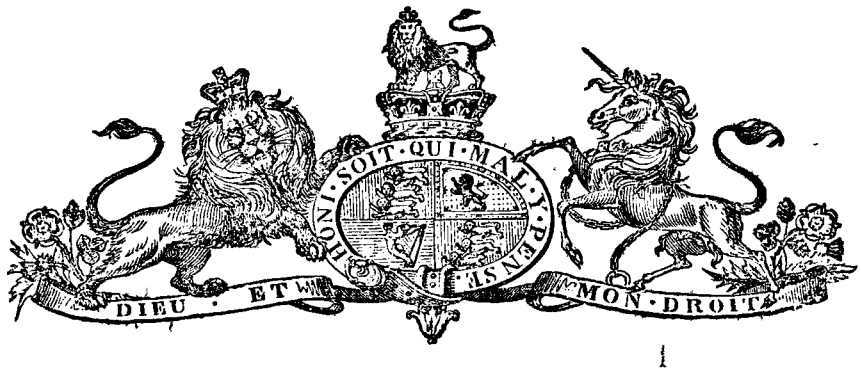


ANNO DUODECIMO & DECIMO TERTIO

VICTORIÆ REGINÆ.

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CAP. LXXVII.

An Act further to facilitate the Sale and Transfer of Incumbered Estates in *Ireland*.

[28th *July* 1849.]

WHEREAS it is expedient that further Facilities should be given for the Sale and Transfer of Incumbered Estates in *Ireland*: Be it enacted, therefore, 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 it shall and may be lawful for Her Majesty, by Warrant or Warrants under the Royal Sign Manual, to appoint any Number of Persons not exceeding Three to be Commissioners under this Act during Her Majesty's Pleasure, and upon every Vacancy in the Office of any such Commissioner in like Manner to appoint some other Person to such Office, and the said Persons so to be from Time to Time appointed shall be Commissioners for the Execution of this Act, and shall be styled "The Commissioners for Sale of Incumbered Estates in *Ireland*."

Three Commissioners to be appointed under Sign Manual.

II. And be it enacted, That the Commissioners shall cause to be made a Seal for their Commission, and shall cause to be sealed therewith all Orders, Conveyances, and other Instruments made by

Commissioners to have a Common Seal.

or proceeding from the Commissioners in pursuance of this Act; and all such Orders, Conveyances, and other Instruments, or Copies thereof, purporting to be sealed with the Seal of the Commissioners, shall be received in Evidence without any further Proof thereof.

Two Commissioners to be a Quorum.

III. And be it enacted, That all Acts, Matters, and Things which the Commissioners are by any of the Provisions of this Act required or authorized to do or execute shall and may be done and executed by any Two of such Commissioners.

Power to appoint and remove Secretary, Clerks, &c.

IV. And be it enacted, That it shall be lawful for the Commissioners, from Time to Time, (with the Consent in every Case of the Commissioners of Her Majesty's Treasury,) to appoint a Secretary, and such Clerks, Messengers, and Officers as they shall deem necessary for the Purposes of this Act, and to remove such Secretary, Clerks, Messengers, and Officers, or any of them.

Appointments under this Act limited to Five Years.

V. And be it enacted, That no Commissioner, Secretary, or other Officer to be appointed as aforesaid shall hold his Office for a longer Period than Five Years next after the Day of the passing of this Act, and thenceforth until the End of the then next Session of Parliament.

Salaries to be paid out of Monies to be provided by Parliament.

VI. And be it enacted, That it shall be lawful for the Commissioners of Her Majesty's Treasury to direct a Salary not exceeding Three thousand Pounds by the Year to be paid to one of the said Commissioners, and a Salary not exceeding Two thousand Pounds by the Year to each of the other Commissioners for the Time being appointed under this Act; and the Salaries of the Secretary, Clerks, Messengers, and other Officers to be appointed under this Act shall be from Time to Time regulated by the Commissioners of Her Majesty's Treasury; and the Salaries of such Commissioners, Secretary, Clerks, Messengers, and Officers as aforesaid, and all other incidental Expenses of carrying this Act into execution not herein otherwise provided for, shall be paid out of such Monies as shall be provided by Parliament.

Commissioners not to sit in House of Commons.

VII. And be it enacted, That no Commissioner appointed under this Act shall during his Continuance in such Office be capable of being elected or of sitting as a Member of the House of Commons.

Oath of Commissioners.

VIII. And be it enacted, That every Commissioner appointed under this Act shall, before he enters upon the Execution of his Office, take the following Oath before One of the Justices of the Court of Queen's Bench or Common Pleas, or One of the Barons of the Court of Exchequer, in *Ireland;* (that is to say,)

'I *A.B.*

'I *A.B.* do swear, That I will faithfully, impartially, and honestly, according to the best of my Skill and Judgment, fulfil all the Powers and Duties of a Commissioner under an Act passed in the Twelfth Year of the Reign of Queen Victoria, intituled [*here set forth the Title of this Act*]:'

And the Appointment of every such Commissioner, with the Time when and the Name of the Justice or Baron before whom he shall have taken the said Oath, shall be forthwith published in the *Dublin Gazette*.

Commissioners to frame and promulgate Forms of Application, &c.

IX. And be it enacted, That the Commissioners shall frame, and cause to be printed and circulated or promulgated, as they shall see occasion, Forms of Application and Directions indicating the Particulars of the Information to be furnished to the Commissioners, on Application to them under this Act, with reference to Title, Incumbrances, and the Circumstances of the Land, and such other Information as in the Judgment of the Commissioners may assist them in forming an Opinion on such Application, and also such other Forms and Directions as the Commissioners may deem requisite or expedient for facilitating Proceedings under this Act.

Commissioners to make General Rules for regulating Proceedings under this Act.

No Fees to be payable on Proceedings.

X. And be it enacted, That the Commissioners shall from Time to Time make such General Rules as they may think best adapted for regulating the Course of Procedure under this Act, and for securing the prompt and due Distribution and Payment of the Monies received upon Sales under this Act amongst or for the Benefit of the Persons entitled thereto, and for the Protection in respect of such Monies of the Interests of Persons under Disability and of future Interests, and generally for securing the due Execution of the Powers vested in the Commissioners under this Act, and giving Effect to the Provisions and Objects of this Act; but no Fees or Sums shall, under any such General Rule or otherwise, be payable to any Officers or Persons appointed under this Act upon or in respect of any Proceedings under this Act, save, in respect of any Copy or Extract of or from any Order, Document, or Proceeding actually required and taken by any Party, such Sum, not exceeding Three Halfpence for every Ninety Words, as shall be paid for the making of such Copy or Extract, and the Commissioners shall authorize to be charged to such Party for the same: Provided that every such General Rule shall be laid before Her Majesty's Privy Council of *Ireland*, and it shall be lawful for such Privy Council, by Order signed by Six of the said Privy Council, to confirm or disallow any such Rule, or to alter or amend, and confirm with Alteration or Amendment, any such Rule, or to remit any such Rule to the Commissioners

Rules to be laid before the Privy Council of Ireland.

Rules, when confirmed by Privy Council, and enrolled in Chancery, to have the Force of an Act of Parliament.

Rules may be altered.

Commissioners for further Consideration; and every such General Rule (when the same shall have been confirmed by Order of the said Privy Council) shall be enrolled in the High Court of Chancery in *Ireland*, and when so enrolled shall be binding on the Commissioners in the Exercise of their Powers, and shall be of the same Force and Effect as if the same had been enacted by Authority of Parliament: Provided always, that any Rules so confirmed and enrolled as aforesaid may from Time to Time be rescinded, amended, or altered as Occasion may require by other Rules made by the Commissioners, and confirmed and enrolled in like Manner.

General Rules to be laid before Parliament.

XI. And be it enacted, That all such General Rules as shall be made and confirmed as aforesaid shall be laid before both Houses of Parliament within One Calendar Month from the Confirmation thereof, if Parliament be then sitting, or if Parliament be not then sitting, within One Calendar Month from the Commencement of the then next Session of Parliament.

Power to Commissioners to summon Witnesses, &c.

XII. And be it enacted, That it shall be lawful for the Commissioners by Summons under their Seal to require the Attendance before them, at a Time and Place to be mentioned in such Summons, of all such Persons as they shall think fit to examine in relation to any Question or Matter depending before them, and to require all such Persons to produce before them all Deeds, Books, Papers, Documents, and Writings relating to such Question or Matter, and to examine upon Oath, or, in the Case of Persons allowed to make Affirmation or Declaration in lieu of an Oath, upon Affirmation or Declaration (as the Case may require), all Persons who shall attend under such Summons, and all Persons who shall voluntarily attend before them as Witnesses; and it shall be lawful for any of the Commissioners to administer such Oath, Affirmation, or Declaration; and every Person required by such Summons to attend before the Commissioners, who, without reasonable Cause, to be allowed by the Commissioners, shall fail to appear according to the Tenor of such Summons, or shall refuse to be sworn or to make Affirmation or Declaration (as the Case may be), or shall not make Answer to all such Questions as shall be lawfully put to him by the Commissioners, or shall refuse or fail to produce before the Commissioners any such Deed, Book, Paper, Document, or Writing, being in or under his Custody, Possession, or Power, as shall be lawfully required to be produced by him before the Commissioners, shall for such Default of Appearance, Refusal to be sworn or to make Affirmation or Declaration, or for not answering any such Question as aforesaid, or not producing such Deed, Book, Paper, Document, or Writing, incur and be liable to all such Penalties, Prosecutions, Actions, and Suits as a Person might

might incur or be liable to for failing to appear, or refusing to be sworn or to give Evidence, in any Suit or Matter depending in the High Court of Chancery in *Ireland;* and the Commissioners shall have the like Powers, Jurisdiction, and Authority for enforcing the Attendance of Persons summoned as aforesaid, for punishing Persons failing to appear, or refusing to be sworn or to make Affirmation or Declaration or to give Evidence, or guilty of Contempt, and generally for enforcing all Orders made by the Commissioners under any of the Powers or Authorities vested in them under this Act, and otherwise in relation to the Matters to be inquired into and done by them under this Act, as are by Law vested in the High Court of Chancery in *Ireland* for such Purposes in relation to any Suit or Matter depending in such Court.

Power to Commissioners to proceed upon Affidavits, and to appoint Persons to take Affidavits and Examinations.

XIII. Provided always, and be it enacted, That the Commissioners may, where they think fit, receive in Evidence Affidavits; and such Affidavits may be made before any Person empowered to take Affidavits which may be received in Evidence in the Court of Chancery in *Ireland,* or, where they think fit, the Commissioners may by Order under their Seal appoint and authorize any Person to take Affidavits, or to examine any Witness or Witnesses who shall attend before such Person to be examined, in *Ireland* or elsewhere, in relation to any Application to or Matter pending before the Commissioners, and to administer Oaths, Affirmations, or Declarations for the Purposes of such Examination.

Orders of Commissioners may be enforced in England.

XIV. And be it enacted, That every Order made by the Commissioners under this Act, a Copy whereof shall be certified under their Seal to the High Court of Chancery in *England,* may be enrolled in like Manner and enforced by the like Process as an Order for Payment or for accounting for Money made by the High Court of Chancery in *Ireland* a Copy whereof is exemplified and certified to the said Court of Chancery in *England* under the Great Seal of *Ireland* may be enrolled and enforced under an Act passed in the Forty-first Year of 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.* 41 G. 3. c. 90.

Commissioners to be a Court of Record, and have the Jurisdiction of a Court of Equity, and

XV. And be it enacted, That the Commissioners shall be a Court of Record, and shall have all the Powers, Authority, and Jurisdiction of a Court of Equity in *Ireland* for the Investigation of Title, and for ascertaining and allowing Incumbrances and Charges and the Amounts due thereon, and settling the Priority of such Charges and Incum-

 brances

may refer any Inquiries, &c. to any One Commissioner.

brances respectively, and the Rights of Owners and others, and generally for ascertaining, declaring, and allowing the Rights of all Persons in any Land or Lease in respect of which Application may be made under this Act, or in the Money to arise from Sales under this Act, and shall have the like Authority and Jurisdiction for enforcing, rescinding, or varying any Contract for Sale made under this Act, and in other Matters incident to or consequent on a Sale under this Act, as are vested in a Court of Equity in relation to a Sale under the Direction of such Court, but their Procedure shall be according to such General Rules as aforesaid, or, where the General Rules shall be inapplicable, at the Discretion of the Commissioners; and the Commissioners shall have Power, in relation to any Matter or Question before them, to send Cases for the Opinion of a Court of Law, and to direct Issues of Fact to be tried by a Jury; and, subject to any such General Rules as aforesaid, the Commissioners may refer to any One of such Commissioners any such Inquiries and Matters as they may think fit, and such One Commissioner shall, for all the Purposes of this Act, have in relation to all such Inquiries and Matters as shall be so referred to him the like Powers, Authorities, and Jurisdiction as the Commissioners or any Two of them would have under this Act.

Where Land or Lease of Land in Ireland is subject to Incumbrance, Owner may apply to Commissioners for a Sale.

XVI. And be it enacted, That where Land in *Ireland*, or a Lease in Perpetuity, or any Lease for a Term whereof not less than Sixty Years shall be unexpired at the Time of such Application as hereinafter mentioned, or any Church or College Lease, of Land in *Ireland*, shall be subject to any Incumbrance, it shall be lawful for the Owner of such Land or Lease, within Three Years from the passing of this Act, to apply to the Commissioners for a Sale of such Land or Lease under the Provisions of this Act.

Incumbrancer may apply to Commissioners for Sale for discharging the Incumbrances.

XVII. And be it enacted, That where any Land in *Ireland*, or any such Lease as aforesaid of Land in *Ireland*, shall be subject to any Incumbrance, it shall be lawful for any Incumbrancer on such Land or Lease, within Three Years from the passing of this Act, to apply to the Commissioners for a Sale under the Provisions of this Act of the whole or Part (as in the Judgment of the Commissioners may appear necessary) of such Land or Lease, for the Purpose of discharging the Incumbrances thereon.

No Application to be entertained unless Costs of any previous Application paid.

XVIII. And be it enacted, That where Application for a Sale of any Land or Lease has been dismissed with Costs by a competent Tribunal, no Application by the same Party for a Sale of such Land or Lease, or any Part thereof, shall be entertained by the Commissioners, unless it is shown that such Costs have been paid.

XIX. Pro-

Where Lands or Lease not to be deemed subject to Incumbrance.

XIX. Provided always, and be it enacted, That for the Purpose of authorizing an Application for a Sale under this Act the Land shall not be deemed subject to an Incumbrance where the same shall not affect the Inheritance, unless such Incumbrance shall affect a Term of not less than Fifty Years absolute unexpired, or a greater Estate in such Land, and shall have been created by the Owner of an Estate of Inheritance, or by a Person who, but for an Act which is void against or postponed at Law or in Equity to such Incumbrance, would be 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; and 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, or by a Person who, but for an Act which is void against or postponed at Law or in Equity to such Incumbrance, would be such Owner or so entitled, 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.

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

XX. 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 Commissioners may proceed and act upon an Application or Consent under this Act made or given in respect of such Incumbrance by the first Person entitled to the Income of such Incumbrance, or by any Trustee thereof, or other Person whose Estate or Interest in the Incumbrance appears to the Commissioners sufficient to enable him properly to apply or consent in respect of the Interests of the Parties interested in the Incumbrance.

Commissioners, upon Application for Sale, may, after Notices and Hearing, direct a Sale.

XXI. And be it enacted, That if upon any Application for a Sale under this Act, or upon any Information or Evidence which may be required by and produced to the Commissioners in relation to the Matter of such Application, it shall appear to the Commissioners that a Sale of the Land or Lease to which the Application may relate, or any Part thereof, may be found to be expedient, they shall direct Notices to be given to such Persons and in such Manner as they think fit, and shall, where any Parties interested in the Land or Lease apply to them for that Purpose, hear such Parties, by themselves, their Counsel or Agents, and shall, so far only as may be necessary to enable them to

to determine whether under all the Circumstances it is expedient that a Sale of all or any Part of the Land or Lease should be made, investigate the Title and the Incumbrances affecting the Land or Lease, and the State and Circumstances of the Land, or of the Land comprised in the Lease, and, if it shall in their Opinion be expedient that such a Sale should be made, may, at their Discretion, make an Order for the Sale of all or any Part of such Land or Lease.

Commissioners not to make Order for Sale on Application by Incumbrancer where the Interest and annual Payments on Charges do not exceed Half the net Income.

XXII. Provided always, and be it enacted, That the Commissioners shall not make an Order for Sale of any Land or Lease, or any Part thereof, upon Application by an Incumbrancer on such Land or Lease, in case it be shown to the Satisfaction of the Commissioners, by the Owner of such Land or Lease, that no Part of such Land or Lease is subject to any Receiver or in the Possession of any Incumbrancer, and that the Amount of the yearly Interest on the Incumbrances and other yearly Payments (if any) in respect of Charges payable out of the Income of such Land or Lease, and the other Lands or Leases (if any) subject to the Incumbrance of such Incumbrancer, do not exceed One Half of the net yearly Income (after the Payment of all Tithe Rent-charge, such Part of the County Cess and Poor's Rate as is payable by the Owner, and all Crown, Quit, and Head Rent,) of such Land or Lease, or of all the Lands or Leases so subject: Provided always, that the Decision of the said Commissioners thereupon shall in all Cases be final and conclusive to all Intents and Purposes whatsoever.

Tenancies, &c. to be ascertained.

XXIII. And be it enacted, That where a Sale shall be made under this Act the Commissioners shall, where and so far as they may deem necessary for the Purposes of such Sale, ascertain the Tenancies of the occupying Tenants, and of any Lessees or Under-lessees whose Tenancies, Leases, or Under-leases affect the Land or Lease, or Part thereof, to be sold, and may give such Notices and make or cause to be made such Inquiries as they shall think necessary for ascertaining and securing the Rights of such Tenants, Lessees, or Under-lessees as aforesaid; and all occupying Tenants, and all Persons being or claiming to be Lessees or Under-lessees as aforesaid, shall, at such Times and Places as the Commissioners may by their Notices require, produce all Leases, Under-leases, and Agreements in Writing under which such Tenants or Persons occupy or claim to hold, if such Leases, Under-leases, or Agreements, or Counterparts thereof, be in their Possession or Power, and where they occupy or claim to hold under Leases, Under-leases, or Agreements in Writing not in their Possession or Power, or under parol Agreements or Lettings, they shall deliver, at such Times and Places as aforesaid, Particulars of the Terms and Conditions

ditions upon and subject to which they occupy or claim to hold; and the Sale shall be made subject to the Tenancies, Leases, or Under-leases, ascertained as aforesaid, and subject to which the Owner or Incumbrancer applying for a Sale under this Act shall be Owner or Incumbrancer, and such other of the Tenancies, Leases, and Under-leases, ascertained as aforesaid, as shall appear to the Commissioners to have been granted *bonâ fide* by the Owner or Person in possession or in receipt of the Rents and Profits, and subject to which it shall appear to the Commissioners the Sale should be made, save such (if any) of such respective Tenancies, Leases, and Under-leases as, with Consent as herein-after mentioned, shall be included in such Sale, and, where the Commissioners think fit, be made subject to any Leases, Under-leases, or Tenancies, according to any general Description or subject to any Condition concerning any Leases, Under-leases, or Tenancies the Nature of which shall not have been ascertained or shall be disputed; and, when the Commissioners shall think fit, such Sale may be made subject to any annual Charge affecting the Land or Lease, or Part thereof, sold, or to any such apportioned Part of such annual Charge as the Commissioners may think fit should remain charged thereon; and where such Land or Lease, or Part thereof, is subject to any Incumbrance under the Terms of which the Incumbrancer cannot be required to accept Payment of the Principal Money before the Expiration of a Term of Years unexpired, such Sale may, if the Commissioners think fit, be made subject to such Incumbrance.

Sale may be made subject to an annual Charge.

XXIV. And be it enacted, That where the Commissioners make an Order for Sale, the Land or Lease, or Part thereof, to which such Order shall relate shall be sold, by or under the Control and Direction of the Commissioners, by public Sale or private Contract, together or in Lots or Parcels, at such Time and Place and generally in such Manner as the Commissioners think fit; and the Conveyance or Assignment of the Land or Lease, or Part thereof, shall be made by the Commissioners under their Seal, and shall be signed by Two of the Commissioners, and the Execution by any other Party of such Conveyance or Assignment shall be unnecessary; and such Conveyance or Assignment shall express or refer to the Tenancies, Leases, and Under-leases (if any), and Charge (if any), subject to which the Sale is made, and may be in the Form contained in the Schedule to this Act, or to the like Effect, with such Limitation of Uses and other Additions or Variations as, with the Approval of the Commissioners, the Purchaser may direct.

Sale to be under Direction of Commissioners.

Execution by Commissioners sufficient

XXV. And be it enacted, That the Purchase Money in every Case shall be paid into the Bank of *Ireland*, to an Account to be there opened in the Name of the Commissioners, and to the Credit

Payment of Purchase Money.

in each Case of the Estate sold, or as the Commissioners by General Rule or Special Order shall direct; and on the Notification by the said Bank to the Commissioners of the Receipt of the Money, a Certificate by the Commissioners of such Payment shall be endorsed on or written at the Foot of the Conveyance or Assignment; and on such Payment into the Bank the Purchaser shall be discharged from all Liability in respect of the Application of the Money so paid, and such Certificate of the Commissioners shall be Evidence of such Payment.

Where an Incumbrancer purchases, Commissioners may authorize Payment into the Bank of Balance of Purchase Money, after retaining Amount of Incumbrance.

XXVI. Provided always, and be it enacted, That it shall be lawful for any Incumbrancer on or Person otherwise interested in any Land or Lease, or Part thereof, (other than the Incumbrancer or Owner upon whose Application the Sale has been ordered,) to bid at any public Sale, and to become the Purchaser at any public Sale or by private Contract, in like Manner as any Person not interested therein might bid and become the Purchaser; and, by Leave of the Commissioners, it shall be lawful for the Incumbrancer or Owner on whose Application the Sale has been ordered to bid and become the Purchaser; and where an Incumbrancer on any Land or Lease, or Part thereof, shall be the Purchaser of such Land or Lease, or Part thereof, the Commissioners may, where they think fit, authorize such Purchaser to retain out of the Purchase Money the Amount which might have been ordered to be paid thereout in respect of such Incumbrance in case the whole Purchase Money had been paid into the Bank of *Ireland* under this Act, or such Sum on account of such Amount as the Commissioners may think fit, and to pay the Residue only of the Purchase Money into the said Bank; and where at the Time of authorizing such Retainer as aforesaid the Commissioners shall not finally have ascertained and determined the Priority and Rights of such Purchaser in respect of his Incumbrance, and the Amount which he would be entitled to be paid in respect thereof out of the Purchase Money, such Retainer shall be without Prejudice to the Power of the Commissioners to require such Purchaser to pay into the said Bank the whole or any Part of the Amount so retained which ought to be so paid by him; and the Commissioners shall withhold their Certificate of Payment herein-before mentioned until they shall be satisfied that the full Purchase Money, less the Amount which such Purchaser would be entitled to be paid in respect of his Incumbrance, has been paid into the said Bank.

Effect of Assurance.

XXVII. And be it enacted, That every such Conveyance, executed as aforesaid by the Commissioners upon the Sale of Land, shall be effectual to pass the Fee Simple and Inheritance of the Land thereby expressed to be conveyed, subject to such Tenancies, Leases, and Under-

Under-leases as shall be expressed or referred to therein as aforesaid, but, save as aforesaid and as herein-after provided, 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; and every such Conveyance or Assignment, executed by the Commissioners upon the Sale of a Lease in Perpetuity or other Lease, shall be effectual to pass the Estate created or agreed to be created by such Lease and then remaining unexpired, subject to the Rent and Covenants annexed to the Reversion expectant on the Determination of such Lease, and to such Tenancies, Leases, and Under-leases as shall be expressed or referred to in such Conveyance or Assignment, but, save as aforesaid and as herein-after provided, discharged from all Rights, Titles, Charges, and Incumbrances whatsoever affecting the Leasehold Estate or Interest: Provided that where any Land or Lease, or Part thereof, shall be sold and conveyed or assigned subject to any annual Charge or apportioned Part thereof, such annual Charge or such apportioned Part thereof only (as the Case may be) shall remain and be charged on and payable out of such Land or Lease, or Part thereof, as in the Conveyance or Assignment shall be expressed.

Saving of Right of Common, &c.

XXVIII. Provided always, and be it enacted, That any such Conveyance or Assignment as aforesaid shall not prejudice or affect any Right of Common, or any Right of Way or other Easement, or any Rentcharge in lieu of Tithes, Crown Rent, or Quit Rent, charged upon or issuing out of any Land, or any Charge made by virtue of an Act passed in the Sixth Year of Her Majesty, intituled *An Act to promote the Drainage of Lands, and Improvement of Navigation and Water Power in connexion with such Drainage, in* Ireland, and the Acts amending the same, or by virtue of an Act passed in the Tenth Year of Her Majesty, intituled *An Act to facilitate the Improvement of Landed Property in* Ireland, save where the Commissioners shall think fit to redeem the Crown Rents or Quit Rents, or to pay off or redeem the Charges under the said Acts or either of them, under the Power herein-after contained, and shall express in such Conveyance or Assignment that the Land conveyed or assigned thereby is so conveyed or assigned discharged of all Crown Rents or Quit Rents, or Charges under the said Acts or either of them, as the Case may be, and in such Case such Land shall be so discharged accordingly.

5 & 6 Vict. c. 89.

10 & 11 Vict. c. 32.

Commissioners may order Delivery of Counterparts of Leases, &c. and Possessions affecting

XXIX. And be it enacted, That the Commissioners shall have Power to order the Delivery to the Purchaser, or as he shall direct, of all Leases or Counterparts of Leases and Agreements, and other Evidences of the Tenancies subject to which the Sale shall be made,

sion to Purchaser.

affecting the Land or Lease, or Part thereof, sold, and shall, on the Application of any Purchaser, issue an Order to the Sheriff to put such Purchaser in possession of all Lands not in the Occupation of Lessees, Under-lessees, or Tenants subject to whose Leases, Underleases, or Tenancies the Sale shall have been made, and who shall have attorned to such Purchaser within a Time to be limited in such Order, and such Order shall be executed by the Sheriff in like Manner as a Writ for the Delivery of Possession.

Application of Purchase Money.

XXX. And be it enacted, That the Commissioners shall, out of the Purchase Money to be received on the Sale of any Land or Lease, or Part thereof, under this Act, allow and pay such Costs of and consequential on the Application for the Order for the Sale as they shall think fit, and the Expenses of and incidental to the Sale; and the Surplus of such Purchase Money, after Payment of such Costs and Expenses, shall, under the Order of the Commissioners, be applied in or towards Payment or Satisfaction of the Incumbrances or Charges which affected such Land or Lease, or Part thereof, according to their Priorities, and shall, subject as aforesaid, be paid to the Owner previously to such Sale of such Land or Lease, where such Owner was absolutely entitled thereto, or, where not so entitled, be laid out in the Purchase of 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 or Lease, or Part thereof, sold, stood settled or limited to, or such of them as shall be then subsisting or capable of taking effect; and until such Money can be so laid out it may, under such Order as aforesaid, be transferred or paid over to Trustees to be appointed or approved by the Commissioners, for the Purpose of being so laid out as aforesaid, with such Power for the Investment thereof in Government Stocks, Funds, or Securities in the meantime, and such Directions for the Payment of the Income of such Investment in the Manner in which the Rents of the Land to be purchased would be applicable, as the Commissioners shall think fit.

Money paid into Bank may be invested in the Funds.

XXXI. And be it enacted, That any Money so paid into the Bank as aforesaid may by Order of the Commissioners be invested in their 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 Commissioners for the Purposes of this Act, the Dividends thereof shall from Time to Time be applied, under the Order of the Commissioners, in like Manner as the Rents of the Land or Lease, or Part thereof, from the Sale whereof the Money invested in such Stocks, Funds, or Annuities has arisen would have been applicable.

XXXII. And

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

XXXIII. Provided always, and be it enacted, That no Payment under this Act towards Discharge of what shall be due on any Incumbrance or Charge, not being Payment in full, shall prejudice or affect any Right or Remedy of the Incumbrancer or the Person entitled to the Charge in respect of the Balance, otherwise than as against the Land or Lease, or Part thereof, sold under this Act; and no Payment under this Act of or in respect of any Incumbrance or Charge 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 Estate, except so far as the Commissioners under any special Circumstances shall order. No Payment, not being in full, to affect Right of Incumbrancer for Balance, and no Payment in respect of any Incumbrance to impair Remedy over.

XXXIV. And be it enacted, That it shall be lawful for the Commissioners to sell any Land or Lease, or Part thereof, discharged from any Crown Rent or Quit Rent which they may be enabled and may, with the Consent of the Owner, think fit to purchase, or from any Charge made by virtue of the said Acts of the Sixth Year and Tenth Year of Her Majesty, or either of them, which they may, with such Consent, think fit to pay off or redeem; and in any such Case the Commissioners shall, out of the Money arising from the Sale, and in preference to all other Payments thereout, pay the Consideration for the Purchase of such Crown Rent or Quit Rent, or such Sum as may be necessary for paying off or redeeming such Charge; and it shall be lawful for the Commissioners, where they think fit, to pay to any Person entitled to any annual or other Charge, not being an Incumbrance according to the Definition of this Act, who may consent to accept the same, a gross Sum in discharge or by way of Redemption thereof or of a Part thereof, and where a Part only of any Land or Lease subject to any Incumbrance or Charge is sold, to charge the Part not sold with such Incumbrance or Charge, or an apportioned Part thereof, in exoneration of the Money arising from the Sale, and to enable or authorize Persons to release the Money arising from the Part so sold from any Incumbrance or Charge, or to relinquish their Claim on such Money in respect thereof, without impairing or affecting such Incumbrance or Charge as to the remaining Part of the Land or Lease originally charged; and the Commissioners, where they think fit, may invest or provide for the Investment of Money to meet any Commissioners may make Provision as to Incumbrances, Charges, &c., to facilitate Sales, &c. and Distribution of Purchase Money.

annual or periodical Charge, or any other Charge, Incumbrance, or Interest, where, by reason of such Charge, Incumbrance, or Interest being contingent or otherwise, it shall appear to the Commissioners proper or expedient so to do, and otherwise may make such Orders and Directions for applying the Money arising from any Sale in such Manner as will secure the convenient Application thereof for the Benefit and according to the Rights of the Parties interested in the Land or Lease, or Part thereof, from the Sale of which the same shall have arisen.

Power to Commissioners to order Money to be paid into Court of Chancery or Exchequer.

XXXV. And be it enacted, That where any Money arising from a Sale under this Act is not immediately distributable, or the Parties entitled thereto cannot be ascertained, or where from any other Cause the Commissioners think it expedient for the Protection of the Rights and Interests therein, the Commissioners may order such Money, or any Stocks, Funds, or Securities in which the same may have been invested under this Act, to be transferred to the Account of the Accountant General of the High Court of Chancery or of the Court of Exchequer in *Ireland*, or (where the Case may require) of the High Court of Chancery in *England*, in the Matter of the Parties interested in the same, to be described as the Commissioners shall think fit and direct, in trust to attend the Orders of such respective Court; and the Commissioners may by their Order declare the Trusts affecting such Money, Stocks, Funds, or Securities, so far as they have ascertained the same, or state (for the Information of the respective Court) the Facts or Matters found by them in relation to the Rights and Interests therein; and the High Court of Chancery, Lord Chancellor, and Master of the Rolls, in *England* and *Ireland* respectively, and the Court of Exchequer in *Ireland*, may make such Orders and give such Directions in relation to any such Monies, Stocks, Funds, or Securities as shall be so transferred to the Account of the Accountant General of such respective Court as such Court or Judge respectively might make or give in relation to any Trust Monies, Stocks, or Securities paid in, transferred, or deposited under the Act passed in the Eleventh Year of Her Majesty "for better securing Trust Funds, and for the "Relief of Trustees," or the Act of the last Session of Parliament for extending to *Ireland* the said Act of the Eleventh Year of Her Majesty respectively; and no Money transferred into the Name of the Accountant General of the Court of Chancery in *Ireland*, or paid out under this Provision under any Order of the Lord Chancellor or Master of the Rolls, shall be liable to Usher's Poundage.

10 & 11 Vict. c. 96.

11 & 12 Vict. c. 68.

Lands included in different

XXXVI. And be it enacted, That where there shall be separate Applications to the Commissioners for Sales under this Act of any Land

Land and of any Lease in the same Land, or of Two or more Leases in the same Land, or there shall be such Applications for Sales of different undivided Shares of any Land or Lease, it shall be lawful for the Commissioners, where they shall see fit so to do, to include, with the Consent of the Persons by whom such respective Applications may be made or prosecuted, and of any other Persons whose Consent the Commissioners may, under the Circumstances, think fit to require, in the same Sale, upon such Terms as they think fit, such Land and Lease, or such Leases, or such several undivided Shares as aforesaid; and where there shall be separate Applications for Sales under this Act of any Land and of any Lease in other Land, or of different Lands or Leases in different Lands, it shall be lawful for the Commissioners, where, from the Lands being intermixed, or from other Circumstances, it shall appear to them convenient so to do, to include, with such Consent as aforesaid, such Land and Lease, or Lands or Leases, in the same Sale, upon such Terms as they may think fit; and where any Land or Lease, or Part thereof, subject to any Incumbrance, is proposed or ordered to be sold under this Act, it shall be lawful for the Commissioners, upon the Application of the Owner of any Lease or Under-lease, or Estate in reversion, or other Estate or Interest whatsoever in the same Land, (and although such Lease, Under-lease, Estate in reversion, or other Estate or Interest be not subject to any Incumbrance, or would not, if subject to any Incumbrance, be subject to be sold under an Order of the Commissioners under the Provisions herein-before contained,) or upon the Application of any Incumbrancer on any such Lease, Under-lease, Estate, or Interest, to include the same, upon such Terms as they may see fit, in the Sale of the Land or Lease, or Part thereof, so proposed or ordered to be sold as aforesaid; and all the Provisions of this Act applicable to any Land or Lease subject to any Incumbrance, and ordered to be sold under this Act, and to any Incumbrance or Charge upon such Land or Lease, and to the Purchase Money arising from the Sale thereof, and to the Conveyance or Assignment thereof, shall, so far as Circumstances admit, extend and be applicable to every such Lease, Under-lease, Estate in reversion, or other Estate or Interest to be so included in the Sale; and in every such Case as aforesaid the Commissioners shall apportion the Purchase Money and Expenses as they see fit.

Applications, and different Interests in the same Land, may be included in the same Sale.

XXXVII. And be it enacted, That if any Land or Lease to be sold 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 Commissioners to apportion the Rent between the Land to be sold and the Remainder of the Land subject to such Rent; and where it is intended to sell under this Act a Part only of any Lease

If Land sold shall be subject to a Lease, comprising other Land, or if Part of Lease in Perpetuity,

&c. be sold, Commissioners may apportion the Rent.

Lease in Perpetuity or other Lease, it shall be lawful for the Commissioners, where they shall think fit, and (having regard to the Rights and Interest of the Owner of the Reversion) it shall appear to them just so to do, to apportion the Rent reserved by such Lease between the Land to be sold and the Remainder of the Land; and the Commissioners shall direct Notices of any such intended Apportionment as aforesaid to be given to such Persons and in such Manner as they shall think fit, and shall hear such Parties as shall apply to them in relation thereto; and after such Apportionment, and after the Sale shall be completed, the Owners of the Reversion in the respective Lands shall have the like Remedies for the apportioned Rents against the Lands out of which the same shall be payable, and the Owners and Occupiers thereof 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.

Provision for Persons under Disability.

XXXVIII. And be it enacted, That where any Person who (if not under Disability) might have made any Application, given any Consent, done any Act, or been Party to any Proceeding under this Act, shall be a Minor, Idiot, Lunatic, or married Woman, the Guardian, Committee of the Estate, and Husband respectively of such Person may make such Applications, give such Consents, do such Acts, and be Party to such Proceedings, as such Persons respectively, if free from Disability, might have made, given, done, or been Party to, and shall otherwise represent such Person for the Purposes of this Act; but a married Woman entitled for her separate Use (with or without Power of Anticipation) shall, for the Purposes of this Act, be deemed a Feme Sole: Provided always, that where there shall be no Guardian or Committee of the Estate of any such Person as aforesaid, being infant, idiot, or lunatic, or where any Person the Committee of whose Estate if he were idiot or lunatic would be authorized to act for and represent such Person under this Act shall be of unsound Mind or incapable of managing his Affairs, but shall not have been found idiot or lunatic under an Inquisition, it shall be lawful for the Commissioners to appoint a Guardian of such Person for the Purpose of any Proceedings under this Act, and from Time to Time to change such Guardian; and where the Commissioners see fit they may appoint a Person to act as the next Friend of a married Woman for the Purpose of any Proceeding under this Act, and from Time to Time remove or change such next Friend.

XXXIX. And

Proceedings not to abate by Death, &c.

XXXIX. And be it enacted, That Proceedings under this Act shall not abate or be suspended by any Death or Transmission or Change of Interest, but in any such Case of Death or Transmission or Change of Interest it shall be lawful for the Commissioners, where they see fit, to require Notices to be given to Persons becoming interested, or to make any Order for discontinuing, suspending, or carrying on the Proceedings, or otherwise in relation thereto, which to them may appear just.

Costs.

XL. And be it enacted, That in every Proceeding under this Act the Commissioners shall 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, Rents, or Income, and Principal or Corpus, as they shall see fit.

Order for a Sale under this Act may be made notwithstanding pending Suit or Decree for Sale.

XLI. And be it enacted, That Application may be made to the Commissioners for a Sale under this Act, and an Order for such Sale may be made by them notwithstanding any pending Proceedings in a Court of Equity in *England* or *Ireland*, or any Decree of any such Court of Equity already made for Sale, and notwithstanding the Owner may have Power under an Act of Parliament or otherwise to make a Sale; and where it shall be shown to the Commissioners that a Decree for Sale has been made by a Court of Equity, the Commissioners shall, if they see fit, without further Inquiry, order a Sale of the Land or Lease decreed to be sold; and where any Sale shall be made of any Land or Lease, or Part thereof, in respect of which there shall have been a Decree of a Court of Equity, or any Proceedings pending in a Court of Equity, the Commissioners shall, in distributing such Monies and in their other Proceedings, have regard to the Proceedings in such Court in relation to the Priorities and Rights of Incumbrancers and others; and where there shall have been a Decree of a Court of Equity the Commissioners shall, in distributing the Monies arising on the Sale and in their other Proceedings, proceed upon and be guided by the Declarations of and Inquiries and Proofs made and taken under such Decree in relation to such Priorities and Rights as aforesaid; provided that it shall be lawful for the Commissioners, where it shall appear to them that there is any clerical Error, or any Error of Names or in computation, or other like Error, in such Decree, or in any Finding or Proof, or where from Matters coming to their Knowledge it shall appear to them that the Court in which the Decree has been made should have an Opportunity of reconsidering

sidering such Decree, or considering or reconsidering any Finding or Proof, to direct such Person as the Commissioners may think fit to apply to such Court in relation thereto, and such Court may make such Order concerning the Matter of such Application as it may think fit; and the Commissioners shall, out of any Monies arising from any Sale under this Act, where there shall have been any such Decree or pending Proceedings as aforesaid, make such Provision for Payment of any Costs incurred in relation to the Proceedings in the Court of Equity as the Circumstances may require; or the Commissioners may, in any of the Cases aforesaid, where they think fit, order all or any Part of the Purchase Money, after Payment thereout of such Costs and Expenses as may be payable thereout under the Orders of the Commissioners, to be paid into the Court of Equity in or under any Suit or Decree there pending or made.

After Order by Commissioners for Sale, Proceedings for a Sale under Decree to be stayed, and no Suit, &c. to be commenced without Leave of Commissioners, pending Proceedings under this Act.

XLII. And be it enacted, That where the Commissioners shall order the Sale of any Land or Lease, or Part thereof, in respect of which any Decree shall have been already made by a Court of Equity for Sale, or any Proceedings shall be pending in a Court of Equity, they shall, by Certificate under their Seal, notify to such Court the Order so made by them; and all Proceedings for or in relation to a Sale under the Decree of such Court shall be stayed, and upon the Completion of the Sale under such Order of the Commissioners any Receiver appointed by such Court shall cease to act as such Receiver with respect to the Land or Lease, or Part thereof, sold; and it shall be lawful for the Court to suspend or stay any other Proceedings in such Court, or under any Order or Decree already made by such Court, as the Court shall think fit; and pending any Proceedings for a Sale under this Act it shall not be lawful for any Owner or Person claiming to be Owner within the Meaning of this Act, or claiming by the Act of such Owner or Person or by Act of Law, or any Incumbrancer, to commence any Proceedings at Law or in Equity for Redemption, Foreclosure, or Sale, or to commence, take, continue, or prosecute any Proceeding whatsoever under the Act of the last Session of Parliament, "to facilitate the Sale of Incumbered Estates in *Ireland*," without the Leave of the Commissioners.

On Application for Sale of an undivided Share, or after Sale, Commissioners may, on Application of Party

XLIII. And be it enacted, That where an Application shall be made for a Sale under this Act of an undivided Share of any Land or Lease, or where any such undivided Share shall have been sold under this Act, and either before or after the Conveyance or Assignment thereof under this Act, the Commissioners, on the Application of any Party interested in such undivided Share, or of the Purchaser, (as the Case

Case may be,) and after causing to be given such Notices to the Owner or Owners of the other undivided Share or Shares of the same Land or Lease as they may think fit, and hearing such Parties interested in the respective Shares as may apply to them, and making or causing to be made such Inquiries as may enable them to make a just Partition, may, if they think fit, make an Order under their Seal for the Partition of such Land or Lease; and in such Order, or in a Map or Plan annexed thereto, shall be shown the Part allotted in Severalty in respect of each of the undivided Shares in such Land or Lease; and the Commissioners shall have the like Authorities, Jurisdiction, and Powers in relation to such Partition as a Court of Equity would have in the Case of a Partition under the Direction of such Court; and the Part so allotted in Severalty in respect of each such undivided Share by such Order for Partition as aforesaid shall, without any Conveyance or other Assurance in relation thereto, go and enure to and upon the same Uses and Trusts, and be subject to the same Conditions, Charges, and Incumbrances, as the undivided Share in respect of which the same is so allotted would have stood limited or been subject to in case such Order had not been made; and the like Order for a Sale of the Part allotted in respect of the undivided Share to which the Application for the Sale shall relate may be made (where the Order for Partition is made before Sale), and the like Proceedings had in relation to such Sale, and the like Conveyance or Assignment may be made of the Part allotted in respect of the Share sold (where the Order for Partition is made after Sale, and before Conveyance or Assignment), and with the like Consequences in the several Cases aforesaid, as if the Application for a Sale, or the Sale, (as the Case may be,) had been in respect of the Part so allotted as aforesaid; and where any Land or Lease, or Part thereof, to be sold under this Act, is subject to any Lease, Under-lease, or Tenancy under which the Lessees, Under-lessees, or Tenants hold jointly or as Tenants in Common, it shall be lawful for the Commissioners, on the Application of any such Lessee, Under-lessee, or Tenant, and after causing to be given such Notices as they may think fit, and hearing such Parties as may apply to them, and making such Inquiries as they may think necessary, to make an Order under their Seal for the Partition, as between such Lessees, Under-lessees, or Tenants, of the Land included in their Lease, Under-lease, or Tenancy, and for the Apportionment of the Rent reserved or payable under such Lease, Under-lease, or Tenancy; and after such Order of Partition the Owner of the Reversion in the respective Parts of the Land shall have the like Remedies for the apportioned Rents against the respective Parts out of which the same shall be payable, and the Lessees, Under-lessees, or Tenants holding such respective Parts under such Lease, Under-lease, or Tenancy, and such Order of Partition, as were subsisting for the entire

interested, and giving Notices and hearing Parties, make Order for Partition.

entire Rent before such Partition and Apportionment; and all the Covenants, Conditions, and Agreements of every such Lease, Underlease, or Tenancy, except as to the Amount of Rent to be paid, shall, as regards the respective Parts allotted on such Partition, and the apportioned Parts of the Rent, remain in force as against the respective Lessees, Under-lessees, or Tenants to whom under such Partition such respective Parts shall be allotted.

On Application for Sale, or after Sale, Commissioners, on Application of Party interested, and with Consent, may make Order for Exchange.

XLIV. And be it enacted, That where an Application shall be made for a Sale under this Act of any Land or Lease, or Part thereof, or where the same shall have been sold under this Act, and either before or after the Conveyance or Assignment thereof under this Act, if Application be made to the Commissioners by any Party interested in such Land or Lease, or by the Purchaser, (as the Case may be,) for the Exchange of all or any Part of such Land, or of all or any Part of the Land comprised in such Lease, for other Land which the Owner thereof may be willing to give in exchange, the Commissioners may make or cause to be made such Inquiries as they may think fit for ascertaining whether such Exchange would be beneficial to the Persons interested in the respective Lands, and cause such Notices to be given to Parties interested in the respective Lands as they may think fit; and if, after making such Inquiries, and hearing such Parties interested in the respective Lands as may apply to them, the Commissioners shall be of opinion that such Exchange would be beneficial, and that the Terms thereof as proposed, or as modified by them, with the Consent of such Owner as aforesaid, are just and reasonable, they may make an Order under their Seal for such Exchange accordingly, and in such Order for Exchange, or in a Map or Plan annexed thereto, shall be shown the Lands given and taken in exchange respectively under such Order; and the Land taken upon such Exchange under such Order shall, without any Conveyance or other Assurance in relation thereto, go and enure to and upon the same Uses and Trusts, and be subject to the same Conditions, Charges, and Incumbrances, as the Land given on such Exchange would have stood limited or been subject to in case such Order had not been made; and the like Order for a Sale may be made in respect of the Land taken in exchange for any Land, or any Land comprised in any Lease to which the Application for a Sale shall relate, (where the Order for Exchange is made before Sale,) and the like Proceedings had in relation to such Sale, and the like Conveyance or Assignment may be made in respect of the Land taken in exchange for the Land or Lease, or Part thereof, sold, (where the Order for Exchange is made after Sale, and before Conveyance or Assignment,) and with the like Consequences, in the several Cases aforesaid, as if the Application for a Sale, or the

Sale,

Sale, (as the Case may be,) had been in respect of the Land so taken in exchange.

Partition may be made of Land where Shares are not subject to be sold under this Act.

XLV. And be it enacted, That it shall be lawful for the Commissioners, upon the Application of the Owners of the several undivided Shares (not subject to be sold under this Act, or as to which no Proceedings for a Sale under this Act shall be pending,) of any Land in *Ireland* who shall desire to effect a Partition of such Land, to make or cause to be made such Inquiries as the Commissioners may think fit for ascertaining whether such Partition would be beneficial to the Persons interested in such respective Shares; and in case the Commissioners shall be of opinion that the proposed Partition would be beneficial, and that the Terms thereof are just and reasonable, they shall make an Order under their Seal for such Partition accordingly; and in such Order, or in a Map or Plan annexed thereto, shall be shown the Part allotted in Severalty in respect of each such undivided Share; and the Part so allotted in Severalty in respect of each such undivided Share by such Order of Partition shall, without any Conveyance or other Assurance in relation thereto, go and enure to and upon the same Uses, and be subject to the same Conditions, Charges, and Incumbrances, as the undivided Share in respect of which the same is so allotted would have stood limited or been subject to in case such Order had not been made.

Exchanges may be made of Lands not subject to be sold under this Act.

XLVI. And be it enacted, That it shall be lawful for the Commissioners, upon the Application of the Owners of Lands in *Ireland* not subject to be sold under this Act, or as to which no Proceedings for a Sale under this Act shall be pending, who shall desire to effect an Exchange of such Lands, to make or cause to be made such Inquiries as the Commissioners may think fit for ascertaining whether such Exchange would be beneficial to the Persons interested in the respective Lands; and in case the Commissioners shall be of opinion that the proposed Exchange would be beneficial, and that the Terms thereof are just and reasonable, they shall make an Order under their Seal for such Exchange accordingly; and in such Order for Exchange, or in a Map or Plan annexed thereto, shall be shown the Lands given and taken in exchange respectively under such Order; and the Land taken upon such Exchange under such Order shall, without any Conveyance or other Assurance in relation thereto, go and enure to and upon the same Uses and Trusts, and be subject to the same Conditions, Charges, and Incumbrances, as the Land given upon such Exchange would have stood limited or been subject to in case such Order had not been made.

XLVII. And

Division of intermixed Lands not subject to be sold under this Act.

XLVII. And be it enacted, That it shall be lawful for the Commissioners, upon the Application of any Number of Persons who shall be separately Owners of Parcels of Land not subject to be sold under this Act, or as to which no Proceedings for a Sale under this Act shall be pending, so intermixed, or divided into Parcels of inconvenient Form or Quantity, that the same cannot be cultivated or occupied to the best Advantage, but forming together a Tract which may be divided into convenient Parcels, and who shall desire to have the whole of such Tract divided into convenient Parcels, to be allotted in lieu of the old Parcels, to make or cause to be made such Inquiries as the Commissioners may think fit, for ascertaining whether such proposed Division and Allotment would be beneficial to the Persons interested in such Lands; and in case the Commissioners shall be of opinion that the proposed Division and Allotment would be beneficial, they shall make an Order for the Division and Allotment thereof accordingly, with a Map or Plan thereunto annexed, in which shall be specified as well the Parcels in which the several Persons on whose Application such Order shall have been made were respectively interested before such Division and Allotment as the several Parcels allotted to them respectively by such Order; and the Parcels of Land taken under such Division and Allotment shall go and enure to and upon the same Uses and Trusts, and be subject to the same Conditions, Charges, and Incumbrances, as the several Lands which the Persons taking the same shall have relinquished or lost on such Division would have stood limited or been subject to in case such Order had not been made.

Notices of Partitions, Exchanges, and Divisions to be given.

XLVIII. Provided always, and be it enacted, That in the Case of Land in respect of which no Proceedings for a Sale under this Act shall be pending, no such Order of Partition or of Exchange, or of Division and Allotment, as aforesaid, shall be made by the Commissioners until such Notices by Advertisement in such public Newspaper or Newspapers as the Commissioners shall direct shall have been given of such proposed Partition, Exchange, or Division and Allotment, and Three Calendar Months shall have elapsed from the Publication of the last of such Advertisements; and in case before the Expiration of such Three Calendar Months any Person entitled to any Estate in or to any Charge upon any Land included in such proposed Partition, Exchange, or Division and Allotment, shall give Notice in Writing to the Commissioners of his Dissent from such proposed Partition, Exchange, or Division and Allotment, (as the Case may be,) the Commissioners shall not make an Order for such Partition, Exchange, or Division and Allotment, unless such Dissent shall be withdrawn, or it shall be shown to the Commissioners that the Estate

or

or Charge of the Party so dissenting shall have ceased, or that such Estate or Charge is not an Estate or Charge in respect of which he would be entitled in Equity to prevent such Partition, Exchange, or Division and Allotment; but no such Order as aforesaid shall be in anywise liable to be impeached by reason of any Infirmity of Estate or Defect of Title of the Persons on whose Application the same shall have been made.

Conveyance, Assignment, and Orders for Partition, Exchange, or Division and Allotment, conclusive.

XLIX. And be it enacted, That every Conveyance and Assignment respectively executed as required by this Act, and every Order for Partition or for Exchange, or for Division and Allotment, made by the Commissioners under their Seal, shall for all Purposes be conclusive Evidence that every Application, Proceeding, Consent, and Act whatsoever which ought to have been made, given, and done previously to the Execution of such Conveyance or Assignment, or the making of such Order respectively, has been made, given, and done by the Persons authorized to make, give, and do the same; and no such Conveyance, Assignment, or Order shall be impeached by reason of any Informality therein.

Proceedings before Commissioners not to be restrained by Injunction, &c.

L. And be it enacted, That the Commissioners shall not be subject to be restrained in the Execution of their Powers under this Act, nor shall any Person be restrained from making Application under this Act to the Commissioners, or doing any other Act or giving any Consent under the Provisions of this Act, by Order or Injunction of a Court of Equity, or by Writ of Prohibition, nor shall the Commissioners be required by Writ of Mandamus to do any Act or take any Proceeding under this Act, nor shall Proceedings before them be removable by Certiorari; and the Commissioners shall not, nor shall any of them, nor shall any Person acting under the Order or Authority of them or any of them, be liable to any Action, Suit, or Proceeding for or in respect of any Act or Matter *bonâ fide* done or omitted by them respectively in the Exercise or supposed Exercise of the Powers of this Act.

Commissioners not to be liable in respect of Acts done bonâ fide.

Orders may be reviewed by Commissioners.

LI. And be it enacted, That it shall be lawful for the Commissioners to review and rescind or vary any Order which shall have been previously made by them, but, save as aforesaid and as hereinafter provided, every Order of the Commissioners shall be final: Provided always, that where the Commissioners allow Appeal, but not otherwise, Appeal against any Order of the Commissioners may be made to the Privy Council of *Ireland* within One Calendar Month from the making of the Order appealed against, and such Appeal shall be heard and reported on by Members of the Privy Council, to be appointed by such Judicial Committee of the said Privy Council as

Appeal to Privy Council where allowed by Commissioners.

as herein-after mentioned, and the Orders of the said Privy Council in relation to such Appeal shall be made according to the Reports of such Judicial Committee, and the Order of the said Privy Council on the Appeal shall be final.

Who to form the Judicial Committee.

LII. And be it enacted, That the Judicial Committee herein-before referred to shall consist of the Lord High Chancellor of *Ireland* for the Time being, and such of the Members of the said Privy Council as shall from Time to Time hold any of the following Offices in *Ireland;* that is to say, the Office of Lord Keeper or First Lord Commissioner of the Great Seal of *Ireland*, Lord Chief Justice or Judge of the Court of Queen's Bench, Master of the Rolls, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, and Judge or Commissary of Her Majesty's Court of Prerogative for Causes Ecclesiastical and Court of Faculties in and throughout *Ireland*, and of all Persons Members of the said Privy Council who shall have held the Office of Lord Chancellor of *Ireland*, or any of the other Offices herein-before mentioned, and of such other Persons not exceeding Four in Number, being Privy Councillors in *Ireland*, as the Lord Lieutenant or other Chief Governor or Governors for the Time being of *Ireland* shall appoint to be Members of such Committee; and no such Appeal as aforesaid shall be heard or reported on by the said Judicial Committee unless in the Presence of at least Four Members of the said Committee; and no Report on such Appeal shall be made unless a Majority of the Members of such Committee present at the Hearing concur in such Report.

Penalty for false Swearing.

LIII. And be it enacted, That every Person who upon Examination upon Oath, Affirmation, or Declaration before the Commissioners or any of them, or any Person appointed and authorized under this Act by the Commissioners to administer such Oath, Affirmation, or Declaration, shall wilfully give false Evidence, and every Person who shall wilfully swear, affirm, or declare falsely in any Affidavit authorized under this Act to be received in Evidence by the Commissioners, shall be liable to the Pains and Penalties of Perjury.

Construction of Terms, &c. in this Act: "Land:"

LIV. And be it enacted, 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

"Estate:"

extend to an Estate in Equity as well as at Law, and to an Equity of Redemption, 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 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 Under-lease out of any Lease or other Estate; and the Expression "Church or College Lease" shall include any Lease by any Archbishop, Bishop, Dean, or Dean and Chapter, or other Ecclesiastical Corporation, sole or aggregate, or by the College of the Holy and Undivided *Trinity* near *Dublin*, or by the Ecclesiastical Commissioners for *Ireland*, where a Fine has been paid on the Grant of such Lease; 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 or periodical Charge which by the Instrument creating the same, or by any other Instrument, is made repurchasable on Payment of a gross Sum of Money, and also any Arrear remaining unpaid of any annual or periodical Charge, for Payment of which Arrear a Sale of any Land charged therewith might be decreed by a Court of Equity; 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, whether in Fee or for any lesser Estate as aforesaid, to the Equity of Redemption in any Land, or to the Land subject to any Incumbrance, or a Trust for the Payment of any Incumbrance, and any Feoffees or Trustees for charitable or other Purposes, entitled

"Lease:"

"Lease in Perpetuity:"

"Church or College Lease:"

"Incumbrance:"

"Incumbrancer:"

"Possession:"

"Owner:"

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 Under-lease at a Rent derived out of such Lease, and any Person entitled in possession, for such whole Estate or such derivative Estate as aforesaid, to the Equity of Redemption in such Lease or to such Lease subject to any Incumbrance, or a Trust for the Payment of any Incumbrance; and the Word "Person" and the Word "Owner" shall extend to a Body Politic or Corporate as well as to an Individual; the Word "Commissioners" shall mean "the Commissioners for Sale of Incumbered Estates in *Ireland*;" the Expression "the Commissioners of Her Majesty's Treasury" shall mean such Commissioners for the Time being or any Three of them, or the Lord High Treasurer for the Time being; 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.

"Person" and "Owner:"
"Commissioners:"
"Commissioners of Her Majesty's Treasury:"
Number:

Act to extend to Ireland only, &c.

LV. And be it enacted, That this Act shall, except so far as the special Provisions of the same otherwise require, extend only to *Ireland*, and may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHE-

SCHEDULE.

Form of Conveyance on Sales by the Commissioners (which may be used with such Variations as the Circumstances may appear to the Commissioners to require).

We Two of the Commissioners for Sale of Incumbered Estates in Ireland, under the Authority of an Act passed in the Year of the Reign of Queen Victoria, intituled [*here set forth the Title of this Act*], in consideration of the Sum of by *E.F.* of, *&c.*, paid into the Bank of Ireland to our Account to the Credit of do grant unto the said *E.F.* all [*here describe the Premises to be sold*], to hold the same unto the said *E.F.*, his Heirs and Assigns, [*or, in the Case of a Chattel Interest in a Lease*, his Executors, Administrators, and Assigns,] for ever, [*or* for the unexpired Term created by a certain Lease [*describing the Lease, as the Case may be*], subject to [*here specify, where the Sale is made subject thereto, the Tenancies, Leases, Under-leases, or Charge, either by reference to a Schedule or otherwise*].

In witness whereof we the said *A.B.* and *C.D.* have hereunto set our Hands and the Seal of the said Commissioners, this Day of in the Year of our Lord .

A.B.
C.D.
[*Seal of the Commission.*]

The Certificate of Payment to be endorsed on or written at the Foot of the Conveyance or Assignment may be in the following Form:

We certify that the within [*or* above] mentioned Sum of was paid into the Bank of Ireland to the Account and Credit within [*or* above] mentioned on the Day of .

A.B.
C.D.
[*Seal of the Commission.*]

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