

TRUSTEES AND INCAPACITATED PERSONS ACT OF 1867 (QUEENSLAND, ADOPTED)⁽¹⁾ IN ITS APPLICATION TO THE TERRITORY OF PAPUA.

An Act to consolidate and amend the Laws relating to Trustees Mortgagees Purchasers and Incapacitated Persons.

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Preamble
repealed by
No. 3 of 1914,
s. 2.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows:—

INTERPRETATION.

1. The several words hereinafter named are herein used and applied in the manner following respectively (that is to say)—

Interpretation
of terms.

(1) The *Trustees and Incapacitated Persons Act of 1867* of Queensland in its application to the Territory of Papua comprises the original *Trustees and Incapacitated Persons Act of 1867* of Queensland, referred to in Part I of the following Table, as amended by the Ordinances of the Territory of Papua referred to in Part II of the following Table:—

TABLE.

PART I.—ACT OF THE STATE OF QUEENSLAND.

Citation of Act.	Ordinance by which adopted.	Date on which adoption took effect.
<i>Trustees and Incapacitated Persons Act of 1867</i> (31 Vic. No. 19) ^(a)	<i>The Courts and Laws Adopting Ordinance (Amended) of 1889</i> (No. 6 of 1889) ^(a)	23.11.1889 (Supplement to British N.G. Govt. Gaz. of 23.11.1889)

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*.

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz.	Date on which came into operation.
<i>Trustees and Executors Ordinance 1912</i> (No. 16 of 1912)	16.7.1912 ^(b)	—	—	23.12.1912 (Papua Govt. Gaz. of 23.12.1912)
<i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914)	—	14.8.1913	4.2.1914	4.2.1914 (Papua Govt. Gaz. of 4.2.1914)

(b) No notice of non-disallowance by Gov.-Gen. in Council has been published in Papua Govt. Gaz.

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- "Land." The term "land" shall be taken to include all tenements and hereditaments and any part or share of or estate or interest in any tenements or hereditaments of what tenure or kind soever
- "Stock." The word "stock" shall mean any fund annuity or security transferable in books kept by any company or society established or to be established or transferable by deed alone or by deed accompanied by other formalities and any share or interest therein
- "Seized." The word "seized" shall be applicable to any vested estate for life or of a greater description at law and in equity in possession or in futurity in any lands
- "Possessed." The word "possessed" shall be applicable to any vested estate less than a life estate at law or in equity in possession or in expectancy in any lands
- "Contingent right." The words "contingent right" as applied to lands shall mean a contingent or executory interest a possibility coupled with an interest whether the object of the gift or limitation of such interest or possibility be or be not ascertained also a right of entry whether immediate or future and whether vested or contingent
- "Convey" and "conveyance." The words "convey" and "conveyance" applied to any person shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seized or entitled to a contingent right either for the whole estate of the person conveying or disposing or for any less estate together with the performance of all formalities required by law to the validity of such conveyance including the acts to be performed by married women and tenants in tail in accordance with any provisions or enactments for giving effect to conveyances by such persons as if fines with proclamations had been levied or common recoveries suffered
- "Assign" or "assignment." The words "assign" or "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning surrendering or otherwise transferring lands of which such person is possessed either for the whole estate of the person so possessed or for any less estate
- "Transfer." The word "transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another.

Trustees and Incapacitated Persons Act of 1867 (Queensland, adopted).

The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage but with this exception the words "trust" and "trustee" shall extend to and include implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust and shall extend to and include the duties incident to the office of personal representative of a deceased person

"Trust" and "trustee."

The word "devisee" shall in addition to its ordinary signification mean the heir of a devisee and the devisee of an heir and generally any person claiming an interest in the lands of a deceased person not as heir of such deceased person but by a title dependent solely upon the operation of the laws concerning devise and descent

"Devisee."

The word "mortgage" shall be applicable to every estate interest or property in lands or personal estate which would in a court of equity be deemed merely a security for money and shall be taken to include every instrument by virtue whereof land is in any manner conveyed assigned pledged or charged as security for the repayment of money or money's worth lent and to be re-conveyed re-assigned or released on satisfaction of the debt and the term "mortgagor" shall be taken to include every person by whom such conveyance assignment pledge or charge as aforesaid shall be made and the term "mortgagee" shall be taken to include every person to whom or in whose favor any such conveyance assignment pledge or charge as aforesaid is made or transferred

"Mortgage."

"Mortgagor."

"Mortgagee."

The term "judgment" shall be taken to include decrees orders of courts of equity and bankruptcy and other orders having the operation of judgments

"Judgment."
Imp. 22 & 23
Vic. c. 35, s. 25.

The word "lunatic" shall mean "any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo*"

"Lunatic."

The expression "person of unsound mind" shall mean any person not an infant who not having been found to be a lunatic shall be incapable from infirmity of mind to manage his own affairs

"Person of unsound mind."

The words "registrar" "prothonotary" and "master in equity" shall be convertible.

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Sections 2-20
repealed by
No. 16 of 1912,
s. 60.

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MORTGAGEES.

Facilitating
extinguishment
of mortgages.

21. Whenever the person entitled to receive payment of any money secured by mortgage upon land shall indorse upon the deed of mortgage an acknowledgment under his hand attested by one witness of the payment of the mortgage debt in full or of any less sum in satisfaction thereof such indorsement shall (upon registration thereof in the manner provided by any law for the registration of other instruments affecting land) operate as a discharge of the mortgage debt and a re-conveyance of all and singular the hereditaments comprised in such mortgage to the person or persons who shall at the time of such payment be entitled to the equity of redemption thereof according to his and their respective interests therein.

Facilitating
redemption in
case of absent
or unknown
mortgagees.

22. Whenever a person entitled to receive payment of any mortgage debt or of any portion thereof shall be out of the jurisdiction of the said court or cannot be found within this colony or is unknown or it shall be uncertain who is so entitled it shall be lawful for the said court upon petition for that purpose by the person entitled to redeem the mortgaged premises to direct the amount of such mortgage debt or of such portion as aforesaid to be paid into court for the use of such person or persons as may thereafter claim the same and establish his or their right thereto and upon such payment into court a certificate under the hand and seal of the master in equity that such payment was allowed and has been made shall on registration thereof as aforesaid operate in the same manner as an indorsement upon the mortgage deed by the person entitled as aforesaid and registered as aforesaid under the provisions hereinbefore contained respectively

Provided that before any such payment into court shall be allowed the amount of the debt or of such portion thereof as aforesaid shall be ascertained in such manner as the said court or judge may think fit and that in respect of any amount not paid into court and which may eventually be shown by the person or persons claiming the same to have been in fact due or payable over and above the amount paid into court the same shall continue to be a debt due upon the mortgage upon the land anything in this section to the contrary notwithstanding.

On claim made
by petition and
proof of right
court may
order money to
be paid provided
it be proved
also that all
deeds have been
delivered up to
person or persons
entitled thereto.

23. Upon petition by the person or persons claiming to be entitled to the money so paid into court and on proof of his or their right thereto the said court shall upon such terms (if any) as may seem meet order the said money to be paid to the said person or persons according to his or their right or interest to and in the same

Provided that no such money shall be paid to the said person or persons under such order until it shall be shown by the admission

of the parties concerned or otherwise to the satisfaction of the master in equity of the said court that the deed or instrument of mortgage and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same or in connection therewith have been delivered up to the person or persons by whom the said money was so paid into court or to his or their executors administrators or assigns.

24. It shall be lawful for the said master in equity by the order of the said court to be made without any formal request by motion petition or otherwise to invest the moneys so paid into court in the purchase of debentures or other negotiable securities granted by the Government of this colony in respect of debts contracted by the said Government.

Master in equity may by order of the court invest the money paid into court in Government securities.

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Sections 25-26 repealed by No. 16 of 1912, s. 60.

27. Any seller or mortgagor of land or of any chattels real or personal or choses in action conveyed or assigned to a purchaser or mortgagee or the solicitor or agent of any such seller or mortgagor who shall after the commencement of this Act conceal any settlement deed will or other instrument material to the title or any incumbrance from the purchaser or mortgagee or falsify any pedigree upon which the title does or may depend in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud shall be liable to an action for damages at the suit of the purchaser or mortgagee or those claiming under the purchaser or mortgagee for any loss sustained by them or either or any of them in consequence of the settlement deed will or other instruments or incumbrance so concealed or of any claim made by any person under such pedigree but whose right was concealed by the falsification of such pedigree and in estimating such damages when the estate shall be recovered from such purchaser or mortgagee or from those claiming under the purchaser or mortgagee regard shall be had to any expenditure by them or either or any of them in improvements on the land but no prosecution for any offence included in this section against any seller or mortgagor or any solicitor or agent shall be commenced without the sanction of Her Majesty's Attorney-General or in case that office be vacant of Her Majesty's Solicitor-General and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney-General or Solicitor-General (as the case may be) shall direct.

Fraudulent concealment of deeds &c. or falsifying pedigree.
Imp. 22 & 23
Vic. c. 35, s. 24.
Imp. 23 & 24
Vic. c. 38, s. 8.

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Sections 28-52 repealed by No. 16 of 1912, s. 60.

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CONTRACTS AFFECTING INCAPACITATED PERSONS.

Agreements may be made by guardians with the approbation of the court and by committees with the approbation of the court.

Imp. 11 Geo. IV. & 1 Wm. IV. c. 65, s. 26.

53. The guardian of any infant with the approbation of the Supreme Court in equity to be signified by an order to be made on the petition of such guardian in a summary way may enter into any agreement for or on behalf of such infant and the committee of the estate of any lunatic with the approbation of the Supreme Court as aforesaid to be signified by an order to be made in the petition of such committee in a summary way may enter into any agreement for or on the behalf of such lunatic which the guardian of an infant may enter into for or on the behalf of an infant by virtue of this Act.

Committee of lunatics by direction of the court may convey land in performance of contracts.

Imp. 1b. s. 27.

54. When any person who shall have contracted to sell mortgage let divide exchange or otherwise dispose of any land shall afterwards become lunatic and a specific performance of such contract either wholly or so far as the same shall remain to be performed shall have been decreed by the Supreme Court in equity either before or after such lunacy it shall be lawful for the committee of the estate of such lunatic in the place of such lunatic by the direction of the Supreme Court as aforesaid to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit to convey such land in pursuance of such decree to such person and in such manner as the Supreme Court as aforesaid shall direct and the purchase money or so much thereof as remains unpaid shall be paid to the committee of such lunatic.

The court may order the estates of lunatics to be sold or charged by mortgage for raising money for the payment of debts &c.

Imp. 1b. s. 28.

55. It shall be lawful for the Supreme Court as aforesaid to order any land of or to which any person being lunatic shall be seized or possessed or entitled to be sold or charged and encumbered by way of mortgage or otherwise disposed of as shall be deemed most expedient for the purpose of raising money for payment of the debts or engagements of such lunatic the discharge of any encumbrances on his estates the costs of applying for and obtaining the commission of lunacy and in opposition thereto and all proceedings under the said commission and the costs of such sales mortgages charges and encumbrances and other dispositions or for any of such purposes as aforesaid as such court shall respectively direct and that the moneys arising from any such sale mortgage charge encumbrance or other disposition may be paid laid out and applied in payment of the debts and engagements of such lunatic the discharge of any encumbrances on his estates the costs of applying for and obtaining the commission of lunacy and in opposition thereto and all proceedings under the same commission or incurred under the order of such court as aforesaid and the costs of such sales mortgages charges and encumbrances and other dispositions in such manner as the said court as aforesaid shall direct and to direct the committee of the estate of such person to execute

in the place of such person respectively conveyances of the estates so to be sold mortgaged encumbered or disposed of and to do all such acts as shall be necessary to effectuate the same in such manner as such court as aforesaid shall direct.

56. Provided always that on any sale mortgage charge encumbrance or other disposition which shall be made in pursuance of this Act the person whose estate shall be sold mortgaged charged encumbered or otherwise disposed of and his or her heirs next of kin devisees legatees executors administrators and assigns shall have such and the like interest in the surplus which shall remain after answering the purposes aforesaid of the money raised by such sale mortgage charge encumbrance or other disposition as he she or they would have had in the estate by the sale mortgage charge encumbrance or other disposition of which such moneys shall be raised if no such sale mortgage charge encumbrance or other disposition had been made and such moneys shall be of the same nature and character as the estate so sold mortgaged charged encumbered or disposed of and it shall be lawful for the said Supreme Court as aforesaid to make such orders and to direct such acts and deeds to be done and executed as shall be necessary for carrying the aforesaid objects into effect and for the due application of such surplus moneys.

Surplus of moneys to be of the same nature as the estate.

Imp. 11 Geo. IV. and 1 Wm. IV. c. 65, s. 29.

57. Provided nevertheless that nothing in this Act contained shall extend to subject any part of the estates of any person being lunatic to the debts or demands of his creditors otherwise than as the same are now subject and liable by due course of law but only to authorise the Supreme Court as aforesaid to make order in such cases as are hereinbefore mentioned when the same shall be deemed just and reasonable or for the benefit or advantage of such lunatic.

Act shall not subject estates of lunatics to debts otherwise than they are now subject.

Imp. 1b. s. 30.

58. Every surrender and lease agreement conveyance mortgage or other disposition respectively granted and accepted executed and made by virtue of this Act shall be and be deemed as valid and legal to all intents and purposes as if the person by whom or in whose place or on whose behalf the same respectively shall be granted or accepted executed and made had been of full age unmarried or of sane mind and had granted accepted made and executed the same and every such surrender and lease respectively made and accepted by or on the behalf of a *femme covert* shall be valid.

Surrender and leases deemed valid.

Imp. 1b. s. 31.

STOCK AND MONEY OF INCAPACITATED PERSONS.

59. It shall be lawful for the Supreme Court in equity by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing or any sum of money by virtue of any Act for paying off any stock and who shall be bene-

Court may order dividends of stock belonging to infants to be applied for maintenance.

Imp. 1b. s. 32.

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ficially entitled thereto or if there shall be no guardian by an order to be made in any cause depending in the said court to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money to be paid to any guardian of such infant or to any other person according to the discretion of such court for the maintenance and education or otherwise for the benefit of such infant such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment and the receipt of such guardian or other person for such dividends or sum of money or any part thereof shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

Stock belonging to lunatics may be ordered by the court to be transferred.

Imp. 11 Geo. IV. and 1 Wm. IV. c. 65, s. 33.

60. Where any stock shall be standing in the name of or shall be vested in any person being lunatic who shall be beneficially entitled thereto or shall be standing in the name of or vested in any person being committee of the estate of a person found lunatic in trust for or as part of his property and such committee shall have died intestate or shall himself become lunatic or shall be out of the jurisdiction of or not amenable to the process of the Supreme Court in equity or it shall be uncertain whether such committee be living or dead or such committee shall neglect or refuse to transfer such stock and to receive and pay over the dividends thereof to a new committee or as he shall direct for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee then and in every or any such case it shall be lawful for the Supreme Court as aforesaid upon the petition of the committee of the estates of the person being lunatic or of the person reported by the master to whom the matter is referred as a proper person to be such committee although such report shall not have been confirmed to direct such person as such court shall think proper to appoint for that purpose to transfer such stock to or into the name of any new committee or in the name of the accountant-general of the said court or otherwise and also to receive and pay over the dividends thereof or such sum or sums of money in such manner as such court shall think proper and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

Where stock shall be standing in the names of lunatics residing out of Queensland the court may direct the transfer.

Imp. 7b. s. 34.

61. Where any stock shall be standing in the name of or vested in any person residing out of Queensland it shall be lawful for the Supreme Court as aforesaid upon petition and proof being made to his or their satisfaction that such person has been declared lunatic and that his personal estate has been vested in a curator or other person appointed for the management thereof according to the laws of the place where such person shall reside to direct any person whom such court shall think proper to appoint for that purpose to transfer such stock or any part or parts thereof into the name

of any such curator or other such person as aforesaid or otherwise and also to receive and pay over the dividends thereof as such court shall think fit and that such transfer and payments shall be valid and effectual to all intents and purposes whatsoever.

62. Where any infant or person of unsound mind shall be entitled to any money payable in discharge of any lands stock or chose in action conveyed assigned or transferred under this Act it shall be lawful for the person by whom such money is payable to pay the same into any of the banks established in this colony by Acts of Parliament or Council in the name and with the privity of the master in equity of the Supreme Court in trust in any cause then depending concerning such money or if there shall be no such cause to the credit of such infant or person of unsound mind subject to the order or disposition of the said court and it shall be lawful for the said court upon petition in a summary way to order any money so paid to be invested in such manner as the said court shall think fit and to order payment or distribution thereof or payment of the dividends or interest thereof as to the said court shall seem reasonable and every cashier of any bank who shall receive any such money is hereby required to give to the person paying the same a receipt for such money and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

Money of infants and persons of unsound mind to be paid into court.

REALTY OF INCAPACITATED PERSONS.

63. In all cases where any person being under the age of twenty-one years or a *femme covert* is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons or for any term of years either absolute or determinable upon the death of one or more person or persons or otherwise it shall be lawful for such person under the age of twenty-one years or for his or her guardian or other person on his behalf and for such *femme covert* or any person on her behalf to apply to the Supreme Court in equity as to land within its jurisdiction by petition or motion in a summary way and by the order and direction of the said court such infant or *femme covert* or his guardian or any person appointed in the place of such infant or *femme covert* by the said court shall and may be enabled from time to time by deed or deeds to surrender such lease or leases and accept and take in the place and for the benefit of such person under the age of twenty-one years or *femme covert* one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act for and during such number of lives or for such term or terms of years determinable upon such number of lives or for such term or terms of years absolute as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively or otherwise as the said court shall direct.

Guardians of minors &c. in order to the surrender and renewal of leases may apply to the court in equity and by order may surrender such leases and renew the same &c.

Imp. 11 Geo. IV. and 1 Wm. IV. c. 65, s. 12.

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Committees of lunatics may in like manner surrender lease and renew the same &c.

Imp. 11 Geo. IV. & 1 Wm. IV. c. 65, s. 13.

64. In all cases where any person being lunatic shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons or for any term of years either absolute or determinable upon the death of one or more person or persons or otherwise it shall be lawful for the committee of the estate of such person to apply to the Supreme Court in equity by petition or motion in a summary way and by the order and direction of the said court such committee shall and may be enabled from time to time by deed or deeds in the place of such lunatic to surrender such lease or leases and accept and take in the name and for the benefit of such lunatic one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this Act for and during such number of lives or for such term or terms of years absolute or determinable as aforesaid as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively or otherwise as the said court shall direct.

Charges attending renewal to be charged on the estates as the court shall direct.

Imp. *Ib.* s. 14.

65. Every sum of money and other consideration paid by any guardian trustee committee or other person as a fine premium or income or in the nature of a fine premium or income for the renewal of any such lease and all reasonable charges incident thereto shall be paid out of the estate or effects of the infant or lunatic for whose benefit the lease shall be renewed or shall be a charge upon the leasehold premises together with interest for the same as the said court as aforesaid shall direct and determine and as to leases to be made upon surrenders by *femmes covert* unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured the same together with interest shall be a charge upon such leasehold premises for the benefit of the person who shall advance the same.

New leases shall be to the same uses.

Imp. *Ib.* s. 15.

66. Every lease to be renewed as aforesaid shall operate and be to the same uses and be liable to the same trusts charges encumbrances dispositions devices and conditions as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

Infants and married women empowered to grant renewals of leases.

Imp. *Ib.* s. 16.

67. Where any person being under the age of twenty-one years or a *femme covert* might in pursuance of any covenant or agreement if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons or for any term or number of years absolute or determinable on the death of one or more person or persons it shall be lawful to and for such infant or its guardian in the name of such infant or such *femme covert* by the direction of the Supreme Court in equity to be signified by an order to be made in a summary way upon the petition of such infant or his guardian or of such *femme covert*

or of any person entitled to such renewal from time to time to accept of a surrender of such lease and to make and execute a new lease of the premises comprised in such lease for and during such number of lives or for such term or terms determinable upon such number of lives or for such term or terms of years absolute as was or were mentioned in the lease so surrendered at the making thereof or otherwise as the court by such order shall direct.

68. Where any person being an infant under the age of twenty-one years is or shall be seized or possessed of or entitled to any land in fee or in tail or to any leasehold land for an absolute interest and it shall appear to the Supreme Court in equity to be for the benefit of such person that a lease or under lease should be made of such estates for terms of years for encouraging the erection of buildings thereon or for repairing buildings actually being thereon or the working of mines or otherwise improving the same or for farming or other purposes it shall be lawful for such infant or his guardian in the name of such infant by the direction of the said court to be signified by an order to be made in a summary way upon the petition of such infant or his guardian to make such lease of the land of such persons respectively or any part thereof according to his or her interest therein respectively and to the nature of the tenure of such estates respectively for such term or terms of years and subject to such rents and covenants as the said court shall direct but in no such case shall any fine or premium be taken and in every such case the best rent that can be obtained regard being had to the nature of the lease shall be reserved upon such lease and the leases and covenants and provisions therein shall be settled and approved of by a master of the said court and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named and such counterparts shall be deposited for safe custody in the master's office until such infant shall attain twenty-one but with liberty to proper parties to have the use thereof if required in the meantime for the purpose of enforcing any of the covenants therein contained

Supreme Court may authorize leases to be made of lands belonging to infants when it is to the benefit of the estate.
Imp. 11 Geo. IV. & 1 Wm. IV. c. 65, s. 17.

Provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

69. Where any person who in pursuance of any covenant or agreement in writing might if within the jurisdiction and amenable to the process of the Supreme Court in equity be compelled to execute any lease by way of renewal shall not be within the jurisdiction or not amenable to the process of the said court it shall be lawful to and for the said court by an order to be made upon the petition of any person or any of the persons entitled to such renewal (whether such person be or be not under any disability) to direct such person as the said court shall think proper to appoint for that

If persons bound to renew are out of the jurisdiction of the court the renewals may be made by a person appointed by the Supreme Court in the name of the person who ought to have renewed.
Imp. 17. s. 18.

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purpose to accept a surrender of the subsisting lease and make and execute a new lease in the name of the person who ought to have renewed the same and such deed executed by the person to be appointed as aforesaid shall be as valid as if the person in whose name the same shall be made had executed the same and had been alive and not under any disability but in every such case it shall be in the discretion of the said court if under the circumstances it shall seem requisite to direct a bill to be filed to establish the right of the party seeking the renewal and not to make the order for such new lease unless by the decree to be made in such cause or until after such decree shall have been made.

Committees of lunatics by the direction of the court may accept of surrenders and make new leases.
Imp. 11 Geo. IV. and 1 Wm. IV. c. 65, s. 19.

70. Where any person being lunatic is or shall be entitled or has a right or in pursuance of any covenant or agreement might if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons or for any term or number of years absolute or determinable on the death of one or more person or persons or otherwise it shall be lawful to and for the committee of the estate of such lunatic in the name of such lunatic by the direction of the Supreme Court in equity to be signified by an order to be made in a summary way upon the petition of such committee or of any person entitled to such renewal from time to time to accept of a surrender of such lease and to make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this Act for and during such number of lives or for such term or terms of years determinable upon such number of lives or for such term or terms of years absolute as were mentioned or contained in such lease so surrendered at the making thereof or otherwise as the said court as aforesaid by such order shall direct and this provision shall extend as well to cases where the lunatic shall not be compellable to renew but it shall be for his benefit to do so as to cases where a renewal might be effectually enforced against the lunatic if of sound mind.

Fines to be paid before renewals and counterparts are executed.
Imp. *Ib.* s. 20.

71. Provided always that no renewed lease shall be executed by virtue of this Act in pursuance of any covenant or agreement unless the fine (if any) or such other sum or sums of money (if any) as ought to be paid on such renewal and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant be first paid and performed and counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee.

Premiums how to be paid.
Imp. *Ib.* s. 21.

72. All fines premiums and sums of money which shall be had received or paid for or on account of the renewal of any lease after a deduction of all necessary incidental charges and expenses shall be paid if such renewal shall be made by or in the name of an

infant to his guardian and be applied and disposed of for the benefit of such infant in such manner as the said court shall direct if such renewal shall be made by a *femme covert* to such person or in such manner as the court shall direct for her benefit if such renewal shall be made in the name of any person out of jurisdiction or not amenable as aforesaid to such person or in such manner or into the Supreme Court in equity to such account and to be applied and disposed of as the said court shall direct and if such renewal should be made in the name of a lunatic to the committee of the estate of such lunatic and be applied and disposed of for the benefit of such lunatic in such manner as the court as aforesaid shall direct but upon the death of such lunatic all such sum and sums of money as shall arise by such fines or premiums or so much thereof as shall remain unapplied for the benefit of such lunatic at his death shall as between the representatives of the real and personal estate of such lunatic be considered as real estate unless such lunatic shall be tenant for life only and then the same shall be considered as personal estate.

On death of lunatic money arising by such fines to be considered real estate.

73. Where any person being lunatic is or shall be seized or possessed of any land either for life or for some other estate with power of granting leases and taking fines reserving small rents on such leases for one two or three lives in possession or reversion or for some number of years determinable upon lives or for any term of years absolutely such power of leasing which is or shall be vested in such person being lunatic and having a limited estate only shall and may be executed by the committee of the estate of such person under the direction and order of the Supreme Court as aforesaid.

The power of leasing lands &c. of lunatics having a limited estate may be executed by the committee. Imp. 11 Geo. IV. and 1 Wm. IV. c. 65, s. 23.

74. Where any person being lunatic is or shall be seized or possessed of or entitled to any land in fee or in tail or to any leasehold land for an absolute interest and it shall appear to the Supreme Court as aforesaid to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years for encouraging the erection of buildings therein or for repairing buildings actually being thereon or otherwise improving the same or for farming or other purposes it shall be lawful for the Supreme Court as aforesaid to order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively or any part thereof according to his or her interest therein respectively and to the nature of the tenure of such estates respectively for such term or terms of years and subject to such rents and covenants as the Supreme Court as aforesaid shall direct.

Where lunatics are seized of estates in fee or in tail or an absolute interest in leasehold estates the court may direct leases to be made. Imp. 1b. s. 24.

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Sections 75-99 repealed by No. 16 of 1912, s. 60.

LEGAL INCAPACITY—

POWERS OF THE COURT.

General rules
may be made
by the judges.
Imp. 15 & 16
Vic. c. 76, s. 223.

100. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders⁽²⁾ for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorized to be done and substituting other days for the same as in their judgment shall be necessary or proper

Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

COMMENCEMENT AND SHORT TITLE.

Commencement
of Act.

Short title.

101. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Trustees and Incapacitated Persons Act of 1867.*"⁽¹⁾

(1) See footnote (1) printed on p. 2803.

(2) No general rules or orders were in force in Queensland at the date of the adoption of the *Trustees and Incapacitated Persons Act of 1867* as a law of the Possession of British New Guinea, and none have been published in *British N.G. Govt. Gaz.* or *Papua Govt. Gaz.* since that date.