

Imperial Acts Adopted

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THE TEXT OF THE LEGISLATION FOLLOWS

Imperial Acts Adopted

CONTENTS

Bills of exchange (day for payment) (1836)

- | | | |
|------|---|----|
| [1.] | Bills of exchange need not be presented to acceptors for honour or referees till the day following the day on which they become due | 10 |
| 2. | If the following day be a Sunday, etc., then on the day following such Sunday, etc. | 11 |

Bills of exchange (non-payment) (1832)

- | | | |
|------|--|----|
| [1.] | Bills of exchange expressed to be paid in any place other than the residence of the drawee, if not accepted on presentment, may be protested in that place, unless amount paid to the holder | 12 |
|------|--|----|

Civil Procedure Act 1833

- | | | |
|-----|---|----|
| 2. | Executors may bring actions for injuries to the real estates of the deceased; and actions may be brought against executors for an injury to property, real or personal, by their testator | 14 |
| 6. | The limitation after judgment or outlawry reversed | 15 |
| 7. | No part of the United Kingdom, etc., to be deemed beyond the seas within the meaning of this Act | 15 |
| 31. | Executors suing in right of the testator to pay costs | 16 |
| 37. | Executors of lessor may distrain for arrears in his lifetime | 16 |
| 38. | Arrears may be distrained for within 6 months after determination of term | 16 |

Debts Recovery Act 1830

[1.]	Recited Acts repealed	19
2.	For remedying frauds committed on creditors by wills	19
3.	Enabling creditors to recover upon bonds, etc.	20
4.	If there is no heir at law actions may be maintained against the devisee	20
5.	Not to affect limitations for just debts, or portions for children	20
6.	Heir at law to be answerable for debts, although he may sell estate before action brought	21
7.	Where an action of debt is brought against the heir, he may plead <i>riens per descent</i>	22
8.	Devisees to be liable the same as heirs at law	22
9.	Trader's estates shall be assets to be administered in courts of equity	22
10.	Parol shall not demur by or against infants	23
11.	Infants to make conveyances under order of the court	23
12.	Persons having a life interest may convey the fee, if the estate is ordered to be sold	24
13.	Not to repeal 33 Geo. I (Ir.) relating to debts due to bankers	25

Debts Recovery Act 1839

[1.]	Recited provisions of 11 Geo. IV & 1 Will. IV. c. 47 extended to authorise mortgages as well as sales of estates	28
2.	Surplus of money arising from such sale or mortgage to descend in the same manner as the estates so sold or mortgaged would have	28

Deodands abolition (1846)

[1.]	Deodands and forfeitures of chattels moving to or causing death abolished from and after 1 September 1846	30
------	--	----

**Escheat and forfeiture of real and
personal property (1834)**

[1.]	Estates and matters to which this Act extends: construction of terms	32
------	---	----

2.	If trustee or mortgagee of any land die without an heir the Court of Chancery may appoint a person to convey	34
3.	Lands, etc., vested in any trustee shall not be escheated by reason of the attainder or conviction of such trustee	34
4.	To whom and to what cases the provisions of this Act shall extend	34
5.	This Act not to prevent the escheat of any beneficial interest	35
6.	Where any person possessing lands, etc., as a trustee shall have died without heirs, or have been convicted, before the passing of this Act, the lands, etc., shall become subject to the control of the Court of Chancery	35

Excise Declarations Act 1831

[1.]	Where an oath or affirmation is now required by any Act relating to the customs or excise a declaration shall be made instead thereof, except in the cases specially provided for	37
2.	Certain oaths relating to the customs revenue excepted	38
3.	Commissioners of customs may require a written declaration in lieu of an oath	38
4.	Certain oaths relating to the excise revenue excepted	39
5.	Commissioners of excise may require accounts of their officers to be verified on oath	40
6.	Recovery of penalties	41
7.	Act may be altered this session	41
8.	Commencement of Act	41

Executors Act 1830

[1.]	After 1 Sept. 1830 executors deemed to be trustees for persons entitled to any residue under the Statute of Distributions, unless otherwise directed by will	43
2.	Not to affect rights of executors where there is not any person entitled to the residue	43
3.	Not to extend to Scotland	43

Factors (1842)

Contents

[1.]	Bonâ fide advances to persons intrusted with the possession of goods or documents of title, though known to be agents, protected	46
2.	<i>Bonâ fide</i> deposits in exchange protected; but no lien beyond the value of the goods given up	47
3.	But the statute to be construed to protect only transactions <i>bonâ fide</i> , without notice that the agent pledging is acting without authority, or <i>malâ fide</i> against the owner	48
4.	Construction of this Act	48
5.	Agent's civil responsibility not to be diminished	50
7.	Right of owner to redeem; or to recover balance of proceeds In case of bankruptcy, owner to prove for amount paid to redeem, or for value of goods, if unredeemed	50
8.	Interpretation of Act	51
9.	Not to affect any contract made before the passing of this Act	51

Infants' Property Act 1830

[1.]	Recited Acts but only so much of 6 Geo. IV as relates to funds belonging to infants, etc., repealed	54
2.	Rules for the interpretation of this Act	54
3.	Infants, femes covert, and lunatics may be admitted to copyhold estates by their guardian, committee, or attorney	55
4.	Femes covert, infants, etc., may appoint attornies for that purpose	56
5.	In default of appearance the lord may appoint an attorney	56
6.	Fines, in what manner demandable, consequences if not paid	57
7.	The lord to deliver up possession on satisfaction of the fines	58
8.	Guardians or husbands, or committees paying fines, may reimburse themselves out of the rents of the copyhold	58
9.	No forfeiture to be incurred by infant, etc., for not appearing, or refusing to pay fines	59
10.	Fines not warranted by custom, etc., may be controverted	59

11.	Persons may appoint attorneys, etc., for surrendering lands of which common recoveries are intended to be suffered, etc.	60
12.	Guardians, of minors, etc., in order to the surrender and renewal of leases, may apply to the Court of Chancery, etc., and by order may surrender such leases, and renew the same, etc.	60
13.	Committees of lunatics may in like manner surrender leases, and renew the same, etc.	61
14.	Charges attending renewal to be charged on the estates as the court shall direct	62
15.	New leases shall be to the same uses	63
16.	Infants empowered to grant renewals of leases	63
17.	Court of Chancery may authorise leases to be made of lands belonging to infants when it is to the benefit of the estate	63
18.	If persons bound to renew are out of the jurisdiction of the court, the renewals may be made by a person appointed by the Court of Chancery, in the name of the person who ought to have renewed	64
19.	Committees of lunatics, by the direction of the Lord Chancellor, may accept of surrenders, and make new leases	65
20.	Fines to be paid before renewals, and counterparts are executed	66
21.	Fines, how to be paid; effect of death of lunatic	66
22.	The Irish Act, 11 Anne c. 3, continued unaltered	67
23.	The power of leasing lands, etc., of lunatics having a limited estate may be executed by the committee	69
24.	Where lunatics are seised of estates in fee or in tail, or an absolute interest in leasehold estates, the Chancellor may direct leases to be made	70
25.	So much of 1 Geo. I c. 10, s. 9, as enacts that agreements of guardians shall bind infants, repealed	70
26.	Such agreements may be made by guardians, with the approbation of the court, and by committees with the approbation of the Lord Chancellor	71
27.	Committee of lunatics, by direction of the Lord Chancellor, may convey land in performance of contracts	71

28.	The Lord Chancellor may order the estates of lunatics to be sold or charged by mortgage for raising money for the payment of debts, etc.	72
29.	Surplus of moneys to be of the same nature as the estate	73
30.	Act shall not subject estates of lunatics to debts otherwise than they are now subject	73
31.	Surrender and leases deemed valid	74
32.	Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance	74
33.	Stock belonging to lunatics may be ordered by the Lord Chancellor to be transferred	75
34.	Where stock shall be standing in the names of lunatics residing out of England, the Lord Chancellor may direct the transfer	75
35.	Costs may be directed to be paid	76
36.	Powers given to the Court of Chancery in England	76
37.	Which may be exercised by the Court of the Exchequer	76
38.	Powers given to courts may be exercised in England and Ireland	77
39.	Powers given to the Lord Chancellor of Great Britain	77
40.	Which may be exercised by Lord Chancellor of Ireland	77
41.	Inquisitions on commissions under the Great Seal of Great Britain to be transmitted and entered of record in Ireland, and acted on there, and <i>vice versa</i>	77
42.	Powers given to the Lord Chancellor to extend to the Lord Keeper and commissioners	79
43.	Who shall be named in the orders of the court for making transfers	79
44.	Act to be an indemnity to the bank and other companies	79

Libel Act 1843

[1.]	Offer of an apology admissible in evidence in mitigation of damages	92
2.	In an action against a newspaper for libel, the defendant may plead that it was inserted without malice and without neglect, and may pay money into court as amends	93
6.	Proviso as to plea of not guilty in civil proceedings	94
9.	Interpretation of Act	94

10.	Commencement and extent of Act	94
	Marriage Act 1835	
[1.]	Marriages before the passing of this Act of persons within the prohibited degrees not to be annulled	96
2.	Marriages of persons within prohibited degrees hereafter to be absolutely void	97
3.	Not to extend to Scotland	97
4.	Act may be altered this session	97
	Mercantile Law Amendment Act 1856	
3.	Consideration or guarantee need not appear by writing	98
5.	A surety who discharges the liability to be entitled to assignment of all securities held by the creditor	99
6.	Acceptance of a bill inland or foreign to be in writing on it, and signed by the acceptor or his agent	99
7.	What are to be deemed 'inland bills'	100
8.	With reference to the repairs of ships, every port within the United Kingdom, etc., a home port	100
16.	Short title	100
17.	Extent of Act	100
	Oaths Act 1838	
[1.]	All persons to be bound by the oath administered in the form, etc., which such persons may declare binding	102
	Perpetuation of Testimony Act 1842	
[1.]	Bills in Chancery to perpetuate testimony may be filed by persons claiming honours, titles, etc., contingent on future events	104
2.	Attorney General to be party defendant in all such suits in which the Queen may have any estate or interest	105
	Prescription Act 1832	
[1.]	Claims to right of common and other profits <i>a prendre</i> , not to be defeated after 30 years' enjoyment by showing the commencement; after 60 years' enjoyment the right to be absolute, unless had by consent or agreement	106

Contents

2.	In claims of right of way or other easement the periods to be 20 years and 40 years	107
4.	Before-mentioned periods to be deemed those next before suits for claims to which such periods relate	108
5.	In actions on the case the claimant may allege his right generally, as at present: In pleas to trespass and other pleadings, where party used to allege his claim from time immemorial, the period mentioned in this Act may be alleged; and exceptions or other matters to be replied specially	108
6.	Restricting the presumption to be allowed in support of claims herein provided for	109
7.	Proviso for infants, etc.	109
8.	What time to be excluded in computing the term of 40 years appointed by this Act	110
9.	Not to extend to Scotland or Ireland	110
10.	Commencement of Act	110
11.	Act may be amended	110

Quakers and Moravians Act 1833

[1.]	Quakers and Moravians may in all cases make a solemn affirmation or declaration instead of an oath	111
2.	Form of affirmation in lieu of oath of abjuration	112

Quakers and Moravians Act 1838

[1.]	Certain persons may make affirmation in lieu of oath	116
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Notes

Western Australia

Imperial Acts Adopted

Bills of exchange (day for payment) (1836)

Imperial Act ¹
6 & 7 Will. IV c. 58

An Act for declaring the Law as to the Day on which it is requisite to present for Payment to the Acceptors or Acceptor *supra* Protest for Honour, or to the Referees or Referee in case of Need, Bills of Exchange which had been dishonoured.

[Assented to 13 August 1836.]

Preamble

Whereas bills of exchange are occasionally accepted *supra* protest for honour, or have a reference thereon in case of need:

And whereas doubts have arisen when bills have been protested for want of payment as to the day on which it is requisite that they should be presented for payment to the acceptors or acceptor for honour, or to the referees or referee, and it is expedient that such doubts should be removed:

Be it therefore declared and enacted by the King'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,

[1.] Bills of exchange need not be presented to acceptors for honour or referees till the day following the day on which they become due

[T]hat it shall not be necessary to present such bills of exchange, to such acceptors or acceptor for honour, or to such referees or referee, until the day following the day on which such bills of exchange shall become due; and that if the place of address on such bill of exchange of such acceptors or acceptor for honour,

or of such referees or referee, shall be in any city, town, or place other than in the city, town, or place where such bill shall be therein made payable, then it shall not be necessary to forward such bill of exchange for presentment for payment to such acceptors or acceptor for honour, or referees or referee, until the day following the day on which such bill of exchange shall become due.

2. If the following day be a Sunday, etc., then on the day following such Sunday, etc.

And be it further enacted and declared, that if the day following the day on which such bill of exchange shall become due shall happen to be a Sunday, Good Friday, or Christmas Day, or a day appointed by His Majesty's proclamation for solemn fast or of thanksgiving, then it shall not be necessary that such bill of exchange shall be presented for payment, or be forwarded for such presentment for payment, to such acceptors or acceptor for honour, or referees or referee, until the day following such Sunday, Good Friday, Christmas Day, or solemn fast or day of thanksgiving.

¹ Adopted in WA by Imperial Acts Adopting Act 1844.
(7 Vict. No. 13) [Assent 30 May 1844]
Affected by the *Bills of Exchange Act 1909* (Cwlth).

Bills of exchange (non-payment) (1832)

Imperial Act ¹
2 & 3 Will. IV c. 98

An Act for regulating the protesting for Non-payment of Bills of Exchange drawn payable at a Place not being the Place of the Residence of the Drawee or Drawees of the same.

[Assented to 9 August 1832.]

Preamble

Whereas doubts having arisen as to the place in which it is requisite to protest for non-payment bills of exchange, which on the presentment for acceptance to the drawee or drawees shall not have been accepted, such bills of exchange being made payable at a place other than the place mentioned therein to be the residence of the drawee or drawees thereof, and it is expedient to remove such doubts:

Be it therefore enacted by the King'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,

- [1.] **Bills of exchange expressed to be paid in any place other than the residence of the drawee, if not accepted on presentment, may be protested in that place, unless amount paid to the holder**

[T]hat from and after the passing of this Act all bills of exchange wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place other than the place by him or them therein mentioned to be the residence of the drawee or drawees thereof, and which shall not on the presentment for acceptance thereof be accepted,

shall or may be, without further presentment to the drawee or drawees, protested for non-payment in the place in which such bills of exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such bills of exchange have been paid to the holder or holders thereof on the day on which such bills of exchange would have become payable had the same been duly accepted.

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 10).
(6 Will. IV No. 4) [Assent 11 April 1836]
Affected by the *Bills of Exchange Act 1909* (Cwlth).

Civil Procedure Act 1833

Imperial Act ¹
3 & 4 Will. IV c. 42

**An Act for further Amendment of the Law, and the better
Advancement of Justice.** ²

[Assented to 14 August 1833.]

[1. *Repealed in WA by Act No. 36 of 1935 s. 8.]* ³

**2. Executors may bring actions for injuries to the real estates
of the deceased; and actions may be brought against
executors for an injury to property, real or personal, by
their testator**

And whereas there is no remedy provided by law for injuries to the real estate of any person deceased, committed in his lifetime, nor for certain wrongs done by a person deceased in his lifetime to another in respect of his property, real or personal;

for remedy thereof be it enacted, that an action of trespass, or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased for any injury to the real estate of such person, committed in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and the damages, when recovered, shall be part of the personal estate of such person;

and further, that an action of trespass, or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed

by him in his lifetime to another in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person.

[3-5. *Repealed in WA by Act No. 35 of 1935 s. 8.]*⁴

6. The limitation after judgment or outlawry reversed

And nevertheless be it enacted, if in any of the said actions judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill, or if in any of the said actions the defendant shall be outlawed, and shall after reverse the outlawry, that in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after.

7. No part of the United Kingdom, etc., to be deemed beyond the seas within the meaning of this Act

And be it further enacted, that no part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to any of them, being part of the dominions of His Majesty, shall be deemed to be beyond the seas within the meaning of this Act, or of the Act passed in the twenty-first year of the reign of King James the First, intituled *An Act for Limitation of Actions, and for avoiding of Suits in Law*.

[8-30. *Repealed in WA by Act No. 36 of 1935 s. 8.]*

31. Executors suing in right of the testator to pay costs

And be it further enacted, that in every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the court in which such action is brought, or a judge of any of the said superior courts, shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered in like manner.

[32-36. *Repealed in WA by Act No. 36 of 1935 s. 8.]*

37. Executors of lessor may distrain for arrears in his lifetime

And be it further enacted, that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.⁵

38. Arrears may be distrained for within 6 months after determination of term

And be it further enacted, that such arrearages may be distrained for after the end or determination of such term or lease, at will, in the same manner as if such term or lease had not been ended or determined;

Provided that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due:

Provided also, that all and every the powers and provisions in the several statutes made relating to distresses for rent shall be applicable to the distresses so made as aforesaid. ⁶

[39-41. Repealed in WA by 59 Vict. No. 13 s. 27.] ⁷

[42-45. Repealed in WA by Act No. 36 of 1935 s. 8.] ⁸

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 13). (6 Will. IV No. 4) [Assent 11 April 1836]

² The short title *Civil Procedure Act 1833* was given to this Imperial Act by the *Short Titles Act 1896* (UK).

For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 9, p 675.

³ I.e. s 1 repealed in so far as it was part of the law of WA by the *Supreme Court Act 1935*, s 8 [Commenced 1 May 1936].

⁴ I.e. ss 3-5 repealed in so far as they were part of the law of WA by the *Limitation Act 1935*, s 2 [Commenced 14 April 1936].

⁵ NB: *Distress for Rent Abolition Act 1936* (WA).

⁶ NB: *Distress for Rent Abolition Act 1936* (WA).

⁷ I.e. ss 39-41 repealed in so far as they were part of the law of WA by the *Arbitration Act 1895*, s 27 [Assent 11 September 1895]

⁸ I.e. ss 42-45 repealed in so far as they were part of the law of WA by the *Supreme Court Act 1935*, s 8 [Commenced 1 May 1936].

Debts Recovery Act 1830

Imperial Act ¹
11 Geo. IV & 1 Will. IV c. 47 ²

An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate. ³

[Assented to 16 July 1830.]

Preamble

Whereas an Act was passed in the third and fourth years of King William and Queen Mary, intituled *An Act for the Relief of Creditors against Fraudulent Devises*,⁴ which was made perpetual by an Act passed in the sixth and seventh years of King William the Third, intituled *An Act for continuing several Laws therein mentioned*:⁵

And whereas an Act was passed by the Parliament of Ireland, in the fourth year of Queen Anne, intituled *An Act for Relief of Creditors against Fraudulent Devises*:⁶

And whereas an Act was passed in the forty-seventh year of his late Majesty King George the Third, intituled *An Act for more effectually securing the Payment of Debts of Traders*:⁷

And whereas it is expedient that the provisions of the said recited Acts should be enlarged, and that the said recited Acts should be repealed, in order that all the provisions relating to this matter should be consolidated in one Act:

Be it therefore enacted by the King'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 —

[1.] Recited Acts repealed

[T]hat the said several recited Acts shall be and the same are hereby repealed, but so as not to affect any of the provisions and remedies of the said Acts or any of them to the benefit of which any persons are entitled, as against any estate or interest in any lands, tenements, hereditaments, or other real estate, of any person or persons who died before the passing of this Act.

2. For remedying frauds committed on creditors by wills

And whereas it is not reasonable or just that by the practice or contrivance of any debtors their creditors should be defrauded of their just debts, and nevertheless it hath often so happened, that where several persons having by bonds, covenants, or other specialties bound themselves and their heirs, and have afterwards died seised in fee simple of and in manors, messuages, lands, tenements, and hereditaments, or had power or authority to dispose of or charge the same by their wills or testaments, have, to the defrauding of such their creditors, by their last wills or testaments devised the same or disposed thereof in such manner as such creditors have lost their said debts: for remedying of which, and for the maintenance of just and upright dealing, be it therefore further enacted, that all wills and testamentary limitations, dispositions, or appointments, already made by persons now in being, or hereafter to be made by any person or persons whomsoever, of or concerning any manors, messuages, lands, tenements, or hereditaments, or any rent, profit, term, or charge out of the same, whereof any person or persons, at the time of his, her, or their decease, shall be seised in fee simple, in possession, reversion, or remainder, or have power to dispose of the same by his, her, or their last wills or testaments, shall be deemed or taken (only as against such person or persons, bodies politic or corporate, and his and their heirs, successors, executors, administrators, and assigns, and every of them, with whom the person or persons making any such wills or testaments, limitations, dispositions, or appointments shall have entered into any bond, covenant, or

other specialty binding his, her, or their heirs) to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none effect, any pretence, colour, feigned or presumed consideration, or any other matter or thing to the contrary notwithstanding.

3. Enabling creditors to recover upon bonds, etc.

And for the means that such creditors may be enabled to recover upon such bonds, covenants, and other specialties, be it further enacted, that in the cases before mentioned every such creditor shall and may have and maintain his, her, and their action and actions of debt or covenant upon the said bonds, covenants, and specialties against the heir and heirs at law of such obligor or obligors, covenantor or covenantors, and such devisee and devisees, or the devisee or devisees of such first-mentioned devisee or devisees jointly, by virtue of this Act; and such devisee and devisees shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended.

4. If there is no heir at law actions may be maintained against the devisee

And be it further enacted, that if in any case there shall not be any heir at law against whom, jointly with the devisee or devisees, a remedy is hereby given, in every such case every creditor to whom by this Act relief is so given shall and may have and maintain his, her and their action and actions of debt or covenant, as the case may be, against such devisee or devisees solely; and such devisee or devisees shall liable for false plea as aforesaid.

5. Not to affect limitations for just debts, or portions for children

Provided always, and be it further enacted, that where there hath been or shall be any limitation or appointment, devise or

disposition, of or concerning any manors, messuages, lands, tenements, or hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money, for any child or children of any person, according to or in pursuance of any marriage contract or agreement in writing, *bonâ fide* made before such marriage, the same and every of them shall be in full force, and the same manors, messuages, lands, tenements, and hereditaments shall and may be holden and enjoyed by every such person or persons, his, her, and their heirs, executors, administrators, and assigns, for whom the said limitation, appointment, devise, or disposition was made, and by his, her, and their trustee or trustees, his, her, and their heirs, executors, administrators, and assigns, for such estate or interest as shall be so limited or appointed, devised or disposed, until such debt or debts, portion or portions, shall be raised, paid, and satisfied, anything in this Act contained to the contrary notwithstanding.

6. Heir at law to be answerable for debts, although he may sell estate before action brought

And be it further enacted, that in all cases where any heir at law shall be liable to pay the debts or perform the covenants of his ancestors, in regard of any lands, tenements, or hereditaments descended to him, and shall sell, alien, or make over the same, before any action brought or process sued out against him, such heir at law shall be answerable for such debt or debts, or covenants, in an action or actions of debt or covenant, to the value of the said lands so by him sold, aliened, or made over, in which cases all creditors shall be preferred as in actions against executors and administrators; and such execution shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts; saving that the lands, tenements, and hereditaments, *bonâ fide* aliened before the action brought, shall not be liable to such execution.

7. Where an action of debt is brought against the heir, he may plead *riens per descent*

Provided always, and be it further enacted, that where any action of debt or covenant upon any specialty is brought against the heir, he may plead *riens per descent* at the time of the original writ brought or the bill filed against him, anything herein contained to the contrary notwithstanding; and the plaintiff in such action may reply that he had lands, tenements, or hereditaments from his ancestor before the original writ brought or bill filed; and if, upon the issue joined thereupon, it be found for the plaintiff, the jury shall inquire of the value of the lands, tenements, or hereditaments so descended, and thereupon judgment shall be given and execution shall be awarded as aforesaid; but if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer or *nihil dicit*, it shall be for the debt and damage, without any writ to inquire of the lands, tenements, or hereditaments so descended.

8. Devisees to be liable the same as heirs at law

Provided always, and be it further enacted, that all and every the devisee and devisees made liable by this Act shall be liable and chargeable in the same manner as the heir at law by force of this Act, notwithstanding the lands, tenements, and hereditaments to him or them devised shall be aliened before the action brought.

9. Trader's estates shall be assets to be administered in courts of equity

And be it further enacted, that from and after the passing of this Act, where any person being, at the time of his death, a trader, within the true intent and meaning of the laws relating to bankrupts, shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, or other real estate, which he shall not by his last will have charged with or devised subject to or for the payment of his debts, and which would be assets for

the payment of his debts due on any specialty in which the heirs were bound, the same shall be assets to be administered in courts of equity for the payment of all the just debts of such person, as well debts due on simple contract as on specialty; and that the heir or heirs at law, devisee or devisees of such debtor, and the devisee or devisees of such first-mentioned devisee or devisees, shall be liable to all the same suits in equity, at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as they are liable to at the suit of creditors by specialty in which the heirs were bound:

Provided always, that in the administration of assets by courts of equity, under and by virtue of this provision, all creditors by specialty, in which the heirs are bound, shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty, in which the heirs are not bound, shall be paid any part of their demands.

10. Parol shall not demur by or against infants

And be it further enacted, that from and after the passing of this Act, where any action, suit, or other proceeding for the payment of debts, or any other purpose, shall be commenced or prosecuted by or against any infant under the age of twenty-one years, either alone or together with any other person or persons, the parol shall not demur, but such action, suit, or other proceeding shall be prosecuted and carried on in the same manner and as effectually as any action or suit could before the passing of this Act be carried on or prosecuted by or against any infant, where, according to law, the parol did not, demur.

11. Infants to make conveyances under order of the court

And be it further enacted, that where any suit hath been or shall be instituted in any court of equity, for the payment of any debts of any person or persons deceased, to which their heir or heirs, devisee or devisees, may be subject or liable, and such court of equity shall decree the estates liable to such debts, or any of

them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such court shall direct, and, if necessary, compel such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said court shall think proper and direct; and every such infant shall make such conveyance accordingly; and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons, being an infant or infants, was or were at the time of executing the same of the full age of twenty-one years.

12. Persons having a life interest may convey the fee, if the estate is ordered to be sold

And be it further enacted, that where any lands, tenements, or hereditaments hath been or shall be devised in settlement by any person or persons whose estate under this Act, or by law, or by his or their will or wills, shall be liable to the payment of any of his or their debts, and by such devise shall be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over, which way not be vested, or may be vested in some person or persons from whom a conveyance or other assurance of the same cannot be obtained, or by way of executory devise, and a decree shall be made for the sale thereof for the payment of such debts or any of them, it shall be lawful for the court by whom such decree shall be made to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said court shall think proper; and every such conveyance, release, surrender, assignment, or other assurance shall be as effectual as if the person who shall make and execute the same were seised

or possessed of the fee simple or other whole estate so to be sold.

13. Not to repeal 33 Geo. I (Ir.) relating to debts due to bankers

And be it further enacted, that nothing in this Act shall extend or be deemed or construed to extend to repeal or alter an Act made by the Parliament of Ireland in the thirty-third year of the reign of King George the First, intituled *An Act for the better securing the Payment of Bankers' Notes, and for providing a more effectual Remedy for the Security and Payment of the Debts due by Bankers.*

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 2). (6 Will. IV No. 4) [Assent 11 April 1836]

² Sometimes cited as 1 Will. IV c. 47.

³ The short title *Debts Recovery Act 1830* was given to this Imperial Act by the *Short Titles Act 1896* (UK).
For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 9, p 670.
This Imperial Act is affected by 2 & 3 Vict. c. 60 (1839) which was adopted in WA by the *Imperial Acts Adopting Act 1844* (7 Vict. No. 13) and is reproduced in this part of this publication.
This Imperial Act, so far as it is a part of the law of WA, is affected by the *Administration Act 1903*.

⁴ I.e. 3 & 4 Will. & Mary c. 14 (1691).

⁵ I.e. 6 & 7 Will. & Mary c. 14 (1694).

⁶ I.e. 4 Anne (Ir.) c. 5 (1704-5).

⁷ I.e. 46 Geo. III sess. 2 c. 74 (1807).

Debts Recovery Act 1839

Imperial Act ¹
2 & 3 Vict. c. 60

An Act to explain and extend the Provisions of an Act passed in the First year of His late Majesty William the Fourth, intituled ‘*An Act for consolidating and the amending Laws for facilitating the Payment of Debts out of Real Estate.*’ ²

[Assented to 17 August 1839.]

Preamble

Whereas by an Act passed in the first year of the reign of his late Majesty King William the Fourth, intituled ‘*An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate,*’ ³ it was (amongst other things) enacted that where any suit had been or should be instituted in any court of equity for the payment of any debts of any person or persons deceased to which their heir or heirs, devisee or devisees might be subject or liable, and such court of equity should decree the estates liable to such debts or any of them to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees an immediate conveyance thereof could not, as the law then stood, be compelled, in every such case such court should direct, and if necessary compel, such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said court should think proper and direct, and every such infant should make such conveyance accordingly, and every such conveyance should be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants was or were at the time of executing the same of the full age of twenty-one years; and it was also thereby further enacted, that

where any lands, tenements, or hereditaments had been or should be devised in settlement by any person or persons whose estate under the said Act now in recital or by law, or by his or their will or wills, should be liable to the payment of any of his or their debts, and by such devise should be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over which might not be vested, or might be vested in some person or persons from whom a conveyance or other assurance of the same could not be obtained, or by way of executory devise, and a decree should be made for the sale thereof for the payment of such debts or any of them, it should be lawful for the court by whom such decree should be made to direct any such tenant for life or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said court should think proper; and every such conveyance, release, surrender, assignment, or other assurance should be as effectual as if the person who should make and execute the same were seised or possessed of the fee simple or other whole estate so to be sold;

And whereas doubts are entertained whether the hereinbefore recited provisions of the said Act extend to authorise courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, or of lands, tenements, or hereditaments so devised in settlement as aforesaid, and also to authorise such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executory devisee as aforesaid, is an infant; and it is expedient that the said provisions of the said Act should be so extended, and that further provision should be made in relation thereto in manner hereinafter mentioned:

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,

[1.] Recited provisions of 11 Geo. IV & 1 Will. IV. c. 47 extended to authorise mortgages as well as sales of estates

[T]hat the said hereinbefore recited provisions of the said Act shall extend and the same are hereby extended to authorise courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, and also of lands, tenements, or hereditaments, so devised in settlement as aforesaid, and to authorise such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executory devisee as aforesaid, is an infant.

2. Surplus of money arising from such sale or mortgage to descend in the same manner as the estates so sold or mortgaged would have

And be it further enacted, that when any sale or mortgage shall be made in pursuance of the said recited Act or this Act, the surplus (if any) of the money raised by such sale or mortgage, which shall remain after answering the purposes for which the same shall have been raised, and defraying all reasonable costs and expenses, shall be considered in all respects of the same nature, and descend or devolve in the same manner, as the estate, or the lands, tenements, or hereditaments so sold or mortgaged, and shall belong to the same persons, be subject to the same limitations and provisions, and be applicable to the same purposes as such estate or such lands, tenements, or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

1 Adopted in WA by *Imperial Acts Adopting Act 1844*.
(7 Vict. No. 13) [Assent 30 May 1844]

- 2 The short title *Debts Recovery Act 1839* was given to this Imperial Act by the *Short Titles Act 1896* (UK).
For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 9, p 686.
- 3 I.e. *Debts Recovery Act 1830* (Imp) (11 Geo. IV & 1 Will. IV c. 47), adopted in WA by the *Imperial Acts Adopting Act 1836* and reproduced in this part of this publication.

Deodands abolition (1846)

Imperial Act ¹
9 & 10 Vict. c. 62

An Act to abolish Deodands.

[Assented to 18 August 1846.]

Preamble

Whereas the law respecting the forfeiture of chattels which have moved to or caused the death of man, and respecting deodands, is unreasonable and inconvenient:

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,

[1.] Deodands and forfeitures of chattels moving to or causing death abolished from and after 1 September 1846

[T]hat from and after the first day of September one thousand eight hundred and forty-six there shall be no forfeiture of any chattel for or in respect of the same having moved to or caused the death of man; and no coroner's jury sworn to inquire, upon the sight of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved to or caused the death of the deceased, or any deodand whatsoever; and it shall not be necessary in any indictment or inquisition for homicide to allege the value of the instrument which caused the death of the deceased, or to allege that the same was of no value.

¹ Adopted in WA by *Imperial Acts Adopting Ordinance 1849*.
(12 Vict. No. 21) [Assent 11 May 1849]

Escheat and forfeiture of real and personal property (1834)

Imperial Act ¹
4 & 5 Will. IV c. 23

An Act for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in Trust.

[Assented to 27 June 1834.]

Preamble

Whereas great inconvenience has been found to result to persons beneficially entitled to real or personal property by the escheating or forfeiture thereof to His Majesty, to corporations, to lords of manors, and others, in consequence of the death without heirs, or the conviction for treason or felony of a trustee in whom or in whose name the same is vested:

and whereas it is expedient that the same should be remedied: and inasmuch as, in order to avoid repetition, certain words are used in this Act as describing subjects some of which, according to their usual sense, such words would not embrace; for the understanding of the sense attached to them in this Act,

be it therefore enacted by the King'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,

[1.] Estates and matters to which this Act extends: construction of terms

[T]hat the provisions of this Act shall extend to and include the several estates and persons, matters and things hereinafter mentioned; (that is to say) those relating to land, to any manor,

message, tenement, hereditament, or real property, whether freehold, customaryhold, copyhold, or of any tenure whatever; those relating to chattels, to personal property of every description capable of being transferred or disposed of otherwise than in books kept by any company or society, or to any share thereof or interest therein; those relating to stock, to any fund, annuity, or security transferable in books kept by any company or society established or to be established, or to any money payable for the discharge and redemption thereof, or to any share or interest therein; those relating to dividends, to interest, or other annual produce; those relating to a conveyance, to any lease and release, surrender, or other assurance of real property, including all acts and deeds necessary for making and perfecting the same; those relating to an assignment, to any surrender, delivery, or other disposition of the personal property, and to all acts, deeds, and things necessary for making and perfecting the same; those relating to a transfer, to any payment or other disposition of stock; those relating to an heir, to any devisee or other real representative, by the common law, or by custom, or otherwise; and those relating to an executor, to any administrator or other personal representative; unless there be something in the subject or context repugnant to such construction;

and whenever this Act, in describing or referring to any trustee or other person, or any trust, land, stock, conveyance, assignment, transfer, grant, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several trusts, lands, stocks, conveyances, assignments, transfers, grants, matters, or things respectively as well as one trust, land, stock, conveyance, assignment, transfer, grant, matter, or thing respectively, unless there be something in the subject or context repugnant to such construction.

2. If trustee or mortgagee of any land die without an heir the Court of Chancery may appoint a person to convey

And be it enacted, that where any person seised of any land upon any trust or by way of mortgage dies without an heir, it shall be lawful for the Court of Chancery to appoint a person to convey such land in like manner as is provided by the Act of the eleventh year of King George the Fourth and the first year of his present Majesty, intituled '*An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases,*'² in case such trustee or mortgagee had left an heir, and it was not known who was such heir; and such conveyance shall be as effectual as if there was such heir.

3. Lands, etc., vested in any trustee shall not be escheated by reason of the attainder or conviction of such trustee

And be it further enacted, that no land, chattels, or stock vested in any person upon any trust or by way of mortgage, or any profits thereof, shall escheat or be forfeited to His Majesty, his heirs or successors, or to any corporation, lord of a manor, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place.

4. To whom and to what cases the provisions of this Act shall extend

And be it enacted, that the several provisions of this Act shall extend to every case of a trustee having some beneficial estate or interest in the same subject, or some duty as trustee to perform, and also to every case of a trust arising or resulting by implication of law or by construction of equity.

5. This Act not to prevent the escheat of any beneficial interest

Provided always, and be it hereby enacted, that nothing contained in this Act shall prevent the escheat or forfeiture of any land, chattels, or stock vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such land, chattels, or stock, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not passed.

6. Where any person possessing lands, etc., as a trustee shall have died without heirs, or have been convicted, before the passing of this Act, the lands, etc., shall become subject to the control of the Court of Chancery

And whereas it is expedient to relieve persons beneficially entitled to real or personal property which has already escheated or become forfeited to His Majesty, to corporations, to lords of manors, or others, by any of the means aforesaid:

Be it therefore enacted, that in all cases where before the passing of this Act any person possessed of or entitled to any land, chattels, or stock, or any right to or interest in any land, chattels, or stock, as a trustee thereof, either in whole or in part, or jointly with some other trustee or trustees, shall have died without an heir, or shall have been convicted of any offence whereby the said land, chattels, or stock, or any of them, have escheated or been forfeited, or have become subject to any escheat or forfeiture, then and in every or any such case the said land, chattels, or stock, or the right thereto or interest therein which hath escheated or been forfeited, or become subject to escheat or forfeiture by reason thereof, shall be subject to the order, control, and disposition of the Court of Chancery, for the use of the party beneficially interested therein, in such manner, and subject in all respects to such rights and incidents, and to such orders and regulations of the said court, under the provisions of the said Act of the eleventh year of King George the Fourth and of the first year of his present Majesty, as if such

person so dead without an heir, or so convicted, as aforesaid, were out of the jurisdiction of or not amenable to the process of the said court, without having been so convicted:

Provided always, that nothing in this clause contained shall extend to any land, chattels, or stock now vested in any person by virtue of any grant thereof made subsequently to the time when such escheat or forfeiture first occurred, or to any land, chattels, or stock which more than twenty years prior to the passing of this Act shall have been actually vested in possession or reduced into possession by the party entitled thereto by virtue of any such escheat or forfeiture.

¹ Adopted in WA by *Imperial Acts Adopting Act 1844*.
(7 Vict. No. 13) [Assent 30 May 1844]

² I.e. 11 Geo. IV & 1 Will. IV c. 60, adopted in WA by the *Imperial Acts Adopting Act 1836* and subsequently repealed in WA by the *Trustee Ordinance 1854*.

Excise Declarations Act 1831

Imperial Act ¹
1 & 2 Will. IV c. 4

An Act to abolish certain Oaths and Affirmations taken and made in the Customs and Excise Departments of His Majesty's Revenue, and to substitute Declarations in lieu thereof. ²

[Assented to 30 July 1831.]

Preamble

Whereas by the laws relating to the revenues of customs and excise numerous oaths and solemn affirmations are required to be taken and made by traders and other persons; and from the frequent occasions on which such oaths and affirmations are required, and the consequent number thereof administered, the reverence and respect which should attach to such solemn obligations have been weakened, and their binding force not duly regarded; and it is therefore expedient to provide for diminishing the number of such oaths, and to substitute other regulations in lieu thereof:

Be it therefore enacted by the King'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,

- [1.] Where an oath or affirmation is now required by any Act relating to the customs or excise a declaration shall be made instead thereof, except in the cases specially provided for**

[T]hat in all cases where, by any Act or Acts relating to the revenues of customs or excise, any oath, solemn affirmation, or affidavit shall be required to be taken or made by any person on

the doing of any act, matter, or thing, or for verifying any book, account, entry, or return, or for any other purpose whatsoever, such oath, solemn affirmation, or affidavit shall no longer, except in the cases hereinafter specially provided for, be taken, made, or required, but in lieu thereof the person who would under the Act or Acts of Parliament imposing the same have been required to take or make such oath, solemn affirmation, or affidavit shall, in the presence of the commissioners, collector, or other person empowered by such Act or Acts of Parliament to administer such oath, solemn affirmation, or affidavit, make and subscribe a declaration, setting forth the matters contained, in and to the same effect as the oath, solemn affirmation, or affidavit which would have been required if this Act had not been passed, and declaring to the truth thereof; and if any such declaration shall be untrue in any particular, the person making the same shall, over and above every other penalty to which such person may become subject, forfeit One hundred pounds.

2. Certain oaths relating to the customs revenue excepted

Provided always, and be it further enacted, that nothing herein contained shall extend to any oath required to be taken on account of any office relating to the revenue of customs, or for the discharge thereof, nor to any oath administered upon any examination or inquiry made by any surveyor general of the customs, or by any inspector general of customs, or by any collector or comptroller of the customs, for ascertaining the truth of facts relative to the customs, or the conduct of persons or officers employed therein, or by any person or persons in any of the British possessions abroad, appointed by the commissioners of His Majesty's customs to make such examinations or inquiry.

3. Commissioners of customs may require a written declaration in lieu of an oath

And whereas it is expedient that in all cases where the commissioners of the customs may deem it requisite to require

confirmation of any written statement or allegation made to them relative to the seizure of goods, or of any other matter relating to their department, such confirmation should, instead of being required to be made upon oath, be made by a declaration of the parties in writing:

Be it therefore enacted, that in such cases no affidavit or oath shall be required, but that in lieu thereof the party shall make and subscribe a written declaration of the truth of the statement or allegation; and if any such declaration made by any such person shall be false or untrue in any particular, the person making such false declaration shall forfeit One hundred pounds.

4. Certain oaths relating to the excise revenue excepted

Provided always, and be it further enacted, that nothing in this Act contained shall extend to abolish or in any manner to interfere with the oath of allegiance and of office required to be taken by every person who shall be appointed a commissioner, or who shall be appointed to any other office relating to the revenue of excise, or the affidavit of any facts showing that any duty or duties are in danger of being lost, in order to the issuing of a warrant by the collector of excise for recovery of such duties in Scotland or Ireland respectively; or the oath required to be made by any officer of excise, setting forth the ground of his suspicion of goods forfeited under any Act or Acts relating to the revenue of excise being deposited or concealed in any place, in order to obtaining a warrant for entering such place and seizing such goods; or any oath required by any Act to be made by any person on claiming or receiving any pension or allowance; or the oath required to be made by every exporter of goods, before receiving any drawback from the revenue of excise, that he is the real owner of the goods exported, and that the goods are really and *bonâ fide* exported to foreign parts and have not been relanded; or the oaths, by an Act passed in the twenty-third year of the reign of His Majesty King George the Third, for the more effectual encouragement of the manufacture of flax and cotton in Great Britain, and by another Act passed in

the third year of the reign of His Majesty King George the Fourth, for continuing the said Act, and to amend the law in respect of the allowances of excise duties on starch and soap used in certain manufactures, required to be made by every person claiming allowances of the duties on starch and soap used in manufactures; or the oaths required to be made for obtaining the allowance of the duties of excise on paper used in printing certain books in the Universities or by the King's printer; or the oaths required to be made for obtaining the allowance of the duties of excise on materials used in building churches; or any oath administered to any person in any judicial proceeding in any court of justice, or before the commissioners of excise or justices of the peace, for recovery of any penalty or forfeiture, or obtaining any abatement, return, or allowance of duties; but all such oaths shall continue to be required, and to be made, taken, and administered, as if this Act had not been passed.

5. Commissioners of excise may require accounts of their officers to be verified on oath

And be it further enacted, that it shall be lawful for the commissioners of excise to require any collector or other officer of excise to verify by oath any account or return rendered by such collector or other officer of excise, of any moneys received or paid or expended or claimed by him; and in case of any seizure of any goods or detection of any offence, the said commissioners may, on restoring such seizure or in forbearing to prosecute for such offence, or on staying any proceedings commenced for the recovery of any penalty or forfeiture, require any facts showing that no fraud has been committed or intended to be verified on the oath or affirmation of any person, such oaths or affirmations respectively to be administered and received by any one of the said commissioners or by any justice of the peace; and every collector and other officer, and every other person, making or taking any such oath or affirmation, who shall wilfully and knowingly swear or affirm falsely to any

matter or thing therein, being duly convicted thereof, shall incur the pains and penalty to which persons are liable for wilful and corrupt perjury.

6. Recovery of penalties

And be it further enacted, that the penalties by this Act imposed shall be sued for and recovered in the same manner and under the same provisions as any penalty imposed by any Acts relating to the revenue of customs or excise respectively may by law be sued for and recovered.

7. Act may be altered this session

And be it further enacted, that this Act may be amended, altered, or repealed by any Act to be passed in this present session of Parliament.

8. Commencement of Act

And be it further enacted, that this Act shall commence and take effect on the twenty-ninth day of September, one thousand eight hundred and thirty-one.

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 6). (6 Will. IV No. 4) [Assent 11 April 1836]

² The short title *Excise Declarations Act 1831* was given to the Imperial Act by the *Short Titles Act 1896* (UK). For other information about the Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 21, p 86.

Executors Act 1830

Imperial Act¹
11 Geo. IV & 1 Will. IV c. 40²

**An Act for making better provision for the Disposal of the
undisposed of Residues of the Effects of Testators.**³

[Assented to 16 July 1830.]

Preamble

Whereas testators by their wills frequently appoint executors, without making any express disposition of the residue of their personal estate:

and whereas executors so appointed become by law entitled to the whole residue of such personal estate; and courts of equity have so far followed the law as to hold such executors to be entitled to retain such residue for their own use, unless it appears to have been their testator's intention to exclude them from the beneficial interest therein, in which case they are held to be trustees for the person or persons (if any) who would be entitled to such estate under the Statute of Distributions⁴, if the testator has died intestate:

and whereas it is desirable that the law should be extended in that respect:

Be it therefore enacted by the King'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, that —

[1.] After 1 Sept. 1830 executors deemed to be trustees for persons entitled to any residue under the Statute of Distributions, unless otherwise directed by will

[W]hen any person shall die, after the first day of September next after the passing of this Act, having by his or her will, or any codicil or codicils thereto, appointed any person or persons to be his or her executor or executors, such executor or executors shall be deemed by courts of equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the Statute of Distributions, in respect of any residue not expressly disposed of, unless it shall appear by the will, or any codicil thereto, the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

2. Not to affect rights of executors where there is not any person entitled to the residue

Provided also, and be it further enacted, that nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled, in cases where there is not any person who would be entitled to the testator's estate under the Statute of Distributions, in respect of any residue not expressly disposed of.

3. Not to extend to Scotland

Provided always, and be it further enacted, that nothing herein contained shall extend to that part of the United Kingdom called Scotland.

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 1). (6 Will. IV No. 4) [Assent 11 April 1836]

² Sometimes cited as 1 Will. IV c. 40.

³ The short title *Executors Act 1830* was given to the Imperial Act by the *Short Titles Act 1896* (UK).

For other information about the Imperial Act see *Halsbury's Statutes of England*,
Second Edition, Vol 9, p 668.

- ⁴ Statute of Distributions: 22 & 23 Car II, c. 10 (1670).

Factors (1842)

Imperial Act ¹ 5 & 6 Vict. c. 39

An Act to amend the Law relating to Advances *bonâ fide* made to Agents intrusted with Goods.

[Assented to 30 June 1842.]

Preamble

Whereas by an Act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled '*An Act to alter and amend an Act for the better Protection of the Property of Merchants and others who may hereafter enter into Contracts or Agreements in relation to Goods, Wares, and Merchandise intrusted to Factors or Agents,*' ² validity is given, under certain circumstances, to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise, and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled, under circumstances, to a lien thereon, but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only;

And whereas by the said Act it is amongst other things further enacted, 'that it shall be lawful to and for any person to contract with any agent intrusted with any goods, or to whom the same may be consigned, for the purchase of any such goods, and to receive the same of and to pay for the same to such agent, and such contract and payment shall be binding upon and good against the owner of such goods, notwithstanding such person shall have notice that the person making such contract, or on whose behalf such contract is made, is an agent; provided such

contract or payment be made in the usual and ordinary course of business, and that such person shall not, when such contract is entered into or payment made, have notice that such agent is not authorised to sell the same, or to receive the said purchase money:’

And whereas advances on the security of goods and merchandise have become an usual and ordinary course of business, and it is expedient and necessary that reasonable and safe facilities should be afforded thereto, and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales, and that owners intrusting agents with the possession of goods and merchandise, or of documents of title thereto, should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof:

And whereas much litigation has arisen on the construction of the said recited Act, and the same does not extend to protect exchanges of securities *bonâ fide* made, and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same, and to extend the provisions thereof, and to put the law on a clear and certain basis:

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,

[1.] **Bonâ fide advances to persons intrusted with the possession of goods or documents of title, though known to be agents, protected**

[T]hat from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be

owner of such goods and documents, so far as to give validity to any contract or agreement by way of pledge, lien, or security *bonâ fide* made by any person with such agent so intrusted as aforesaid, as well for any original loan, advance, or payment made upon the security of such goods or documents, as also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

2. *Bonâ fide* deposits in exchange protected; but no lien beyond the value of the goods given up

And be it enacted, that where any such contract or agreement for pledge, lien, or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise, or document of title, or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if *bonâ fide* on the part of the person with whom the same may be made, shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act, and shall be as valid and effectual, to all intents and purposes, and to the same extent, as if the consideration for the same had been a *bonâ fide* present advance of money:

Provided always, that the lien acquired under such last-mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which, or the documents of title to which, or the negotiable security which shall be delivered up and exchanged.

3. But the statute to be construed to protect only transactions *bonâ fide*, without notice that the agent pledging is acting without authority, or *malâ fide* against the owner

Provided always, and be it enacted, that this Act, and every matter and thing herein contained, shall be deemed and construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges, as shall be made *bonâ fide*, and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same, or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise;

and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt, owing from any agent to any person with or to whom such lien or pledge shall be given, nor to authorise any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner; but that, for the purpose and to the intent of protecting all such *bonâ fide* loans, advances, and exchanges as aforesaid (though made with notice of such agent not being the owner, but without any notice of the agent's acting without authority), and to no further or other intent or purpose, such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

4. Construction of this Act

And be it enacted, that any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant, or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented, shall be deemed and taken to be a document of title within the meaning of this Act;

and any agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner of such goods, or obtained by reason of such agent's having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid, and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates;

and such agent shall be deemed to be possessed of such goods or documents, whether the same shall be in his actual custody, or shall be held by any other person subject to his control or for him or on his behalf;

and where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid, on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or documents of title as aforesaid, and such goods or documents of title shall actually be received by the person making such loan or advance, without notice that such agent was not authorised to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act, though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto;

and any contract or agreement whether made direct with such agent as aforesaid, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such agent; and any payment made, whether by money or bills of exchange, or other negotiable security, shall be deemed and taken to be an advance within the meaning of this Act;

and an agent in possession as aforesaid of such goods or documents shall be taken, for the purposes of this Act, to have been intrusted therewith by the owner thereof, unless the contrary can be shown in evidence.

5. Agent's civil responsibility not to be diminished

Provided always, and be it enacted, that nothing herein contained shall lessen, vary, alter, or affect the civil responsibility of an agent for any breach of duty or contract, or non-fulfilment of his orders or authority in respect of any such contract, agreement, lien, or pledge as aforesaid.

[6. *Repealed in WA by 29 Vict. No. 5, s. 5.]*³

**7. Right of owner to redeem; or to recover balance of proceeds
In case of bankruptcy, owner to prove for amount paid to
redeem, or for value of goods, if unredeemed**

Provided also, and be it enacted, that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid, at any time before such goods shall have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which such lien may exist, and upon payment or satisfaction to such agent, if by him required, of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents, or any of them, by way of lien as against such owner, or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged, or who shall have any such lien thereon as aforesaid, any balance or sum of money remaining in his hands as the produce of the sale of such goods, after deducting the amount of the lien of such person under such contract or agreement as aforesaid:

Provided always, that in case of the bankruptcy of any such agent the owner of the goods which shall have been so

redeemed by such owner as aforesaid shall, in respect of the sum paid by him on account of such agent for such redemption, be held to have paid such sum for the use of such agent before his bankruptcy, or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge, and shall, if he shall think fit, be entitled in either of such cases to prove for or set off the sum so paid, or the value of such goods, as the case may be.

8. Interpretation of Act

And be it enacted, that in construing this Act the word ‘person’ shall be taken to designate a body corporate or company as well as an individual;

and that words in the singular number shall, when necessary to give effect to the intention of the said Act, import also the plural, and *vice versa*; and words used in the masculine gender shall, when required, be taken to apply to a female as well as a male.

9. Not to affect any contract made before the passing of this Act

Provided also, and be it enacted, that nothing herein contained shall be construed to give validity to or in anywise to affect any contract, agreement, lien, pledge, or other act, matter, or thing made or done before the passing of this Act.

¹ Adopted in WA by *Imperial Acts Adopting Act 1844*. (7 Vict. No. 13) [Assent 30 May 1844]
Affected in WA by the *Factors Acts Amendment Act 1878* (42 Vict. No. 3) [Assent 3 July 1878] which also affects the Imperial Acts 4 Geo. IV c. 83 (1823) and 6 Geo. IV c. 94 (1825).

² I.e. 6 Geo. IV c. 94 (1825).

³ I.e. s 6 repealed in so far as it was part of the law of WA by the *Criminal Law Consolidation Ordinance 1865*, s 5.

Infants' Property Act 1830

Imperial Act ¹
11 Geo. IV & 1 Will. IV c. 65 ²

An Act for consolidating and amending the Laws relating to Property belonging to Infants, Femes Covert, Idiots, Lunatics, and Persons of Unsound Mind. ³

[Assented to 23 July 1830.]

Preamble

Whereas an Act was passed in the ninth year of the reign of King George the First, intituled *An Act to enable Lords of Manors more easily to recover their Fines, and to exempt Infants and Femes Covert from Forfeitures of their Copyhold Estates in Particular Cases:* ⁴

And whereas an Act was passed in the twenty-ninth year of the reign of King George the Second, intituled *An Act to enable Infants, Lunatics, and Femes Covert to surrender Leases, in order to renew the same:* ⁵

And whereas an Act was passed in the eleventh year of the reign of King George the Third, intituled *An Act to enable Lunatics entitled to renew Leases, their Guardians and Committees, to accept of Surrenders of Old Leases, and grant new ones:* ⁶

And whereas an Act was passed in the Parliament of Ireland in the eleventh year of the reign of Queen Anne, intituled *An Act to enable Guardians and others to renew Leases for Lives:* ⁷

And whereas an Act was passed in the forty-third year of the reign of King George the Third, intituled *An Act to authorise the Sale or Mortgage of the Estates of Persons found Lunatic by Inquisition in England or Ireland respectively, and the granting of Leases of the same:* ⁸

And whereas an Act was passed in the forty-seventh year of the reign of King George the Third, intituled, *An Act concerning Common Recoveries suffered in Copyhold or Customary Courts by Attorney*: 9

And whereas an Act was passed in the fifty-ninth year of the reign of King George the Third, intituled *An Act concerning Common Recoveries to be suffered by Attorney in Courts of Ancient Demesne, and to explain an Act of His present Majesty relative to the Sale or Mortgaging of Estates of Lunatics*: 10

And whereas an Act was passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled *An Act for consolidating and amending the Laws relating to Conveyances and Transfers of Estates and Funds vested in Trustees who are Infants, Idiots, Lunatics, or Trustees of Unsound Mind, or who cannot be compelled or refuse to act; and also the Laws relating, to Stocks and Securities belonging to Infants, Idiots, Lunatics, and Persons of Unsound Mind*: 11

And whereas an Act was passed in the ninth year of the reign of his said late Majesty, intituled *An Act for extending the Acts passed in the Forty-third and Fifty-ninth Years of the Reign of His late Majesty King George the Third, for the Sale and Mortgage of Estates of Persons found Lunatics by Inquisition taken in England and Ireland, so as to authorise such Sale and Mortgage for other Purposes; and for rendering Inquisitions or Commissions of Lunacy taken in England available in Ireland, and like Inquisitions taken in Ireland available in England*:¹²

And whereas it is expedient the provisions of the said Acts should be consolidated and amended;

Be it therefore enacted by the King'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,

[1.] Recited Acts but only so much of 6 Geo. IV as relates to funds belonging to infants, etc., repealed

[T]hat the said recited Acts of the eleventh year of the reign of Queen Anne, the ninth year of the reign of King George the First; the twenty-ninth year of the reign of King George the Second, the eleventh, forty-third, forty-seventh, and fifty-ninth years of the reign of King George the Third, and the ninth year of the reign of his late Majesty King George the Fourth, and also the said recited Act of the sixth year of the reign of his present Majesty, so far as the said last-mentioned Act relates to stocks, funds, annuities, and securities belonging beneficially to persons being infants, idiots, lunatics, or of unsound mind, shall be and the same are hereby repealed (except as to such proceedings under the same as shall have been commenced before the passing of this Act, and which may be proceeded in according to the provisions of the said recited Acts respectively, or according to the provisions of this Act, as shall be thought expedient), provided always that the several Acts repealed by the said last-recited Act shall not be revived.

2. Rules for the interpretation of this Act

And inasmuch as, in order to avoid unnecessary repetition, certain words are used in this Act as describing subjects some of which, according to their usual sense, such words would not embrace; for the understanding of the sense attached to them in this Act, be it further enacted, that the provisions of this Act shall extend and be understood to extend to and include the several other estates, persons, matters, and things hereinafter mentioned; (that is to say)

those relating to land, to any manor, messuage, tenement, hereditament, or real property of whatsoever tenure, and to property of every description transferable otherwise than in books kept by any company or society, or any share thereof or charge thereon, or estate or interest therein;

those relating to stock, to any fund, annuity, or security transferable in books kept by any company or society, or to any money payable for the discharge or redemption thereof, or any share or interest therein; those relating to dividends, to interest or other annual produce; those relating to the Bank of England, to the East India Company, South Sea Company, or any other company or society established or to be established;

those relating to a conveyance, to any release, surrender, assignment, or other assurance, including all Acts, deeds, and things necessary for making and perfecting the same;

those relating to a transfer, to any assignment, payment, or other disposition; and those relating to a lunatic, to any idiot or person of unsound mind or incapable of managing his affairs;

unless there be something in the subject or context repugnant to such construction;

and whenever this Act, in describing or referring to any person, or any land, stock, conveyance, lease, recovery, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several lands, stocks, conveyances, leases, recoveries, matters, or things, as well as one land, stock, conveyance, lease, recovery, matter, or thing respectively, unless there be something in the subject or context repugnant to such construction.

3. Infants, femes covert, and lunatics may be admitted to copyhold estates by their guardian, committee, or attorney

And be it further enacted, that from and after the passing of this Act, where any person being under the age of twenty-one years, or being a feme covert or lunatic, is or shall be entitled by descent, or surrender to the use of a last will, or otherwise, to be admitted tenant of any copyhold lands, such person, in his or her

own proper person, or being a feme covert by her attorney, or being an infant by his guardian or attorney, as the case may require, or being a lunatic by the committee of his estate, shall come to and appear at one of the three next courts which shall be kept (for the keeping whereof the usual notice shall be given) for the manor whereof such land shall be parcel, and shall there offer himself or herself to the lord or his steward to be admitted tenant to the said land; to make which appearance and to take which admittance in behalf of such infant or lunatic or feme covert, such guardian, committee, or attorney shall be and is hereby respectively authorised and required.

4. Femes covert, infants, etc., may appoint attorneys for that purpose

And be it further enacted, that it shall be lawful for any feme covert, and for any infant who shall have no guardian, and she and he is hereby empowered, by writing under her or his hand and seal respectively, to appoint an attorney or attorneys on her or his behalf, for the purpose of appearing and taking such admittance as aforesaid.

5. In default of appearance the lord may appoint an attorney

And be it further enacted, that in default of such appearance of any infant, feme covert, or lunatic, in his or her own person, or by his or her guardian, committee, or attorney in that behalf, and of acceptance of such admittance as aforesaid, it shall be lawful for the lord of every such manor, or his steward, after such three several courts have been duly holden for such manor, and proclamations in such several courts been regularly made, to appoint, at any subsequent court to be holden for such manor, any fit person to be attorney for every such infant, feme covert, or lunatic for that purpose only, and by such attorney to admit every such infant, feme covert, or lunatic to the said land, according to such estate as such infant, feme covert, or lunatic shall be legally entitled to therein, and upon every such admittance to impose and set such fine as might have been

legally imposed and set if such infant had been of full age, or if such feme covert had been sole and unmarried, and if such lunatic had been of sane mind.

6. Fines, in what manner demandable, consequences if not paid

And be it further enacted, that upon every such admittance of any infant, feme covert, or lunatic as aforesaid, the fine imposed and set thereupon shall and may be demanded by the bailiff or agent of the lord of such manor, by a note in writing, signed by the lord of such manor or by his steward, to be left with the guardian of such infant, or such infant if he have no guardian, or with such feme covert or her husband, or with the committee of the estate of such lunatic, or with the tenant or occupier of the land to which such infant, feme, covert, or lunatic shall have been admitted as aforesaid;

and if the fine so imposed and set be not paid or tendered to such lord or his steward within three months after such demand made, then it shall be lawful for the lord of such manor to enter into and upon the copyhold land to which any such infant, feme covert, or lunatic shall be so admitted, and to hold and enjoy the same, and to receive the rents, issues, and profits thereof, but without liberty to fell any timber standing thereon, for so long time only and until by such rents, issues, and profits such lord shall be fully paid and satisfied such fine, together with all reasonable costs and charges which such lord shall have been put unto in levying and raising the same, and in obtaining the possession of such copyhold land, although such infant, feme covert, or lunatic shall happen to die before such fine and fines, and the costs and charges aforesaid, shall be raised and collected;

of all which rents, issues, and profits so to be received by such lord of such manor, or his steward, bailiff, or servant, upon the occasion aforesaid, such lord shall yearly, and every year, upon demand to be made by the person who shall be entitled to the surplus of the said rents and profits, over and above what will

pay and satisfy such fine and costs and charges, or by the person who shall be then entitled to such copyhold land, give and render a just and true account, and shall pay the same surplus, if any, to such person as shall be entitled to the same.

7. The lord to deliver up possession on satisfaction of the fines

And be it further enacted, that as soon as such fine, and the costs, charges, and expenses aforesaid, shall be fully paid and satisfied, or if, after such seizure and entry of and upon such copyhold land for the purposes aforesaid, such fine, and the costs and charges aforesaid, shall be lawfully tendered and offered to be paid and satisfied to the lord of such manor, then and in any of the said cases it shall be lawful for such infant, feme covert, lunatic, or other person entitled thereto, or the guardian of such infant, the husband of such feme covert, or the committee of such lunatic, to enter upon and take possession of and hold the said copyhold land according to the estate or interest such infant, feme covert, or lunatic shall be lawfully entitled to therein, and the lord of such manor shall and is hereby required in any of the said cases to deliver possession thereof accordingly;

and if such lord, after such fine, and the costs and charges aforesaid, shall be fully paid and satisfied, or after the same shall have been tendered or offered to be paid as aforesaid, shall refuse to deliver the possession of the said copyhold land as aforesaid, he or they shall be liable to and shall make satisfaction to the person or persons so kept out of possession, for all the damages that he or she shall thereby sustain, and all the costs and charges that he or she shall be put unto for the recovery thereof.

8. Guardians or husbands, or committees paying fines, may reimburse themselves out of the rents of the copyhold

And be it further enacted, that where any infant, feme covert, or lunatic shall be admitted to any copyhold land, if the guardian of

such infant, or husband of such feme covert, or committee of such lunatic, shall pay to the lord of any manor the fine legally imposed and set upon such admittance, and the costs and charges which such lord of such manor shall have been put unto as aforesaid, then it shall be lawful for every guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, to enter into and to hold and enjoy the said land to which such infant, feme covert, or lunatic shall have been so admitted, and receive and take the rents, issues, and profits thereof to his and their own use, until thereby such guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, shall be fully satisfied and paid all and every such sum and sums of money as he shall respectively pay and disburse upon the account aforesaid, notwithstanding the death of such infants, femes covert, or lunatic shall happen before such sum or sums of money so expended shall or may be so raised and reimbursed.

9. No forfeiture to be incurred by infant, etc., for not appearing, or refusing to pay fines

Provided always, and be it further enacted, that from and after the passing of this Act no infant, feme covert, or lunatic shall forfeit any copyhold land for his or her neglect or refusal to come to any court to be kept for any manor whereof such land is parcel, and to be admitted thereto, nor for the omission, denial, or refusal of any such infant, feme covert, or lunatic to pay any fine imposed or set upon his or her admittance to any such land.

10. Fines not warranted by custom, etc., may be controverted

Provided nevertheless, and be it further enacted, that if the fine imposed in any of the cases hereinbefore mentioned shall not be warranted by the custom of the manor, or shall be unlawful, then such infant, feme covert, or lunatic shall be at liberty to controvert the legality of such fine, in such manner as he or she might have done if this Act had not been made.

11. Persons may appoint attorneys, etc., for surrendering lands of which common recoveries are intended to be suffered, etc.

And be it further enacted, that it shall be lawful for any person not being under coverture, and for every feme covert (such feme covert being solely and secretly examined by the lord of the manor whereof the land of which a common recovery is proposed to be suffered shall be holden by copy of court roll, or in ancient demesne, or otherwise, or by his steward, or by the deputy of such steward), to appoint any person to be his or her attorney, for the purpose of surrendering the land of which a common recovery shall be proposed to be suffered, to the use of any person, to make him tenant to the plaint, and also to appoint any other person to appear for the person so appointing as vouchee, and to enter into the usual warranty, and to do all other lawful and necessary acts for the suffering and perfecting of such common recovery respectively, and to direct the demandant in such common recovery respectively to surrender the tenements so recovered, when or after such recovery shall be suffered and perfected, to such uses as shall be declared in the instrument by which such attorney shall be respectively appointed; and that the surrender and common recovery which shall be had, acknowledged, and suffered as aforesaid shall have the like effect, but no other, as such surrender and common recovery would have had if the party who shall acknowledge such surrender and suffer such common recovery by attorney, and give such directions as aforesaid, had appeared in court in his or her person, and acknowledged the said surrender, and suffered the same recovery, and had joined in the surrender to be made by such defendant.

12. Guardians, of minors, etc., in order to the surrender and renewal of leases, may apply to the Court of Chancery, etc., and by order may surrender such leases, and renew the same, etc.

And be it further enacted, that in all cases where any person, being under the age of twenty-one years, or a feme covert, is or

shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian or other person on his behalf, and for such feme covert, or any person on her behalf, to apply to the Court of Chancery in England, the Courts of Equity of the Counties Palatine of Chester, Lancaster, and Durham, or the Courts of Great Session of the Principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said courts respectively such infant or feme covert, or his guardian, or any person appointed in the place of such infant or feme covert by the said courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take, in the place and for the benefit of such person under the age of twenty-one years, or feme covert, one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said courts shall respectively direct.

13. Committees of lunatics may in like manner surrender leases, and renew the same, etc.

And be it further enacted, that in all cases where any person, being lunatic, shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for the committee of the estate of such person to apply to the Lord Chancellor of Great

Britain, being intrusted by virtue of the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by petition or motion in a summary way; and by the order and direction of the said Lord Chancellor, intrusted as aforesaid, such committee shall and may be enabled from time to time, by deed or deeds, in the place of such lunatic, to surrender such lease or leases, and accept and take, in the name and for the benefit of such lunatic, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years, absolute or determinable as aforesaid, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise, as the said Lord Chancellor, intrusted as aforesaid, shall direct.

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

And be it further enacted, that every sum of money and other consideration paid by any guardian, trustee, committee, or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or lunatic for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said courts and Lord Chancellor, intrusted as aforesaid, respectively shall direct and determine; and as to leases to be made upon surrenders by femes covert, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises, for the benefit of the person who shall advance the same.

15. New leases shall be to the same uses

And be it further enacted, that, every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devices, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

16. Infants empowered to grant renewals of leases

And be it further enacted, that where any person, being under the age of twenty-one years, or a feme covert, might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant, or such feme covert, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, or of such feme covert, or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise, as the court by such order shall direct.

17. Court of Chancery may authorise leases to be made of lands belonging to infants when it is to the benefit of the estate

And be it further enacted, that where any person, being an infant under the age of twenty-one years, is or shall be seised or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the

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

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

And be it enacted, that where any person who, in pursuance of any covenant or agreement in writing, might, if within the jurisdiction and amenable to the process of the Court of

Chancery, be compelled to execute any lease by way of renewal, shall not be within the jurisdiction or not amenable to the process of the said court, it shall be lawful to and for the said Court of Chancery, by an order to be made upon the petition of any person or any of the persons entitled to such renewal (whether such person be or be not under any disability), to direct such person as the said court shall think proper to appoint for that purpose, to accept a surrender of the subsisting lease, and make and execute a new lease in the name of the person who ought to have renewed the same; and such deed, executed by the person to be appointed as aforesaid, shall be as valid as if the person in whose name the same shall be made had executed the same, and had been alive and not under any disability; but in every such case it shall be in the discretion of the said Court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the renewal, and not to make the order for such new lease unless by the decree to be made in such cause, or until after such decree shall have been made.

19. Committees of lunatics, by the direction of the Lord Chancellor, may accept of surrenders, and make new leases

And be it further enacted, that where any person, being lunatic is or shall be entitled or has a right, or in pursuance of any covenant or agreement might, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, or otherwise, it shall be lawful to and for the committee of the estate of such lunatic, in the name of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in a summary way upon the petition of such committee, or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute to any person a new lease of the premises comprised in such lease to be

surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as were mentioned or contained in such lease so surrendered at the making thereof, or otherwise, as the Lord Chancellor, intrusted as aforesaid, by such order shall direct; and this provision shall extend as well to cases where the lunatic shall not be compellable to renew, but it shall be for his benefit to do so, as to cases where a renewal might be effectually enforced against the lunatic if of sound mind.

20. Fines to be paid before renewals, and counterparts are executed

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

21. Fines, how to be paid; effect of death of lunatic

And be it further enacted, that all fines, premiums, and sums of money, which shall be had, received, or paid for or on account of the renewal of any lease, after a deduction of all necessary incidental charges and expenses, shall be paid, if such renewal shall be made by or in the name of an infant, to his guardian, and be applied and disposed of for the benefit of such infant, in such manner as the said court shall direct; if such renewal shall be made by a feme covert, to such person or in such manner as the court shall direct for her benefit; if such renewal shall be made in the name of any person out of jurisdiction or not amenable as aforesaid, to such person or in such manner, or into the Court of Chancery to such account, and to be applied and

disposed of as the said court shall direct; and if such renewal should be made in the name of a lunatic, to the committee of the estate of such lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the Lord Chancellor, intrusted as aforesaid, shall direct;

but upon the death of such lunatic, all such sum and sums of money as shall arise by such fines or premiums, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be tenant for life only, and then the same shall be considered as personal estate.

22. The Irish Act, 11 Anne c. 3, continued unaltered

And whereas by the said Act passed in the Parliament of Ireland in the eleventh year of the reign of Queen Anne, after reciting that several persons had theretofore made and thereafter might make leases for one or more life or lives, of several lands, tenements, and hereditaments in the said then kingdom of Ireland, with covenants and agreements in such leases for renewing the same from time to time on the tender and payment of some fine, certain on the death of any life or lives in such lease or leases mentioned, by adding such one or more life or lives, on failure of the life or lives in being within the respective times in such agreements and covenants mentioned, as the several lessee or lessees in such lease or leases should nominate; and also reciting, that through one pretence or other, on the fall or failure of any life or lives in being, the lessee or lessees were greatly delayed before he or they could obtain any renewal according to the covenants and agreements in their leases, to their very great discouragement; for remedy whereof it was enacted, that if it should so happen that any person or persons who, in pursuance of such agreements for renewal in such leases contained or to be contained, ought to make such new lease or leases as had been or should be agreed to be made, should be under any disability so to do, by reason of infancy, coverture, or

non compos mentis, that then and in every such case, (that is to say) in case of disability by reason of infancy or being under age, by the direction of the High Court of Chancery or the Court of Exchequer, signified by an order made upon hearing all parties concerned on the petition of such lessee or lessees, it should and might be lawful to and for the guardian or guardians of such infant or person under age, upon such lessee or lessees tendering the fine or fines agreed on in such lease, and performing all such matters and things as by the said covenants and agreements ought to be performed on his or their part and behalf previous to such renewal, in such manner as should by such order be directed, to renew such lease or leases by adding such new life or lives as should be named by the said lessee or lessees according to the said covenants and agreements, and such guardian or guardians were thereby required to renew such lease or leases by putting in such new life or lives as should be so named unto them as aforesaid, while the infant or minor of such guardian or guardians should be under such disability of infancy or under age; and it was further enacted, that in all cases where the person or persons who by covenant or agreement were obliged to make such renewals were or should be disabled to renew by reason of being under coverture, beyond the seas, or *non compos mentis*, it should and might be lawful to and for the Lord Chancellor or Commissioner or Commissioners of the Great Seal of the said then kingdom of Ireland for the time being, upon petition or complaint made to him or them in the High Court of Chancery, upon payment of the fine and such other sum or sums of money as ought to be paid upon such renewal for the use of the person or persons entitled to the same, and upon the lessee or lessees doing and performing all and every such matters and things as by the said covenants or agreements in the said lease or leases ought to be done or performed by him or them previous to such renewal, to order or appoint such renewal or renewals to be made by one of the masters of the said Court of Chancery, to be nominated and appointed by the said Lord Chancellor or Commissioner or Commissioners of the Great Seal for the time being; and such

master so nominated and appointed and also such guardian and guardians as aforesaid, should make and execute such deed of renewal in the name of the person or persons who ought to have renewed the same; which deed or deeds of renewal so made and executed by the said guardian or guardians, master or masters, counterparts thereof being duly perfected by the lessee or lessees for the use and benefit of the person or persons having the reversion and inheritance of such lands, tenements, or hereditaments comprised in such deed or deeds, should be as good and effectual in law and equity to all intents and purposes, as if the person or persons under age had been of full age and had executed the same, or as if the other person or persons under such disability had not been so disabled and had executed the same; provided such person or persons under age or under such disability as aforesaid were at the time of the renewal of such lease compellable in law or equity to make such renewal: and whereas it is expedient that the provisions of the said recited Act, which have been so long in force in Ireland, should remain unaltered; be it therefore further enacted, that the clauses and provisions contained in the said Act shall be and continue in force in the same manner to all intents and purpose as if the said clauses and provisions, and every part thereof, had been repeated and re-enacted in this Act; and none of the other provisions in this Act contained for authorising any surrenders to be accepted, or any new lease to be made or executed, for or on the behalf of any person who, in pursuance of any covenant or agreement for renewal in any lease contained or to be contained, ought to make such new lease or leases, shall extend or be construed to land in Ireland.

23. The power of leasing lands, etc., of lunatics having a limited estate may be executed by the committee

And be it further enacted, that where any person, being lunatic, is or shall be seised or possessed of any land, either for life or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases, for one, two, or three

lives in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing which is or shall be vested in such person, being lunatic and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, intrusted as aforesaid.

24. Where lunatics are seised of estates in fee or in tail, or an absolute interest in leasehold estates, the Chancellor may direct leases to be made

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

25. So much of 1 Geo. I c. 10, s. 9, as enacts that agreements of guardians shall bind infants, repealed

And whereas by an Act passed in the first year of the reign of King George the First, intituled *An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the Poor Clergy*,¹³ it was enacted that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all

intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements: and whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued; be it further enacted, that so much of the said Act of the first year of the reign of King George the First, as is hereinbefore recited, shall be and the same is hereby repealed.

26. Such agreements may be made by guardians, with the approbation of the court, and by committees with the approbation of the Lord Chancellor

And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last-recited Act, if the same had not been repealed; and the committee of the estate of any lunatic, with the approbation of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in the petition of such committee in a summary way, may enter into any agreement for or on the behalf of such lunatic which the guardian of an infant might have entered into for or on the behalf of such infant by virtue of the said last-recited Act, if the same had not been repealed.

27. Committee of lunatics, by direction of the Lord Chancellor, may convey land in performance of contracts

And be it further enacted, that when any person who shall have contracted to sell, mortgage, let, divide, exchange, or otherwise dispose of any land, shall afterwards become lunatic, and a specific performance of such contract, either wholly or so far as the same shall remain to be performed, shall have been decreed by the Court of Chancery, either before or after such lunacy, it shall be lawful for the committee of the estate of such lunatic, in

the place of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit, to convey such land, in pursuance of such decree, to such person and in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and the purchase money, or so much thereof as remains unpaid, shall be paid to the committee of such lunatic.

28. The Lord Chancellor may order the estates of lunatics to be sold or charged by mortgage for raising money for the payment of debts, etc.

And be it further enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to order any land, of or to which any person being lunatic shall be seised or possessed or entitled, to be sold, or charged and incumbered by way of mortgage, or otherwise disposed of, as shall be deemed most expedient for the purpose of raising money for payment of the debts or engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all proceedings under the said commission, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions, or for any of such purposes as aforesaid, as such Lord Chancellor, intrusted as aforesaid, shall respectively direct; and that the moneys arising from any such sale, mortgage, charge, incumbrance, or other disposition, may be paid, laid out, and applied in payment of the debts and engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all proceedings under the same commission, or incurred under the order of such Lord Chancellor, intrusted as aforesaid, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions, in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and to direct the committee of the estate

of such person to execute, in the place of such person respectively, conveyances of the estates so to be sold, mortgaged, incumbered, or disposed of, and to do all such acts as shall be necessary to effectuate the same, in such manner as such Lord Chancellor, intrusted as aforesaid, shall direct.

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

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

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

Provided nevertheless, and be it enacted, that nothing in this Act contained shall extend to subject any part of the estates of any person, being lunatic, to the debts or demands of his creditors, otherwise than as the same are now subject and liable by due course of law, but only to authorise the Lord Chancellor, intrusted as aforesaid, to make order in such cases as are

hereinbefore mentioned, when the same shall be deemed just and reasonable, or for the benefit or advantage of such lunatic.

31. Surrender and leases deemed valid

And be it further enacted, that every surrender and lease, agreement, conveyance, mortgage, or other disposition respectively, granted and accepted, executed and made, by virtue of this Act, shall be and be deemed as valid and legal to all intents and purposes as if the person by whom, or in whose place, or on whose behalf the same respectively shall be granted or accepted, executed and made, had been of full age, unmarried, or of sane mind, and had granted, accepted, made, and executed the same; and every such surrender and lease respectively made and accepted by or on the behalf of a feme covert shall be valid, without any fine being levied by her.

32. Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance

And be it further enacted, that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said court, to direct all or any part of the dividends due or to become due in respect of such stocks, or any such sum of money, to be paid to any guardian of such infant, or to any other person, according to the discretion of such court, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

33. Stock belonging to lunatics may be ordered by the Lord Chancellor to be transferred

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

34. Where stock shall be standing in the names of lunatics residing out of England, the Lord Chancellor may direct the transfer

And be it further enacted, that where any stock shall be standing in the name of or vested in any person residing out of England, it shall be lawful for the Lord Chancellor, intrusted as aforesaid,

upon petition, and proof being made to his or their satisfaction that such person has been declared lunatic, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where such person shall reside, to direct any person whom such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock, or any part or parts thereof, into the name of any such curator or other such person as aforesaid, or otherwise, and also to receive and pay over the dividends thereof, as such Lord Chancellor shall think fit; and that such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

35. Costs may be directed to be paid

And be it further enacted, that the Court of Chancery or Lord Chancellor, intrusted as aforesaid, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or stock or the rents or dividends in respect of which the same respectively shall be made, in such manner as the said court or Lord Chancellor shall think proper.

36. Powers given to the Court of Chancery in England

And be it further enacted, that the powers and authorities given by this Act to the Court of Chancery in England shall extend to all land and stock within any of the dominions, plantations, and colonies belonging to His Majesty, except Scotland.

37. Which may be exercised by the Court of the Exchequer

And be it further enacted, that the powers and authorities given by this Act to the Court of Chancery shall and may be exercised in like manner by, and are hereby given to, the Court of Exchequer.

38. Powers given to courts may be exercised in England and Ireland

And be it further enacted, that the powers and authorities given by this Act to the Courts of Chancery and Exchequer in England shall and may be exercised in like manner, and are hereby given to the Courts of Chancery and Exchequer in Ireland, with respect to land and stock in Ireland.

39. Powers given to the Lord Chancellor of Great Britain

And be it further enacted, that the powers and authorities given by this Act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall extend to all land and stock wheresoever, within any of the dominions, plantations, and colonies belonging to His Majesty (except Scotland and Ireland).

40. Which may be exercised by Lord Chancellor of Ireland

And be it further enacted, that the powers and authorities given by this Act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to, the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land and stock in Ireland, but not further or otherwise.

41. Inquisitions on commissions under the Great Seal of Great Britain to be transmitted and entered of record in Ireland, and acted on there, and *vice versa*

And whereas it is desirable that in some cases inquisitions taken in England on a commission in the nature of a writ *de lunatico inquirendo* and writs of *supersedeas* of any such commission, should be acted upon in Ireland in the same manner as the same may be acted upon in England, and for that purpose shall be placed on record in Ireland; and that inquisitions on a like commission executed in Ireland, and writs of *supersedeas* of any such commission, shall be acted on in England, and for that purpose shall be placed on record there; be it therefore enacted,

that in all cases where any person has been or shall be found lunatic or of unsound mind, and incapable of managing his or her affairs, by any inquisition on a commission in the nature of a writ *de lunatico inquirendo* under the Great Seal of Great Britain, it shall be lawful for the proper officer, by order of the Lord Chancellor of Great Britain, intrusted as aforesaid, to transmit a transcript of the record of such inquisition to the Chancery of Ireland, and such transcript shall thereupon be entered of record and be as of record there; and in case a writ of *supersedeas* of any such commission shall issue, the issue of such writ shall be certified and transmitted and recorded in like manner, and the copies of the record of any such inquisition or *supersedeas* so transmitted and entered as of record in the Chancery of Ireland shall, if the Lord Chancellor of Ireland, intrusted as aforesaid, shall see fit, and so long only as he or they shall so see fit, be acted upon by him or them respectively, and be of the same force and validity and have the same effect to all intents and purposes in Ireland, as if such inquisition had been taken on a commission under the Great Seal of Ireland, and such writ of *supersedeas* had been issued under the Great Seal of Ireland; and that in all cases where any person has been or shall be found lunatic or of unsound mind and incapable of managing his or her affairs, by any inquisition on a commission in the nature of a writ *de lunatico inquirendo* under the Great Seal of Ireland, it shall be lawful for the proper officer, by order of the Lord Chancellor of Ireland, intrusted as aforesaid, to transmit a transcript thereof in like manner to the Chancery of England, and such transcript shall thereupon be entered as of record there; and in case a writ of *supersedeas* of any such commission shall issue, a transcript thereof shall be certified and transmitted to the Chancery of England, and recorded in like manner; and such entry of record of any such inquisition or *supersedeas* shall, if the Lord Chancellor of Great Britain, intrusted as aforesaid, shall see fit, and so long as he or they shall so see fit, be acted upon by him or them respectively, and be of the same force and validity, and have the same force and effect, as if such inquisition had been taken on a commission

under the Great Seal of Great Britain, and such writ of *supersedeas* had been issued under the Great Seal of Great Britain.

42. Powers given to the Lord Chancellor to extend to the Lord Keeper and commissioners

And be it further enacted, that the powers and authorities given by this Act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to, the Lord Keeper or Commissioners of the Great Seal of Great Britain for the time being, intrusted as aforesaid; and the powers and authorities given by this Act to the Lord Chancellor of Ireland, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to, the Lord Keeper or Commissioners of the Great Seal of Ireland for the time being, intrusted as aforesaid.

43. Who shall be named in the orders of the court for making transfers

Provided always, and be it further enacted, that in all cases in which orders shall be made in pursuance of this Act for the transfer of stock, the person to be named in such order for making such transfer shall be some officer of such company or society in whose books such transfer shall be made; and where such transfer shall be directed to be made in books kept by the Governor and Company of the Bank of England, such officer shall be the secretary or deputy secretary, or accountant general or deputy accountant general, for the time being of the said governor and company.

44. Act to be an indemnity to the bank and other companies

And be it further enacted, that this Act shall be and is hereby declared to be a full and complete indemnity and discharge to the Governor and Company of the Bank of England, and all other companies and societies, and their officers and servants,

for all acts and things done or permitted to be done pursuant thereto; and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 4).
(6 Will. IV No. 4) [Assent 11 April 1836]

This adopted Act is affected in WA by the *Guardianship and Administration Act 1990*.

² Sometimes cited as 1 Will. IV c. 65.

³ The short title *Infants' Property Act 1830* was given to this Imperial Act by the *Short Titles Act 1896* (UK).

⁴ I.e. 9 Geo. I c. 29 (1722).

⁵ I.e. 29 Geo. II c. 31 (1756).

⁶ I.e. 11 Geo. III c. 20 (1771).

⁷ I.e. 11 Anne (Ir.) c. 3 (1711-12).

⁸ I.e. 43 Geo. III c. 75 (1803).

⁹ I.e. 47 Geo. III sess. 2 c. 8 (1807).

¹⁰ I.e. 59 Geo. III c. 80 (1819).

¹¹ I.e. 6 Geo. IV c. 74 (1825).

¹² I.e. 9 Geo. IV c. 78 (1828).

¹³ I.e. 1 Geo. I c. 10, s 9 (1714).

[Judgments Act 1838 repealed by No. 59 of 2004 s. 20(d).]

Judgments Act 1839

Imperial Act ¹

2 & 3 Vict. c. 11

**An Act for the better Protection of Purchasers against Judgments,
Crown Debts, Lis Pendens, and Fiats in Bankruptcy. ²**

[Assented to 4 June 1839.]

Preamble

Whereas it is desirable that further protection should be afforded to purchasers against judgments, Crown debts, and *lis pendens*:

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,

[1-6. *Repealed by No. 59 of 2004 s. 20(e).*]

7. Purchasers not to be affected by any *lis pendens*, unless such suit is duly registered as directed by this Act

And be it enacted, that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court of equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book as aforesaid, in alphabetical order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and such officer shall be entitled for any such entry to the sum of two shillings and sixpence; and the provisions hereinbefore contained in

regard to the re-entering of judgments every five years, and the fee payable to the officer thereon, shall extend to every case of *lis pendens* which shall be registered under the provisions of this Act.

8. Recognisances entered into not to affect purchasers, unless duly registered as directed by this Act

And be it enacted, that no judgment, statute, or recognisance which shall hereafter be obtained or entered into in the name or upon the proper account of Her Majesty, her heirs or successors, or inquisition by which any debt shall be found due to Her Majesty, her heirs or successors, or obligation or specialty which shall hereafter be made to Her Majesty, her heirs or successors, in the manner directed by an Act passed in the thirty-third year of the reign of his late Majesty King Henry the Eighth, intituled '*The Erection of the Court of Surveyors of the King's Lands, and the Names of the Officers there, and their Authority,*' or any acceptance of office which shall hereafter be accepted by officers whose lands shall thereby become liable for the payment and satisfaction of arrearages under the provisions of the Act passed in the thirteenth year of the reign of her late Majesty Queen Elizabeth, intituled '*An Act to make the Lands, Tenements, Goods, and Chattels of Tellers, Receivers, et cetera, liable to the Payment of their Debts,*' shall affect any lands, tenements or hereditaments, as to purchasers or mortgagees, unless and until a memorandum or minute, containing the name and the usual or last place of abode, and the title, trade, or profession, of the person whose estate is intended to be affected thereby, and also in the case of any judgment the court and the title of the cause in which such judgment shall have been obtained, and the date of such judgment, and the amount of the debt, damages, and costs thereby recovered, and also in the case of a statute or recognisance the sum for which the same was acknowledged, and before whom the same was acknowledged, and the date of the same, and also in the case of an inquisition the sum thereby found to be due, and the date of the same, and

also in the case of an obligation or specialty the sum in which the obligee shall be bound, or for which the obligation or specialty shall be made, and the date of the same, and also in the case of acceptance of office the name of the office and the time of the officer accepting the same, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book, to be intituled 'The Index to Debtors and Accountants to the Crown,' in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, statute, or recognisance, inquisition, obligation, or specialty, or the acceptance of any office; and such officer shall be entitled for any such entry to the sum of two shillings and sixpence; and all persons shall be at liberty to search the same book, and also the other book to be kept according to the provisions of the said recited Act of the first and second years of the reign of her present Majesty, or either of the said books, on payment of the sum of one shilling, whether one only or both of the said books shall be searched, and no multiplication of books is to increase the fee.

9. Quietus to debtors or accountants to the Crown to be registered

And be it enacted, that whenever a quietus shall be obtained by a debtor or accountant to the Crown, and an office copy thereof shall be left with the senior master of the said Court of Common Pleas, together with a certificate, signed by the Accountant General, that the same may be registered, the said master shall forthwith enter the same in the said book of debtors and accountants to the Crown, in alphabetical order, by the name of the person whose estate is intended to be discharged by such quietus, with the date, and shall for any such entry be entitled to a fee of two shillings and sixpence.

10. For discharge of the estates of debtors or accountants to the Crown in certain cases

And whereas it is expedient to make further provision for the discharge of an estate belonging to a debtor or accountant to the Crown from the claim of the Crown in the hands of a purchaser or mortgagee, although the debt or liability shall not be fully discharged: Be it therefore enacted, that it shall be lawful for the commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three of them, by writing under their hands, upon payment of such sums of money as they may think fit to require into the receipt of Her Majesty's Exchequer, to be applied in liquidation of the debt or liability of any debtor or accountant to the Crown, or upon such other terms as they may think proper, to certify that any lands, tenements, or hereditaments of any such Crown debtor or accountant shall be held by the purchaser or mortgagee or intended purchaser or mortgagee thereof, his or their heirs, executors, administrators, and assigns, wholly exonerated and discharged from all further claims of Her Majesty, her heirs or successors, for or in respect of any debt, claim, or liability, present or future, of the debtor or accountant to whom such lands, tenements, or hereditaments belonged, or, in cases of leases for fines, to certify that the lessees, their heirs, executors, administrators, and assigns, shall hold so exonerated and discharged, without prejudice to the rights and remedies of the Crown against the reversion of the lands, tenements, or hereditaments comprised in any such leases, and the rents and covenants reserved and contained by and in the same; and thereupon the same lands, tenements, or hereditaments shall respectively be held accordingly wholly exonerated and discharged as aforesaid, but in the cases of leases without prejudice as aforesaid.

11. Discharge of part of the estate of a debtor or creditor to the Crown not to affect claim of the Crown on other lands liable

Provided also, and be it enacted, that any such certificate, or the discharge of any such lands, tenements, or other hereditaments by virtue of this Act, shall in nowise impeach, lessen, or affect the right or power of Her Majesty, her heirs or successors, to levy the whole of any debt or demand which may at any time be due from any such debtor or accountant to the Crown out of or from any other lands, tenements, or hereditaments which would have been liable thereto in case no such certificate had been granted and no such discharge had been obtained.

12. For protection of purchasers against secret fiats of bankruptcy

And whereas it is expedient that further provision should be made for the protection of purchasers against secret acts of bankruptcy and fiats in bankruptcy: Be it therefore enacted, that all conveyances by any bankrupt *bona fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed.

13. Purchases from bankrupts not to be impeached unless commission is sued out within twelve months

And be it enacted, that no purchase from any bankrupt *bona fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy.

14. Act not to extend to Ireland

And be it enacted, that this Act shall not extend to Ireland.

¹ Adopted in WA by *Imperial Acts Adopting Ordinance 1867*.
(31 Vict. No. 8) [Assent 15 July 1867]

² The short title Judgments Act 1839 was given to this Imperial Act by the *Short Titles Act 1896* (UK).

³ I.e. *Judgments Act 1838* (Imp) (1 & 2 Vict. c. 110) which is also adopted in WA and reproduced in this part of this publication.

[Judgments Act 1840 repealed by No. 59 of 2004 s. 20(f).]

Judgments Act 1855

Imperial Act ¹

18 & 19 Vict. c. 15

An Act for the better Protection of Purchasers against Judgments, Crown Debts, Cases of Lis Pendens, and Life Annuities or Rentcharges. ²

[Assented to 26 April 1855.]

Preamble

Whereas an Act of Parliament was passed in the session of the first and second years of Her Majesty, intituled '*An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England*'³;

and another Act in the session of the second and third years of Her Majesty, intituled '*An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis Pendens, and Fiats in Bankruptcy*'⁴;

and another Act in the session of the third and fourth years of Her Majesty, intituled '*An Act for further amending the Act for abolishing Arrest on Mesne Process in Civil Actions*'⁵:

And whereas the provisions of the said Acts respecting judgments, decrees, orders, and rules, and *lis pendens*, ought to include and be applicable to the Counties Palatine of Lancaster and Durham, and the common law and equity courts thereof respectively:

And whereas an Act was passed in the session of the thirteenth and fourteenth years of Her Majesty, intituled '*An Act to amend the Practice and Proceedings of the Court of Chancery of the*

*County Palatine of Lancaster,*⁶ by force whereof the said provisions do to some extent include and are applicable to the County Palatine of Lancaster, as far as regards the Courts of Chancery thereof:

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:

[1-8. *Repealed by No. 59 of 2004 s. 20(g).*]

9. Duties of prothonotary Fees for registration and searches

For the purposes of any registration or re-registration to be made in pursuance of this Act in either of the said Counties Palatine, all such acts and things as under the provisions of the said several Acts of the reign of Her Majesty ought to be done by or left with the senior master of the Court of Common Pleas at Westminster shall be done by or left with the prothonotary or deputy prothonotary of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the County Palatine of Durham, as the case may require, or such other officer (if any) of the same courts respectively as may for the time being have been appointed by the same courts respectively, for the purpose of entering the judgments thereof respectively, under the provisions of the said Act of the first and second years of Her Majesty;

and the said prothonotary, deputy prothonotary, or other officer as aforesaid, shall be entitled to the sum of two shillings and sixpence, and no more, for the duties to be performed on every registration, and the sum of one shilling only for re-registration;

and all persons shall be at liberty to search all or any of the books kept in pursuance of any of the foregoing provisions of this Act in each court, for the sum of one shilling.

11. Legal estate vested in purchaser or mortgagee not to be taken in execution

And whereas great delay and expense are occasioned upon purchases and mortgages of lands in consequence of judgments against mortgagees and Crown debts and liabilities to the Crown of mortgagees continuing to bind lands, although the mortgagees have been *bonâ fide* paid off, and the lands have been actually conveyed to purchasers, or to other mortgagees:

For remedy whereof, be it enacted as follows: Where any legal or equitable estate or interest or any disposing power in or over any lands, tenements, or hereditaments shall, under any conveyance or other instrument executed after the passing of this Act, become vested in any person as a purchaser or mortgagee for valuable consideration, such lands, tenements, or hereditaments shall not be taken in execution under any writ of *elegit*, or other writ of execution, to be sued upon any judgment, or any decree, order, or rule against any mortgagee or mortgagees thereof, who shall have been paid off prior to or at the time of the execution of such conveyance, nor shall any such judgment, decree, order, or rule, or the money thereby secured, be a charge upon such lands, tenements, or hereditaments so vested in purchasers or mortgagees, nor shall such lands, tenements, or hereditaments so vested in purchasers or mortgagees be extended or taken in execution, or rendered liable under any writ of extent or writ of execution or other process issued by or on behalf of Her Majesty, her heirs or successors, in respect of any judgment, statute, or recognizance obtained against or entered into by, or inquisition found against, or obligation or specialty made by, or acceptance of office by any mortgagee or mortgagees, whereby he or they hath or have become or shall become a debtor or accountant, or debtors or accountants to the Crown, where such mortgagee or mortgagees shall have been paid off prior to or at the time of the execution of such conveyance as aforesaid.

12. Life annuities and rentcharges not to affect lands as to purchasers, etc., until memorandum left with senior master

And whereas by reason of the repeal in the last session of Parliament of the Act of the fifty-third year of King George the Third, chapter one hundred and forty-one, requiring the enrolment of life annuities or rentcharges, purchasers are no longer enabled to ascertain by search what life annuities or rent charges may have been granted by their vendors or others:

Be it therefore enacted by the authority aforesaid as follows:

Any annuity or rentcharge granted after the passing of this Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall not affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rentcharge is granted, and the annual sum or sums to be paid, shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rentcharge, together with the year and the day of the month when every such memorandum or minute is so left with him, and he shall be entitled for every such entry to the sum of two shillings and sixpence, and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of one shilling.

13. Searches may be made by parties themselves

The searches of the several registers, by the said recited Acts or by this Act authorised to be made for the sum of one shilling, may be made by the parties themselves, under proper

regulations in the office, and the sum of one shilling only shall be payable on one search, although more names than one shall be searched for where such names relate to the same purchase, mortgage, or other transaction.

14. Annuities, etc., given by will excepted from Act

The provisions of this Act shall not extend to require the registry of annuities or rentcharges given by will.

¹ Adopted in WA by *Imperial Acts Adopting Ordinance 1867*. (31 Vict. No. 8) [Assent 15 July 1867]

² The short title Judgments Act 1855 was given to this Imperial Act by the *Short Titles Act 1896 (UK)*.
For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 13 p 380.

³ I.e. *Judgments Act 1838 (Imp)* (1 & 2 Vict. c. 110) which is also adopted in WA and reproduced in this part of this publication.

⁴ I.e. *Judgments Act 1839 (Imp)* (2 & 3 Vict. c. 11) which is also adopted in WA and reproduced in this part of this publication.

⁵ I.e. *Judgments Act 1840 (Imp)* (3 & 4 Vict. c. 82) which is also adopted in WA and reproduced in this part of this publication.

⁶ I.e. 13 & 14 Vict. c. 43.

⁷ I.e. repealed in so far as it was part of the law of WA by the *Debtors Act 1871* (34 Vict. No. 21) s 23 [Assent 13 January 1871; Commencement 1 April 1871].

Libel Act 1843

**Imperial Act ¹
6 & 7 Vict. c. 96**

An Act to amend the Law respecting defamatory Words and Libel. ²

[Assented to 24 August 1843.]

Preamble

For the better protection of private character, and for more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty:

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,

[1.] Offer of an apology admissible in evidence in mitigation of damages

[T]hat in any action for defamation it shall be lawful for the defendant (after notice in writing of his intention to do so, duly given to the plaintiff at the time of filing or delivering the plea in such action) to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology.

2. In an action against a newspaper for libel, the defendant may plead that it was inserted without malice and without neglect, and may pay money into court as amends

And be it enacted, that in an action for a libel contained in any public newspaper or other periodical publication it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or, if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action;

and that every such defendant shall upon filing such plea be at liberty to pay into court a sum of money by way of amends for the injury sustained by the publication of such libel, and such payment into court shall be of the same effect and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to payment of costs and the form of pleading, except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into court under an Act passed in the session of Parliament held in the fourth year of his late Majesty, intituled '*An Act for the further Amendment of the Law and the better Advancement of Justice*'³;

and that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

[3-5. *Repealed in WA by 1 & 2 Edw. VII No. 14 s. 3 as amended by No. 31 of 1906 s. 18.*]⁴

6. Proviso as to plea of not guilty in civil proceedings

Provided also, that nothing in this Act contained shall take away or prejudice any defence under the plea of Not guilty which it is now competent to the defendant to make under such plea to any action ... for defamatory words or libel.

*[Section 6, except the proviso so far as it relates to civil proceedings, repealed in WA by 1 & 2 Edw. VII No. 14 s. 3 as amended by No. 31 of 1906 s. 18.]*⁵

[7-8. *Repealed in WA by 1 & 2 Edw. VII No. 14 s. 3 as amended by No. 31 of 1906 s. 18.]*⁶

9. Interpretation of Act

And be it enacted, that wherever throughout this Act, in describing the plaintiff or the defendant, or the party affected or intended to be affected by the offence, words are used importing the singular number or the masculine gender only, yet they shall be understood to include several persons as well as one person, and females as well as males, unless when the nature of the provision or the context of the Act shall exclude such construction.

10. Commencement and extent of Act

And be it enacted, that this Act shall take effect from the first day of November next; and that nothing in this Act contained shall extend to Scotland.

¹ Adopted in WA by *Imperial Act Adopting Ordinance 1847*. (10 Vict. No. 8) [Assent 5 August 1847]

² The short title *Libel Act 1843* was given to this Imperial Act by the *Short Titles Act 1896* (UK). For other information about this Imperial Act see *Halsbury's Statutes of England*, Fourth Edition, Vol 24, p 87.

- ³ I.e. the *Civil Procedure Act 1842* (3 & 4 Will. IV. c. 42) which was adopted in WA by the *Imperial Acts Adopting Act 1836* and which is reproduced in this part of this publication.
- ⁴ I.e. ss 3-5 repealed in so far as they were part of the law of WA by the *Criminal Code Act 1902*, s 3, Third Schedule, as amended by the *Criminal Code Amendment Act 1906*, s 18.
- ⁵ See note 4 above.
- ⁶ See note 4 above.

Marriage Act 1835

**Imperial Act ¹
5 & 6 Will. IV c. 54**

An Act to render certain Marriages valid, and to alter the Law with respect to certain Voidable Marriages. ²

[Assented to 31 August 1835.]

Preamble

Whereas marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical Court pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of affinity should remain unsettled during so long a period, and it is fitting that all marriages which may hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be *ipso facto* void, and not merely voidable:

Be it therefore enacted by the King'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,

[1.] Marriages before the passing of this Act of persons within the prohibited degrees not to be annulled

[T]hat all marriages which shall have been celebrated before the passing of this Act between persons being within the prohibited degrees of affinity shall not hereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which shall be depending at the time of the passing of this Act:

Provided that nothing hereinbefore enacted shall affect marriages between persons being within the prohibited degrees of consanguinity.

2. Marriages of persons within prohibited degrees hereafter to be absolutely void

And be it further enacted, that all marriages which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatsoever.

3. Not to extend to Scotland

Provided always, and be it further enacted, that nothing in this Act shall be construed to extend to that part of the United Kingdom called Scotland.

4. Act may be altered this session

And be it enacted, that this Act may be altered or repealed by any Act or Acts to be passed in this present session of Parliament.

¹ Adopted in WA by *Imperial Acts Adopting Act 1844*. (7 Vict. No. 13) [Assent 30 May 1844]

² The short title *Marriage Act 1835* was given to this Imperial Act by the *Short Titles Act 1896* (UK). For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 11, p 710. This Act is affected by the *Marriage Act 1961* (Cwlth).

Mercantile Law Amendment Act 1856

Imperial Act¹
19 & 20 Vict. c. 97

An Act to amend the Laws of England and Ireland affecting Trade and Commerce.²

[Assented to 29 July 1856.]

Preamble

Whereas inconvenience is felt by persons engaged in trade by reason of the laws of England and Ireland being in some particulars different from those of Scotland in matters of common occurrence in the course of such trade, and with a view to remedy such inconvenience it is expedient to amend the laws of England and Ireland as hereinafter is mentioned:

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:—

*[1-2. Repealed in WA by 59 Vict. No. 41 s. 58.]*³

3. Consideration or guarantee need not appear by writing

No special promise to be made by any person after the passing of this Act to answer for the debt, default, or miscarriage of another person, being in writing, and signed by the party to be charged therewith or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

[4. *Repealed in WA by 59 Vict. No. 23 s. 4.]*⁴

5. A surety who discharges the liability to be entitled to assignment of all securities held by the creditor

Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding, at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him:

Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

6. Acceptance of a bill inland or foreign to be in writing on it, and signed by the acceptor or his agent⁵

No acceptance of any bill of exchange, whether inland or foreign, made after the thirty-first day of December one thousand eight hundred and fifty-six, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part of such bill, on one of the said

parts, and signed by the acceptor or some person duly authorised by him.

7. What are to be deemed ‘inland bills’⁶

Every bill of exchange or promissory note drawn or made in any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Aldernay, and Sark, and the island adjacent to any of them, being part of the dominions of Her Majesty, and made payable in or drawn upon any person resident in any part of the said United Kingdom or islands, shall be deemed to be an inland bill; but nothing herein contained shall be deemed to be an inland bill; but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such bill or note.

8. With reference to the repairs of ships, every port within the United Kingdom, etc., a home port

In relation to the rights and remedies of persons having claims for repairs done to, or supplies furnished to or for, ships, every port within the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of Her Majesty, shall be deemed a home port.

[9-15. Repealed by No. 35 of 1935 s. 2.]⁷

16. Short title

In citing this Act it shall be sufficient to use the expression ‘The Mercantile Law Amendment Act, 1856.’

17. Extent of Act

Nothing in this Act shall extend to Scotland.

- ¹ Adopted in WA by *Imperial Acts Adopting Ordinance 1867*.
(31 Vict. No. 8) [Assent 15 July 1867]
- ² For information about this Imperial Act see *Halsbury's Statutes of England*,
Second Edition, Vol 4 p 660.
- ³ I.e. repealed in so far as they were part of the law of WA by the *Sale of Goods
Act 1895* (59 Vict. No. 41) s 58 [Assent 12 October 1895; Commencement
1 January 1896].
- ⁴ I.e. repealed in so far as it was part of the law of WA by the *Partnership Act 1895*
(59 Vict. No. 23) s 5 [Assent 2 October 1895; Commencement 1 October 1895].
- ⁵ This section is affected by the *Bills of Exchange Act 1909* (Cwlth).
- ⁶ This section is affected by the *Bills of Exchange Act 1909* (Cwlth).
- ⁷ I.e. repealed in so far as they were part of the law of WA by the *Limitation
Act 1935* s 5 [Assent 7 January 1936; Commencement 14 April 1936].

Oaths Act 1838

Imperial Act¹
1 & 2 Vict. c. 105

An Act to remove Doubts as to the Validity of certain Oaths.²

[Assented to 14 August 1838.]

Be it declared and 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,

[1.] All persons to be bound by the oath administered in the form, etc., which such persons may declare binding

[T]hat in all cases in which an oath may lawfully be and shall have been administered to any person, either as a juryman or a witness, or a deponent in any proceeding, civil or criminal, in any court of law or equity in the United Kingdom, or on appointment to any office or employment, or on any occasion whatever, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding; and every such person, in case of wilful false swearing, may be convicted of the crime of perjury, in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted.

¹ Adopted in WA by *Imperial Acts Adopting Act 1844*.
(7 Vict. No. 13) [Assent 30 May 1844]

² The short title *Oaths Act 1838* was given to this Imperial Act by the *Short Titles Act 1896* (UK).

For other information about this Imperial Act see *Halsbury's Statutes of England*,
Second Edition, Vol 13, p 407.

Perpetuation of Testimony Act 1842

**Imperial Act ¹
5 & 6 Vict. c. 69**

An Act for perpetuating Testimony in certain Cases. ²

[Assented to 30 July 1842.]

Preamble

Whereas it is expedient to extend the means of perpetuating testimony in certain cases:

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,

[1.] Bills in Chancery to perpetuate testimony may be filed by persons claiming honours, titles, etc., contingent on future events

[T]hat any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, shall be entitled, from and after the passing of this Act, to file a bill in the High Court of Chancery to perpetuate any testimony which may be material for establishing such claim or right;

and that all laws, rules, and regulations not contrary to the provisions of this Act, now in force or in use in suits to perpetuate testimony, or respecting depositions taken in such suits, or the punishment of perjury committed in making such

depositions, shall be in force and used and applied in all suits to be instituted under the authority of this Act, and in respect to depositions taken on such suits.

2. Attorney General to be party defendant in all such suits in which the Queen may have any estate or interest

And be it further enacted, that in all suits which may be so instituted under the authority of this Act, touching any honour, title, dignity, or office, or any other matter or thing, in which Her Majesty, her heirs or successors, may have any estate or interest, it shall be lawful to make the Attorney General for the time being a party defendant therto;

and that in all proceedings in which the depositions taken in any such suit in which the Attorney General for the time being was so made a defendant may be offered in evidence, such depositions may be admissible notwithstanding any objection to such depositions upon the ground that Her Majesty, her heirs or successors, were not parties to the suit in which such depositions were taken.

¹ Adopted in WA by *Imperial Acts Adopting Act 1844*.
(7 Vict. No. 13) [Assent 30 May 1844]

² The short title *Perpetuation of Testimony Act 1842* was given to this Imperial Act by the *Short Titles Act 1896* (UK).

Prescription Act 1832

Imperial Act ¹
2 & 3 Will. IV c. 71

An Act for shortening the Time of Prescription in certain Cases. ²

[Assented to 1 August 1832.]

Preamble

Whereas the expression ‘Time immemorial, or time whereof the memory of man runneth not to the contrary,’ is now by the law of England in many cases considered to include and denote the whole period of time from the reign of King Richard the First, whereby the title to matters that have been long enjoyed is sometimes defeated by showing the commencement of such enjoyment, which is in many cases productive of inconvenience and injustice;

for remedy thereof be it enacted by the King’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,

- [1.] **Claims to right of common and other profits *a prendre*, not to be defeated after 30 years’ enjoyment by showing the commencement; after 60 years’ enjoyment the right to be absolute, unless had by consent or agreement**

[T]hat no claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our sovereign lord the King, his heirs or successors, or any land being parcel of the Duchy of Lancaster or of the Duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein

pecially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

2. In claims of right of way or other easement the periods to be 20 years and 40 years

And be it further enacted, that no claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said lord the King, his heirs or successors, or being parcel of the Duchy of Lancaster, or of the Duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that

the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

[3. *Repealed in WA by 1 & 2 Edw VII No. 29 s. 5.]*³

4. Before-mentioned periods to be deemed those next before suits for claims to which such periods relate

And be it further enacted, that each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made.

5. In actions on the case the claimant may allege his right generally, as at present: In pleas to trespass and other pleadings, where party used to allege his claim from time immemorial, the period mentioned in this Act may be alleged; and exceptions or other matters to be replied specially

And be it further enacted, that in all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this Act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the

occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

6. Restricting the presumption to be allowed in support of claims herein provided for

And be it further enacted, that in the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim.

7. Proviso for infants, etc.

Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, *non compos mentis*, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

8. What time to be excluded in computing the term of 40 years appointed by this Act

Provided always, and be it further enacted, that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

9. Not to extend to Scotland or Ireland

And be it further enacted, that this Act shall not extend to Scotland or Ireland.

10. Commencement of Act

And be it further enacted, that this Act shall commence and take effect on the first day of Michaelmas term now next ensuing.

11. Act may be amended

And be it further enacted, that this Act may be amended, altered, or repealed during this present session of Parliament.

¹ Adopted in WA by *Imperial Acts Adopting Act 1836* (preamble, item 9). (6 Will. IV No. 4) [Assent 11 April 1836]

² The short title *Prescription Act 1832* was given to this Imperial Act by the *Short Titles Act 1896* (UK). For other information about this Imperial Act see *Halsbury's Statutes of England*, Fourth Edition, Vol 13, p 701.

³ I.e. section 3 repealed in so far as it was part of the law of WA by the *Light and Air Act 1902*, s 5 [Assent 19 February 1902].

Quakers and Moravians Act 1833

Imperial Act¹
3 & 4 Will. IV c. 49

An Act to allow Quakers and Moravians to make Affirmation in all cases where an Oath is or shall be required.²

[Assented to 28 August 1833.]

Preamble

Whereas it is expedient and reasonable that the solemn affirmation of persons of the persuasion of the people called Quakers, and of Moravians, should be allowed in all cases where an oath is or shall be required:

Be it therefore enacted by the King'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,

[1.] Quakers and Moravians may in all cases make a solemn affirmation or declaration instead of an oath

[T]hat every person of the persuasion of the people called Quakers, and every Moravian, be permitted to make his or her solemn affirmation or declaration, instead of taking an oath, in all places and for all purposes whatsoever where an oath is or shall be required either by the common law or by any Act of Parliament already made or hereafter to be made, which said affirmation or declaration shall be of the same force and effect as if he or she had taken an oath in the usual form;

and if any such person making such solemn affirmation or declaration shall be lawfully convicted wilfully, falsely, and corruptly to have affirmed or declared any matter or thing,

which if the same had been in the usual form would have amounted to wilful and corrupt perjury, he or she shall incur the same penalties and forfeitures as by the laws and statutes of this realm are enacted against persons convicted of wilful and corrupt perjury, any law, statute, or custom to the contrary notwithstanding:

Provided always, that every such affirmation or declaration shall be in the words following; (that is to say)

Form of declaration

‘I A.B. being one of the people called Quakers [*or* one of the persuasion of the people called Quakers, *or* of the United Brethren called Moravians, *as the case may be*], do solemnly, sincerely, and truly declare and affirm.’

2. Form of affirmation in lieu of oath of abjuration

And whereas some doubts may arise as to the form of the affirmation to be taken in lieu of the oath of abjuration by persons of the persuasion of the people called Quakers:

Be it therefore enacted, that instead of the form of affirmation prescribed in lieu of the abjuration oath by an Act of the eighth year of the reign of his late Majesty King George the First, intituled ‘An Act for granting the People called Quakers such Forms of Affirmation or Declaration as may remove the Difficulties which many of them lie under,’ and instead of the form of the oath of abjuration prescribed by an Act of the sixth year of the reign of his late Majesty King George the Third, intituled ‘An Act for altering the Oath of Abjuration and the Assurance, and for amending so much of an Act of the Seventh Year of Her late Majesty Queen Anne, intituled “An Act for the Improvement of the Union of the Two Kingdoms,” as after the Time therein limited requires the Delivery of certain Lists and Copies therein mentioned to Persons indicted of High Treason or Misprision of Treason,’ every person of the persuasion of the

people called Quakers shall be permitted to make his or her solemn affirmation in the following words: (*videlicet*)

'I A.B. being one of the people called Quakers [*or* one of the persuasion of the people called Quakers, *or* of the United Brethren called Moravians, *as the case may be*], do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that King William is lawful and rightful King of this realm, and of all other his dominions and countries thereunto belonging: And I do solemnly and sincerely declare, that I do believe that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and since his decease pretended to be and took upon himself the style and title of King of England by the name of James the Third, or of Scotland by the name of James the Eighth, or the style and title of King of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to any of them: And I do solemnly promise, that I will be true and faithful and bear true allegiance to King William, and to him will be faithful against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown, or dignity; and I will do my best endeavour to disclose and make known to King William and his successors all treasons and traitorous conspiracies which I shall know to be made against him or any of them; and I will be true and faithful to the succession of the Crown, against the descendants of the said James, and against all other persons whatsoever, which succession by an Act intituled "An Act for the Further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," is and stands limited to the Princess Sophia Electoress and Duchess Dowager of Hanover, and the heirs of her body, being Protestants: And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret

reservation whatsoever: And I do make this recognition, acknowledgement, renunciation, and promise heartily, willingly, and truly.’

- ¹ Adopted in WA by *Imperial Acts Adopting Act 1844*. (7 Vict. No. 13) [Assent 30 May 1844]
- ² The short title *Quakers and Moravians Act 1833* was given to this Imperial Act by the *Short Titles Act 1896* (UK). For other information about this Imperial Act see *Halsbury’s Statutes of England*, Second Edition, Vol 9, p 545. Note also the *Quakers and Moravians Act 1838* (Imp) (1 & 2 Vict. c. 77) which has also been adopted in WA.

Quakers and Moravians Act 1838

Imperial Act ¹
1 & 2 Vict. c. 77

An Act for permitting Affirmation to be made instead of an Oath in certain Cases. ²

[Assented to 10 August 1838.]

Preamble

Whereas by an Act passed in the reign of King William the Third, intituled '*An Act that the Solemnization, Affirmation, and Declaration of the People called Quakers shall be received instead of an Oath in the usual Form,*' reciting that divers dissenters commonly called Quakers, refusing to take an oath in courts of justice and other places, are frequently imprisoned and their estates sequestered by process of contempt issuing out of such courts, to the ruin of themselves and families, it is enacted, that every Quaker on every occasion (except on criminal trials) where an oath is by law required shall be permitted to make solemn affirmation and declaration in lieu thereof:

And whereas the same privilege has by subsequent Acts of Parliament been extended in all cases to the persons called Quakers and Moravians:

And whereas it is expedient and fitting that the aforesaid privilege should be extended to such persons as have been Quakers and Moravians, but have ceased to belong to either of such religious denominations of Christians, still continuing nevertheless to entertain conscientious objections to the taking of an oath:

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,

[1.] Certain persons may make affirmation in lieu of oath

[T]hat it shall be lawful for any person who shall have been a Quaker or a Moravian to make solemn affirmation and declaration in lieu of taking an oath as fully as it would be lawful for any such person to do if he still remained a member of either of such religious denominations of Christians, which said affirmation or declaration shall be of the same force and effect as if he or she had taken an oath in the usual form; and if any such person making such solemn affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful and corrupt perjury are or shall be subject:

Provided always, that every such affirmation or declaration shall be in the words following; that is to say,

Form of declaration

‘I *A.B.*, having been one of the people called Quakers [*or* one of the ‘persuasion of the people called Quakers, *or* of the United Brethren ‘called Moravians, *as the case may be*] and entertaining conscientious ‘objections to the taking of an oath, do solemnly, sincerely, and truly ‘declare and affirm’

¹ Adopted in WA by *Imperial Acts Adopting Act 1844*.
(7 Vict. No. 13) [Assent 30 May 1844]

² The short title *Quakers and Moravians Act 1838* was given to this Imperial Act by the *Short Titles Act 1896* (UK).
For other information about this Imperial Act see *Halsbury’s Statutes of England*, Second Edition, Vol 9, p 553.

Note also the *Quakers and Moravians Act 1833* (Imp) (3 & 4 Will. IV c. 49)
which has also been adopted in WA.

*[Small Tenements Recovery Act 1838 repealed by No. 59 of 2004
s. 20(c).]*

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