CHAPTER 6.

An Act to confirm an Agreement of Compromise made with respect to an estate or farm called Pwllcarn and other hereditaments in the county of Glamorgan, and to provide for raising a sufficient sum for payment of purchase moneys, costs, and expenses in connexion with the said Agreement. A.D. 1878.

[8th August 1878.]

Marriage settlement of John Popkin Traherne and Arabella Diana Richards, dated 2nd June 1852.

WHEREAS by an indenture of settlement dated the second day of June one thousand eight hundred and fifty-two, and made between Morgan Popkin Traherne of the first part, John Popkin Traherne of the second part, Arabella Diana Richards of the third part, Robert Hillier Rickards, the Reverend Hely Hutchinson Keating Rickards, and Edward Priest Richards of the fourth part, John Richards Homfray and Alexander Cuthbertson of the fifth part, and the Reverend Henry Lynch Blosse and Morgan Price Smith of the sixth part (being the settlement executed in consideration of the then intended marriage of the said John Popkin Traherne with the said Arabella Diana Richards), after reciting the then intended marriage, the said Morgan Popkin Traherne granted and conveyed unto the said Robert Hillier Rickards, the Reverend Hely Hutchinson Keating Rickards, and Edward Priest Richards (herein-after referred to as the trustees), and their heirs, all and singular the messuages, tenements, farms, lands, and hereditaments which, according to the respective tenements, and the names of the occupiers, and the parishes in which the same were situate, and the quantities or thereabouts, were specified in the first and second schedules thereto, together with their appurtenances, to hold to the said trustees and their heirs, subject as therein mentioned, to the use of the said Morgan Popkin Traherne, his heirs and assigns, until the solemnization of the said marriage, and after the solemnization thereof to uses to secure a rentcharge of two hundred and fifty pounds to the said John Popkin Traherne and Arabella Diana Richards, or the survivor of them, during the life of the said Morgan Popkin Traherne, and to

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a term for securing the same, and subject thereto to the use of the said Morgan Popkin Traherne during his life, and after his decease to uses to secure to his wife, Elizabeth Margaret Traherne, during her life a jointure rentcharge of three hundred and twenty pounds per annum, and also a further jointure rentcharge of one hundred and eighty pounds per annum during the joint lives of herself and Charlotte Rickards, which has ceased or failed to take effect by the decease of the said Charlotte Rickards, and a further rentcharge of eighty pounds per annum, payable to the said Elizabeth Margaret Traherne during her life after the decease of the said Charlotte Rickards, and also rentcharges of fifty pounds per annum to each of Charlotte Mary Drummond, Frances Gordon, and Caroline Drummond during their respective lives, such last-mentioned rentcharges to commence from the decease of the said Elizabeth Margaret Traherne, and to terms of years for securing the said several rentcharges, and subject thereto to the use of the said John Popkin Traherne during his life, without impeachment of waste, and after his decease to certain uses for securing a jointure to the said Arabella Diana Richards during her life, and subject thereto to certain uses in favour of the issue of the said then intended marriage, and in default of such issue (which event happened) to the use of such person or persons, for such estate or estates, and for such purposes, and subject to such provisions, as the said Morgan Popkin Traherne should by any deed or deeds duly executed or by will appoint, and in default of and subject to such appointment to the use of the said Morgan Popkin Traherne, his heirs and assigns for ever; and in the said indenture of settlement is contained power to demise all or any part of the said hereditaments and premises for any term not exceeding ninety-nine years, and power to enter into agreements for leases:

And whereas the said intended marriage was solemnized shortly after the date and execution of the said indenture of settlement:

And whereas the schedules to the said indenture contain the particulars of various lands, farms, and hereditaments situate in the county of Glamorgan, including, amongst others, a farm and lands called Pwllcarn Farm, herein-after more particularly mentioned:

Will of Morgan Popkin Traherne, dated 25th June 1853.

And whereas the said Morgan Popkin Traherne duly made and executed his will, dated the twenty-fifth day of June one thousand eight hundred and fifty-three, and thereby gave and devised unto the said Robert Hillier Rickards and Hely Hutchinson Keating Rickards, their heirs and assigns, all those his freehold and copyhold messuages or tenements, farms, lands, hereditaments, and premises therein-after particularly mentioned and described, (that is to say,) amongst others the said farm and lands called Pwllcarn;

subject nevertheless as regards Pwllcarn, as therein-after mentioned and provided, upon trust to sell the same as therein mentioned; and he directed that the moneys to arise by such sale should be taken to be part of his personal estate, and the said testator directed that his just debts (mortgage debts excepted), funeral and testamentary expenses, and the expenses attending the trusts of his said will, should be paid by his executors, and subject thereto he bequeathed his personal estate to his wife the said Elizabeth Margaret Traherne absolutely. And the said testator further declared that if the proceeds to arise from the sales of the said farms, lands, hereditaments, and premises therein particularly mentioned should be sufficient to discharge the whole of his just debts, except as aforesaid, and funeral and testamentary expenses, and the expense attending the trusts of his said will, then the devise therein-before made and the trusts therein-before declared of the said farm and lands called Pwllcarn should be void, and the said farm and lands should be subject only to such devise thereof as was therein-after mentioned and contained. And the testator gave, devised, limited, and appointed the hereditaments and premises comprised in the said indenture of settlement, and also the said farm and lands called Pwllcarn, and the residue of his real estate, unto the said Robert Hillier Rickards and Hely Hutchinson Keating Rickards, their heirs and assigns, to the use of the first and other sons of the said John Popkin Traherne by any future wife successively in tail general, and for default of such issue to the use of the eldest and other daughters of the said John Popkin Traherne successively in tail general, and for default of such issue to the use of the testator's said wife for her life, and after her decease to the use of the testator's son, Anthony Powell Traherne, during his life, with a limitation to the use of trustees during his life in trust to preserve contingent remainders, and after his decease to the use of the first son of the said Anthony Powell Traherne in tail general, with remainders to the use of the second and third and other younger sons of the said Anthony Powell Traherne successively in tail general, with remainders to the use of the first, second, and other daughters of the said Anthony Powell Traherne successively in tail general, with remainders to the use of the testator's son, Llewellyn Price Traherne, during his life, with a limitation in remainder to the use of trustees during the life of the said Llewellyn Price Traherne in trust to preserve contingent remainders, with remainders to the use of the first and other sons of the said Llewellyn Price Traherne successively in tail general, with divers limitations over in strict settlement; and it was thereby

A.D. 1878. provided that it should be lawful for the said John Popkin Traherne, or any other of the person or persons for the time being entitled to a life estate in the said hereditaments, by any deed or deeds, executed in the presence of and attested by one or more witness or witnesses, to demise and lease all or any part of the said lands and hereditaments, to be approved of by his trustees for the time being, for any term not exceeding sixty years in possession, and also by such deed or deeds, with such approval as aforesaid, to demise or lease to any person or persons whomsoever the coal, culm, and minerals in, under, and upon the said last-mentioned hereditaments and premises for the like term of sixty years in possession, but not in reversion or remainder, and that such leases should contain all usual and other powers, provisions, conditions, and stipulations usually inserted in like leases in the county of Glamorgan, and at the best rents, royalties, and reservations that could be obtained for the same; and the said testator appointed his widow, Elizabeth Margaret Traherne, to be his executrix:

And whereas the said testator died on the eleventh day of March one thousand eight hundred and fifty-nine without having revoked or altered his said will, which was duly proved by the said Elizabeth Margaret Traherne, the executrix:

And whereas Arabella Diana Traherne (formerly the said Arabella Diana Richards, spinster) died several years ago, and there was no issue of the said marriage between her and the said John Popkin Traherne:

And whereas the said John Popkin Traherne has had no issue by any subsequent marriage:

And whereas the said Anthony Powell Traherne has issue Onslow Powell Traherne, his only child, who is the first tenant in tail in remainder of the said devised estates, and is an infant under the age of twenty-one years:

And whereas the said Llewellyn Price Traherne has issue Edmund Traherne, his only child, and who is an infant under the age of twenty-one years:

And whereas the said Edward Priest Richards died on the nineteenth day of June one thousand eight hundred and sixty-seven, and the said Robert Hillier Rickards died on the twenty-ninth day of December one thousand eight hundred and seventy-three:

And whereas the said farm called Pwllcarn is situate in the manor of Tyr-r-yalt, in the county of Glamorgan, and consists partly of inclosed and partly of uninclosed lands, and it adjoins a common or waste, part of the same manor, called Mynydd-y-caira,

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and there is not any visible boundary between the farm and the common:

And whereas some time since differences arose between the said John Popkin Traherne, as the owner of the said farm, and his tenants on the one hand, and the lords of the manor and their lessees on the other hand, as to the extent and boundaries of the said farm and common respectively, the lords of the manor alleging that the boundary line of the parish of Bettws formed the boundary of the said farm, and the said John Popkin Traherne claiming, as the testator and his predecessors in title had claimed, a large extent of uninclosed land beyond the said parish boundary:

And whereas the lessees of the lords of the manor or servants of the lords of the manor having entered upon the disputed land, and having commenced the sinking of pits and the opening of minerals thereon, actions were commenced in Her Majesty's Court of Exchequer of Pleas by the said John Popkin Traherne in the names of his tenants against the lords of the manor and their lessees or servants, in order to try the right to the said land, and after various proceedings in the said actions the same were set down and were ready to come on for trial at the summer assizes for the county of Glamorgan in the month of July one thousand eight hundred and seventy-three:

And whereas in the month of June one thousand eight hundred and seventy-three the lords of the manor filed their bill in the High Court of Chancery against the said John Popkin Traherne and his tenant Edward Thomas, thereby praying in effect for an injunction to restrain the prosecution of the said actions, and to have the boundary between the said farm and common ascertained; but it was ordered that the trial of the said action should proceed:

And whereas in the course of the investigation of the title and evidence for the purposes of the said trial it appeared that divers acts and neglects had occurred on the part of the testator, which, as the said John Popkin Traherne was advised, would probably have the effect of confining the boundaries of the said farm to the parish of Bettws, and, acting on the advice of counsel, the said John Popkin Traherne entered into negotiations with the lords of the manor for a compromise of the matters in question in the said actions and suit, and ultimately, and on the twenty-fourth July one thousand eight hundred and seventy-three, an agreement containing terms of compromise was entered into and signed by counsel on behalf of the said John Popkin Traherne and his tenants, and by counsel on behalf of the lords of the manor and their lessees or servants, in the following words:

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"Thomas v. Thomas.

"Pwllcarn.

"Memorandum as to terms.

"Major Traherne to have one undivided moiety (with Messieurs Thomas and Bushby) in one hundred and thirty acres on northern side of Bettws parish boundary, as shown on Bettws tithe maps annexed, subject to measurement hereafter to ascertain the one hundred and thirty acres. The northern boundary of such land not to go beyond Maesteg Track. The eastern boundary to be a line from Garw Well straight to Bwlch Garw on the Maesteg Track. The western boundary to be a north and south line from the said track to parish boundary line on the said tithe map, far enough west to make up the one hundred and thirty acres;

"Messieurs Thomas and Bushby to give up the whole of their surface rights in the one hundred and thirty acres to Major Traherne;

"In the event of the minerals of the Pwllcarn Farm below parish boundary line being let and minerals under the one hundred and thirty acres being let to the same tenant, Major Traherne agrees that such minerals under the one hundred and thirty acres shall pay the same or no less royalty and sleeping rent as the minerals on the rest of the Pwllcarn Farm. Major Traherne will agree to join in letting the minerals under the one hundred and thirty acres to the tenant of the minerals of the rest of Pwllcarn Farm on the above terms;

"Also that minerals under the one hundred and thirty acres shall be free of wayleave above or below ground to Garw Valley Railway through Pwllcarn Farm;

"The said Major Traherne to have the option of purchasing the undivided moiety of the said one hundred and thirty acres for seven thousand eight hundred pounds within nine months from this date. Messieurs Thomas and Bushby believe that they can show a good title to the property, and are willing to show a title for twenty years at their expense. That in the event of Major Traherne not being satisfied with the title shown, Messieurs Thomas and Bushby not to be bound to sell. A proper conveyance, including surface, as far as can be granted, with usual covenants, to be made to Major Traherne or his trustees or nominee at Major Traherne's expense;

"No claim for anything below Bettws parish boundary shown on tithe map of Bettws parish, and no claim by Major Traherne for land beyond one hundred and thirty acres;

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"Record in both actions to be withdrawn, each party bearing his own costs;

"This arrangement, if not fully carried into effect, to be without prejudice to the rights or claims of all parties;

"Upon this arrangement being fully carried into effect, Major Traherne will, if requested so to do by Messieurs Thomas and Bushby, execute a release of all his claims in or over Craig Walter;

"On settlement bill in Chancery to be taken off file, each party paying his own costs. This arrangement, if carried out, is not to affect the right of Major Traherne as a commoner or free tenant of the manor of Tyr-r-yalt. Major Traherne is advised that he is the owner in fee simple of Pwllcarn Farm and of part of Mynydd-y-Caira Hill as part of such farm, but Major Traherne will give indemnity as well as all other deeds, in case of dispute to be settled by Mr. Charles Hall, or in the event of his declining, by counsel to be agreed upon by Mr. Giffard, Q.C., and Sir John Karslake, or if they do not agree, by a person to be appointed by the Attorney-General for the time being. If any dispute arises as to the mode of carrying the terms above indicated into effect the questions are to be referred to Sir John Karslake and Mr. Giffard."

In pursuance of the said agreement the records in the said actions were withdrawn, and the bill of complaint in the suit was taken off the file:

And whereas the said John Popkin Traherne has exercised the option given to him by the said agreement of purchasing the other undivided moiety of the minerals under the one hundred and thirty acres therein referred to upon the terms mentioned in the said agreement, but such purchase has not yet been completed:

And whereas questions subsequently arose whether the lands, minerals, and rights to which the said John Popkin Traherne had become entitled in the said one hundred and thirty acres were his absolute property, or whether they formed part of the said farm called Pwllcarn, and were subject to the limitations declared of the said farm by the said testator's will:

And whereas the said John Popkin Traherne incurred costs, charges, and expenses in and in relation to the said actions and proceedings which resulted in the acquisition or preservation of the said lands, minerals, and rights, but the amount thereof has not yet been ascertained; and the said John Popkin Traherne was advised that in case the said lands, minerals, and rights were to be treated and considered as part of the farm of Pwllcarn, and as subject to the limitations declared of the said farm by the said

A.D. 1878. testator's will, he was entitled to a lien upon the said lands, minerals, and rights for the said costs, charges, and expenses, and was also entitled to have the amount payable by him in respect of the other undivided moiety of the said minerals raised and paid out of the property, subject to the trusts of the said testator's will, or in case of the said amount being paid by the said John Popkin Traherne, he would be entitled to a lien for the same on the said lands, minerals, and rights:

And whereas, having regard to the questions and matters aforesaid, and having regard to the fact of the said Onslow Powell Traherne, the said tenant in tail general, being an infant under the age of twenty-one years, the said John Popkin Traherne on the twentieth day of May one thousand eight hundred and seventy-four instituted a suit in the High Court of Chancery against the said Elizabeth Margaret Traherne, Anthony Powell Traherne, and Onslow Powell Traherne, and the bill of complaint in the said suit prayed that "the rights and interests of the said John Popkin "Traherne, and all parties claiming under the will of the said testator "in the lands, minerals, and rights by the said agreement or memo-"randum agreed to be given up or sold to the said John Popkin "Traherne, might be ascertained and declared by the Court, and "that in case the Court should be of opinion that the said lands, "minerals, and rights were subject to the limitations and trusts "contained in the testator's will, inquiries might be directed for "ascertaining whether it would be for the benefit of the parties "interested under the said will to adopt the said memorandum of "agreement and accept the said lands, minerals, and rights; and "that in case it should appear to be for the benefit of the parties "interested under the said will to accept the said lands, minerals, "and rights, then that it might be declared that the said John "Popkin Traherne was entitled to a lien or charge on such lands, "minerals, and rights for the costs, charges, and expenses properly "incurred by him in the acquisition or preservation of such lands, "minerals, and rights, including the amount to be paid by him for "the purchase of the said other moiety of the minerals under the "said one hundred and thirty acres, in the event of the option to "purchase the same being exercised, and, if necessary, that the "amount to be paid for the said moiety might be raised and paid out "of the property subject to the trusts of the testator's will, and in "that case alone an account might be directed of what was due to "the said John Popkin Traherne in respect of such costs, charges, "and expenses, and purchase money, and that what on taking such "account should appear to be due to the said John Popkin Traherne "might be raised by means of a mortgage or sale of the property in

" respect of which he should be declared to be entitled to a lien or " charge and might be paid by the said John Popkin Traherne:" A.D. 1878.

Vice-Chancellor Malins' decree of 28th July 1874.

And whereas his Lordship Vice-Chancellor Malins on the twenty-eighth day of July one thousand eight hundred and seventy-four made a decree in the said suit directing an inquiry whether it would be for the benefit of the parties interested under the said testator's will to accept the lands, minerals, and rights by the said memorandum of agreement agreed to be given up or sold to the said John Popkin Traherne, and if it should appear to be for their benefit, then the Court declared that the said John Popkin Traherne was entitled to a lien or charge on such lands, minerals, and rights for the costs, charges, and expenses properly incurred by him in the acquisition or preservation of such lands, minerals, and rights, including the amount to be paid by the said John Popkin Traherne for the purchase of the moiety of the minerals under the one hundred and thirty acres in the said memorandum of agreement mentioned, the option of purchasing which was by the said memorandum of agreement given to him; and in that event it was ordered that an account be taken of such costs, charges, and expenses, and purchase money, and that an inquiry be made in what way it would be most for the benefit of the parties interested that the amount thereof should be raised, and it was ordered that the further consideration of the said cause should be adjourned:

Chief clerk's certificate, 15th July 1876.

And whereas the chief clerk made his certificate, dated the fifteenth day of July one thousand eight hundred and seventy-six, in pursuance of the directions given by the said decree, and thereby certified that it would be for the benefit of the parties interested under the said testator's will to accept the lands, minerals, and rights by the said memorandum of agreement agreed to be given up or sold to the said John Popkin Traherne, and that the costs, charges, and expenses properly incurred by the said John Popkin Traherne in the acquisition or preservation of such lands, minerals, and rights, including the amount to be paid by him for the purchase of the moiety of the minerals under the said one hundred and thirty acres, amounted to the sum of ten thousand three hundred and sixty-four pounds eleven shillings; and that it would be most for the benefit of the parties interested that the said sum of ten thousand three hundred and sixty-four pounds eleven shillings should be raised by way of mortgage charged upon and borne by the whole of the estate called the Coytrahen Estate, in the county of Glamorgan, including under such description the farm and lands called Pwllcarn, and the undivided moiety of the said one hundred and thirty acres to be purchased by the said John Popkin Traherne

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as aforesaid, as well as the undivided share belonging to the said John Popkin Traherne, and also the surface of the said one hundred and thirty acres:

Vice-Chancellor Malins' order, 28th July 1876.

And whereas by the order on further consideration made in the said suit by his Lordship Vice-Chancellor Malins on the twenty-eighth day of July one thousand eight hundred and seventy-six it was declared that it would be for the benefit of the parties interested under the said testator's will to accept the lands, minerals, and rights by the memorandum of agreement agreed to be given up or sold to the said John Popkin Traherne, and the Court being of opinion that a sufficient sum should be raised by mortgage of the whole of the said testator's estate called or known as the Coytrahen Estate, including as aforesaid, to satisfy the said sum of ten thousand three hundred and sixty-four pounds eleven shillings, together with the costs therein-after directed to be retained, and it appearing that the sum of eleven thousand pounds would be a fit sum to raise for that purpose, it was ordered that the said John Popkin Traherne and all other necessary parties should raise the said sum of eleven thousand pounds by mortgage of the Coytrahen Estate (including as aforesaid), such mortgage to be settled by the judge in chambers. And it was ordered that the said John Popkin Traherne should be at liberty to receive the sum of eleven thousand pounds, and that he should thereout retain the said sum of ten thousand three hundred and sixty-four pounds eleven shillings in satisfaction of the costs, charges, and expenses, and the said purchase money. And it was ordered that the costs of all parties be taxed as therein mentioned, and that out of the residue of the said sum of eleven thousand pounds the said John Popkin Traherne should retain and pay the said costs when taxed, and that any balance after such payment should be paid into court and invested as therein mentioned; but in case such residue be insufficient to satisfy such costs, it was ordered that the deficiency should be raised by the said John Popkin Traherne by further charge on such estate, and be applied by him with the residue in satisfaction of the said costs:

And whereas in pursuance of the said order the said John Popkin Traherne proceeded to raise the said sum of eleven thousand pounds by mortgage of the said estates, but upon investigation of the title thereto on behalf of the persons proposing to advance the said sum it was objected that the Court had no jurisdiction to make the said order:

And whereas an appeal was presented from the said order on behalf of the said Onslow Powell Traherne, and the Court of Appeal, on the twenty-ninth day of June one thousand eight

hundred and seventy-seven, being of opinion that it had no power to direct a mortgage for the purpose of providing the sum payable for the lands, minerals, and rights in the said decree of the twenty-eighth July one thousand eight hundred and seventy-six mentioned out of the estate of the said Onslow Powell Traherne, and other the persons interested in remainder in the said hereditaments under the will of Morgan Popkin Traherne (subject to the life interest of the said John Popkin Traherne), but that it had jurisdiction to direct the costs, charges, and expenses of John Popkin Traherne in the actions and suit in the pleadings mentioned, and the costs, charges, and expenses properly incurred by the said John Popkin Traherne in maintaining, acquiring, and preserving the lands, minerals, and rights, the subject of the agreement dated the twenty-fourth day of July one thousand eight hundred and seventy-three, to be raised as therein-after mentioned, did order that the said order be varied by omitting therefrom the directions following; (that is to say,) "That the Court being of opinion that a sufficient " sum should be raised by mortgage of the whole of the testator's " estate called or known as the Coytrahen Estate, in the county of " Glamorgan, including the farm and lands called Pwllcarn, and " the entirety of the one hundred and thirty acres in the chief " clerk's certificate mentioned, to satisfy the sum of ten thousand " three hundred and sixty-four pounds eleven shillings by the chief " clerk's certificate appearing to be the amount of the costs, charges, " and expenses properly incurred by the plaintiff in the acquisition " or preservation of the said lands, minerals, and rights, including " the amount to be paid by the plaintiff for the purchase of the " minerals under the moiety of the one hundred and thirty acres, " together with the costs herein-after directed to be retained, and it " appearing by the said affidavit of James Kempthorne filed the " twenty-fourth July one thousand eight hundred and seventy-six " that the sum of eleven thousand pounds would be a fit sum to " raise for that purpose, this Court doth order that the plaintiff and " all other necessary parties do raise the said sum of eleven thousand " pounds by a mortgage of the Coytrahen Estates, including the " said farm and lands called Pwllcarn, and the one hundred and " thirty acres, such mortgage to be settled by the vacation judge in " chambers;" and in lieu of the said directions so to be omitted as aforesaid, it was ordered that a sufficient sum be raised by mortgage of the whole of the estate of the testator devised by his will, and called or known as the Coytrahen Estate, in the county of Glamorgan, including the farm and lands called Pwllcarn, and the entirety of the surface, and the entirety of the minerals under the one hundred and thirty acres, in the chief clerk's certificate dated the fifteenth day

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of July one thousand eight hundred and seventy-six mentioned, to satisfy the amount of the costs, charges, and expenses properly incurred by the said John Popkin Traherne in the acquisition or preservation of the said lands, minerals, and rights, and the costs of the actions and suit in the pleadings mentioned, and the other costs therein-after directed to be taxed, and also the costs of the suit as between solicitor and client, including therein any charges and expenses properly incurred by the said John Popkin Traherne. And it was ordered that it be referred to the taxing master to tax the plaintiff and defendants their costs of the suit as between solicitor and client, including in the costs of the said John Popkin Traherne any charges or expenses properly incurred by him, not being costs of the suit, and the costs, charges, and expenses of the mortgage for raising the same therein-after mentioned. And it was ordered that such costs, charges, and expenses, including the costs, charges, and expenses already taxed and certified by the chief clerk, be included in the said mortgage; and the said John Popkin Traherne and all other necessary parties were to concur in and execute the same; and such mortgage was to be by way of conveyance, and to contain the usual power of sale, together with all other powers and provisions. And the Court did declare the said Onslow Powell Traherne, and every other person who for the time being might become entitled to the said estate in remainder expectant on the life estate of the said John Popkin Traherne therein, under the limitations in the said will, would become and be, and that every person then in existence entitled under the said settlement and will was a trustee of the said estate for the purpose and to the extent of the mortgage security as directed to be executed. And it was ordered that the said John Popkin Traherne be appointed to execute the said mortgage accordingly. And it was ordered that the money to be so raised be received by the said John Popkin Traherne and applied by him in payment of the said costs, charges, and expenses, he by his counsel undertaking to apply the same accordingly. And the Court being of opinion that it was fit and proper that the agreement for compromise mentioned in the order dated the twenty-eighth July one thousand eight hundred and seventy-six should be carried out by an Act of Parliament upon the terms of the said John Popkin Traherne agreeing that his life estate in the one moiety of the minerals under the said one hundred and thirty acres should be treated as a life estate, subject to impeachment for waste, and that the leasing power in the will of Morgan Popkin Traherne should not be exerciseable in respect thereof otherwise than on the terms of the second section of the Settled Estates Act of the nineteenth and twentieth Victoria, chapter one hundred and twenty,

and also subject to the further condition that the rents and royalties by any such lease to be reserved should not be less than the full amount of the rents reserved for the similar portions of coal under the other moiety, did order that the said John Popkin Traherne be at liberty to apply to Parliament on behalf of the said Onslow Powell Traherne for an Act to effect such object:

And whereas by a further order made in the said suit by his Lordship Vice-Chancellor Malins on the fourth day of April one thousand eight hundred and seventy-eight it was ordered that the further proceedings in the said suit be carried on by the plaintiff against the said Llewellyn Price Traherne and Edmund Traherne, an infant, in the same manner as if they had been originally made parties defendants to the said suit; and the said Court did declare that it would be for the benefit of the said infant to adopt and be bound by the decree, orders, and other proceedings in the said suit, and to assent to the Act of Parliament by the order of the twenty-ninth June one thousand eight hundred and seventy-seven made in the said cause directed to be applied for, and that the plaintiff do have the benefit of the said decree, orders, and proceedings against the said Llewellyn Price Traherne and Edmund Traherne as if they had respectively been parties to the same decree, orders, and proceedings:

And whereas the said John Popkin Traherne is willing that his life estate and interest in the entirety of the coal and other minerals under the said one hundred and thirty acres, one moiety of which have been so purchased under the said compromise, should be treated as held by him as tenant for life, and otherwise to the uses and subject to the trusts and provisions of the testator's will, omitting only therefrom the provision in the said settlement of one thousand eight hundred and fifty-two that such life interest should be without impeachment of waste, and that the operation of the leasing powers in the said will and settlement shall in relation to the working of the said minerals under the said land be subject to the provisions herein-after contained:

And whereas it is beneficial and for the interests of the infant remainder-men that the said compromise should be confirmed, and the purchase of the said minerals for the sum aforesaid should be adopted and accepted by and on behalf of all the persons interested in remainder, subject to the life estate of the said John Popkin Traherne under the said will, and that the said sum of eleven thousand pounds with interest thereon, and all the costs and expenses of and incident to the said suit and proceedings, the amount to be ascertained by taxation as directed by the said order of the Court of Appeal, and of obtaining this Act, should be raised

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by mortgage of the entirety of the said settled estates, such mortgage to be executed by the said John Popkin Traherne, and that all sums to be from time to time received during the life of the said John Popkin Traherne in respect of leases of the said minerals under the said one hundred and thirty acres of land should be apportioned and applied in the manner provided at the date of the said order of the Court of Appeal by section two therein referred to of the Act nineteen and twenty Victoria, chapter one hundred and twenty, intituled "An Act to facilitate Leases and Sales of Settled Estates," or as now provided by the corresponding section of the Settled Estates Act, 1877, except that five-eighth parts of the rents and royalties payable thereunder shall be paid to the said John Popkin Traherne, or other the person for the time being entitled to the rents and profits of the settled estates, and that the remaining three-eighth parts thereof shall be appropriated and invested and the income thereof applied in manner provided by the said Act upon the trusts of the said settlement, and as and when the same shall be sufficient in paying off and satisfying the said sums to be charged upon the said settled estates by any mortgage to be created under the powers of this Act:

40 & 41 Vict. c. 18.

And whereas the whole of the messuages, lands, and hereditaments which are comprised in the said recited settlement and will are for convenience herein-after referred to as "the settled estates:"

Certificate of chief clerk, approving draft Bill for this Act.

And whereas in pursuance of the herein-before recited order of the twenty-ninth day of June one thousand eight hundred and seventy-seven the chief clerk of his Lordship Vice-Chancellor Malins made a certificate in the said cause, bearing date the twenty-eighth day of June one thousand eight hundred and seventy-eight, and thereby certified that the draft of a Bill to be submitted to Parliament, being the Bill for this Act, had been settled and approved by the said judge, and was identified by his signature on the margin thereof, and that the several instruments, facts, and events recited in the preamble of the said draft Bill before the recital of the said certificate, except so far as regards the execution of the said indenture of settlement of the second day of June one thousand eight hundred and fifty-two, had been proved in the said cause, and such certificate has been duly approved by the said Vice-Chancellor, and filed, and has become absolute:

And whereas the aforesaid objects cannot be effected without the authority of Parliament:

Wherefore Your Majesty's most dutiful and loyal subject, the said John Popkin Traherne, most humbly beseeches Your Majesty that it may be enacted; and be it enacted by the Queen's most

Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: A.D. 1878.

1. In citing this Act for any purpose it shall be sufficient to use the expression "Traherne's Estate Act, 1878." Short title.

2. The said terms of compromise or agreement of the said actions and suit, dated the twenty-fourth day of July one thousand eight hundred and seventy-three, and the purchase of the undivided moiety of the minerals under the one hundred and thirty acres mentioned in the said terms of compromise, are hereby authorised, adopted, and ratified as a fit and proper compromise for the benefit of all persons interested in the Coytrahen Estate under the will of the said Morgan Popkin Traherne, dated the twenty-fifth day of June one thousand eight hundred and fifty-three, and the said settlement of the second day of June one thousand eight hundred and fifty-two, but upon the terms that the estate and interest of the said John Popkin Traherne, the present tenant for life of the said estate under the said settlement, shall henceforth, instead of being an estate for life without impeachment of waste under the said settlement, be converted into and be an estate for life impeachable for waste so far as relates to the entirety of the minerals under the said one hundred and thirty acres of land mentioned in the said terms of compromise, and that the leasing powers in the said will and settlement shall, so far as relates to the said minerals, be subject to the provisions as to the application of the rents and royalties herein-after contained. Agreement of compromise of 24th July 1873 confirmed.

3. The entirety of the said one hundred and thirty acres and the minerals thereunder shall henceforth be subject to the uses, limitations, and trusts which at the date of this Act are subsisting under or by virtue of the said settlement and will, with the exception only that the estate for life therein of the said John Popkin Traherne is, so far as relates to the minerals under such one hundred and thirty acres, to be henceforth an estate for life impeachable for waste, and that the powers to lease minerals given to the said John Popkin Traherne by the said will and settlement shall not be exerciseable by him or during his life so far as relates to minerals under the one hundred and thirty acres, unless and except upon the terms that three-eighth parts of the rents and royalties reserved by any lease or leases already granted or to be reserved by any lease or leases hereafter during the life of the said John Popkin Traherne to be granted of the said minerals, or any of them, shall be applied in accordance with the provisions in that behalf contained in the Settled Estates Act, 1877, 40 & 41 Vict. c. 18. As to property acquired under agreement of compromise.

A.D. 1878.

and in particular in accordance with the provisions in that behalf of the said Act applicable to leases of minerals in the case of a person for the time being entitled to the receipt of the rents or royalties, and who is not by reason of his estate or by virtue of any declaration in the settlement entitled to work such minerals for his own benefit, and so that such rents or royalties shall as to five-eighth parts thereof be payable to the said John Popkin Traherne, or other the tenant for life or person for the time being only entitled to the income of the settled estates under the said settlement and will as tenant of the said settled estates, and that the remaining three-eighth parts of such rents or royalties shall for the time being be applicable and applied in manner provided in that behalf by the said last-mentioned Act, and shall in the meantime be from time to time paid to and received by the trustees for the time being of the said will, and be held as capital or corpus upon the like trusts and for the like purposes as rents or royalties reserved by any such lease would be applicable if any such lease were granted as aforesaid under the provisions of the said last-mentioned Act: Provided that the same shall and may, as soon as they shall be sufficient for this purpose, be applied in paying off and satisfying the sums to be raised out of and charged upon the settled estates by any mortgage to be created under the powers of this Act, and in the meantime the interest or sums accruing thereon shall be payable to the said John Popkin Traherne or other the person for the time being entitled to the income of the settled estates: Provided also, that neither the said powers of leasing, nor any other power in the said settlement or will, nor anything herein contained, shall in any way preclude any person for the time being interested in the settled estates from making any application relating to the said estates under the said Act, or any other statute for the time being in force or otherwise applicable to the settled estates.

Settled estates may be mortgaged for purchase money, interest, and costs.

4. For the purpose of carrying out the said compromise and purchase so sanctioned as aforesaid it shall be lawful for the said John Popkin Traherne, under the direction of the Chancery Division of the High Court of Justice, in the said suit of Traherne versus Traherne, or in any other action or proceedings, to raise by way of mortgage of the whole or such part or parts as the Court shall direct of the estates and hereditaments comprised in the said will and settlement (other than and except, during the life of the said John Popkin Traherne, the mines and minerals within and under the lands and hereditaments commonly known by the name of Garth, situate in the county of Glamorgan, and the rents, royalties, and dues payable in respect of the same) such sum as is directed or

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authorised to be raised by the said order of the Court of Appeal dated twenty-ninth day of June one thousand eight hundred and seventy-seven, and the said recited order of the Vice-Chancellor dated the twenty-eighth day of July one thousand eight hundred and seventy-six, and also such sum as by the same orders is directed or authorised to be raised for costs, and costs, charges, and expenses of the said actions and suits for and in relation to the maintaining, acquiring, and preserving the lands, minerals, and rights the subject of the said agreement of compromise, and of the purchase under the exercise of the option thereby given to the said John Popkin Traherne, and so exercised as aforesaid, and further to raise by such mortgage the sum of seven thousand eight hundred pounds as and for the purchase money payable under the said compromise for the said undivided moiety or share of the minerals under the said one hundred and thirty acres, and the interest on such purchase money from the time when the same became payable until payment thereof, and also the costs, charges, and expenses of and incident to the said mortgage, and of applying for and obtaining this Act, and such mortgage or morgtages shall and may be made at any rate of interest not exceeding five pounds per centum per annum, and with such powers of sale and other powers as the said Court or the judge thereof to whose branch the said cause is attached shall direct, and for effectually mortgaging such lands and hereditaments for the purposes aforesaid the said John Popkin Traherne, and in the event of his death, the person who shall be for the time being entitled to possession or to the receipt of the rents and profits of the settled estates, or if any such person who if of full age would be so entitled as aforesaid shall be an infant, then the person duly appointed guardian of the estate of such infant, shall be at liberty and is hereby authorised and empowered to convey the said estates and hereditaments and minerals in fee simple by way of mortgage, freed and discharged from all the limitations, uses, trusts, powers, and provisions respectively in the said will and settlement, or either of them, and so that such mortgage when executed shall be paramount to and override all uses, provisions, limitations, and trusts contained in the said settlement and will respectively, but subject nevertheless to all leases, demises, and agreements for leases of the said minerals granted or to be granted under the powers contained in the said settlement or in the Settled Estates Act, and any certificate of the taxing master or of the chief clerk of the said judge shall be conclusive evidence of the amount which is hereby authorised to be raised by mortgage, in addition to the said sum of seven thousand eight hundred pounds authorised to be raised for payment of the said purchase money.

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As to receipt for money borrowed.

5. The receipt in writing of the said John Popkin Traherne, or, in the event of his death, of the person who shall for the time being be entitled to the possession or the receipt of the rents and profits of the settled estates, or if any such person who if of full age would be so entitled as aforesaid shall be an infant, then of the person duly appointed guardian of the estate of such infant, for any money hereby authorised to be raised by mortgage, shall be a good discharge to the person or persons advancing the same.

For securing payment of interest on money borrowed.

6. The interest on the said mortgage money shall be from time to time duly paid and kept down by and with and out of the annual rents and profits and income of the settled estates which shall be applicable for that purpose, in priority to any other payment thereout or application thereof; and any persons for the time being entitled or included under the said limitations, uses, and trusts, or any trustee or trustees for the time being of the said settlement or will, shall and may take such proceedings in any court as they may be advised to enforce the due payment of the said interest, and shall and may apply to the High Court of Justice for a receiver of such interest to secure the due payment thereof.

General saving.

7. Saving to the Queen's most Excellent Majesty, her heirs and successors, and to all and every other persons and person, bodies politic and corporate, and their respective heirs and successors, executors, and administrators, (other than and except the said John Popkin Traherne, Elizabeth Margaret Traherne, Hely Hutchinson Keating Rickards, Anthony Powell Traherne, Onslow Powell Traherne, Llewellyn Price Traherne, and Edmund Traherne, and all and every other person and persons to whom any estate, right, title, or interest, either at law or in equity, of, into, out of, or upon the hereditaments affected by this Act, or any part thereof, hath been limited, devised, or bequeathed, or have come or devolved, or shall come or devolve, under or by virtue of the said indenture of settlement of the second day of June one thousand eight hundred and fifty-two, and the said will of the said Morgan Popkin Traherne, or either of them, but excluding from this exception the annuities of fifty pounds payable after the decease of the said Elizabeth Margaret Traherne to each of the said Charlotte Mary Drummond, Frances Gordon, and Caroline Drummond, and any person or persons claiming under them, or any of them, in respect of such annuities,) all such estate, right, title, interest, claim, and demand whatsoever of, in, to, or out of the said lands, hereditaments, and premises, or any part thereof, as they, every or any of them, would have had, held, or enjoyed, or been entitled to if this Act had not been made.

8. This Act shall not be a Public Act, but shall be printed by the several printers to the Queen's most Excellent Majesty duly authorised to print the Statutes of the United Kingdom, and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges, justices, and others. A.D. 1878. Act as printed by the Queen's printers to be evidence.

LONDON: Printed by George Edward Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty. 1878.