Lives are to be calculated. Tables nor upon Tables less favourable to the Expectation of Life than the Life Tables which are appended to the Twelfth Annual Report of the Registrar General of Births, Deaths, and Marriages in *England*, nor than any Tables which may be from Time to Time issued be the same Authority.

Interpretation. XIII. The Provisions contained in the Eleventh Section of the said Act with reference to the Interpretation of the Words and Expressions therein specified shall apply to the same Words and Expressions whenever they occur in this Act, and the said Act and this Act shall be read and construed together as One Act.

CAP. CXVII.

An Act to facilitate the Sale and Transfer of Incumbered Estates in the *West Indies*. [11th *August* 1854.]

'WHEREAS it is expedient that Facilities should be given for the Sale and Transfer of 'Incumbered Estates in the several *West Indian* Colonies mentioned in the Schedule 'hereto:' 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, as follows:

Preliminary.

Preliminary.

Short Title of Act. I. This Act may for all Purposes be cited as "The *West Indian* Incumbered Estates Act, 1854."

Act how to come into operation. II. This Act shall not take effect until Her Majesty has, by Order in Council to be made as herein-after mentioned, directed the same to come into operation in One or more of the said scheduled Colonies.

Interpretation of certain Terms in this Act. III. In the Construction and for the Purposes of this Act the following Terms shall have the respective Meanings herein-after assigned to them; that is to say,

"Land" shall extend to Sugar and other Plantations, Messuages, Tenements, and Hereditaments, corporeal and incorporeal, of every Tenure or Description, and shall include and denote that Estate or Interest in any Hereditaments which any Person applying for a Sale is possessed of, is entitled to, or has any Mortgage, Charge, or Incumbrance upon:

"Incumbrance" shall mean any Debt, Portion, Legacy, or other Sum of Money constituting a Charge or Lien on Land, or raiseable out of Land:

"Incumbrancer" shall mean any Person entitled to such Incumbrance, or entitled to require the Payment or Discharge thereof:

"Possession" shall include the Receipt of the Rents and Profits:

"Owner" shall mean any Person entitled in possession to Land, or the Receipt of the Rents and Profits thereof, or who would be so entitled if there were no Incumbrances on such Land, for a Term of not less than Thirty Years unexpired, or for an Estate or Interest for his own Life, or for an Estate or Interest determinable on the dropping of any other Life or Lives, or for any greater Estate or Interest:

"Person and Owner" shall extend to a Body Politic or Corporate as well as to an Individual:

"Commissioners" shall mean the Persons appointed Commissioners for the Sale of Incumbered Estates in the *West Indies*, as herein-after mentioned.

Constitution and Powers of Commissioners.

Constitution and Powers of Commissioners.

Three Commissioners to be appointed under Sign Manual. IV. It shall be lawful for the Commissioners of Her Majesty's Treasury for the Time being 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

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 the *West Indies*." *Constitution and Powers of Commissioners.*

V. Of the above Commissioners One shall be styled "The Chief Commissioner," and the other or others shall be styled "The Assistant Commissioner or Commissioners." Style of Commissioners.

VI. The Chief Commissioner shall be a Barrister-at-Law of not less than Ten Years standing, and shall reside in *England;* the Assistant Commissioners shall from Time to Time be employed in the Execution of this Act in such Manner as the Chief Commissioner may direct. Residence of Commissioners.

VII. For the Purpose of aiding in the Execution of this Act, the Governor or other Person administering the Government of any Colony may appoint to be Local Commissioners for such Colony during Pleasure any Number, not exceeding Three, of the following Persons; that is to say, Power to appoint Local Commissioners.

Any Vice-Chancellor, Chief Justice, Judge, Attorney General, Solicitor General, or other Legal or Public Officer holding any Office in the Colony in which such Appointment is made; or,

Any other Person usually resident in such Colony.

VIII. The Commissioners shall cause to be made for their Commission such Seal or Seals as they may require, and shall cause to be sealed with One of such Seals all Orders, Conveyances, and other Instruments 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 such Seal of the Commissioners, shall be received in Evidence, without any further Proof. Commissioners to have a Common Seal.

IX. The Commissioners of Her Majesty's Treasury may from Time to Time appoint and remove a Chief Secretary, and also such Assistant Secretaries, Clerks, Messengers, and Officers as they may deem necessary for the Purposes of this Act. Power to appoint and remove Secretary, Clerks, &c.

X. The Offices of the Commissioners, and all Powers, Rights, and Privileges pertaining thereto, shall continue and be in force only for a Period of Six Years next ensuing the Date at which this Act takes effect, and from thenceforth until the next Session of Parliament. Duration of Office and Powers of Commissioners.

XI. No Commissioner shall during his Continuance in Office be capable of being elected or of sitting as a Member of the House of Commons. Commissioners incapable of sitting in Parliament.

XII. There shall be paid out of Monies to be provided by Parliament, Salaries of Commissioners, &c., and out of what Funds paid.

To the Chief Commissioner, Two Assistant Commissioners, Chief Secretary, and to all such Assistant Secretaries, Clerks, Messengers, and Officers as may be appointed by the Chief Commissioner in *England*, such Salaries as the Commissioners of Her Majesty's Treasury may from Time to Time recommend, so that the same do not exceed in the following Cases the Sums herein-after mentioned; that is to say,

In the Case of the Chief Commissioner, the Sum of Two thousand Pounds by the Year:

In the Case of each Assistant Commissioner, the Sum of One thousand five hundred Pounds by the Year:

The Salaries of the Local Commissioners, and of all such Assistant Secretaries, Clerks, Messengers, and Officers as may be appointed under this Act in any Colony, shall be paid out of Monies to be provided by the Colonies as herein-after mentioned.

XIII. The Commissioners may fix such Scale of Fees to be paid in respect of Proceedings under this Act, both in *England* and the Colonies, as they think fit, but all Fees to be paid in any Colony shall be subject to Disallowance or Alteration by the Legislature of such Colony. Power of Commissioners to fix Scale of Fees.

XIV. All Expenses incidental to carrying this Act into execution, and not being such Salaries as aforesaid, or defrayed by Fees, shall be paid for, if incurred in *England*, out of Monies to be provided for that Purpose by Parliament, and if incurred in any Colony, by Monies to be provided for that Purpose by the Legislature of such Colony in manner herein-after mentioned. Expenses of Act how provided for.

Constitution and Powers of Commissioners.

Oath of Commissioners.

XV. Every Commissioner and Local Commissioner appointed under this Act shall, before he enters upon the Execution of his Office, take the following Oath; that is to say,

'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 Year of the Reign of Queen Victoria, intituled [*here set forth the Title of this Act*].'

And such Oath shall, in the Case of the Chief Commissioner and Assistant Commissioners, be taken before One of the Judges of Her Majesty's Superior Courts in *England*, and in the Case of any Local Commissioner be taken before the Judge of the Supreme Court of the Colony for which he is appointed Commissioner.

Publication of Appointment of Commissioners.

XVI. The Appointment of every Commissioner and Local Commissioner shall be published as follows; that is to say,

The Appointment of the Chief Commissioner and Assistant Commissioners, in the *London Gazette*:

The Appointment of any Local Commissioner, in the Newspaper of the Colony in which Government Notices are usually published:

And no Commissioner or Local Commissioner shall act until Publication as aforesaid has been made of his Appointment.

Commissioners to be a Court of Record.

XVII. The Commissioners shall constitute One Court of Record, having, for the Purposes of this Act, and subject to the Provisions thereof, Jurisdiction throughout *England* and any Colony or Colonies within which this Act comes into operation; and all Proceedings, Inquiries, Suits, or Trials to be taken, made, or had under this Act, and all Investigations of any Matters or Things arising out of or incidental to any such Proceedings, Inquiries, Suits, or Trials, may, subject to the Provisions herein-after contained, be at any Stage or at any Time transferred from *England* to any Colony, or from any Colony to *England*.

Powers of Commissioners, by whom to be exercised.

XVIII. All Acts, Matters, and Things which the Commissioners are by this Act empowered to do, and all the Powers and Authorities hereby given to them, may, under any Order of the Commissioners made for that Purpose, be done or exercised by the Person or Persons herein-after mentioned; that is to say,

In *England*, by the Chief Commissioner, either alone or with One Assistant Commissioner:

In any Colony, by any Assistant Commissioner, either alone or jointly with the Local Commissioners of such Colony, or any One of them, or by the Local Commissioners or Commissioner of such Colony, or any Two of them, if more than Two.

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

XIX. The Commissioners shall frame, and cause to be printed and circulated or otherwise promulgated, as they see Occasion, Forms of Application and Directions indicating the Particulars of the Information to be furnished to the Commissioners when any Application is made to them under this Act, with reference to Title, Incumbrances, and the Circumstances of 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.

XX. The Commissioners shall, having regard to the Laws and Usages of each Colony in which the same are intended to take effect, frame Rules for the following Purposes; that is to say,

For regulating the Course of Procedure under this Act; the several Powers and Duties of the Assistant and Local Commissioners; the Conduct of Proceedings in *England* and the Colonies; and the Transfer thereof from *England* to the Colonies, and from the Colonies to *England*:

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:

For the Protection, in respect of such Monies, of the Interests of Persons under Disability, and of future Interests:

Constitution and Powers of Commissioners.

For the Protection of the Interests of absent Parties, and of the Interest of Parties in Cases where the Proceedings are transferred from *England* to the Colonies, or *vice versâ*:

Generally for the due Execution of the Powers vested in the Commissioners under this Act, and for giving effect to the Provisions and Objects thereof:

And all Rules so made shall, unless disallowed in manner herein-after mentioned, have the same Force as if they had been enacted by Parliament.

Rules to be laid before Privy Council.

XXI. All Rules made under the above Authority shall be laid before Her Majesty in Council, and it shall be lawful for Her Majesty by Order in Council to disallow the same, and any Rule so disallowed shall from the Date of its Disallowance be void, but all Matters and Things previously done in pursuance thereof shall have the same Validity as if no such Disallowance had taken place.

Power to Commissioners to summon Witnesses, &c.

XXII. The Commissioners shall have Power—

1. To require by Summons under their Seal the Attendance before them, at a Time and Place to be mentioned in such Summons, of all such Persons as they may think fit to examine in relation to any Question or Matter depending before them:
2. To require by a like Summons all such Persons to produce before them all Deeds, Books, Papers, Documents, and Writings relating to such Question or Matter:
3. 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 attending under such Summons, and all Persons attending voluntarily as Witnesses.

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

XXIII. The Commissioners may, in their Discretion, receive in Evidence Affidavits; and such Affidavits may be made in any Part of Her Majesty's Dominions before any Person empowered by Law to take Affidavits, and in any other Part of the World before any Person authorized by Order under the Seal of the Commissioners to take Affidavits; and the Commissioners may by a like Order under their Seal authorize any Person in any Part of the World to examine, in such Manner as they think fit, any Witness or Witnesses in relation to any Application to or Matter pending before the Commissioners, and to administer Oaths, Affirmations, or Declarations for the Purpose of such Examination.

Power of Commissioners to direct Trials and Issues of Fact.

XXIV. The Commissioners in relation to any Matter or Question before them shall have Power—

To send Cases for the Opinion of any Court of Law or Equity sitting in *England* or in any Colony within their Jurisdiction:

To send Questions of Fact to be tried, in *England* by a Jury, or in any such Colony as aforesaid either by a Jury or in any other Manner in which Questions of Fact are usually tried in such Colony.

Power of Commissioners to enforce Orders.

XXV. In all Cases within their Jurisdiction the Commissioners shall, with respect to the following Matters, that is to say,

The enforcing the Attendance of Persons summoned to give Evidence,

The enforcing the Production of Deeds, Books, Papers, Documents, and Writings,

The punishing Persons refusing to give Evidence, or guilty of a Contempt,

The enforcing any Order whatever made by them under any of the Powers or Authorities of this Act,

Have in *England* all such Powers, Rights, and Privileges as are possessed by the High Court of Chancery for such or the like Purposes in relation to any Matter depending in such Court, and have in any Colony within their Jurisdiction all such Powers, Rights, and Privileges as are possessed by the Supreme Court of Judicature in such Colony for such or the like Purposes in relation to any Matter or Thing depending in such Court; and it shall be lawful for the Commissioners in any such Colony as aforesaid, either to carry into effect such Powers, Rights, and Privileges by Officers appointed by themselves, or to request any such Court of Judicature as aforesaid, or any Officer thereof, to enforce any Orders made by them, and such Court or Officer shall thereupon enforce the same accordingly.

Sales

Sales by Commissioners, and Distribution of Purchase Monies.

Sales by Commissioners, and Distribution of Purchase Monies.

Power of Commissioners to sell Land, &c.

XXVI. Subject to the Restrictions herein-after mentioned, where any Land situate in a Colony within the Jurisdiction of the Commissioners is subject to any Incumbrance, the Commissioners shall have Power to sell the same, or such Part thereof as they think fit, upon Application made to them in manner herein-after mentioned by the Owner of such Land or any Incumbrancer thereon.

No Application to be entertained unless previous Costs paid.

XXVII. Where an Application for a Sale of any such Land as aforesaid has been made to any competent Tribunal in the Colony, and dismissed with Costs, no Application by the same Party for a Sale of the same Land or any Part thereof shall be entertained by the Commissioners unless it is shown that such Costs have been paid.

Application to to be made by legal or beneficial Owners.

XXVIII. Where any such Land as aforesaid is vested in any Person or Persons in trust for any Owner, an Application for the Sale thereof may be made by such Owner, either with or without the Concurrence of such Trustee or Trustees, or by such Trustee or Trustees with the Concurrence of such Owner.

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

XXIX. Where any Incumbrance is vested in a Trustee or Trustees, or settled on divers Persons in succession, the Commissioners may act on an Application made by such Trustee or Trustees, or by the First Person entitled to the Income of such Incumbrance, or by any other Person having, in the Opinion of the Commissioners, an Amount of Interest in the Incumbrance sufficient to justify his making an Application for a Sale.

Form of Application, and to whom to be made.

XXX. Every Application for a Sale of Land under this Act shall be in such Form as the Commissioners direct, and may, subject to any Rules to be framed by the Commissioners, be made, at the Discretion of the Applicant, either to the Commissioners acting in *England* or in the Colony in which such Land is situate.

Duty of Commissioners on Application for Sale.

XXXI. The Commissioners shall, upon the Receipt of such Application as aforesaid, make such Inquiries as to the Circumstances of the Land in respect of which the same is made, and of the Parties interested therein, either as Incumbrancers, Owners, or otherwise, and direct such Notices to be given as they think necessary, to enable them to form a Judgment as to the Expediency of a Sale, and shall hear by themselves, their Counsel or Agents, any Persons interested in such Land who may apply to them to be heard, and shall, upon the Conclusion of such Inquiries, and after hearing such Parties, if any, as aforesaid, make such Order in the Premises as to the Allowance or Disallowance of a Sale of such Land as they think just.

Restrictions on Sale.

XXXII. No Sale shall be made by the Commissioners of any Land in the Cases following:

Where the Amount of yearly Interest on the Incumbrances attaching to the Land in respect of which any Application is made, and to any other Land subject to the same Incumbrances does not exceed One Half of the net yearly Value of such Land and other Land, if any, such yearly Value to be calculated on the average Profits or Income derived therefrom after deducting all necessary Outgoings during the preceding Seven Years, or during such other Period as the Commissioners may, having regard to any special Circumstances, think fit:

Where, for any Reason whatever, it appears to the Commissioners unjust or inexpedient that a Sale should be made.

Regard to be had to yearly Tenancies and other temporary Interests.

XXXIII. In making any Sale of Land under this Act, the Commissioners shall have regard to the Interests of any yearly Tenants or other Persons not being Incumbrancers, who may be entitled for the Time being, by themselves or their Agents, to receive or retain the Produce of such Land or of any Part thereof, and they may, in their Discretion, deal with such Interests in such One of the Two following Ways as they think just; that is to say, they may either make the Sale subject to such Interests, or may cause such Interests to be valued at a gross Amount, and treat the Amount so valued as an Incumbrance, assigning thereto such Priority as they think fit.

XXXIV. In

Sales by Commissioners, and Distribution of Purchase Monies.

XXXIV. In Cases where any Land to be sold is subject—
To Dower or any Interests in the Nature of Dower,
To any annual or contingent Incumbrance,
To any Incumbrance under the Terms of which the Incumbrancer cannot be required to accept Payment of the Principal Money for a Term of Years yet to come,
The Commissioners shall deal with such Interests in One of the Two following Ways; that is to say, they shall either make the Sale subject to such Dower, Interests, or Incumbrances, or they may, with the Consent of the Parties entitled to such Dower, Interest, or Incumbrances, cause the same to be valued at a gross Amount, assigning thereto such Priority as they think just.

Power to sell, subject to annual Sums, and also to Incumbrances, in certain Cases.

XXXV. Every Sale of Land in pursuance of this Act shall be made, under the Control and Direction of the Commissioners, by Public Sale or Private Contract, together or in Parcels, at such Time and Place and generally in such Manner as the Commissioners think fit; and every Conveyance of Land so sold shall be made by the Commissioners under their Seal, and shall be signed by the Chief Commissioner, or such other Commissioner or Commissioners as the Chief Commissioner may direct, and the Execution by any other Party of such Conveyance shall be unnecessary; and such Conveyance shall express the Interests and Incumbrances (if any) subject to which the Sale is made, and may be in such Form as the Commissioners may by Order from Time to Time direct, or as near thereto as Circumstances permit.

Sale by Commissioners.

XXXVI. No Sale made by the Commissioners shall affect any of the following Rights or Payments:
Any Right of Common, Right of Way, or other Easement;
Any Tithes or like Ecclesiastical Dues;
Any Crown Rents or other like Sums payable at fixed Periods to Her Majesty or to the Government of the Colony;
Except in Cases where the Commissioners undertake to commute such Crown Rents or other like Sums as aforesaid, which they shall be at liberty to do, with the Sanction of the Legislature of such Colony, in Cases where they think it will be for the Benefit of the Parties interested in the Produce of such Sale, and if they do so they shall express in the Conveyance that the Land sold is discharged from such Crown Rents or other Sums, as the Case may be.

Saving of certain Rights.

XXXVII. The Purchase Money on every Sale shall be paid, as the Commissioners may direct, either into the Bank of *England*, or into the Commissariat Chest of some Colony named by them, and be carried to an Account to be opened in the Name of the Commissioners to the Credit in each Case of the Land (describing the same by the Name of the Plantation or Estate to which it belongs, or by any other Name the Commissioners think fit); and upon Proof being made to the Satisfaction of the Commissioners, and in such Manner as they may direct, of any Monies so having been paid in, the Chief Commissioner, or such other Commissioner or Commissioners as the Chief Commissioner directs, shall endorse a Certificate on the Conveyance of such Payment; and any Purchaser who has paid any Money into the Bank or into such Commissariat Chest as aforesaid shall be discharged from all Liability in respect of the Application thereof, and such Endorsement shall be Evidence of such Payment; and in all Cases Her Majesty's Government shall guarantee the Safety of all Monies paid in pursuance of this Act into the Commissariat Chest of any Colony.

Payment of Purchase Money.

XXXVIII. Every Conveyance made by the Commissioners in pursuance of this Act shall vest in the Purchaser the Land so sold, subject to such Rights and uncommuted Payments, if any, as are herein-before declared not to be affected by any Sale by the Commissioners, but discharged from all other Interests, Rights, Claims, and Incumbrances, except such as may in pursuance of the Power herein-before given be expressed in the Conveyance to be subsisting on such Land, and no Conveyance made by the Commissioners shall be set aside on the Ground of their not having had Jurisdiction over the Subject Matter thereof.

Effect of Conveyance.

XXXIX. The Commissioners shall have Power to order the Delivery to the Purchaser, or as he directs, of all Deeds and Documents of Title belonging or exclusively relating to the

Commissioners may order Delivery of Deeds, &c.

Sales by Commissioners, and Distribution of Purchase Monies.

the Land sold, which are in the Possession or Power of any of the Parties to their Order, and, on the Application of any Purchaser, to issue an Order for the Delivery to him of the Possession of the Land sold, or of such Part thereof as may not be in the Occupation of any Person subject to whose Interest the Sale was made.

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

XL. Upon a Sale of Land under this Act an Incumbrancer or other interested Person (with the Exception of the Person upon whose Application the Sale was made), and with the Leave of the Commissioners such last-mentioned Person, may purchase such Land or any Part thereof; and if an Incumbrancer becomes a Purchaser he may, if the Commissioners think fit, retain out of the Purchase Money such Amount as would, in the Judgment of the Commissioners, be eventually payable thereout to him in respect of his Incumbrance, or any less Sum on Account of such Amount, and pay the Residue only into the Bank or Commissariat Chest; and such Retainer shall be without Prejudice to the Power of the Commissioners to require such Purchaser to pay back into the Bank or Commissariat Chest the whole or any Part of the Amount so retained by him, in the event of their afterwards determining that he is not entitled to retain the same.

Application of Purchase Money.

XLI. The Commissioners shall apply the Money arising from any Sale made by them in satisfaction of the Payments herein-after mentioned according to the Order following; that is to say,

Firstly, in paying to Her Majesty or the Government of the Colony the Consideration for the Purchase of such Crown Rents or other like Sums, if any, as the Commissioners may have thought fit to commute in manner aforesaid:

Secondly, in paying all Costs, Charges, and Expenses of and incidental to the Sale, including the Application for the same, or such of them as they think fit to allow:

Thirdly, in satisfying the Incumbrances affecting such Land according to their Priorities:

And lastly, in paying the Surplus to the Parties who were previously to the Sale entitled to such Land as Owners if such Parties had an absolute Interest therein, but if had not an absolute Interest, then the Commissioners shall lay out the same in manner herein-after mentioned:

And for the Purposes of this Act the Commissioners shall have Power, having due Regard to the Laws and Customs of each Colony, to declare the Rights and Priorities of all Parties interested in such Land, whether as Owners, Incumbrancers, or otherwise howsoever.

Application of Money where Owner not absolutely entitled.

XLII. In Cases where the Parties who were previously to the Sale entitled to such Land as Owners had not an absolute Interest, such Surplus as aforesaid of the Purchase Money shall be settled to the same Uses, upon the same Trusts, and in the same Manner to and in which the Land sold stood settled, or such of them as may be capable of taking effect; and until such Money is so laid out it may be paid 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 or Colonial 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 think fit.

Appointment of new Trustees.

XLIII. In Cases where the Commissioners appoint or 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 think fit for the Appointment of new Trustees, on any Event to be determined by the Commissioners.

Provision where a Part only of Land subject to an Incumbrance is sold.

XLIV. In Cases where a Part only of Land subject to any Incumbrance is sold, the Commissioners may charge the Part not sold with such Incumbrance, or an apportioned Part thereof, in exoneration of the Money arising from the Sale, and enable Persons to release the Money arising from the Part so sold from any Incumbrance, or to relinquish their Claim on such Money in respect thereof, without impairing such Incumbrance as to the remaining Part of the Land originally charged.

Provision for setting aside Monies to meet Incumbrances.

XLV. In Cases where it appears to the Commissioners unjust or inexpedient that a Valuation should be made of such Interests and Incumbrances as they are herein-before authorized

authorized to cause to be valued at a gross Sum, it shall be lawful for them to set aside and invest any Portion of the Money arising from any Sale in such Manner as they think fit to meet the Claims of any such interested Persons or Incumbrancers, and generally the Commissioners shall have Power to make all such Orders and give such Directions with respect to the Application of the Money arising from any Sale as they think best adapted to secure the just and convenient Distribution thereof amongst all interested Parties, according to their several Rights and Titles.

Sales by Commissioners, and Distribution of Purchase Monies.

XLVI. No Payment under this Act towards the Discharge of any Incumbrance, not being a Payment in full, shall prejudice or affect any Right or Remedy of the Incumbrancer in respect of the Balance, otherwise than as against the Land sold; and no Payment under this Act in respect of any Incumbrance shall impair any Right or Equity of any Persons out of whose Land such Payment is made to be reimbursed or indemnified by any other Person or out of any other Land, except so far as the Commissioners order under any special Circumstances.

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.

XLVII. The Commissioners may order any Purchase Money standing to their Account to be invested in their Name in such Government or Colonial Stocks, Funds, and Securities as they think fit, with Power to vary the same into or for others of a like Nature; and until such Stocks, Funds, and Securities are 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 from the Sale of which the Money invested in such Stocks, Funds, or Securities has arisen would have been applicable.

Purchase Money may be invested.

XLVIII. In Cases 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 be invested, to be transferred to the Account of the Accountant General of the High Court of Chancery in *England*, in the Matter of the Parties interested in the same, to be described in such Manner as the Commissioners direct, in trust to attend the Orders of such Court, or to be transferred to the Account of such Officer in any Colony, and be subject to the Jurisdiction of such Court as the Commissioners direct; 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 any such Court as aforesaid) the Facts or Matters found by them in relation to the Rights and Interests therein; and the said Court of Chancery and any such Colonial Court as aforesaid may make such Orders with respect to any such Monies, Stocks, Funds, or Securities as aforesaid, or the Application thereof, as the Circumstances of the Case require.

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

XLIX. The Commissioners shall have the following additional Powers in respect of Sales of Land; that is to say,

Where separate Applications are made for Sales under this Act of different undivided Shares of any Land,

A Power, with the Consent of the Applicants, and such other Consents as the Commissioners think fit to require, to include in One Sale all such undivided Shares;

Where separate Applications are made for Sales under this Act of different Lands, but such Lands are intermixed, or otherwise adapted to be sold together,

A Power, with such Consent or Consents as aforesaid, to include in One Sale such different Lands;

Where an Application is made to the Commissioners for the Sale of any undivided Share in Lands, and the Owner of any other undivided Share or Shares, whether incumbered or not, in the same Land, is desirous of having the same sold at the same Time,

A Power, with such Consent or Consents as aforesaid, to include in One Sale all such Shares as aforesaid:

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

Sales by Commissioners, and Distribution of Purchase Monies.

And all the Provisions of this Act applicable to any Land subject to any Incumbrance, and ordered to be sold under this Act, and to the Purchase Money arising from the Sale thereof, and to the Conveyance thereof, shall, so far as Circumstances admit, be applicable to any Land or Share in Land 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.

Provision for Persons under Disability.

L. A married Woman for the Time being entitled to receive the Income of Land for her separate Use, or having a Power of disposing of Land, either during her Lifetime or by Will, shall, for the Purposes of this Act, be deemed a Feme Sole; but in other Cases, 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, is a Minor, Idiot, Lunatic, or Married Woman, the Guardian, Curator, Tutor, Committee of the Estate, or Husband respectively of such Person, or if there is none any Person appointed by the Commissioners, 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 Persons for the Purposes of this Act.

Proceedings not to abate by Death, &c.

LI. 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 appears just.

Costs.

LII. In every Proceeding under this Act the Commissioners shall have full 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 are in the first instance or ultimately to be paid and borne; but, unless the Commissioners otherwise direct, the Costs of the Petitioner in respect of any Petition for Sale presented under this Act, and of the Proceedings thereunder, shall not be payable out of the Proceeds of the Sale, otherwise than in the same Order of Priority in which the Incumbrance of the Petitioner is payable.

Sales under this Act may be made notwithstanding Proceedings in any other Court.

LIII. In Cases where a competent Court has in the course of any Proceedings made an Order directing any Land to be sold, the Commissioners may sell the same, without further Inquiry; but in that Event, and also in any Case where any competent Court has made an Order in any Proceedings with respect to any Land, or the Rights of any Person interested therein, the Commissioners shall, on selling such Land, and in distributing the Monies arising from such Sale, have regard to the Orders made by such Court, and to any Inquiries or Proof made and taken in the course of such Proceedings, with Power, nevertheless, for the Commissioners, whenever it appears to them that there is any Error in such Order, or any Defect in any such Inquiries or Proofs, to direct such Person as they think fit to apply to the Court in relation thereto, and such Court may make such Order concerning the Matter of such Application as it thinks fit; and the Commissioners may, out of any Monies arising from any Sale under this Act, where there have been any such Proceedings as aforesaid, provide for the Costs of such Application, and may, if they think fit, order all or any Part of the Purchase Money, after Payment thereout of such Costs and Expenses as may be payable under the Orders of the Commissioners, to be paid into the Court in which any such Proceedings have been instituted.

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.

LIV. Where the Commissioners order the Sale of any Land in respect of which any Decree for Sale has been already made by a competent Court, or any Proceedings are pending, 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 suspended; 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 Part thereof sold; and pending any Proceedings for a Sale under this Act it shall not be lawful for any Owner, Incumbrancer, or other Person interested in such Land to commence any Proceedings at Law or in Equity for Redemption, Foreclosure, or Sale.

Powers of Commissioners as to Partition, Exchange, Division, and Allotment.

Powers of Commissioners as to Partition, Exchange, Division, and Allotment.

On Application for Sale of an undivided Share, or after Sale, Commissioners may, on Application of Party interested, and giving Notices and hearing Parties, make Order for Partition.

LV. Where an Application is made for a Sale under this Act of an undivided Share of any Land, or where any such undivided Share has been sold under this Act, and either before or after the Conveyance thereof, the Commissioners, on the Application of any Party interested in such undivided Share, or of the Purchaser, (as the 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 as they think fit, and hearing all such Parties interested in the respective Shares as may apply to them, and making such Inquiries as may enable them to make a just Partition, may, if they think fit, make an Order for the Partition of such Land; 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; and the Part so allotted in Severalty in respect of each such undivided Share shall, without any Conveyance or other Assurance, enure to 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 enured or been subject to in case such Order had not been made.

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

LVI. Where an Application is made for a Sale under this Act of any Land, or where the same has been sold under this Act, if, either before or after the Conveyance thereof, Application is made to the Commissioners by any Party interested in such Land, or by the Purchaser, (as the Case may be,) for the Exchange of all or any Part of such Land, the Commissioners may make such Inquiries as they think fit for the Purpose of 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 all such Parties interested in the respective Lands as may apply to them, the Commissioners are of opinion that such Exchange would be beneficial, and that the Terms therefore are just and reasonable, they may make an Order 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, enure to the same Uses and Trusts, and be subject to the same Conditions, Charges, and Incumbrances, as the Land given on such Exchange would have enured or been subject to in case such Order had not been made.

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

LVII. It shall be lawful for the Commissioners, in any Colony within which this Act may take effect, upon the Application of the Owners of any undivided Shares, (not subject to be sold under this Act, or as to which no Proceedings for a Sale under this Act are pending,) to make such Inquiries as the Commissioners think fit for ascertaining whether a Partition would be beneficial to the Persons interested in such respective Shares; and in case the Commissioners are 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, enure to 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 enured 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.

LVIII. It shall be lawful for the Commissioners, in any Colony within which this Act may take effect, upon the Application of the Owners of Lands in any of the said Colonies not subject to be sold under this Act, or as to which no Proceedings for a Sale under this Act are pending, to make or cause to be made such Inquiries as the Commissioners may think fit for ascertaining whether an Exchange would be beneficial to the Persons interested in the respective Lands; and in case the Commissioners are 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

Powers of Commissioners as to Partition, Exchange, Division, and Allotment.

under such Order shall, without any Conveyance or other Assurance, enure to the same Uses and Trusts, and be subject to the same Conditions, Charges, and Incumbrances, as the Land given upon such Exchange would have enured or been subject to in case such Order had not been made.

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

LIX. It shall be lawful for the Commissioners, in any Colony within which this Act may take effect, upon the Application of any Number of Persons who are 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 are pending, and which are so intermixed, or divided into Parcels of inconvenient Form or Quantity, that the same cannot be cultivated or occupied to the best Advantage, to make such Inquiries as the Commissioners think fit for ascertaining whether a Division would be beneficial to the Persons interested in such Lands; and in case the Commissioners are of opinion that a Division would be beneficial, they shall make an Order for the Division 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 has been made were respectively interested before such Division as the several Parcels allotted to them respectively by such Order; and the Parcels of Land taken under such Division shall enure to 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 have relinquished on such Division would have enured or been subject to in case such Order had not been made.

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

LX. In the Case of Land in respect of which no Proceedings for a Sale under this Act may be pending, no such Order of Partition, Exchange, or Division as aforesaid shall be made by the Commissioners until such Notices by Advertisement in such public Newspaper or Newspapers as the Commissioners direct have been given of such proposed Partition, Exchange, or Division, and Three Months have elapsed from the Publication of the last of such Advertisements; and if before the Expiration of such Three Months any Person entitled to any Estate in or any Incumbrance upon any Land included in such proposed Partition, Exchange, or Division gives Notice in Writing to the Commissioners of his Dissent from such proposed Partition, Exchange, or Division, the Commissioners shall not make an Order for the same unless such Dissent is withdrawn, or it is shown to the Commissioners that the Estate or Incumbrance of the Party so dissenting has ceased, or that such Estate or Incumbrance is not an Estate or Incumbrance in respect of which he is legally entitled to prevent such Partition, Exchange, or Division; 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 has been made.

Conveyances and Proceedings of Commissioners.

Conveyances and Proceedings of Commissioners.

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

LXI. Every Conveyance executed as required by this Act, and every Order for Partition, Exchange, or Division 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 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 or Order shall be impeached by reason of any Informality therein.

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

LXII. 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 of any Court of Justice, or by any other legal Process, nor shall the Commissioners be required by Writ of Mandamus, or any Writ of a like Nature, to do any Act or take any Proceeding under this Act, nor shall Proceedings before them be removable by Certiorari or other Writ of a like Nature.

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

LXIII. The Commissioners shall not, nor shall any Person acting under their Authority, be liable to any Action, Suit, or Proceeding for or in respect of any Act or Matter *bonâ fide* done or omitted in the Exercise or supposed Exercise of the Powers of this Act.

Penalty for false swearing.

LXIV. Every Person who, upon Examination before the Commissioners or any of them, or any Person appointed and authorized under this Act by the Commissioners to administer

any

any 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.

Appeal.

Appeal.

Orders may be reviewed by Commissioners; and Appeal to Privy Council.

LXV. The Commissioners may review, rescind, or vary any Order previously made by them; and it shall be lawful for any Person aggrieved by any Order of the Commissioners, with their Sanction, but not otherwise, to appeal to Her Majesty in Council, in such Manner, within such Time, and subject to such Rules, Regulations, and Limitations as Her Majesty may by Order in Council prescribe; and the Commissioners may, in their Discretion, give or refuse such Sanction, and annex thereto such Conditions, as to giving Security or otherwise, as they shall think fit; but in all Cases where the Commissioners refuse their Sanction to any Appeal their Decision shall be final.

Power to alter Provisions of Act.

Power to alter Provisions of Act.

Power of Commissioners to make Alteration.

LXVI. Wherever it appears to the Commissioners that by reason of the Prevalence in any Colony of Laws or Customs differing from those of *England*, or that by reason of any other Matter or Thing whatsoever it is expedient, with the view of carrying into execution the Purposes of this Act,

That there should be substituted for the Provisions of this Act or any of them other like Provisions accommodated to the Laws or Customs of such Colony; or

That further Provisions should be made for carrying into execution in such Colony the Orders of the Commissioners; for reconciling any Conflict between the Laws of *England* and such Colony; for declaring the Law with respect to any Matter or Thing; or otherwise for more effectually bringing this Act into operation within any Colony, or carrying into effect the Purposes thereof;

It shall be lawful for the Commissioners, having due Regard to the Interests of Owners, Incumbrancers, and others, and to the Laws and Customs of the Colony, by Order under their Seal to make any such Substitutions or Provisions as aforesaid, subject to the Restrictions following; namely, that such Substitutions or Provisions shall not be repugnant to the Spirit of this Act or to the general Law of *England*, and shall not affect the Constitution of the Commissioners as established by this Act; but no such Order shall be of any Force till the same has been confirmed by Order of Her Majesty in Council in manner herein-after mentioned.

Orders to be submitted to Legislature of Colony, and confirmed by Queen in Council.

LXVII. Before any such Order shall be capable of Confirmation, it shall for the Space of Thirty Days be submitted to the Legislature of the Colony within which the same is intended to operate; and if such Legislature, within such Period as aforesaid, express by Resolution their Disapproval thereof, such Order shall thereupon be void to all Intents; but if the Legislature, within the said Period, express by Resolution their Approval thereof, or come to no Resolution in respect thereof, the same shall thereupon be presented to Her Majesty for Confirmation, and, if so confirmed, shall, as soon as conveniently may be, be proclaimed in the Colony, and upon such Proclamation being made shall have the same Force within such Colony as if the same had been enacted by Authority of Parliament.

Order may be altered.

LXVIII. Any Order so confirmed as aforesaid may from Time to Time be rescinded, amended, or altered, as Occasion may require, by other Orders, to be made by the Commissioners, and to be submitted to the Legislature of the Colony, and confirmed in like Manner.

Act how to come into operation.

LXIX. Her Majesty may from Time to Time, by Order in Council, direct this Act to come into operation in any of the said scheduled Colonies, and thereupon, but not otherwise, the same shall have the Force of Law in such Colony or Colonies named in any such Order; but no such Order in Council shall be made in respect of any Colony until the Legislature of such Colony has presented an Address to Her Majesty, praying Her Majesty to issue such Order, and has also, to the Satisfaction of Her Majesty's Principal Secretary of State for the Colonies, made Provision for the Payment of the Salaries of the Local Commissioners, and of all such Assistant Secretaries, Clerks, Messengers, and Officers

as may be appointed under this Act in such Colony, and of such other Expenses of carrying this Act into execution as are herein-before directed to be provided for by the Legislature of the Colony.

SCHEDULE.

Jamaica.	St. Christopher's.
Barbados.	Montserrat.
St. Vincent.	Nevis.
Grenada.	The Virgin Islands.
Tobago.	British Guiana.
St. Lucia.	Trinidad.
Antigua.	The Bahamas.
Dominica.	The Turks Islands.

CAP. CXVIII.

An Act to empower the Legislature of *Canada* to alter the Constitution of the Legislative Council for that Province, and for other Purposes.

[11th *August* 1854.]

'WHEREAS an Act of the Session of Parliament holden in the Third and Fourth 'Years of Her Majesty, Chapter Thirty-five, "to reunite the Provinces of *Upper* and '"*Lower Canada*, and for the Government of *Canada*," provides amongst other things for the 'Establishment of a Legislative Council in the Province of *Canada*, consisting of Members 'summoned thereto by the Governor, under the Authority of Her Majesty as therein 'specified: And whereas it is expedient that the Legislature of the said Province should 'be empowered to alter the Constitution of the said Legislative Council: And whereas the 'said Act requires Amendment in other respect:' Be it 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, as follows:

Power to the the Legislature of Canada to alter the Constitution of the Legislative Council.

I. It shall be lawful for the Legislature of *Canada* by any Act or Acts to be hereafter for that Purpose passed, to alter the Manner of composing the Legislative Council of the said Province, and to make it consist of such Number of Members appointed or to be appointed or elected by such Persons and in such Manner as to the said Legislature may seem fit, and to fix the Qualifications of the Persons capable of being so appointed or elected, and by such Act or Acts to make Provision, if they shall think fit, for the separate Dissolution by the Governor of the said Legislative Council and Legislative Assembly respectively, and for the Purposes aforesaid to vary and repeal in such Manner as to them may seem fit all or any of the Sections and Provisions of the said recited Act, and of any other Act of Parliament now in force which relate to the Constitution of the Legislative Council of *Canada*: Provided always, that any Bill or Bills which shall be passed by the present Legislative Council and Assembly of *Canada* for all or any of the Purposes aforesaid shall be reserved by the said Governor, unless he think fit to withhold Her Majesty's Assent thereto, for the Signification of Her Majesty's Pleasure, and shall be subject to the Enactments of the said recited Act of the Third and Fourth Years of Her Majesty, Chapter Thirty-five, Section Thirty-nine, which relate to Bills so reserved for the Signification of Her Majesty's Pleasure.

Provisions of former Acts of Parliament to apply to the new Legislative Council.

II. As soon as the Constitution of the Legislative Council of the Province of *Canada* shall have been altered under such Act or Acts so assented to by Her Majesty as aforesaid, all Provisions of the said recited Act of Parliament of the Third and Fourth Years of Her Majesty, Chapter Thirty-five, and of any other Act of Parliament now in force relating to the Legislative Council of *Canada* shall be held to apply to the Legislative Council so altered, except so far as such Provisions may have been varied or repealed by such Act or Acts of the Legislature of *Canada* so assented to as aforesaid.

III. It