compelled to take Exceptions to the same.

XIII. And be it enacted, That in case of Death or Transmission or Change of Interest, and wherever, after the Presentation of a Petition for confirming and carrying into effect a Contract for Sale or for a Sale under this Act, the Direction of the Court shall be requisite for carrying on the Proceedings under the same, or for effecting the Objects thereof, or otherwise relative thereto, it shall be lawful for any Person interested in such Proceedings to apply to the Court for an Order for any such Purpose, and it shall be lawful for the Court to make such Order on any such Application as it shall see fit.

In case of Death, &c. Parties interested may apply to the Court to carry on Proceedings.

XIV. And be it enacted, That when, upon a Petition for confirming and carrying into effect a Contract for Sale, or applying for a Sale, any Reference shall have been made to the Master as aforesaid, he shall cause an Advertisement to be published at least once in Two successive Weeks in the *Dublin Gazette* and in such daily or other Journals or Newspapers in *Ireland* or *England*, or both, as the Master shall think fit, stating the Name and Addition or Title of the Petitioner, and in case the Petitioner shall not be the Owner, the Name

When, upon a Petition, &c. a Reference shall have been made to the Master, he shall cause the same to be published

by Advertisements.

Name and Addition or Title of the Owner, and the Denomination or short Description of the Land or Lease contracted or desired to be sold, and the County wherein the same shall be situate, and any other Matters as the Master may think fit, and fixing a Day whereon the Master will enter upon the Consideration of the Matter referred to him, and requiring all Persons having Incumbrances to come in and prove them.

Error in Advertisement not to vitiate Proceedings.

XV. Provided always, and be it enacted, That no Error or Imperfection in any such Advertisement as aforesaid shall vitiate the Proceedings under any such Reference, unless the Court, upon Application made to the same, or otherwise in the course of Proceedings under such Reference, shall determine that it ought so to do.

Master, before proceeding, &c. shall cause Notice to be given to all Persons who shall appear to have Interest in the Subject of Inquiry.

XVI. And be it enacted, That the Master, before proceeding upon any of the Inquiries directed by any such Reference, and also from Time to Time under such Reference, or under any further Reference made to him in the same Matter, as and when by reason of any Interest appearing to exist in any of the Subjects of the Inquiries referred to him it shall seem to him fitting, shall cause Notice to be given, as and in such Form as he shall think proper, to all Persons who shall appear to him to have any Interest in any of the Subjects of such Inquiries, and whose Attendance before him shall appear proper, that he is about to proceed or that he is proceeding in the Matter of such Reference; and all Notices under this Act may be served out of the Jurisdiction of the Court, and it shall be lawful for the Court to direct substituted Service thereof in any Case in which it shall so think fit; and in case any Incumbrancer or Party interested, having been served with any such Notice, shall omit or neglect to appear in the Master's Office, or to file or carry in a Charge, it shall be lawful for the Court, on the Application of any Party, to make an Order in open Court on Motion of Course that such Incumbrancer or Party shall be bound by the Proceedings as if he had been a Party thereto, or such other Order as the Court shall think fit, and thereupon it shall be lawful to proceed notwithstanding the Absence of such Party; and if it shall appear to the Satisfaction of the Master that any Person to whom in his Judgment Notice ought to be given cannot be found, or cannot be in any Manner served with Notice, it shall be lawful for the Master to state in his Report the Name of such Person, and the Circumstances under which Notice was not or could not be given to him: Provided nevertheless, that after such Order made it shall be lawful for the Master at any Time in his Discretion to admit, and for the Court, on such Terms as it shall think proper, to order him to admit, any Party against whom such Order shall have been made to attend and proceed before him as if no such Order had been made: Provided also, that the Parties against whom such Order shall have been made shall not thereby be excluded from sharing in the Proceeds of such Sale, under the Direction of the Court, or from any other Benefits of this Act, consistent with the full Effect of such Order, or with such Directions as the Court shall think proper at any Time to make.

XVII. And

Persons claiming an Interest in any Land, &c. may enter a Caveat in the Registrar's Office, and shall be thereby entitled to Notice.

XVII. And be it enacted, That from and after the passing of this Act it shall be lawful for any Person claiming any Interest in any Land or Lease in *Ireland* to enter a Caveat in the Office of the Registrar of the Court against the Sale of such Land or Lease, by Order of the Court or otherwise, under the Provisions of this Act; and in such Caveat shall be mentioned the Place of Abode of such Person, or some Place of Address at or to which Notices respecting such Sale may be served or sent; and such Person shall thereupon and thereby be entitled to and shall have and receive such Notice of all subsequent Proceedings to be taken upon any Reference under this Act relating to the Land or Lease mentioned in such Caveat or any Part thereof, as herein-after mentioned; (that is to say,) where the Place of Abode or Address mentioned in such Caveat shall be in the City of *Dublin* such Notice shall be served on such Person personally or left with some Inmate of such Place of Abode or Address, being of the Age of Sixteen Years or upwards, and where such Place of Abode or Address shall be elsewhere than in the City of *Dublin* such Notice shall be transmitted through the Post Office, addressed to such Person at such Place of Abode or Address.

All Persons claiming under Reference to appear before the Master, who shall in his Report state by whom he has been attended, &c.

Omission of the Master to give Notice not to vitiate Proceedings.

XVIII. And be it enacted, That it shall be lawful for all Persons claiming any Interest in any of the Subjects of such Inquiries in the usual Manner to appear before the Master under any Reference under the Powers of this Act, and to claim to take a Part in the Proceedings under the Reference, or in any of them, and the Master shall have Power to determine what Parties shall and may attend before him and take a Part in the Proceedings under the Reference, or in any of them, and upon what Terms; and the Master in his Report under any such Reference shall state by what Persons he has been attended in such Proceedings, or in any of them, and also what (if any) Persons, and in respect of what Inquiries, he has prohibited from attending before him, and also what (if any) Persons shall after Notice to them as aforesaid have neglected or omitted to attend before him: Provided always, that no Omission of the Master to cause any such Notice as aforesaid to be given shall vitiate any Proceedings before the Master, unless the Court, upon Application made to the same, or otherwise, in the course of Proceedings in the Matter in which such Reference shall have been made, shall determine otherwise.

Persons who have been disallowed from attending before the Master, or complaining of any Certificate, &c., may apply to the Court against such Disallowance, &c.

XIX. Provided always, and be it enacted, That it shall be lawful for any Person whose Attendance before him the Master shall have disallowed, and also for any Person complaining of any Act or Proceeding of the Master in any Case not otherwise specially provided for, or requiring the Direction or Order of the Court in any Proceeding before the Master, to apply to the Court against such Disallowance, Act, or Proceeding, or for such Direction or Order, but so that no such Application complaining of any Disallowance, Act, or Proceeding of the Master shall, without special Leave of the Court, be made, unless within Fourteen Days after the Act or Proceeding complained of, if the Court be then sitting, and if the Court shall not be then sitting, unless Notice of such Intention to

apply at the Sitting of the Court be given within Fourteen Days to the Party petitioning for such Sale as aforesaid.

Directions of this Act as to Proceedings to have the Force of Orders of the Court.

XX. And be it enacted, That all the Directions in this Act contained as to Proceedings before the Master and in Court shall have such and the same Force and Effect as if the same were Orders of the Court, and the Court shall have such and the same Powers and Authorities in relation to all such Proceedings, and in relation to the Costs of or incident thereto, as the Court would have if such Directions were Orders of the Court, and were not expressly contained herein.

When Incumbrance shall be subject to Limitations, the first Person entitled, &c. is to make Application.

XXI. And be it enacted, That when any Incumbrance shall be subject to any Limitations of Estate or Interest, or shall be held upon any Trust, the first Person entitled to the Income of such Incumbrance, or the Trustee or other Person whom the Court may think fit, shall be the Person to make any Application or give any Consent under this Act in respect of such Incumbrance.

Where any Person shall be entitled to any Charge, &c. Master may treat such Charge as an Incumbrance.

As to the Sale of any Land, &c. a Part only of which shall be desired to be sold.

XXII. And be it enacted, That where any Person who shall be entitled to any Charge not being an Incumbrance within the Meaning of this Act (including any such apportioned Charge as herein-after mentioned) shall be willing to accept a gross Sum in satisfaction of such Charge, it shall be lawful for the Master, if he shall think fit, to treat and to include in his Report such Charge as an Incumbrance within the Meaning of this Act; and that where any Land or Lease a Part only of which shall be contracted or desired to be sold shall be subject to any such Charge not being an Incumbrance as aforesaid, or to any Incumbrance from which the Land or Lease contracted or desired to be sold shall not be otherwise freed or discharged under the Provisions of this Act, it shall be lawful for the Master, if he shall see fit, to approve of the Part not contracted or desired to be sold of such Land or Lease being charged with such Charge or Incumbrance in exoneration of the Land or Lease contracted or desired to be sold, or to approve of an Apportionment of such Charge or Incumbrance between the Land or Lease to be sold and the Residue of the Land or Lease subject thereto, with the Consent in either Case of all Parties interested in the Part of such Land or Lease not contracted or desired to be sold, and to include such Matters in his Report: Provided nevertheless, that a Sale by Order of the Court may be made under this Act before all the Accounts of Incumbrances are taken, or the Rights of Incumbrancers ascertained, if the Court shall on special Application so direct.

Report of the Master and all other Reports, &c. to be filed according to the Rules of the Court.

XXIII. And be it enacted, That the Report of the Master as to the Expediency of Sale, and all other Reports, Affidavits, Orders, and other Proceedings under this Act, shall, so far as consistent with the Provisions of this Act, or with any Rule or Order of the Court or of the Lord Chancellor of *Ireland*, to be made as herein-before provided, be filed according to the Rules and Practice of the Court in Causes or Matters pending in the same, so far as such filing would, as to Matters of the like Nature, be thereby required, and as Circumstances will admit; and that at the Expiration of Fourteen Days after the filing

filing of the Report, as to Parties who shall have appeared before the Master, and as to all other Persons at the Expiration of One Month after the filing of any Report approving of a Sale, if no Application shall be made or shall be pending before the Court, complaining of such Report, or of any Proceedings of the Master under the Reference under which such Report shall have been made, it shall be lawful for the Court, upon the Application of any Party interested in such Report, (and without the Attendance of Counsel, unless the Court shall see fit to direct such Attendance of Counsel,) to confirm the Report absolute, and to direct or authorize a Sale to be made by the Master, and that after Confirmation of such Report absolute it shall not be lawful for any Person to make any Application complaining of the same without special Leave of the Court.

Order for Sale may include the whole or Part of the incumbered Land, &c.

XXIV. And be it enacted, That any Order for Sale to be made by the Court under this Act may include the whole or any Part or Parts of the incumbered Land or Lease, and may provide that the Land or Lease, or the Part or Parts thereof to be sold, shall remain subject to any Incumbrance which the Court shall think fit; and such Order shall specify the Land or Lease, or the Part or Parts thereof which shall be directed or authorized to be sold, and also the Incumbrances and Charges (if any) to remain charged on the Land or Lease to be sold, and also the Incumbrances and Charges (if any) to remain charged on any Land or Lease, or Part or Parts thereof, not included in the Sale, and whether such Incumbrances and Charges respectively are to be charged on any such Land or Lease or Part thereof exclusively, or in common with any other Land or Lease or Part thereof, and whether with Priority of Charge, or Liability in respect of any such Land or Lease, or Part thereof, or otherwise, and all such other Matters incident to the Sale as the Court shall think fit.

Court may order the whole of an Estate to be sold, although the Master shall have approved of the Sale of a Part only.

XXV. And be it enacted, That it shall be lawful for the Court to order the whole of any incumbered Land or Lease to be sold, although the Master shall have approved of the Sale of a Part thereof, or to order a further or other Part or further or other Parts thereof to be sold than what the Master shall have approved, and to alter or vary such Report, and the Plan or Scheme therein contained, and to confirm such Report, subject to such Variations, without any further Reference to the Master.

Previously to making Order for Sale, Court may confirm the Report nisi, and direct Service of the same, &c.

XXVI. And be it enacted, That previously to making any Order for Sale it shall be lawful for the Court to make any Order of Confirmation of the Report nisi, and to direct Service of such Order on any Person or Persons, and also that it shall be lawful for the Court, in the course of any Proceedings under this Act, to direct any Reference back or further Reference to the Master to review such Report or otherwise, and upon any Terms and with any Directions, as the Court shall think fit.

Assurance of Land sold to be made

XXVII. And be it enacted, That the Assurance of the Land or Lease sold by Order of the Court under this Act shall be made in such

in such Form as the Master shall direct, &c., and to vest the Estate absolutely in the Purchaser.

such Form in all respects as the Master shall direct, and that the Master shall execute the same, and Execution thereof by any other Party shall not be necessary for the Validity thereof, nevertheless it shall be lawful for the Master to direct or authorize any other Persons to execute the same, for the Purpose of covenanting for Title, or for the Production of Title Deeds and Evidences, or otherwise; and the Assurance shall be made to the Purchaser, his Heirs, Executors, Administrators, and Assigns, as the Case may be, or as he shall direct; and in case the Assurance so executed shall be a Conveyance upon a Sale of Land under this Act the same shall be effectual to pass the Land thereby expressed to be conveyed, and the Fee Simple and Inheritance thereof, to the Uses and in manner therein limited and expressed, discharged from all former and other Estates, Rights, Titles, Charges, and Incumbrances whatsoever of Her Majesty, Her Heirs and Successors, and of all other Persons whomsoever, save and except such Charges and Incumbrances, if any, as shall be thereby excepted, or expressed to be or to remain charged upon such Land, and except also as herein-after provided; and in case such Assurance shall be a Conveyance or Assignment of a Lease in perpetuity or other Lease as aforesaid, such Assurance shall be effectual to pass the Estate created or agreed to be created by such Lease then remaining unexpired, subject to the Rent and Covenants annexed to the Reversion expectant on the Determination of such Lease, but discharged from all Rights, Titles, Charges, and Incumbrances whatsoever affecting the Leasehold Title or Interest, save and except such Charges and Incumbrances, if any, as shall be thereby excepted, or expressed to be or to remain charged upon such Leasehold Estate or Interest, and except also as herein-after provided.

Saving of Rights of Lessees, &c.

XXVIII. Provided always, and be it enacted, That no such Assurance as aforesaid shall prejudice or affect the Rights of any Lessee, Tenant, or Occupier in possession, nor the Rights of any Lessee or Under Lessee at a Rent, subject to whose Lease or Under Lease the petitioning Owner or Incumbrancer applying to the Court under this Act shall be an Owner or Incumbrancer, nor any Right of Common, nor any Right of Way or other Easement, nor any Rent-charge in lieu of Tithes, Crown Rent, or Quit Rent, charged upon or issuing out of any Land, except in respect of the apportioned Part, if any, of any such Rent-charge, Crown Rent, or Quit Rent from which the same shall be expressed to be discharged by such Conveyance under the Provisions herein contained.

Purchase Money arising on any Sale to be paid into the Bank of Ireland.

XXIX. And be it enacted, That, subject as herein-after mentioned, the Purchase Money to arise on any Sale by Order of the Court under this Act shall be paid into the Bank of *Ireland*, in the Name and with the Privity of the Accountant General, to be placed to his Account there in the Matter of "The Act to facilitate the Sale of Incumbered Estates in *Ireland*," *ex parte* as aforesaid, to the Credit of the Matter of such Sale, or as the Court shall direct, and the same shall be paid out or applied in Payment of the Incumbrances which affected the Land or Lease from the Sale of which such Purchase Money shall have arisen, or otherwise, according to the Right of the Persons interested in such Land or Lease, by Order of the Court from Time

to

to Time made upon Petition to be preferred in a summary Way by any Person entitled under the Provisions of this Act.

Owner of Land subject to Incumbrances may sell without Order of the Court, unless restrained by Order after Publication of Notices.

XXX. And be it enacted, That where any Land in *Ireland*, or any Lease in perpetuity of Land in *Ireland*, shall be subject to an Incumbrance or Incumbrances, it shall be lawful for the Owner of such Land or Lease, as the Case may be, without the Order of the Court under this Act, absolutely to sell such Land or Lease, or any Part thereof, and upon Payment of the Purchase Money into the Bank of *Ireland* in manner herein-after provided to convey such Land or Lease to the Purchaser, his Heirs, Executors, Administrators, or Assigns, or as he or they shall direct, unless after such Publication of Notice as herein-after directed such Sale or Conveyance shall be restrained by Order of the Court under the Provision herein-after contained.

Incumbrancer after Notice and Neglect of Owner may sell in like Manner.

XXXI. And be it enacted, That where any Land in *Ireland*, or any Lease in perpetuity of any Land in *Ireland*, shall be subject to an Incumbrance or Incumbrances, it shall be lawful for the Incumbrancer entitled to any such Incumbrance, in case the Principal Money owing on such Incumbrance shall be actually payable, or in case any Interest thereon shall be in arrear for Twelve Months or upwards, to give Notice in manner herein-after provided to the Owner of such Land or Lease, requiring him to discharge the Money due and payable on the Incumbrance of such Incumbrancer for Principal, Interest, and Costs, or to proceed to raise a Fund for the Discharge thereof by Sale under this Act; and in case such Owner shall not at the Expiration of Six Months after such Notice pay the Money then due and payable on such Incumbrance for Principal, Interest, and Costs, and shall not have published Notice by Advertisement as herein-after provided of his Intention to sell such Land or Lease, or a Part thereof sufficient for the Discharge of the Money due and payable on foot of such Incumbrance for Principal, Interest, and Costs under this Act, it shall be lawful for the Incumbrancer, without the Order of the Court under this Act, absolutely to sell such Land or Lease, as the Case may be, or any Part thereof, and upon Payment of the Purchase Money into the Bank of *Ireland* as herein-after provided to convey such Land or Lease to the Purchaser, his Heirs, Executors, Administrators, or Assigns, or as he or they shall direct, unless after such Publication of Notice as herein-after provided such Sale or Conveyance shall be restrained by Order of the Court under the Provision herein-after contained; and where at the Expiration of such Six Months as aforesaid such Owner shall not have paid the Money due and payable on such Incumbrance as aforesaid, but shall have published Notice by Advertisement as herein-after provided of his Intention to sell such Land or Lease, or a sufficient Part thereof, and shall subsequently refuse or neglect to sell in pursuance of such Notice, it shall be lawful for the Court, upon the Application of such Incumbrancer by Petition in a summary Way, to direct that such Incumbrancer shall have the Benefit of such Publication and Notice by Advertisement, and thereupon such Incumbrancer may sell in the same Manner as such Owner might have done, and the Conveyance by such Incumbrancer shall have the same Operation as a

Conveyance by such Owner would have had under the Provisions herein-after contained, but except for the Purposes of this Provision such Sale and Conveyance by such Incumbrancer shall be deemed a Sale and Conveyance without the Order of the Court under this Act: Provided always, that no Incumbrancer shall sell as aforesaid, or give Notice as herein provided of his Intention so to do, unless the Principal Sum of Two hundred Pounds at the least shall be owing on his Incumbrance.

Where several Incumbrancers give Notice, the first of such Incumbrancers may sell.

XXXII. Provided always, and be it enacted, That where Incumbrancers entitled to more than One such Incumbrance as aforesaid shall have given several Notices to such Owner, and such Owner shall not have paid the Money due and payable on such Incumbrances, and shall not have published Notice of his Intention to sell as aforesaid, or having published such Notice shall have subsequently refused or neglected to sell as aforesaid, such of the Incumbrancers by whom Notice shall have been given to such Owner as shall be entitled to the first Incumbrance in order of Priority of Charge shall have the Power of selling and conveying which One Incumbrancer giving Notice to the Owner would have had under the Provisions hereinbefore contained; but upon the Refusal or Neglect of the Incumbrancer entitled to such first Incumbrance to exercise such Power of selling as aforesaid, it shall be lawful for the Court, upon the Application by Petition in a summary Way of any other of the Incumbrancers who shall have given Notice to the Owner as aforesaid, to direct that the Incumbrancer so applying may exercise the Power of selling and conveying which might have been exercised by the Incumbrancer so refusing or neglecting under this Act; but, except for the Purposes of this Provision, a Sale and Conveyance in exercise of such Power shall be deemed a Sale and Conveyance without the Order of the Court under this Act.

Notices to Owners how to be given.

XXXIII. And be it enacted, That the Notice to be given by an Incumbrancer to an Owner as aforesaid shall be given in Writing to such Owner or left at his usual Place of Abode, or in case such Owner or his Place of Abode shall not be known to such Incumbrancer, or in case such Owner shall be out of the United Kingdom, or in case from any other Cause the Incumbrancer shall be unable to give such Notice, it shall be lawful for such Incumbrancer to file an Affidavit in the Court showing his Inability to give such Notice as aforesaid, and thereupon it shall be lawful for the Court, upon the Application of such Incumbrancer, by Petition in a summary Way, to direct that such Notice shall be served upon such Owner wherever resident, or that Service thereof upon the known Solicitor and Land Agent of such Owner shall be deemed good Service thereof on such Owner, or to direct the Substitution of Service of such Notice in such Manner as to the Court shall seem fit.

Notices of proposed Sales without Order of the Court.

XXXIV. Provided always, and be it enacted, That every Owner and every Incumbrancer who shall propose to sell any Land or Lease without the Order of the Court as aforesaid shall cause Notice of his Intention so to sell to be published at least once in Four successive Weeks by Advertisement in the *Dublin Gazette*, and in Two Newspapers

Newspapers published in *Dublin*, and in One Newspaper published or circulating in the County in which the Land shall be situate, and in the *London Gazette*, and shall cause a Copy of such Notice to be posted in One or both of such Two Weeks on the Church (if any), and on the Roman Catholic Chapel (if any), and where there shall be no such Church or Chapel on some public or conspicuous Place of the Parish, or of each of the Parishes in which the Land shall be situated, and on the Court where the Sessions of the Peace for the Division of a County at large or for the City or Town or County of a City or Town in which the Land shall be situated are usually holden; and where any Person shall have entered a Caveat in the Office of the Registrar against the Sale of any Land or Lease under the Provisions of this Act, every such Owner and Incumbrancer shall cause a Copy of such Notice to be served in One of such Weeks on such Person in manner herein-after mentioned; (that is to say), where the Place of Abode or Address mentioned in such Caveat shall be in the City of *Dublin* shall cause such Copy to be served on such Person personally, or to be left with some Inmate of such Place of Abode or Address, and where such Place of Abode or Address shall be elsewhere than in the City of *Dublin* shall transmit such Copy through the Post Office, addressed to such Person at such Place of Abode or Address as aforesaid, and such Notice shall state the Name and Addition or Title of the Owner, and if the Sale shall be proposed to be made by an Incumbrancer the Name and Addition or Title of such Incumbrancer, and the Intention of such Owner or Incumbrancer, as the Case may be, to sell under the Provisions of this Act without the Order of the Court, and in case such Owner shall not be entitled absolutely to such Land or Lease, as the Case may be, or to the Equity of Redemption thereof, shall mention the Settlement, Will, or other Assurance under which he shall be Owner, and if such Sale shall be proposed to be made by an Incumbrancer shall mention the Incumbrance under which he shall be such an Incumbrancer, and in every Case shall state the Denomination or Sub-denomination or short Description of the Land or Lease proposed to be sold, and the County and the Barony or Parish or Place wherein such Land or the Land comprised in such Lease shall be situate, and all the Incumbrances affecting such Land or Lease known to the Person proposing to sell the same, and any other Matters which may from Time to Time be directed or required by such Orders of the Court as herein-after mentioned; and no such Sale without Order of the Court shall be made under this Act before the Expiration of Three Months after the Publication of the last of such Advertisements as aforesaid, in the Computation of which Period of Three Months the Months of *September* and *October* shall be excluded; and it shall be lawful for any Incumbrancer upon or Person interested in the Land or Lease so proposed to be sold at any Time before the Expiration of such Three Months to apply to the Court by Petition to be preferred in a summary Way, and the Court, if it shall think fit, upon such Petition, having reference to the Amount and Nature of the Interests of the Person proposing to sell as aforesaid, and of the Incumbrancer or other Person so applying to the Court, and to all the Circumstances of such Land or Lease, and of the Incumbrance or Incumbrances affecting the same, may restrain the Person proposing to sell as aforesaid from proceeding with

with such proposed Sale, either as respects the whole of the Land or Lease proposed to be sold, or as respects any Part or Parts thereof, which it may appear to the Court improper or unnecessary to sell, or may require Security to be given to such Petitioner, or may give to such Petitioner the Conduct or Right of Supervision of the proposed Sale, so far as the Court may not restrain the same, or may make such Order in relation to such Petition and to Costs as the Court shall think fit; and it shall be lawful for the Lord High Chancellor of *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, to make from Time to Time Orders prescribing and regulating the Particulars to be included in the Notices of such proposed Sales, and such other Orders for or concerning such Notices, as shall appear necessary for ensuring the Knowledge by Incumbrancers and Persons interested of the Sales proposed to be made as aforesaid.

Where Land or Lease sold without Order of Court, Notice to be served personally on Persons having future Estates.

XXXV. Provided also, and be it enacted, That where the Owner of any Land which shall be proposed to be sold as aforesaid without Order of the Court shall not be entitled for an Estate of Inheritance in possession to such Land, the Owner or Incumbrancer who shall propose to sell such Land shall cause a Copy of such Notice of his Intention so to sell to be served personally, or in such Manner as under the Rules and Orders of the Court would be deemed equivalent to personal Service, on all Persons except such Owner having Estates in Remainder or other future Estates in such Land other than such Estates, if any, as may be subsequent to the first vested Estate of Inheritance therein; and where the Owner of any Lease which shall be proposed to be sold as aforesaid without Order of the Court shall not be entitled for the whole Estate created or agreed to be created by such Lease, the Owner or Incumbrancer who shall propose to sell such Lease shall cause a Copy of such Notice to be served personally, or in such Manner as aforesaid, on all Persons except such Owner having Remainders or future Estates in such Lease other than such Remainders or Estates, if any, as may be subsequent to the first vested Estate quasi in Tail therein; and such Notices shall be given before the Publication of such Notices by Advertisement as aforesaid; or where any such Person entitled to any such Remainder or future Estate, except as aforesaid, in such Land or Lease shall be Infant, Idiot, Lunatic, or a married Woman, a Copy of such Notice shall be so served on the Father or Guardian of any such Person being an Infant, or on the Committee of any such Person being an Idiot or Lunatic, or on the Husband of any such Person being a married Woman; and where any such Infant shall not have a Guardian, or the Father of such Infant shall be the Person proposing to sell, or where any such Idiot or Lunatic shall not have a Committee duly appointed, or where any Notice required by this Provision cannot be given, it shall be lawful for the Person proposing to sell to apply to the Court by Petition in a summary Way; and the Court, if it shall think fit, on such Petition, may order Notice to be given to any other Person, for and on behalf of such Infant, Idiot, or Lunatic, and in such Manner and within such Time as the Court may direct, or to direct any substituted Service of any such Notice as the Court may think fit; and every Person on whom such Notice shall be served on behalf of any such Infant, Idiot, or Lunatic shall have the

like Powers of applying to the Court in relation to such proposed Sale as such Infant, Idiot, or Lunatic respectively would have had if free from Disability.

Saving of the Rights of Mortgagees.

XXXVI. Provided always, and be it enacted, That no such Notice of an Intention to sell any Land or Lease as aforesaid shall prejudice or affect the Right of any Mortgagee or other Incumbrancer of or upon such Land or Lease to commence any Proceeding for Redemption, Foreclosure, or Sale, or other Proceedings at Law or in Equity, or the Right of any Mortgagee of such Land or Lease who shall have under his Security a Power of Sale which has arisen and may be exercised, to proceed to the Exercise of such Power of Sale at any Time before a Sale shall have been made under the Powers of this Act.

No Land or Lease sold without Order of the Court to be sold below selling Value certified by Surveyor appointed by Lord Lieutenant.

XXXVII. Provided also, and be it enacted, That no Land or Lease shall be sold under this Act without the Order of the Court, unless the Price at which the same shall be sold shall be equal to or exceed the Sums which a Surveyor appointed or authorized as herein-after mentioned shall certify in Writing to be the fair selling Value thereof; and it shall be lawful for the Lord Lieutenant or other Chief Governor or Governors for the Time being of *Ireland* to appoint or authorize, as Occasion shall require, such and so many Surveyors as he or they may think fit, to act as Surveyors for the Purposes of this Act, and at pleasure to revoke any such Appointment or Authority; and such Surveyors may be so appointed or authorized to act throughout *Ireland*, or for any Counties, County, or Division mentioned in such Appointment or Authority; and every such Appointment or Authority shall be published in the *Dublin Gazette*.

Where required by Caveat, Notice to be given of the Price at which Land or Lease sold without Order of the Court is contracted to be sold.

XXXVIII. Provided also, and be it enacted, That where any Person having entered a Caveat under the Provision herein-before contained shall in such Caveat have signified his Desire that Notice be given to him of the Price at which any Sale shall be made of the Land or Lease in case of a Sale thereof without the Order of the Court, the Owner or Incumbrancer who shall sell as aforesaid shall, forthwith after entering into any Contract for Sale, and before the filing of such Affidavit as herein-after mentioned, give notice in Manner aforesaid to the Person who shall have entered such Caveat of the Price at which such Land or Lease, or any Part thereof, shall have been contracted to be sold.

Affidavit to be filed.

XXXIX. And be it enacted, That where any Land or Lease shall be sold under this Act without the Order of the Court, the Owner or Incumbrancer by whom such Sale shall be made shall file an Affidavit in the Court, which shall be made by such Owner or Incumbrancer, as the Case may be, and his Solicitor; and such Affidavit shall set forth the Notice which shall have been published by Advertisement and otherwise as aforesaid of such Sale, and shall state the Dates of the several Publications of such Notice by Advertisement, and shall also state that to the best of the Knowledge and Belief of the Deponents such Notice has been otherwise published and given as directed by this Act, and shall state whether the whole or what Part

or Parts of the Land or Lease described in such Notice shall have been sold, and to whom, and shall state the Amount of the Purchase Money thereof, and the Person by whom the same is to be paid, and that the Purchase Money was the best Price that could be reasonably gotten at the Time of such Sale, and shall state the Sum which shall have been certified by a Surveyor appointed or authorized as aforesaid to be the fair selling Value thereof, and, if a Part or Parts only of the Land or Lease shall have been sold, shall sufficiently describe the same by the Description by which the same shall have been sold and conveyed, or shall be intended to be conveyed; and the Deponents in such Affidavit shall declare that such Land or Lease, or the Part or Parts thereof so sold, has or have been so sold without Fraud, for the Purpose of discharging an Incumbrance or Incumbrances affecting such Land or Lease, and where the Sale shall be made by an Incumbrancer, that the Principal Sum of Two hundred Pounds or upwards is justly owing on his Incumbrance; and such Affidavit shall also state, that before the Publication of such Notice by Advertisement a negative Search was made in the Office for registering Deeds, Wills, and Conveyances in *Ireland*, for a Period of not less than Sixty Years next before the Day of making Certificate of such Search (such Day not being more than Three Months before the Time of the first Publication by Advertisement of such Notice) for the Acts affecting such Land, or the Land comprised in such Lease, of all Persons by whose Acts, according to the Belief of the Deponent, the Land or Lease described in such Notice might have been affected in Title or Charge, and that a negative Search was also made in the Office for the Registration of Judgments and Incumbrances affecting Real Estates in *Ireland* for such Judgments and other Incumbrances there registered and re-registered within Twenty Years before the Day of making Certificate of such last-mentioned Search (such Day not being more than Three Months berore the first Publication by Advertisement of such Notice) against the several Persons the Judgments and Incumbrances against whom would, in the Judgment and Belief of such Deponents, have affected such Land or Lease, and that all the Incumbrances appearing on such respective Searches, except such (if any) as such Deponents know to have been satisfied, or to have otherwise ceased to affect such Land or Lease, and all other Incumbrances (if any) affecting such Land or Lease known to such respective Deponents, were mentioned in such Notice; and in case the Sale shall have been made by an Incumbrancer after Notice to an Owner, such Affidavit shall also state that Notice was given to the Owner according to the Provisions of this Act; and such Certificate of the fair selling Value as aforesaid, and the official Certificates of such negative Searches, shall be annexed to and filed with such Affidavit; and the Registrar of the Court shall give a Certificate of the filing of such Affidavit, specifying the Names of the Deponents, the Dates of the Jurat, and of the filing, and such other Particulars as he may think necessary to identify such Affidavit, and shall state the Amount of the Purchase Money mentioned in such Affidavit, and that such Affidavit contains the Statements required in an Affidavit upon a Sale without the Order of the Court under this Act; provided that where such an Affidavit as aforesaid shall have been filed upon a Sale of a Part of the Land or Lease described in such Notice as aforesaid,

said, it shall not be necessary in the Affidavit to be filed upon any subsequent Sale of other Part or Parts of the Land or Lease described in the same Notice again to set forth such Notice or the Publications thereof, or the Searches and Statements in relation thereto, mentioned in such former Affidavit, but reference may be made to the former Affidavit, and to the Copy of Notice and Statements of the Publication, and Searches in such former Affidavit contained and mentioned, and to the Certificates of Searches filed with such former Affidavit.

Purchase Money to be paid into Court.

XL. And be it enacted, That upon the Delivery to the Accountant General of such Certificate of the Registrar as aforesaid, the Purchase Money mentioned in such Certificate shall, without Order of the Court, be paid into the Bank of *Ireland*, in the Name and with the Privity of the Accountant General, and shall be placed to his Account in the Matter of private Sales, under the "Act to facilitate the Sale of incumbered Estates in *Ireland*," to the Credit of the Persons interested in the Land or Lease mentioned in the Affidavit, describing such Affidavit by reference to the Names of the Deponents, and the Dates of the Jurat and filing, and otherwise as described in such Certificate of the Registrar; and such Purchase Money shall be paid out or applied by Order of the Court made from Time to Time upon Petition to be preferred in a summary Way by any Person entitled under the Provisions of this Act; and unless within Two Months after Payment into the Bank of such Purchase Money the Court shall otherwise direct, such Purchase Money shall, without Order for this Purpose, be invested by the Accountant General in the Purchase in his Name of any Stocks, Funds, or Annuities transferable at the Bank of *Ireland*.

Separate Register of Affidavits to be kept, and to be open to Inspection.

XLI. And be it enacted, That a separate Register of the Affidavits filed upon Sales without Order of the Court under this Act shall be kept in the said Court, and any Person shall have Liberty at any reasonable Time to inspect the same, on Payment of the Sum of Two Shillings and Sixpence for such Inspection, and shall be furnished with a Copy of any Affidavit on Payment after the Rate of Two-pence for every Seventy-two Words contained in such Copy.

Defect in Notices, &c. not to invalidate Sale where Purchase Money paid into Court.

XLII. And be it enacted, That where such Purchase Money shall be paid into the Bank of *Ireland*, with the Privity of the Accountant General as aforesaid, no Defect or Irregularity in the Notices and Affidavit, or the Certificate of the Registrar herein-before required, shall invalidate or affect such Sale or the Operation thereof.

Operation of a Conveyance upon a Sale without Order of the Court.

XLIII. And be it enacted, That upon the Payment of the Purchase Money into the Bank of *Ireland* in manner herein directed the Conveyance upon a Sale without the Order of the Court as aforesaid shall, as from the Execution thereof by the Person selling as aforesaid, and without the Execution of such Conveyance by any other Person, be an effectual Disposition of the Land or Lease thereby expressed to be conveyed, as against the Person making such Conveyance,

Conveyance, and as against the Owner mentioned in the Notice set forth in such Affidavit as aforesaid, and all Persons entitled or interested, or who may become entitled or interested, under the same Settlement, Will, or other Assurance, if any, mentioned in such Notice, and all Persons entitled or interested, or who may become entitled or interested, under the Incumbrances mentioned in such Notice, or any of them, and also as against all Estates, Rights, and Interests which the Persons against whom such Conveyance is herein-before made an effectual Disposition, or the Persons by whom such Incumbrances as aforesaid, or any of them, shall have been created, at the Time of such Creation, or at any Time afterwards, might have passed, barred, or prevented from taking effect, save and except the Estates, Rights, and Interests of all Lessees, Tenants, and Occupiers in possession, and of all Lessees and Under-lessees at Rents subject to whose Leases or Under-leases the Owner mentioned in such Notice shall be Owner of the Land or Lease expressed to be conveyed as aforesaid; and from and after the Expiration of Five Years from the Time of the Payment of such Purchase Money into the Bank of *Ireland* as aforesaid, such Conveyance shall have the same Operation as if the Sale and Conveyanee had been a Sale and Conveyance under the Order of the Court under the Provisions herein-before contained.

Rights prosecuted within Five Years not to be affected.

XLIV. Provided always, and be it enacted, That a Conveyance without the Order of the Court as aforesaid shall not prejudice or affect any Estate, Right, or Interest, (other than the Estates, Rights, or Interests against which such Conveyance is made effectual upon the Payment of the Purchase Money into the Bank of *Ireland* as aforesaid,) in case an Entry, Action, Distress, or Suit shall be made or brought on or in respect of such other Estate, Right, or Interest before the Expiration of such Five Years as aforesaid; and it shall be lawful for any Person claiming any such Estate, Right, or Interest in the Land or Lease comprised in such Conveyance to apply to the Court by Petition in a summary Way; and the Court may, upon such Petition, order that a Sum be set apart out of the Purchase Money in respect of such Estate, Right, or Interest, or to answer any Claim in respect of such Estate, Right, or Interest, or to answer any Claim in respect thereof, or to be applied by way of Payment in Purchase of or Compensation for the same, as the Court may think fit.

Sales without Order commenced by Owner or Incumbrancer dying, &c. may be proceeded with by the Person becoming entitled.

XLV. And be it enacted, That where any Notice shall have been published, or other Act done, for or in relation to a Sale without the Order of the Court as aforesaid, and the Owner or Incumbrancer by whom such Notice shall have been published, or other Act done, shall die or cease to be Owner or Incumbrancer before the Sale or all the Sales which might be made or completed under such Notice or Act as aforesaid shall be made and completed, the Person who, after the Death or Determination of the Ownership of the Owner who shall have published such Notice or done such Act as aforesaid, shall for the Time being be Owner of the Land or Lease, or the Executors or Administrators or Persons who, after the Death or Determination of the Interest

Interest of the Incumbrancer who shall have published such Notice or done such Act as aforesaid, shall for the Time being be Incumbrancer in respect of the same Incumbrance, shall be entitled to proceed to the Completion of the Sale or Sales which might have been made and completed by the Owner or Incumbrancer by whom such Notice or other Act as aforesaid shall have been published or done, in case he had been living, and had not ceased to be Owner or Incumbrancer, and so on every successive Death or Determination of Ownership or Interest: Provided always, that it shall be lawful for the Lord Chancellor of *Ireland*, with such Advice and Consent as herein-before mentioned, from Time to Time to make such Rules and Orders as shall appear necessary for the Protection of Infants and absent Parties.

Purchase Money on Sale without Order of the Court to be applied according to the Rights in the Land.

XLVI. And be it enacted, That the Money which shall be paid into the Bank of *Ireland* on any Sale without the Order of the Court as aforesaid shall be paid out and applied in Payment of the Incumbrances which affected the Land or Lease from the Sale of which such Purchase Money shall have arisen, or otherwise according to the Rights of the Persons interested in such Land or Lease; provided that unless any other Person or Persons shall, upon Application by Petition as aforesaid, or otherwise, show better Right thereto, the Persons who may be entitled to the Incumbrances, and the Persons otherwise interested, according to the Statements in the Notice and Affidavit given and filed on such Sale as aforesaid, shall be deemed to be the Persons interested in such Land or Lease; and it shall be lawful for the Court, upon the Order for Payment out of Court of any such Money as aforesaid, to make such Conditions for the Delivery by the Person to whom such Payment may be made of any Title Deeds, or for the Execution of any Release of any other Land or Lease on such other Conditions as the Court may think fit and direct.

Receipt of Accountant General to be a sufficient Discharge.

XLVII. And be it enacted, That, as respects as well Sales under the Order of the Court as Sales without the Order of the Court under this Act, and the Application of the Purchase Money arising therefrom respectively, the Receipt of the Accountant General aforesaid, or of such other Person as the Court shall from Time to Time appoint to receive any Monies paid under the Provisions of this Act, shall be a sufficient Discharge for the same, or for so much thereof as shall in such Receipt be expressed to be received.

Where it shall appear that there is more than One Incumbrance, Court may direct Proceedings to be instituted to ascertain Priority of the same.

XLVIII. Provided always, and be it enacted, That in any Case where it shall appear that there are more Incumbrances than One affecting any Land or Lease which shall have been sold or contracted to be sold, or shall be desired to be sold as aforesaid, whether with or without the Order of the Court, and any Doubt shall in the Opinion of the Court exist as to the Order and Priority of such Incumbrances, and in any Case in which the Court shall consider an Issue or a Suit or Action expedient for ascertaining or determining the Rights of Parties in the Land or Lease or Incumbrance, it shall be lawful for the Court at any Time, and either before or after any Sale under this Act, to direct any Proceedings to be instituted at Law or in Equity for

for the Purpose of ascertaining the same, and to make any Rules or Directions relative to such Matters as it shall see fit.

Application of Surplus of Purchase Money.

XLIX. And be it enacted, That the Surplus of the Purchase Money to be received on any Sale under this Act, whether under the Order of the Court or without the Order of the Court as aforesaid, after the Discharge of all Incumbrances, shall be laid out, under the Direction of the Court, in the Purchase of other Land, which shall be limited and settled to the same Uses, upon the same Trusts, for the same Purposes, and in the same Manner as the Land sold stood settled or limited to, or such of them as shall be then subsisting or capable of taking effect; or such Monies may, at the Discretion of the Court, be paid out of Court to and distributed amongst the Parties who shall appear entitled thereto, as the Court shall direct; and all such Monies may in the meantime be paid over to Trustees, to be appointed by the Court, or in such Manner as it shall direct, for the Purpose of such Investment thereof, and in such Manner as shall be directed by the Court.

Money paid into Court may be invested in the Funds.

L. And be it enacted, That any Money so paid into Court may by Order of the Court be invested by the Accountant General of the said Court in his Name in the Purchase of any Stocks, Funds, or Annuities transferable at the Bank of *Ireland;* and until the same shall be sold by Order of the Court for the Purposes of this Act, and after Payment of such Incumbrances as aforesaid, the Dividends thereof shall from Time to Time be paid to the Person who for the Time being would have been entitled to the Rents of the Land to be purchased therewith.

Usher's Poundage.

LI. And be it enacted, That no Money which under the Provisions of this Act shall be paid into the Bank of *Ireland* to the Credit of the Accountant General of the Court of Chancery, or shall be paid out of Court, shall be liable to Usher's Poundage.

Appointment of new Trustees.

LII. And be it enacted, That whenever the Court shall appoint or shall direct the Appointment of any Trustee for the Purposes of this Act it shall be lawful for the Court to make or to direct to be made such Provision as it shall think fit for the Appointment of new Trustees on any Event to be determined by the Court.

Where any annual Charge, not being an Incumbrance under this Act, shall affect any Land to be sold, the Person entitled to such Charge may

LIII. Provided always, and be it enacted, That where any annual Charge, not being an Incumbrance within the Meaning of this Act, shall affect any Land or Lease to be sold under the Provisions of this Act, being Part of an Estate affected by such annual Charge, it shall be lawful for the Person entitled to such Charge, with the Approbation of the Court, and with the Consent of all Parties interested in the remaining Part of such Estate, to release the Land or Lease to be sold from such Charge, without impairing or affecting the same Charge as to the remaining Part of such Estate, and the Form of such Release shall be approved by the Master, and may be included in the aforesaid Assurance; and if any Person so entitled

entitled shall be willing to execute such Release it shall be lawful for the Master to state such Matter in his Report. release the same, &c.

LIV. And be it enacted, That every Person to whom all or any Part of the Purchase Money received on any Sale, either with or without the Order of the Court under this Act, shall be so paid out of Court as aforesaid shall and he is hereby declared to be liable to refund and repay the same, or so much thereof as he shall have received, unto and amongst the Person or Persons who shall, upon a Suit to be instituted for that Purpose, prove to the Satisfaction of the Court that he or they had at the Time of such Sale a better Title to the Land or Lease so sold as aforesaid, and in respect whereof such Purchase Money was received, than the Person or Persons to or amongst whom such Purchase Money shall have been so paid out and distributed as aforesaid; and every such Repayment shall be made to such Persons, and at such Time, and in such Proportions, Manner, and Form respectively, as the Court shall direct: Provided always, that it shall be lawful for the Court, where from any Uncertainty of Title or otherwise it shall appear proper so to do, before or upon the Payment out of Court of any such Purchase Money as aforesaid, to require and take from any Person to whom or for whose Benefit the same or any Part thereof shall be so paid out of Court such Security for the Repayment of such Money as to the Court in its Discretion shall seem fit. Parties to whom the Surplus of Purchase Money is paid out of Court liable to repay the Money to Parties proving a better Title to the Estate sold. Court may require Security for such Repayment.

LV. Provided also, and be it enacted, That where a Sale shall have been made under this Act without Order of the Court of any Land or Lease, and such Sale shall not have been made *bonâ fide* for the Discharge of Incumbrances, the Person who shall have so sold under this Act, whether he shall or shall not have received all or any Part of the Purchase Money under Order of the Court, shall be and is hereby declared to be liable to pay or make to any Person whose Right or Interest to or in such Land or Lease shall have been defeated or prejudicially affected by such Sale such Compensation as the Person so selling would have been liable to pay or make in case the Power given by this Act had been a Trust for Sale for the Discharge of Incumbrances affecting such Land or Lease, and, subject thereto, a Trust for the Benefit of the Person whose Right or Interest shall have been so affected and of all other Persons interested in such Land or Lease, and the Court, upon Suit for that Purpose, shall order such Compensation to be made or paid accordingly, and where any Sale shall have been made under this Act without Order of the Court of any Land or Lease, and any Notice required by this Act shall have been withheld, or shall have been omitted to be given, or where any such Sale shall have been made at an Under-value by Collusion with the Purchaser or his Solicitor or Agent, then the Person who shall have so sold under this Act, whether he shall or shall not have received all or any Part of the Purchase Money under Order of the Court, and his Solicitor or Agent, and where such Sale shall have been made at an Under-value by Collusion the Purchaser, or his Solicitor or Agent if such Solicitor or Agent shall have been cognizant of such Collusion, shall jointly and severally be liable to pay or make Sale without Order of the Court not made bonâ fide for Discharge of Incumbrances to be treated as a Breach of Trust.

make to any Person whose Right or Interest to or in such Land or Lease shall have been defeated or prejudicially affected by such Sale full Compensation, and the Court, upon Suit for that Purpose against all or any of the Persons liable under this Provision, shall order such Compensation to be paid or made accordingly, and the Liability of any Defendant in any such Suit as aforesaid to any Pains or Penalties for Perjury in respect of any Statement in any Affidavit made under the Provision herein contained shall not be allowed in the way of Demurrer, Plea, or Refusal to answer or otherwise to protect such Defendant from Discovery in respect of the Premises: Provided always, that the Provision for Compensation herein contained shall not affect or abridge the Right of any Person to bring a Suit in Equity for the Recovery of the Land or Lease on account of Fraud against any Person who shall have assisted in the Commission of such Fraud, or shall have taken such Land with Knowledge of the Commission thereof.

No Payment towards Discharge of Incumbrance, not being Payment in full, shall affect Right of Incumbrancer for Balance.

LVI. Provided always, and be it enacted, That no Payment towards Discharge of what shall be due on any Incumbrance not being Payment in full shall prejudice or affect any Right or Remedy of the Incumbrancer, otherwise than as against the Land or Lease sold, freed and discharged from such Incumbrance, unless so far as by the Provisions of this Act, or by any general Rule or Order or special Rule or Order of the Lord Chancellor of *Ireland* or of the Court, pursuant to this Act, is or shall be otherwise specially provided.

Where Incumbrancer shall be satisfied by Payment out of any Sale, &c., and other Persons or Lands are liable, Court may order Proceeding to be instituted on such Terms as it may think fit, &c.

LVII. Provided always, and be it enacted, That where any Incumbrancer shall be satisfied, wholly or in part, by Payment out of any Monies arising from any Sale under the Provisions of this Act, and it shall appear or be shown to the Court that any Person whosoever, or any Land or Estate (wherever situate) other than the Land or Lease sold, was liable to such Incumbrance or any Part thereof, and that any such Person or Land or Estate ought to discharge or contribute towards the Discharge of such Incumbrance or any Part thereof in exoneration of the Land or Lease sold, it shall be lawful for the Court, if it shall see fit, to order that any Proceedings shall or may be instituted by such Person, on such Terms and in such Manner as the Court shall think fit, for recovering the Money which ought to be so discharged or contributed in exoneration as aforesaid, and to direct that any such Money shall be paid into the Bank of *Ireland* in the Name and with the Privity and to the Credit aforesaid, or as the Court shall direct, to be paid, applied, and dealt with in manner aforesaid, or as the Court shall direct.

No Payment in respect of any Incumbrance to impair any Right of any Persons out of whose Estate the same shall be made.

LVIII. Provided always, and be it enacted, That no Payment of or in respect of any Incumbrance which shall be made under the Provisions of this Act, whether upon or after a Sale under Order of the Court, or upon or after a Sale without the Order of the Court, or which shall be made for facilitating or otherwise in relation to any such Sale as aforesaid, shall impair any Right or Equity of any Persons out of whose Estate such Payment shall be made to be reimbursed or indemnified by any Person or out of any other Land

or

or Estate, except so far as the Court under any special Circumstances shall order.

Where an Estate shall be ordered to be sold Court may empower the Master to include in his Report other Interests in the same Estate.

LIX. And be it enacted, That where any Lease subject to any Incumbrance shall be proposed or intended by Order of the Court, or shall be ordered to be sold under the Provisions of this Act, it shall be lawful for the Court, upon the Application of any Persons claiming to be Owners of any Estate in reversion in the same Land, (if the Court shall see fit,) to direct or to authorize and empower the Master to include in his Report approving a Sale, and also to include in the Sale, such Estate in reversion, upon such Terms in all respects as the Court, or the Master under the Authority of the Court, shall see fit; and in every such Case the Court, or the Master under the Authority of the Court, shall apportion the Purchase Money and the Expenses as the Court or Master shall see fit; and the Assurance to be made under the Provisions of this Act shall or may include such Estate in reversion so sold as aforesaid, if the Master shall think fit.

If Land sold shall be subject to a Lease, &c., comprising other Land, Master may apportion the Rent, &c.

LX. And be it enacted, That if any Land or Lease to be sold by Order of the Court under this Act shall be subject to a Lease or Under Lease for Years or Lives comprising other Land at an entire Rent, it shall be lawful for the Master, before proceeding to a Sale, to apportion the Rent between the Land or Lease to be sold and the Remainder of the Land subject to such Rent, having first caused Notice thereof to be given, as well to the Tenant as to the Person by whom such entire Rent shall be payable, and to the Person entitled to receive such entire Rent, and any Persons claiming an Interest in the Matter may claim to be heard before the Master on the Subject of such Apportionment: Provided nevertheless, that no Apportionment so made by the Master shall be vitiated by any Want of Notice, or by the Absence of any Parties, unless the Court, on the Application of any Person complaining of such Apportionment, shall otherwise direct; and after such Apportionment, and after such Sale shall be completed, the Owners of the Reversion of the respective Lands shall have the like Remedies for the apportioned Rents respectively as were subsisting for the entire Rent before such Apportionment; and all the Covenants, Conditions, and Agreements of every Lease or Under Lease, except as to the Amount of Rent to be paid, shall, as regards the apportioned Parts, remain in force in the same Manner as they would have done in case no such Apportionment had taken place.

No Person entitled to Incumbrance shall be bound to accept Payment without Six Months Notice, &c.

LXI. Provided always, and be it enacted, That no Person entitled to any Incumbrance shall be bound to accept Payment of the same under this Act until such Incumbrance shall be payable, or to accept at any Time less than the full Amount which shall have become due thereon; and no Person so entitled, who, according to the Practice of the Court or the Rules of Equity, shall be entitled to Six Months Notice of Payment, shall be bound to accept Payment of his Incumbrance under this Act without Six Months Notice; but

when such Notice shall have been given no fresh Notice shall be necessary if the Money shall be paid within Three Months after the Day fixed, nor shall any Incumbrance, being a re-purchaseable Annuity, be re-purchased until the Time for Re-purchase thereof shall have arrived; and every Notice with respect to any Incumbrance may be given in such Form, and by and in the Name of such Person, and to such Person, as the Master or the Court shall direct; and every such Notice shall be binding and effectual to all Intents and Purposes.

Where Incumbrance included in the Order for Sale shall not be payable or not ascertained, Court may order a Sum to be carried to the Credit of same, &c.

LXII. Provided always, and be it enacted, That where any Incumbrance included in an Order for Sale under this Act, or affecting any Land or Lease which shall be sold without the Order of the Court under this Act, shall, for Want of any Notice or otherwise, not be payable, or where Parties entitled to an Incumbrance cannot be ascertained, or have not come in and claimed to be paid, it shall be lawful for the Court to order such Sum as it shall think fit to be set apart and carried by the Accountant General to such Credit, and to be applied and dealt with as the Court shall direct, in order to provide for any such Incumbrance, and for Costs and Expenses relating thereto.

Pending Proceedings Court may appoint a Receiver, who shall be subject to Jurisdiction of the Court.

LXIII. And be it enacted, That pending any Proceedings for a Sale by Order of the Court under this Act it shall be lawful for the Court, on the Application of any Party interested as Owner or Incumbrancer, if it shall see fit, to appoint a Receiver of any Land or Lease which shall have been contracted or shall be desired to be sold as aforesaid, or any Part thereof, and also to discharge such Receiver at any Time; and that every such Receiver shall have all the same Powers and Authorities, and be subject to the Jurisdiction of the Court, and to all subsisting Rules and Orders of the Court for the Regulation of Receivers, in like Manner and as fully as any Receiver appointed in a Cause pending in the Court is so subject; and that every such Receiver shall account before the Master, and shall pay his Balance into the Bank of *Ireland*, in the Name and with the Privity and to the Credit aforesaid, or otherwise as the Court shall direct, to be paid, applied, and dealt with in manner aforesaid, or as the Court shall direct: Provided always, that nothing in this Act contained shall empower the Court to appoint such Receiver at the Instance of an Incumbrancer who would not, if this Act had not passed, be entitled to apply for the Appointment of a Receiver over such Land or Lease.

Court may appoint Guardians of Infants to act for them for the Purposes of this Act.

LXIV. And be it enacted, That in every Case in which the Guardian of an Infant would be authorized to do any Act or give any Consent under the Provisions of this Act on behalf of such Infant if such Infant shall have no Guardian, it shall be lawful for the Court under this Act, if it shall think fit, to appoint a Guardian of such Infant for the Purpose of any Proceedings under this Act, and also to change such Guardian from Time to Time.

LXV. And

Court may appoint Persons to act on behalf of Lunatics, &c.

LXV. And be it enacted, That where any Person the Committee of whose Estate if he were idiot or lunatic would be authorized or directed to do any Act or give any Consent as aforesaid on his Behalf shall be of unsound Mind or incapable of managing his Affairs, but shall not have been found idiot or lunatic under an Inquisition, or there shall be no Committee of the Estate, it shall be lawful for the Court, on the Application of any Person on behalf or as next Friend of such Person, or on the Application of any Person interested in any Proceedings pending under this Act, to appoint a Guardian of such Person for the Purpose of any such Proceedings under this Act, and also at any Time and from Time to Time to change such Guardian.

As to the Payment of Costs.

LXVI. And be it enacted, That the Costs and Expenses of and incident to every Application for the Appointment and Change of any Guardian under this Act shall be in the Discretion of the Court, and shall and may, if the Court think fit, be introduced amongst the Costs to be provided for under the general Provisions of this Act.

No Petition for Sale without Consent where an Incumbrancer is in possession, or during pending Suits.

LXVII. Provided always, and be it enacted, That this Act shall not authorize nor be taken to authorize the presenting of any Petition for Sale by Order of the Court in any Case where an Incumbrancer shall be in possession of the Land which shall be subject to his Incumbrance, unless with his Consent, nor in any Case where the first Mortgagee of the Land or Lease shall have under his Security a Power of Sale which has arisen and may be exercised, unless he shall make or consent to the Application, or shall, after being requested by the Petitioner so to do, have refused, or for Three Months have neglected in the Opinion of the Court to use Diligence towards the Exercise of such Power of Sale, nor in any Case where at the Time of presenting such Petition any Suit for Foreclosure or Redemption or Sale of the incumbered Land which shall have been commenced before the First Day of *July* One thousand eight hundred and forty-eight shall be pending, unless with the Consent of the Parties competent to consent to the Dismissal or staying of the Suit, and that every such Consent shall be stated in the Petition for confirming and carrying into effect a Contract for Sale or for Sale as aforesaid; and that in case of such Suit it shall be lawful for the Court, under this Act, to give such Directions to any Parties for discontinuing or staying such Suit, and respecting the Costs thereof, or otherwise, as it shall see fit; and that pending any Proceedings for a Sale by Order of the Court under this Act it shall not be lawful for any Owner or Person claiming to be Owner within the Provisions of this Act, or claiming by the Act of such Owner or Person, or by Act of Law, pending any Proceedings under this Act, or any Incumbrancer, to commence any Proceedings at Law or in Equity for Redemption, Foreclosure, or Sale, without the Leave of the Court, to be given under this Act; and that in every Case the Court shall have full Power to make or grant any Order or Injunction for staying any Proceedings contrary to the Provisions of this Act, and for Costs relative thereto: Provided always, that this Act

Power to stay pending Suits.

No Suits to be commenced pending Proceedings under this Act, without Leave of the Court.

Act shall not authorize any Sale or Assignment of a Lease contrary to the Covenants and Conditions of such Lease.

Proofs of Debts, &c. in a discontinued Suit may be used in a Reference upon a Petition.

LXVIII. And be it enacted, That when any Petition shall be presented for confirming and carrying into effect a Contract for Sale or for a Sale under this Act of any Land or Lease in respect of which any Suit for Foreclosure or Redemption or Sale shall have been pending, and shall be discontinued or stayed under this Act, it shall be lawful for the Court to order that all such Proofs and Debts and other Proceedings, and such Evidence as shall have been taken in the Suit, may be adopted and used in the Proceedings under such Petition, in the same Manner as if the same had been originally taken under the Reference upon such Petition.

Consent, where necessary, may by Leave of the Court be given subsequently.

LXIX. Provided always, and be it enacted, That when any Petition for confirming and carrying into execution a Contract for Sale or for a Sale under this Act shall have been presented without the requisite Consent, such Consent may by Leave of the Court be given subsequently, so as to render valid the Proceedings under such Petition; and that where any such Petition shall be held by the Court invalid for Want of such Consent it shall be lawful for the Court to make such Order against the Person who shall have presented the same relative to the Costs of any other Person of any Proceedings had under such Petition as the Court shall think fit.

Power to Second or subsequent Incumbrancer to redeem the prior Incumbrances.

LXX. And be it enacted, That any Incumbrancer not being the First Incumbrancer on any Land or on any Lease of Land in *Ireland*, who shall be desirous of exercising the Powers given to a First Incumbrancer under this Act, and for that Purpose shall be willing to redeem the prior Incumbrance, or all the prior Incumbrances if more than One, may apply by Petition in a summary Way to the Court for Liberty so to redeem such prior Incumbrance or Incumbrances; and it shall be lawful for the Court, upon such Petition, to make such Order and give such Directions in all respects as might have been made or given in a Suit by such petitioning Incumbrancer for Redemption of such prior Incumbrance or Incumbrances; and in case the Amount which shall be owing to any Incumbrancer whose Incumbrance shall be sought to be redeemed as aforesaid shall not be admitted or agreed upon, it shall be lawful for the Court, if it shall think fit, upon Payment into Court by the Petitioner of the Money claimed to be due on such Incumbrance, to order that the Petitioner shall, for the Purposes of all Proceedings in Court under this Act, and for the Purpose of Sales without the Order of the Court under this Act, stand in the Place of the Owner of such Incumbrance, without Prejudice to the Rights of the Petitioner and of the Incumbrancer whom he shall seek to redeem, upon taking the Account of the Incumbrance: Provided always, that it shall not be lawful upon any such Petition to question the Validity or Title of any such prior Incumbrance,

No Petition for Sale by Assignees of

LXXI. And be it enacted, That no Petition shall be presented for confirming and carrying into execution a Contract for Sale or for a Sale

a Sale by Order of the Court under this Act by any Assignee of any Bankrupt or Insolvent Debtor, without the Consent thereto of the major Part in Number and Value of the Creditors assembled at a Meeting duly convened for that Purpose first had and obtained: Provided nevertheless, that where any such Petition shall have been presented without such Consent having been first had and obtained, such Consent may by Leave of the Court be given subsequently, so as to render valid the Proceedings under such Petition.

Bankrupts or Insolvents, without Consent of major Part of Creditors.

LXXII. And whereas Doubts are entertained whether, when a Judgment affects Lands in *Ireland*, and when the Person entitled to such Judgment is willing to release a Portion of such Lands in order to the Sale thereof, or otherwise, he can grant such Release without nullifying the Effect or Validity of such Judgment upon the Residue thereof, or any other Property which it is intended should remain subject to such Judgment: And whereas it is expedient that such Doubts be removed; be it enacted, That the Release of any Portion of Lands in *Ireland* from any Judgment affecting the same shall not operate or be construed to extend or operate so as to nullify or in any Manner to affect the Validity and Force of such Judgment as regards the Residue of such Lands, or any other Property not specially released from such Judgment, but that such Judgment shall continue to affect such Residue or other Property, notwithstanding such Release, in like Manner and with the like Powers to enforce Payment of Interest and Principal, and to all Intents and Purposes, as if such Deed of Release had not been executed.

Release of a Portion of Lands not to affect the Validity of a Judgment as regards the Residue of such Lands.

LXXIII. And be it enacted, That in the Month of *February* in every Year if Parliament be then sitting, or, if Parliament be not sitting, then within Fourteen Days after the next Meeting of Parliament, a Return shall be laid before both Houses of Parliament, showing the total Amount or Quantity in Statute Acres of all Lands sold under the Provisions of this Act during the Year ending the Thirty-first Day of December then last past, together with a Statement of the total annual Rent of such Lands (so far as the same shall have been shown in the Proceedings), the total Amount of Incumbrances which affected such Lands at the Time of the Applications for the Sale thereof respectively under this Act, the total Amount of Purchase Money for the same, together with the total Amount of all such Law Costs incurred as shall have been paid out of such Purchase Money, and of all other Charges and Expenses which may have been paid or deducted from the Proceeds of such Sales under the Order of the Court.

Annual Returns to be laid before Parliament.

LXXIV. And be it enacted, That in citing this Act in other Acts, and in legal Instruments, it shall be sufficient to use the Expression "The *Irish* Incumbered Estates Act."

Short Title.

LXXV. And be it enacted, That this Act shall, except so far as the special Provisions of the same otherwise require, extend only to *Ireland*,

Act to extend to Ireland only, &c.

Ireland, and may be amended, altered, or repealed by any Act to be passed in this Session of Parliament.

LONDON: Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1848.