



ANNO NONO

VICTORIÆ REGINÆ.

CAP. XI.

An Act for the substitution of more simple modes of Assurance in lieu of Fines and Recoveries.

[18th May, 1846.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That, in the construction of this Act, the word "lands" shall extend to advowsons, rectories, messuages, lands, tenements, rents, and hereditaments of any tenure, and whether corporeal or incorporeal, and any undivided share thereof; and the word "estate" shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands; and the expression "base fee" shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression "estate tail," in addition to its usual meaning, shall mean a base fee into which an estate tail shall have been converted; and the expression "actual tenant in tail" shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression "tenant in tail" shall mean, not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression "tenant in tail entitled to a base fee," shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression "money subject to be invested in the purchase of lands" shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to lands of any

Meaning of certain words and expressions.

"Lands."

"Estate."

"Base fee."

"Estate tail."

"Actual tenant in tail."

"Tenant in tail."

"Tenant in tail, entitled to a base fee."

"Money."

"Person."

Number and
gender.

Settlement.

Proviso.

Estates tail
and estates ex-
pectant there-
on, no longer
barrable by
warranty.

Power, after
the 1st of July,
1846, to dis-
pose of lands
entailed in fee
simple or for a
less estate,
saving the
rights of cer-
tain persons.

Power of dis-
position not
to be exercised
by women ten-
ants in tail or
provisions *virii*,
under 11 H. 7.
c. 20. except
with assent.

any tenure out of this Province, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and the word "person" shall extend to a body politic, corporate or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things, as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing, as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and every assurance already made or hereafter to be made whether by deed, will, private Act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as a part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and, where any such settlement is or shall be made by will, the time of the death of the testator shall be considered the time when such settlement was made: Provided always, that those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is any thing in the subject or context repugnant to such construction.

II. And be it enacted, That all warranties of lands which, after the first day of July, one thousand eight hundred and forty-six, shall be made or entered into by any tenant in tail thereof, shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail.

III. And be it enacted, That after the first day of July, one thousand eight hundred and forty-six, every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which, but for some previous act would have been vested in, or might have been claimed by, the person making the disposition, at the time of his making the same, and also as against all persons, including the Queen's Most Excellent Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made.

IV. Provided always, and be it enacted, That where, under any settlement made before the passing of this Act, any woman shall be tenant in tail of lands within the provisions of an Act passed in the eleventh year of the Reign of His Majesty King Henry the Seventh, intituled, *Certain alienations made by the wife, of the lands of her deceased husband shall be void*, the power of disposition hereinbefore contained as to such lands, shall not be exercised by her, except with such
assent

assent as, if this Act had not been passed, would, under the provisions of the said Act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands.

V. Provided always, and be it enacted, That, except as to lands comprised in any settlement made before the passing of this Act, the said Act of the eleventh year of the Reign of His Majesty King Henry the Seventh, shall be of no force in that part of this Province to which this Act extends.

Except, &c.

11 H. 7 c. 20.
to have no
force in U. C.

VI. Provided always, and be it enacted, That the power of disposition hereinbefore contained shall not extend to tenants of estates tail, who, by an Act passed in the thirty-fourth and thirty-fifth years of the Reign of His Majesty King Henry the Eighth, intituled, *An Act to embar feigned recovery of lands wherein the King is in reversion*, or by any other Act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct.

The power of
disposition not
to extend to
certain tenants
in tail.

VII. And be it enacted, That after the first day of July, one thousand eight hundred and forty-six, in every case in which an estate tail in any lands shall have been barred and converted into a base fee, either before or on or after that day, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the Queen's Most Excellent Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of the base fee into which the estate tail shall have been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons, in respect of estates prior to the estate tail which shall have been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made.

Power, after
the 1st of July,
1846, to en-
large base
fees, saving
the rights of
certain per-
sons.

VIII. Provided always, and be it enacted, That nothing in this Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein.

Issue inherita-
ble not to bar
expectancies.

IX. Provided always, and be it enacted, That, if a tenant in tail of lands shall make a disposition of the same, under this Act, by way of mortgage, or for any other limited purpose, then, and in such case, such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity, as well as at law, to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: Provided always, that, if the estate created by such disposition shall be only an estate *per autre vie*, or for years, absolute or determinable; or if, by a disposition under this Act by a tenant in tail of lands, an interest, charge, lien, or incumbrance, shall be created without a term of years, absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall, in equity, be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interests, lien, charge, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected.

Extent of the
estate created
by a tenant in
tail by way of
mortgage, or
for any other
limited pur-
pose.

Proviso.

The owner of the first existing estate under settlement, prior to an estate tail under the same settlement, to be the protector of the settlement.

X. And be it enacted, That, if at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands, or any of them, under the same settlement, any estate for years, determinable on the dropping of a life or lives, or any greater estate (not being an estate for years) prior to the estate tail, then the person who shall be the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this Act, deemed the prior estate), shall be the protector of the settlement, so far as regards the lands in which such prior estate shall be subsisting, and shall, for all the purposes of this Act be deemed the owner of such prior estate, although the same may have been charged or incumbered, either by the owner thereof or by the settler, or otherwise howsoever, and although the whole of the rents and profits be exhausted, or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and that an estate by the curtesy or in dower, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement, within the meaning of this clause; and that an estate by way of resulting use or trust to or for the settler, shall be deemed an estate under the same settlement, within the meaning of this clause.

Each of two or more owners of a prior estate to be the sole protector as to his share.

XI. Provided always, and be it enacted, That, where two or more persons shall be owners, under a settlement within the meaning of this Act, of a prior estate, the sole owner of which estate, if there had been only one, would, in respect thereof, have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement, to the extent of such undivided share.

Where a married woman alone shall be the protector, and where she and her husband together shall be protector.

XII. Provided always, and be it enacted, That, where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled or agreed, or directed to be settled to her separate use, she and her husband together shall, in respect of such estate, be the protector of such settlement, and shall be deemed one owner; but, if such prior estate shall by such settlement have been settled or agreed, or directed to be settled to her separate use, then, and in such case, she alone shall, in respect of such estate, be the protector of such settlement.

As to estates confirmed or restored by settlement.

XIII. Provided always, and be it enacted, That, except in the case of a lease hereinafter provided for, where an estate shall be limited by a settlement, by way of confirmation, or where the settlement shall merely have the effect of restoring an estate; in either of those cases, such estates shall, for the purposes of this Act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement.

XIV. Provided always, and be it enacted, That, where a lease at a rent shall be created or confirmed by a settlement, the person in whose favour such lease shall be created or confirmed, shall not, in respect thereof, be the protector of such settlement.

As to leases at rent created by settlement.

XV. Provided always, and be it enacted, That no woman in respect of her dower, and (except in the case hereinafter provided for, of a bare trustee under a settlement made on or before the first day of July, one thousand eight hundred and forty-six), no bare trustee, heir, executor, administrator, or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator, or assign, shall be the protector of a settlement.

No tenant in dower, heir, executor, &c., to be protector, except in the case of a bare trustee.

XVI. Provided always, and be it enacted, That where, under any settlement, there shall be more than one estate prior to an estate tail, and the person who shall be the owner, within the meaning of this Act, of any such prior estate, in respect of which, but for the two last preceding clauses, or either of them, he would have been the protector of the settlement, shall, by virtue of such clauses, or either of them, be excluded from being the protector; then, and in such case, the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector.

Who shall be the protector where the owner of the prior estate shall, by the two last clauses, be excluded.

XVII. Provided always, and be it enacted, That, where already, or on or before the first day of July, one thousand eight hundred and forty-six, an estate under a settlement shall have been disposed of, either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such estate would, before the first day of January, one thousand eight hundred and thirty-four, have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands entailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement.

Where, in the disposition of an estate before the 1st July, 1846, the person to make the tenant to the writ of entry in a recovery shall be the protector.

XVIII. Provided always, and be it enacted, That, where any person having, either already, or on or before the first day of July, one thousand eight hundred and forty-six, either for valuable consideration or not, disposed of, either absolutely or otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would, under this Act, if this clause had not been inserted, have been the protector of the settlement by which the lands were entailed in which such remainder or reversion may be subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector; then, and in every such case, the person who, before the first day of January, one thousand eight hundred and thirty-four, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement.

Where, in the case of the disposition of a reversion on or before the 1st July, 1846, the person to make the tenant to the writ of entry in a recovery shall be the protector.

XIX. Provided always, and be it enacted, That where, under any settlement of lands made before the first day of January, one thousand eight hundred and thirty-four, the person who, if this Act had not been passed, would have been the proper person

Where a bare trustee, under a settlement made before the 1st of January, 1834,

shall be the protector.

person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands, for the purpose of barring any estate tail or other estate under such settlement, shall be a bare trustee, such trustee shall, during the continuance of the estate conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement.

Power to any settlor to appoint the protector.

XX. Provided always, and be it enacted, That it shall be lawful for any settlor entailing lands to appoint, by the settlement by which the lands shall be entailed, any number of persons in esse, not exceeding three, and not being aliens, to be protector of the settlement, in lieu of the person who would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons in esse; and not being an alien or aliens, whom the donee of the power shall think proper, by deed, to appoint protector of the settlement, in the place of any one person, or number of persons, who shall die, or shall by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person: Provided nevertheless, that, by virtue or means of any such appointment, the number of the persons to compose the protector shall never exceed three: Provided further, nevertheless, that every deed by which a protector shall be appointed under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void unless registered in the Registry Office of the county or counties wherein the lands referred to shall lie, within six calendar months after the execution thereof: Provided further, nevertheless, that the person who, but for this clause, would have been sole protector of the settlement, may be one of the persons to be appointed protector under this clause, if the settlor shall think fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protector shall have ceased to be so by death or relinquishment of the office by deed, and no other person shall have been appointed in their place.

Proviso.

Proviso.

Proviso.

In cases of lunacy, the Vice Chancellor of U. C. or other persons entrusted with lunatics, or, in cases of treason or felony, &c., the Court of Chancery to be the protector.

XXI. Provided always, and be it enacted, That, if any person, protector of a settlement, shall be lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, then the Vice Chancellor of Upper Canada, for the time being, or other the person or persons for the time being entrusted by the Crown with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, shall be the protector of such settlement, in lieu of the person who shall be such lunatic or idiot, or of unsound mind, as aforesaid; or, if any person, protector of a settlement, shall be convicted of treason or felony; or, if any person not being the owner of a prior estate under a settlement, shall be protector of such settlement, and shall be an infant; or, if it shall be uncertain whether such last mentioned person be living or dead; then Her Majesty's Court of Chancery in and for Upper Canada, shall be the protector of such settlement, in lieu of the person convicted as aforesaid, or of the person who shall be an infant, or whose existence cannot be ascertained as aforesaid; or, if any settlor entailing lands, shall, in the settlement by which the lands shall

shall be entailed, declare that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement, shall not be such protector, and shall not appoint any person to be protector in his stead; then, the said Court of Chancery shall, as to the lands in which such prior estate shall be subsisting, be the protector of the settlement during the continuance of such estate; or if, in any other case where there shall be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate shall be sufficient to qualify the owner thereof to be protector of the settlement, and there shall happen at any time to be no protector of the settlement as to the lands in which the prior estate shall be subsisting, the said Court of Chancery shall, while there shall be no such protector, and the prior estate shall be subsisting, be the protector of the settlement as to such lands.

XXII. Provided always, and be it enacted, That, if at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, shall be desirous of making under this Act a disposition of the lands entailed, there shall be a protector of such settlement, then and in every such case the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the lands entailed, which shall be good against all persons who, by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed.

Where there is a protector, his consent requisite to enable an actual tenant in tail to create a larger estate than a base fee.

XXIII. Provided always, and be it enacted, That, where an estate tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the lands in respect of which there shall be such protector, the power of disposition hereinbefore contained.

Where a base fee, and a protector, his consent requisite to the exercising of a power of disposition.

XXIV. And be it enacted, That, any device, shift, or contrivance by which it shall be attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and that the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a Court of Equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust.

The protector to be subject to no control in the exercise of his power of consenting.

XXV. Provided always, and be it enacted, That the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act.

Certain rules of equity not to apply between the protector and a tenant in tail.

XXVI.

A voidable estate by a tenant in tail, in favor of a purchaser, confirmed by a subsequent disposition of such tenant in tail under this Act, but not against a purchaser without notice.

XXVI. Provided always, and be it enacted, That when a tenant in tail of lands under a settlement shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and shall afterwards, under this Act, by any assurance other than a lease not requiring inrolment, made a disposition of the lands in which such voidable estate shall be created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there shall be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act; but if, at the time of making the disposition, there shall be a protector of the settlement, and such protector shall not consent to the disposition, and the tenant in tail shall not without such consent be capable under this Act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent: Provided always, that, if such disposition shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him.

Base fees, when united with the immediate reversions, enlarged instead of being merged.

XXVII. And be it enacted, That, if a base fee in any lands, and the remainder or reversion in fee in the same lands, shall, at the time of the passing of this Act, or at any time afterwards, be united in the same person, and at any time after the passing of this Act there shall be no intermediate estate between the base fee and the remainder or reversion, then and in such case the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act if such remainder or reversion had been vested in any other person.

Tenant in tail to make a disposition by deed, but not by will or contract, and, if a married woman, with her husband's concurrence.

XXVIII. And be it enacted, That every disposition of lands under this Act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute: Provided nevertheless, that no disposition by a tenant in tail shall be of any force, either at law or in equity, under this Act, unless made or evidenced by deed; and that no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this Act, notwithstanding such disposition shall be made or evidenced by deed; and, if the tenant in tail making the disposition shall be a married woman, the concurrence of her husband shall be necessary to give effect to the same; and any deed which may be executed by her for effecting the disposition shall be acknowledged by her as hereinafter directed.

Every assurance by a tenant in tail, except a lease not exceeding 21 years at a

XXIX. Provided always, and be it enacted, That no assurance by which any disposition of lands shall be effected under this Act by a tenant in tail thereof (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve calendar months from the date

date of such lease, where a rent shall be thereby reserved, which, at the time of granting such a lease, shall be a rack-rent, or not less than five sixths parts of a rack-rent,) shall have any operation under this Act unless it be registered in the Registry Office of the county or counties wherein the lands referred to shall lie, within six calendar months after the execution thereof.

rack-rent, or not less than five sixths of a rack-rent, to be inoperative unless registered within six months.

XXX. And be it enacted, That the consent of the protector of a settlement to the disposition under this Act of a tenant in tail, shall be given either by the same assurance by which the disposition shall be effected; or by a deed distinct from the assurance, and to be executed either on or at any time before the day on which the assurance shall be made, otherwise the consent shall be void.

Consent of protector by the same or a distinct deed.

XXXI. And be it enacted, That, if the protector of a settlement shall, by a distinct deed, give his consent to the disposition of a tenant in tail, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he shall refer to the particular assurance by which the disposition shall be effected, and shall confine his consent to the disposition thereby made.

If by distinct deed.

XXXII. And be it enacted, That it shall not be lawful for the protector of a settlement, who, under this Act, shall have given his consent to the disposition of a tenant in tail, to revoke such consent.

Protector not to revoke his consent.

XXXIII. And be it enacted, That any married woman, being, either alone or jointly with her husband, protector of a settlement, may, under this Act, in the same manner as if she were a feme-sole, give her consent to the disposition of a tenant in tail.

A married woman protector.

XXXIV. Provided always, and be it enacted, That the consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition shall be effected by the tenant in tail, be void, unless such deed be registered in the Registry Office of the county or counties wherein the lands referred to shall lie, either at or before the time when the assurance shall be registered.

Consent by distinct deed void, unless registered with or before assurance.

XXXV. And be it enacted, That, in cases of dispositions of lands under this Act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this Act by tenants in tail thereof, the jurisdiction of Courts of Equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts and the supplying of defects in the execution either of the powers of disposition given by this Act to tenants in tail, or of the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which, in a court of law, would not be an effectual disposition or consent under this Act; and that no disposition of lands under this Act by a tenant in tail thereof, in equity, and no consent by a protector of a settlement to a disposition of lands under this Act, by a tenant in tail thereof, in equity, shall be of any force, unless such disposition or consent would, in case

Courts of Equity excluded from giving any effect to dispositions by tenants in tail, or consents of protectors of settlements which in Courts of Law would not be effectual.

of

of an estate tail at law, be an effectual disposition or consent under this Act in a court of law.

Vice Chancellor, &c., to have power to consent to a disposition by a tenant in tail, and to make such orders as shall be thought necessary; and if any other person shall be joint protector, the disposition not to be valid without his consent.

XXXVI. Provided always, and be it enacted, That in every case in which the Vice Chancellor of Upper Canada, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or Her Majesty's said Court of Chancery, shall be the protector of a settlement, such Vice Chancellor, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be,) while protector of such settlement, shall, on the motion or petition in a summary way, by a tenant in tail under such settlement, have full power to consent to a disposition, under this Act, by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid, shall be such as shall be approved of by such Vice Chancellor, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be); and it shall be lawful for such Vice Chancellor, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), to make such orders in the matter as shall be thought necessary; and if such Vice Chancellor, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person protector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person, being protector as aforesaid, shall consent thereto in the manner in which the consent of the protector is by this Act required to be given.

Order of the Vice Chancellor, &c., to be evidence of consent.

XXXVII. Provided always, and be it enacted, That in every case in which the Vice Chancellor, or other person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or Her Majesty's said Court of Chancery, shall be the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made.

The Judge or Commissioner, in the case of an actual tenant in tail becoming bankrupt after the 1st July, 1846, by deed to dispose of the lands of the bankrupt to a purchaser.

XXXVIII. And be it enacted, That any Judge or Commissioner acting in the execution of any Commission of Bankruptcy, which, after the first day of July, one thousand eight hundred and forty-six, shall be issued in pursuance of the laws of this Province, under which any person shall be adjudged a bankrupt, who at the time of issuing such commission, or at any time afterwards, before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become bankrupt, could have done under this Act at the time of such disposition: Provided always, that if, at the time of the disposition of such lands, or any of them, by such Judge or Commissioner as aforesaid, there shall be a protector of the settlement by which the estate of such actual

tenant

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tenant in tail in the lands disposed of by such Judge or Commissioner was created, and the consent of such protector would have been requisite to have enabled the actual tenant in tail, if he had not become bankrupt, to have disposed of such lands to the full extent to which, if there had been no such protector, he could under this Act have disposed of the same, and such protector shall not consent to the disposition, then and in such case, the estate created in such lands, or any of them, by the disposition of such Judge or Commissioner, shall be as large an estate as the actual tenant in tail, if he had not become bankrupt, could at the time of such disposition have created under this Act in such lands without the consent of the protector.

XXXIX. And be it enacted, That any Judge or Commissioner acting in the execution of any such commission as aforesaid, under which any person shall be adjudged a bankrupt, who at the time of issuing such commission, or at any time afterwards, before he shall have obtained his certificate, shall be a tenant in tail entitled to a base fee in lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created; and by such disposition the base fee shall be enlarged into as large an estate as the same could, at the time of such disposition, have been enlarged into under this Act, by the person so entitled if he had not become bankrupt.

Judge or Commissioner, in case of a tenant in tail entitled to a base fee becoming bankrupt, and of there being no protector, by deed to dispose of the lands of the bankrupt to a purchaser.

XL. And be it enacted, That the Judge or Commissioner acting in the execution of any such commission as aforesaid, under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee (as the case may be), was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, so far as regards the consent of such protector; and the disposition of such lands, or any of them, by such Judge or Commissioner as aforesaid, if made with the consent of such protector, shall, whether such Commissioner may have made under this Act a prior disposition of the same lands, without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not, under any Acts now in force or hereafter to be passed concerning bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become bankrupt, and such disposition had been made by him under this Act, with the consent of such protector; and all the previous clauses in this Act, in regard to the consent of the protector to the disposition of a tenant in tail of lands held under any tenure, and in regard to the time and manner of giving such consent, and in regard to the registration of the deed of consent, where such deed shall be distinct from the assurance by which the disposition of the Judge or Commissioner shall be effected, shall, except so far as the same may be varied by the clause next hereinafter contained, apply to every consent that may be given by virtue of this present clause.

As to the consent of the protector in case of Bankruptcy.

As to the registration of the deed of disposition of lands.

XXI. And be it enacted, That every deed, by which any Judge or Commissioner, acting in the execution of any such commission as aforesaid, shall, under this Act, dispose of lands, shall be void unless registered in the Registry Office of the county or counties in which the lands therein referred to shall lie, within six calendar months after the execution thereof.

Subsequent enlargement of base fees created by the disposition of the Judge or Commissioner.

XLII. And be it enacted, That, if any Judge or Commissioner, acting in the execution of any such commission as aforesaid, shall, under this Act, dispose of any lands of any tenure of which the bankrupt shall be actual tenant in tail, and in consequence of there being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands, and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this Act, if, at the time of the disposition by such Judge or Commissioner as aforesaid, there had been no such protector.

Enlargement of base fees subsequent to the sale or conveyance of the same under the bankrupt laws.

XLIII. And be it enacted, That, if a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt, at the time when there shall be a protector of the settlement by which the estate tail converted into the base fee was created, and if such lands shall be sold or conveyed under any Acts now in force or hereafter to be passed concerning bankrupts, and if at any time afterwards during the continuance of the base fee in such lands there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, the base fee in such lands shall be enlarged into the same estate into which the same could have been enlarged under this Act, if at the time of the adjudication of such bankruptcy there had been no such protector, and the Judge or Commissioner, acting in the execution of the commission under which the tenant in tail so entitled shall have been adjudged a bankrupt, had disposed of such lands under this Act.

A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee, becoming bankrupt, confirmed by the disposition of the Judge or Commissioner, if no protector, or being such with his consent or on their ceasing to be a protector; but not against a purchaser, without notice.

XLIV. Provided always, and be it enacted, That, where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a bankrupt under any such commission as aforesaid, and the Judge or Commissioner acting in the execution of such commission shall make any disposition under this Act of the lands in which such voidable estate shall be created, or any of them then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such Judge or Commissioner as aforesaid, whether such Judge or Commissioner may have made under this Act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under any Acts now in force or hereafter to be passed concerning bankrupts, the disposition by such Judge or Commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act; and if at the time.

time of the disposition by such Judge or Commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the disposition by such Judge or Commissioner, and such actual tenant in tail, if he had not been adjudged a bankrupt, would not without such consent have been capable under this Act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such actual tenant in tail, if he had not been adjudged a bankrupt, could at the time of such disposition have been capable under this Act of confirming the same without such consent; and if at any time after the disposition of such lands by such Judge or Commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a protector of such settlement, and such protector shall not have consented to the disposition by such Judge or Commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this Act: Provided always, that if the disposition by any such Judge or Commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him.

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XLV. And be it enacted, That all acts and deeds done and executed by a tenant in tail of lands, of any tenure, who shall be adjudged a bankrupt under any such commission as aforesaid, and which shall affect such lands or any of them, and which, if he had been seized of or entitled to such lands in fee simple absolute, would have been void against the assignees of the bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this Act by such Judge or Commissioner as aforesaid.

Acts of a bankrupt tenant in tail void against any disposition under this Act by the Judge or Commissioner.

XLVI. Provided always, and be it enacted, That, subject and without prejudice to the powers of disposition given by this Act to the Judge or Commissioner acting in the execution of any such commission as aforesaid, under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt, and also subject and without prejudice to the estate in such lands which may be vested in the assignees of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall have the same powers of disposition under this Act in regard to such lands as he would have had if he had not become bankrupt.

Subject to the powers given to the Judge or Commissioner, and to the estate vested in the assignees, a bankrupt tenant in tail shall retain his powers of disposition.

XLVII. And be it enacted, That any disposition under this Act of lands of any tenure by any Judge or Commissioner acting in the execution of any such commission as aforesaid, under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands, shall be adjudged a bankrupt, shall, although the bankrupt be dead at the time of the disposition, be in the following cases as valid and effectual as the same would have been, and have the same operation under this Act as the same would have had, if the bankrupt were alive; that is to say, in case,

The disposition by the Judge or Commissioner of the lands of a bankrupt tenant in tail shall, if the bankrupt be dead, have in the cases hereinafter mentioned

at

the same operation as if he were alive.

at the time of the bankrupt's decease, there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created; or in case the bankrupt had been an actual tenant in tail of such lands, and there shall, at the time of the disposition, be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement, who, in the manner required by this Act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the bankrupt had been tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue, who, if the base fee had not been created, would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement, who, in the manner required by this Act, shall consent to the disposition.

Assignees to recover rents of the lands of a bankrupt, of which the Judge or Commissioner has power to make disposition, and to enforce covenants, as if entitled to the reversion.

This clause to apply to such lands only as the Judge or Commissioner may dispose of after the bankrupt's death.

XLVIII. And be it enacted, That the rents and profits of any lands, of which any Judge or Commissioner acting in the execution of any such commission as aforesaid hath power to make disposition under this Act, shall in the mean time, and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person adjudged bankrupt under the commission, be received by the assignees of the estate of the bankrupt, for the benefit of his creditors; and the assignees may proceed by action of debt for the recovery of such rents and profits, or may distrain for the same upon the lands subject to the payment thereof, and, in case any action of trespass shall be brought for taking any such distress, may plead thereto the general issue, and give this Act or other special matter in evidence; and also, in case any such distress shall be replevied, shall have power to avow or make cognizance, generally, in such manner and form as any landlord may now do by any law or statute now in force, or hereafter to be made, for the more effectually recovering of rent in arrear; and such assignees, and their bailiffs, agents, and servants, shall also have all such and the same remedies, powers, privileges, and advantages of pleading, avowing, and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents, and servants, are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions, and agreements, in respect of the lands of which such Judge or Commissioner as aforesaid hath the power of disposition under this Act, and in respect of the rents and profits thereof, and of entry into and upon the same lands, for the non-observance of any such covenant, condition and agreement, and of expelling and amoving therefrom the tenants or other occupiers thereof, and thereby determining and putting an end to the estate of the persons who shall not have observed such covenants, conditions and agreements, as the bankrupt would have had in case he had not been adjudged a bankrupt: Provided always, that this clause shall only apply to those lands which any Judge or Commissioner, acting in the execution of any such commission as aforesaid, may have power to dispose of under this Act after the bankrupt's decease.

The previous clauses, with certain varia-

XLIX. And be it enacted, That lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject

subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this Act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except that in every case, where under this clause a disposition shall be to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate, and, except in case of bankruptcy, the assurance by which the disposition of such leasehold lands or money shall be effected shall be an assignment by deed, which shall have no operation under this Act unless registered in the Registry Office of the county or counties wherein the lands therein referred to shall lie, within six calendar months after the execution thereof; and in every case of bankruptcy the disposition of such leasehold lands or money shall be made by the Judge or Commissioner, and completed by registration, in the same manner as hereinbefore required in regard to other lands.

tions, to apply to lands of any tenure to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and where money is subject to be invested in like manner.

L. And be it enacted, That, after the first day of July, one thousand eight hundred and forty-six, it shall be lawful for every married woman, in every case, except that of being tenant in tail, for which provision is already made by this Act, by deed to release or extinguish any power which may be vested in, or limited or reserved to her in regard to any lands of any tenure, or any such money as aforesaid, or in regard to any estate in any lands of any tenure, or in any such money as aforesaid, as fully and effectually as she could do if she were a feme-sole; save and except that no such disposition, release, surrender, or extinguishment, shall be valid and effectual, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed.

A married woman, with her husband's concurrence, to release and extinguish powers, as a feme-sole.

LI. Provided always, and be it enacted, That the powers of disposition given to a married woman by this Act shall not interfere with any power which, independently of this Act, may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this Act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition.

Powers of disposition given to a married woman by this Act not to interfere with any other powers.

LII. And be it enacted, That every deed to be executed by a married woman for any of the purposes of this Act, except such as may be executed by her in the character of protector, for the sole purpose of giving her consent to the disposition

Every deed by a married woman, not executed by her as protector,

of

to be acknowledged by her as prescribed by laws of U. C.

of a tenant in tail, shall be executed, produced and acknowledged by her as her act and deed in manner and form prescribed by the laws of Upper Canada, enabling women to convey their real estate.

Court of Queen's Bench in the case of a husband being lunatic, &c., may dispense with his concurrence, except where the Vice Chancellor, or other persons intrusted with lunatics, or the Court of Chancery, shall be the protector of a settlement in lieu of the husband.

LIII. Provided always, and be it enacted, That, if a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever, it shall be lawful for the Court of Queen's Bench of Upper Canada, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said Court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise; and all acts, deeds, or surrenders to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a feme-sole, and, when done, executed, or made by her, shall (but without prejudice to the rights of the husband as then existing independently of this act) be as good and valid as they would have been if the husband had concurred: Provided always, that this clause shall not extend to the case of a married woman where under this Act the Vice Chancellor or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot and of unsound mind, or Her Majesty's Court of Chancery for Upper Canada, shall be the protector of a settlement in lieu of her husband.

Proviso.

This Act to be in force only in U. C.

LIV. And be it enacted, That this Act shall extend to and be in force only in that part of this Province formerly Upper Canada, except where it is otherwise expressly provided.

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