

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
3rd August, 1886.

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Hon. Mr. Buckley.

SETTLED LAND.

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A BILL INTITULED

AN ACT for facilitating Sales of Settled Land.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

5	1. (1.) The Short Title of this Act is "The Settled Land Act, 1886."	Title.
10	(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the <i>thirty-first</i> day of <i>December</i> , one thousand eight hundred and eighty-six, which time is in this Act referred to as "the commencement of this Act."	Short Title.
15	2. (1.) Any deed, will, agreement for a settlement, or other agreement or other instrument, or any number of instruments, whether made before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is, for purposes of this Act, a settlement, and is in this Act referred to as "a settlement," or as "the settlement," as the case requires.	Commencement of Act.
20	(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the	Definition of settlement, tenant for life, &c.

testator's legal personal representative, is, for purposes of this Act, an estate or interest coming to the settlor or legal personal representative under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement is, for purposes of this Act, settled land, and is, in relation to the settlement, referred to in this Act as "the settled land." 5

(4.) The determination of the question whether land is settled land for purposes of this Act or not is governed by the state of facts and the limitations of the settlement at the time of the settlement taking effect. 10

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land for his life is, for purposes of this Act, the tenant for life of that land and the tenant for life under that settlement. 15

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act. 20

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is encumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or, if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for purposes of this Act, are, for purposes of this Act, trustees of the settlement. 25

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as "capital money arising under this Act."

(10.) In this Act— 35

(a.) "Land" includes incorporeal hereditaments, also an undivided share in land; "income" includes rents and profits; and "possession" includes receipt of income:

(b.) The Supreme Court of New Zealand is referred to as "the Court:" 40

GENERAL POWERS AND REGULATIONS.

3. A tenant for life may sell the settled land, or any part thereof, or any easement, right, or privilege of any kind over or in relation to the same.

4. (1.) Every sale shall be made at the best price that can reasonably be obtained. 45

(2.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(3.) On a sale the tenant for life may fix reserve biddings and buy in at an auction. 50

(4.) A sale may be made subject to any stipulations respecting title, or evidence of title, or other things.

Powers to tenant for life to sell, &c.

Regulations respecting sale.

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(5.) On a sale any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed
5 or reserved and made binding, as far as the law permits, by covenant, condition or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold to him.

5. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in
10 undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Concurrence of tenant for life in exercise of powers as to undivided share.

6. (1.) On a sale, mortgage, or charge the tenant for life may, as
15 regards land sold, mortgaged, or charged, or intended so to be, including leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, in the
20 manner requisite for giving effect to the sale, mortgage, or charge.

Completion of sale, &c., by conveyance.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations,
25 powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

- (a.) All estates, interests, and charges having priority to the settlement; and
30 (b.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
(c.) All leases and grants at fee-farm rents or otherwise, and all
35 grants of easements, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the
40 successors in title of the tenant for life.

INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

7. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when
45 received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes: namely,—

Capital money under Act; investment, &c., by trustees or Court.

- (1.) In investment on Government securities, or on real securities in New Zealand, with power to vary the investment into or for any other such securities:
50 (2.) In purchase of land in fee-simple:

- (3.) In purchase, in fee-simple, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
- (4.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge : 5
- (5.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of this Act.

Regulations
respecting
investment,
devolution, and
income of
securities, &c.

8. (1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees or under the direction of the Court, as the case may be, accordingly. 10

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and, in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust-money of the settlement ; and any investment shall be in the names or under the control of the trustees. 15 20

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life or of the trustees.

(4.) Any investment or other application shall not, during the life of the tenant for life, be altered without his consent. 25

(5.) Capital money arising under this Act, while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively in the same manner and for and on the same estates, interests, and trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement. 30

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement. 35

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Investments in land
in New Zealand.

9. Capital money arising under this Act from settled land in New Zealand shall not be applied in the purchase of land out of New Zealand, unless the settlement expressly authorizes the same. 40

Settlement of land
purchased.

10. (1.) Land acquired by purchase shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging. 45 50

(3.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof,

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or any undivided share therein, has heretofore been released on the occasion and in order to the completion of a sale.

(4.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land
5 is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge.

(5.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge is not concerned to inquire whether or not it is proper that
10 the land should be subjected to the charge.

(6.) The provisions of this section referring to land extend and apply as far as may be to mines and minerals, and to easements, rights, and privileges over and in relation to land.

CONTRACTS.

15 **11.** (1.) A tenant for life—

(a.) May contract to make any sale, mortgage, or charge; and

Power for tenant for life to enter into contracts.

(b.) May vary or rescind, with or without consideration, the contract in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be
20 in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act;

(c.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.
25

(2.) Every contract shall be binding on and shall endure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and
30 may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give
35 directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

TRUSTEES.

12. (1.) If at any time there are no trustees of a settlement within the definition in this Act, or where, in any other case, it is
40 expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other
45 guardian or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act, or, with the consent of the Public Trustee, may appoint him to be trustee of the settlement.

Appointment of trustees by Court.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the
50 appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing

trustee, shall, for purposes of this Act, become and be the trustees or trustee of the settlement.

Number of trustees
to act.

13. (1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee. 5

(2.) Subject thereto, the provisions of the Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees' receipts.

14. The receipt in writing of the trustees of a settlement, or, where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, or any money or securities paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferrer therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised. 15

Protection of each
trustee individually.

15. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default. 20

Protection of
trustees generally.

16. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing as they might make, bring, take, or do; and, in case of purchase of land with capital money arising under this Act, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase. 30

Trustees'
reimbursement.

17. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them. 35

Reference of
differences to Court.

18. If at any time a difference arises between a tenant for life and the trustee of the settlement respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit. 40

Notice to trustees.

19. (1.) A tenant for life, when intending to make a sale, mortgage, or charge, shall give notice of his intention in that behalf 45

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to each of the trustees of the settlement by posting registered letters containing the notice addressed to the trustees severally each at his usual or last-known place of abode in New Zealand, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter containing the notice addressed to the solicitor at his place of business in New Zealand, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, mortgage, or of a contract for the same.

10 (2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

15 (3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

PROCEDURE AND GENERAL PROVISIONS.

20 20. (1.) Every application to the Court shall be by petition or by summons at chambers, and be made in accordance with any statute, rule, or regulation for the time being regulating the practice of the Court.

Regulation respecting payments into Court, applications, &c.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

(3.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

25 (4.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

30 (5.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(6.) General rules for purposes of this Act shall be deemed rules of Court within section thirty-one of "The Supreme Court Act, 1882," and may be made accordingly.

35 40 45 90 21. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee-simple or other estate or interest the subject of the settlement, or by creation of a term or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in such other mode as the Court thinks fit.

Payment of costs out of settled property.

Powers not
assignable ;
contract not to
exercise powers
void.

22. (1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement. 5

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life ; and in that case the assignee's rights shall not be affected without his consent. 10

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act ; and in this section "assignment" includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or encumbrance ; and "assignee" has a meaning corresponding with that of assignment. 15

Prohibition or
limitation against
exercise of powers
void.

23. (1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act, a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void. 20 25 30

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same. 35

Provision against
forfeiture.

24. Notwithstanding anything in a settlement the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture. 40

Tenant for life
trustee for all
parties interested.

25. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties. 45

General protection
of purchasers, &c.

26. On a sale, mortgage, or charge a purchaser, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act. 50

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27. (1.) Powers and authorities conferred by this Act on a tenant for life, or trustees, or the Court are exercisable from time to time.

Exercise of powers; limitation of provisions, &c.

5 (2.) Where a power of sale, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

10 (3.) Where any provision in this Act refers to sale, purchase, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

15 28. (1.) Nothing in this Act shall take away, abridge, or pre-judicially affect any power for the time being subsisting under a settlement, or by statute, or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are
20 cumulative.

Saving for other powers.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act relative to any matter in respect whereof the tenant for life exercises, or contracts or intends to exercise, any power under this Act, the provisions of this Act shall
25 prevail, and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act.

30 (3.) If a question arise or a doubt is entertained respecting any matter within this section the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

35 29. (1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life or the trustees of the settlement any powers additional to or larger than those conferred by this Act.

Additional or larger powers by settlement.

(2.) Any additional or larger powers so conferred shall, as far as
40 may be, notwithstanding anything in this Act, operate and be exercisable in the like manner and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement

LIMITED OWNERS GENERALLY.

45 30. (1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act as if each of them were a tenant for life as defined in this Act (namely):—

Enumeration of other limited owners to have powers of tenant for life.

(a.) A tenant in tail:

50 (b.) A tenant in fee-simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:

- (c.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown.
- (d.) A tenant for years determinable on life, not holding merely under a lease at a rent : 5
- (e.) A tenant for the life of another, not holding merely under a lease at a rent.
- (f.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose : 10
- (g.) A tenant in tail after possibility of issue extinct : 15
- (h.) A tenant by the curtesy whose estate shall be deemed to arise under a settlement made by his wife :
- (i.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event. 20

(2.) In every such case the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised. 25

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid. 30

INFANTS ; MARRIED WOMEN ; LUNATICS.

31. Where a person who is in his own right seised of or entitled in possession to land is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof. 35

32. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders. 40

33. (1.) The foregoing provisions of this Act do not apply in the case of a married woman. 45

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her husband, shall have the powers of a tenant for life under this Act. 50

Infant absolutely entitled to be as tenant for life.

Tenant for life infant.

Married woman ; how to be affected.

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(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

5 (4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

10 (5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

15 **34.** Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Court, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

Tenant for life
lunatic.