



ANNO VICESIMO TERTIO ET VICESIMO QUARTO

# VICTORIÆ REGINÆ.

A.D. 1860.

*Morgan's Chancery orders  
4ed 272*

No. 6.

*An Act to amend the Law of Property and for other Purposes.*

[Assented to, 17th October, 1860.]

**B**E it Enacted by the Governor-in-Chief of the Province of South Preamble.  
Australia, with the advice and consent of the Legislative  
Council and House of Assembly of the said Province, in this present  
Parliament assembled, as follows—

1. In the construction of this Act—

Interpretation of  
terms.

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 :

The word "transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such from himself to another :

The word "mortgage" shall mean every instrument by virtue whereof land or other property is in any manner conveyed, assigned, pledged, or charged as security for the repayment of money or money's worth lent, and to be reconveyed, re-assigned, or released on satisfaction of the debt :

The word "mortgagor" shall mean every person by whom such conveyance, assignment, pledge, or charge as aforesaid shall be made :

The word "mortgagee" shall mean every person to whom or in  
whose

X N. B. That the provision (complete  
mental) in Imp'd Act 23 of U.C. 38  
S. 6 has not been enacted in A.C.

whose favor any such conveyance, assignment, pledge, or charge as aforesaid is made or transferred:

The word Court shall mean the Supreme Court of South Australia:

The word "person," used and referred to in the masculine gender, shall include a female as well as a male, and shall include a body corporate; and, generally, unless the contrary shall appear from the context, every word importing the singular number shall extend to several persons or things, and every word importing the masculine gender only shall extend to a female.

Restriction on effect  
of licence to alien.

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2. Where any licence to do any act, which, without such licence would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after the commencement of this Act be given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights, under covenants and powers of forfeiture and re-entry in the lease contained, shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant, or condition, assignment, underlease, or other matter, not specifically authorized, or made dispunishable by such licence, in the same manner as if no licence had been given; and the condition and right of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorized to be done.

Restricted operation  
of partial licence.

3. Where, in any lease heretofore granted, or to be hereafter granted, there is, or shall be a power or condition of re-entry on assigning or underletting, or doing any other specified act, without licence, and a licence at any time after the commencement of this Act shall be given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act, as aforesaid, in respect of part only of such property; such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over, or in respect of such shares, or interests, or remaining property, but such right of re-entry shall remain in full force, over, or in respect of the shares, or interests, or property, not the subject of such licence.

Apportionment of con-  
ditions of re-entry in  
certain cases.

4. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the

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the reversion, shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have, and be entitled, to the benefit of all conditions or powers of re-entry for non-payment of the original rent, or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion, in respect of the apportioned rent, or other reservation, allotted or belonging to him.

5. The Court shall have power to relieve, against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has, in the opinion of the Court, been committed through accident or mistake, or otherwise, without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court, in conformity with the covenant to insure, upon such terms as to the Court may seem fit.

Relief against forfeiture for breach of covenant to insure in certain cases.

6. The Court, where relief shall be granted, shall direct a record of such relief having been granted, to be made by endorsement on the lease or otherwise.

When relief granted the same to be recorded.

7. The Court shall not have power under this Act to relieve the same person more than once in respect of the same covenant or condition; nor shall it have power to grant any relief under this Act, where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of Court in favor of the person seeking the relief.

Court not to relieve any person more than once in respect of the same covenant, &c.

8. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire, shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured effected by the lessee or mortgagor, in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

Lessor to have benefit of an informal insurance.

9. Where on the *boná fide* purchase after the commencement of this Act of a leasehold interest, under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damages, or otherwise in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase; but this provision is not to

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.

take

take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

Preceding provisions to apply to leases for a term of years absolute, &c.

10. The preceding provisions shall be applicable to leases for a term of years absolute or determinable on a life or lives or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons.

Release of part of land charged, not to be an extinguishment of rent-charge.

11. The release from a rent-charge of part of the hereditaments charged therewith, shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

Release of part of land charged not to affect execution.

12. The release from an execution of part of any hereditaments charged therewith shall not affect the validity of the execution as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release.

Mode of execution of Powers.

13. A deed, hereafter executed in the presence of and attested by two or more witnesses, in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed, or by any instrument in writing, not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution, or attestation, or solemnity: Provided always, that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

Devisee in trust may raise money by sale notwithstanding want of express power in the will.

14. Where, by any will which shall come in operation after the commencement of this Act, the testator shall have charged his real estate or any specific portion thereof with the payments of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy,

*See 1 Ch. 56, 446:762,*

*1 Ch. 53 339*  
*Trustee for whole est.*

*See 1 Robbins 406 et seq*

*S.S. 14 et seq / one same as S.S. 14 et seq / in 1856 Swarth's Act: 22-3 V. c. 35 / 1859.*

+ Does not apply to Ord. 16 C 3  
But see now in Act No. 537 of 1911, S. 64.

legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money, as aforesaid, by a sale and absolute disposition, by public auction or private contract of the said hereditaments or any part thereof, or by a mortgage of the same with or without a power of sale, on default of payment, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest, and fix such period or periods of repayment, as the person or persons executing the same shall think proper.

CR 202/341

15. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent or devise, or to any person or persons who may be appointed under any power in the will, or by the Court, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Powers given by last section extended to survivors, devisees, &c.

16. If any testator who shall have created such a charge as is described in section 14, shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested; but any sale or mortgage under this Act shall operate only on the estate and interest whether legal or equitable of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

see H 28 James' Will & S 64

Executors to have power of raising money, &c., where there is no sufficient devise.  
Whole  
L 16 C 3 not not  
- 74 IC 731 1843  
- 20 C 745 36-4  
- 28 C 138  
- 40 C 253  
- 1 Ch '03, 330

Called  
by?

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 14, 15, and 16 of this Act or either of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Purchasers, &c., not bound to inquire as to powers.

CR 714 C 431

18. The provisions contained in sections 14, 15, and 16 shall not in any way prejudice or affect any sale or mortgage already made, or hereafter to be made, under or in pursuance of any will coming into operation before the commencement of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed, and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

Sections 14, 15, and 16 not to affect certain sales, &c., nor to extend to devisees in fee or in tail  
1 Ch '03, 330  
S c 18 limited  
vis sine 14-15  
1/6  
any one devisee can only  
take part of the estate  
by gift or purchase  
at common law  
1 Ch '03,

19. Every person shall have power to assign any chose in action, and the assignee thereof for the time being may bring every such

Assignment choses in action.  
see No. 1160 of 78  
Sec. 6 subsec II

action thereupon or in respect thereof in his own name as the assignor or the first of the assignors could have brought if no such assignment had been made, without prejudice nevertheless to any equity of the defendant as against the plaintiff or any such assignor.

Assignment of personalty to self and others.

20. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or other persons, by the like means as he might assign the same to another.

Purchasers not to be bound to see to the application of purchase-money.

21. The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

As to liability of executor or administrator in respect of rents, covenants, or agreements.

22. Where an executor or administrator, liable as such, to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate, whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease, and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

As to liability of executor, &c., in respect of rents, &c., in conveyances or rent charge.

23. In like manner, where an executor or administrator, liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation) or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered shall have satisfied



satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate, shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance, but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

24. Where an executor or administrator shall have given such or the like notices, as would have been given by the Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

25. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to the Court for the opinion, advice, or direction of the Court, on any question respecting the management or administration of the trust, property, or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by all persons interested in such application, or such of them as the Court shall think expedient, and the trustee, executor, or administrator,

As to distribution of the assets of testator or intestate after notice given by executor or administrator.

*Refd 586 of 193, Sched I*

*Refd 586 of 193, Sched I*

Trustee, executor, &c., may apply by petition to Court, for opinion, advice, &c., in management, &c., of trust property. S. 1.

*1C 226  
233  
5-843*

*1381 of 1855-96  
P 11339*

*In Regd under 23-4 of C. 39, S. 9, the acting trustee must be signed by counsel, & the Judge may require to be attended by counsel: 2 Jan 6<sup>th</sup> 2232*

acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject matter of the said application: Provided, nevertheless, that such application shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud, or wilful concealment, or misrepresentation, in obtaining such opinion, advice, or direction; and the costs of such application shall be in the discretion of the Court.

Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the trustees.

26. Every deed, will, or other instrument creating a trust either expressly or by implication, shall, without prejudice to the clauses, actually contained therein, be deemed to contain a clause in the words, or to the effect following, that is to say—"That the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys, or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default, respectively, and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

Trustees, &c., may pay trust moneys, or transfer stocks and securities into Court.

27. That all trustees, executors, administrators, mortgagees, or other persons, having in their hands any moneys belonging to any trust whatsoever, or in respect whereof a trust shall have arisen by implication or construction of law, or the major part of them, shall be at liberty, on filing an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, or if there shall be no such instrument, then shortly setting out the facts of the case, and if the moneys shall be the surplus arising from the sale of mortgaged property, then setting out the deed or instrument of mortgage, to pay the same into the Court, in the matter of the particular trusts (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the Court; and that all trustees or other persons, having any stock or chose in action standing in their names, or in the names of any deceased persons, of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them, shall be at liberty to transfer or deposit such stock or chose



choses in action into the Court, in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the Court; and in every such case the receipt of the Court, or some duly authorized officer thereof, for the money so paid, or, in the case of stock or choses in action, the certificate of the Court, or such duly authorized officer, of the transfer, or deposit of such stock or choses in action, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the stock or choses in action so transferred or deposited.

28. That where the major part of such trustees, executors, administrators, or other persons, are desirous of making such transfer, payment, or delivery, as aforesaid, but for any reason the concurrence of the other or others of them cannot be had, it shall be lawful for the Court to order and direct such transfer, payment, or delivery, to be made by the major part of such persons, without the concurrence of the other or others of them; and where any such moneys, stock, or choses in action, shall be deposited with any banker, broker, or other depository, it shall be lawful for the Court to make such order for the payment or delivery of such moneys, stock, or choses in action, to the major part of such trustees, executors, administrators, or other persons, as aforesaid, for the purpose of being paid or delivered into the Court, as to the Court shall seem meet; and every transfer of any stock or choses in action, in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority, or by the act of all the persons entitled to the stock or choses in action so transferred, or the moneys so paid, and shall fully protect and indemnify all Companies and Associations whatsoever, and all persons acting under or in pursuance of such order.

Court may, upon application by a majority of trustees, &c., order payment or transfer.

29. That such orders as shall seem fit, shall be from time to time made by the Court, in respect of the trust moneys, stock, or choses in action so paid in, transferred, and deposited, as aforesaid, and for the investment and payment of any such moneys, or of any dividends or interest on any such stock or choses in action, and for the transfer and delivery out of any such stock and choses in action, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to the Court, without bill, by such party or parties as to the Court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court shall see fit and direct; and every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to rehearing and appeal, in the same manner as if the same had been made in a suit regularly instituted in the Court; and if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suits, the Court may direct any such suit or suits to be instituted.

Court to make orders on petition, without bill, for application of trust moneys, and administration of trust.

586d 93, sched I

Court may make general orders.

30. The Court shall have power, and is hereby authorized, to make such orders, as from time to time shall seem necessary for better carrying the provisions of sections 27, 28, and 29, of this Act into effect.

Personal property in South Australia may be recovered in certain cases without administration or probate in South Australia.

Call 537  
1911 S. 216.

31. Where any person possessed of personal property in the said Province shall die in any part of Her Majesty's dominions out of such Province, and administration to his or her effects, or probate of his or her will, shall be duly granted in Great Britain or Ireland, the administrator or executor shall, upon production of, and after depositing, pursuant to the Act No. 22 of 1853, the letters of administration, or probate, or exemplifications, or office copies thereof, be entitled to recover, receive, and take possession of such personal property without obtaining administration to the effects, or probate of the will of the deceased, in the said Province.

Wills of realty how proved.

32. The probate of any will proved in the said Province, or the probate, or an exemplified copy of the probate of any will granted by any Court out of the said Province, having authority to grant probate of wills, shall be *prima facie* evidence of the contents of such will and of the due execution thereof, in all actions, suits, and other proceedings in the said Province relating to lands or hereditaments therein situate: Provided, with respect to such exemplified copy, that it shall either purport to be sealed with the seal of the Court by which such probate shall have been granted, or, in the event of such Court having no seal, to be signed by the Judge, or by any one of the Judges of such Court: And provided that such Judge shall attach to his signature a statement in writing that such Court has no seal, but if any of such copies shall purport to be so sealed or signed respectively, the same shall be respectively received in evidence in every case in which the original document might be received in evidence, without proof of the authority of such Court, or of the seal, or of the signature or truth of the statement attached thereto, or of the judicial character of the person appearing to have made such signature and statement: Provided also, that at least one calendar month prior to the trial of the action, suit, or other proceeding wherein it is intended to use such probate, or exemplified copy as evidence, notice in writing of such intention shall be given to the opposite party by the party proposing to use the same; and it shall be lawful for the Court, or a Judge thereof, from time to time to postpone the trial or hearing, in order to afford an opportunity to the party against whom it is proposed to use such probate or exemplified copy as evidence to make inquiries and obtain any evidence which may be necessary to impeach the validity of such will; and it shall be lawful for the Court or Judge, after inquiry into the circumstances of the case, to make such order as shall seem fit with respect to the nature of the proof to be produced, and as to costs or otherwise, as under the circumstances shall seem just.

Forgery, &c., how punishable.

33. If any person shall forge the seal or signature of, or attached to,

to, any probate or exemplified copy as aforesaid, or shall tender in evidence any such probate or exemplified copy with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall, upon conviction, be liable to imprisonment, with or without hard labour, and with or without solitary confinement, for any term not exceeding four years; and whenever any such probate or exemplified copy shall have been admitted in evidence, by virtue of this Act, the Court or Judge who may have admitted the same may, at the request of any person against whom the same is so admitted in evidence, direct that the same shall be impounded and kept in the custody of some officer of the Court or other person, for such period and subject to such conditions as to the said Court or Judge shall seem fit.

34. This Act may be cited as "The Property Act of 1860."

Short title.

35. This Act shall commence and take effect from the first day of November, 1860.

Commencement  
of Act.