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An Act to amend "The *West Indian* Incumbered Estates Act, 1854." [2d *August* 1858.]

WHEREAS it is expedient that "The *West Indian* Incumbered Estates Act, 1854," should be amended: Be it therefore 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:

Short Title.

I. This Act may for all Purposes be cited as "The *West Indian* Incumbered Estates Act, 1858."

Definition of Principal Act, &c.

II. "The *West Indian* Incumbered Estates Act, 1854," (herein-after called "the Principal Act,") and this Act, shall, so far as is consistent with the Context and Objects of such Acts, be construed as One Act; and this Act and the Principal Act (herein-after referred to as "these Acts") may for all Purposes be cited as "the *West Indian* Incumbered Estates Acts, 1854, 1858."

Certain Clauses of 17 & 18 Vict. c. 117. repealed.

III. The Third, Tenth, Seventeenth, Twenty-fifth, Thirty-second, Thirty-third, Thirty-fourth, Thirty-eighth, Forty-fifth, and Fiftieth Sections of the Principal Act shall be and are hereby repealed.

Construction of Terms, &c.

IV. In the Construction and for the Purposes of these Acts (except when the Context or other Provisions of these Acts require a different Construction) the following Terms shall have the respective Meanings herein-after assigned to them; (that is to say,)

"Land" shall extend to Sugar and other Plantations, Messuages, Tenements, Rents, and Hereditaments, corporeal and incorporeal, of every Tenure or Description, as well as all Fixtures and Machinery annexed thereto, and any undivided Share thereof:

"Estate" shall extend to an Estate in Equity as well as at Law, and to an Equity of Redemption:

"Incumbrance" shall mean any legal or equitable Mortgage in Fee or for any less Estate, and also any Money secured by a Trust, or by Judgment, Decree, or Order of any Court of Law or Equity, and also any Debt, Portion, Legacy, Lien, or other Charge whereby a gross Sum of Money is secured to be paid on an Event or at a Time certain, and also any annual or periodical Charges which by the Instrument creating the same or by any other Instrument is made repurchaseable on Payment of a gross Sum of Money, and also any Arrear remaining unpaid of any annual or periodical Charge for Payment of which Arrear a Sale of any Land charged therewith might be decreed by a Court of Equity, and also any Sum of Money constituting a Charge or Lien on Land or raiseable out of Land:

"Incumbrancer" shall mean any Person entitled to such Incumbrance, or entitled to require the Payment or Discharge thereof:

"Possession" shall include the Receipt of the Rents and Profits:

"Owner" shall include any Person entitled in possession, either at Law or in Equity, to Land, or to the Receipt of the Rents and Profits thereof, or who would be so entitled if there were no Incumbrance on such Land, for a Term of not less than Thirty Years unexpired, or for an Estate or Interest for his own Life, or for an Estate or Interest determinable on the dropping of any Life or Lives, or for any greater Estate or Interest:

"Person and Owner" shall extend to a Body Politic or Corporate as well as to an Individual:

"Commissioners" shall mean the Persons appointed Commissioners for the Sale of Incumbered Estates in the *West Indies*.

Duration of Office and Powers of Commissioners.

V. The Offices of the Commissioners, and all Powers, Rights, and Privileges pertaining thereto, shall continue and be in force only for a Period of Five Years next after the Day of the passing of this Act, and from thenceforth until the End of the then next Session of Parliament.

VI. The

Commissioners to be a Court of Record, and have Jurisdiction of a Court of Equity.

VI. The Commissioners shall constitute One Court of Record, and shall have all the Powers, Authority, and Jurisdiction of a Court of Equity in *England*, and in any Colony or Colonies within which these Acts may be or come into operation for the Investigation of Title, and for ascertaining and allowing Incumbrances and Charges, and the Amounts due thereon, and for settling the Priority of such Charges and Incumbrances respectively, and the Rights of Owners and others, and generally for ascertaining, declaring, and allowing the Rights of all Persons in any Land in respect of which Applications may be made under these Acts, or in the Money to arise from Sales under these Acts, and for all other the Purposes of these Acts, and shall have the like Authority and Jurisdiction for enforcing, rescinding, or varying any Contract for Sale made under these Acts as are vested in a Court of Equity in relation to a Sale under the Direction of such Court; and all Proceedings, Inquiries, Suits, or Trials to be taken, made, or had under these Acts, and all Investigations of any Matters or Things arising out of or incidental to any such Proceedings, Inquiries, Suits, or Trials, may, subject to the Provisions herein-after contained, be at any Stage or at any Time transferred from *England* to any Colony, or from any Colony to *England*.

Powers of Commissioners to enforce Order.

VII. In all Cases within their Jurisdiction the Commissioners shall, with respect to the following Matters, (that is to say,)

The enforcing the Attendance of Persons summoned to give Evidence,

The enforcing the Production of Deeds, Books, Papers, Documents, and Writings,

The punishing Persons refusing to give Evidence or guilty of a Contempt,

The enforcing any Order whatever made by them under any of the Powers or Authorities of these Acts, or otherwise in relation to the Matters to be inquired into and done by them under these Acts,

Have all such Powers, Rights, and Privileges as are by Law vested in the High Court of Chancery in *England* for such or the like Purposes in relation to any Suit or Matter depending in such Court, and shall have also, in any Colony or other Part of Her Majesty's Dominions, all such Powers, Rights, and Privileges as are possessed by the Supreme Court of Judicature in such Colony or other Part of Her Majesty's Dominions, for such or the like Purposes in relation to any Action, Suit, Matter, or Thing depending in such Court; and it shall be lawful for the Commissioners either to carry into effect such Powers, Rights, and Privileges by Officers appointed by themselves, or to request the said High Court of Chancery, or such Court of

of Judicature as aforesaid, or any Officer thereof, to enforce any Orders made by them, and such Court or Officer shall thereupon enforce the same accordingly.

Restrictions on Sale.

VIII. The Commissioners shall not make an Order for Sale of any Land upon Application by an Incumbrancer thereon, in case it be shown to the Satisfaction of the Commissioners by the Owner of such Land that no Part of such Land is subject to any Receiver, or is in the Possession of any Incumbrancer, or has been out of Cultivation for the Space of Twelve Months preceding such Application, and that the Amount of the yearly Interest on the Incumbrances and other yearly Payments (if any) in respect of Charges payable out of the Income of such Land, and the other Lands (if any) subject to the same Incumbrances, do not exceed One Half of the net yearly Income of such Land and other Lands (if any), such yearly Income to be calculated on the average Profits or Income (if any) derived therefrom, after deducting all the necessary Outgoings (if any) during the preceding Seven Years, or during such other Period as the Commissioners may, having regard to any special Circumstances, think fit, or in case, for any Reason whatever, it shall appear to the Commissioners unjust or inexpedient that a Sale should be made: Provided always, that the Decision of the Commissioners thereupon, so far as the same relates to their Power and Jurisdiction over such Land, shall in all Cases be final and conclusive to all Intents and Purposes whatsoever.

Tenancies to be ascertained.

IX. Where a Sale shall be made under these Acts, the Commissioners shall, when and so far as they may deem necessary for the Purposes of such Sale, ascertain the Tenancies of the occupying Tenants, and of any Lessees, Under-lessees, or other Parties whose Tenancies, Leases, Under-leases, or other Interests affect the Land to be sold, or any Part thereof, and may give such Notices, and make or cause to be made such Inquiries, as they shall think necessary for ascertaining and securing the Rights of such Tenants, Lessees, Under-lessees, or other Parties as aforesaid; and all occupying Tenants, and all Persons being or claiming to be Lessees, Under-lessees, or Parties interested as aforesaid, shall, at such Times and Places as the Commissioners may require, produce all Leases, Under-leases, Agreements in Writing, and other Deeds or Documents under which such Tenants or Persons occupy or claim, if such Leases, Under-leases, Agreements, or other Deeds or Documents, or Counterparts thereof, be in their Possession or Power, and where they occupy or claim under Leases, Under-leases, Agreements in Writing, or other Deeds or Documents not in their Possession or Power, or under parol Agreements or Contracts, they shall deliver, at such Times and Places as aforesaid,

said, Particulars of the Terms and Conditions upon and subject to which they occupy or claim; and the Sale shall be made subject to the Tenancies, Leases, Under-leases, or Interests, ascertained as aforesaid, and subject to which the Owner or Incumbrancer applying for a Sale shall be Owner or Incumbrancer, and such other of the Tenancies, Leases, Under-leases, and Interests, ascertained as aforesaid, as shall appear to the Commissioners to have been granted *bonâ fide* by the Owner or Person in possession or in receipt of the Rents and Profits, and subject to which it shall appear to the Commissioners that the Sale should be made, save such (if any) of such respective Tenancies, Leases, and Under-leases as shall be included in such Sale, and, where the Commissioners think fit, subject to any Leases, Under-leases, Tenancies, or other Interests according to any general Description, or subject to any Condition concerning any Leases, Under-leases, Tenancies, or Interest the Nature of which shall not have been ascertained or shall be disputed; and, when the Commissioners shall think fit, such Sale may be made subject to any annual Charge affecting the Land to be sold or any Part thereof, or to any such apportioned Part of any such annual Charge as the Commissioners may think fit to remain charged thereon; and where such Land or any Part thereof is subject to any Incumbrance under the Terms of which the Incumbrancer cannot be required to accept Payment of the Principal Money before the Expiration of a Term of Years unexpired, such Sale may, if the Commissioners think fit, be made subject to such Incumbrance.

Effect of Conveyance.

X. Every Conveyance executed by the Commissioners in pursuance of these Acts shall be effectual to pass the Fee Simple and Inheritance and absolute Interest of and in the Land thereby expressed to be conveyed, or such lesser Estate or Interest as may in such Conveyance be specified, subject to such Rights and uncommuted Payments, if any, as are referred to in the Thirty-sixth Section of the Principal Act, and to such Tenancies, Leases, Under-leases, Incumbrances, and Interests as shall be expressed or referred to in the said Conveyance as aforesaid, but, save as aforesaid, discharged from all former and other Estates, Rights, Titles, Charges, and Incumbrances whatsoever of Her Majesty, Her Heirs and Successors, and of all other Persons whomsoever; and no Conveyance made by the Commissioners shall be set aside on the Ground of their not having Jurisdiction over the Subject Matter thereof.

Provision for setting aside Monies to meet Incumbrances.

XI. It shall be lawful for the Commissioners, where they think fit, to pay to any Person entitled to any annual or other Charge or Interest, not being an Incumbrance according to the Definition of this Act, who may consent to accept the same, a gross Sum in discharge

or by way of Redemption thereof or of a Part thereof; and the Commissioners may, in all Cases where they think fit, invest or provide for the Investment of Money, to meet as far as possible any annual or periodical Charge, or any other Charge, Incumbrance, or Interest, where, by reason of such Charge, Incumbrance, or Interest being contingent or otherwise, it shall appear to the Commissioners proper or expedient so to do, and may otherwise make and give such Orders and Directions for applying the Monies arising from any Sale in such Manner as will secure the convenient Application thereof for the Benefit and according to the Rights of all interested Parties; but nothing in these Acts or either of them contained shall be construed to restrain the Commissioners, if they shall think fit, from selling any Land within their Jurisdiction, absolutely freed and discharged from all Estates, Rights, Titles, Interests, Incumbrances, Claims, and Demands whatsoever, whether at Law or in Equity, and whether annual or periodical, future, vested, contingent, or otherwise, save and except such Rights and Interests as are set forth in the Thirty-sixth Section to the said Principal Act.

Provision for Person under Disability.

XII. Where any Person, who (if not under Disability) might have made any Application, given any Consent, done any Act, or been Party to any Proceeding under these Acts, shall be an Infant, Idiot, Lunatic, or married Woman, the Guardian, Committee of the Estate, and Husband respectively of such Person may make such Application, give such Consents, do such Acts, and be Party to such Proceedings as such Persons respectively if free from Disability might have made, given, done, or been Party to, and shall otherwise represent such Person for the Purposes of these Acts; but a married Woman entitled for her separate Use (with or without Power of Anticipation) shall for the Purpose of these Acts be deemed a Feme Sole: Provided always, that where there shall be no Guardian or Committee of the Estate of any such Person as aforesaid being infant, idiot, or lunatic, or where any Person, the Committee of whose Estate, if he were idiot or lunatic, would be authorized to act for and represent such Person, shall be of unsound Mind, or incapable of managing his Affairs, but shall not have been found idiot or lunatic under an Inquisition, it shall be lawful for the Commissioners to appoint a Guardian of such Person for the Purpose of any Proceedings under these Acts, and from Time to Time to change such Guardian; and, where the Commissioners see fit, they may appoint a Person to act as the next Friend of a married Woman for the Purpose of any Proceedings under these Acts, and from Time to Time to remove or change such next Friend.

XIII. Every

XIII. Every Conveyance, or Order for Partition, Exchange, or Division, executed or made by the Commissioners in pursuance of these Acts, shall be exempt from Stamp Duty, notwithstanding the same may have been executed or made in *England*.

XIV. Where Her Majesty by Order in Council has directed or shall direct the Principal Act to come into operation in any of the Colonies mentioned in the Schedule to the Principal Act, or where any of such Colonies has presented or shall present an Address to Her Majesty praying Her Majesty to issue such Order, then and in every such Case such Order and such Address respectively shall apply and be construed to apply as well to this Act as to the Principal Act. Provision as to these Acts coming into operation.

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