

CUST'S
WEST INDIAN ESTATES.

THE

WEST INDIAN INCUMBERED
ESTATES ACTS.

A TREATISE

ON

THE WEST INDIAN INCUMBERED
ESTATES ACTS,

17 and 18 Vict., c. 117—21 and 22 Vict., c. 96.

25 and 26 Vict., c. 75—27 and 28 Vict., c. 108.

WITH AN APPENDIX,

CONTAINING

THE ACTS,

GENERAL RULES, FORMS, AND DIRECTIONS, ADDITIONAL FORMS, LOCAL ACTS,
TABLES OF FEES, SOLICITOR'S FEES AND CHARGES.

AND

REPORTS OF CASES

(Heard before Henry James Stonor, Esq., Chief Commissioner.)

BY

REGINALD JOHN CUST, ESQ.,

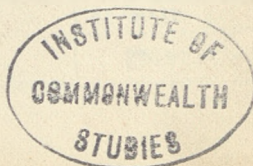
Of Lincoln's Inn, Barrister-at-Law; Secretary to the West Indian Incumbered
Estates Commission.

SECOND EDITION.

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1865.



TO THE RIGHT HONOURABLE
JOHN LORD CAMPBELL,
LORD HIGH CHANCELLOR OF GREAT BRITAIN,
&c. &c.

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PREFACE TO THE SECOND EDITION.

A SECOND EDITION of this work being required, I have carefully revised it throughout, and continued the history of the Acts of Parliament to which it relates, their amendment and continuance by the Imperial Legislature, and their adoption by the various Local Legislatures, to the present time. I have also made such further additions to its contents as I conceived would be of advantage to the profession and the public. Amongst the latter, accurate reports of several important judgments of the learned Chief Commissioner, Mr. STONOR, claim the first place. His judicial efforts have received the high commendation of Lord KINGSDOWN in the Privy Council,¹ and the approbation of the legal press on several occasions; and relating, as they do, to the nicest points of law and equity, the record of them will doubtless be acceptable to the profession. In the next place, I would draw attention to the complete body of Forms which experience has enabled me to compile, and which will greatly tend to diminish the trouble and expense of practitioners and suitors; and, in the last place, I would advert to the important Official Documents which I have inserted at the end of the Appendix.² They consist of a circular despatch of the late lamented Sir GEORGE CORNEWALL LEWIS, dated the 6th of September, 1860, relative

¹ *Fraser v. Burgess*, 12 Moo. P.C. 314, post p. 255.

² See post, p. 309.

to the adoption of the Acts by the various Colonies; a memorial addressed to the Treasury by a large number of the most eminent Solicitors in London, relative to the removal of the Court from its present inconvenient locality (both of which are extracted from a Parliamentary paper moved for by Mr. CAVE); and, lastly, a Parliamentary Return of business from the passing of the Amendment Act of 1862 to the 6th of April, 1864, (moved for by Mr. JOHN ABEL SMITH). Since the last-mentioned return was made, the colony of Antigua has adopted the Acts, and considerable additional business has come and is anticipated from this source. The Legislature of Grenada has also, some time since, passed a resolution to the same effect, but through circumstances unknown to the public, that resolution has not yet been carried into effect.

I cannot conclude without taking this opportunity of acknowledging the valuable and kind assistance afforded to me by the Chief Commissioner in the preparation and perfecting of this work, and in the performance of my official duties on all occasions.

R. J. C.

2, STONE BUILDINGS, LINCOLN'S INN,
January, 1865.

PREFACE TO THE FIRST EDITION.

IN the Session of 1854 an Act was passed for the purpose of applying the principle of the Irish Incumbered Estates Court to the West Indian Colonies, but providing that the measure should not come into operation in any Colony until the Legislature of such Colony should have addressed the Crown, praying for an Order in Council to that effect. The execution of the Act was entrusted to a Chief Commissioner and Assistant Commissioners (not exceeding two) in England, and to Local Commissioners in the Colonies. In the year 1856, the Legislature of the Island of St. Vincent first addressed the Crown in conformity with the Act; and in the month of February, 1857, the Hon. EDMUND PHIPPS and Sir FREDERIC ROGERS were appointed Chief Commissioner and Assistant Commissioner, and forthwith proceeded to prepare the General Rules, Forms and Directions, and Tables of Fees, under the provisions of the Act. This necessarily caused some delay, especially as it was deemed advisable to submit the General Rules to the Law Officers of the Crown before they received the sanction of the Privy Council, but this was accorded in the month of August in that year, and business was opened by the presentation of a petition for the sale of an estate in the Island of St. Vincent. The lamented death of Mr. PHIPPS interposed a further delay, and it was not till the month of February, 1858, when the present Chief Commissioner, Mr.

STONOR, was appointed to succeed him, that business could be actively resumed. Serious obstacles then arose through the defective framework of the Act, and it was found absolutely necessary to apply to the Legislature : the result of this application was an Amendment Act, which received the Royal Assent in August, 1858. The Island of Tobago also addressed the Crown early in 1858 ; and it is understood that several other islands contemplate the same step at the present time. Under these circumstances no apology will be necessary for this publication, in which the Principles of the Acts, their respective Provisions, and the Procedure of the Court are explained ; whilst in the Appendix will be found, in a convenient form, the Acts, General Rules, Forms and Directions, together with the Local Acts and Tables of Fees in use in the Colonies of St. Vincent and Tobago, as also reports of some of the judgments and observations of the present Chief Commissioner, which will be found of great practical assistance and advantage to those who may have occasion to practise professionally in the Court, and to all who are interested in the working of these Acts.

R. J. C.

2, STONE BUILDINGS, LINCOLN'S INN,

June, 1859.

A TREATISE
ON
THE WEST INDIAN INCUMBERED
ESTATES ACTS.

CHAPTER I.

INTRODUCTORY.

THE difficulties attending the transfer of landed property, to which the attention of our legislators and law reformers is at this moment so strongly directed, are of ancient date. They existed in the days of feudalism, when land was the only species of property which conferred distinction, and being held for the most part by military services, could not be alienated by the tenant without the consent of the lord. They exist, with less reason, in modern times, and have increased with the increasing wealth and commerce of the country, partly from the great demand for land, and the number of transactions thereby occasioned, and partly from the pride or caprice of individuals, who seek by complicated wills and settlements to keep the absolute ownership of the soil in suspense for the longest possible period. Various, however, as have been the causes which have tended to fetter and embarrass the transfer of land, they may be all referred to the grand distinction which has ever been maintained in English law between real and personal estate ;

Titles to
landed
estates in
England ;
difficulty of
transfer.

the former of which is held by title, and the latter by possession. The result of this distinction has been that while money, shares, securities, ships, merchandise, bullion, and moveable property, of whatever value, can be transferred from hand to hand by the simplest process, a rood of land cannot change proprietors without a delay and expense in many cases wholly disproportionate to its intrinsic value.

Delay and expense.

All persons who have had dealings in land have complained of these grievous taxes on landed estates; but professional men alone can fully comprehend the causes which render them at present inevitable. The owner of an estate may contract for the sale of it, and may even agree with the purchaser as to the price, but the principals can go no further; the matter passes at once into the province of the lawyers, and months, perhaps years, may elapse before the tedious negotiation is completed, and the land and money can change hands. The ceremonies prescribed by the law and custom of conveyancers must be gone through, or, if neglected, it will be at the peril of the purchaser, who would probably, in such case, find himself at a future time unable to dispose of the property he had purchased, as well as debarred from all legal or equitable relief in the event of its loss. The whole history of the estate, and of every fraction of it, for sixty years, and oftentimes more, must be carefully compiled, and submitted to the scrutiny of a practised conveyancer, whose duty it is to exercise his ingenuity in proving, if possible, that the vendor's title to the land is imperfect. Every death or marriage, every settlement, mortgage, or will, is submitted to his examination; and when, as frequently happens, the estate comprises recent purchases, the history will branch out in different directions, and extend to an indefinite length. The examination results in an opinion more or less unfavourable to the title, and

Investigation by conveyancer.

sundry requisitions, which the vendor is called upon to satisfy, or the purchaser may rescind his contract. The vendor is required to produce evidence of the births, marriages, and deaths of several people, of whom he may never have heard, and to explain sundry transactions to which he was no party. In default of satisfactory explanations on such matters, it is not impossible that his father, or some predecessor, may be charged with having committed actual or constructive fraud, or that family arrangements, of which the exact circumstances have been lost, may be stigmatised as improper or illegal. Doubts will frequently arise as to some ancient inclosures; and where the boundaries and descriptions of fields have become altered, he will have to account for every discrepancy. If any previous owner has been involved in a Chancery suit, the vendor may be called upon to give an account of all the proceedings, however voluminous; and if such suit has been compromised, to show that such compromise was fair and proper. It matters not whether the land has been long in his family, or recently purchased: he must still account for its history, as it was his duty to have obtained all necessary information at the time of his purchase. As the law now stands, a sixty years' pedigree is an inseparable incident to a marketable estate.

Requisitions
of convey-
ancer.

Sixty years'
title.

We will suppose that, after considerable delay and expense, the requisitions of the conveyancer are satisfactorily answered, the births, deaths, and marriages are duly certified, the vendor's predecessors are acquitted of fraud, all questions as to inclosures or boundaries are settled or compromised, and the Chancery proceedings are found regular; in such case the transaction may be completed, and the vendor gets his money and parts with his land. But what is the condition of the purchaser? However carefully he may have satisfied himself of the goodness of his title, and of the absence of

Condition of
the pur-
chaser.

any possible claimant or incumbrancer, still the property he has acquired can never be set free from its antecedents. The sins and infirmities of past years cling to it; and every time he wishes to sell an acre or raise money on mortgage, he must go into the old story again, enter into all the old explanations, prove the births, deaths, and marriages, account for all the transactions; in short, incur the same expense and trouble as his predecessor, with the additional risk on every occasion that some hostile conveyancer may suggest some latent infirmity in the title which escaped notice when he purchased the estate. For as a traveller or geologist will rejoice in a discovery which has escaped the notice of previous investigators, so is it the glory of a true conveyancer to discover and substantiate a loophole in a title which some eminent contemporary has failed to perceive.

Perfect titles
not really
necessary.

It is well known by conveyancers that perfect titles are of rare occurrence; although, in most cases, where both parties are willing to complete their bargain, sufficient security can be given to enable the purchaser safely to part with his money; and conveyancers would often be content with substantial titles, and would overlook or neglect imaginary difficulties, but for the danger of the title being rejected on a subsequent occasion. Hence, where land is purchased as a permanent investment, with no intention of selling or mortgaging it, as in the case of purchases by a railway company, a substantial holding title is often accepted, various investigations are dispensed with, and the expense is considerably diminished.

Necessity of
explaining
past transac-
tions.

It would appear, therefore, that a great part of the delay and expense attending the transfer of landed property arises from the impossibility of getting rid of the past, and the necessity of explaining every minute circumstance attending an estate for a long space of years to a series of practitioners, every one of whom is bound, if

possible, to find some cause of objection. If, therefore, a system could be devised by which a title once fairly examined might receive judicial sanction, and be declared good up to a given period against all the world, one great source of the evil would be removed. It is to effect this object that Incumbered Estates Courts, or, under their more recent style, Landed Estates Courts (for there is no difference between them), have been devised, and there is little doubt that the establishment of such tribunals throughout the greater part of the British empire would be productive of the greatest benefit to all persons interested in landed property. But the impediments and obstacles in the way of such legislation are necessarily very considerable, and the interests which would be affected and threatened by the relaxation of the present system are numerous and powerful, and hitherto it has only been where the evil has grown absolutely insupportable that it has been found possible to apply the remedy.

Incumbered
Estates
Courts.

In Ireland the improvidence of the landed proprietors, coupled with their reluctance to part with their territorial rights, however shadowy they might have become, had led to a state of affairs alike anomalous in itself and injurious to the community. In many instances, the mortgages, judgments, and other charges on estates far exceeded their value; and the owner, though nominally a large landed proprietor, was in reality a mere agent or collector for others. The number and variety of the incumbrances were so overwhelming and complicated, that a sale was often impossible. The owner, having no beneficial interest, had no inducement to give up the traditional importance of ownership, even though severed from all substantial profit; the incumbrancers, on the other hand, could only act through the medium of the Court of Chancery, where the number of parties and complexity of

Irish estates
before the
Incumbered
Estates Act.

Receivers.

interests were in most cases a bar to effective relief. The result was that an undue proportion of the soil of the island came to be managed by receivers, whose duty it was, after providing for the bare expenses of management, to keep down the interest of the incumbrances, the capital of which became practically irredeemable, and only to be realised by transfer of the security.

It will be readily understood that such a state of affairs was ruinous to the welfare of the country. A fertile soil, requiring only the application of capital to make it productive, lay undeveloped, because no person had sufficient interest in it to undertake the risk. The mortgagee, who received the rents and was the substantial owner, had no interest in increasing the productiveness of the land out of which he could never derive more than a fixed sum for principal and interest. On the other hand, the nominal proprietor could not be expected to risk his capital, and devote his energies to increase the productiveness of a property, of which the profits were to be enjoyed by others. And yet, though energy and capital were at hand to terminate the divided ownership, and double the productiveness of the soil, the state of the law, as described above, was an insuperable obstacle to their application or introduction.

Passing of
the Act.

The evil having passed endurance, the interference of the Legislature was earnestly invoked; and after much opposition, and more than one abortive attempt, the Irish Incumbered Estates Act was passed. The practical effect of this measure was to enable an incumbered estate to be summarily sold by judicial decree, on the application of the owner or any incumbrancer, providing for the due application of the purchase money among the parties entitled through the medium of a competent tribunal, and relieving the purchaser from any trouble or risk, by giving him a Parliamentary title free from incumbrances.

Three learned and able Commissioners were appointed to the difficult task of carrying into effect this measure ; and their exertions in its performance were crowned with complete success.

The Act came into operation in October, 1849; and by returns made in July, 1853, it appeared that in the short space of three years and a-half 1,700,000 acres, yielding a rental of £730,000 a-year, had changed hands under its provisions. So popular was the procedure of the new court, that the Commissioners were overwhelmed by the rush of business. In spite of the immense quantity of land thrown upon the market, the average value steadily rose, and, in many cases, the owners themselves petitioned for a sale of their property, with a view to apply the surplus of the purchase money in re-purchasing a portion of it free from incumbrances. In all, 2,800 petitions had been presented, and 3,500 conveyances executed by the Commissioners. In September, 1858, the number of petitions had reached 4,400, and the number of conveyances amounted to 8,300. Nor were the results of the sales less striking. At the last-mentioned period, £23,000,000 had been received on account of the purchase moneys of estates, of which £3,000,000 were furnished by English and foreign purchasers, and the remainder by Irish capitalists. The total number of purchasers amounted to 8,600. Thus, under the influence of the Incumbered Estates Act, upwards of three millions of capital was, in nine years, introduced into Ireland; and, what is even more striking, £20,000,000 of Irish capital was, in the same period, invested in the purchase of land—circumstances which would naturally tend to a further expenditure in works and improvements, and a great increase in the wealth and importance of the landed proprietors.

In short, the success of the measure was such that its advantages were admitted even by those who had originally opposed its introduction, and the

Results of
the Act.

Capital in-
vested in
land.

system which had in the first instance been established for a limited period, and was applicable only to incumbered estates, was, by the Irish Landed Estates Act of 1858, rendered permanent, and made applicable to all estates, whether incumbered or not; and the principle of judicial sale having been found by experience to give satisfaction, has since that time become an established element in the transfer of land in Ireland.

Attempts have been made from time to time to introduce the same, or a similar system in England, but without success. In 1859, two bills were introduced by Sir Hugh Cairns, then Solicitor-General, one similar in principle to the Irish Act, but not containing compulsory powers for the sale of incumbered estates, and the other providing for the registration of the future titles of the estates to which an indefeasible title had been given under the provisions of the first bill. The principle of both bills met with general approval, but their consideration was postponed, and ultimately abandoned, in consequence of the dissolution of Parliament and change of government which followed. The subject was again brought forward in the year 1862, and discussed at great length in both Houses of Parliament, the result being the adoption of the Land Registry Act of the present Lord Chancellor (Lord Westbury), a measure based on principles similar to those of the Irish Act, but with a wider scope, and depending for its success on the working of a novel and hitherto untried machinery. It is premature to speculate on the probable operation of the above Act, but there appears no doubt that so far as it carries out the principle of the Irish Incumbered Estates Act, its effects will be found beneficial.

We now come to the consideration of the West Indian Incumbered Estates Acts—the subject of this volume. The condition of the important and extensive colonies to which they relate has long been a subject of grave anxiety to British states-

Attempts to introduce a similar system in England.

West Indian Incumbered Estates Acts.

men, and of deep interest to all. The calamities which, during the last twenty years, have befallen West Indian proprietors, are well known to be due to causes which no human wisdom could have foreseen or prevented; nor has any scheme been devised from which a complete restoration to their former prosperity could be expected. But as the condition of the estates in some of the islands resembles in many respects the ancient condition of Irish estates, it was not unreasonably hoped that the remedy, which, as we have seen, was so successfully applied in Ireland, might operate beneficially in the West Indies.

The decline of the West Indian Islands, and the ruin of the West Indian proprietors, dated from the abolition of slavery. It is obvious that even an English estate would be injuriously affected by any sudden change in the relationship of master and servant, or any circumstance which might render the supply of labour uncertain or scanty. But there is a wide difference between a plantation in the West Indies and an agricultural estate in England or Ireland, where the labour and risk are undertaken by tenants, and the owner has only to collect his rents, and, after setting apart a certain average proportion for management and ordinary or periodical expenses, may look on the residue as a constant annual income. The proprietor of a West Indian plantation resembled rather the owner of a business or trading concern, which, if properly managed and worked, might produce a large revenue, but which required a liberal investment of capital, and great skill and management to produce anything at all.

Previously to the abolition of slavery, the West Indian Islands had been brought to a marvellous state of development and cultivation. The productiveness of the soil seemed capable of indefinite extension, the commercial relationship with England furnished an unlimited market for any amount of produce that the land would yield, while the system of compulsory labour supplied the necessary machinery

Decline of
the West
Indian
Islands.

Difference
between
English and
West Indian
estates.

State of the
West Indian
Islands pre-
vious to the
abolition of
slavery.

for extracting and manufacturing such produce. The annual revenue of an estate depended in effect on the pteaali employed in cultivating it; such capital was, however, essential to the success of the undertaking. The purchaser of an estate had to invest not only the sum he paid for the fee-simple of the land, but also a large additional amount of capital for the machinery, plant, and supplies, by which alone the crops could be realised. He had, of course, to procure competent skill to superintend the works, and, above all, a constant supply of well-directed and disciplined labour. Under a system of compulsory labour, it was not difficult to fulfil these conditions; and the profits realised were so enormous that a vast amount of capital became engaged in the cultivation of these islands. The great European war contributed in no small degree to expand the West Indian commerce, and in many cases estates of a few hundred acres produced annual returns of many thousands of pounds. It naturally followed that large fortunes were amassed, and a West Indian estate came to be looked upon as a mine of wealth, out of which a moderate outlay of capital would infallibly extract a princely revenue. A system of consigneeship grew up, under which London or Liverpool merchants undertook the entire charge of receiving and realising the consignments, and of furnishing from time to time the supplies necessary for cultivation; thus relieving the owner from the necessity of personally attending to his property, and, by commissions and loans at compound interest, ensuring large profits for themselves.

It not unfrequently happened that the owner of an estate was unable to furnish the necessary capital for working it, and therefore either entered into partnership with some person who had the requisite means, or raised the amount required by mortgages, the interest of which, and sometimes the capital, was easily defrayed out of the increased profits. Family charges, such as jointures, lega-

Their prosper-
ity.

Consignees.

Incum-
brances.

Family
charges.

cies, and children's portions, were also liberally charged on such estates, especially when the owner resided in England, the large annual profits apparently justifying the settlor or testator in relying on such debts being easily discharged. Consignees also, in the ordinary course of management, were willing to take up money at 3 or 4 per cent. in England, and realise compound interest at 6 per cent. on West Indian estates, when a bad harvest or the requirements of the proprietor rendered a loan acceptable. Thus it happened that many West Indian estates became saddled with incumbrances, which, though heavy when compared with the acreage of the estates, yet, when set off against their prodigious returns, were borne without inconvenience, and, if required, easily shaken off.

Loans.

But suddenly the blow fell, which, though various attempts were made to palliate or disguise its effects, was destined to ruin the majority of West Indian proprietors. By the celebrated Act of the Imperial Legislature, passed in 1833, compulsory labour was summarily abolished, and in lieu thereof a money compensation was given to the holders of slaves. But no money compensation could ever restore the previous state of affairs, or enable the owner to realise the profits which, in the palmy days of slavery, he had looked upon as his undisputed inheritance. What has followed has possibly been a return to a more natural order of things, and, socially considered, the change may be a beneficial one; but to those who had grown up with, and become dependent on, the ancient system, it was absolute ruin. An estate which had produced a magnificent revenue under a system of compulsory labour, had still a certain value, and might be made to yield a reasonable profit in proportion to its extent; but the owner of a few hundred acres was no longer a wealthy proprietor. The whole position of his family and fortune was changed; and where,

Abolition of slavery.

Effects on the colonies.

as was often the case, mortgages, jointures, or charges had been created on a scale corresponding with the ancient profits of the estate, the interest of the owner vanished. An estate which yielded £10,000 a year might, without difficulty, pay a jointure of £1,000 a year, and the interest of £20,000 or £30,000 to younger children or mortgagees, leaving a handsome surplus for the owner ; but when the annual profits were reduced to £1,000 or £2,000, the owner had no longer any interest in cultivating it. He became, in effect, a mere trustee or agent for others, and not unfrequently for the junior members of his own family, and having no substantial interest himself, left the management of the estate in the hands of those who had, or thought they had, such interest. This led, of necessity, to family arrangements, which naturally developed themselves into family quarrels and Chancery suits. Large estates came under the management of the Court of Chancery, receivers were appointed, and the costs of litigation swallowed up what little surplus could be extracted. The same impediments to a sale existed here as in Ireland. The owner was indifferent, and would take no steps, and incur no risks about a property which, to him at least, was unproductive, while the charges were so numerous, and the accounts so complicated, that an incumbrancer who endeavoured to realise his security was soon compelled to abandon the task as hopeless. A certain amount of cultivation might take place ; the consignees, receivers, managers, and agents still made their profits, but little else was realised. To such a pitch had matters arrived, that in the year 1852, on the affairs of the lunatic tenant for life of a West Indian estate being brought under the consideration of the Lord Chancellor, Lord St. Leonards deliberately pronounced an opinion that, as the expenditure on the estate had for some years exceeded the income, and the continuance of the

Impedi-
ments to a
sale.

working only tended to accumulate debt, it would be for the benefit of the lunatic's estate that the cultivation of the West Indian estate should be abandoned.¹

It will thus be seen that landed property in the West Indies, though differing in many respects from that in Ireland, had been reduced, partly by causes peculiar to itself, and partly by the same causes which prevailed in Ireland, to an equally deplorable condition, alike ruinous to the owners and unjust to the incumbrancers; and as in Ireland, when the cry became too great to be neglected, the Imperial Legislature interposed a forcible but beneficial remedy, so, under the urgent pressure of West Indian sufferers, it was endeavoured to introduce a similar remedy into that part of the Empire, so far as the constitutional relations between the colonies and the mother country permitted. In 1854 an Act was passed providing for the creation of an Incumbered Estates Court in each of the West Indian Islands, with a Central Commission in London, but containing the proviso that the Act should not come into operation in any colony until the Queen should, by an Order in Council, direct it to come into operation in such colony, and that such Order in Council should not be made until the Legislature of such colony had agreed to adopt the Act, and had addressed the Crown in that behalf. This last proviso, which was conceived out of a constitutional regard for the independence of the colonial Legislatures, and the provisions contained in the Act for the appointment of a Local Commissioner and other officers, to be remunerated out of colonial funds, were the causes of great delay in the introduction of the measure. A movement was first made by the Island of St. Vincent, the Government of which had been one of the earliest to draw the attention of the Home Government to the evils occasioned by the

West India
Incumbered
Estates Act,
1854.

St. Vincent.

¹ Re Tharp, 2 Sm & Gif. 578.

great number of incumbered estates, and the consequent non-residence of their proprietors. In a despatch from the Lieutenant-Governor of this island, dated the 26th day of June, 1854, it is stated as one cause of the great depression then existing in the colony, that there were eighty-seven estates in the island which produced sugar; that of these sixty-four were superintended by attorneys, in consequence of the absence of their proprietors; that forty-two of these estates were under the management of six attorneys, and that one attorney actually managed fifteen estates. It is not to be wondered, therefore, that the inhabitants of this colony were willing to adopt a system which afforded at least a reasonable prospect of new proprietors and fresh capital being introduced into the island.

Colonial Act.

The difficulty as to providing adequate remuneration for the local officers, without unduly burdening the colonial funds, was met by a colonial Act, by which it was provided that the officers of the Supreme Court should be charged with the local administration of the measure, and remunerated by fees and commissions, varying in proportion with the value of the property to be dealt with under the Act.

Address and
Order in
Council.

In July, 1856, the Legislature of St. Vincent addressed the Crown in conformity with the Act, and on the 2nd of February, 1857, an Order in Council was issued, calling the Act into operation in that colony. Similar orders have been subsequently made, calling the Act into operation in the colonies of Tobago, the Virgin Islands, St. Christopher, Jamaica, and Antigua; and it is understood that the Acts will shortly be adopted by several other of the West Indian colonies.

Amendment
Acts.

The Act of 1854 was found to be in some respects ambiguous and defective, and supplementary Acts have in consequence been passed, for the purpose of remedying such defects as experience proved to exist. By the Expiring Laws Continuance Act, 1864, the above Acts, which would have

expired at the end of the Session of 1864, were, with other Acts, prolonged, and a similar prolongation may be expected in the next session. It would perhaps have been more consistent with the nature and objects of the Acts if they had been prolonged at once for a definite term of three or five years, instead of from year to year, as the uncertainty incident to an annual tenure must, in some degree, impair the beneficial effect of the Acts. It is obvious that to allow the Acts to expire would be a breach of faith to the West Indian colonies which have adopted them, and especially to those colonies whose adoption of them has been of too recent date to enable them to have derived much benefit from them, and the more so as such adoption took place in consequence of the urgent recommendations of the Imperial Government, conveyed in a circular despatch of Sir George Cornwall Lewis, dated so recently as the 6th of September, 1860.

The above circular despatch was, with other papers connected with the Court, laid before Parliament in the Session of 1864, and is printed in the Appendix, together with a memorial, signed by a number of eminent solicitors practising in the Court, applying to the Government for a removal of the offices of the Court from Westminster to Lincoln's Inn,—a change which has been urgently demanded.

A return of business transacted by the Court, which was laid before Parliament in the same Session, will also be found in the Appendix.

It now only remains to give a brief sketch of the provisions of the several Acts, and of the mode of proceeding under them, which will be treated of in the following chapters.

Circular Despatch.

CHAPTER II.

THE WEST INDIAN INCUMBERED ESTATES ACTS,
1854—1858—1862—1864.

It is proposed in this chapter to consider in detail the principal sections of these Acts, especially such of the former as have been repealed or modified by the latter. For this purpose it will be convenient to distinguish the Acts by the designation of the Principal Act, the Act of 1858, the Act of 1862, and the Act of 1864 respectively.

Principal
Act—differ-
ence from
the Irish Act.

The Principal Act received the royal assent in August, 1854; and it is to be observed, that although its objects were essentially similar to those of the Irish Act of 1849, yet neither the framework nor the wording of the earlier statute were followed by the Legislature in that now under our consideration. The points of difference between the two Acts will be considered in detail, as the sections are successively commented upon; but the variations are now of less consequence, as by the Act of 1858 most of them have been removed, and the measure has been brought as nearly as possible into conformity with the Irish Act.

The first provision of the Principal Act which calls for remark is the interpretation section, now repealed. This section differed materially from the corresponding section in the Irish Act, especially in the definition of the word "land." In the Irish Act, "land" is defined to extend to manors, advowsons, rectories, messuages, lands, tenements, rents and hereditaments of any tenure, whether subject to any fee-farm or other perpetual rent, with or without condition of re-entry for se-

Sec. 3.

"Land."

Irish Act,
Sec. 54.

curing the same, or otherwise, and whether corporeal or incorporeal, and any undivided share thereof; and the word "estate" is defined to extend to an estate in equity as well as at law, and to an equity of redemption, and to the benefit of any covenant or contract for or right to renewal.

"Estate."

Here we have a clear definition of the words "land" and "estate," corresponding with their technical sense. But by the third section of the Principal Act (now repealed), "land" was defined to extend to sugar and other plantations, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description, "and to include and denote that estate or interest in any hereditaments which any person applying for a sale is possessed of, is entitled to, or has any mortgage, charge, or incumbrance upon." Thus, "land" was defined to be not the actual tenement or hereditament which is the subject of property, but the estate or interest which a given person may have therein; a confusion of terms, which, as we shall subsequently see, rendered the measure wholly nugatory for the purposes for which it was intended.

The definition of the word "owner" was also defective, as though it included a tenant for life, or *pur autre vie*, it is doubtful whether it would have included the owner of an estate for years determinable on the life of the owner, or of an estate for the lives of the owner and others. In consequence of these defects the entire section was repealed, and fresh definitions substituted, in which the wording of the Irish Act has been to a great extent followed.

"Owner"

Act of 1858,
sec. 4.

The object of the Act being to effect a judicial sale of estates, the first important provisions which come under our consideration are those which create the requisite machinery for that purpose.

Constitution
of the Court.

The Commissioners of the Treasury are to appoint any number of persons, not exceeding three, to be the Commissioners under the Act during her

Principal Act,
Sec. 4.

Majesty's pleasure. Such persons are to be styled the Commissioners for Sale of Incumbered Estates in the West Indies. Of the above Commissioners, one is to be styled the Chief Commissioner, and the other or others the Assistant Commissioner or Commissioners. The Chief Commissioner must be a barrister of ten years' standing, and must reside in England. The Assistant Commissioners are not subject to any qualification, and may be employed from time to time in the execution of the Act as the Chief Commissioner may direct. For the purpose of aiding in the execution of the Act, the Government of any colony may appoint one or more fit persons resident in the colony to hold the office of Local Commissioner.

It would appear from these provisions, that the appointment of a Local Commissioner is not compulsory, but permissive; and that an Assistant Commissioner may, by the direction of the Chief Commissioner, proceed to any colony for the purpose of carrying the Act into execution. These provisions were, doubtless, framed to meet the case of the smaller colonies, where a permanent Court might not be required, and the occasional presence of an Assistant Commissioner might suffice; for the nature of the business to be performed by the Court is such that the proceedings can, in most cases, be conducted in London, or elsewhere at a distance, in the same manner and with the same facility as an ordinary sale or mortgage, which is seldom conducted in the county where the property sold or mortgaged is situate.

The Commissioners of the Treasury are to appoint a Chief Secretary, and such other officers as may be deemed necessary. The salaries of the Commissioners, Secretary, and other officers, as well as all expenses incurred in England, are to be paid out of moneys to be provided by Parliament; while the remuneration of the colonial officers, and the expenses incurred in any colony, are to be

provided by the Colonial Legislature. The Commissioners may fix a scale of fees to be paid in respect of proceedings under the Acts ; but all fees to be paid in a colony are subject to disallowance or alteration by the Legislature of such colony. It will be observed, on reference to these sections, that there is an ambiguity as to the appointment of the assistant secretaries, clerks, and other officers in England, the appointment being vested in the Commissioners of the Treasury, while the provisions for their remuneration are made dependent on their being appointed by the Chief Commissioner.

Principal Act,
Sec. 13.
Act of 1802,
Sec. 5.

Secs. 9, 12.

It will also be observed that there is no express provision for the appointment of a Secretary or other officer in the colonies. To obviate this difficulty, as well as to secure the economical working of the Act, the Legislatures of the several colonies which have adopted the Acts have respectively made provision for the appointment of a secretary and provost-marshal, and have also provided that the Local Commissioners and other colonial officers shall be remunerated by fees under the 13th section. Tables of fees have been accordingly prepared, by which, in addition to certain fixed payments, the Local Commissioners and other officers are entitled to receive a small percentage on the amount realised by the sale of each estate. These provisions meet the objection which was felt to the introduction of the Act, that it would cause expense to the colony ; while the principle of defraying the expenses of the Act out of the purchase moneys of land sold under its provisions, and the price of which is enhanced by the saving of expense to the purchaser, is obviously a fair one, and has since been incorporated in the Irish Landed Estates Act of 1858.

Some doubt was at first entertained whether the 13th section of the present Act authorised the

Commissioners in England to deduct a commission or percentage from the purchase moneys of estates sold by them in England. This doubt was removed by the 5th section of the Act of 1862, and a table of fees and commissions to be taken in respect of proceedings in England has already been prepared, and is now in force. Considerable sums have been already received in respect of such fees and commissions, which have gone some way in defraying the expense of the Court.

Sec. 8.

The Commissioners are to cause to be made such seal as they may require, and such seal is to be received in evidence without further proof; but no directions are given as to the use of a seal by the Local Commissioners. It is, however, apprehended that, under the 18th section of the Principal Act, and the 53rd General Rule, the Local Commissioners would be authorised to use a seal. Such seal would probably not be receivable in evidence under the latter part of this section; but, as a judicial proceeding in a Colonial Court, would be within the provisions of the statute 15 & 16 Vic. c. 86, s. 7.

Mode of
bringing the
Act into
operation.

The machinery for carrying the Act into effect being duly provided, it is necessary for us to consider when and in what manner it is to come into operation. The provisions in this behalf are peculiar, and, as has been before remarked, were in the first instance the cause of considerable delay. They are contained in the 2nd and 69th sections, the effect of which is to render it optional for each colony to adopt the Act or not. It is provided that the Act shall not have the force of law in any colony until her Majesty has, by Order in Council, directed it to come into operation in such colony; and that no such order shall be made in respect of any colony until the Legislature of such colony shall have presented an address to her Majesty praying for such order, and shall also have made adequate provision for the local expenses.

Before, therefore, the Act has the force of law in any colony, it is necessary

1stly. That the Colonial Legislature should pass an Act making provision for the local expenses:

2ndly. That the Colonial Legislature should present an address to her Majesty praying her Majesty to issue an Order in Council.

3rdly. That an Order in Council should be issued.

It is proper that at the same time the local Court should be constituted by the appointment of a Local Commissioner and Secretary, as the existence of a local Court enables proceedings to be commenced and conducted in the colony, and gives many facilities for applying the Act with economy and expedition. Local Court.

In the colonies which have adopted the Acts this has been done without causing any expense to the colony or increasing the judicial staff, as the expenses of the local Court are, in each case, covered by the fees and commissions above mentioned, and one or more of the existing judges have been appointed to the office of Local Commissioner. Sec. 20.

The Commissioners are required to frame a code of General Rules for regulating the course of procedure, and the due execution of the Acts, and are invested with ample discretionary powers for that purpose. These rules are required to be laid before her Majesty in Council, and are subject to disallowance, but, until disallowed, have the same force as if they had been enacted by Parliament, and take effect from the date of their promulgation. Sec. 21.

The Commissioners are also required to frame and publish Forms and Directions for facilitating proceedings. These differ from the General Rules, in being not required to be laid before her Majesty in Council, and are meant to embrace such points of practice as may from time to time require modification. The General Rules can only be made or altered by the Commissioners in England; but it is Sec. 19.

Sec. 18.
G. R. 53.

competent for the Local Commissioner in each colony to frame and circulate forms and directions for facilitating proceedings in the local Court.

Sec. 66.

Besides the power of framing General Rules, the Commissioners are further empowered to reconcile any conflict between the laws of England and the laws of any colony which may interfere with the due operation of the Acts, by substituting for the provisions of the Acts other like provisions, accommodated to the laws and customs of such colony; such substitutions or provisions must, however, be duly approved by the Legislature of the colony, and confirmed by her Majesty in Council before they have the force of law. The object of this provision is to save the necessity of an application to the Imperial Parliament in the event of such conflict as aforesaid.

Laws of the
West Indian
colonies.

In the majority of the West Indian Islands the general law of England prevails, subject to such modifications as may have been introduced by the Colonial Legislatures; but as all colonial Bills must receive the confirmation of her Majesty in Council, and such confirmation would not be given to any provisions which might be repugnant to the laws of England, the laws of such islands may be regarded as generally in consonance with the laws of England, and there is no probability of a conflict between them. These remarks are applicable to the following colonies:—Jamaica, which was captured from the Spaniards in 1655; Barbadoes, the Bahamas, Antigua, Montserrat, Nevis, and the Virgin Islands, which were colonised by the English between 1624 and 1666; St. Christopher, which was ceded to the English at the Peace of Utrecht in 1713; Grenada, St. Vincent, Dominica, and Tobago, which were ceded to the English at the Peace of Paris in 1763.¹

¹ "The common law of England is the common law of St. Vincent, and thus the rules which regulate our Equity Courts regulate also the Court of Equity in that island." Per Lord Wynford. *Sayers v. Whitfield*. 1. Knapp, 148.

On the other hand, the islands of Trinidad and St. Lucia, and the colony of British Guiana, being recent conquests, are not subject to the common law of England, but to the laws of the countries from which they were conquered. Trinidad was colonised by the Spaniards in 1498, and surrendered to the English in 1797. The law which prevails is the law of Spain as it existed in the colony previous to the surrender. St. Lucia was originally colonised by the English in 1639, but was in 1650 taken possession of by the French, who retained it, with the exception of a few short intervals, until 1803, when it was surrendered to the English. The laws which govern this island are those of the French monarchy, which were in force before the surrender. British Guiana was originally a Dutch colony, but capitulated to the English in 1803, since which time it has been a British possession. The colony is governed by the Dutch laws, which were in force previously to its coming into the possession of the English. The laws of all these three last mentioned colonies are subject to modifications made since they became British possessions. We have, therefore, in these three colonies three different systems of jurisprudence, one of which has been abrogated in the country from whence it was derived, and all of which have been subject to modifications during the last half century. Some difficulty may, therefore, be experienced in ascertaining the laws of these colonies with respect to the sales of land and priorities of incumbrancers; and it is with the view of meeting these difficulties that the above-mentioned provisions have been introduced into the Act. But as the Acts have not yet been put in force within any one of these three colonies, the difficulties anticipated have not hitherto arisen.

It is now necessary to consider the functions of the Commissioners, their powers and duties, and the mode in which such powers and duties are to be exercised. It was provided by the Principal Act

Functions
of the com-
missioners.

Sec. 17.

Sec. 25.

that the Commissioners should constitute a Court of Record, having for the purposes of the Act jurisdiction throughout England and any colony in which the Act should be in operation; and that in all cases under their jurisdiction they should, for the purpose of enforcing their orders, have in England the powers of the Court of Chancery, and in any colony within their jurisdiction the power of the Supreme Court of Judicature of such colony. These sections have been repealed, and other provisions have been substituted by the 6th and 7th Sections of the Act of 1858, in which the provisions of the Irish Act have been followed.

Powers of the Commissioners.

On comparing the corresponding sections, it will be seen that the powers of the Commissioners are much extended, though not more so than is necessary for carrying the measure into effective operation. Under the Principal Act it was doubtful how far the Commissioners had power (except indirectly) to decide questions of title and priorities, or to enforce, rescind, or vary contracts; and it would seem that their jurisdiction as to these matters was only *in rem*, and did not bind the parties, except as to the estate sold. Under the Principal Act, also, the powers of the Commissioners for enforcing orders — such as the payment of money, or the production of documents — were confined to England and to colonies under their jurisdiction; so that any person might, by removal to Ireland, or any colony not under the jurisdiction of the Commissioners, set at nought their authority, and, by suppressing or destroying evidence, prevent or impede the due administration of justice. The substituted sections meet these deficiencies, and provide for an authoritative adjudication of all questions of title, and for the due enforcement of contracts, with authority at least co-extensive and co-ordinate with that of a Court of Equity; while for enforcing their orders the Commissioners have not only the general authority

Sec. 6, 7.

of the Court of Chancery, but also that of the Supreme Court of Judicature in every part of the British empire. These provisions enable the Commissioners to act not only in *rem*, but also in *personam*, and although the powers entrusted to them are more extensive than are possessed by any other Court, yet the purposes for which such powers are given, and which are defined in the 7th section of the Act of 1858, and the nature of the duties imposed on the Commissioners, are such that no less extensive authority would have sufficed.

Act of 1858,
Sec. 7.

It is essential for the due administration of the Acts that the Commissioners should have power to enforce the payment of money, and the production of deeds and documents, and the existence of this power will generally prevent the necessity for its exercise. Very few cases have occurred in the Irish Court in which the orders of the Commissioners have been disobeyed, and these arose for the most part from misapprehension of the law. In the event of disobedience, the Commissioners may issue writs of attachment or sequestration against the offending parties, or make use of such other process as may lawfully issue from the Court of Chancery or Supreme Court, as the case may be; and the Commissioners may either carry into effect their powers, rights, and privileges by officers appointed by themselves, or may request the Court of Chancery, or Supreme Court, or any officer thereof, to enforce any order made by them; and on such request it is incumbent on the Court or officer to enforce such order.

G. R. 76-77.

For the purpose of deciding questions of fact, the Commissioners are authorised to require the attendance of witnesses and the production of documents, and to take evidence orally or by affidavit; and, if they think fit, they may send cases to be tried in England by a jury, or in any colony, according to the law of such colony. The Commissioners are also

Principal Act,
Sec. 24.

authorised to send questions of law for the opinion of a Court of Law or Equity.

Sec. 62.

The Commissioners are not subject to be restrained or interfered with in the execution of their powers by the authority of any Court of Law or Equity ; nor can any person be restrained from proceeding in their Court. Their authority is therefore absolute as to all matters within their jurisdiction, subject to an appeal to her Majesty in Council, but such an appeal can only be had with the sanction of the Commissioners.

Sec. 65.

It will be seen by all these provisions that great confidence is reposed in the ability and integrity of the Commissioners, and that with a view to save expense, and prevent unnecessary litigation, many of the usual safeguards have been removed. The nature of the business to be transacted by the Commissioners will, however, require it to be, for the most part, conducted by professional men, whose presence will effectually guard against any possible neglect or abuse of authority.

Sec. 18.

All acts which the Commissioners are empowered to do may be done or executed in England by the Chief Commissioner ; and, with certain exceptions, all such acts may be done or executed in any colony by the Local or Assistant Commissioner.

Transfer of
proceedings.
Sec. 17.

The Chief Commissioner may at any time direct the proceedings in any matter to be transferred from England to any colony, or from any colony to England. The locality where the proceedings may best be conducted will depend on many circumstances. The investigation of title and settlement of the schedule of incumbrances may be most conveniently held where the majority of the incumbrancers reside ; while the choice of the place of sale will depend on the probability of realising the highest price. It was thought that large estates would find a better market in London, and that smaller properties would fetch a larger price in the colonies, but

it has been hitherto found in practice more advantageous in all cases to carry out sales in London.

Having now considered the powers and jurisdiction of the Commissioners, we come to the duties for the execution of which they are appointed.

Subject to certain restrictions, where any land situate in any colony under their jurisdiction is subject to any incumbrance, the Commissioners have power to sell such land, on the application of the owner or any incumbrancer.

Power to sell
land.
Sec. 26.

By the definition of the words "owner" and "incumbrancer," it appears that a person having an estate for life, or for a term of thirty years, or an incumbrance on an estate for life or for years, may apply for the sale of the inheritance. In this respect the Act is less restrictive than the Irish Act, which provides that lands shall not be deemed to be incumbered within the meaning of that Act unless such incumbrance affects a term of not less than fifty years absolute unexpired, or a greater estate in the land, and shall have been created by the owner of an estate of inheritance. But it is in the discretion of the Commissioners to grant or refuse any such application, and any reversioner or remainderman would be entitled to be heard in opposition.

Act of 1858,
Sec. 4.

Irish Act,
Sec. 10.

G. R. 10, 11.

Where land is vested in trustees the application may be either by the owner, or by the trustees with the consent of the owner. Where an incumbrance is vested in trustees, or settled on divers parties in succession, the application for a sale may be made by the trustees, by the first tenant for life, or by any other person having, in the opinion of the Commissioners, a sufficient interest in the incumbrance.

Principal Act,
Sec. 20.

Applications for the sale of land are to be in such form as the Commissioners shall direct, and may be made either to the Commissioners in England or to the Local Commissioner of the colony. This is left to the discretion of the petitioner. On the receipt of such application the Commissioners are to make such inquiries, and give such notices, as they

Sec. 30.

may deem necessary to enable them to form a judgment as to the expediency of a sale ; and, after duly hearing all proper objections which may be urged, are to make an order for the allowance or disallowance of the sale.

Sec. 31.

The order for sale may be opposed on the grounds mentioned in the 27th section, which provides that when application for a sale of land has been already made to any competent tribunal in the colony, and dismissed with costs, no application by the same party, for a sale of the same land, is to be entertained, unless it is shown that such costs have been paid.

Restrictions
on sale.

But the Principal Act interposed further restriction on the power of the Commissioners to order a sale. By the 32nd and 34th sections (now repealed), it was positively enacted that no sale should be ordered where the annual interest of the incumbrances was less than half the annual income of the land subject thereto, and that where the land to be sold was subject to certain charges not coming under the definition of incumbrances, including annuities, rent-charges, and contingent interests, the sale must be made subject to such interests, unless the party entitled thereto should consent to release the same.

These restrictions were unreasonable, and would have been fatal to the success of the measure. The effect of the 32nd section was to render a sale impossible, unless the annual interest of permanent incumbrances, irrespective of annuities or rent-charges, bore a certain proportion to the annual profits, even though the owner himself might earnestly desire a sale, and though annuities and rent-charges might swallow up the whole annual profits. The effect of the 34th section was to enable an annuitant to render a sale impossible or unprofitable, by vexatiously refusing to release the land from his annuity, notwithstanding he might be offered its full equivalent.

Both these objections were actually raised in the first case that came under the jurisdiction of the Court, and will be found treated of in the Chief Commissioners' judgment.¹

But all difficulty on these heads has been removed by the Act of 1858, which defines the cases in which the Commissioners are restrained from selling; and provides that all objections founded on the state of the property shall be raised by the owner alone, and that the decision of the Commissioners thereupon, so far as the same relates to their power and jurisdiction over the land, shall be final and conclusive. It is also provided by the 10th section that the Commissioners shall have power to make all proper and necessary provisions for the redemption or satisfaction of all annuities or other interests of a like nature; but that, subject to the exception contained in the 39th section of the Principal Act, the conveyance of the Commissioners shall override all estates, rights, and interests whatever.

Act of 1858,
sec. 8.

Sec. 10.

No part of the Acts is more important or essential than this section. It was essential for the due working of the Act that the Commissioners should have the power to convert the land into money, and charge upon the money all those incumbrances of what nature or kind soever which had previously existed on the land. No real injustice could be done to annuitants or others by changing their security; and to require their consent only gave them the means of injuring others as well as themselves by impeding or preventing a sale. In the case above alluded to, a jointure of £600 a year was charged on an estate which was lying unproductive; and as no person would have purchased the estate subject to the jointure, and the jointress refused to receive the value of the annuity in lieu thereof to the

¹ Re Greathed, see Appendix.

extent of her security, the sale was effectually prevented until the passing of the Act of 1858.

The sale.

Having given the Commissioners power to sell land, and having defined those cases where this power is restricted, the Act passes to the next stage of the proceedings, the sale itself.

The 35th section prescribes the mode of sale and the nature of the conveyance, concerning which directions will be given in the next chapter.

Effect of the conveyance.

The effect of the conveyance is of course a most important consideration, and is, in fact, the basis of the measure; and yet, strange to say, this is the point on which the Principal Act was most signally defective. The object of the measure is to facilitate the transfer of land, by relieving the purchaser from the necessity of inquiring into the vendor's title. An ordinary conveyance passes only such estate and interest as the vendor has in him at the time of execution, casting, therefore, on the purchaser the burden of ascertaining the extent of such estate and interest. To free the purchaser from this, it is essential that the conveyance of the Commissioners should pass some well-defined estate or interest, amounting, in the absence of restrictive words, to an estate in fee-simple, or the largest estate known to the law.

Sec. 38.

The 38th section was probably intended to effect this object; but the singular definition of the word "land," to which we have before adverted, gave this section an exactly contrary effect, and reduced the operation of the Act to a nullity.

Sec. 3.

Land was, by the 3rd section, defined to be that estate or interest in any hereditaments which any person applying for a sale is possessed of, or has any mortgage, charge, or incumbrance upon. If we graft this definition on the 38th section, we shall find that the conveyance does not vest in the purchaser any defined estate in the land, but only that estate or interest which the person applying

for a sale is possessed of, or has an incumbrance upon. The purchaser, therefore, is in no better position than if he had taken a conveyance from the owner, or from an incumbrancer with a power of sale; and as he only takes the estate of the person applying for a sale, he must, to ascertain that estate, investigate the title as strictly as if the Act had never passed. This defect in the Act was so fatal as to render it necessary that an Amendment Act should be passed, before any conveyance could be executed.

The 10th section of the Act of 1858 removes all doubt on this head, and enacts that the conveyance shall pass the absolute fee-simple of the land, unless a lesser estate or interest is expressly mentioned. It also enacts that the conveyance shall not be set aside on the ground of the Commissioners not having jurisdiction. It is also provided that every conveyance by the Commissioners shall be conclusive evidence of the propriety and regularity of all proceedings connected with it, and that no such conveyance shall be set aside for informality. Sec. 61.

No doubt can, therefore, now be entertained as to the effect of the conveyance, which is of paramount force and virtue, and cannot be questioned in any court. This, no doubt, imposes a heavy responsibility on the Commissioners, who have to guard against the danger of including in the conveyance the land of other parties, or of shutting out leases or other valuable interests. The experience, however, of the Irish court has shown that this danger is more apparent than real, as throughout the whole of their large transactions very few cases of mistakes have occurred, and those were of such trivial character that the parties who suffered by them were fully compensated out of the purchase-money. The publicity of the proceedings was found an effectual safeguard against the occurrence of important mistakes.

The only exceptions to the paramount operation Sec. 36.

of the conveyance are the rights and payments mentioned in the 36th section, with which the land is presumed to remain charged, unless expressly declared to be exempt.

Provision is made for the rights of tenants, lessees, and others, by the 9th section of the Act of 1858, which has been substituted for the 33rd section of the Principal Act.

Sec. 13.

The Act of 1858 contains the important provision that all conveyances by the Commissioners shall be free from stamp-duty. This was omitted in the Principal Act, which would have led to the anomaly, that while conveyances executed by the Local Commissioners would be free from stamp-duty, conveyances executed by the Commissioners in London, though of adjacent land, would have been subject to a duty of one-half per cent.

Sec. 37

The purchase-money is to be paid into the Bank of England, or into the commissariat chest of some colony; and the purchaser so paying it is discharged from any further liability in respect thereof. This is also an important element in the Act, as it effectually separates the purchaser from the vendor, and diminishes the chance of collusion. If an incumbrancer purchases, he will be allowed to retain the whole or part of his incumbrance out of the purchase-money. This is an important privilege, as it tends to induce incumbrancers to bid for the property, especially if the estate is likely to be insufficient to pay them, and it thereby adds to the number of competitors, and increases the value to be derived from the sale.

Sec. 40.

On the conveyance being executed, the purchaser may have an order from the Commissioners for delivery of possession, which will be executed, in case of need, by the provost-marshal, or other officer of the colony.

The next division of the Act provides for the due application of the purchase-money among the parties

entitled, according to their rights and priorities, for which purpose the Commissioners have all necessary powers. The 45th Section, providing for the setting aside of money to meet annual or contingent incumbrances, has been repealed, and more extended powers have been substituted by the Act of 1858. The provisions for the protection of persons under disability have also been extended and amplified by the Act of 1858. Sec. 12.

For the purpose of preventing expense, it is provided that proceedings shall not abate by reason of death or transmission of interest, but that in such cases the Commissioners shall give notice to parties becoming interested, and shall make such orders as may appear to be necessary for their protection. Sec. 51.

The Commissioners have full power of giving or withholding costs; but in general the costs of the petitioner, if an incumbrancer, will rank in priority with his incumbrance, unless the Commissioners shall otherwise direct. This provision is meant to discourage the presentation of petitions by incumbrancers having no reasonable prospect of realizing their incumbrances. The costs, charges, and expenses incidental to the sale itself, and such other costs as may in the opinion of the Commissioners be considered as having been incurred for the benefit of all parties, form a charge on the purchase-money in priority to all incumbrances on the estate. Sec. 52.

Where proceedings have been pending in any competent court with respect to any land which the Commissioners may order to be sold, the Commissioners are bound to take notice of such proceedings, for the purpose of ascertaining the rights and priorities of all parties; but on an order for sale being made by the Commissioners, all such proceedings, so far as they relate to a sale, are to be suspended, and no other proceedings with that object can be instituted. The corresponding sections of the Irish Act enable the Commissioners to provide for the costs of such suspended proceedings out of the pur- Sec. 53.

Sec. 54.

chase-moneys of the land sold, but no such provision is contained in these Acts. Such costs can therefore only be satisfied out of the purchase-money in those cases where they would have been a charge on the land had it remained unsold.

Partitions,
exchanges,
and divisions.

Sections 55 to 60 enable the Commissioners to effect partitions, exchanges, and divisions, the powers comprised in them being analogous to those exercised in England by the Inclosure Commissioners. These powers, though subsidiary to the powers of sale, are of a highly useful character, and have in several instances, where applications have been made for the sale of undivided shares of land, or where the boundaries of adjoining estates are ill-defined, been found of great service in carrying into effect the principal objects of the Acts.

Receivers.
Act of 1862.
Sec. 3,

Shortly after the Acts came into operation, a difficulty was found in providing for the due protection and management of estates about to be sold in the interval between the commencement of proceedings and the actual sale, which was found in general to extend to six or eight months; as it often happened that the parties in possession declined to continue the cultivation. At the suggestion of one of the Local Commissioners, application was made to Parliament for power to appoint Receivers, and the Act of 1862 was accordingly passed, giving to the Commissioners the same powers of appointing Receivers as are possessed by the Court of Chancery. Such powers were, however, only to be exercised after the making of the absolute order; and as it was found essential in many cases to take prompt measures to protect the estate from deterioration immediately on the commencement of proceedings, the Commissioners were by the Act of 1864 authorised to appoint a Receiver after making the conditional order. The rapidity with which a West Indian estate deteriorates in value, if not adequately protected and cultivated, and the great

Acts of 1864,
Sec. 5.

value of the stock and plant generally used on such estates, render this power of peculiar value.

The value of the stock and plant led to a further difficulty, which has since been removed by legislative enactment. The powers originally conferred on the Commissioners only enabled them to sell "land" according to the definition contained in the Acts, which did not include personal chattels, such as stock or plant. Such stock and plant were, however, in many cases of equal or greater value than the land itself, to which they were an essential adjunct—the land being only the vessel in which, by proper use of the stock and plant, the crops were produced. In consequence of this, it had become an universal custom to include the stock and plant in all mortgages of West Indian estates, and the inability of the Commissioners to include the stock and plant in their judicial sales was found a serious inconvenience. This difficulty was removed by the Act of 1864, which gives to the Commissioners powers over the stock and plant similar to those which they already possessed over the land.

Sale of stock
and plant,
Act of 1864,
Sec. 4.

CHAPTER III.

THE PROCEDURE OF THE COURT.

It is intended in this chapter to give a sketch of the procedure of the Court according to the present practice, which is based on the General Rules and Forms and Directions originally published by the Commissioners, but has been from time to time modified and amended since the institution of the Court, in accordance with the experience derived from the business transacted in it.

Division of proceedings.

Proceedings for a sale may be divided into three stages :—The Petition, which includes all proceedings up to the absolute order for sale ; the Sale, which includes the preparation for and conduct of the sale itself, the conveyance, and delivery of possession to the purchaser ; and the Distribution, which includes the ascertaining of the rights and priorities of all parties, and the distribution of the purchase money among them.

The Petition.

The petition.

The first stage is commenced by the presentation of a petition, briefly setting out the facts on which the petitioner's claim rests, and praying for a sale. Such petition may be presented by the owner of the land to be sold, or any incumbrancer thereon.

Who may petition.

“ Owner” and “ Incumbrancer.”

The words “ owner ” and “ incumbrancer ” are defined and extended by the 4th section of the Act of 1858, and by the 28th and 29th sections of the Principal Act, and include nearly all parties having any substantial interest in the land, or in any incumbrance thereon.

Petitions by infants or married women.

Every petition by an infant, or by a married woman in respect of her separate property, must be presented by some person as his or her next friend, who will be accountable for the costs of the proceedings, in the event of the petition being dismissed, or the proceeds of the sale being insufficient to defray them.

Selection of Court.

The petition may be presented either to the Commissioners in England or to the Local Commissioner in the colony where the estate is situate ; but if once presented, the proceedings cannot afterwards be transferred without the order of the Chief Commissioner. It is important, therefore, for the petitioner to determine in which Court he shall commence proceedings. This must depend much on the circumstances of each case, but the following

suggestions will be useful to enable parties to come to a decision.

1st. The successful and expeditious issue of the proceedings must depend in great measure on the energy and skill of the solicitor who conducts them ; and it is therefore very important to secure the assistance of an efficient solicitor. Solicitor.

2ndly. The costs and expenses of each incumbrancer are added to his incumbrance, and such costs and expenses will be materially increased if he resides at a distance from the Court where the proceedings are being conducted. It should be ascertained, therefore, whether the majority of the incumbrancers reside in England or in the colony. This consideration as to the saving of expense is of importance to the owner, if the incumbrances are less than the value of the estate ; it is also material to the incumbrancer, as the proceeds of the sale may prove insufficient to discharge his incumbrance and costs. Residence of incumbrancer.

3rdly. The commencement of proceedings in England or in the West Indies does not in any way control the discretion of the Chief Commissioner as to the place of sale, which is a matter for subsequent consideration. Place of sale.

4thly. Proceedings for a sale under these Acts resemble in great measure those of ordinary sales by auction or private contract, which are seldom conducted on or near the land itself ; the only part of the proceedings which requires an actual visit to the land being the identification of the parcels, which is generally effected by means of a surveyor. Nature of proceedings.

The next point of importance is the preparation of the petition, of which forms are given in the Appendix. It should state concisely the facts on which the petitioner's prayer is founded, and such other matters as are required by the General Rules. The order for sale, which is the foundation of all subsequent proceedings, will follow the terms of the Preparation of the petition .

prayer of the petition ; care must, therefore, be taken to insure accuracy in the names of the parties, and the description of the property, as any subsequent amendments will be at the cost of the petitioner. In preparing the petition, regard should be had to the directions contained in the Forms and Directions, which will be found in the Appendix.

The petition must be accompanied by the following documents :—

- 1st. A schedule of the lands of which a sale is sought, containing as full and accurate a description thereof as the petitioner can obtain.
- 2ndly. A schedule of all charges and incumbrances affecting such lands, with the date and particulars of each charge or incumbrance, to the best of the petitioner's knowledge.
- 3rdly. An abstract of the petitioner's title, either to the land, in the case of an owner, or to the incumbrance, in the case of an incumbrancer, sufficient to show a *prima facie* title to the relief sought by the petitioner.
- 4thly. An affidavit by the petitioner in the form given in the Appendix.

It was originally ordered that the petition and accompanying documents should be written on foolscap paper, bookwise. It has, however, been found to be more convenient to adopt, as far as possible, the practice of the Court of Chancery, and to require them to be written on brief paper, briefwise ; the schedules and affidavit accompanying the petition being made up and fastened together in the same manner as a brief petition in Chancery. The abstract of title must, of course, be made up separately, and should be in the form of an ordinary abstract of title as delivered by a vendor to a purchaser. Where estates with different titles are included in the same petition, separate abstracts should be

Documents accompanying the petition.

Mode of preparation.

Abstract.

filed of the different titles, connected together, if necessary, by a supplemental abstract of such part of the title as is common to all the estates. If this is not done the Chief Commissioner will require the abstracts to be re-drawn before making the conditional order. The affidavit annexed to the petition should refer specifically to the petition, schedules, and abstracts. The Chief Commissioner will, from time to time, allow the petition and other documents to be amended, but upon such terms, as to costs or otherwise, as may appear just.

Affidavit.

Amendments.

Matters occurring after the petition has been presented, and tending to defeat or invalidate the title of the petitioner, do not deprive the Court of jurisdiction, though they may afford grounds for an application to stay proceedings, or to transfer the carriage of them to some other party. The jurisdiction is founded on the presentation of the petition, which is presumed to be presented on behalf of the petitioner and all other parties interested, like a creditor's bill in Chancery. The discharge of the petitioner's incumbrance will not, therefore, be of itself sufficient ground for discontinuing the proceedings if there are other incumbrancers who are desirous that they should proceed.

Matters occurring after the petition.

It is desirable in every case that the proceedings on behalf of the petitioner should be conducted by a solicitor or attorney; but if this is not the case, the petitioner must leave an address in accordance with the 8th General Rule.

Address of petitioner.

The petition and accompanying documents must be delivered to the clerk at the office, at 8, Park-street, Westminster, and the proper fee paid thereon. They will, in due course, be examined and perused by the Secretary, who will report thereon to the Chief Commissioner. The Chief Commissioner, after receiving the report of the Secretary and perusing the papers, will either make an order for the sale of the estate, or adjourn the matter for further in-

Filing of petition.

quiries or explanations. In the latter case, he will generally require the attendance of the petitioner or his solicitor, and give directions as to the inquiries or explanations which he may deem necessary. If the petitioner is unable to satisfy the Chief Commissioner on the points as to which he requires explanations, the petition will be dismissed, otherwise an order will be made for the sale of the estate.

Conditional order.

Such order will, in the first instance, be conditional only, and will fix a time within which cause may be shown against it. It will also specify the names of the parties upon whom it is to be served. The conditional order will be drawn up and signed by the Secretary, and delivered to the petitioner's solicitor, who must thereupon bespeak a sufficient number of office copies thereof for service on the parties named therein. Service of the conditional order is effected by the delivery of an office copy thereof to the party to be served, or his solicitor. A written acceptance of service should, if possible, be obtained from the party served, otherwise the service must be verified by affidavit. A form of such affidavit is given in the Appendix. If, as is often the case, the petitioner's solicitor is instructed to appear for, and accept service on behalf of, any person on whom service of this or any other order or document is directed, he should file in the office a short note to that effect. If it is impossible or inconvenient to effect personal service, the Chief Commissioner will, in some cases, allow service to be made by post through the office under the 58th General Rule.

Service of the order.

Advertisements.

The conditional order generally contains a direction that it is to be duly advertised. The petitioner's solicitor must apply to the Secretary for directions as to the newspapers in which the advertisements should be inserted. According to the present practice, the conditional order is generally directed to be advertised once in each of the following papers:—

The *Times*, the *Estates' Gazette*, and one of the principal newspapers in the colony in which the estate is situate. In some cases advertisements in Liverpool, Bristol, and Glasgow papers are directed. Copies of the newspapers in which the advertisements have appeared must be filed in the office before the order will be made absolute, as evidence of their due insertion.

The conditional order will fix a time within which cause may be shown against it. Any person is at liberty within the above time to show cause against the conditional order, whether named therein or not; but after the expiration of the above time, no cause can be shown against the conditional order, except by special leave, and upon such terms, as to costs or otherwise, as the Chief Commissioner may direct.

Opposition to sale.

Any person wishing to show cause against the conditional order must file a notice of opposition at the office. Such notice must state briefly the grounds on which the opposition is founded; and if reliance is placed on any facts not appearing in the petition, such facts must be verified by affidavit. Every notice of opposition must give the name and address of some solicitor or other person in London upon whom notices may be served, otherwise the petitioner will be entitled to move *ex parte* that the order be made absolute. It should be borne in mind that the grounds on which the conditional order may be opposed are substantially limited to those specified in the 8th section of the Act of 1858; and that in many cases where an estate is incumbered it is more advantageous for the owner to consent to the order, and, if he desires to retain the estate, to bid for it at the sale, as by this means he may acquire an indefeasible title. This course has frequently been adopted in Ireland.

Notice of opposition.

Grounds of opposition.

The effect of filing a notice of opposition as above mentioned, is to prevent the conditional order from being made absolute without notice to the

Effect of notice of opposition.

party opposing. If a notice of opposition has been duly filed, and the petitioner does not, within a reasonable time after the expiration of the time fixed by the conditional order, move that the conditional order be made absolute, the party opposing may move that the petition be dismissed. If, however, the petitioner is desirous of proceeding with the matter, he must move that the conditional order be made absolute, and serve a notice of such motion on the party opposing.

Affidavits.

If affidavits have been filed in support of the notice of opposition, the petitioner may, on giving notice of motion, file affidavits in reply; but no further affidavits will in general be admitted without leave of the Court.

Application for appointment.

Any party desirous of serving a notice of motion, on this or any other occasion, must first apply to the Secretary to have a time appointed for the hearing, and must specify such time in the notice. The parties may appear at the hearing either personally or by their solicitor or counsel; but if it is intended to appear by counsel, notice of such intention must be given to the other side. In all such matters the procedure of the Court follows that of the Court of Chancery.

Grounds of opposition.

The party opposing the conditional order will be restricted at the hearing to the grounds set forth in his notice; but the Chief Commissioner will, if necessary, allow the notice to be amended, and adjourn the hearing on such terms, as to costs, evidence, or otherwise, as he may think proper. After hearing the parties, the Chief Commissioner will either make the conditional order absolute, or vary or discharge the same, and will make such order as to costs as may appear just.

Proceedings in default of appearance.

If the party opposing does not appear in support of his opposition, or if he has not given the name and address of any solicitor or other person in London, on whom a notice of motion may be served,

the opposition of such party will be deemed to be withdrawn.

If at the expiration of the time specified in the conditional order no notice of opposition has been filed, the petitioner, on producing evidence of the due service and advertisement of the conditional order, will be entitled to an absolute order; but the Chief Commissioner may on application extend or re-open the time for showing cause upon such terms as to costs or otherwise as may seem just.

The absolute order will be drawn up and signed by the Secretary, and delivered to the solicitor having the carriage of the proceedings. This order is the foundation of all subsequent proceedings.

Absolute order.

As six months or more must in general elapse between the making of the conditional order and the sale of the estate, and the parties in possession are often unwilling to continue the cultivation of the estate at their own expense during such period, without some security for the repayment of their outlay, it is frequently found expedient, in order to prevent the deterioration in value, to which a West Indian estate is subject from want of adequate protection and cultivation, to obtain the appointment of a Receiver and Manager. The Court has power, under the Acts of 1862 and 1863, to make such an appointment at any time after the making of the conditional order, on the application of any person having, in the judgment of the Court, a sufficient interest. Notice of the application must in general be served on the party in possession, but under special cases, where irreparable loss is apprehended, a Receiver will be appointed *ex parte*. The procedure of the Court as to the appointment of a Receiver, and as to the security to be given by such Receiver, is similar to that of the Court of Chancery. Forms of the orders relating to Receiver, and of the Receiver's recognisance, are given in the Appendix.

Receiver.

If the Receiver is resident in England, he must enter into a recognisance in London with two

Recognisance.

sureties. If he is resident in the colony he must enter into a recognisance before the Local Commissioner. The Receiver is the officer of the Court, and any interference with his possession is punishable as a contempt. It is his duty, subject to any directions he may receive from the Chief Commissioner, to manage and cultivate the estate, and to receive the rents and profits thereof; and the balance (if any) due to him in respect of his expenditure, with all just allowances, is declared by the Act of 1862 to be a charge on the estate in priority to all incumbrances thereon, it being presumed that the value of the estate will be enhanced in proportion to such expenditure.

The Sale.

The sale

We now arrive at the second stage of the proceedings, the object of which is to effect the sale of the land as speedily, and for as high a price, as possible. But as the effect of the conveyance is to override all rights in the land comprised therein, except such as may be specially excepted, it becomes a matter of paramount importance to take every precaution to avoid injustice.

Notice to claimants.

Immediately after the absolute order for sale has been made, the solicitor having the carriage of the proceedings must prepare the Notice to claimants, (a form of which is given in the Appendix), and must bring two fair copies of it to the Secretary for his signature, one of which will be filed in the office and the other returned to the solicitor. The Secretary will then give directions as to the printing of the notice, the newspapers in which it is to be advertised, the parties upon whom it is to be served, and the mode in which it is to be posted on the estate. The notice, when settled and signed by the Secretary, must be printed on foolscap paper, and twelve copies lodged at the office, of which a certain number are sent by the Secretary to the Secretary of the Local Commissioner, for the information of parties in the

colony. Printed copies must then be served on the owner, on all the incumbrancers who are known and accessible, on all the principal lessees, tenants, and occupiers of any part of the estate, and on the proprietors or managers of all the adjoining estates. Printed copies must also be posted on conspicuous parts of the estate; the object being to make the fact of the impending sale as publicly known as possible.

Service of this notice need not be personal, but may be effected by post through the office; but the most convenient method of serving and publishing the notice in the colony is to send out a sufficient number of printed copies to an agent on the spot, with instructions to make the required services, to cause the notice to be duly posted and advertised, and to send back affidavits verifying the fact of this having been done. Forms of such affidavits are given in the Appendix.

Service of notice.

The notice to claimants must, in all cases, be duly advertised. According to the present practice it is sufficient to advertise it once in the *Times* and once in the colonial newspaper.

Advertisement.

The notice to claimants limits a time within which claims may be filed, and the sale will not in general take place until after the expiration of such time. Parties having or claiming estates or interests in the land itself, which may be liable to be prejudiced or overridden by the conveyance of the Commissioners, should make their claims at once, before the expiration of the time limited by the notice, or they will be too late; but parties claiming merely as incumbrancers, whose claims are capable of being satisfied out of the purchase moneys, can either make their claims at once, or defer them until the issuing of the final notice. It is, however, advisable for *bonâ fide* claimants, in all cases, to make their claims as early as possible, as they may, by so doing, not only save themselves much subsequent trouble and expense, but also in some cases

Time for filing claims.

save the Statute of Limitations.¹ A form of claim is given in the Appendix. If it is intended to proceed at once on a claim, the facts on which the claim rests, and the mode in which the amount is made up, must be concisely stated and verified by affidavit. If, however, the claimant has reason to doubt that the proceeds of the sale will be sufficient to discharge the incumbrances having priority over his claim, it will be prudent to file a concise statement of the nature and probable amount of his claim, and to leave the details and the verification until the settlement of the schedule of incumbrances. Parties in the colony, who are desirous of filing claims, can transmit them to England through the medium of the Secretary of the Local Commissioner. Every claim must contain the name and address of some solicitor or other person in London, upon whom notices may, if necessary, be served. A list of all claims which have been filed is open to public inspection at the office.

Title.

The next duty of the solicitor having the carriage of the proceedings will be to complete and verify the title, and to prepare the particulars of sale and plan. For the above purpose it will be necessary for him to obtain possession of the principal deeds, plans, and other documents relating to the estate, which he is enabled to do by serving on the parties, in whose possession such deeds, plans, or documents may be, a notice in the form given in the Appendix. Parties depositing or giving up possession of any deeds or documents, in obedience to the above notice, may, by filing a claim to that effect in the office, reserve their lien (if any) on such deeds and documents, and effect will then be given to such lien on the settlement of the schedule of incumbrances, as against all such rights and interests (if any) as are legally subject thereto.

Notice to produce deeds.

Lien.

Abstract of title.

On obtaining the necessary deeds and documents

¹ Hunter v. Neckolds, 1 M. & G., 640.

the solicitor having the carriage of the proceedings must complete the title (if not already completed) by deducing the same for the usual period, as if he were preparing for an ordinary sale by the owner with the concurrence of the incumbancers. In framing the abstract care must be taken not to include in the same abstract estates held under different titles, but to follow in this, as well as in other details, the ordinary conveyancing practice between vendor and purchaser. For the purpose of preparing and verifying the abstracts, the solicitor having the carriage of the proceedings can have access to all the deeds and documents which have been deposited at the office. When a complete abstract has been prepared and filed, it will be perused by the Secretary, who will report thereon to the Chief Commissioner. The Chief Commissioner, after receiving the report of the Secretary and perusing the papers, will make such requisitions thereon as he may deem necessary and proper, and a copy of such requisitions will be sent to the solicitor having the carriage of the proceedings. It will be the duty of such solicitor to comply, as far as he is able, with these requisitions, and to attend the Chief Commissioner thereon from time to time if required.

Perusal of
abstract.

Requisitions.

The requisitions are of two classes—special and general. The special requisitions are those which arise directly out of the peculiar circumstances of the title; and are similar to those which would be made by an ordinary purchaser, with this important difference, that the nature of the conveyance made by the Commissioners renders technical objections, such as objections as to legal estates or outstanding terms, of comparatively little importance. The general requisitions are those which are repeated with more or less variation on every occasion, and which are intended to provide for the protection of the interests of absent parties. The following may be taken as an example of the general requisitions:—

1. The probate or office copies of the wills and the originals or certified copies of the deeds abstracted must be produced and examined.
2. Evidence as to the tenure or holding of the lessees, tenants, or occupiers (if any), must be furnished, and especially whether any plots of land have been sold to labourers, or dedicated for churches, chapels, or schools.
3. The usual notice to claimants must be duly advertised and posted on some conspicuous parts of the estate, and served on the lessees, tenants, and occupiers (if any) of the estate, and on the owners or managers of the adjoining lands, and on the following parties (naming them); and evidence of this having been done must be produced.
4. Search must be made in the Colonial Registry for sales and incumbrances not appearing in the abstract, made by William Fitzherbert from 1843 to 1855 inclusive, and by William Henry Fitzherbert from 1856 to 1862 inclusive; and where mortgages or charges are found which have not been abstracted, search must be made for releases or transfers of such mortgages or charges. Abstracts of all documents appearing on the register and relating to the title, and not already abstracted, must be furnished, and the originals or certified copies of such documents must be produced and examined.
5. The usual evidence of identity must be given, and duly verified plans must be lodged.

6. Evidence must be given of the estimated value of the estate, and as to the proper mode of dealing with the growing crops, and the live and dead stock and plant thereon.

It will be seen that the first requisition requires the deeds and documents abstracted to be produced and examined at the office. Where this is from any cause found to be impracticable, the Chief Commissioner will, after due explanations, receive secondary evidence of such deeds and documents as may be missing.

1st Requisition.
Deeds and documents.

The second requisition is one of great importance, and the neglect of it may cause the sale to be postponed. The practice of granting plots of land in fee simple to negroes, labourers, and others, to induce them to settle upon the estate, has become common in some of the islands, and great care is necessary to avoid overriding or prejudicing such grants. The solicitor having the carriage of the proceedings should give precise instructions to his agents to ascertain the particulars of such grants (if any), and to cause them to be clearly defined on the plan. Where churches, chapels, schools, or buildings of a public character have been erected on the estate, evidence will be required as to the parties in whom they are vested, and the tenure on which they are held.

2nd Requisition.
Occupiers.

The third requisition, as to the service and publication of the notice to claimants, is intended to ensure the production of sufficient evidence that such service and publication has been duly effected, according to the directions already given.

3rd Requisition.
Notice to claimants.

The fourth requisition, as to the searches, is one which should receive the early attention of the solicitor having the carriage of the proceedings, as a careful search will often facilitate in a great degree the subsequent proceedings in the matter. A registry of deeds has been long established in all the West Indian colonies, and stringent laws have been

4th Requisition.
Searches.

passed rendering registration imperative. The registry contains in general a copy of each deed registered, with the diagram or plan (if any) drawn thereon. A sufficient abstract for any period that may be desired can, therefore, in most cases be obtained from the registry without having access to the deeds. The deeds are registered in the names of grantors and grantees, and as soon as it is ascertained that during any given period the control of the inheritance was vested in any one person, a search in the name of that person during the given period for deeds executed by him and affecting the property, will, in general, bring to light all dealings with the inheritance during that period. It is found in practice that when minorities and limited interests have been deducted, the number of individuals who, during the period of sixty years, have had the control of the inheritance, is very limited, and that the necessary searches are not in general onerous. In some cases it is convenient to obtain from the registry a certified abstract or copy of so much of the register as affects the property, as such an abstract requires no further verification; but where an abstract has been already prepared it will be sufficient to send out a copy of this abstract to be verified and completed from the register. The production of a certified abstract does not, however, render unnecessary the production of such deeds as may be accessible.

The time and mode of making the above search will vary according to the nature of the title and the extent of the information possessed by the party having the carriage of the proceedings; but in every case it will be necessary to obtain either an affidavit by the person who has made the search, or a certificate from the officer having the custody of the register, to the effect that he has searched the register through the prescribed period in the prescribed names for deeds and incumbrances affecting the property, and that no such deeds or incumbrances

Time of
making
search.

(other than those specified) are to be found on the register.

The fifth requisition is one of great importance, owing to the paramount operation of the conveyance of the Commissioners, which overrides all estates and interests not specially excepted. It is, therefore, in all cases necessary to obtain a correct plan of the estate, and an affidavit by some competent person verifying the same. Forms of the required affidavits will be found in the Appendix. Care should be taken in the preparation of the plan that the boundaries of the estates are distinctly marked throughout their entire course; that the names of the adjoining estates are given and that a compass and scale are added; for if inaccuracies or ambiguities appear on the plan the sale will be postponed until they are removed or explained; and as this cannot in general be effected without a reference to the colony, a delay of three or four months and much consequent loss may be occasioned.

5th Requisition.
Identity.

The sixth requisition is necessary, not only for the purpose of fixing the upset or reserved price at or subject to which the estate is to be offered for sale, but also to provide for the growing crops, stock, and plant, which generally form an important element in the value of the estate. The circumstances attending the growing crops, stock, and plant vary in every case according to the state of cultivation and the time of year, and no precise rule can be laid down on the subject. If the estate is cultivated for sugar, and the parties in possession are willing to continue the cultivation, it is frequently made a stipulation in the particulars of sale that the cultivation shall be continued until the delivery of possession to the purchaser, but that the purchaser shall pay the expense of the cultivation incurred subsequently to the day of sale, and take the stock and plant at a valuation, the growing crops in such case being, of course, the property of the purchaser. Where the crop is ready or nearly ready to be taken

6th Requisition.
Value and
crops, &c.

off, it is sometimes found convenient to reserve to the parties in possession the right to take off and realise the existing crop, paying to the purchaser a moderate sum for the temporary use of the land. These arrangements are in general well understood by West Indian proprietors, and the sixth requisition is intended to elicit from the parties interested the mode of sale which they think most desirable.

Draft of particulars of sale.

As soon as the requisitions are satisfactorily complied with, and the plan is obtained and verified, the solicitor having the carriage of the proceedings must prepare draft particulars of sale, containing a description of the estate and the terms of sale, and also a draft advertisement of sale, and submit them, with the plan, to the Secretary for his approval. The draft particulars, when settled and approved by the Secretary, must be printed, and the proof sent to the Secretary, who will submit it, together with the plan and draft advertisement, to the Chief Commissioner for his approval. The Chief Commissioner will, in general, require the attendance of the solicitor having the conduct of the proceedings, on settling the particulars, and will, on this occasion, fix the day of sale, and hear any suggestions from any parties interested as to the best mode of dividing the estate into lots, of dealing with the growing crops, stock and plant, and generally as to the mode of sale.

Exceptions or reservations.

The particulars of sale must specify the exceptions or reservations, leases, estates, and interests (if any), subject to which the sale is to be made, the terms as to the payment of the purchase-money, and the intended mode of dealing with the growing crops and plant. According to the usual practice, one-fourth of the purchase-money is to be paid within fourteen days, and the balance within three months, with interest at 5 per cent. in case of delay. The solicitor having the carriage of the proceedings should, before preparing the draft particulars, obtain from the office copies of particulars of sale used on

similar occasions, and follow, as near as circumstances will admit, the established form.

The advertisement for sale is in general an abbreviated copy of the particulars, and when, settled and signed by the Secretary, must be inserted in such newspapers as the Secretary may direct ; the usual newspapers being the *Times*, *Estates Gazette*, and colonial newspapers, with the addition, in some cases, of Liverpool, Bristol, and Glasgow newspapers.

Request of
sale.

If any special arrangements are necessary for carrying out the sale, or if the petitioner desires to have leave to bid at the sale, or to have credit for any part of the purchase-money on account of his incumbrance, he should at some convenient time before the sale file a proposal in writing, stating what he desires, and should apply for an appointment before the Chief Commissioner to consider such proposal. A form of such proposal is given in the Appendix.

Proposal for
sale.

The Chief Commissioner will, under special circumstances, receive private tenders for estates about to be sold, but as a general rule all estates sold in the Court are sold by public auction. The auction in general takes place at the office, at 8, Park-street, Westminster, in the presence of the Chief Commissioner ; but the Chief Commissioner can, if necessary, order it to take place at any other place, either in London or in any West Indian colony ; and such an order will not involve a transfer of the proceedings. The Chief Commissioner will in such case give such directions as may be necessary for providing for the proper conduct of the sale, and for defraying the expenses thereof.

Sale by
auction.

If the sale takes place at the office, the biddings are opened by the auctioneer, under the directions of the Chief Commissioner, and the auction proceeds in the usual way ; when the highest offer is reached, the Chief Commissioner will in general

declare the person making such highest offer to be the purchaser.

Reserved price.

The Chief Commissioner will, in some cases, fix a reserved price as a minimum, under which the estate is not to be sold, and in the event of the biddings not reaching such reserved price, will postpone the sale; but as the postponement of the sale always creates additional expense, and in many cases detracts from the value of the estate, it is the more usual practice to put the estate up at an upset or minimum price, fixed with reference to the estimated value of the estate, and announce that all biddings above that amount are without reserve. As the owner and incumbrancers, and all parties interested are entitled to bid, they have it in their power, by bidding themselves, to prevent the estate from being sold at an under-value, while the certainty of a sale taking place has a great effect in stimulating intending purchasers to bid, and thus tends to increase the price given. In the event of the biddings not reaching the required amount, it is always more advantageous for the owner, or party principally interested, to become himself the purchaser, rather than allow the sale to be postponed, as by purchasing and obtaining a parliamentary title, he is in a position, if he does not desire to retain the estate, to sell on favourable terms.

The Chief Commissioner is not bound to accept the highest offer, but may accept such offer as appears to him to be most advantageous to all parties interested. It is, however, obvious that, as a general rule, the highest bidder is the purchaser.

Acknowledgment of biddings.

When the Chief Commissioner has declared any person to be the purchaser of the estate, such person must sign an acknowledgment in the form given in the Appendix, and such acknowledgment will be confirmed by the Chief Commissioner, and filed at the office.

At the conclusion of the sale, an order will be drawn up in the form given in the Appendix, declaring the purchaser, and giving directions as to the payment of the purchase-money. This order will be delivered to the purchaser, who must also obtain an office copy thereof, to be lodged at the Bank of England at the time of the payment of the purchase-money.

Order de-
claring pur-
chaser.

The purchaser must obtain from the Bank of England proper receipts for the moneys paid, and must file such receipts at the office.

Receipts.

If the purchase-money is not paid on the days appointed, the purchaser will be in contempt, and liable to be committed; but the Commissioners may enlarge the time, on such terms, as to interest or otherwise, as they may think proper. The Commissioners have also power, under the 31st General Rule, to re-sell the property.

Proceedings
in default of
payment.

The purchaser is at liberty to pay the whole of his purchase-money into the bank at any time within the time limited by the order, and on the due payment of such purchase-money, together with interest (if any), and the amount (if any) payable in respect of the cultivation, stock, or plant, he will be entitled to a conveyance, and an order for possession. The conveyance will be made to the person named in the order, or as he shall, by a memorandum in writing, filed at the office, direct.

The conveyance must be prepared by and at the expense of the purchaser, but forms and directions for preparing it can be obtained at the office. The form of the conveyance will vary slightly, according to circumstances; three of the most usual forms are given in the Appendix. It must contain a description of the estate, with a plan thereof, in conformity with the particulars of sale, and must express the exceptions, reservations, estates, and interests (if any), subject to which the sale has been made.

Conveyance.

On the execution of the conveyance, the purchaser will be entitled to the possession of the land com-

Order for
possession.

prised therein, subject to such estates or interests (if any) as are therein mentioned, and to an order directing the owner and all other parties to give possession thereof. A form of such order is given in the Appendix. The purchaser will also be entitled to the stock or plant on the estate, if they have been included in the sale.

Immediate possession.

If the purchaser is desirous, on account of the cultivation, or for any other reason, to obtain possession immediately after the sale, or at any time before the time appointed for payment of the purchase-money, and is not prepared to pay the purchase-money before such time, the Chief Commissioner will, on receiving an adequate guarantee for the payment of the purchase-money at the time appointed, give the purchaser an order for possession. The guarantee of a London banker will in general be deemed sufficient. Should the purchaser anticipate or find any difficulty in obtaining possession of the estate, he may apply either to the Chief Commissioner in London, or to the Local Commissioner, for an order to the provost-marshal, directing him to give possession.

Order to provost-marshal.

The Chief Commissioner will if necessary, ascertain and define the relative rights of the purchaser and the prior possessor, with respect to any growing crops, stock or plant on the estate; or any rents, rates, taxes, outgoings, interest, or annual charges, which ought to be apportioned between them.

Leases and documents

The Chief Commissioner will direct that the duplicates, or counterparts of leases, subject to which the sale is made, be delivered to the purchaser, who may also generally obtain, on application, any other deeds, papers, or documents, relating to the land purchased by him, as may not be required by the Court, upon such terms as to costs, production, redelivery, or otherwise, as may seem proper.

The Distribution.

The distribution.

We now arrive at the third and last stage of

the proceedings—the distribution of the purchase-money.

As soon as the sale is over, the solicitor having the carriage of the proceedings must prepare and submit to the Secretary the Draft Schedule of incumbrances, of which a form is given in the Appendix. Where several estates, included in the same petition, are sold together, and appear to be subject to the same incumbrances, they may be included in the same schedule, otherwise a separate schedule must be prepared for each estate. The draft schedule should contain a concise statement in order of priority of the parties entitled to the purchase-moneys of the estate, and the nature and amount of their claims, as far as they are ascertained, the first charge being the commission, deducted in pursuance of the Act of 1862; the second charge being the costs of the proceedings for sale; and the third charge being the balance (if any) due to the Receiver, if a Receiver has been appointed.

Draft
Schedule.

Where it is apparent that the purchase-moneys will be insufficient to discharge more than a certain number of the incumbrances, it is unnecessary to carry the schedule beyond the claims of such parties as appear to have a reasonable prospect of taking any benefit under it, leaving subsequent incumbrancers to intervene at their own risk, if so advised.

The draft schedule will be settled by the Secretary, and two fair copies of it will then be prepared in the office, and signed by the Secretary. One of these copies will be kept at the office in London for inspection by parties in England, and the other copy will be sent to the Secretary of the Local Commissioner for inspection by parties in the colony. The solicitor having the carriage of the proceedings should take an office copy of the draft schedule.

The solicitor must at the same time prepare, and bring to the Secretary for his signature, two fair copies of the Final notice to claimants, one of which will be filed at the office, and the other returned to

Final notice
to claimants.

the solicitor. A form of the final notice is given in the Appendix. The Secretary will then give directions as to the printing of this notice, the newspapers in which it is to be advertised, and the parties on whom it is to be served. The final notice, when settled and signed by the Secretary, must be printed on foolscap paper, and twelve copies lodged at the office, of which a certain number are sent by the Secretary to the Secretary of the Local Commissioner, for the information of parties in the colony. Printed copies must be served on the owner and all the incumbrancers whose names appear on the draft schedule, or who have filed claims, and on such other parties as the Secretary may direct. Service of this notice need not be personal, but may be effected by post through the office.

Advertisement.

The final notice must in all cases be duly advertised. According to the present practice, it is sufficient to advertise it once in the *Times*, and once in the colonial newspaper.

Claims or objections.

The notice to claimants will name a time within which claims or objections to the draft schedule may be filed, and any person is at liberty within the above time to file claims or objections, whether named in the draft schedule or not, but after the expiration of the above time no claims or objections will be received, except by special leave, and upon such terms as to costs or otherwise, as the Chief Commissioner may direct. Any claim or objection which may be filed, must be duly verified by affidavit or otherwise, and must contain the name and address of some solicitor or other person in London upon whom notices may, if necessary, be served. The claimant must also, if he intends to prosecute his claim, appear in support of it either personally or by his solicitor or counsel, at the time and place appointed in the final notice for the final settlement of the draft schedule.

Final settlement.

On the day fixed for the final settlement, the solicitor having the carriage of the proceedings must

appear before the Chief Commissioner at the appointed time and place, and move that the draft schedule be finally settled as it stands, or with such variations as he may desire to have made in it. The Chief Commissioner will on this occasion consider in succession each claim as appearing on the draft schedule, and will hear and dispose of any objections or applications respecting such claims. He will then consider and dispose of in succession, and in the order of the dates on which they were respectively filed, such claims and objections (if any) as have been filed, and have not already been disposed of.

After hearing all parties, and disposing of all such claims and objections, the Chief Commissioner will finally settle the draft schedule, but if any points are raised which appear to require further consideration or special argument, the Chief Commissioner will appoint a day for such argument, and will adjourn the consideration of the draft schedule until such points have been finally disposed of.

If on the final settlement the formal evidence in support of any claim is defective, or if it is necessary for the purpose of ascertaining the amount due to any party to make any inquiries, take any accounts, or tax any costs, the Chief Commissioner will refer it to the Secretary to see to the production of the necessary evidence, make the necessary inquiries, take the necessary accounts, and tax the costs; but except as to such matters as may be specially reserved, the draft schedule will be deemed to be finally settled.

Accounts and inquiries.

When the amounts due to the parties named in the draft schedule have been ascertained, and nothing further remains to be done, the draft schedule will be completed, and confirmed by the Chief Commissioner.

Confirmation of draft schedule.

The Final schedule of incumbrances, which is in effect a copy of the draft schedule as finally settled and confirmed, will then be drawn up in the office and signed by the Chief Commissioner. The final

Final schedule.

schedule is then entered among the records of the Court, as evidence of the mode in which the purchase moneys of the estate have been administered, and office copies of it can be obtained by parties desiring the same.

Distribution.

The moneys in Court will not in general be distributed until the draft schedule has been confirmed, but payments will, in some cases, be made, after the final settlement, to parties whose rights are not likely to be affected by the result of the accounts or inquiries. The solicitor having the carriage of the proceedings can in general obtain payment on account of his outlay at any time after the purchase-moneys have been paid into the bank.

Payment.

Payments are always made by cheques on the Bank of England, and the party desiring payment, or his solicitor, must obtain an appointment before the Chief Commissioner for such purpose, and must bring with him a stamped receipt signed by the person entitled to receive the money. When the parties entitled to receive the money appear to be trustees, the Chief Commissioner will, if he thinks fit, require notice to be served on the parties beneficially interested before payment to the trustees.

Prosecution of accounts and inquiries.

Where accounts or inquiries are directed, the party prosecuting such accounts or inquiries must apply for an appointment before the Secretary for such purpose. The procedure on such accounts and inquiries is similar to the analogous procedure in Chancery. On the completion of the accounts or inquiries the Secretary certifies the result thereof, reserving, if necessary, any points of importance for consideration before the Chief Commissioner. Any party dissatisfied with the certificate of the Secretary can except to it within a reasonable time, otherwise it will be confirmed by the Chief Commissioner.

Certificate.

Taxation of costs.

It will generally be necessary, before the confirmation of the draft schedule, to tax the costs of the solicitor having the carriage of the proceedings; such taxation in general takes place after the final

settlement. If, however, no opposition is anticipated, the solicitor having the carriage of the proceedings can obtain the taxation of his costs before the final settlement, so as to save the delay occasioned by a subsequent reference ; or where the party having the carriage of the proceedings is in effect the party entitled to the ultimate balance in Court, so that the costs, whether taxed or not, must come out of such balance, such party can, if he thinks fit, waive the costs, and settle with his solicitor out of Court. Where a sum of money is divisible among two or more persons, and the proportions in which they are respectively entitled can only be ascertained by entering into complicated accounts, the Chief Commissioner will, on application, pay the money on their joint receipt, leaving them to divide it between them out of Court ; and thus save the expense of taking the accounts. When the priorities of the incumbrances have been once ascertained, the proceedings on the draft schedule have not in practice been found to lead to difficulties ; for, as the fund is limited in amount, there is always a strong inducement to come to a mutual understanding, and thus save the expense of litigation.

Settlement of accounts out of Court.

The principal questions which have hitherto arisen on the settlement of the draft schedule have been on the liens of consignees, managers, and trustees, as to which much discussion and argument have taken place. It has been held, as the result of the cases which have been decided on the subject, that the claim of a consignee, manager, or trustee, occupies a position analogous to that of a claim of salvage or bottomry, taking priority not only over the interest of the owner, but over all estates, interests, and incumbrances whatever ; on the principle that it is by virtue of this expenditure that the security of all parties is kept in existence, and that parties lending their money on the security of West Indian estates have implied notice of the necessity of such expenditure. In cases

Points on the draft schedule.

between consecutive consignees or managers, the claim of the last consignee or manager has been preferred to that of the former, according to the rule of the civil law; "interdum posterior potior est priori; ut puta, si in rem ipsam conservandam impensum est, quod sequens credidit. Hujus enim pecunia salvam fecit totius pignoris causam." The principles involved in the above questions are discussed at length in the judgments of the Chief Commissioner, reported in the Appendix.¹

Partition, Exchange, or Division.

The procedure of the Court as to these heads is similar, *mutatis mutandis*, to that already described as to proceedings for a sale.

Application
for partition.

Where the owner or incumbrancer of an undivided share of any land is desirous of obtaining a sale thereof, and is unable to obtain the consent of the owner of the other undivided share to a sale of the entirety, it is often found convenient, instead of selling an undivided share, to cause the land to be partitioned, and to sell the share of the party applying. For this purpose the Court has jurisdiction, under the 55th section of the Principal Act, when application has been made for the sale of an undivided share of any land, to cause such land to be partitioned.

Petition.

Such a partition is compulsory on the owner of the other undivided moiety. To obtain such a partition, the petitioner for sale must, after presenting his petition for sale, present a petition for partition in the form given in the Appendix, and a conditional order will then be made on the petition for partition similar to that made on the petition for sale. The proceedings for the service and advertisement of the conditional order for partition, and making

¹ *Scott v. Nesbitt*, 14 Ves, 438; *Morison v. Morison*, 2 Sm. & G., 564; *Re Greathed, ex parte Davis and Boddington*—Appendix; *Re Greathed, ex parte W. S. Greathed*—Appendix; *Fraser v. Burgess*—Appendix; 8 W. R., 876, 12 Moo., P. C., 314; *Re Harriott*—Appendix; *Re Macdowall*—Appendix.

the same absolute, will be the same as above described as to the conditional order for sale.

When an absolute order for partition has been made, the Chief Commissioner will appoint one or more competent persons to survey the land referred to in the order, and to make a report as to the best mode of effecting such partition, and will give all necessary directions for the above purpose.

Absolute order.

Such report must be verified by affidavit, and refer to a plan showing the mode in which it is proposed to effect the partition. On the return of the report, the Chief Commissioner will fix a day for its consideration, and will order notice thereof to be given to the owner of the other share. After considering the report, and disposing of any objections thereto, the Chief Commissioner will make an order for partition similar to those made by the Inclosure Commissioners, and such order will take effect from the execution thereof. The petitioner can then proceed with the sale of the share of the estate in which he is interested.

Report.

Order for partition.

The procedure for obtaining an exchange is similar to that for obtaining a partition, except that the consent of the owner of the lands to be taken in exchange will be necessary.

Exchange.

The Commissioners have jurisdiction, under the 57th, 58th, and 59th sections of the Principal Act, to make orders for partition, exchange, or division, over lands not the subject of proceedings for a sale; but the proceedings for obtaining such orders are wholly voluntary, and are analogous to proceedings taken for similar purposes before the Inclosure Commissioners.

It will appear from the foregoing sketch of the procedure of the Court that of the three stages into which the proceedings for sale are divided, the first and third are the concern of the vendors; the purchaser is interested in the second alone. Thus the two parties never come into contact. The new proprietor need not inquire even the names of his pre-

Concluding remarks.

decessors, and has no occasion to trouble himself with their respective rights and interests. The late proprietors receive the value of the estate, but enter into no covenants, and undertake no responsibilities. The Court is interposed between them as vendor to the one and as purchaser to the other.

Commence-
ment of
proceedings.

The proceedings are originated by the owner or any incumbrancer ; and if within a limited time no good reason is shown to the contrary, an order for sale is made. If, on the other hand, the owner objects to a sale, and can show that the incumbrances are small in comparison with the value of the property, and that there exists a reasonable prospect of discharging them by other means, the Court will refuse or postpone the order.

Sale.

The sale takes place under the direction of the Court, and all necessary steps are taken to conduct it to the greatest possible advantage. On payment of the purchase-money, the purchaser receives his conveyance from the Court, which is his sole title-deed, and which guarantees him against all the world. Armed with this single document, he may cultivate, sell, mortgage, settle or devise his estate, without risk, expense, or trouble, and with the certainty that whatever difficulties may hereafter occur as to his title will be due to himself alone, as all connection with the past is effectually sundered. Should, however, circumstances again arise to involve the title, the process of sale can be repeated, and the new difficulties consigned to the same oblivion as the old ones.

Distribution.

It only remains to effect a due distribution of the purchase-money, which, of course, requires great care and deliberation on the part of the Commissioners to prevent injustice. Under the ordinary practice, the responsibility for the due application of the purchase-money falls on the purchaser, who is bound to examine closely into the title and interests of all the incumbrancers, as he pays the purchase-money at his own risk. But under the

new system, the purchaser is wholly free from this responsibility, and the task of ascertaining the rights of all parties is imposed upon the Court.

This proceeding resembles, to a considerable extent, the ordinary investigation of title by the purchaser's conveyancer, with the important exceptions that the purchaser is in no way concerned with it, and also that it is done for the last time, and can never be called in question.

It is obvious that in this stage of the proceedings great caution is necessary, and, indeed, there is not the same demand for expeditious procedure as in the other stages. It is important that no delay should take place in selling the estate, and giving possession to the purchaser; but no injustice is done by deferring the final distribution of the purchase money until sufficient notice and opportunity can be given to all parties, as well in England as in the West Indies, to come forward and establish their claims.

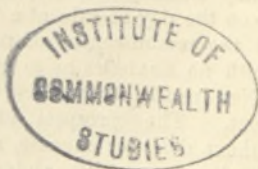
When the rights and interests of all parties have been duly ascertained, the purchase-money is distributed among the parties entitled thereto, and the surplus paid over to the owner.

It will be seen that the operation of this system is beneficial alike to the incumbrancer, the purchaser, and the owner. The incumbrancer is enabled to realise his principal and interest in full without expense, and in a limited time; without instituting any suits, entering into any covenants, or incurring any liability. The purchaser steps into his estate on the day of sale, at a trifling cost, freed from all the reminiscences of past dealings, and clogged with no anxieties as to his present or future title. Nor are the advantages to the owner less conspicuous. The prospect of immediate possession, without delay or expense, and with the security of a Parliamentary title, giving unbounded facilities for future dealings, cannot fail considerably to enhance the saleable value of the property,

Advantages
of the system.

and will, in many cases, tempt purchasers who would otherwise have been deterred from investing in land by the expense, annoyance, and risk of a long investigation of title. The facility of raising the purchase-money by mortgage will also bring into the market many persons who would otherwise have been unable to compete.

Thus, not only is the actual value enhanced, but the market is widely extended, both of which causes will operate to increase the price, and provide a larger surplus for the owner. At the same time, the introduction of foreign capital, which such sales will have a marked tendency to encourage, cannot fail to benefit the community.



APPENDIX.

THE WEST INDIAN ENCUMBERED ESTATES ACT—1854.

17 & 18 VICT., CAP. CXVII.

“An Act to facilitate the Sale and Transfer of Incumbered Estates in the *West Indies*.”—11th August, 1854.

WHEREAS it is expedient that facilities should be given for the sale and transfer of incumbered estates in the several *West Indian Colonies* mentioned in the schedule hereto: be it enacted, therefore, 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:

Preliminary.

Preliminary.

1. This Act may for all purposes be cited as “The *West Indian Incumbered Estates Act, 1854*.”

Short Title of Act.

2. This Act shall not take effect until her Majesty has, by Order in Council to be made as hereinafter mentioned, directed the same to come into operation in one or more of the said scheduled colonies.

Act how to come into operation.

3 (a). In the construction and for the purposes of this Act the following terms shall have the respective meanings hereinafter assigned to them; that is to say, “Land” shall extend to sugar and other plantations, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, and shall include and denote that estate or interest in any hereditaments which any person applying for a sale is possessed of, is entitled to, or has

Interpretation of certain terms to this Act.

(a) Repealed.

any mortgage, charge, or incumbrance upon: "Incumbrance" shall mean any debt, portion, legacy, or other sum of money constituting a charge or lien on land, or raisable out of land; "Incumbrancer" shall mean any person entitled to such incumbrance, or entitled to require the payment or discharge thereof: "Possession" shall include the receipt of the rents and profits: "Owner" shall mean any person entitled in possession to land, or the receipt of the rents and profits thereof, or who would be so entitled if there were no incumbrances on such land, for a term of not less than thirty years unexpired, or for an estate or interest for his own life, or for an estate or interest determinable on the dropping of any other life or lives, or for any greater estate or interest: "Person and owner" shall extend to a body politic or corporate as well as to an individual: "Commissioners" shall mean the persons appointed Commissioners for the sale of incumbered estates in the *West Indies* as hereinafter mentioned,

*Constitution
and Powers
of Commis-
sioners.*

Three Com-
missioners to
be appointed
under sign
manual.

Constitution and Powers of Commissioners.

4. It shall be lawful for the Commissioners of her Majesty's Treasury for the time being to appoint any number of persons, not exceeding three, to be Commissioners under this Act during her Majesty's pleasure, and upon every vacancy in the office of any such Commissioner in like manner to appoint some other person to such office; and the said persons so to be, from time to time, appointed shall be Commissioners for the execution of this Act, and shall be styled "The Commissioners for Sale of Incumbered Estates in the West Indies.

Style of Com-
missioners.

5. Of the above Commissioners one shall be styled "The Chief Commissioner," and the other or others shall be styled "The Assistant Commissioner or Commissioners."

Residence of
Commission-
ers.

6. The Chief Commissioner shall be a barrister-at-law of not less than ten years' standing, and shall reside in *England*; the assistant Commissioners shall from time to time be employed in the execution of this Act in such manner as the Chief Commissioner may direct.

Power to ap-
point Local
Commission-
ers.

7. For the purpose of aiding in the execution of this Act, the Governor or other person administering the government of any colony may appoint to be Local Commissioners for such colony during pleasure

any number, not exceeding three, of the following persons; that is to say, any Vice-chancellor, Chief Justice, Judge, Attorney-general, Solicitor-general, or other legal or public officer holding any office in the colony in which such appointment is made; or any other person usually resident in such colony.

8. The Commissioners shall cause to be made for their commission such seal or seals as they may require, and shall cause to be sealed with one of such seals all orders, conveyances, and other instruments proceeding from the Commissioners in pursuance of this Act; and all such orders, conveyances, and other instruments, or copies thereof, purporting to be sealed with such seal of the Commissioners, shall be received in evidence, without any further proof.

Commissioners to have a common seal.

9. The Commissioners of her Majesty's Treasury may from time to time appoint and remove a Chief Secretary, and also such assistant secretaries, clerks, messengers, and officers as they may deem necessary for the purposes of this Act.

Power to appoint and remove, secretary, clerks, &c.

10 (a). The offices of the Commissioners, and all powers, rights, and privileges pertaining thereto, shall continue and be in force only for a period of six years next ensuing the date at which this Act takes effect, and from thenceforth until the next session of Parliament.

Duration of office and powers of Commissioners.

11. No Commissioner shall during his continuance in office be capable of being elected or of sitting as a member of the House of Commons.

Commissioners incapable of sitting in Parliament.

12. There shall be paid out of moneys to be provided by Parliament, to the Chief Commissioner, two Assistant Commissioners, Chief Secretary, and to all such assistant secretaries, clerks, messengers, and officers as may be appointed by the Chief Commissioner in *England*, such salaries as the Commissioners of her Majesty's Treasury may from time to time recommend, so that the same do not exceed in the following cases the sums hereinafter mentioned; that is to say, in the case of the Chief Commissioner, the sum of two thousand pounds by the year: in the case of each Assistant Commissioner, the sum of one thousand five hundred pounds by the year: the salaries of the Local Commissioners, and of all such assistant secretaries, clerks, messengers, and officers as may be appointed under this Act in any colony, shall

Salaries of Commissioners, &c., and out of what funds paid.

†

be paid out of moneys to be provided by the colonies as hereinafter mentioned.

Power of Commissioners to fix scale of fees.

13. (a) The Commissioners may fix such scale of fees to be paid in respect of proceedings under this Act, both in *England* and the colonies, as they think fit, but all fees to be paid in any colony shall be subject to disallowance or alteration by the Legislature of such colony.

Expenses of Act, how provided for.

14. All expenses incidental to carrying this Act into execution, and not being such salaries as aforesaid, or defrayed by fees, shall be paid for, if incurred in *England*, out of moneys to be provided for that purpose by Parliament; and if incurred in any colony, by moneys to be provided for that purpose by the Legislature of such colony in manner hereinafter mentioned.

Oath of Commissioners.

15. Every Commissioner and Local Commissioner appointed under this Act shall, before he enters upon the execution of his office, take the following oath; that is to say: "I, A. B., do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, fulfil all the powers and duties of a Commissioner under an Act passed in the year of the reign of Queen Victoria, intituled [*here set forth the title of this Act.*]" And such oath shall, in the case of the Chief Commissioner and Assistant Commissioners, be taken before one of the Judges of her Majesty's Superior Courts in *England*, and in the case of any Local Commissioner be taken before the Judge of the Supreme Court of the colony for which he is appointed Commissioner.

Publication of appointment of Commissioners.

16. The appointment of every Commissioner and Local Commissioner shall be published as follows; that is to say, the appointment of the Chief Commissioner and Assistant Commissioners in the *London Gazette*: the appointment of any Local Commissioner in the newspaper of the colony in which Government notices are usually published: and no Commissioner or Local Commissioner shall act until publication as aforesaid has been made of his appointment.

Commissioners to be a Court of Record.

17. (b) The Commissioners shall constitute one Court of Record, having, for the purposes of this Act, and subject to the provisions thereof, jurisdiction throughout *England* and any colony or colonies within

(a) See Act of 1862, s. 55.

(b) Repealed.

which this Act comes into operation; and all proceedings, inquiries, suits, or trials to be taken, made, or had under this Act, and all investigations of any matters or things arising out of or incidental to any such proceedings, inquiries, suits, or trials, may, subject to the provisions hereinafter contained, be at any stage or at any time transferred from *England* to any colony, or from any colony to *England*.

18. All acts, matters, and things which the Commissioners are by this Act empowered to do, and all the powers and authorities hereby given to them, may, under any order of the Commissioners made for that purpose, be done or exercised by the person or persons hereinafter mentioned; that is to say, in *England* by the Chief Commissioner, either alone or with one Assistant Commissioner; in any colony by any Assistant Commissioner, either alone or jointly with the Local Commissioners of such colony, or any one of them, or by the Local Commissioners or Commissioner of such colony, or any two of them, if more than two.

Powers of Commissioners, by whom to be exercised.

19. The Commissioners shall frame, and cause to be printed and circulated, or otherwise promulgated, as they see occasion, forms of application and directions indicating the particulars of the information to be furnished to the Commissioners when any application is made to them under this Act, with reference to title, incumbrances, and the circumstances of land, and such other information as in the judgment of the Commissioners may assist them in forming an opinion on such application, and also such other forms and directions as the Commissioners may deem requisite or expedient for facilitating proceedings under this Act.

Commissioners to frame and promulgate forms of application, &c.

20. The Commissioners shall, having regard to the laws and usages of each colony in which the same are intended to take effect, frame rules for the following purposes; that is to say, for regulating the course of procedure under this Act; the several powers and duties of the Assistant and Local Commissioners; the conduct of proceedings in *England* and the colonies; and the transfer thereof from *England* to the colonies, and from the colonies to *England*; for securing the prompt and due distribution and payment of the moneys received upon sales under this Act amongst or for the benefit of the persons entitled thereto; for the protection, in respect of such moneys, of the interests

Commissioners to make General Rules for regulating proceedings under this Act.

of persons under disability, and of future interests; for the protection of the interests of absent parties, and of the interest of parties in cases where the proceedings are transferred from *England* to the colonies, or *vice versa*; generally for the due execution of the powers vested in the Commissioners under this Act, and for giving effect to the provisions and objects thereof: and all rules so made shall, unless disallowed in manner hereinafter mentioned, have the same force as if they had been enacted by Parliament.

Rules to be laid before Privy Council.

21. All rules made under the above authority shall be laid before her Majesty in Council, and it shall be lawful for her Majesty by Order in Council to disallow the same, and any rule so disallowed shall from the date of its disallowance be void, but all matters and things previously done in pursuance thereof shall have the same validity as if no such disallowance had taken place.

Power to Commissioners to summon witnesses, &c.

22. The Commissioners shall have power—1, To require by summons under their seal the attendance before them, at a time and place to be mentioned in such summons, of all such persons as they may think fit to examine in relation to any question or matter depending before them; 2, to require by a like summons all such persons to produce before them all deeds, books, papers, documents, and writings relating to such question or matter; 3, to examine upon oath, or, in the case of persons allowed to make affirmation or declaration in lieu of an oath, upon affirmation or declaration (as the case may require), all persons attending under such summons, and all persons attending voluntarily as witnesses.

Power to Commissioners to proceed upon affidavits, and to appoint persons to take affidavits and examinations.

23. The Commissioners may, in their discretion, receive in evidence affidavits; and such affidavits may be made in any part of her Majesty's dominions before any person empowered by law to take affidavits, and in any other part of the world before any person authorised by order under the seal of the Commissioners to take affidavits; and the Commissioners may by a like order under their seal authorise any person in any part of the world to examine, in such manner as they think fit, any witness or witnesses in relation to any application to or matter pending before the Commissioners, and to administer oaths, affirmations, or declarations for the purpose of such examination.

24. The Commissioners in relation to any matter or question before them shall have power to send cases for the opinion of any Court of Law or Equity sitting in *England* or in any colony within their jurisdiction: to send questions of fact to be tried in *England* by a jury, or in any such colony as aforesaid either by a jury or in any other manner in which questions of fact are usually tried in such colony.

Power of Commissioners to direct trials and issues of fact.

25 (a). In all cases within their jurisdiction the Commissioners shall, with respect to the following matters, that is to say, the enforcing the attendance of persons summoned to give evidence, the enforcing the production of deeds, books, papers, documents, and writings, the punishing persons refusing to give evidence or guilty of a contempt, the enforcing any order whatever made by them under any of the powers or authorities of this Act, have in *England* all such powers, rights, and privileges as are possessed by the High Court of Chancery for such or the like purposes in relation to any matter depending in such Court, and have in any colony within their jurisdiction all such powers, rights, and privileges as are possessed by the Supreme Court of Judicature in such colony for such or the like purposes in relation to any matter or thing depending in such Court; and it shall be lawful for the Commissioners in any such colony as aforesaid, either to carry into effect such powers, rights, and privileges by officers appointed by themselves, or to request any such Court of Judicature as aforesaid, or any officer thereof, to enforce any orders made by them, and such Court or officer shall thereupon enforce the same accordingly.

Power of Commissioners to enforce orders.

Sales by Commissioners, and Distribution of Purchase Moneys.

Sales by Commissioners, and Distribution of purchase moneys

26. Subject to the restrictions hereinafter mentioned, where any land situate in a colony within the jurisdiction of the Commissioners is subject to any incumbrance, the Commissioners shall have power to sell the same, or such part thereof as they think fit, upon application made to them in manner hereinafter mentioned by the owner of such land or any incumbrancer thereon.

Power of Commissioners to sell land in colonies, upon application of the incumbrancer

27. Where an application for a sale of any such land as aforesaid has been made to any competent tribunal in the colony, and dismissed with costs, no ap-

No application to be entertained unless costs

(a) Repealed.

of any previous application paid.

Application to be made by legal or beneficial owners.

When incumbrance subject to limitations, the first person entitled, &c., to make application.

Form of application and to whom to be made.

Duty of Commissioners on application for sale.

Restrictions on sale.

plication by the same party for the sale of the same land or any part thereof shall be entertained by the Commissioners unless it is shown that such costs have been paid.

28. Where any such land as aforesaid is vested in any person or persons in trust for any owner, an application for the sale thereof may be made by such owner, either with or without the concurrence of such trustee or trustees, or by such trustee or trustees with the concurrence of such owner.

29. Where any incumbrance is vested in a trustee or trustees, or settled on divers persons in succession, the Commissioners may act on an application made by such trustee or trustees, or by the first person entitled to the income of such incumbrance, or by any other person having, in the opinion of the Commissioners, an amount of interest in the incumbrance sufficient to justify his making an application for a sale.

30. Every application for a sale of land under this Act shall be in such form as the Commissioners direct, and may, subject to any rules to be framed by the Commissioners, be made, at the discretion of the applicant, either to the Commissioners acting in *England* or in the colony in which such land is situate.

31. The Commissioners shall, upon the receipt of such application as aforesaid, make such inquiries as to the circumstances of the land in respect of which the same is made, and of the parties interested therein, either as incumbrancers, owners, or otherwise, and direct such notices to be given as they think necessary, to enable them to form a judgment as to the expediency of a sale, and shall hear by themselves, their counsel, or agents, any persons interested in such land who may apply to them to be heard, and shall upon the conclusion of such inquiries, and after hearing such parties, if any, as aforesaid, make such order in the premises as to the allowance or disallowance of a sale of land as they think just.

32. (a). No sale shall be made by the Commissioners of any land in the cases following: where the amount of yearly interest on the incumbrances attaching to the land in respect of which any application is made, and to any other land subject to the same incumbrances, does not exceed one-half of the net yearly value of such land and other land, if any, such yearly

(a) Repealed.

value to be calculated on the average profits or income derived therefrom after deducting all necessary outgoings during the preceding seven years, or during such other period as the Commissioners may, having regard to any special circumstances, think fit; where, for any reason whatever, it appears to the Commissioners unjust or inexpedient that a sale should be made.

33 (a). In making any sale of land under this Act, the Commissioners shall have regard to the interests of any yearly tenants or other persons, not being incumbrancers, who may be entitled for the time being, by themselves or their agents, to receive or retain the produce of such land or of any part thereof, and they may, in their discretion, deal with such interests in such one of the two following ways as they think just: that is to say, they may either make the sale subject to such interests, or may cause such interests to be valued at a gross amount, and treat the amount so valued as an incumbrance, assigning thereto such priority as they think fit.

Regard to be had to yearly tenancies and other temporary interests.

34 (a). In cases where any land to be sold is subject to dower or any interests in the nature of dower, to any annual or contingent incumbrance, to any incumbrance under the terms of which the incumbrancer cannot be required to accept payment of the principal money for a term of years yet to come, the Commissioners shall deal with such interests in one of the two following ways: that is to say, they shall either make the sale subject to such dower, interests, or incumbrances, or they may, with the consent of the parties entitled to such dower, interest, or incumbrances, cause the same to be valued at a gross amount, assigning thereto such priority as they think just.

Power to sell, subject to annual sums, and also to incumbrances, in certain cases.

35. Every sale of land in pursuance of this Act shall be made, under the control and direction of the Commissioners, by public sale or private contract, together or in parcels, at such time and place, and generally in such manner as the Commissioners think fit; and every conveyance of land so sold shall be made by the Commissioners under their seal, and shall be signed by the Chief Commissioner, or such other Commissioner or Commissioners as the Chief Commissioner may direct, and the execution by any other party of such conveyance shall be unnecessary; and such conveyance shall express the interests and in-

Sale by Commissioners.

cumbrances (if any) subject to which the sale is made, and may be in such form as the Commissioners may by order from time to time direct, or as near thereto as circumstances permit.

Saving of
certain,
rights.

36. No sale made by the Commissioners shall affect any of the following rights or payments: any right of common, right of way, or other easement; any tithes or like ecclesiastical dues; any crown rents or other like sums payable at fixed periods to her Majesty or to the Government of the colony, except in cases where the Commissioners undertake to commute such crown rents or other like sums as aforesaid, which they shall be at liberty to do, with the sanction of the Legislature of such colony, in cases where they think it will be for the benefit of the parties interested in the produce of such sale, and if they do so they shall express in the conveyance that the land sold is discharged from such crown rents or other sums, as the case may be.

Payment of
purchase
money.

37. The purchase-money on every sale shall be paid, as the Commissioners may direct, either into the Bank of *England*, or into the commissariat chest of some colony named by them, and be carried to an account to be opened in the name of the Commissioners to the credit in each case of the land (describing the same by the name of the plantation or estate to which it belongs, or by any other name the Commissioners think fit); and upon proof being made to the satisfaction of the Commissioners, and in such manner as they may direct, of any moneys so having been paid in, the Chief Commissioner, or such other Commissioner or Commissioners as the Chief Commissioner directs, shall endorse a certificate on the conveyance of such payment; and any purchaser who has paid any money into the Bank or into such commissariat chest as aforesaid shall be discharged from all liability in respect of the application thereof, and such endorsement shall be evidence of such payment; and in all cases her Majesty's Government shall guarantee the safety of all moneys paid in pursuance of this Act into the commissariat chest of any colony.

Effect of
conveyance.

38 (a). Every conveyance made by the Commissioners in pursuance of this Act shall vest in the purchaser the land so sold, subject to such rights and uncommuted payments (if any) as are hereinbefore

(c) Repealed.

declared not to be affected by any sale by the Commissioners, but discharged from all other interests, rights, claims, and incumbrances, except such as may in pursuance of the power hereinbefore given be expressed in the conveyance to be subsisting on such land, and no conveyance made by the Commissioners shall be set aside on the ground of their not having had jurisdiction over the subject matter thereof.

39. The Commissioners shall have power to order the delivery to the purchaser, or as he directs, of all deeds and documents of title belonging or exclusively relating to the land sold, which are in the possession or power of any of the parties to their order, and, on the application of any purchaser, to issue an order for the delivery to him of the possession of the land sold, or of such part thereof as may not be in the occupation of any person subject to whose interest the sale was made.

Commissioners may order delivery of counterparts of deeds, &c., and possession to purchaser.

40. Upon a sale of land under this Act an incumbrancer or other interested person (with the exception of the person upon whose application the sale was made), and with the leave of the Commissioners such last-mentioned person, may purchase such land or any part thereof; and if an incumbrancer becomes a purchaser he may, if the Commissioners think fit, retain out of the purchase-money such amount as would, in the judgment of the Commissioners, be eventually payable thereout to him in respect of his incumbrance, or any less sum on account of such amount, and pay the residue only into the Bank or commissariat chest; and such retainer shall be without prejudice to the power of the Commissioners to require such purchaser to pay back into the Bank or commissariat chest the whole or any part of the amount so retained by him, in the event of their afterwards determining that he is not entitled to retain the same.

Where an incumbrancer purchases, Commissioners may authorise payment into the Bank or balance of purchase money, after retaining amount of incumbrance.

41. The Commissioners shall apply the money arising from any sale made by them in satisfaction of the payments hereinafter mentioned according to the order following: that is to say, firstly, in paying to her Majesty or the Government of the colony the consideration for the purchase of such crown rents or other like sums, if any, as the Commissioners may have thought fit to commute in manner aforesaid; secondly, in paying all costs, charges, and expenses of and incidental to the sale, including the application for

Application of purchase money.

the same, or such of them as they think fit to allow; thirdly, in satisfying the incumbrances affecting such land according to their priorities; and lastly, in paying the surplus to the parties who were previously to the sale entitled to such land as owners, if such parties had an absolute interest therein, but, if they had not an absolute interest, then the Commissioners shall lay out the same in manner hereinafter mentioned: and for the purposes of this Act the Commissioners shall have power, having due regard to the laws and customs of each colony, to declare the rights and priorities of all parties interested in such land, whether as owners, incumbrancers, or otherwise, or howsoever.

Application of money where owner not absolutely entitled.

42. In cases where the parties who were previously to the sale entitled to such land as owners had not an absolute interest, such surplus as aforesaid of the purchase money shall be settled to the same uses, upon the same trusts, and in the same manner to and in which the land sold stood settled, or such of them as may be capable of taking effect; and until such money is so laid out it may be paid to trustees to be appointed or approved by the Commissioners, for the purpose of being so laid out as aforesaid, with such power for the investment thereof in Government or colonial stocks, funds, or securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Commissioners think fit.

Appointment of new trustees.

43. In cases where the Commissioners appoint or direct the appointment of trustees for any of the purposes of this Act, it shall be lawful for the Commissioners to make or to direct to be made such provision as they think fit for the appointment of new trustees, on any event to be determined by the Commissioners.

Provision where a part only of land subject to an incumbrance is sold.

44. In cases where a part only of land subject to any incumbrance is sold, the Commissioners may charge the part not sold with such incumbrance, or an apportioned part thereof, in exoneration of the money arising from the sale, and enable persons to release the money arising from the part so sold from any incumbrance, or to relinquish their claim on such money in respect thereof, without impairing such incumbrance as to the remaining part of the land originally charged.

45. (a) In cases where it appears to the Commissioners unjust or inexpedient that a valuation should be made of such interests and incumbrances as they are hereinbefore authorised to cause to be valued at a gross sum, it shall be lawful for them to set aside and invest any portion of the money arising from any sale in such manner as they think fit to meet the claims of any such interested persons or incumbrancers, and generally the Commissioners shall have power to make all such orders and give such directions with respect to the application of the money arising from any sale as they think best adapted to secure the just and convenient distribution thereof amongst all interested parties, according to their several rights and titles.

Provision for setting aside moneys to meet incumbrances.

46. No payment under this Act towards the discharge of any incumbrance, not being a payment in full, shall prejudice or affect any right or remedy of the incumbrancer in respect of the balance otherwise than as against the land sold, and no payment under this Act in respect of any incumbrance shall impair any right or equity of any persons out of whose land such payment is made to be reimbursed or indemnified by any other person or out of any other land, except so far as the Commissioners order under any special circumstances.

No payment, not being in full, to affect right of incumbrancer for balance, and no payment in respect of any incumbrance to impair remedy over.

47. The Commissioners may order any purchase money standing to their account to be invested in their name in such Government or colonial stocks, funds, and securities as they think fit, with power to vary the same into or for others of a like nature; and until such stocks, funds, and securities are sold by order of the Commissioners for the purposes of this Act, the dividends thereof shall from time to time be applied, under the order of the Commissioners, in like manner as the rents of the land from the sale of which the money invested in such stocks, funds, or securities has arisen would have been applicable.

Purchase money may be invested.

48. In cases where any money arising from a sale under this Act is not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Commissioners think it expedient for the protection of the rights and interests therein, the Commissioners may order such money, or any stocks, funds, or securities in which

Power to Commissioners to order money to be paid into Court of Chancery.

the same may be invested, to be transferred to the account of the Accountant-General of the High Court of Chancery in *England*, in the matter of the parties interested in the same, to be described in such manner as the Commissioners direct, in trust to attend the orders of such Court, or to be transferred to the account of such officer in any colony, and be subject to the jurisdiction of such Court as the Commissioners direct; and the Commissioners may by their order declare the trusts affecting such money, stocks, funds, or securities, so far as they have ascertained the same, or state (for the information of any such Court as aforesaid) the facts or matters found by them in relation to the rights and interests therein; and the said Court of Chancery and any such colonial Court as aforesaid may make such orders with respect to any such moneys, stocks, funds, or securities as aforesaid, or the application thereof, as the circumstances of the case require.

49. The Commissioners shall have the following additional powers in respect of sales of land: that is to say, where separate applications are made for sales under this Act of different undivided shares of any land, a power, with the consent of the applicants, and such other consents as the Commissioners think fit to require, to include in one sale all such undivided shares; where separate applications are made for sales under this Act of different lands, but such lands are intermixed, or otherwise adapted to be sold together, a power, with such consent or consents as aforesaid, to include in one sale such different lands; where an application is made to the Commissioners for the sale of any undivided share in lands, and the owner of any other undivided share or shares, whether incumbered or not, in the same land, is desirous of having the same sold at the same time, a power, with such consent or consents as aforesaid, to include in one sale all such shares as aforesaid; and all the provisions of this Act applicable to any land subject to any incumbrance, and ordered to be sold under this Act, and to the purchase-money arising from the sale thereof, and to the conveyance thereof, shall, so far as circumstances admit, be applicable to any land or share in land to be so included in the sale; and in every such case as aforesaid the Commissioners shall apportion the purchase-money and expenses as they seem fit.

Lands included in different applications and different interests in the same land may be included in the same sale.

50. (a) A married woman for the time being entitled to receive the income of land for her separate use, or having a power of disposing of land, either during her lifetime or by will, shall, for the purposes of this Act, be deemed a feme sole; but in other cases, where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under this Act, is a minor, idiot, lunatic, or married woman, the guardian, curator, tutor, committee of the estate, or husband respectively of such person, or if there is none, any person appointed by the Commissioners, may make such applications, give such consents, do such acts, and be party to such proceedings as such persons respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such persons for the purposes of this Act.

Provision
for persons
under dis-
ability.

51. Proceedings under this Act shall not abate or be suspended by any death, or transmission or change of interest, but in any such case of death or transmission or change of interest it shall be lawful for the Commissioners, where they see fit, to require notices to be given to persons becoming interested, or to make any order for discontinuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to them appears just.

Proceedings
not to abate
by death, &c.

52. In every proceeding under this Act the Commissioners shall have full discretion as to the giving or withholding costs and expenses, and as to the persons by whom and the funds out of which the same are in the first instance or ultimately to be paid and borne; but, unless the Commissioners otherwise direct, the costs of the petitioner in respect of any petition for sale presented under this Act, and of the proceedings thereunder, shall not be payable, out of the proceeds of the sale, otherwise than in the same order of priority in which the incumbrance of the petitioner is payable.

Costs.

53. In cases where a competent Court has in the course of any proceedings made an order directing any land to be sold, the Commissioners may sell the same, without further inquiry; but in that event, and also in any case where any competent Court has made an order in any proceedings with respect to any land, or the rights of any person interested therein, the Commissioners shall, on selling such land, and in dis-

Sales under
this Act may
be made not-
withstanding
proceedings
in any other
Court.

(a) Repealed.

tributing the moneys arising from such sale, have regard to the orders made by such Court, and to any inquiries or proof made and taken in the course of such proceedings, with power, nevertheless, for the Commissioners, whenever it appears to them that there is any error in such order, or any defect in any such inquiries or proofs, to direct such person as they think fit to apply to the Court in relation thereto, and such Court may make such order concerning the matter of such application as it thinks fit; and the Commissioners may, out of any moneys arising from any sale under this Act, where there have been any such proceedings as aforesaid, provide for the costs of such application, and may, if they think fit, order all or any part of the purchase-money, after payment thereof of such costs and expenses as may be payable under the orders of the Commissioners, to be paid into the Court in which any such proceedings have been instituted.

After order by Commissioners for a sale under decree to be stayed, and no suit, &c., to be commenced without leave of Commissioners, pending proceedings under this Act.

54. Where the Commissioners order the sale of any land in respect of which any decree for sale has been already made by a competent Court, or any proceedings are pending, they shall, by certificate under their seal, notify to such Court the order so made by them, and all proceedings for or in relation to a sale under the decree of such Court shall be suspended; and upon the completion of the sale under such order of the Commissioners any receiver appointed by such Court shall cease to act as such receiver with respect to the land or part thereof sold; and pending any proceedings for a sale under this Act it shall not be lawful for any owner, incumbrancer, or other person interested in such land, to commence any proceedings at law or in equity for redemption, foreclosure, or sale.

Powers of Commissioners as to Partition, Exchange, Division, and Allotment.

55. Where an application is made for a sale under this Act of an undivided share of any land, or where any such undivided share has been sold under this Act, and either before or after the conveyance thereof, the Commissioners, on the application of any party interested in such undivided share, or of the purchaser (as the case may be), and after causing to be given such notices to the owner or owners of the other undivided share or shares of the same land as they think

Powers of Commissioners as to Partition, Exchange, Division, and Allotment.

On application for sale of an undivided share, or after sale, Commissioners, may, on applica-

fit, and hearing all such parties interested in the respective shares as may apply to them, and making such inquiries as may enable them to make a just partition, may, if they think fit, make an order for the partition of such land; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each of the undivided shares in such land; and the part so allotted in severalty in respect of each such undivided share shall, without any conveyance or other assurance, enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have enured or been subject to in case such order had not been made.

tion of party interested, and giving notices, and hearing parties, make order for partition.

56. Where an application is made for a sale under this Act of any land, or where the same has been sold under this Act, if, either before or after the conveyance thereof, application is made to the Commissioners by any party interested in such land, or by the purchaser (as the case may be) for the exchange of all or any part of such land, the Commissioners may make such inquiries as they think fit for the purpose of ascertaining whether such exchange would be beneficial to the persons interested in the respective lands, and cause such notices to be given to parties interested in the respective lands as they may think fit; and if, after making such inquiries, and hearing all such parties interested in the respective lands as may apply to them, the Commissioners are of opinion that such exchange would be beneficial, and that the terms therefore are just and reasonable, they may make an order for such exchange accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken upon such exchange under such order shall, without any conveyance or other assurance, enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given on such exchange would have enured or been subject to in case such order had not been made.

On application for sale or after sale, Commissioners, on application of party interested, and with consent, may make order for exchange.

57. It shall be lawful for the Commissioners, in any colony within which this Act may take effect, upon the application of the owners of any undivided shares (not subject to be sold under this Act, or as to which

Partition may be made of land where shares are not subject to

be sold under
this Act.

no proceedings for a sale under this Act are pending), to make such inquiries as the Commissioners think fit for ascertaining whether a partition would be beneficial to the persons interested in such respective shares; and in case the Commissioners are of opinion that the proposed partition would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such partition accordingly; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each such undivided share; and the part so allotted in severalty in respect of each such undivided share by such order of partition shall, without any conveyance or other assurance, enure to the same uses, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have enured or been subject to in case such order had not been made.

Exchanges
may be made
of lands not
subject to be
sold under
this Act.

58. It shall be lawful for the Commissioners, in any colony within which this Act may take effect, upon the application of the owners of lands in any of the said colonies not subject to be sold under this Act, or as to which no proceedings for a sale under this Act are pending, to make or cause to be made such inquiries as the Commissioners may think fit for ascertaining whether an exchange would be beneficial to the persons interested in the respective lands; and in case the Commissioners are of opinion that the proposed exchange would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such exchange accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken upon such exchange under such order, shall without any conveyance or other assurance, enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances as the land given upon such exchange would have enured or been subject to in case such order had not been made.

Division of
intermixed
lands not
subject to be
sold under
this Act.

59. It shall be lawful for the Commissioners, in any colony within which this Act may take effect, upon the application of any number of persons who are separately owners of parcels of land not subject to be

sold under this Act, or as to which no proceedings for a sale under this Act are pending, and which are so intermixed, or divided into parcels of inconvenient form or quantity, that the same cannot be cultivated or occupied to the best advantage, to make such inquiries as the Commissioners think fit for ascertaining whether a division would be beneficial to the persons interested in such lands; and in case the Commissioners are of opinion that a division would be beneficial, they shall make an order for the division thereof accordingly, with a map or plan thereunto annexed, in which shall be specified as well the parcels in which the several persons on whose application such order has been made were respectively interested before such division as the several parcels allotted to them respectively by such order; and the parcels of land taken under such division shall enure to the same uses and trusts, and be subject to the same conditions, charges, and incumbrances as the several lands which the persons taking the same have relinquished on such division would have enured or been subject to in case such order had not been made.

60. In the case of land in respect to which no proceedings for a sale under this Act may be pending, no such order of partition, exchange, or division as aforesaid shall be made by the Commissioners until such notices by advertisement in such public newspaper or newspapers as the Commissioners direct have been given of such proposed partition, exchange, or division, and three months have elapsed from the publication of the last of such advertisements; and if before the expiration of such three months any person entitled to any estate in or any incumbrance upon any land included in such proposed partition, exchange, or division gives notice in writing to the Commissioners of his dissent from such proposed partition, exchange, or division, the Commissioners shall not make an order for the same unless such dissent is withdrawn, or it is shown to the Commissioners that the estate or incumbrance of the party so dissenting has ceased, or that such estate or incumbrance is not an estate or incumbrance in respect of which he is legally entitled to prevent such partition, exchange, or division; but no such order as aforesaid shall be in anywise liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same has been made.

Notices of
partitions,
exchanges,
and divisions
to be given.

Conveyances and proceedings of Commissioners.

Conveyance, assignment, and orders for partition, exchange, or division and allotment, conclusive.

Proceedings before Commissioners not to be restrained by injunction, &c.

Commissioners not to be liable in respect of acts done *bona fide*

Penalty for false swearing.

Appeal.

Orders may be reviewed by Commissioners; and appeal to Privy Council.

Conveyances and Proceedings of Commissioners.

61. Every conveyance executed as required by this Act, and every order for partition, exchange, or division made by the Commissioners under their seal, shall for all purposes be conclusive evidence that every application, proceeding, consent, and act whatsoever which ought to have been made, given, and done previously to the execution of such conveyance, or the making of such order respectively, has been made, given, and done by the persons authorised to make, give, and do the same; and no such conveyance or order shall be impeached by reason of any informality therein.

62. The Commissioners shall not be subject to be restrained in the execution of their powers under this Act, nor shall any person be restrained from making applications under this Act to the Commissioners, or doing any other act, or giving any consent under the provisions of this Act, by order of any Court of justice, or by any other legal process, nor shall the Commissioners be required by writ of mandamus, or any writ of a like nature, to do any act or take any proceeding under this Act, nor shall proceedings before them be removable by certiorari or other writ of a like nature.

63. The Commissioners shall not, nor shall any person acting under their authority, be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done or omitted in the exercise of the powers of this Act.

64. Every person who, upon examination before the Commissioners or any of them, or any person appointed and authorised under this Act by the Commissioners to administer any oath, affirmation, or declaration shall wilfully give false evidence, and every person who shall wilfully swear, affirm, or declare falsely in any affidavit authorised under this Act to be received in evidence by the Commissioners, shall be liable to the pains and penalties of perjury.

Appeal.

65. The Commissioners may review, rescind, or vary any order previously made by them; and it shall be lawful for any person aggrieved by any order of the Commissioners, with their sanction, but not otherwise, to appeal to her Majesty in Council, in such

manner, within such time, and subject to such rules, regulations, and limitations as her Majesty may by Order in Council prescribe; and the Commissioners may, in their discretion, give or refuse such sanction, and annex thereto such conditions, as to giving security or otherwise, as they shall think fit; but in all cases where the Commissioners refuse their sanction to any appeal their decision shall be final.

Power to alter Provisions of Act.

66. Wherever it appears to the Commissioners that by reason of the prevalence in any colony of laws or customs differing from those of *England*, or that by reason of any other matter or thing whatsoever it is expedient, with the view of carrying into execution the purposes of this Act, that there should be substituted for the provisions of this Act or any of them other like provisions accommodated to the laws or customs of such colony; or that further provisions should be made for carrying into execution in such colony the orders of the Commissioners; for reconciling any conflict between the laws of *England* and such colony; for declaring the law with respect to any matter or thing; or otherwise for more effectually bringing this Act into operation within any colony, or carrying into effect the purposes thereof; it shall be lawful for the Commissioners, having due regard to the interests of owners, incumbrancers, and others, and to the laws and customs of the colony, by order under their seal, to make any such substitutions or provisions as aforesaid, subject to the restrictions following, namely, that such substitutions or provisions shall not be repugnant to the spirit of this Act or to the general law of *England*, and shall not affect the constitution of the Commissioners as established by this Act; but no such order shall be of any force till the same shall have been confirmed by order of her Majesty in Council in manner hereinafter mentioned.

67. Before any such order shall be capable of confirmation, it shall for the space of thirty days be submitted to the Legislature of the colony within which the same is intended to operate; and if such Legislature, within such period as aforesaid, express by resolution their disapproval thereof, such order shall thereupon be void to all intents; but if the Legislature, within the said period, express by resolu-

*Power to
alter Pro-
visions of Act.*

Power of
Commission-
ers to make
alteration.

Orders to be
submitted to
Legislature
of colony,
and con-
firmed by
Queen in
Council.

tion their approval thereof, or come to no resolution in respect thereof, the same shall thereupon be presented to her Majesty for confirmation, and, if so confirmed, shall, as soon as conveniently may be, be proclaimed in the colony, and upon such proclamation being made shall have the same force within such colony as if the same had been enacted by authority of Parliament.

Order may
be altered

68. Any order so confirmed as aforesaid may from time to time be rescinded, amended, or altered, as occasion may require, by other orders, to be made by the Commissioners, and to be submitted to the Legislature of the colony, and confirmed in like manner.

Act how to
come into
operation.

69. Her Majesty may from time to time, by Order in Council, direct this Act to come into operation in any of the said scheduled colonies, and thereupon, but not otherwise, the same shall have the force of law in such colony or colonies named in such order; but no such Order in Council shall be made in respect of any colony until the Legislature of such colony has presented an address to her Majesty, praying her Majesty to issue such order, and has also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of the salaries of the Local Commissioners, and of all such assistant secretaries, clerks, messengers, and officers as may be appointed under this Act in such colony, and of such other expenses of carrying this Act into execution as are hereinbefore directed to be provided for by the Legislature of the colony.

SCHEDULE.

Jamaica.	St. Christopher's.
Barbadoes.	Montserrat.
St. Vincent.	Nevis.
Grenada.	The Virgin Islands.
Tobago.	British Guiana.
St. Lucia.	Trinidad.
Antigua.	The Bahamas.
Dominica.	The Turks Islands.

THE WEST INDIAN INCUMBERED
ESTATES ACT, 1858.

21 & 22 VICT., CAP. XCVI.

An Act to amend "The *West Indian Incumbered Estates Act, 1854.*—2nd August, 1858."

WHEREAS it is expedient that "The *West Indian Incumbered Estates Act, 1854,*" should be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may for all purposes be cited as "The *West Indian Incumbered Estates Act, 1858.*" Short title.
2. "The *West Indian Incumbered Estates Act, 1854*" (hereinafter called "the Principal Act") and this Act shall, so far as is consistent with the context and objects of such Acts, be construed as one Act and this Act and the Principal Act (hereinafter referred to as "these Acts") may for all purposes be cited as "the *West Indian Incumbered Estates Acts, 1854, 1858.*" Definition of Principal Act, &c.
3. The third, tenth, seventeenth, twenty-fifth, thirty-second, thirty-third, thirty-fourth, thirty-eighth, forty-fifth, and fiftieth sections of the Principal Act shall be and are hereby repealed. Certain clauses of 17 & 18 Vict., c. 117, repealed.
4. In the construction and for the purposes of these Acts (except when the context or other provisions of these Acts require a different construction) the following terms shall have the respective meanings hereinafter assigned to them: (that is to say, "Land" shall extend to sugar and other plantations, messuages, tenements, rents, and hereditaments, corporeal and incorporeal, of every tenure or description, as well as all fixtures and machinery annexed thereto, and any undivided share thereof; "Estate" shall extend to an Construction of terms, &c.

estate in equity as well as at law, and to an equity of redemption: "Incumbrance" shall mean any legal or equitable mortgage in fee or for any less estate, and also any money secured by a trust, or by judgment, decree, or order of any Court of law or equity, and also any debt, portion, legacy, lien, or other charge whereby a gross sum of money is secured to be paid on an event or at a time certain, and also any annual or periodical charges which by the instrument creating the same or by any other instrument is made purchaseable on payment of a gross sum of money, and also any arrear remaining unpaid of any annual or periodical charge for payment of which arrear a sale of any land charged therewith might be decreed by a Court of Equity, and also any sum of money constituting a charge or lien on land or raiseable out of land: "Incumbrancer" shall mean any person entitled to such incumbrance, or entitled to require the payment or discharge thereof: "Possession" shall include the receipt of the rents and profits: "Owner" shall include any person entitled in possession, either at law or in equity, to land, or to the receipt of the rents and profits thereof, or who would be so entitled if there were no incumbrance on such land, for a term of not less than thirty years unexpired, or for an estate or interest for his own life, or for an estate or interest determinable on the dropping of any life or lives, or for any greater estate or interest: "Person and Owner" shall extend to a body politic or corporate as well as to an individual: "Commissioners" shall mean the persons appointed Commissioners for the Sale of Incumbered Estates in the *West Indies*.

Duration of office and powers of Commissioners.

5. (a) The offices of the Commissioners, and all powers, rights, and privileges pertaining thereto, shall continue and be in force only for a period of five years next after the day of the passing of this Act, and from thenceforth until the end of the then next session of Parliament.

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

6. The Commissioners shall constitute one Court of Record, and shall have all the powers, authority, and jurisdiction of a Court of Equity in *England*, and in any colony or colonies within which these Acts may be or come into operation for the investigation of title, and for ascertaining and allowing incumbrances and

(a) See the Expiring Laws Continuance Act, 1864.

charges, and the amounts due thereon, and for settling the priority of such charges and incumbrances respectively, and the rights of owners and others, and generally for ascertaining, declaring, and allowing the rights of all persons in any land in respect of which applications may be made under these Acts, or in the money to arise from sales under these Acts, and for all other the purposes of these Acts, and shall have the like authority and jurisdiction for enforcing, rescinding, or varying any contract for sale made under these Acts as are vested in a Court of Equity in relation to a sale under the direction of such Court; and all proceedings, inquiries, suits, or trials to be taken, made, or had under these Acts, and all investigations of any matters or things arising out of or incidental to any such proceedings, inquiries, suits, or trials, may, subject to the provisions hereinafter contained, be at any stage or at any time transferred from *England* to any colony, or from any colony to *England*.

7. In all cases within their jurisdiction the Commissioners shall, with respect to the following matters: (that is to say), the enforcing the attendance of persons summoned to give evidence; the enforcing the production of deeds, books, papers, documents, and writings; the punishing persons refusing to give evidence, or guilty of a contempt; the enforcing any order whatever made by them under any of the powers or authorities of these Acts, or otherwise in relation to the matters to be inquired into and done by them under these Acts; have all such powers, rights, and privileges as are by law vested in the High Court of Chancery in *England* for such or the like purposes in relation to any suit or matter depending in such Court, and shall have also, in any colony or other part of her Majesty's dominions, all such powers, rights, and privileges as are possessed by the supreme Court of Judicature in such colony or other part of her Majesty's dominions, for such or the like purposes, in relation to any action, suit, matter, or thing depending in such Court; and it shall be lawful for the Commissioners either to carry into effect such powers, rights, and privileges by officers appointed by themselves, or to request the High Court of Chancery, or such Court of Judicature as aforesaid, or any officer thereof, to enforce any orders made by

Powers of
Commissioners to enforce
orders.

them, and such Court or officer shall thereupon enforce the same accordingly.

Restrictions
on sale.

8. The Commissioners shall not make an order for sale of any land upon application by an incumbrancer thereon, in case it be shown to the satisfaction of the Commissioners by the owner of such land that no part of such land is subject to any receiver, or is in the possession of any incumbrancer, or has been out of cultivation for the space of twelve months preceding such application, and that the amount of the yearly interest on the incumbrances and other yearly payments (if any) in respect of charges payable out of the income of such land, and the other lands (if any) subject to the same incumbrances, do not exceed one-half of the net yearly income of such land and other lands (if any), such yearly income to be calculated on the average profits or income (if any) derived therefrom, after deducting all the necessary outgoings (if any) during the preceding seven years, or during such other period as the Commissioners may, having regard to any special circumstances, think fit, or in case, for any reason whatever, it shall appear to the Commissioners unjust or inexpedient that a sale should be made: Provided always, that the decision of the Commissioners thereupon, so far as the same relates to their power and jurisdiction over such land, shall in all cases be final and conclusive to all intents and purposes whatsoever.

Tenancies to
be ascer-
tained.

9. Where a sale shall be made under these Acts, the Commissioners shall, when and so far as they may deem necessary for the purpose of such sale, ascertain the tenancies of the occupying tenants, and of any lessees, under-lessees, or other parties whose tenancies, leases, under-leases, or other interests affect the land to be sold, or any part thereof, and may give such notices, and make or cause to be made such inquiries as they shall think necessary, for ascertaining and securing the rights of such tenants, lessees, under-lessees, or other parties as aforesaid: and all occupying tenants, and all persons being or claiming to be lessees, under-lessees, or parties interested as aforesaid, shall, at such times and places as the Commissioners may require, produce all leases, under-leases, agreements in writing, and other deeds or documents under which such tenants or persons occupy or claim, if such leases, under-leases, agreements, or other deeds or

documents, or counterparts thereof, be in their possession or power, and where they occupy or claim under leases, under-leases, agreements in writing, or other deeds or documents not in their possession or power, or under parol agreements or contracts, they shall deliver, at such times and places as aforesaid, particulars of the terms and conditions upon and subject to which they occupy or claim; and the sale shall be made subject to the tenancies, leases, under-leases, or interests, ascertained as aforesaid, and subject to which the owner or incumbrancer applying for a sale shall be owner or incumbrancer, and such other of the tenancies, leases, under-leases, and interests, ascertained as aforesaid, as shall appear to the Commissioners to have been granted *bonâ fide* by the owner or person in possession or in receipt of the rents and profits, and subject to which it shall appear to the Commissioners that the sale should be made, save such (if any) of such respective tenancies, leases, and under-leases as shall be included in such sale, and, where the Commissioners think fit, subject to any leases, under-leases, tenancies, or other interests according to any general description, or subject to any condition concerning any leases, under-leases, tenancies, or interests, the nature of which shall not have been ascertained or shall be disputed; and, when the Commissioners shall think fit, such sale may be made subject to any annual charge affecting the land to be sold or any part thereof, or to any such apportioned part of any such annual charge as the Commissioners may think fit to remain charged thereon; and where such land or any part thereof is subject to any incumbrance under the terms of which the incumbrancer cannot be required to accept payment of the principal money before the expiration of a term of years unexpired, such sale may, if the Commissioners think fit, be made subject to such incumbrance.

10. Every conveyance executed by the Commissioners in pursuance of these Acts shall be effectual to pass the fee simple and inheritance and absolute interest of and in the land thereby expressed to be conveyed, or such lesser estate or interest as may in such conveyance be specified, subject to such rights and uncommuted payments, if any, as are referred to in the 36th section of the Principal Act, and to such tenancies, leases, under-leases, incumbrances, and in-

Effect of
conveyance.

terests as shall be expressed or referred to in the said conveyance as aforesaid, but, save as aforesaid, discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever of her Majesty, her heirs and successors, and of all other persons whomsoever; and no conveyance made by the Commissioners shall be set aside on the ground of their not having jurisdiction over the subject-matter thereof.

Provision
for setting
aside
moneys to
meet in-
cumbrances.

11. It shall be lawful for the Commissioners, where they think fit, to pay to any person entitled to any annual or other charge or interest, not being an incumbrance according to the definition of this Act, who may consent to accept the same, a gross sum in discharge or by way of redemption thereof or of a part thereof; and the Commissioners may, in all cases where they think fit, invest or provide for the investment of money, to meet as far as possible any annual or periodical charge, or any other charge, incumbrance, or interest, where, by reason of such charge, incumbrance, or interest being contingent or otherwise, it shall appear to the Commissioners proper or expedient so to do, and may otherwise make and give such orders and directions for applying the moneys arising from any sale in such manner as will secure the convenient application thereof for the benefit and according to the rights of all interested parties; but nothing in these Acts or either of them contained shall be construed to restrain the Commissioners, if they shall think fit, from selling any land within their jurisdiction, absolutely freed and discharged from all estates, rights, titles, interests, incumbrances, claims, and demands whatsoever, whether at law or in equity, and whether annual or periodical, future, vested, contingent, or otherwise, save and except such rights and interests as are set forth in the 36th section of the said Principal Act.

12. Where any person, who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under these Acts, shall be an infant, idiot, lunatic, or married woman, the guardian, committee of the estate, and husband respectively of such person may make such application, give such consents, do such acts, and be party to such proceedings as such persons respectively, if free from disability, might have made,

Provision
for persons
under dis-
ability.

given, done, or been party to, and shall otherwise represent such persons for the purposes of these acts; but a married woman (entitled for her separate use (with or without power of anticipation) shall for the purpose of these Acts be deemed a *feme sole*: provided always, that where there shall be no guardian or committee of the estate of any such person as aforesaid being infant, idiot, or lunatic, or where any person, the committee of whose estate, if he were idiot or lunatic, would be authorised to act for and represent such person, shall be of unsound mind or incapable of managing his affairs, but shall not have been found idiot or lunatic under an inquisition, it shall be lawful for the Commissioners to appoint a guardian of such person, for the purpose of any proceedings under these Acts, and from time to time to change such guardian; and, where the Commissioners see fit, they may appoint a person to act as the next friend of a married woman for the purpose of any proceedings under these Acts, and from time to time to remove or change such next friend.

13. Every conveyance or order for partition, exchange, or division, executed or made by the Commissioners in pursuance of these Acts, shall be exempt from stamp duty, notwithstanding the same may have been executed or made in England.

14. Where her Majesty by Order in Council has directed or shall direct the Principal Act to come into operation in any of the colonies mentioned in the schedule to the Principal Act, or where any of such colonies has presented or shall present an address to her Majesty praying her Majesty to issue such order, then and in every such case such order and such address respectively shall apply, and be construed to apply, as well to this Act as to the Principal Act.

Provision
as to these
Acts coming
into opera-
tion.

THE WEST INDIAN INCUMBERED
ESTATES ACT, 1862.

25 & 26 VICT., CAP. XLV.

An Act to amend "The *West Indian* Incumbered Estates Acts, 1854 and 1858.—17th July, 1862.

WHEREAS it is expedient that "The *West Indian* Incumbered Estates Acts, 1854 and 1858," should be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may for all purposes be cited as "The *West Indian* Incumbered Estates Act, 1862."

Principal Act and this Act to be as one.

2. "The *West Indian* Incumbered Estates Act, 1854, (hereinafter called "The Principal Act,") "The *West Indian* Incumbered Estates Act, 1858," (hereinafter called "the First Amendment Act,") and this Act shall, so far as is consistent with the context and objects of such Acts, be construed as one Act, and the Principal Act, the First Amendment Act, and this Act (hereinafter referred to as "these Acts"), may for all purposes be cited as "The *West Indian* Incumbered Estates Acts, 1854, 1858, 1862."

Power to appoint receivers of lands after absolute order for sale.

3. (a) When the Commissioners shall have made an absolute order for the sale of any lands under these Acts, they shall have the same powers of appointing a receiver or receivers of such lands, or any part thereof, as the Court of Chancery in *England* has of appointing a receiver of the rents and profits of any lands within the jurisdiction of such Court in a suit relating to such lands, and the receiver or receivers so appointed shall from the date of such appointment have and possess all the powers, authorities, rights and privileges which receivers appointed by the Court of Chancery in *England* have in respect of the lands over which they are appointed receivers, subject to such general rules as the Commissioners in *England* shall from time to time make under the Principal Act.

(a) See the Act of 1864, sec. 5.

4. Every receiver so appointed by the Commissioners shall give such security for the due performance of his office as the Commissioners shall require, and shall be entitled to such remuneration by salary, commission, or otherwise, as the Commissioners shall direct, subject to such general rules as the Commissioners in *England* shall from time to time make under the Principal Act, and the balance due to such receiver in respect of such salary, commission, or other remuneration, or in respect of such sums as he may have properly expended in the management and cultivation of such lands, shall be a charge on such lands in priority to all incumbrances thereon.

Security by
and remun-
eration of
receivers.

5. It is hereby declared that the term "fees" in the thirteenth section of the Principal Act includes as well fixed payments or charges in respect of proceedings under these Acts, as also commissions or per centages on the amount of the purchase-moneys of lands sold under these Acts.

Fees and
commissions.

6. Where her Majesty, by Order in Council, has directed or shall direct the Principal Act, or the Principal Act and the First Amendment Act, to come into operation in any of the colonies mentioned in the schedule to the Principal Act, or where any of such colonies has presented or shall present an address to her Majesty, praying her Majesty to issue such order, then and in every case such order and such address respectively shall apply and be construed to apply as well to this Act as to the Principal Act, or as to the Principal Act and the First Amendment Act (as the case may be.)

Provison as
to Acts
coming into
operation.

THE WEST INDIAN INCUMBERED
ESTATES ACT, 1864.

27 & 28 VICT., CAP. CVIII.

An Act to amend "The *West Indian Incumbered Estates Acts.*"—29th July, 1864.

WHEREAS it is contemplated that "The *West Indian Incumbered Estates Acts, 1854, 1858, 1862,*" should, in so far as such Acts or any provisions thereof are temporary in their duration, be continued by an Act of the present session of Parliament, for a further period to be named in such Act, and it is expedient that the same Acts should be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

Definition of
Principal Act,
&c.

1. This Act may for all purposes be cited as "The *West Indian Incumbered Estates Act, 1864.*"

2. "The *West Indian Incumbered Estates Act, 1854,*" hereinafter called the Principal Act, "The *West Indian Incumbered Estates Act, 1858,*" hereinafter called the First Amendment Act, and "The *West Indian Incumbered Estates Act, 1862,*" hereinafter called the Second Amendment Act, and this Act, shall, so far as is consistent with the context and objects of such Acts, be construed as one Act; and the Principal Act, the First Amendment Act, the Second Amendment Act, and this Act may for all purposes be cited as "The *West Indian Incumbered Estates Acts, 1854, 1858, 1862, 1864.*"

Provision as
to Acts
coming into
operation.

3. Where her Majesty, by Order in Council, has directed or shall direct the Principal Act, or the Principal Act and the First Amendment Act, or the Principal Act and the First and Second Amendment Acts, to come into operation in any of the colonies mentioned in the schedule to the Principal Act, or where any of such colonies has presented, or shall present, an address to her Majesty praying her Majesty to issue such order, then and in every such case such order and such address respectively shall apply and be construed to apply as well to this Act, and to any Act of the present session of Parliament continuing "The *West Indian Incumbered Estates Acts, 1854, 1858, 1862,*" as aforesaid (so far

as regards the said Acts), as to the Principal Act, or as to the Principal Act and the First Amendment Act, or as to the Principal Act and the First and Second Amendment Acts (as the case may be).

4. Where any land shall be sold under the aforesaid Acts, or any of them, the Commissioners shall have power to include in such sale all or any horses, mules, cattle, live or dead stock, plant, carts, carriages, implements, duplicate and other unfixd machinery, utensils, and other chattels and effects used or employed in or about the cultivation of such land or any part thereof, and which may be subject to any incumbrance affecting such land or any part thereof, and all or any other horses, mules, cattle, live or dead stock, plant, carts, carriages, implements, duplicate and other unfixd machinery, utensils, and other chattels and effects used or employed in or about the cultivation of such land, and the owner or part owner or any mortgagee of which shall apply for or consent to such sale, and to apply the moneys arising from the sale of such chattels and effects in the same manner in all respects as if such chattels and effects had been land sold under these Acts, or otherwise according to the rights and interests of the parties entitled thereto; and such moneys shall be subject to the payment of the same commissions or percentages and fees as they would have been subject to if they had arisen from land sold under these Acts.

Power to include stock in sales.

5. The Commissioners shall have the same powers of appointing a receiver or receivers of any lands for the sale of which a conditional order has been made by them under these Acts, and likewise of the horses, mules, cattle, live or dead stock, plant, carts, carriages, implements, duplicate and other unfixd machinery, utensils, and other chattels and effects used or employed in or about the cultivation of such land, or any part thereof, which may be subject to any incumbrance affecting such land or any part thereof, and all or any other horses, mules, cattle, live or dead stock, plant, carts, carriages, implements, duplicate and other unfixd machinery, utensils, and other chattels and effects used or employed in or about the cultivation of such land, and the owner or part owner, or any mortgagee of which shall apply for or consent to the appointment of such receiver or receivers, as they have under "The *West Indian Incumbered Estates Act, 1862,*" over any land for the sale of which an absolute order has been made by them.

Power to appoint receiver of lands and stock after conditional order for sale.

THE EXPIRING LAWS CONTINUANCE ACT, 1864.

27 & 28 VICT. CAP. LXXXIV.

An Act for continuing various expiring Acts.—29th July, 1864.

WHEREAS the several Acts mentioned in the first column of the schedule hereto are wholly, or as to certain provisions thereof, limited to expire at the times specified in respect of such Acts in the fourth column of the said schedule: And whereas it is expedient to continue such Acts, in so far as they are temporary in their duration, for the times mentioned in respect of such Acts respectively in the fifth column of the said schedule: 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.

Short title.

Continuance of Acts in schedule.

1. This Act may be cited for all purposes as the "Expiring Laws Continuance Act, 1864."

2. The Acts mentioned in column one of the said schedule, and the Acts, if any, amending the same, shall, in so far as such Acts or any provisions thereof are temporary in their duration, be continued until the times respectively specified in respect of such Acts in the fifth column of the said schedule.

SCHEDULE.

1. Original Acts.	2. Amending Acts.	3. How far temporary.	4. Time of expiration of temporary provisions.	5. Continued until
17 & 18 Vict., c. 117. Incumbered Estates (West Indies)	21 & 22 Vict., c. 96. 25 & 26 Vict., c. 45.	As to appointment of Commissioners.	2nd August, 1863, and end of then next session. (21 & 22 Vict., c. 96.)	2nd August, 1865.

(*Inter alia.*)

GENERAL RULES,

GENERAL RULES under the WEST INDIAN INCUMBERED ESTATES ACT, 17th and 18th Vict., c. 117, dated the 1st day of May, 1857.

IT is this day ordered by the Honourable Edmund Phipps and Sir Frederic Rogers, Bart., being the Commissioners for the Sale of Incumbered Estates in the West Indies, pursuant to the statute in that case made and provided, that the following General Rules and Orders shall take effect and be binding in relation to all proceedings to be hereafter had or taken under and in pursuance of an Act passed in the Session holden in the 17th and 18th years of the reign of her Majesty Queen Victoria, c. 117, intituled "An Act to Facilitate the Sale and Transfer of Incumbered Estates in the West Indies."

1. That in the construction of any general rules or orders made by the Commissioners, the words and phrases to which a particular or extended meaning is assigned by the 3rd section of the Act, shall, when used in such rules or orders, be understood to bear such particular or extended meaning, except where the context or other provisions of the rules require a different construction; and the word "affidavit" shall include an affirmation or declaration made by any person who by law is empowered to give evidence by affirmation or declaration in lieu of oath; and when time is to be computed by days it shall be exclusive of Sundays and the following holidays, that is to say, Christmas Day, New Year's Day, Good Friday, Easter Monday, and Easter Tuesday; and when it is to be computed by the month it shall be construed calendar month; and in all cases it shall be inclusive of the first and inclusive of the last day, unless the last day be one of such holidays, when the following day shall be included.

2. That when the words "the Act" are used they shall imply the said Act under authority of which these rules are issued. That when in any of the following rules the word "Commissioners" is used it shall, where such extended sense is not excluded by

the context or by any other of the provisions herein-after following, be understood to mean such one or more Commissioners or Local Commissioners as may at any time in virtue of the Act, or of any order issued in pursuance of the Act, be directed or authorised to perform the duties or execute the authorities referred to in such rule. That the word "London" shall include as well the city of London as the district comprised within the limits of the Metropolitan Police. That the words "West Indies" shall imply such one or more of the colonies comprised within the schedule of the Act as shall from time to time have come within its provisions under the terms of the 69th section thereof.

3. That it shall be in the power of the Commissioners by any fresh rule or rules from time to time to add to, alter, or annul any of the rules here made, but that every such fresh rule or rules shall be laid before her Majesty in Council, and be liable to disallowance, as is in the 21st section of the Act provided with respect to all rules made under the authority of the Act.

4. That all attested copies of petitions, affidavits, and other documents in the offices of the Court shall be written on foolscap paper, bookwise (¹), and shall contain three folios of ninety-six words in each page; and all copies shall be attested by the Secretary or such other officer as the Commissioners shall, from time to time, for that purpose appoint, whether such copies be brought in for attestation, or be made out in the office; and when it is required that the common seal of the Commissioners shall be affixed to any document the same shall be done by the Secretary, or by such other person as the Court shall from time to time appoint for that purpose.

5. That all proceedings under the Act may be commenced in England or in the West Indies; and these general rules shall be applicable to all proceedings within the West Indies, subject only to such modifications as may from time to time be rendered necessary by any conflict between the laws of England and of any colony therein, and be made by the Commissioners under the powers given by the Act, and reserved in these rules.

6. That it shall be the duty of the Secretary or

¹ See ante p. 38.

other officer on whom such duty shall from time to time be imposed by the Commissioners in London and in the West Indies respectively, to render a statement in such form, and so certified as the Commissioners shall direct, by each bi-monthly mail, of the proceedings before the Commissioners in England and the Local Commissioners respectively, and of the position of each petition (to be interchanged between the colony in which any estate is situated and the Court of the Chief Commissioner in London), and that such statement of proceedings shall be open for inspection by any person demanding it, without fee or reward.

Commencement of Proceedings.

7. That proceedings under the Act shall be commenced by petition, to be addressed and framed according to the forms to be approved by the Commissioners; and every such petition shall be signed by the petitioner or his attorney, and shall be accompanied by an affidavit verifying the material facts therein, and containing an averment that the deponent does not know or believe that any petition in the same matter has been presented in the West Indies or in England, as the case may be.

8. That every person presenting a petition to the Commissioners otherwise than through the agency of an attorney, shall state some place at foot thereof, in London, where such petition is presented in England, or within the chief towns of any colony in the West Indies if such petition is presented therein, where notices and orders may be served on him; and such party, or, in case of his death or transmission of his interest, the party claiming in his right may from time to time change such place of address, and substitute some other place within the same limits respectively for the like purpose.

9. That after a petition is filed, the Secretary, or such other officer as the Commissioners shall from time to time for that purpose appoint, shall, on the application of any party interested, give a certificate that such petition has been filed, in order that the matter may be registered as a *lis pendens*.

10. That on every petition for a sale an order shall be made by the Commissioners, either dismissing the petition of reserving it for inquiry, or granting a conditional order for a sale, stating therein by name or

general description the parties who must be served with such order, and the time within which cause against such order must be shown; but the petitioner, if he be dissatisfied with the fiat of the Commissioners, may, by notice left in the office, require that he may be heard by himself, his counsel, or agent.

11. That in any case in which a party shall seek to show cause against or to set aside any order made by the Commissioners, he shall lodge a notice to that effect in the office, and state at foot or on the back thereof upon what party he requires such notice to be served, and the grounds upon which he seeks to show cause against and set aside such order, and the subject-matter of such notice shall come on to be heard in due course before the Commissioners, but the parties so seeking to show cause against or set aside any order shall not be permitted to advance at such hearing any grounds other than those stated and set forth in such notice, unless by special leave of the Commissioners, and upon such terms as the Commissioners may impose; and the Commissioners, on the hearing of such matter, shall, if they think fit, make an order to vary or to discharge the order already pronounced, or make such other order as they shall think fit, and may order the whole or any portion of the costs, up to and including the hearing of such matter, to be paid by such of the parties as they shall think properly liable thereto.

Removal of Proceedings.

12. That it shall be open to any owner or incumbrancer, whether he shall have commenced the proceedings himself or not, to make application by petition to the Chief Commissioner to transfer proceedings commenced in the West Indies to England, or proceedings commenced in England to the West Indies, and that such petition shall state the grounds of such application, and be supported by affidavit in all its material facts, and if it be shown to the satisfaction of the Chief Commissioner that notice has been duly served upon all parties interested who have up to that time taken part in such proceedings, of such application and of the grounds thereof, with copies of the affidavit in support thereof, and if no opposition be made thereto within such period as the Chief Com-

missioner shall from time to time determine with reference to the residences of the parties before him, or if the grounds of opposition appear to the Commissioner insufficient, or if the consent of all such parties be stated in the original affidavit and satisfactorily proved before him, and if such Chief Commissioner be of opinion that the grounds of such application are established, and are sufficient, he shall issue an order for the immediate stay of such proceedings in the Court in which they are then pending, and for their transfer in the stage they shall then have reached, to the West Indies or to England, according to the prayer of the petition.

13. That it shall be in the power of the Chief Commissioner, at any time when it shall appear to him desirable for the interests of the several parties, or he shall for any special circumstances think it right that the proceedings upon any petition should be transferred from England to the West Indies, or from the West Indies to England, or should be transferred back again after any transfer, to direct such transfer.

14. That upon any such transfer all parties already before the Court, or desirous to receive notices, or to enter an appearance, shall enter an address with the Secretary of the Court to which such proceedings are from time to time transferred, that is to say, in London, if such Court is in London, or if in the West Indies within the colony in which such Court is situate.

15. That whenever a transfer of proceedings shall be directed, under the terms of either of the two last rules, from the West Indies to England, or from England to the West Indies, all proceedings under such petition, where the same shall be carried on in England, shall cease therein from the date of the order of the Chief Commissioner; and where such proceedings are carried on in the West Indies, they shall cease therein from the date of the receipt of such order by the Secretary of the Local Commissioners within the colony from which such proceedings are transferred.

16. That all matters and things previously done under such petitions shall have as full power and validity as if they had been done, and that they shall be deemed to have been done, within that Court, whether in England or the West Indies, to which they shall be so transferred.

17. That in the case of removal of proceedings from England to the West Indies, or *vice versa*, the cost of the proceedings up to the time of such removal, including the fees, if any, which may have become payable under the 13th section of the Act, shall be at the discretion of the Chief Commissioner, who shall award and apportion the same, and give such order as to the payment or recovery thereof, either at the time of such removal or at the termination of the proceedings, by sale or otherwise, as to him shall seem just.

Proceedings after absolute Order of Sale.

18. That when an absolute order for a sale shall be pronounced, the Commissioners may, if they shall think it necessary, require the owner and all other persons to produce to or lodge with the Commissioners, on oath, all deeds, books, papers, documents, and writings in their possession, custody, or power respectively, relating to the premises ordered to be sold, and to the charges thereon, and to do all such other acts and furnish such information within the authority of the Commissioners to direct, as may be necessary to enable the Commissioners to sell the premises to the best advantages.

19. That the statements in any petition shall not constitute an admission of the validity of any claim stated therein, or of any particular sum being due in respect of any incumbrance, save claims and sums expressly admitted by the petitioner.

20. That on the order for a sale being made absolute, a notice shall be circulated among the tenantry or persons residing on the property, or others interested therein, according to a printed form to be approved by the Commissioners, specifying the tenancies, leases, and agreements which are admitted, and calling upon all parties who have claims for other tenancies, leases, or agreements not specified, or who consider that the terms of their tenancies, leases, or agreements are incorrectly stated, to come forward and apply for an amendment of the order in this behalf. But this rule shall not be construed as rendering it necessary to serve every tenant or every person residing on the property, or claiming to be interested therein, with such notice.

21. That if any person shall claim to be entitled to any lease or agreement other than those which are

admitted, he shall lodge in the office the particulars of such claim, accompanied by an affidavit that he believes the same to be just and true, and (if he does not appear by attorney) stating the address to which notices and orders may be served on him; and the Commissioners shall thereupon make an order either allowing his claims in the whole or in part, or calling upon him to sustain it by sufficient evidence, or such other order as may meet the merits of the case.

22. That when the absolute order for a sale shall be pronounced, advertisements shall be published in a London newspaper, and in one or more newspapers published and circulated within the colony in which such property is situate, and such other newspapers as the Commissioners shall direct, giving notice of such order, and calling upon all claimants of estates, interests, or incumbrances in or upon the premises ordered to be sold, to come forward and establish their several claims and demands.

23. That when the absolute order for a sale shall be pronounced, the Commissioners shall direct what further information shall be procured respecting the title of all parties to the premises and to the incumbrances affecting the same, and what searches or further searches should be made in relation thereto; and such person as they shall direct shall forthwith proceed to make out a full title to the premises, including charges and incumbrances thereon, and shall prove and verify the same in such manner as the Commissioners shall direct; but the sale itself shall not be delayed by the proceedings under this and the preceding rule, unless the Commissioners shall see cause for deferring such sale.

Sale and Conveyance.

24. That in any case in which it shall appear to the Commissioners that any premises can be sold by auction to better advantage out of London, the Commissioners may direct that the biddings shall be made at such place and before such person as they shall for that purpose appoint; and thereupon such biddings shall be had accordingly, and shall be returned to the Commissioners, who shall declare the highest bidder the purchaser, unless the highest sum offered shall be, in the opinion of the Commissioners, clearly inad-

quate, or unless the Commissioners shall see good cause against confirming the sale.

25. That if upon a sale by auction the highest price offered for any lot be, in the opinion of the Commissioners, clearly inadequate, they shall be at liberty to adjourn the sale of that lot to a future day.

26. That no sale of any lot shall be deemed to have been made until the amount of deposit (if any) required by the conditions of sale shall have been actually paid in the manner prescribed by such conditions.

27. That immediately after a sale, whether by public auction or private contract, the purchaser shall obtain a certificate under the seal of the Commissioners that he is the purchaser, thereby authorising him to pay the amount of his purchase-money into the Bank of England in the case of a sale in England, or into the commissariat chest of the colony within which such property is situate, where the sale takes place within such colony, if there shall be any commissariat chest within such colony, and, where there is none, into such commissariat chest within any other West Indian colony as the Commissioners direct, to the account of the Commissioners, to the credit of the estate of A. B., of, &c. [as the case may be], and shall procure the notification by the bank, or the commissary of the commissariat chest, to the Commissioners of the receipt of the money.

28. That the conveyance or assignment of all premises sold by the Commissioners shall be prepared by and at the expense of the purchaser, and the draft thereof shall be approved of by the Commissioners. It shall specify the tenancies (if any) subject to which the sale is made, and any apportionment of rent between the purchaser and the proprietor of other lands demised with the lands sold, or any part thereof, and any rents or incumbrances remaining charged upon the property, or any part thereof, in the hands of the purchaser; and the Commissioners shall, when necessary, ascertain and define the relative rights of the purchaser and the prior possessor with respect to any crops on the land.

29. That the duplicates or counterparts of leases where they exist and can be had, or other evidences of the tenancies subject to which the sale is made, shall be delivered to the purchaser, except where they

relate also to other lands, in which case copies shall be delivered to him.

30. That the Commissioners may require and compel all persons claiming to be tenants to produce the leases, or agreements, or other instruments under which they so claim, and to give copies thereof.

31. That in case the purchase-money, and any interest which may have accrued upon it under the terms of the sale or by law, shall not be paid into the bank or into the commissariat chest of the colony, as the case may be, within fourteen days after the sale, or where there is not a commissariat chest in such colony, in such other mode and within such period as shall have been in any case directed by the Commissioners, any party to the proceedings may procure an order for payment; or the Commissioners may make such order without any special application, or may, if they think proper, resell the property; and the expenses incident to such resale, together with the deficiency (if any), in the price obtained below the former price, shall be paid forthwith by the purchaser at the former sale, for which payment the deposit (if any) shall be a guarantee; but he shall not be entitled to the benefit of any excess in the price which may be obtained at the latter sale.

Distribution of the Purchase Money.

32. That any deduction in the nature of per centage fee out of the purchase money from time to time, made payable in England, by any scale of fees in respect of proceedings under the Act fixed by the Commissioners, under the authority of the 13th section of the Act, or any such deduction made payable in any colony within the West Indies, by any scale of fees so fixed by the said Commissioners, and not disallowed or altered by the Legislature of such colony, shall be set aside for the purpose of being appropriated in accordance with such scale or scales of fees, before any other application of such purchase money under the provisions of the Act.

33. That the costs properly incurred by an incumbrancer coming in and proving his incumbrance shall, except where the Commissioners may otherwise direct, rank in point of priority with the incumbrance in respect of which such costs have been incurred.

34. That a schedule of incumbrances shall be pre-

pared by the Commissioners, or such of their officers as they shall appoint, according to their several priorities, with the sums due on each for principal, interest, and costs respectively, and, in case of an annuity, for arrears and costs; and when such schedule shall be filed, notice thereof shall be given by advertisement in one or more newspapers, as has been already directed in the Rule No. 22, as to notices of order of sale; and if the Commissioners shall consider it necessary, notice shall also be specially given to the incumbrancers and other parties interested in the premises, or their attorneys; and if no party interested shall file an objection thereto within such time as the Commissioners shall appoint for that purpose, the same shall stand confirmed without further order; and all parties shall be bound thereby, so far as relates to the money produced by the sale of the premises in respect of which such schedule shall be made unless the Commissioners shall, on special application, make an order to the contrary.

35. That any party may file an objection to the schedule of incumbrances within the time so appointed, and shall briefly state therein the grounds of his objection, and such objection shall be heard and dealt with by the Commissioners in such manner as they shall think fit.

36. That after the schedule of incumbrances shall be confirmed, and if the Commissioners shall think the funds may be safely distributed, the Commissioners shall allocate the stock and funds in Court (computing the value of the stock at the price of the day of such allocation) among the several incumbrancers and parties entitled, according to their priorities; and such allocation, so far as it may extend, shall be deemed payment of such incumbrances, so that they shall cease to bear interest; and the owner of the incumbrance shall be entitled to the dividends on the stock, and shall be liable to all the consequences of its fall or rise in price; but such Commissioners shall not be bound to make any allocation of stock or funds in part payment of an incumbrance without the consent of the incumbrancer, unless or until the whole of the lands comprised in his security has been sold by the Commissioners; but nothing herein contained shall prevent the Commissioners from conveying the portion of such lands

which has been sold free from and discharged of such incumbrance.

37. That the Commissioners may, before such schedule as aforesaid shall be finally settled, upon the application of any person who shall be the first or an early incumbrancer, and whose claim shall appear to be valid, order payment to such incumbrancer of the amount claimed by him, or any part thereof, if it shall appear to the Commissioners that such order may be made with safety to all parties: but the cost of such application shall not be allowed on taxation against the fund, unless, in the order pronounced by the Commissioners, they shall award the costs thereof to such incumbrancer.

38. That when stock or money is allocated to trustees, the Commissioners may refuse to order a transfer or payment thereof to be made to them, unless the full number of trustees shall exist according to the provisions of the instrument creating the trust.

39. That the fund allocated to any party shall not be transferred or paid over to him until he shall have verified his title thereto as the Commissioners shall direct.

40. That the Commissioners shall not draw in favour of, or transfer stock to any person in payment of a legacy, until the person entitled to such payment shall produce a certificate from the proper officer of the payment of the legacy duty, if any payable in respect thereof; but the Commissioners may, with the consent of such person, draw in favour of, or transfer to the proper officer authorised to receive the same, the amount of such duty.

41. That the Commissioners may, in any special case, order the payment of money or transfer of stock to any person, upon his giving such security as shall be approved of by the Commissioners to abide any order which the Commissioners may afterwards make in regard thereto.

42. That notice in writing of any assignment, charge, or other disposition of any fund in the hands of the Commissioners, or of the interest of any person therein, must be lodged in the office, stating particularly the fund to which the same relates, and the name of the person whose interest therein is affected, and the name of the party so claiming to be interested in such charge, and some place in Great Britain, Ire-

land, or in that colony in the West Indies where such proceedings are carried on, where notice may be served upon such party or his attorney.

Proceedings for a Partition.

43. That when an application for a partition is presented under the 55th section of the Act, the Commissioners shall direct what notices shall be served, and on whom, and shall direct advertisements to be published in the manner hereinbefore directed in Rule No. 22 for notices by advertisement in the public papers, calling upon all parties interested to serve notice of objections (if any they have to a partition) before a certain day therein to be named; and on the day named in such advertisement, or as soon after as may be convenient, the Commissioners shall hear the said application, and if no objection shall be substantiated, will issue an order to one or more surveyor or surveyors to make a report, according to instructions to be contained in such order; and as soon as the report of the surveyor or surveyors shall be returned to the Commissioners, they shall name a day on which a partition shall be made, unless in the meantime a notice of objection shall be served on behalf of some interested party, in which case the Commissioners shall hear all parties who require to be heard, and examine the proceedings, and make a partition or such other order thereon as may appear to them to be proper.

44. That application for a partition, under the 55th section of the Act, may be either included in an original petition for a sale, or made by supplemental petition, referring to the former petition, and to the proceedings thereon.

45. That the costs properly incurred in proceedings for a partition, including the costs of the survey and advertisements, shall be borne by the owners of the estate in proportion to their respective shares; and the amount paid by any owner having a limited interest shall be a charge in his favour upon the inheritance or whole interest in the share allotted to him.

Proceedings for Exchange or for Division of Intermixed Land.

46. That application for an exchange, under the 56th section of the Act, may be either included in an

original petition for sale, or made by supplemental petition, referring to the former petition and to the proceedings thereon.

47. That the costs properly incurred in proceedings for an exchange or division shall be borne in such proportions as the Commissioners shall direct, having regard to any special agreement between the parties; and the amount paid by any owner having a limited interest shall be a charge in his favour upon the inheritance or whole interest in the lands allotted to him.

48. That the Local Commissioner or Commissioners, if more than one, in any colony, and the Assistant Commissioner or Commissioners, if residing therein, shall, whether sitting singly or jointly, have the powers and authorities of a Court of Record.

Chief Commissioner.

49. That the Chief Commissioner may, either with or without the Assistant Commissioner or Commissioners, if more than one, do all acts, matters, and things, and may exercise all powers and authorities which the Commissioners are by the Act or by these rules empowered to do or exercise.

Assistant and Local Commissioners.

50. That the Local Commissioners and the Assistant Commissioners resident within any colony, or either of them, if more than one, shall have power, and they are hereby required, so often as such inquiries are referred to them by the Chief Commissioner, to examine, within the colony in which they are acting or resident, into the title or rights of priority of any owner or incumbrancer of any estate that is the subject of petition, whether upon the original petition or after conditional or absolute order of sale, or after sale with view to the conveyance of the property, or the distribution of the purchase-money; and to undertake any other inquiries in all cases in which a title or titles, priority or priorities, or petition for division, exchange, or apportionment, shall be referred to him or them by the Chief Commissioner.

51. That Local Commissioners within the colony for which they are appointed, or such Assistant Commissioners (when resident therein), acting separately or jointly, shall cause to be put in force, in the manner

therein directed, all or any of the powers in the 22nd section of the Act contained with respect to the attendance or examination of witnesses, or the production of deeds or papers relating to such several matters, and shall examine such witnesses, deeds, or papers, and that the said Local or Assistant Commissioners, or one of them, as the case may be, shall certify to the said Chief Commissioner the result of any such inquiry, who shall thereupon, either alone or with such Commissioner or Commissioners, act as seems to him right in the premises.

52. That any Local or Assistant Commissioners so acting, either together or separately, under the directions of the Chief Commissioner, shall have the powers, rights, and privileges, which are assigned by the 25th section of the Act to the Commissioners acting within their jurisdiction.

53. That the Local Commissioners within the West Indies, in their own colonies, and any Assistant Commissioner or Commissioners while residing there, shall have the same powers, as far as the same are applicable, as are possessed by the Chief Commissioner in England, with the exception of the authority to transfer proceedings from England to the West Indies, or *vice versâ*, and of the power to frame rules or alterations under the 20th or 66th section of the Act, and of the authority to affix a scale of fees for proceedings under the Act.

Secretary and other Officers.

54. The Secretary and other officers appointed under the Act shall, from time to time, be employed in the execution of the Act in such manner as the Commissioners shall direct.

Practice.

55. That whenever a party served with or affected by a conditional order shall file an affidavit or rely on any matter as cause against any such order, and shall give notice thereof, and shall not (where such notice has to be both given and received within London, or within any West Indian colony, appear in Court to show cause against any such conditional order within a week; or where such notice has to pass from England to the West Indies, or *vice versâ*, shall not so appear within four months, such cause shall be disallowed,

and the party originally obtaining such conditional order shall be entitled to an office rule, making the same absolute against such party, which shall be an authority for taxing the costs of supporting such order against the grounds stated in such notice of opposition, and in any affidavit referring to the same.

56. That nothing in these rules shall be construed to prevent the Commissioners from limiting or extending the time for supporting or opposing conditional orders under special circumstances, or from dismissing or disallowing at once any application to set aside a conditional order when the grounds stated on the face of such application are clearly insufficient or futile, or from reconsidering or reversing any order already made absolute, or from acting in the premises in any way which the diversity in the local residence of the parties of the justice of the case may seem to them to require.

57. That every attorney who appears for any party shall enter his name and address in a book to be kept in the office for that purpose; and every change of attorney or address shall be entered in the same manner.

58. That every person making an application to the Commissioners in England shall enter an address in Great Britain or Ireland, and in the case of an application in any colony in the West Indies an address within such colony, to which all notices or orders to him may be sent, and may change the same from time to time; and that any notice or order which may require to be served in any matter shall be lodged with such of the officers of the Court as the Commissioners shall appoint for that purpose, and shall be served in manner hereinafter mentioned, through the office of such officer, unless the Commissioners shall otherwise order; and such notice or order may be transmitted by the post where there is a communication by post, or by messenger where there is no such communication, by the clerk or officer so to be appointed for that purpose; and the certificate of such clerk or officer of the sending by the post or service by messenger, when so served, of such notice or order, shall be sufficient proof that such notice or order was duly served at the time when the same would reach the said address in the ordinary course of the post, or at the date at which such notice or order was left

at such address in the case of delivering by messenger.

59. That whenever a notice or order shall be lodged in the office of the Commissioners for the purpose of being served, if the application is in England, or in any colony in the West Indies within which communication by post is established, and be intended for places within such communication, the person lodging the same shall at the same time bring in and lodge as many copies of such notice or order as such person shall require to be served; and shall also, at the same time, bring in and lodge in the office as many covers or envelopes, with a sufficient postage stamp affixed on each, as may be necessary for the purpose of transmitting such copies free by post, and upon which envelopes or covers shall be legibly written, by the party bringing in the same, the address of the parties respectively on whom such copies are to be served; and it shall be the duty of the officer to compare such copies with the notice, and to correct the same when necessary, and also to compare the address on each cover or envelope with the address mentioned at the foot of such original notice, and to see that the same is correct. And that all notices to be served through the notice office shall be lodged in such office before the hour of two o'clock on the day upon which it is required that the same shall be sent, and that the notice clerk himself, or some other of the sworn clerks of the Court, shall deliver into the post, office copies of the different notices, properly addressed as before mentioned, previous to the usual time for closing the post-office for receipt of letters to be dispatched by the next practicable post; and such shall enter in a book to be kept for that purpose a memorandum or minute of his having posted such notices; and there shall be indorsed at the foot or on the back of every notice or order that shall be so brought into the notice office the name and address of every person upon whom it is required that such notice or order shall be served, and if an attorney, the name of the party for whom he is concerned.

60. That whenever a notice or order shall be lodged in the notice office for the purpose of being served within any colony within which no internal communication by post is established, or for places not comprehended in such communication, the person bringing

such notice or notices for delivery by messenger shall tender to the Provost-Marshal within such colony, or other officer locally appointed for such purpose, the amount that becomes due for the delivery of the same, including mileage, under and by virtue of the table of fees authorised by the Commissioners to be demanded and taken in such behalf, and that, in respect of the payment for personal service of such notice or orders in the manner herein provided, all the provisions with respect to such notices contained in the preceding rules shall be applicable to the several last-mentioned notices.

61. That whenever the Commissioners shall appoint any person to act in the nature of a guardian or next friend, to protect the rights of an infant, idiot, lunatic, or married woman, in any matter depending before them, the order made by the Commissioners to that effect shall be served upon such person or his lawful attorney, and all notices and orders subsequently served upon such person shall be deemed to have been duly served upon the party whose interests such person has been so appointed to protect; but it shall be competent for any person interested, or claiming to be interested, to apply to the Commissioners to rescind or vary the order appointing such guardian or next friend, or to have some other person appointed in his place.

62. That when any person claiming to be interested shall desire to be served with notice of the proceedings in any matter, he shall be at liberty to enter an appearance in the form to the effect following:—

“ *C. D.* appears in this matter [stating the title of the matter] for the purpose of being served with notice of all proceedings therein. Dated this
day of 185 .”

And such notice must be signed by the party himself, or his attorney, and some place stated therein where notices are to be served on him or on his attorney; and thereupon the party entering such appearance shall be entitled, unless the Commissioners shall think fit otherwise to direct, to be served with notice of all proceedings in the matter, and to appear thereon, until he shall by notice declare that he withdraws such appearance: but the costs occasioned by and consequent on entering such appearance shall be paid

by the party entering the same, unless the Commissioners shall otherwise direct.

63. That the Commissioners shall from time to time examine the state of each matter, and the proceedings which may have taken place since such last examination; and if any matter shall appear not to have been prosecuted with due diligence, they shall require the party having the carriage thereof to explain the reason of such neglect or delay, and if such reason shall not appear satisfactory, they shall be at liberty to order the carriage of such matter to be transferred to some other party interested in such matter, who shall undertake to prosecute the same with due diligence, and shall order the costs occasioned by such transfer to be paid by the party guilty of such delay; and shall order all papers and documents relating to the proceedings in such matter, which were in the custody, power, or procurement of the petitioner or party having the carriage of the proceeding, or his attorney, to be handed over to such other party, or lodged in Court, as the Commissioners shall direct; and no petition shall be withdrawn without the leave of the Commissioners.

64. That every petitioner shall be at liberty, until an order shall be made upon his petition, to amend the same as often as he may be advised, but after any order shall be made upon the petition no other amendment shall be made in any petition without the leave of the Court; and in all cases of amendment the material facts, the subject-matter of the amendment so sought to be made, shall be verified by affidavits.

65. That any party introducing any scandalous, prolix, or impertinent matter into any petition, affidavit, or other document, shall pay the costs incident to such misconduct, and all such scandalous, prolix, and impertinent matter shall be expunged at the expense of such party.

66. That whenever any married woman is under the provisions of the 50th section of the Act treated as a feme sole, she shall be subject to examination by the Commissioners or such other persons as they shall from time to time appoint, separate and apart from her husband, with reference to her assent to any proceedings under this Act which require her assent for their validity.

Examination.

67. That all examinations before the Commissioners, or before any examiner, shall be *vivá voce*, unless the Commissioners in any special case shall otherwise direct.

68. That whenever any witness shall be examined otherwise than *vivá voce*, be shall be examined upon interrogatories, in such form and subject to such directions as the Commissioners shall from time to time deem expedient.

69. That the Commissioners, if they shall think fit, on the application of any party, shall make an order for the examination of any witness out of Great Britain and Ireland, or out of any West Indian colony within which the matter is carried on, before a person to be mentioned in such order; and the expense of such order, and of executing the same, shall be in the discretion of the Commissioners; and the examination and cross-examination of such witnesses shall be subject to the rules applicable to the examination of a witness in Great Britain and Ireland, unless the Commissioners shall otherwise direct.

70. That all parties claiming to be interested in any matter before the Commissioners, and all witnesses, shall be bound to answer all lawful questions; and in the event of such parties or witnesses not fully or fairly answering the same, whether upon *vivá voce* examination or upon interrogatories, they shall be deemed guilty of a contempt of Court.

71. That any party interested in any manner shall be at liberty to examine any other party interested therein, upon such personal interrogatories as the Commissioners shall approve of, and such examination shall take place within such time as the Commissioners shall appoint; and the examination of any party on personal interrogatories shall be conducted in the same manner as the examination of a witness before an examiner.

Affidavits.

72. That whenever any affidavit shall be made before the Commissioners, or before any person whom they shall authorise to take the same, such affidavit or affirmation shall not be returned to the party, but shall be filed in the proper office of the Court.

73. That no affidavit shall be received in which there shall appear to be either interlineation or erasure, unless such interlineation or erasure be noticed in the jurat of such affidavit; and the time when and the place where every affidavit is sworn shall be stated in the jurat thereof.

74. That all affidavits, answers, and other proceedings that could be read and relied upon in any of the superior courts of law and equity may be read and relied upon before the Commissioners, subject to all just exceptions; and that copies thereof, purporting to be attested by the proper officer, shall be considered as *prima facie* evidence thereof.

75. That the Commissioners shall not be bound to reject any affidavit by reason of any irregularity in the heading or the jurat thereof, or by reason of non-compliance with any of the preceding rules.

Orders.

76. That in case of disobedience of any order made by the Commissioners, a writ of attachment shall issue against the party so in default or disobeying the order of the Court; and all sheriffs and other officers charged with the execution of like writs issuing out of the High Court of Chancery in England, or the Supreme Court of Judicature within any West Indian colony, shall be bound duly to execute the same.

77. That the Commissioners shall, in case they think fit, in order to enforce obedience to their orders, cause a writ of sequestration to issue against any party in default: and such writ of sequestration shall be executed in like manner as writs of sequestration issuing out of the High Court of Chancery in England, or the Court of Chancery within any West Indian colony, may now be executed.

Costs.

78. That all costs incurred in proceedings before the Commissioners or in relation thereto, shall be taxable upon the requisition of any party (without any order referring the same for taxation), by such officer of the Court as the Commissioners shall from time to time appoint for that purpose; and it shall be the duty of such officer, if any difficulty shall arise upon the taxation of such costs, to consult the Commis-

sioners in regard thereto : and it shall be lawful for any party dissatisfied with such taxation to apply to the Commissioners by way of appeal from such taxation ; but unless notice of such application shall be lodged for service within two days after such costs shall be certified by the officer appointed to tax the same, the taxation thereof shall be conclusive upon all parties, unless the Commissioners, upon special grounds, shall otherwise order.

79. That the officer from time to time appointed to tax costs shall be at liberty to tax costs incurred in proceedings before the Commissioners, or in relation thereto, between attorney and client, without any rule or order for that purpose, and it shall be his duty so to do, upon the requisition of the client.

80. That in all cases of costs, whether between party and party, or attorney and client, it shall be competent for the party against whom such costs are claimed to offer by notice a sum in gross in lieu of such costs ; and if the party entitled to such costs shall agree to accept of such sum, the officer appointed for the taxation of costs shall certify the sum specified in such notice as the sum at which he has ascertained such costs ; but in case the party entitled to such costs shall refuse to agree to such notice, and shall thereby render it necessary to have such costs taxed, and the same shall be taxed to less than the sum so offered by such notice, the party entitled to such costs shall be charged with the expenses of such taxation, and the same shall be ascertained by the officer and deducted from the amount of such costs ; or an office rule may be obtained for the payment of the same, in case the sum due on such costs shall not be sufficient to cover the amount of such expenses.

81. That in any case in which the Court shall award costs to any party it shall be optional with the Court either to refer the costs to be taxed, or by the order to direct payment of a sum in gross in lieu of taxed costs, and also to direct by and to whom such sum in gross shall be paid.

82. That in any case in which costs are directed to be paid by any order, and the same shall be subsequently taxed or ascertained, the party entitled to such costs may, upon production of the said order and the officer's certificate of the amount thereof, have an office rule entered for the payment of the same.

83. That all bills of costs, whether between attorney and client, or party and party, when taxed, shall be retained in the office, and at the end of every term all such bills of costs taxed since the previous term shall be bound up in one or more volumes, with proper indexes, and to that end the costs for taxation shall be written on post paper, bookwise, with a sufficient margin; and in taxing any subsequent costs in the same cause or matter, regard shall be had to the preceding bills, so as to ascertain that none of the items charged were included in any previous bill; but no inspection shall be given of any bills of costs lodged in the office between attorney and client, except to the attorney or client, or their respective agents, without the special order of the Court.

84. That on the taxation of costs no sum shall be allowed for the attendance of counsel and a reference before a Commissioner, unless such Commissioner shall have entered in his book his approbation of the attendance of such counsel.

Money and Stock.

85. That when any stock shall stand in the Bank of England to the credit of the Commissioners, the Governor and Company of the Bank of England shall from time to time receive the dividends arising therefrom, and furnish to the Commissioners a schedule, signed by the proper officer of the Bank of England, containing all sums of money received by them for such dividends, specifying in what manner and account each sum is received.

86. That the Governor and Company of the Bank of England shall not transfer stock or pay money standing to the credit of any matter, without an order of the Court under their seal, and signed by one of the Commissioners.

87. That in order to provide against the accumulation of accounts for sums under 6*d.*, in all cases where a fractional part of 6*d.* may occur in dividing sums in cash or stock, or may remain after payment out of all the other funds as the sole balance, the Commissioners may pay or transfer the same, not exceeding 6*d.*, to the parties, in such manner as shall appear most convenient for closing finally such account; and that where an allocation or order shall be made for

any fraction under 1*d.*, the Commissioners may draw without regard to such fraction.

88. That in any case in which an order shall direct the dividends of stock to be invested from time to time, the officer of the Court shall give a schedule and notice thereof to the broker, who shall accordingly invest such dividends at the end of such half year, deducting therefrom his lawful commission, and thereupon the Commissioners shall draw in favour of such broker for the sum so invested.

89. That the broker, in figuring valuations of stock under any money order, shall not charge more than 5*s.* for the first valuation, and 2*s.* for every subsequent valuation.

90. That in any case in which any stock shall have been allocated to, and afterwards ordered to be transferred to any person, the Commissioners shall draw in his favour for the dividends (if any) received subsequent to such allocation.

91. That whenever an order shall be made for the purchase of stock with money standing to the credit of the Commissioners, the price shall not be paid to the broker until he shall have transferred to the Commissioners stock equal in value to the money to be invested, deducting his lawful commission, and shall have produced the certificate of the proper officer of the Bank of England to that effect, unless the Commissioners shall under special circumstances otherwise direct.

92. That whenever an order shall be made for the sale of stock standing in the names of the Commissioners, the same shall not be transferred until the broker shall have lodged in the Bank, to the credit of the Commissioners, the price thereof, deducting his lawful commission, and shall have produced the certificate of the proper officer of the Bank of England to that effect, unless the Commissioners shall under special circumstances otherwise direct.

EDMUND PHIPPS.

FREDERIC ROGERS.

Laid before her Majesty in Council the sixth day of May, 1857.

FORMS AND DIRECTIONS.

FORMS AND DIRECTIONS for facilitating proceedings under the West Indian Incumbered Estates Act, 17 & 18 Vic., c. 117, issued under the authority of the 19th section of the said Act, by the Honourable Edmund Phipps, Q.C., and Sir Frederic Rogers, Bart., Commissioners.

All proceedings under the Act shall be entitled in the following form:—

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (*name of colony*).

In the matter of the estate of A.B. owner.

The petition by which proceedings are commenced, and which requires no personal attendance before the Commissioners in the first instance, may be in the following form, with such modifications as circumstances may require.

FORM OF PETITION FOR SALE BY OWNER (subject to variation according to circumstances).

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (*St. Vincent*).

Form of petition for sale by owner.

In the matter of the estate of John Smith, of _____ in _____ } To the Commissioners for Sale of Incumbered Estates in the West Indies.

The Petition of JOHN SMITH, an owner of land, Sheweth,

That he is owner as *tenant in fee* of the premises described in the first part of the first schedule herunto annexed, under the title set forth in the abstract accompanying this petition, and that he has been in possession and receipt of the rents and profits of the whole thereof, under his said title, since the 1st day of March, 1825.

That he is owner, as *tenant for his life*, of the premises described in the second part of the first schedule

hereunto annexed, under the title set forth in the abstract accompanying this petition, and that on the 4th day of May, 1830, he entered into possession and receipt of the rents and profits thereof, and he is still in receipt of every portion thereof, *except (here specify exceptions if any)*.

That C. D., of _____ entered into receipt of the rents and profits of _____ under (*here state any special circumstances*) on the 3rd day of May, 1845, and has continued in the receipt thereof to this date; and that E. F. entered into receipt of the rents and profits of _____ on the 3rd day of June, 1847, under the mortgage in the abstract stated, bearing date the 1st day of March, 1842, and is still in receipt thereof.

That the said premises are subject to the several incumbrances set forth in the second schedule hereunto annexed, *and that there is not any suit or matter depending in any Court of Equity either in England or in the West Indies, in relation to the premises or any part thereof, or in relation to the receipt of the rents and profits thereof, to the knowledge of your petitioner.*

Your petitioner therefore prays that the premises, or such part thereof as the Commissioners shall direct, may be sold, and that your petitioner may have such further relief in the premises as to the Commissioners shall seem meet.

The petition must be accompanied by a schedule of the property of which a sale is sought, stating,— Schedule of property.

1st. The name, if any, of the plantation or estate, the nature of the interest sought to be disposed of, or, in the case of incorporeal hereditaments, a full and complete description thereof.

2nd. The rent, or quit-rent, if any, to which the property, or any part thereof, is liable, and the rent days, and, if held by lease, the particulars thereof and the rent days, and the circumstances of the property with regard to renewals.

3rd. The arrears, if any, of rent or quit-rent, due up to and including the last rent day.

4th. The tenants' names.

5th. The date and description of the instrument, if any, under which each tenant holds, and the tenure of each tenant, and whether any timber or trees,

sugar or other plantations on the land, machinery, or plant, belong to the tenant, or are claimed by him.

6th. The extent and description of each holding or farm.

7th. The annual rent.

8th. The rent days.

9th. The arrears due up to the last rent day, inclusive.

10th. Observations relating, for example, to the character and capabilities of the estate proposed to be sold, to the liability of the estate to any arrear of rent charge, or to any charge for money borrowed under the West Indian Loan Acts, or to any other special matter affecting the premises proposed to be sold or the charges on the same.

The petition must also be accompanied by a schedule of all charges and incumbrances whatever affecting the premises, or any part thereof, specifying,—

1st. The date of each incumbrance.

2nd. The name of the party entitled to the same.

3rd. The name of the party creating the charge, and the manner in which such charge was created, whether by will, settlement, mortgage, judgment, or otherwise.

4th. The sum due for principal on each incumbrance.

5th. The annual rate of interest payable in respect of each charge or incumbrance; the day or days of payment of the same, if there be any specially appointed for that purpose; and the amount due for interest up to some certain day to be named in the petition; or in the case of an annuity, the arrears up to and including the period of payment next before the presenting of the petition.

6th. Any special circumstances, such, for example, as any proviso respecting the rate of interest, or the terms on which an incumbrance may be paid off, or an annuity redeemed, or any exemption of a portion of the premises from the whole or any portion of the incumbrance, or the liability of any other property, or of any person, to pay any incumbrance, whether in exoneration of the premises or otherwise, distinguishing whether the estate proposed to be sold is primarily liable to the incumbrance, or only by way of guarantee or suretyship.

The petition must also be accompanied by copies of the decrees and reports made in any pending suit in Chancery affecting the premises or any of the incumbrances thereon.

Copies of
Chancery
proceedings.

The petition must also be accompanied by a concise abstract of the title to the premises, and by an affidavit by the petitioner or his attorney that he has read the petition, including the schedules and abstract of title accompanying the same, and that he believes the said petition and schedules to be true, and the abstract to be a correct and fair abstract of petitioner's title, and that he does not know or believe that any petition in the same matter has been presented before the Local Commissioners in the colony wherein the estate is situate, or before the Commissioners in England, as the case may be.

Abstract of
title and affi-
davit.

The deponent must sign the petition and each schedule and the abstract of title.

FORM OF PETITION FOR SALE BY INCUMBRANCER
(liable to variation, according to circumstances).¹

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (*St. Vincent*).

In the matter of the estate of John Smith, of _____ in _____

{ To the Commissioners
for Sale of Incumbered Estates in the
West Indies.

Form of petition by incumbrancer.

The petition of JOHN JONES, an incumbrancer on land,

Sheweth,

That, on the 3rd day of May, 1836, Frederic Smith, of _____, in _____, merchant, since deceased, conveyed the lands mentioned in the first schedule thereto, *in fee*, to one William Johnson and his heirs, by way of mortgage, to secure the sum of £10,000, with interest, at the rate of 5 per cent. per annum, payable 25th March and 29th September.

That the said Frederic Smith had such an estate or power over the premises as enabled him to execute the said mortgage.

That the said mortgage is now vested in your petitioner, as appears by the abstract of title herewith lodged.

¹ For another form, see post p. 141

That John Smith, of _____, is now the owner of said lands, as *tenant for life* thereof.

That on the *4th day of June, 1846*, W. B. filed his bill in the High Court of Chancery in England against the said John Smith and others, for the purpose (among other things) of enforcing a charge of £5,000 against part of the said premises.

That by a decree made in the said cause, dated the *8th day of May, 1847* (a copy of which is annexed hereto), certain inquiries and accounts were directed.

That the master to whom the said cause was referred made his report, dated the *3rd day of July, 1848* (a copy of which is annexed hereto), and the said report has been duly confirmed.

That no further proceedings have been taken in the said suit.

That, save as aforesaid, there is no suit or matter depending in any Court of Equity, either in England or the West Indies, in relation to the said premises or any part thereof, to the knowledge of your petitioner.

That your petitioner has been informed that Mary, the wife of Thomas Jones, claims to have some interest in the said premises, and that a legacy of £50, charged on the said premises, is vested in Henry Jones, a lunatic, and that the said Thomas Jones is the guardian or committee of the said Henry Jones.

That, save as aforesaid, your petitioner has no reason to believe that any person interested in the said premises is under any disability.

That the sum of £11,500 is now due on foot of the said mortgage, together with interest, since the *29th of September, 1857*, the day up to which interest is computed.

That your petitioner is *not* the first incumbrancer on the said premises, and that he has in a schedule hereto annexed set forth the other incumbrances affecting the premises, and in whom the same are vested, according to the best of his knowledge, information, and belief.

Your petitioner, therefore, prays that the premises, or such part thereof as the Commissioners shall direct, may be sold, and that your petitioner may have such further relief in the premises as to the Commissioners shall seem meet.

The petition must be accompanied by a schedule of the property of which a sale is sought, which should be in the same form as the schedule to a petition by an owner, so far as the information of the petitioner shall enable him to give the same; and also a schedule of the incumbrances affecting the premises, so far as the petitioner is acquainted with the same, and copies of the decrees and reports made in any pending suit in Chancery. The petition must also be accompanied by an abstract of the petitioner's title, and by an affidavit by the petitioner or his solicitor, similar to that required to accompany the petition of an owner.

General directions.

The deponent must sign the petition, and each schedule, and the abstract of title.

Where an application for sale of land has been dismissed with costs by a competent tribunal, in a petition by the same party for a sale of such land, or any part thereof, he must state that such costs have been paid, and when, and to whom, and verify such statement by affidavit.

Where application has been dismissed.

Every petition for sale, whether by an owner or incumbrancer, must state whether there is any suit or matter depending in any Court of Equity in relation to the premises, or any part thereof, either in the United Kingdom or in any West Indian colony, and if there be any such suit or matter, must state in what Court such suit or matter is depending, and a short description of the title thereof, and what stage such suit or matter has reached, and what declarations, inquiries, or proofs have been made under any decree or order in such suit or matter, and whether the petitioner, or any other person to his knowledge, objects to the decree, or to any finding or proof under it, as erroneous or proper to be reconsidered.

Petition should state all particulars as to existing Chancery causes.

It is not necessary to set out in the petition the contents of documents of which abstracts or copies are sent, further than they tend to show the petitioner's title to a sale.

It should appear by every petition whether the petitioner knows or has reason to believe that any person interested in the premises is an infant, idiot, lunatic, or married woman, and if so, he should state, as far as he is able, the names and addresses of the guardian, committee, or husband, as the case may be.

Persons under disability.

Every petition presented otherwise than through the

Address of petitioner.

agency of an attorney, must state at the foot thereof the address required by the 8th General Rule.

Private offers for purchase.

In case an agreement for sale by private contract of any lands ordered to be sold by the Commissioners shall be entered into with any person before the premises are put up to auction, the parties will be at liberty to apply by motion to the Commissioners that such sale shall be confirmed, and a conveyance executed to the purchaser; but such motion must be grounded on an affidavit by the party making the application, showing that such sale would be beneficial to all parties, and stating that no consideration has been directly or indirectly given or agreed to be given for the premises, except the purchase money stated in such affidavit.

Further directions as to schedules to petition.

In setting forth the schedules of tenancies, leases, agreements for leases, and incumbrances, the petitioner must include all such as he knows or believes to be claimed by any person, although he may dispute the validity of such claim; and in the column of observations he may state how far he disputes such claim.

Abstract of title.

In preparing an abstract of title, either to land or to an incumbrance, accompanying a petition by an owner or incumbrancer, it is not necessary to go back earlier than the earliest deed creating an incumbrance still affecting the premises. But as a perfect abstract of title will be required in the course of the proceedings, it may in some cases expedite the distribution of the purchase money if a complete abstract is presented in the first instance. This is left to the discretion of the petitioner.

The attorney presenting a petition for an incumbrancer ought to be prepared with the documents showing the existence of the incumbrance and of the petitioner's title thereto, as the Commissioners may require to inspect them before fiatting a petition.

With respect to furnishing a complete abstract of the title to the estate in the first instance, this, when the petitioner is an incumbrancer, may not always be in his power, and in any case when there is reason to suppose that a perfect abstract is in existence, and may afterwards be produced under the orders of the Commissioners, it will not be advisable to incur unnecessary expenses in the first instance.

Documents showing title to incumbrance required.

The expense of obtaining the approval of the title by an experienced conveyancer will be allowed in the costs at a rate proportional to the circumstances of the title; but in order to obtain the allowance of such costs it will be necessary that the conveyancer's attention should be specially directed to the following points:—

Opinion of
conveyancer.

1. Whether (independently of the Incumbered Estates Act) the abstract discloses a good title to the land ordered to be sold, and, if not, what steps are necessary to make a good title.
2. In whom does the abstract show the title to be vested.
3. What charges appear by the abstract to affect the land, and in what order of priority.
4. In whom such charges appear to be vested.
5. What searches will be necessary, both as to title and incumbrances, and both in England and in the West Indies.

As evidencing a special attention to each of these points the conveyancer should be requested to sign a certificate in the following form, subject to such modifications as the circumstances of each case may require,—more particularly with reference to any colony in which any variations from the English laws prevail:—

I have examined the foregoing title, have directed the necessary searches, and, subject thereto, I approve of the title as satisfactory to a purchaser, independent of the indefeasible nature of the conveyance by the Commissioners.

(Signed) (*Name of Conveyancer.*)

If important searches, not directed by counsel, are afterwards found necessary, or defects in the title discovered by the Commissioners, the expenses of counsel's opinion in such cases, even if the searches are satisfactory, and the defects are supplied and a sale effected, may be disallowed in the costs.

All incumbrances appearing by the searches, all registered or re-registered judgments, recognisances, Crown bonds, &c., should be entered in the schedule of incumbrances, after first examining to see whether the judgments are satisfied.

Where the Commissioners make a conditional order

Notice of
position.

for sale, any party wishing to oppose the same must lodge the notice required by the 11th General Rule, which notice may be in the following form:—

In the matter of the Estate) A. B. (*owner*), or
of A. B., owner. } D.F. (*a third party*),
shows cause against the conditional order for sale made in this matter on the *24th day of April, 1858*, and the said A. B. will rely upon (*here state grounds shortly*) and upon an affidavit this day filed in the proper office, and the documents therein referred to, as cause against the said conditional order being made absolute.

Dated this *3rd day of May, 1858*.

To _____, solicitor.

Grounds of
notice.

It may save expense to parties to add that the grounds to be referred to in the above notice, and the affidavits, &c., in support thereof, are substantially restricted to those specified in the 32nd section of the Act, and that if the opposition is on the part of an owner with reference to the proportion between the clear annual receipts of his estate and the annual charges upon it by incumbrancers, he will be required to append to his notice all the particulars required by that section, and to state, as near as he can, how much has been received during each of the seven years immediately preceding the presentation of the petition, for the rent and arrears of rent of all the premises subject to the incumbrance of the petitioner, and how much has become due during that period for rent-charges or other charges incident to the land, and how much he claims on account of his own beneficial occupation.

Carriage of
sale.

If the owner, not being the petitioner, desires to have the carriage of the sale, he should make application immediately on the order being made absolute. In deciding upon such application, the Commissioners will be guided by what appears to them most for the advantage of all parties: therefore any circumstances which bear upon that consideration, such as the probability of a surplus for the owner, the possession of the title deeds, or of an abstract of title and searches, the position of an incumbrancer who is the last that can be shown to have a reasonable prospect of having all or a portion of his claim discharged, or any other circumstances tending to the economical and successful

conduct of the sale, may be brought before the Commissioners.

At any subsequent stage of the proceedings, a renewed or original motion for transfer of the carriage of the proceedings may be made on the ground of delay; but this motion should be preceded by notice to the carrying solicitor, and by demand of a statement from him of the progress of proceedings for a sale, and will be always subject to the discretion of the Commissioners as to allowance of costs, and in no case will the carriage of the proceedings be given or transferred to a party other than the original petitioner, unless upon an undertaking from such party to hold himself within the same restrictions as to bidding at the sale without leave of the Commissioners as are expressed with regard to the original petitioner in the 40th section of the Act.

The carrying solicitor, when an absolute order for sale is made, must give the notices required by the 20th General Rule, which may be in the following form :¹—

Notice to claimants.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (*St. Vincent*)

NOTICE TO CLAIMANTS AND INCUMBRANCERS.

In the matter of the Estate } Whereas by an absolute order, bearing
of A. B., owner, {
date the 4th day of July, 1858, it was ordered that the following lands should be sold, namely (*state lands*), situate in the parish of _____ in the island of *St. Vincent*, being the estate of the owner in this matter.

Now all persons claiming estates or interests in the said premises, or who may object to such order, are hereby informed that the Commissioners will hear any application which any such person may bring before them, on notice, to be served at the office at 8, *Park Street, Westminster*, within *three months* from the date thereof.

And all persons claiming charges or incumbrances on the said premises, or any part thereof, are required to lodge a brief statement of the particulars thereof at the said office within *four months* from the date hereof, and also to send their respective addresses, in

¹ For the form of notice now in use, see post, p. 151.

order that they may receive notice at what time and in what manner their claims should be established.

Dated 10th day of July, 1858. R. J. C.,
Solicitor having the carriage } Secretary.
of the order for sale. }

This notice should in all cases be served on the owners of all the adjoining lands.

Notice to
produce
deeds, &c.

He must then, within three days after obtaining the absolute order for sale, when the parties to be served reside in England, and by the next practicable packet if in the West Indies, serve a notice upon the owner, or the person upon whom the service of the conditional order was substituted, the receiver over the property (if any), and on such parties as have entered appearances by their attorneys, and on such other persons as he may believe to possess the required information, calling upon them within ten days from the service of such notice to furnish such information and to produce to the Commissioners such deeds, leases, counterparts of leases, maps, surveys, statements of title, and other documents relating to the lands to be sold or to the charges thereon, as may be in their custody or power, and stating that if in case of refusal, and in consequence thereof, an application to the Commissioners becomes necessary, such notice will be made use of, in order to charge the party so refusing with the costs of such application; which notice may be in the following form:—

In the Court of Commissioners for Sale of Incumbered Estates in the West Indies (*St. Vincent*).

In the matter of the Estate } You are hereby re-
of A. B., owner. } quired within *ten days*
from the service of this notice upon you, in pursuance of the General Order of the Court, dated the 1st day of May, 1857, to inform me in writing whether there are any, and if so, what deeds, leases, counterparts of leases, maps, surveys, rentals, statements of title, or other documents in your custody or power, relating to the lands in the petition in this matter mentioned, which have been ordered to be sold, or to the charges thereon.

The lands aforesaid are (*here state lands*).

And you are further required, within the same period, to lodge all such documents *in this Court* in pursuance of the said General Order.

¹ For the form now in use, see *post*, p. 152.

And you are hereby apprised that in case of refusal or neglect to comply with this notice by you, if you have in your custody or power any such documents, upon any application to the Commissioners which may in consequence thereof become necessary, this notice will be used to charge you with the costs of such application.

Dated this 10th day of July, 1858.

Solicitor having the carriage)
of sale.)

Where the notice has to be served in the West Indies, it must be enclosed in a prepaid cover directed to the Secretary of the Local Commissioner, who will thereupon cause it to be served by the Provost Marshal; and the form of notice should contain, instead of the words in italics, the words "in the Court of the Local Commissioner," whose secretary will give a receipt for the deeds and other documents and transmit the same to the secretary or other officer in England appointed to receive them.

The deeds or other documents must be brought in a tin box, and will, when lodged in the Court of the Local Commissioner, be examined and sealed by the secretary before they are transmitted to England.

On the absolute order for sale being made, an order of course may be obtained requiring the owner to lodge all documents relating to the title of the estate and all leases and agreements or counterparts. The owner will generally save expense to his estate by rendering any maps, surveys, or rentals available for the purposes of the sale.

When the title deeds are in the possession of an incumbrancer, an order may be obtained in chambers, on affidavit, to lodge the same; the Commissioners, however, will not generally require the deposit of the instruments constituting the security, as they may be produced on proving the incumbrance, and in special cases, such as that of the deeds referring to other properties not the subject of petition, certified copies from the Registry-office, where a registry exists, may be sufficient.

Any party depositing deeds in the office may lodge the same subject to his lien (if any), and in such case the lien when established will be treated as a charge on the proceeds of the estate, and will rank in point of interest and priority as a charge of the date when the lien accrued. The existence and amount of the

General directions as to title-deeds, &c.

Deeds subject to lien.

lien must be established when the schedule of incumbrances is settled, but the Commissioners will not regard any claim of lien unless the deeds are lodged according to their order.

Deeds in possession of solicitor.

Where a solicitor has in his possession abstracts of title, copies of deeds, rentals, maps, surveys, or other documents prepared by him, for which he has not been paid, he may make them available for the purpose of the sale, by lodging the same in the office, and giving notice thereof to the party having the carriage of the proceedings; and, so far as their production saves expense to the estate, he will be entitled to apply to the Commissioners for an order that he may be allowed the amount as costs in the matter, independent of any lien.

Schedule of tenancies.

It will further be the business of the solicitor having the carriage of the sale to prepare a schedule of the tenancies, if any, on the estate, for which purpose he may issue preliminary notices, if any complication is likely to arise; if the facts are within his own knowledge he may content himself with giving final notice of the recognised tenancies by publication or otherwise. If a survey or valuation be deemed desirable by him, this should be the subject of application to the Commissioner in chambers. The propriety of dividing into lots, and what these should be, may be made matter of consultation with the owner or persons locally acquainted with the premises.

Survey.

During the preparations for the sale all questions upon tenancy should be finally determined, and the abstract of title, with the opinion of counsel (if any has been taken), be laid before the Commissioner.

The same accuracy and completeness will be required in such abstract as in the case of an ordinary transfer of property, it being no part of the intention of the Act under which the Commissioners convey, to supply any inherent defect of title, but that their conveyance should, with reference to incumbrances, and upon any other point, whether of jurisdiction or otherwise, be, when once executed, indefeasible, and independent of any previous evidence of title.

Such a result, however desirable and advantageous, naturally requires extreme caution in the preliminary steps to avoid injustice.

For a similar reason, care, diligence, and accuracy will be required in completing the schedule of incum-

brances, as no surplus will be paid over to the owner till the Commissioners are satisfied that all incumbrances are discharged, nor any payment on account made to an early incumbrancer (except upon terms) unless it be free from doubt that he is either the first in order, or that the funds (after deduction of expenses) are amply sufficient to satisfy the claims of those prior to him.

The conveyance, which has to be prepared by the purchaser, may (subject to such variations as the nature of the property and of the title may require) be in the following form, and under section 35 can be executed by one Commissioner alone :¹—

FORM OF CONVEYANCE.

I, E. P., one of the Commissioners for sale of incumbered estates in the West Indies, under the authority of an Act passed in the 17th and 18th years of the reign of Queen Victoria, intituled "An Act to facilitate the sale and transfer of incumbered estates in the West Indies," in consideration of the sum of £10,000 by E. F., of, &c., paid into the *Bank of England* to the account of the said Commissioners to the credit of the estate of John Smith, of _____, do grant unto the said E. F. all [*here describe the premises*], to hold the same unto the said E. F., his heirs and assigns for ever (*or in the case of a chattel interest, his executors, administrators, and assigns for the unexpired term created by a certain lease, describing the lease*), subject to (*here specify, where the sale is made subject thereto, the tenancies, leases, under-leases, or charges, either by reference to a schedule or otherwise.*)

In witness whereof, I, the said E. P., have hereunto set my hand, and the seal of the said Commissioners, this *1st day of June*, in the year of our Lord, 1858.

E. P.

(*Seal of the Commission.*)

Any intermediate investment of the money will be subject to the special direction of the Commissioners with reference to the circumstances of each case. Before the costs of the carrying solicitor, in respect of the sale, are repaid from the purchase-money, they will have to be taxed and allowed as directed by the Commissioners. They will, however, form the first item in the final schedule of incumbrances.

¹ For other forms of conveyance see post, p. 160.

Final notice.

Before the schedule of incumbrances is confirmed final notice to claimants must be given. This final notice, which is independent of the notice to claimants directed by the 20th General Rule, is not to be given till a copy of a complete schedule of incumbrances, approved by the Commissioners, has been filed with the officer of the Court, and may be in the following form :—

FINAL NOTICE TO CLAIMANTS.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (*St Vincent*),

In the matter of the estate of A. B., owner.

All parties interested are hereby required to take notice that the Commissioners have sold (*here specify property*), and that the draft schedule of incumbrances is now lodged in this Court, where it may be inspected free of charge; and if any person have a claim not therein inserted and admitted, or have any objection to the said schedule, either on account of the amount or priority of any charge therein mentioned as due to him or any other person, or because he claims any lien on the purchase-money or otherwise, notice is hereby given that a statement, duly verified, of the particulars of such claim, objection, or lien must be lodged by such person in this Court on or before the *1st day of March* next; and that on the *15th day of March* next, at the hour of *eleven a.m.*, the Chief Commissioner will give directions for the final settlement of the said schedule. And all persons interested are hereby further required to take notice, that within the time aforesaid any person may file an objection to anything contained in the said schedule.

Dated this *1st day of February*, 1858.

R. J. C.,

Secretary.

H. B., Solicitor.

Allocation of funds.

The allocation of the funds will follow after the Commissioners have passed the schedule of incumbrances, and any costs subsequent to those already inserted therein may, when taxed, be paid as post costs; a sum may be allowed for these in the statements preparatory to allocation.

Before the final allocation of the funds from the

¹ For the form of notice now in use see post, p. 169.

purchase-money, it will, of course, be important that all claims, if any, from purchasers, tenants, or others, for compensation thereout in respect of errors or mis-descriptions, should be brought forward.

REGINALD J. CUST,
Secretary.

Office of the West Indian Incumbered Estates
Commission, 8, Park-street, Westminster.
August 10, 1857.

ADDITIONAL FORMS.

1. Petition for sale.
2. Affidavit verifying Petition.
3. Conditional Order for sale.
4. Affidavit of service.
5. Notice of opposition.
6. Absolute Order for sale.
7. Notice of appearance.
8. Order appointing Receiver.
9. Recognisance of Receiver.
10. Certificate of security.
11. Order discharging Receiver.
12. Notice to Claimants.
13. Notice to produce deeds.
14. Claim.
15. Affidavit identifying lands.
16. Affidavit of service and posting of Notice.
17. Proposal for sale.
18. Order on proposal.
19. Acknowledgment of bidding.
20. Order declaring purchaser.
21. Order declaring purchaser and for credit.
22. Order for possession.
23. Conveyance (No. 1).
24. Conveyance (No. 2).
25. Conveyance (No. 3.)
26. Draft Schedule of Incumbrances.
27. Final Notice to Claimants.
28. Petition for Partition.
29. Petition for Exchange.

(1.) PETITION FOR SALE

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (St. Vincent).

In the matter of the estate of John McFee, late of the Island of St. Vincent, Esquire, deceased.

To the Commissioners for Sale of Incumbered Estates in the West Indies.

The Petition of John Grant and Robert Grant, of, &c., Incumbrancers on Land.

Sheweth as follows,

1. On the the 6th day of December, 1860, the above-named John McFee conveyed the lands described in the first schedule hereto to your petitioners in fee, by way of mortgage, (subject as therein mentioned) to secure the payment on demand of the balance which for the time being should be due from the said John McFee, his executors or administrators, to your petitioners, on the account current between them, together with interest on such balance from the day of such demand until the actual payment thereof at £5 per cent. per annum; and in such mortgage was contained a declaration that the total amount to be ultimately recoverable thereunder should not exceed £8,000.

2. The said John McFee had such an estate or power over the premises as enabled him to execute the said mortgage.

3. The said mortgage is still vested in your petitioners.

4. The said John McFee is dead, and the ownership of the said lands, subject to the incumbrances thereon, is now vested in the devisees, heir-at-law, or other legal representatives of the said John McFee.

5. The amount now due on foot of the said mortgage for principal and interest exceeds the sum of £9,000.

6. As to part of the mortgaged premises your petitioners are not the first incumbrancers thereon, and they have in the second schedule hereto set forth the other incumbrances affecting the premises, and the names of the parties in whom the same are vested, according to the best of their knowledge, information, and belief.

7. There is no suit or matter depending in any court of equity, either in England or in the West Indies, in

relation to the said premises, or any part thereof, to the knowledge of your petitioners.

8. With the exception of the wife of John D'Oyly, of St. Vincent, merchant, who may take an interest under the will of the said John McFee, your petitioners have no reason to believe that any person interested in the said premises is under any disability.

Your petitioners therefore pray that the lands described in the said first schedule, or such part thereof as the Commissioners shall direct, may be sold, and that your petitioners may have such further relief in the premises as to the Commissioners shall seem meet.

R. W. T.,

Solicitor to the petitioners.

The first schedule above referred to—

The second schedule above referred to—

(2.) AFFIDAVIT VERIFYING PETITION.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (St. Vincent).

In the matter of the estate of John McFee, late of the Island of St. Vincent, Esquire, deceased.

I, Richard Walter Tweedie, one of the firm of Messrs. Boys and Tweedies, of 6, Ely-place, Holborn, in the county of Middlesex, solicitors acting for John Grant and Robert Grant, of &c., make oath and say as follows:—

1. I have read the petition annexed hereto, purporting to be the petition presented in the above matter by the above-named John Grant and Robert Grant, for the sale of certain estates in the Island of St. Vincent, in the West Indies, viz., Mount Greenan, one undivided moiety of Sans Souci, Pennistons, Jambou Vale, Escape, Peruvian Vale, and Henry's Vale; and I have also read the schedules written at the foot of the said petition, and the abstract of title marked A, and now produced and shown to me.

2. From the knowledge acquired by me, as one of the solicitors of the said petitioners, and from reference to the title deeds referred to on the said abstract, or some of them, I believe the said petition and schedules to be true, and that the abstract above

referred to is a correct and fair abstract of the title of the said John Grant and Robert Grant, so far as the same is shown therein.

3. I am not aware that any petition in this matter has been presented before the Local Commissioners in the colony wherein the said estates are situate, or before the Commissioners in England.

Sworn, &c.

(3.) CONDITIONAL ORDER FOR SALE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (St. Vincent).

In the matter of the estate of John McFee, deceased ;
Exparte John Grant and Robert Grant, petitioners.

The 20th day of November, 1863.

Conditional Order for Sale.

Whereas a petition was presented to the Commissioners, on the 12th day of November, 1863, by John Grant and Robert Grant, praying that the premises described in the first schedule thereto, or such part thereof as the Commissioners should direct, might be sold : whereupon, and upon reading the said petition, the schedules annexed thereto, the abstract of title filed therewith, and the affidavit of Richard Walter Tweedie, verifying the same, it is ordered by Henry James Stonor, Esquire, Chief Commissioner, that the lands, plantations, and premises described in the said first schedule (that is to say)—an estate called Mount Greenan, situate in the parish of Charlotte, in the Island of St. Vincent ; one undivided moiety of an estate called Sans Souci, situate in the said parish of Charlotte ; a plantation or estate called Pennistons, situate in the parish of St. Andrew, in the said island ; a plantation or estate called Jambou Vale, situate in the said parish of Charlotte ; one undivided third part of a brick store at Coubiamarou Bay, and one undivided sixth part of a store in the town of Calliaqua, heretofore respectively used by the said Jambou Vale estate for storing produce and goods ; a plantation or estate called Escape, situate in the parish of St. George, in the said island ; a plantation or estate called Peruvian Vale, situate in the said parish of Charlotte ; and a plantation or estate called Henry's Vale, situate in the said

parish of Charlotte ; together with all lands annexed or appurtenant thereto—be sold at the Office of the Commissioners, 8, Park-street, Westminster, on Tuesday, the 7th day of June, 1864, or on such subsequent day as the Commissioners shall direct, for the purpose of discharging the incumbrances thereon, unless cause be shown to the contrary before the 20th day of February, 1864 : and it is further ordered that office copies of this order be served forthwith on the heirs or devisees of John McFee, and that this order be duly advertised.

REGINALD J. CUST,
Secretary. (L.S.)

NOTE—Any person desirous of showing cause against this order must lodge at the Office of the Commissioners, 8, Park-street, Westminster, before the 20th day of February, 1864, a notice stating briefly the grounds on which he relies, verified by affidavit, and the same will be considered and disposed of on or after the 25th day of February, 1864, as the Commissioners may direct.

(4.) AFFIDAVIT OF SERVICE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the Estate of
 Thomas Macfarlane Owner
Ex parte James Ferguson Petitioner.

I, John Mackenzie, of &c., make oath and say that I did, on Monday, the 15th day of February, 1864, personally serve the above named Thomas Macfarlane with an office copy of the conditional order for Sale made in this matter on the 1st day of January, 1864, by delivering to and leaving with the said Thomas Macfarlane, in person, at his residence, at &c., such office copy ; which office copy was stamped with the seal of the Commissioners for sale of Incumbered Estates in the West Indies.

Sworn, &c.

(5.) NOTICE OF OPPOSITION.

In the Court of the Commissioners for Sale of
Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Thomas

Macfarlane. Owner.

Ex parte James Ferguson Petitioner.

Thomas Macfarlane, of, &c., the above named
owner, shows cause against the conditional order for
sale made in this matter on the 1st day of January,
1864, and will rely on the following grounds:—

1. That the amount of the yearly interest and
annual charges payable out of the income of the
estate comprised in the said conditional order does
not exceed one-half of the net yearly income of
such estate.

2. That it would be unjust and inexpedient that a
sale should be made of the above estate.

Dated this 1st day of March, 1864.

TURNBULL and Co.,
Lincoln's Inn,
Solicitors for the above-named
Thomas Macfarlane.

To Messrs. Bull and Co,
Solicitors for the above-named
James Ferguson.

(6.) ABSOLUTE ORDER FOR SALE.

In the Court of the Commissioners for Sale of
Incumbered Estates in the West Indies (St.
Vincent.)

In the matter of the estate of John McFee, deceased,
Ex parte John Grant and Robert Grant, petitioners.

The 14th day of April, 1864.

Absolute Order for Sale.

Whereas, by a conditional order, dated the 20th
day of November, 1863, it was ordered that the lands
hereinafter mentioned should be sold, unless cause
should be shown to the contrary before the 20th
day of February, 1864; and that office copies of the
said conditional order should be served on the heirs

or devisees of John McFee, and that the said order should be duly advertised: upon the motion of the petitioner, and upon reading the said conditional order, and the affidavit of T. W. Durant, filed the 11th day of April, 1864; and the said conditional order having been duly advertised, and no cause having been shown to the contrary; it is ordered by Henry James Stonor, Esquire, Chief Commissioner, that the said conditional order be made absolute, and that the lands, plantations, and premisses therein set forth (that is to say):—An estate called Mount Greenan, situate in the parish of Charlotte, in the Island of St. Vincent; one undivided moiety of an estate called Sans Souci, situate in the said parish of Charlotte; a plantation or estate called Pennistons, situate in the parish of St. Andrew, in the said island; a plantation or estate called Jambou Vale, situate in the said parish of Charlotte; one undivided third part of a brick store at Coubiamarou Bay, and one undivided sixth part of a store in the town of Calliaqua, heretofore respectively used by the said Jambou Vale Estate for storing produce and goods; a plantation or estate called Escape, situate in the parish of St. George, in the said island; a plantation or estate called Peruvian Vale, situate in the said parish of Charlotte; and a plantation or estate called Henry's Vale, situate in the said parish of Charlotte; together with all lands annexed or appurtenant thereto—be sold for the purpose of discharging the incumbrances thereon.

REGINALD J. CUST,
Secretary. (L.S.)

(7.) NOTICE OF APPEARANCE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Tobago.)

In the matter of the estate of John

Vernon Owner.

Ex parte Henry Fitzpatrick Petitioner.

I, William Vernon, of, &c., claim to be interested in this matter, as being entitled to a sum of £1,000

charged on the above estate by a mortgage, dated the 4th day of May, 1845, and made between, &c.; and I desire that notice of all proceedings in the said matter may be sent to me at the above address, and I undertake to pay the costs occasioned by the filing of this notice on receiving an order to that effect from the Commissioners.

WILLIAM VERNON.

(8.) ORDER APPOINTING RECEIVER.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Edward

Hyde Clarke Owner.

Exparte George Rochfort Clarke Petitioner.

The 24th day of February, 1863.

Upon the application of the petitioner, and notice of this application having been duly served upon Edward Hyde Clarke, the owner, and upon reading the absolute order for sale in this matter, dated the 5th day of December, 1862, and an affidavit of Henry Douglas, filed this day: upon James Du Buisson, of, &c., first giving security, it is ordered by Henry James Stonor, Esquire, Chief Commissioner, that he be appointed receiver and manager of the plantation or sugar work called Swanswick, in the parish of Trelawney, in the island of Jamaica; and it is ordered that the said James Du Buisson do from time to time pass his accounts, and pay the balance which shall be certified to be due from him into the Bank of England, to the account of the Commissioners, to the credit of this matter.

REGINALD J. CUST,
Secretary. (L.S.)

(9.) RECOGNISANCE OF RECEIVER.

The Chief Commissioner has approved of and allowed this recognisance.

REGINALD J. CUST, Secretary.

Know all men by these presents, that we, James Du Buisson, of, &c., Henry Rucker, of, &c., and John Cleverly, of, &c., do acknowledge ourselves, and each of us doth acknowledge himself to owe to Henry James Stonor, Esquire, Chief Commissioner for Sale of Incumbered Estates in the West Indies, the sum of £4,000, to be paid to the said Henry James Stonor, his executors, administrators, or assigns; and unless we do pay the same, we, the said James Du Buisson, Henry Rucker, and John Cleverly, are willing, and do grant, and each of us is willing, and doth grant for himself, his heirs, executors, and administrators, that the said sum of £4,000 shall be levied, recovered, and received of and from us, and each of us, and of and from all and singular the lands, tenements, and hereditaments, goods, and chattels, of us and each of us, wheresoever the same shall or may be found. Sealed with our seals. Dated this 4th day of March, 1863.

Whereas, by an order of the Commissioners for Sale of Incumbered Estates in the West Indies, made in the matter of the estate of Edward Hyde Clarke, owner, *ex parte* George Rochfort Clarke, petitioner, and dated the 24th day of February, 1863, it was ordered that the above bounden James Du Buisson (first giving security) should be appointed receiver of the rents, profits, and produce of the Swanswick estate, in the island of Jamaica, in the West Indies, in the said order mentioned; and whereas the said Henry James Stonor, as such Chief Commissioner as aforesaid, hath approved of the said James Du Buisson as a proper person to be such receiver, and hath approved of the above bounden Henry Rucker and John Cleverly, as sureties for the said James Du Buisson, and hath also approved of the above written recognisance with the under-written condition, as a proper security to be entered into by the said James Du Buisson, Henry Rucker, and John Cleverly, pursuant to the said order: now, the condition of the above written re-

cognisance is such, that if the said James Du Buisson do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents, profits, and produce of the said Swanswick estate, at such periods as the said Chief Commissioner shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him, as the said Chief Commissioner shall direct, then the above recognisance shall be void and of non effect, otherwise the same is to be and remain in full force and virtue.

JAMES DU BUISSON (L.S.)

HENRY RUCKER (L.S.)

JOHN CLEVERLY (L.S.)

Taken and acknowledged by the above named James Du Buisson, Henry Rucker, and John Cleverly, at No. 24, Laurence Pountney-lane, in the city of London, this 4th day of March, 1863, before

T. B. TOWSE,

A London Commissioner to Administer Oaths in Chancery.

(10.) CERTIFICATE OF SECURITY.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Edward

Hyde Clarke Owner.

Exparte George Rochfort Clarke Petitioner.

In pursuance of the directions given to me by the Chief Commissioner, I hereby certify that in pursuance of the order in this matter, dated the 24th day of February, 1863, James Du Buisson, of, &c., the person who upon his first giving security is by the said order appointed receiver and manager of the plantation or sugar work called Swanswick, situate in the parish of Trelawney, in the island of Jamaica, has given security to the satisfaction of the Chief Commissioner, and has entered into a recognisance together with Henry Rucker, of, &c., and John Cleverly, of, &c., as his sureties, dated the 4th day of March, 1863, which has been approved of by the

Chief Commissioner; in testimony of which I have signed an allowance in the margin thereof, and such recognisance has been duly enrolled.

Dated this 11th day of March, 1863.

REGINALD J. CUST,
Secretary.

Approved—

HENRY JAMES STONOR,
Chief Commissioner.

(11.) ORDER DISCHARGING RECEIVER.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Edward

Hyde Clarke Owner.

Exparte George Rochfort Clarke Petitioner.

The 26th day of November, 1863.

On the application of George Rochfort Clarke, the petitioner, and also the purchaser of the Swanswick estate, and James Du Buisson, the receiver and manager of the said estate, appointed by this Court, having duly passed his account as such receiver and manager, it is ordered by Henry James Stonor, Esquire, Chief Commissioner, that the said James Du Buisson be discharged from being such receiver and manager, and that the recognisance, dated the 4th day of March, 1863, entered into by the said receiver and Henry Rucker, of, &c., and John Cleverly, of, &c., his sureties, may be vacated, and it is further ordered that the said James Du Buisson do deliver up possession of the said estate to the said George Rochfort Clarke, as the purchaser thereof, or to his lawful attorney or agent.

REGINALD J. CUST,
Secretary. (L.S.)

NOTICE TO CLAIMANTS.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Edward

Clarke Owner.]

Ex parte Robert Hawthorn and William

George Shedden Petitioners.

Notice to Claimants, Tenants, and Incumbrancers.

Whereas, by an absolute Order, dated the 3rd day of August, 1864, it was ordered that the following lands should be sold (that is to say):—

A sugar plantation or estate called Hyde, situate in the parish of Trelawney, in the island of Jamaica.

Now all persons claiming any estates or interests, or any charges or incumbrances, in or upon the said lands, or any part thereof, are required to take notice of the said order, and to lodge statements, duly verified, of the particulars of their respective claims at the Office of the Commissioners, No. 8, Park-street, Westminster, on or before the 27th day of October, 1864.

REGINALD J. CUST,
Secretary.

Dated this 5th day of August, 1864.

Particulars of the lands comprised in the above order may be obtained at the Office of the Commissioners above-mentioned; or on application to Messrs. Freshfields and Newman, No. 5, Bank-buildings, London; or to Messrs. Hill, Airey, and Fitzgerald, solicitors, Kingston, Jamaica.

FRESHFIELDS and NEWMAN,
5, Bank-buildings, London,
Solicitors having the carriage of the sale.

(13.) NOTICE TO PRODUCE DEEDS.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (St. Vincent).

In the matter of the estate of W. S.

Greatheed	Owner.
<i>Ex parte</i> S. Burgess	Petitioner.

Whereas, by an absolute order, dated the 30th day of March, 1858, it was ordered that the following lands should be sold (that is to say):—

The Arnos Vale Estate, situate in the parish of St. George, in the island of St. Vincent.

In pursuance of the General Order of the Court, dated the 1st day of May, 1857, you are hereby required, within fourteen days from the service of this notice upon you, to inform me in writing whether there are in your possession, custody, or power, any, and if so, what deeds, leases, counterparts of leases, maps, surveys, rentals, abstracts of title, or other documents relating to the said lands or to the charges thereon: and you are further required, within the same period, to lodge all such documents at the Office of the Court at 8, Park-street, Westminster.

The time occupied in the transmission of mails between England and the West Indies is not included in the above period.

And you are hereby apprised that if, in case of your refusal or neglect to comply with this notice, an application to the Commissioners should become necessary, this notice will be used to charge you with the costs of such application.

Dated this 16th day of April, 1858.

CHARLES LEVER,
1, Frederick's-place, Old Jewry,
Solicitor having the carriage of the sale.

(14.) CLAIM.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica.)

In the matter of the estate of Rebecca
Hiatt and John Pink (deceased) . . .
Ex parte James Davidson Petitioner.

The claim of James Davidson, of, &c.

The said James Davidson claims the sum of £7,000 for principal, and the sum of £1,300 for interest, making together the sum of £8,300, to be due to him as assignee of the balance due to the executors of A. R. Scott, deceased, late consignee of the estates of the said Rebecca Hiatt and John Pink, under an order of the High Court of Chancery in England, made in a suit of *Pink v. Pink*, dated, &c., and an indenture of assignment, dated, &c.

TUKE and VALPY,

17, Lincoln's Inn Fields,

Solicitors for the above-named James Davidson.

(15.) AFFIDAVIT IDENTIFYING LANDS.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Thomas
Macfarlane Owner.
Ex parte James Ferguson Petitioner.

I, Henry Macdowal, of &c., surveyor, make oath, and say as follows:—

1. I am well acquainted with the Hope estate, situate in the parish of St. Thomas-in-the-East, in the island of Jamaica, having been resident in the neighbourhood for the last fifteen years, and having practised as a surveyor and valuer.
2. The plan marked A, and now produced and shown to me, is a correct representation of the said Hope Estate, and correctly shows the situation, extent, and boundaries thereof.
3. The said plan has been prepared from former

- plans and surveys, which have been, until recently, in the possession or custody of Thomas Macfarlane.
4. To the best of my knowledge, information, and belief, the whole of the lands delineated in the said plan, and surrounded by a red line (except as hereinafter mentioned), are comprised and included in the said Hope estate, and have been held and occupied as part thereof for the space of at least forty years.
 5. The boundaries of the said Hope estate, as shown by the said red line, are clearly defined, and well known, and are correctly delineated by the said red line. To the best of my knowledge, information, and belief none of the said boundaries are in dispute.
 6. Part of the said estate was in the year 1840 sold and conveyed in fee simple to labourers residing on the estate: the lands so sold are distinguished on the said plan by being coloured blue, and surrounded by a deep blue line.
 7. The chapel marked B on the said plan is used by a Wesleyan congregation, and is held by the minister of such congregation as tenant from year to year at a rent of five shillings.
 8. The mansion house and garden marked C on the said plan is in the occupation of William Thompson under a lease, of which 10 years are unexpired.
 9. The names of the principal adjoining estates, and of the proprietors or managers thereof, are set forth in the first schedule hereto.
 10. The names of the lessees, tenants, and occupiers of the said estate, with the terms of their tenancy or occupation, are set forth in the second schedule hereto.
 11. The said Hope estate was previously to the year 1840 in the possession or occupation of Henry Macfarlane, who died in or about that year. Since his death it has been, and now is, in the possession or occupation of his son, the said Thomas Macfarlane.

Sworn, &c.

(16.) AFFIDAVIT OF SERVICE AND POSTING OF NOTICES.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Thomas

Macfarlane Owner.
Exparte James Ferguson Petitioner.

I, Henry Mackenzie, of, &c., make oath and say as follows :—

1. I am well acquainted with the Hope estate, situate in the parish of St. Thomas-in-the-East, in the island of Jamaica, having been manager thereof for the space of twenty years.

2. The names of the principal adjoining estates, and of the proprietors or managers thereof, are set forth in the first schedule hereto.

3. The names of the principal lessees, tenants, and occupiers of the said estate are set forth in the second schedule hereto.

4. I did, on the 1st day of June, 1864, serve the following parties (*naming them*) with a copy of the Notice to Claimants, marked A., and now produced and shown to me (*state mode of service*).

5. I did, on or about the 1st day of June, 1864, cause to be posted or affixed in conspicuous places on or near the said Hope estate printed copies of the said Notice to Claimants in manner following (that is to say):—One copy on the gate post leading to the principal mansion on the above estate; one copy at or near the post-office in the adjoining village of Hopetown; one copy at the police station on the said estate; one copy on the boiling house on the said estate; and one copy near the labourers' cottages on the said estate.

Sworn, &c.

(17.) PROPOSAL FOR SALE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (St. Christopher).

In the matter of the estate of A. Lomax
and E. C. Byam . . . Owners.
Ex parte Mary Plummer . . . Petitioner.

The proposal of the petitioner for fixing the reserved biddings, for leave to bid, and for fixing the amount of deposit on the sale of the lands mentioned in the absolute order for sale hereinafter referred to,

Sheweth as follows,

1. On the 8th day of April, 1864, an absolute order was made in this matter for the sale of the plantation or estate called the Hermitage estate, situate in Cayon quarter, in the island of St. Christopher.

2. By the affidavit of T. B. Hardtman, filed, &c., it appears that the marketable value of the above estate, after allowing for the claims of T. Swanston, as lessee thereof, under the covenants and provisions of his lease, but free from all other incumbrances, does not exceed the sum of £4,800.

3. There is due to the petitioner, as first mortgagee of the said estate, the sum of £3,333 for principal and £2,335 for interest; and there is also due to the petitioner as third mortgagee of the said estate the sum of £2,221 for principal, and £726 for interest.

4. There is due to the second mortgagee upon the said estate the sum of £2,000 for principal, and a further sum for interest.

The said petitioner therefore applies—

1. That the reserved bidding for the said estate, subject to the lease to the said T. Swanston and to his claim, under the covenants and provisions therein contained, may be fixed at the sum of £4,000.

2. That the petitioner may be at liberty to bid on her own account.

3. That having regard to the amount due to the petitioner in respect of her incumbrances she may, if

declared the purchaser, be excused from paying into Court more than £10 per cent. of the purchase money.

LIFFE, RUSSELL, AND LIFFE,
2, Bedford Row, London,
Solicitors for the petitioner.

(18.) ORDER ON PROPOSAL FOR SALE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of Edward

Hyde Clarke Owner.

Exparte George Rochfort Clarke Petitioner.

The 9th day of June, 1863.

Upon the application of the petitioner, and upon hearing Mr. Steward, solicitor for the petitioner, and upon reading the proposal of the said petitioner, filed the 15th day of May, 1863, and the several affidavits of, &c., filed the same day, it is ordered by Henry James Stonor, Esq., Chief Commissioner, that the plantation or sugar work called Swanswick, situate in the parish of Trelawney, in the island of Jamaica, be sold by public auction in one lot, at the Court of the Commissioners, on the 23rd day of June, 1863; and that the said petitioner be at liberty to bid at such sale, and in case the said petitioner shall be declared to be the purchaser of the said estate, it is further ordered that the said petitioner appearing to be an incumbrancer on the said estate, do have credit for nine-tenths of his purchase-money until the final settlement of the draft schedule of incumbrances upon the said estate, or until the further order of the Commissioners; the said petitioner undertaking to pay the whole of such purchase-money into the Bank of England at any time on being required to do so by the order of the Commissioners.

REGINALD J. CUST,
Secretary. (L.S.)

(19.) ACKNOWLEDGMENT OF BIDDING.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of James Kennedy, deceased.

Exparte Augustus Scott Petitioner.

I, the undersigned, do hereby acknowledge that I have bid the sum of £10,000 for Lot 1 in the particulars of sale in the above matter, dated the 1st day of September, 1864.

JOHN FRASER,
Cheapside, London.

1st November, 1864.

(Confirmed).

HENRY JAMES STONOR,
Chief Commissioner.

(20.) ORDER DECLARING PURCHASER.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of James Kennedy (deceased).

Exparte Augustus Scott Petitioner.

The 1st day of November, 1864.

At a sale by auction, held this day, before Henry James Stonor, Esq., Chief Commissioner, it is ordered that John Fraser, of, &c., be declared to be the purchaser of the Mount Kennedy estate, situate in the parish of St. Ann, in the island of Jamaica, at the price of £10,000, and that he do, within fourteen days of the date hereof, pay the sum of £2,500 as a deposit, and on or before the 1st day of February, 1865, the further sum of £7,500, being the balance of the said purchase-money, into the Bank of England, to the account of the Commissioners.

REGINALD J. CUST,
Secretary. (L.S.)

(21.) ORDER DECLARING PURCHASER AND FOR CREDIT.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the Estate of Edward

Hyde Clarke Owner.

Exparte George Rochfort Clarke Petitioner.

The 23rd day of June, 1863.

At a sale by auction, held this day, before Henry James Stonor, Esq., Chief Commissioner, it is ordered that George Rochfort Clarke, of, &c., the petitioner in this matter, be declared to be the purchaser of the plantation or sugar work called Swanswick, situate in the parish of Trelawney, in the island of Jamaica, at the price of £2,300, and that he do, within fourteen days of the date hereof, pay the sum of £230 as a deposit into the Bank of England to the account of the Commissioners, and it is further ordered that the said George Rochfort Clarke do have credit for the balance of the said purchase money until the further order of the Commissioners.

REGINALD J. CUST,
Secretary. (L.S.)

(22.) ORDER FOR POSSESSION.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of James Kennedy, deceased.

Exparte Augustus Scott Petitioner.

The 1st day of December, 1864.

Whereas, by an order, dated the 1st day of November, 1864, it was ordered that John Fraser, of, &c., be declared to be the purchaser of the lands known as the Mount Kennedy estate, in the parish of St. Ann, in the island of Jamaica, whereupon, and upon the application of the said John Fraser, and upon reading the

said order and the certificate of the Bank of England, dated the 28th day of November, 1864, and filed the same day, it is ordered by Henry James Stonor, Esq., Chief Commissioner, that the said John Fraser do receive possession of the said lands, and that Henry Kennedy and all other persons having or claiming the possession or occupation of the said lands or any part thereof, do immediately, on sight hereof, deliver up possession of the said lands, and of every part thereof, to the said John Fraser, or to his lawful attorney or agent.

REGINALD J. CUST,
Secretary. (L.S.)

Note.—If by reason of the neglect or refusal of any person to obey this order, further proceedings shall be necessary to enforce the same, such person will be liable to pay the whole costs of such proceedings, and also to punishment for contempt of the above-named Court.

(23.) CONVEYANCE, NO. 1.

I, Henry James Stonor, Esq., Chief Commissioner for Sale of Incumbered Estates in the West Indies, under the authority of the West Indian Incumbered Estates Acts, 1854, 1858, 1862, and 1864, and in consideration of £5,000 by Charles Fitzgerald, of, &c., paid into the Bank of England to the account of the Commissioners for Sale of Incumbered Estates in the West Indies, do grant unto the said Charles Fitzgerald, his heirs and assigns, all those lands called Rosebank, situate in the parish of Vere, in the county of Middlesex, in the said island of Jamaica, containing 300 acres, or thereabouts, which said lands are delineated and described in the plan thereof drawn in the margin of these presents and are therein coloured red, and included in a red line, Together with all messuages, erections, and buildings thereon, and all appurtenances thereto, To hold the same unto the said Charles Fitzgerald, his heirs and assigns, subject to the estate and interest (if any) of Henry Thompson, his executors, adminis-

and assigns, under or in respect of his yearly or other tenancy of the said lands.

In witness whereof, I, the said Henry James Stonor, have hereunto set my hand and the seal of the said Commissioners, this 10th day of December, 1864.

HENRY JAMES STONOR,
Chief Commissioner.

(Witnesses.)

I hereby certify that the above-mentioned sum of £5,000 was paid into the Bank of England to the account above-mentioned previously to the date of these presents.

HENRY JAMES STONOR,
Chief Commissioner.

(24.) CONVEYANCE, No. 2.

I, Henry James Stonor, Esq., Chief Commissioner for Sale of Incumbered Estates in the West Indies, under the authority of the West Indian Incumbered Estates Acts, 1854, 1858, 1862, 1864, and in consideration of £10,000 by John Fraser, of &c., paid into the Bank of England to the account of the Commissioners for Sale of Incumbered Estates in the West Indies, do grant unto the said John Fraser, his heirs and assigns, all those lands called the Mount Kennedy estate, situate in the parish of St. Ann, in the county of Middlesex, in the island of Jamaica, containing 400 acres, or thereabouts, which said lands are delineated and described in the plan thereof drawn in the margin of these presents, and are therein coloured red, and included in a red line, Together with all messuages, erections, and buildings thereon, and all appurtenances thereto, and together with a right of way for all purposes along the line coloured blue in the said plan, from the point A on the public road to the point B on the sea shore, To hold the same unto the said John Fraser, his heirs and assigns, subject as to such parts of the said lands (if any) as were on the 9th day of February, 1864, held by any persons as tenants or occupiers

under any leases or agreements, to such leases or agreements respectively.

In witness whereof, I, the said Henry James Stonor, have hereunto set my hand and the seal of the said Commissioners this 13th day of December, 1864.

HENRY JAMES STONOR,
Chief Commissioner. (L.S.)

(Witnesses.)

I hereby certify that the above-mentioned sum of £10,000 was paid into the Bank of England to the account above-mentioned previously to the date of these presents.

HENRY JAMES STONOR,
Chief Commissioner.

(25.) CONVEYANCE, No. 3.

Whereas James Nicholson, of, &c., has been declared by the Commissioners for Sale of Incumbered Estates in the West Indies to be the purchaser of the lands hereinafter described for the sum of £4,500, and has paid into the Bank of England, to the account of the Commissioners, the sum of £450, in part of the said sum of £4,500, leaving a balance of £4,050 unpaid in respect thereof; and whereas it has been ascertained by the Commissioners that there is due to the said James Nicholson on account of incumbrances formerly affecting the said lands, an amount exceeding the above balance of £4,050, and the Commissioners have authorised the said James Nicholson to retain the said sum of £4,050, in part payment of the said amount so due to him as aforesaid, and in full discharge of the balance due to the Commissioners in respect of the said sum of £4,500 as aforesaid: Now, I, Henry James Stonor, Esq., Chief Commissioner for Sale of Incumbered Estates in the West Indies, under the authority of the West Indian Incumbered Estates Acts, 1854, 1858, 1862, and 1864, and in consideration of the said sum of £450 so paid into the Bank of England as aforesaid, and of the said sum of £4,050 so retained as aforesaid, which sums together make up the said sum of £4,500, do

grant to the said James Nicholson, his heirs and assigns, all those lands called the Old Hall estate, situate in the parish of Clarendon, in the county of Middlesex, in the island of Jamaica, containing 1,000 acres, or thereabouts, which said lands are delineated and described in the plan thereof drawn in the margin of these presents, and are therein coloured red, and included in a red line, Together with all messuages, erections, and buildings thereon, and all appurtenances thereto, To hold the same unto the said James Nicholson, his heirs and assigns.

In witness whereof, I, the said Henry James Stonor have hereunto set my hand and the seal of the said Commissioners this 1st day of January, 1865.

HENRY JAMES STONOR,
Chief Commissioner. (L.S.)

(Witnesses.)

I certify that the above-mentioned sum of £450 was paid into the Bank of England to the account above-mentioned on the 28th day of April, 1863, and that the sum of £4,050 was authorised by the Commissioners to be retained by the above-named James Nicholson in part discharge of moneys ascertained to be due to him on account of incumbrances formerly affecting the lands hereby granted; the said sums of £450 and £4,050, making together the sum of £4,500, being the purchase-money of the said lands.

HENRY JAMES STONOR,
Chief Commissioner.

26. DRAFT SCHEDULE

In the Court of the Commissioners for Sale of

In the Matter of the Estate of Thomas

Roberts Owner.

Ex parte William Graham Petitioner.

No	Names of Claimants.	Nature of Claim.	Amount of Claim.
1		Commission on sale for £8,000.	
2	The Petitioners.	Any costs of petition, sale, and distribution which may be allowed in priority to the following claims.	£80
3	George Harding (Receiver of the Court.)	Balance due to claimant on his account as Receiver.	£150
4	James Ford and Co.	Balance due to claimants as consignees.	£400
5	William Thompson.	Balance of principal and interest charged on the estate by an Indenture of mortgage, dated the 4th day of June, 1830.	£4000
6	George Harris.	Principal sum charged on the estate by an Indenture of mortgage, dated the 8th day of July, 1844.	£3000
7	Jane Stevens.	Interest from Arrears of an annuity under an Indenture of settlement, dated the 4th day of Jan., 1825.	£150
8	Hannah Green.	Interest from Value of annuity of £40, colonial currency, under the will of John Styles, dated the 4th day of June, 1817.	£120
9	Henry Smith and others.	Legacies under the same will.	£350

OF INCUMBRANCES.

Incumbered Estates in the West Indies (Jamaica).

Draft Schedule of Incumbrances affecting the Harewood estate, situate in the parish of Trelawney, in the island of Jamaica, sold in this matter on the 2nd day of August, 1864, for £8,000.—Amount of Deposit paid into the Bank of England, £2,000.

Total due.	Amount paid.	Total paid.	Date of payment.	Observations.

1st October, 1864.

REGINALD J. CUST,
Secretary.

(27.) FINAL NOTICE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Jamaica).

In the matter of the estate of T. H.

Barritt Owner.

Exparte Sir J. R. Reid, Bart., J.

Irving, and J. Milligan Petitioners.

FINAL NOTICE TO CLAIMANTS.

This is to give notice, that the Commissioners have sold the following lands (that is to say) :—

Mile Gully, Spitzbergen, and Harmans, or Harmony Run, in the parish of Manchester, in the island of Jamaica, Garbrand Hall and Mullett Hall, in the parish of St. Thomas-in-the-East, in the said island, and Pipes or Smiths Penn, Paradise, Blackwall, and Mumbies, in the parish of Vere, in the said island, all which lands formerly belonged to the above-named T. H. Barritt :

And that copies of the Draft Schedule of Incumbrances formerly affecting the said lands are now lying in the Office of the Commissioners at 8, Park-street, Westminster, and with the Secretary of the Local Commissioners at Spanish Town, in the said island, and that if any person has any claim not therein inserted, or if he object to the said draft schedule, either on account of the amount or the priority of any charge therein mentioned as due to him or to any other person or persons, or because he claims any lien on the purchase money, or for any other reason, he is required to lodge a full statement, duly verified, of the particulars of such claim, lien, or objection, at the Office of the Commissioners, at 8, Park-street, Westminster, on or before the 17th day of November, 1864, and to appear in this Court in person or by his counsel, solicitor, or attorney, in support of such claim or objection, on the 24th day of November, 1864, at eleven o'clock in the forenoon, or on such other day and hour as the Commissioners may appoint, when the said schedule will be finally settled.

REGINALD J. CUST, Secretary.

Dated this 12th day of August, 1864.

FRESHFIELDS AND NEWMAN,

5, Bank Buildings, London,

Solicitors having the carriage of the sale.

(28.) PETITION FOR PARTITION.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (St. Vincent.)

In the matter of the estate of H. W. Lindow.

The Petition of H. W. LINDOW, of, &c., an owner of land,

Sheweth as follows,

1. Your petitioner did, on the 25th day of May last, present his petition in this Court in the above matter, praying for a sale of one undivided moiety of the lands described in the schedule hereto.

2. Your petitioner is the owner of such undivided moiety of the said lands.

3. Proceedings in the said matter are still pending, but no sale has yet been made of the said undivided moiety.

4. James Crosby, of, &c., is owner as tenant for life under his marriage settlement, as your petitioner believes, of the other undivided moiety of the said lands, but the limitations of the said settlement are not further known to your petitioner.

5. Your petitioner is desirous that a partition should be made of the said lands before proceeding to a sale of his undivided moiety thereof.

Your petitioner therefore prays that a partition may be made of the lands described in the said schedule, and that your petitioner may have such further relief in the premises as to the Commissioners shall seem meet.

H. W. LINDOW.

(29.) PETITION FOR EXCHANGE.

In the Court of the Commissioners for Sale of Incumbered Estates in the West Indies (Antigua).

In the matter of the estate of Henry Brown.

To the Commissioners for Sale of Incumbered Estates in the West Indies.

The Petition of Henry Brown, &c., an owner of land, Sheweth, as follows,

1. James Cann, of, &c., did, on the 1st day of January, 1864, present his petition in this Court, in the matter of the estate of William Jones, praying for a sale of the lands described in the first schedule hereto.

2. On the 1st day of August, 1864, the said lands were sold under an order made by the Commissioners in the said matter, and your petitioner was the purchaser of the said lands.

3. On the 15th day of August, 1862, the said lands were duly conveyed by the Commissioners to your petitioner.

4. Your petitioner is owner of the said lands so conveyed to him, as tenant for life, under a settlement dated, &c.

5. Your petitioner has agreed with S. Green, of, &c., for an exchange of the said lands for the lands described in the second schedule hereto, whereof the said S. Green is owner.

6. The proposed exchange will be very beneficial to your petitioner, and to those entitled in remainder, as the lands described in the said first schedule are intermixed with other lands of the said S. Green; and the lands described in the said second schedule are adjacent to other lands, which are subject to the same limitations as the lands described in the said first schedule.

Your petitioner therefore prays that an exchange may be made of the said lands upon the terms hereinbefore mentioned, or upon such other terms as the Commissioners shall approve; and that your petitioner may have such further relief in the premises as to the Commissioners shall seem meet.

NAMES OF COLONIES

In which the West Indian Incumbered Estates Acts are in force, with the dates of the Orders in Council by which they were brought into operation, and of the Addresses of the Colonial Legislatures upon which such orders were founded :—

NAMES.	DATE OF ADDRESS.	DATE OF ORDER.
ST. VINCENT. .	15 July, 1856	2 February, 1857.
TOBAGO . . .	22 December, 1857	31 July, 1858.
VIRGIN ISLANDS	28 December, 1859	7 March, 1860.
ST. CHRISTOPHER	December, 1859	26 March, 1860.
JAMAICA . . .	4 March, 1861	26 June, 1861.
ANTIGUA . . .	October, 1864	1 November, 1864.

LOCAL ACTS.

ST. VINCENT.

(Order in Council, dated 2nd February, 1857.)

An Act to make Provision for carrying into execution, in the Island of Saint Vincent and its Dependencies, "The West Indian Incumbered Estates Act, 1854." (27th May, 1856.)

Preamble.

WHEREAS, by an Act of the Imperial Parliament, made and passed in the 18th year of the reign of her Most Gracious Majesty Queen Victoria, to be cited as "The West Indian Incumbered Estates Act, 1854," it is amongst other things enacted and provided, that her Majesty may, from time to time, by Order in Council, direct the said Act to come into operation in any of the colonies mentioned in the schedule to the said Act annexed, and that thereupon, but not otherwise, the same shall have the force of law in such colony: provided always, and it is thereby expressly declared, that no such Order in Council shall be made until the Legislature of such colony has presented an address to her Majesty, praying her Majesty to issue such order, and has also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of the salaries of the Local Commissioners, and of all such assistants, secretaries, clerks, messengers, and officers as may be appointed under the said Act in the said colony, and of such other expenses of carrying the said Act into execution as are thereinbefore directed to be provided for by the Legislature of the colony: and whereas the colony of St. Vincent is one of those named in the said schedule, but by reason of the impoverished state of the colony, with a diminished trade and revenue, it is unable to meet its present liabilities and expenditure, and a reduction in such expenditure, and in the emoluments of the present holders of office in the said colony, is in contemplation, and no fund exists or can be provided from which to

make provision out of the public revenue for payment of salaries of holders of offices to be created as contemplated by the said hereinbefore in part recited Act : and whereas the Legislature of this colony has, by an humble address, prayed her Most Gracious Majesty that she will be pleased to issue an Order in Council directing the said recited Act to come into operation within this her Majesty's island of St. Vincent : and whereas it is deemed absolutely necessary for the welfare of the colony that the provisions of the said recited Act should be operative in this island, and as the only means of obtaining the same, it is considered advisable that, in lieu of salaries which it is impossible to provide and pay from the public revenue, the Commissioner or Commissioners to be appointed under the said recited Act should be remunerated by fees to be paid by the suitors or persons prosecuting and defending or adopting proceedings under the said recited Act, and for that purpose seeking the intervention of the Commissioners under the same Act :

1. Be it therefore enacted by the Governor, Council, and Assembly of the Government of St. Vincent and its dependencies, that the Commissioners to be appointed in pursuance of the said recited Act in the colony of St. Vincent shall be entitled to have, receive, and take, in and as and for remuneration for the service and duties to be by him or them performed, such fees in respect of the business and duties to be performed under the said recited Act as shall be fixed and settled by the Commissioners in England under the 13th clause of the said recited Act, subject to such disallowance or alteration by the Legislature of this colony as is in and by the said last-mentioned clause of the said recited Act mentioned.

2. And be it enacted, that the Secretary of the Supreme Court of Judicature of this colony, or his lawful deputy, shall be the Secretary to the said Commissioners under the said recited Act, and the Provost-marshal or his lawful deputy shall be the sole executive officer of the said Commissioners for the service of all process to be issued by said Commissioners; and such Secretary and Provost-marshal respectively shall, in respect of the duties and service to be by them respectively performed, be entitled to have, receive, and take such fees as shall be fixed and settled by the Commissioner or Commissioners under the powers

Commissioners to be remunerated by fees instead of salaries.

in the said "West Indian Incumbered Estates Act, 1854" contained, subject to such disallowance or alteration as therein mentioned.

Fees established to be paid by suitors to persons thereto entitled.

3. And be it enacted that all such fees, when settled and approved as by the said recited Act is provided, shall be demandable by, and payable to, the respective persons to whom the same shall be awarded as remuneration for the services to be by them respectively performed, and shall be payable and paid by the suitors in the Court to be established under the said recited Act in this colony; and payment of all such fees shall and may be demanded by any person to whom the same are made payable before he shall be required to perform the duty or service in respect of which any such fee shall be payable: and if any person to whom any fee shall be so given under the provisions of this Act shall demand or take any greater or other fee, in respect of any service by him performed or required to be performed under the said recited Act, every such person shall be deemed guilty of a petty misdemeanour and of extortion, and shall be liable, on conviction before any police magistrate or any two justices of the peace, to forfeit and pay a penalty, not exceeding twenty pounds nor less than five pounds, and to make amends to the party aggrieved in treble the amount demanded; and the mode of procedure for the recovery and enforcement of such penalty and amends shall be according to the "Summary Procedure Act, 1853."

Schedule of fees to be exhibited publicly in office of person entitled thereto, and list of all fees payable under Act to be published in the Island Gazette and newspaper.

4. That every person to whom any fee shall be payable under the provisions of this Act, or the said recited Act, shall cause a list or schedule of all such fees to be publicly exhibited at all times in his office or place of business, under a penalty of five pounds, to be recovered as last aforesaid: and the Chief Commissioner for this Government, if more than one shall be appointed under the said recited Act, or the Commissioner if only one, shall cause a list of all fees authorised to be received by the Commissioner or Commissioners, and the officers acting under him or them, to be inserted at the public expense in the *Gazette* of the said island, and in the several newspapers of the said island, before any proceedings are had or taken in the court to be established in this colony under the said recited Act, and before any fee shall be demanded or become payable under the same.

5. That this Act shall not come into operation until her Majesty's pleasure thereon shall be signified and made known.

ST. VINCENT.

An Act to amend the West Indian Incumbered Estates Acts, 1854, 1858, and 1862. (6th June, 1863.)

WHEREAS the provisions contained in the West Indian Incumbered Estates Acts, 1854, 1858, and 1862, fail in accomplishing the beneficial objects that they were intended to attain under the peculiar circumstances affecting West India property, particularly its mode of cultivation, and the delay which often unavoidably occurs between the conditional order for sale and the sale, on account of the distance of the colonies from England; and whereas it is absolutely necessary that provisions should be made to protect estates against pillage and deterioration during the progress of the proceedings after the petition for sale hath been presented; Be it enacted by the Governor, Council, and Assembly of the said island of Saint Vincent and its dependencies as follows:—

Preamble

1. That whenever the Commissioners shall have made any conditional order for sale of any lands under these Acts, they shall have the same powers of appointing a receiver or receivers of such lands, or any part thereof, as the Court of Chancery in England has of appointing a receiver of the rents and profits of any lands within the jurisdiction of such Court in a suit relating to such lands; and the receiver or receivers so appointed shall from the date of such appointment have and possess all the powers, authorities, rights, and privileges, which receivers appointed by the Court of Chancery in England have in respect of the lands over which they are appointed receivers, subject to such general rules as the Commissioners in England shall from time to time make under the Principal Act.

Power to appoint receiver of lands after conditional order for sale.

2. Every receiver so appointed by the Commissioners shall give such security for the due performance of his office as the Commissioners shall require; and shall be entitled to such remuneration

Security by, and remuneration of receiver.

by salary, commission, or otherwise, as the Commissioners shall direct, subject to such general rules as the Commissioners in England shall from time to time make under the Principal Act; and the balance due to such receiver in respect of such salary, commission, or other remuneration in respect of such sums as he may have properly expended in the management and cultivation of such lands, shall be a charge on such lands in priority to all incumbrances thereon.

Proceedings to
obtain order
for receiver.

3. That it shall be open to any owner or incumbrancer to make application by petition to the Commissioners for the appointment of such receiver or receivers pursuant to the provisions of this Act; and that such petition shall state the grounds of such application, and be supported by affidavit in all its material facts, and if no opposition be made thereto, or being made it shall appear to the Commissioners insufficient, the Commissioners shall make such order therein as shall be just; and the costs on all such application shall be costs in the suit, and shall be the same as those allowed for like services performed in the Court of Chancery according to the docket of fees used in that Court, and the practice and proceedings on all such applications shall be according to the practice of the Court of Chancery until altered or varied by any order or orders made or to be made by the Commissioners in England.

Short title of
Act.

4. That this Act may for all purposes be cited as "The West Indian Incumbered Estates Amendment Act, 1863."

Construction
of West
Indian In-
cumbered
Estates Acts

5. "The West Indian Incumbered Estates Act, 1854," "The West Indian Incumbered Estates Act, 1858," "The West Indian Incumbered Estates Act, 1862," and this Act shall, so far as is consistent with the context and objects of such Acts, be construed as one Act.

TOBAGO.

(Order in Council, dated 31st July, 1858).

An Act for carrying into execution in Tobago "The West Indian Incumbered Estates Act, 1854." (13th January, 1858).

WHEREAS, by an Act of the Imperial Parliament, made and passed in the 18th year of the reign of her Most Gracious Majesty Queen Victoria, to be recited as "The West Indian Incumbered Estates Act, 1854," it is amongst other things enacted and provided that her Majesty may, from time to time, by Order in Council, direct the said Act to come into operation in any of the colonies mentioned in the schedule to the said Act annexed, and that thereupon, but not otherwise, the same should have the force of law in such colony; provided always, and it is thereby expressly declared, that no such Order in Council shall be made until the Legislature of such colony has presented an address to her Majesty praying her Majesty to issue such order, and has also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of the salaries of the Local Commissioners, and of all such assistants, secretaries, clerks, messengers, and officers as may be appointed under the said Act in the said colony, and of such other expenses of carrying the said Act into execution as are thereinbefore directed to be provided for by the Legislature of the colony; and whereas the colony of Tobago is one of those named in the said schedule, and it would be of much advantage to the island that the said Act should have the force of law in this colony; and whereas the extent of the public revenue of this island does not enable the Legislature to provide adequate salaries for such officers as may be appointed for carrying into execution in this colony the provisions of the aforesaid Act, and it is therefore intended to make other provisions by way of remuneration in lieu of such salaries: be it therefore enacted by the Governor, the Legislative Council, and Elective Legislative Assembly of Tobago, that the Commissioners to be appointed in pursuance of the

Preamble.

Commissioners to be appointed in the colony to be entitled to certain fees to be fixed by the Commissioners in England

said recited Act in this colony of Tobago shall be entitled to have, receive, and take, in and as and for remuneration for the services and duties to be by him or them performed, such fees in respect of the business and duties to be performed under the said recited Act as shall be fixed and settled by the Commissioners in England under the 13th section of the said recited Act, subject to such disallowance or alteration by the Legislature of this colony as is in and by the said last-mentioned section of the said recited Act mentioned.

Secretary of
Commissioners.

Provost-
marshal.

To be entitled
to certain fees
in respect of
their ser-
vices.

Fees how
fixed.

Fees to be
paid by
sutors in the
Court thereby
established.

Penalty for
extortion.

2. That the Secretary of the Court of Common Pleas of this colony shall be the Secretary of the said Commissioners under the said recited Act, and the Provost-marshal and his lawful deputy shall be the sole executive officer of the said Commissioners for the service of all process to be issued by the said Commissioners; and such Secretary and Provost-marshal respectively shall, in respect of the duties and services to be by them respectively performed, be entitled to have, receive, and take such fees as shall be fixed and settled by the Commissioner or Commissioners under the powers in the said West Indian Incumbered Estates Act, 1854, contained, subject to such disallowance or alteration as therein mentioned.

3. That all such fees, when settled and approved as by the said recited Act is provided, shall be demandable by and payable to the respective persons to whom the same shall be awarded as remuneration for the services to be by them respectively performed, and shall be payable and paid by the suitors in the Court to be established under the said recited Act in this colony, and payment of all such fees shall and may be demanded by any person to whom the same are made payable before he shall be required to perform the duty or service in respect of which any such fee shall be payable: and if any person to whom any fee shall be so given under the provisions of this Act, shall demand or take any other or greater fee in respect to any duty or service by him performed, or required to be performed under the said recited Act, every such person shall be deemed guilty of extortion, and the party aggrieved may proceed against the offending officer by criminal information or indictment in her Majesty's Court of Queen's Bench of this colony, and, on conviction, such officer shall suffer

such punishment by fine or imprisonment, or both, as the Court may award, and he shall also be answerable to the party aggrieved in treble the amount of the sum demanded or taken, to be recoverable in any of the Courts of this colony by action or plaint of debt, according to the jurisdiction of such Court.

4. That every person to whom any fee shall be payable under the provisions of this Act, or the said recited Act, shall cause a list or schedule of all such fees to be publicly exhibited at all times in his office or place of business under a penalty of five pounds, to be recovered as last aforesaid; and the Chief Commissioner for this Government, if more than one shall be appointed under the said recited Act, or the Commissioner, if only one, shall cause a list of all fees authorised to be received by the Commissioners or Commissioner, and the officers acting under him or them to be inserted at the public expense in the official *Gazette* of the said island, and in the several newspapers of the said island, before any proceedings are had or taken in the Court to be established in this colony under the said recited Act, and before any fee shall be demanded or become payable under the same.

List of commissioners' and other fees to be inserted in the official *Gazette* before any proceedings are taken.

5. That this Act shall not come into operation until her Majesty's pleasure thereon shall be signified and made known.

When this Act shall come into operation.

VIRGIN ISLANDS.

(Order in Council, dated 7th March, 1860.)

An Ordinance to make provision for carrying into execution in the Virgin Islands "The West Indian Incumbered Estates Acts 1854, 1858." (29th December, 1859.)

WHEREAS by the Acts of the Imperial Parliament of her Most Gracious Majesty Queen Victoria, to be cited as "The West Indian Incumbered Estates Acts 1854, 1858," it is, amongst other things, enacted and provided, that her Majesty may, from time to time, by Order in Council, direct the said Acts to come into operation in any of the colonies mentioned in the schedule to the said Act of 1854 annexed, and that thereupon, but not otherwise, the same should have

Preamble.

the force of law in such colony : provided always, and it is thereby expressly declared, that no such Order in Council shall be made, until the Legislature of such colony has presented an address to her Majesty, praying her Majesty to issue such order, and has also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of the salaries of the Local Commissioners, and of all such assistants, secretaries, clerks, messengers, and officers, as may be appointed under the said Acts in the said colony, and of such other expenses of carrying the said Acts into execution, as are therein before directed to be provided for by the Legislature of the colony : and whereas the colony of the Virgin Islands is one of those named in the said schedule, but, by reason of the impoverished state of the colony, with a diminished trade and revenue, it is unable to meet its present liabilities and expenditure, and no fund exists or can be provided, from which to make provision out of the public revenue for payment of salary of holders of offices to be created as contemplated by the said hereinbefore in part recited Acts : and whereas the Legislative Council of the Virgin Islands has, by an humble address, prayed her Most Gracious Majesty that she will be pleased to issue an Order in Council directing the said recited Acts to come into operation within these her Majesty's Virgin Islands : and whereas it is deemed absolutely necessary for the welfare of the Virgin Islands, that the provisions of the said recited Acts should be operative in these islands ; and, as the only means of obtaining the same, it is considered advisable that in lieu of salaries, which it is impossible to provide and pay from the public revenue, the Commissioner or Commissioners to be appointed under the said recited Acts should be remunerated by fees, to be paid by the suitors or persons prosecuting and defending, or adopting proceedings under the said recited Acts, and for that purpose seeking the intervention of the Commissioners under the same Acts :

1. Be it therefore enacted by the Governor and Legislative Council of the Virgin Islands, that the Commissioners to be appointed in pursuance of the said recited Acts in the Virgin Islands shall be entitled to have, receive, and take in and as and for remuneration for the services and duties to be by him or

Commissioners to be remunerated by fees instead of salaries.

them performed, such fees in respect of the business and duties to be performed under the said recited Acts as shall be fixed and settled by the Commissioners in England, under the 13th clause of the said recited Act of 1854 subject to such disallowance or alteration by the Legislature of these islands, as is in and by the said last mentioned clause of the said recited Act of 1854 mentioned.

2. The Secretary of the General Court of the Virgin Islands, or his lawful deputy, shall be the secretary to the said Commissioners, under the said recited Acts; and the Provost-marshal or his lawful deputy, shall be the sole executive officer of the said Commissioners, for the service of all process to be issued by the said Commissioner; and such Secretary and Provost-marshal respectively shall, in respect of the duties and services to be by them respectively performed, be entitled to have, receive, and take such fees as shall be fixed and settled by the Commissioner or Commissioners, under the powers in the said "West Indian Incumbered Estates Act 1854" contained, subject to such disallowance or alteration as therein mentioned.

Appointment
of Secretary
and Marshal.

3. All such fees, when settled and approved as by the said recited Act is provided, shall be demandable by and payable to the respective persons to whom the same shall be awarded as remuneration for the services to be by them respectively performed, and shall be payable and paid by the suitors in the Court, to be established under the said recited Acts in these islands; and payment of all such fees shall and may be demanded by any person to whom the same are made payable, before he shall be required to perform the duty or service in respect of which any such fee shall be payable: and if any person to whom any fee shall be so given, under the provisions of this Ordinance shall demand or take any greater or other fee, in respect of any duty or service by him performed or required to be performed under the said recited Acts, every such person shall be deemed guilty of a petty misdemeanour and of extortion, and shall be liable on conviction before any justice of the peace, to forfeit and pay a penalty not exceeding twenty-five pounds, and to make amends to the party aggrieved in treble the amount demanded, and the mode of procedure for the recovery and enforcement of such penalty and

Fees estab-
lished to be
paid by
sutors, to
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tled.

Officer
demanding
greater fee
than those
allowed guilty
of extortion
and liable on
conviction to
penalty not
more than
£25 and to
make amends
to party
aggrieved

amends shall be according to the Act of the Virgin Islands entitled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders."

4. Every person to whom any fee shall be payable, under the provisions of this ordinance, or the said recited Acts, shall cause a list or schedule of all such fees to be publicly exhibited at all times in his office or place of business, under a penalty not exceeding five pounds, to be recovered as last aforesaid.

5. This ordinance shall not come into operation until her Majesty's pleasure thereon shall be signified and made known and duly published in the Road Town of Tortola.

ST. CHRISTOPHER.

(Order in Council, dated 26th March, 1860).

An Act to render operative in the Island of St. Christopher the provisions of the West Indian Incumbered Estates Act, 1854, 1858. (8th December, 1859.)

Preamble.

Whereas by "The West Indian Incumbered Estates Act, 1854," made and passed in the 18th year of the reign of her Most Gracious Majesty Queen Victoria, it is amongst other things enacted that her Majesty may, from time to time, by Order in Council, direct the said Act to come into operation in any of the colonies mentioned in the schedule to the said Act annexed, and that thereupon, but not otherwise, the same should have the force of law in such colony. provided always, and it is thereby expressly declared, that no such Order in Council shall be made until the Legislature of such colony has presented an address to her Majesty, praying her Majesty to issue such order, and has also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of the salaries of the Local Commissioners, and of all such assistants, clerks, messengers, and officers as may be employed under the said Act in the said colony, and of such other

Schedule of fees to be exhibited publicly in office of person entitled thereto.

Suspending clause.

expenses of carrying the said Act into execution as are thereinbefore directed to be provided for by the Legislature of the colony: and whereas the said Act has been amended by an Act "The West Indian Incumbered Estates Act, 1858," made and passed in the 21st and 22nd years of the reign of her Most Gracious Majesty Victoria, whereby the said two several Acts are directed to be construed as one Act, and to be cited as "The West Indian Incumbered Estates Acts, 1854, 1858:" and whereas the colony of St. Christopher is one of those named in the said schedule, and it is desirable to secure for the said colony and its dependency, Anguilla, the advantages of the provisions of the said Acts: and whereas it is not expedient to provide salaries for such officers as may be appointed to carry into execution in this colony the provisions of the aforesaid Acts, but it is necessary to make other provisions by way of remuneration in lieu of such salaries: be it therefore enacted by the Officer administering the Government of the islands of St. Christopher and Anguilla, and by the Council and Assembly of the same,

1. That the Commissioners to be appointed in pursuance of the said recited Act in the colony of St. Christopher, shall be entitled to have, receive, and take, in and as and for remuneration for the services and duties to be by him or them performed, such fees in respect of the business and duties to be performed under the said recited Act, as shall be fixed and settled by the Commissioners in England under the 13th section of the said first recited Act, subject to such disallowance or alteration by the Legislature of this colony as in and by the said last-mentioned section of the said first recited Act mentioned.

Local Commissioner to be remunerated by fees instead of salaries.

Fees how fixed.

2. That the Secretary of the Court of Queen's Bench and Common Pleas of the colony shall be the Secretary of the said Commissioners under the said recited Acts, and the Provost-marshal or his lawful deputy shall be the sole executive officer of the said Commissioners for the service of all process to be issued by the said Commissioners; and such Secretary and Provost-marshal respectively shall, in respect of the duties and services to be by them respectively performed, be entitled to have, receive, and take such fees as shall be fixed and settled by the Commissioner or Commissioners under the powers in the said West Indian

Secretary of the Court of Queen's Bench and Common Pleas shall be Secretary, and Provost-marshal executive officer of the Commissioners.

Incumbered Estates Acts contained, subject to such disallowance or alteration as therein mentioned.

Fees to be paid by suitors in the Court hereby established.

3. That all such fees, when settled and approved as by the said first recited Act is provided, shall be demanded by and payable to the respective persons to whom the same shall be awarded as remuneration for the services to be by them respectively performed, and shall be payable and paid by the suitors in the Court to be established under the said recited Acts in this colony, and payment of all such fees shall and may be demanded by any person to whom the same are made payable before he shall be required to perform the duty or service in respect of which any such fee shall be payable: and if any person to whom any fee shall be so given, under the provisions of this Act, shall demand or take any greater or other fee in respect of any duty or service by him performed, or required to be performed under the said recited Acts, every such person shall be deemed guilty of extortion; and the party aggrieved may proceed against the offending officer by criminal information or indictment in her Majesty's Court of Queen's Bench and Common Pleas of this colony; and, on conviction, such officer shall suffer such punishment by fine, or imprisonment, or both, as the Court may award, and he shall also be answerable to the party aggrieved in treble the amount of the sum demanded or taken, to be recoverable in any of the Courts of the colony by action or plaint of debt, according to the jurisdiction of such Court.

Penalty for extortion.

4. That every person to whom any fee shall be payable under the provisions of this Act, or the said recited Acts, shall cause a list or schedule of all such fees to be publicly exhibited at all times in his office or place of business, under a penalty of five pounds, to be recovered as last aforesaid; and the Chief Commissioner for this Government, if more than one shall be appointed under the said recited Acts, or the Commissioner, if only one, shall cause a list of all such fees authorised to be received by the Commissioners or Commissioner, and the officers acting under him or them, to be inserted, at the public expense, in the official *Gazette* of the said island, before any proceedings are had or taken in the Court to be established in this colony under the said recited Act, and before any fee shall be demanded, or become payable under the same.

Schedule of fees to be exhibited publicly in office of person entitled thereto, and list of all fees payable under Act to be published in island newspaper.

5. That this Act shall not come into operation until her Majesty's pleasure thereon shall be signified and made known.

When Act shall come into operation.

JAMAICA.

(Order in Council, dated 26th June, 1861.)

An Act for carrying into execution in this Island "The West Indian Incumbered Estates' Acts, 1854, 1858." (March, 1861.)

WHEREAS by an Act passed in the Imperial Parliament, made and passed in the 18th year of the reign of her Most Gracious Majesty Queen Victoria, to be cited as "The West Indian Incumbered Estates Act, 1854," it is, amongst other things, enacted that her Majesty may, from time to time, by Order in Council, direct the said Act to come into operation in any of the colonies mentioned in the schedule thereto annexed; and that thereupon, but not otherwise, the same should have the force of law in such colony; and it is, therefore, expressly declared that no such Order in Council shall be made until the Legislature of such colony has presented an address to her Majesty, praying her Majesty to issue such order; and has, also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of such Commissioners and officers as may be appointed under the said Act, and such other expenses of carrying the same into execution as are thereinbefore directed to be provided for by the Legislature of the colony: and whereas, by a certain other Act of the Imperial Parliament, made and passed in the 21st and 22nd years of the reign of her said Majesty, to be cited as "The West Indian Incumbered Estates Act, 1858," it is, amongst other things, enacted that the said two recited Acts may, for all purposes, be cited as "The West Indian Incumbered Estates Acts, 1854, 1858:" and whereas the colony of Jamaica is one of those named in the schedule annexed to the firstly-recited Act, and it is expedient that the two recited Acts should have the force of law in this colony: and whereas, the extent of the public revenue in this island does not enable the Legislature to provide

Preamble.

adequate salaries for such officers as may be appointed for carrying into execution in this colony the provisions of the recited Acts, and it is therefore intended to make other provisions, by way of remuneration, in lieu of such salaries: be it therefore enacted by the Governor, Legislature, Council, and Assembly of this island, and by the authority of the same, as follows:

The Judges of the Supreme Court, or any two of them, to be Commissioners.

1. (a) The Commissioners to be appointed in pursuance of the recited Acts in this island shall be the Judges of the Supreme Court for the time being, or any two of them, when sitting in the Supreme Court, as by law established and held, or at such other times in vacation as such Judges shall appoint, for the holding of sittings for the purposes of this Act, and shall have whenever sitting, as herein provided, jurisdiction over all matters to be brought before them in the Court to be so established under this and the recited Acts.

The Clerk of the Supreme Court to be Secretary to such Commissioners, and the Provost-marshal to be their sole executive officer, and to receive such fees as shall be fixed.

2. The clerk of the Supreme Court of Judicature of the colony, or his lawful deputy, shall be secretary to the said Commissioners under the recited Acts; and the Provost-marshal, or his lawful deputy, shall be the sole executive officer of the said Judges, as Commissioners, for the service of all process to be issued by the said Commissioners; and such clerk and provost-marshal respectively shall, in respect of the duties and service to be by them respectively performed, be entitled to have, receive, and take such fees as shall be fixed and settled by the Commissioners under the powers in the said "West Indian Incumbered Estates Act, 1854" contained, subject to such disallowance or alteration by the Legislature of the colony, as is in and by the 13th section of such Act mentioned.

3. There shall be paid by the several suitors under this and the said recited Acts, before all proceedings to be instituted under this and the said recited Acts, such fees in respect of the business and duties to be by such Judges, as Commissioners, performed under this and the said recited Acts, as shall be fixed by the Commissioners in England, under the 13th section of the said first recited Act, subject, however, to such disallowance or alteration by the Legislature of this colony as in and by the said last-mentioned section of such Act provided.

Suitors to pay such fees as shall be fixed by the Commissioners in England.

(a) Repealed. See p. 186.

4. Such several fees shall be paid by means of stamps, to be impressed on the several proceedings to be had and taken in such Court; and such stamps shall be procurable from the office of the Receiver-General, or other person authorised by law to distribute stamps, and no discount shall be allowed in respect of such stamps.

Fees to be paid by means of stamps.

5. The Commissioners shall respectively be paid, on the warrant of the Governor, by means of the fund to be created from stamp duties, as herein provided, for the services and duties to be performed by them under this and the recited Acts, such respective salary or remuneration as shall be ascertained and fixed, in proportion to the respective number of days each such Commissioner shall sit in such Court.

Commissioners to be paid by warrant of the Governor.

6. Such fees, when settled and approved as by the recited Acts and this Act is provided, shall be demanded by, and payable to, the Secretary and Provost-marshal, or deputy respectively, to whom the same shall be awarded, as remuneration for the services to be by them respectively performed; and shall be payable and paid by the suitors in the Court to be established under the recited Acts, and this Act, or either of them, in this colony; and payment of all such fees shall and may be demanded by any person to whom the same are made payable, before he shall be required to perform the duty or service in respect of which any such fee shall be payable; and if any person to whom any fee shall be so given, under the provisions of this Act, shall demand or take any greater or other fee in respect of any duty or service by him performed, or required to be performed, under the said recited Acts, or either of them, every such person shall be deemed guilty of a petty misdemeanour and of extortion, and shall be liable, on conviction before any two justices of the peace, to forfeit and pay a penalty not exceeding twenty pounds nor less than five pounds, and to make amends to the party aggrieved in treble the amount demanded; and such penalty and amends shall be recovered and enforced, according to the provisions of any Act now or hereafter to be in force relating to summary proceedings before justices: provided that such penalty and amends may be proceeded for and enforced in a consolidated form of proceedings in one summons, and conjoined in all the other process therefor.

Fees when settled to be demandable by Secretary and Provost-marshal.

Any person who shall demand greater fees may be punished as for a petty misdemeanour.

Proviso.

7. That the Secretary and Provost-marshal shall

Secretary and

Provost-marshal to exhibit a list of fees in their offices, and publish same in the Gazette.

The Judges to cause list of fees to be published in the Gazette.

Act not to come into operation until her Majesty's pleasure is signified.

cause a list or schedule of all fees payable to be publicly exhibited at all times in their offices or places of business, under a penalty of five pounds, by each to be recovered as last aforesaid; and the Judges appointed under this Act shall cause a list of all fees to be published, at the public expense, in the "*Jamaica Gazette*, by Authority," before any proceedings are had or taken in the Court to be established in this colony under the recited Acts, and before any fee shall be demanded or become payable under the same.

8. This Act shall not come into operation until her Majesty's pleasure thereon shall be signified and made known by the Governor, by a notification in the "*Jamaica Gazette*, by Authority."

JAMAICA.

An Act to amend the Act of the 24th Vict., c. 4, for carrying into execution in this island, "The West Indian Incumbered Estates Acts, 1854, 1858." (January, 1862.)

Preamble.

WHEREAS, for conformity with the Act of the Imperial Parliament, to be cited as "The West Indian Incumbered Estates Act, 1854," it is necessary to amend the Act of the Legislature of this island of the 24th Vict., c. 4, for carrying into execution in this island "The West Indian Incumbered Estates Acts, 1854, 1858," in respect to the number of Commissioners to be appointed in this colony thereunder: Be it therefore enacted by the Governor, Legislative Council, and Assembly of this island, and by the authority of the same, as follows:—

1st Sect. 24
Vict. cap. 4,
repealed.

Any three
Judges of
Supreme
Court to be
Commis-
sioners.

1. The 1st section of the recited Act of the Jamaica Legislature is hereby repealed.

2. The Commissioners to be from time to time appointed, in pursuance of the recited Imperial Acts in this colony, shall be any three of the Judges of the Supreme Court for the time being, who, or any two of whom, to be so appointed, shall, whenever sitting, at such times and places as such three Judges, or any two of them, shall appoint for the holding of sittings for the purposes of the recited Acts, have jurisdiction over all matters to be brought before them in the Court to be established, as provided under the recited Acts of the Imperial Parliament, and the Legislature of this island.

ANTIGUA.

(Order in Council, dated 1st November, 1864).

An Act for carrying into execution in Antigua "The West Indian Incumbered Estates Acts, 1854, 1858, 1862." (Dated 27th May, 1864.)

WHEREAS by "The West Indian Incumbered Estates Acts, 1854, 1858, and 1862," it is, amongst other things, provided that her Majesty may from time to time by Order in Council direct the said Act to come into operation in any of the colonies mentioned in the schedule to the Principal Act annexed, and that thereupon, but not otherwise, the same should have the force of law in such colony: provided always, and it is thereby expressly declared, that no such Order in Council shall be made until the Legislature of such colony has presented an address praying her Majesty to issue such Order, and has also, to the satisfaction of her Majesty's Principal Secretary of State for the Colonies, made provision for the payment of the salaries of the Local Commissioners and of all such assistants, secretaries, clerks, messengers, and officers as may be appointed under the said Act in the said colony, and of such other expenses of carrying the said Act into execution as are thereinbefore directed to be provided for by the Legislature of the colony: and whereas the colony of Antigua is one of those named in the said schedule, and it would be of much advantage to the island that the said Acts should have the force of law: and whereas the public revenue of this island does not enable the Legislature to provide adequate salaries for such officers as may be appointed for carrying into execution in this colony the provisions of the aforesaid Acts, and it is therefore intended to make other provision by way of remuneration in lieu of such salaries: be it enacted by the Governor, the Council, and Assembly as follows:

1. The Commissioners to be appointed in pursuance of the said recited Acts in this colony of Antigua shall be entitled to have, receive, and take in and as and for remuneration for the services and duties to be

Remuneration of Local Commissioners.

by him or them performed, such fees in respect of the business and duties to be by him or them performed under the said recited Acts, as shall be fixed and settled by the Commissioners in England under the 13th section of the said Principal recited Act, subject to such disallowance or alteration by the Legislature of this colony, as is in and by the said last mentioned section of the said Principal Act mentioned.

Secretary of Court of Common Pleas and Provost-marshal to be executive officers.

2. The Secretary of the Court of Common Pleas of this colony shall be the Secretary of the said Commissioners under the said recited Acts, and the Provost-marshal and his lawful deputy shall be the sole executive officer of the said Commissioners for the service of all process to be issued by the said Commissioners, and such Secretary and Provost-marshal respectively shall in respect of the duties and services to be by them respectively performed, be entitled to have, receive, and take such fees as shall be fixed and settled by the Commissioner or Commissioners under the powers in the said "West Indian Incumbered Estates Act, 1854, 1858, and 1862" contained, subject to such disallowance or alteration as therein mentioned.

Fees to be payable in advance.

3. All such fees when settled and approved as by the said recited Acts is provided, shall be demandable by and payable to the respective persons to whom the same shall be awarded as remuneration for the services to be by them respectively performed, and shall be payable and paid by the suitors in the Court to be established under the said recited Acts in this colony, and payment of all such fees shall and may be demanded by any person to whom the same are made payable before he shall be required to perform the duty or service in respect of which any such fee shall be payable.

Publication and exhibition of docket of fees.

4. Every person to whom any fee shall be payable under the provisions of this Act or the said recited Acts, shall cause a list or schedule of all such fees to be publicly exhibited at all times in his office or place of business under a penalty of five pounds, to be recovered by action of debt in the Court of Common Pleas of this colony, and the Chief Commissioner for this Government, if more than one, to be appointed under the said recited Acts, or the Commissioner, if only one, shall cause a list of all fees authorised to be received by the Commissioner or Commissioners and

the officers acting under him or them, to be inserted at the public expense in one of the newspapers of the said island, before any proceedings are had or taken in the Court to be established in this colony under the said recited Acts, and before any fee shall be demanded or become payable under the same.

5. Whenever the Commissioners shall have made any conditional order for sale of any lands under these Acts they shall have the same powers of appointing a receiver or receivers of such lands or any part thereof as the Court of Chancery in England has of appointing a receiver of the rents and profits of any lands within the jurisdiction of such Court in a suit relating to such lands, and the receiver or receivers so appointed shall from the date of such appointment have and possess all the powers, authorities, rights, and privileges which receivers appointed by the Court of Chancery in England have in respect of the lands over which they are appointed receivers, subject to such general rules as the Commissioners in England shall from time to time make under the Principal Act.

Appointment
of receiver.

6. Every receiver so appointed by the Commissioners shall give such security for the due performance of his office as the Commissioners shall require, and shall be entitled to such remuneration by salary, commission, or otherwise, as the Commissioners shall direct, subject to such general rules as the Commissioners in England shall from time to time make under the Principal Act, and the balance due to such receiver in respect of such salary, commission, or other remuneration, or in respect of such sums as he may have properly expended in the management and cultivation of such lands shall be a charge on such lands in priority to all incumbrances thereon.

Security to be
given by
receiver.

7. That it shall be open to any owner or incumbrancer to make application by petition to the Commissioners for the appointment of such receiver or receivers pursuant to the provisions of this Act, and that such petition shall state the grounds of such application and be supported by affidavit in all its material facts, and if no opposition be made thereto, or being made, shall appear to the Commissioners insufficient, the Commissioners shall make such order thereon as shall be just, and the costs on all such applications shall be costs in the suit, and shall be the

Application
for appointment
of receiver.

same as those allowed for like services performed in the Court of Chancery according to the docket of fees used in that Court, and the practice and proceedings on all such applications shall be according to the practice of the Court of Chancery, until altered or varied by any order or orders made or to be made by the Commissioners in England.

Act when to come into operation.

8. This Act shall not come into operation until her Majesty's pleasure thereon shall be signified and made known.

TABLES OF FEES.

TABLE OF FEES AND COMMISSIONS

TO BE TAKEN UNDER "THE WEST INDIAN INCUMBERED ESTATES ACTS, 1854, 1858, 1862," IN RESPECT OF PROCEEDINGS IN ENGLAND.

On and after the 1st November 1862, the following fees shall be payable to the Commissioners in England, upon the following proceedings in England :—

	£	s.	d.
On the presentation of every petition for sale, exchange, or partition	2	0	0
On the making of every absolute order for sale, exchange, or partition	2	0	0
On settling the particulars of sale or scheme for exchange or partition	2	0	0
On settling the schedule of incumbrances, or confirming award of exchange or partition... ..	2	0	0
On every issue directed to be tried before a jury	2	0	0
On taxation of every bill of costs	0	10	0

The following commission shall be payable to the Commissioners in England, and deducted from the moneys to be produced by the sale of any estates as to which proceedings have been taken in England, whether the same shall be sold in England or in any colony :—

One pound percent. on the gross amount of the purchase money; the same to be in addition to the percentage (if any) which may be payable to the Local Commissioner or Secretary of any colony under the "Table of Fees" fixed by the Commissioners of the said Acts for such colony.

31st October, 1862.

HENRY JAMES STONOR,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

TABLE OF FEES

THAT MAY BE DEMANDED AND TAKEN WITHIN THE ISLAND OF ST. VINCENT, UNDER THE WEST INDIAN INCUMBERED ESTATES ACT, 1854.

LOCAL COMMISSIONER.

	£	s.	d.
For every petition for sale, exchange, or partition	3	0	0
Upon every conditional order	1	0	0
For every notice of opposition	1	0	0
Upon every final decree	4	0	0
For attendance at sale, &c., where proceeding commenced and completed in the colony, out of every £100 realised	0	10	0
Where proceedings commenced in England, ditto	0	5	0
Where proceedings, commenced and continued till after sale, are transferred to England, ditto	0	5	0
Where after proceedings commenced in England, the sale takes place in the colony, and proceedings are transferred back to England before allocation of the funds	0	2	6
If no Sale is finally effected, or if commission calculated as above would amount to less, a sum of	6	0	0

SECRETARY.

Entering every petition for sale, exchange, or partition	0	2	6
Other entries (<i>specified in Table</i>)	}	0	2
		0	3
Minuting formal decree	1	0	0
But where more than three days' hearing on the merits on open Court—per diem additional	0	15	0
Certificate of the several proceedings ..	0	5	0
Searching records of Court	0	1	0
For attendance at sale, where proceedings are commenced, continued, and completed in the colony, out of every £100 realised	0	5	0

	£	s.	d.
Where proceedings are commenced in England, ditto	0	2	6
Where proceedings commenced, and after sale transferred to England	0	2	6
Where after proceedings commenced in England, the sale takes place in the colony, and proceedings are transferred back to England before allocation of the funds	0	1	0
If no sale is finally effected, or if commission calculated as above would amount to less, a sum of	3	0	0
Preparing schedule of incumbrance per folio	0	2	6
Upon any issue that may be directed by the Court before a jury, the same fees as are now receivable before the Supreme Court of Judicature			
For taxation of every bill of costs—			
For every £100 of the amount of such bill when taxed	2	10	0
For each copy of petition required by parties or by order of Court, per folio ..	0	0	4
If less than 6 folios	0	2	0
Copies of any other documents, per folio..	0	0	3
If less than 6 folios	0	1	6
Attesting copy of every petition or other document			

PROVOST-MARSHAL.

For serving a notice	0	5	0
If out of Kingstown (exclusive of mileage)	0	10	0
Extra per mile, going and returning (if out of Kingstown)	0	0	8
If in any other island within the Government in addition to expenditure actually incurred in travelling, but not in subsistence	3	0	0
For each witness, if subpoenaed	0	7	6
Executing contempt process, where person taken	1	13	6
Ditto on return "non est inventus" ..	0	10	6
Every day such person continues in custody	0	3	4
Attendance each day on any hearing ..	0	5	0

	£	s.	d.
Every mile travelled in service of notice on tenants or others	0	1	6
Upon any issue directed to be tried before a jury, the same fees as would be pay- able in the Supreme Court of Judicature			
Upon final judgment	1	0	0

EDMUND PHIPPS,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

14th July, 1857.

TABLE OF FEES

THAT MAY BE DEMANDED AND TAKEN WITHIN THE ISLAND OF TOBAGO, UNDER THE WEST INDIAN INCUMBERED ESTATES ACT 1854, 1858, 1862, 1864, AS APPROVED AND FIXED BY THE COMMISSIONERS OF THE SAID ACTS.

THE following per centage shall be paid to the Local Commissioner and Secretary on the final allocation of the moneys to be produced by the sale of any estate under the above Acts :—

- Where proceedings are commenced and completed in the colony :
To the Local Commissioner, One per cent.,
To the Secretary, One half per cent.,
On the gross amount of purchase-money.
- Where proceedings are either commenced in the colony and completed in England, or commenced in England and completed in the colony,
To the Local Commissioner, One half per cent.,
To the Secretary, One quarter per cent.,
On the same.
- Where proceedings are commenced and completed in England, but the sale takes place in the colony,
To the Local Commissioner, One quarter per cent.,
To the Secretary, One eighth per cent.,
On the same.

And the following fees shall be paid to the Local Commissioner, Secretary, and Provost-marshal, by

the petitioner or other parties having the conduct of the sale :—

TO THE LOCAL COMMISSIONER.

	£	s.	d.
On the presentation of every petition for sale, exchange, or partition	2	0	0
On the making of every absolute order for sale, exchange, or partition	2	0	0
On settling the particulars of sale or scheme for exchange or partition	2	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	2	0	0
On any issue tried before a jury	2	0	0
On the transfer of any proceedings from England	2	0	0
Each affidavit	0	4	0
Every exhibit attached thereto	0	1	0
Every order	0	5	6
Every certificate	0	13	6
Exemplification under seal	0	13	6
Taking recognisance, each party bound ..	0	10	0
Attendance out of Court or out of chambers	0	10	0

TO THE SECRETARY.

On the presentation of every petition for sale, exchange, or partition	1	0	0
On the making of every absolute order for sale, exchange, or partition	1	0	0
On settling the particulars of sale or scheme for exchange or partition	1	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	1	0	0
On every issue tried before a jury	1	0	0
On the transfer of any proceedings from England	1	0	0
On taxation of a bill of costs the same payment as is receivable for a similar purpose in the Court of Common Pleas			
For copies of documents, the same payment as is receivable for a similar purpose in the Court of Common Pleas			
Filing every order or other proceeding ..	0	3	0

	£	s.	d.
Enrolling decree, order, or other process, for every folio of ninety words	0	1	0
Every certificate	0	4	0
Minuting every order	0	3	0

TO THE PROVOST-MARSHAL.

For serving a notice, subpoena, or other process, if within the capital	0	5	0
If out of the capital (exclusive of mileage)	0	10	0
Extra per mile (going and returning)	0	0	8
If out of the island in addition to expenditure incurred in travelling, but not in subsistence	3	0	0
For executing contempt process where the person is taken	1	10	0
Ditto on return, "non est inventus"	0	10	0
Every day such person continues in custody	0	3	4
Attendance each day on any hearing or trial	0	5	0
Delivering possession of lands and etne- ments for each separate estate, planta- tion or lot, besides mileage from the capital at 8d. per mile going and returning	3	0	0
Making inventories and copies thereof when required, 1s. per folio of every ninety words			

HENRY JAMES STONOR,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

19th October, 1864.

TABLE OF FEES

THAT MAY BE DEMANDED AND TAKEN WITHIN THE VIRGIN ISLANDS, UNDER "THE WEST INDIAN INCUMBERED ESTATES ACTS, 1854—1858," AS APPROVED AND FIXED BY THE COMMISSIONERS OF THE SAID ACTS.

The following percentage shall be paid to the Local Commissioners and Secretary on the final allocation of the moneys to be produced by the sale of any estate under the above Acts:—

1. Where proceedings are commenced and completed in the colony:

To the Local Commissioner, One per cent.,

To the Secretary, One half per cent.,

On the gross amount of the purchase-money.

2. Where proceedings are either commenced in the colony and completed in England, or commenced in England and completed in the colony :

To the Local Commissioner, One half per cent.,

To the Secretary, One quarter per cent.,

On the same.

3. Where proceedings are commenced and completed in England, but the Sale takes place in the colony :

To the Local Commissioner, One quarter per cent.,

To the Secretary, One eighth per cent.,

On the same.

And the following fees shall be paid to the Local Commissioners, Secretary, and Provost-marshal, by the petitioner or other parties having the conduct of the sale :—

TO THE LOCAL COMMISSIONER.

On every petition for sale, exchange, or partition (whether a conditional order be made or not)	£	s.	d.
On the making of every absolute order	2	0	0
On settling the particulars of sale	2	0	0
On settling the schedule of incumbrances	2	0	0
On any issue tried before a jury	2	0	0

TO THE SECRETARY.

On every petition for sale, exchange, or partition (whether a conditional order be made or not)	£	s.	d.
On the making of every absolute order	1	0	0
On settling the particulars of sale	1	0	0
On settling the schedule of incumbrances	1	0	0
On any issue tried before a jury	1	0	0

In taxation of a bill of costs :

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

For copies of any documents :

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

TO THE PROVOST-MARSHAL.

	£	s.	d.
For serving a notice, subpoena, or other process, if within the capital	0	5	0
If out of the capital (exclusive of mileage)	0	10	0
Extra per mile, going and returning	0	0	8
If out of the island of Tortola, in addition to expenditure incurred in travelling, but not in subsistence	3	0	0
For executing contempt process where the person is taken	1	10	0
Ditto, on return "non est inventus"	0	10	0
Every day such person continues in custody	0	3	4
Attendance each day on any hearing or trial	0	5	0

HENRY JAMES STONOR,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

8th November, 1860.

TABLE OF FEES

THAT MAY BE DEMANDED AND TAKEN WITHIN THE ISLAND OF ST. CHRISTOPHER UNDER "THE WEST INDIAN INCUMBERED ESTATES ACTS, 1854—1858," AS APPROVED AND FIXED BY THE COMMISSIONERS OF THE SAID ACTS.

The following percentage shall be paid to the Local Commissioner and Secretary on the final allocation of the moneys to be produced by the sale of any estate under the above Acts:—

1. Where proceedings are commenced and completed in the colony:

To the Local Commissioner, One per cent.,
To the Secretary, One half per cent.,
On the gross amount of the purchase-money.

2. Where proceedings are either commenced in the colony and completed in England, or commenced in England and completed in the colony:

To the Local Commissioner, One half per cent.,
To the Secretary, One quarter per cent.,
On the same.

3. Where proceedings are commenced and completed in England, but the sale takes place in the colony :

To the Local Commissioner, One quarter per cent.,

To the Secretary, One eighth per cent.,

On the same.

And the following fees shall be paid to the Local Commissioner, Secretary, and Provost-marshal by the petitioner or other parties having the conduct of the sale :

TO THE LOCAL COMMISSIONER.

	£	s.	d.
On the presentation of every petition for sale, exchange, or partition	2	0	0
On the making of every absolute order for sale, exchange, or partition	2	0	0
On settling the particulars of sale or scheme for exchange or partition	2	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	2	0	0
On any issue tried before a jury	2	0	0
On the transfer of any proceedings from England	2	0	0

TO THE SECRETARY.

On the presentation of every petition for sale, exchange, or partition	1	0	0
On the making of every absolute order for sale, exchange, or partition	1	0	0
On settling the particulars of sale, or scheme for exchange or partition	1	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	1	0	0
On every issue tried before a jury	1	0	0
On the transfer of any proceedings from England	1	0	0
On taxation of a bill of costs :			

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

For copies of any documents :

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

TO THE PROVOST-MARSHAL.

	£	s.	d.
For serving a notice, subpœna, or other process, if within the capital	0	5	0
If out of the capital (exclusive of mileage)	0	10	0
Extra per mile, going and returning	0	0	8
If out of the island, in addition to expenditure incurred in travelling, but not in subsistence	3	0	0
For executing contempt process where the person is taken	1	10	0
Ditto on return, "non est inventus"	0	10	0
Every day such person continues in custody	0	3	4
Attendance each day on any hearing or trial	0	5	0

HENRY JAMES STONOR,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

10th April, 1862.

TABLE OF FEES

THAT MAY BE DEMANDED AND TAKEN WITHIN THE ISLAND OF JAMAICA UNDER "THE WEST INDIAN INCUMBERED ESTATES ACTS, 1854—58," AS APPROVED AND FIXED BY THE COMMISSIONERS OF THE SAID ACTS.

The following percentage shall be paid to the Local Commissioners and Secretary on the final allocation of the moneys to be produced by the sale of any estate under the above Acts :—

1. Where proceedings are commenced and completed in the colony :

To the Local Commissioner, One per cent.,
To the Secretary, One half per cent.,
On the gross amount of the purchase money.

2. Where proceedings are either commenced in the colony and completed in England, or commenced in England and completed in the colony,

To the Local Commissioners, One half per cent.,
To the Secretary, One quarter per cent.,
On the same.

3. Where proceedings are commenced and completed in England, but the sale takes place in the colony,

To the Local Commissioners, One quarter per cent.,

To the Secretary, One eighth per cent.,

On the same.

And the following Fees shall be paid to the Local Commissioners, Secretary, and Provost-marshal by the petitioner or other parties having the conduct of the sale:—

TO THE LOCAL COMMISSIONERS.

	£	s.	d.
On the presentation of every petition for sale, exchange, or partition	2	0	0
On the making of every absolute order for sale, exchange, or partition	2	0	0
On settling the particulars of sale or scheme for exchange or partition	2	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	2	0	0
On any issue tried before a jury	2	0	0
On the transfer of any proceedings from England	2	0	0

TO THE SECRETARY.

On the presentation of every petition for sale, exchange, or partition	1	0	0
On the making of every absolute order for sale, exchange, or partition	1	0	0
On settling the particulars of sale, or scheme for exchange or partition	1	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	1	0	0
On every issue tried before a jury	1	0	0
On the transfer of any proceedings from England	1	0	0
On taxation of a bill of costs	0	10	0

For copies of any documents :

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

TO THE PROVOST-MARSHAL.

	£	s.	d.
For serving a notice, subpoena, or other process, if within the capital	0	5	0
If out of the capital (exclusive of mileage)	0	10	0
Extra per mile, going and returning	0	0	8
If out of the island, in addition to expenditure incurred in travelling, but not in subsistence	3	0	0
For executing contempt process, where the person is taken	1	10	0
Ditto on return, "non est inventus"	0	10	0
Every day such person continues in custody	0	3	4
Attendance each day on any hearing or trial	0	5	0

HENRY JAMES STONOR,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

19th February, 1862.

TABLE OF FEES

THAT MAY BE DEMANDED AND TAKEN WITHIN THE ISLAND OF ANTIGUA UNDER "THE WEST INDIAN INCUMBERED ESTATES ACTS 1854, 1858, 1862, AND 1864," AS APPROVED AND FIXED BY THE COMMISSIONERS OF THE SAID ACTS.

The following percentage shall be paid to the Local Commissioner and Secretary on the final allocation of the moneys to be produced by the sale of any estate under the above Acts :—

1. Where proceedings are commenced and completed in the colony :
 - To the Local Commissioner, One per cent.,
 - To the Secretary, One half per cent.,
 - On the gross amount of the purchase money.
2. Where proceedings are either commenced in the colony and completed in England, or commenced in England and completed in the colony :
 - To the Local Commissioner, One half per cent.,
 - To the Secretary, One quarter per cent.
 - On the same.

3. Where proceedings are commenced and completed in England, but the sale takes place in the colony.

To the Local Commissioner, One quarter per cent.,
 To the Secretary, One eighth per cent.,
 On the same.

And the following fees shall be paid to the Local Commissioner, Secretary, and Provost-marshal, by the petitioner or other parties having the conduct of the sale.

TO THE LOCAL COMMISSIONER.

	£	s.	d.
On the presentation of every petition for sale, exchange, or partition	2	0	0
On the making of every absolute order for sale, exchange, or partition	2	0	0
On settling the particulars of sale, or scheme for exchange or partition	2	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	2	0	0
On any issue tried before a jury	2	0	0
On the transfer of any proceedings from England	2	0	0

TO THE SECRETARY.

On the presentation of every petition for sale, exchange, or partition	1	0	0
On the making of every absolute order for sale, exchange, or partition	1	0	0
On settling the particulars of sale or scheme for exchange or partition	1	0	0
On settling the schedule of incumbrances or confirming award of exchange or partition	1	0	0
On every issue tried before a jury	1	0	0
On the transfer of any proceedings from England	1	0	0
On taxation of a bill of costs,			

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

For copies of any documents

The same payment as is receivable for a similar purpose in the Supreme Court of Judicature.

TO THE PROVOST-MARSHAL.

	£	s.	d.
For serving a notice, subpoena, or other process if within the capital	0	5	0
If out of the capital (exclusive of mileage)..	0	10	0
Extra per mile, going and returning.. . .	0	0	8
If out of the island, in addition to expenditure incurred in travelling, but not in subsistence	3	0	0
For executing contempt process when the person is taken.. . . .	1	10	0
Ditto, on return, "non est inventus".. . .	0	10	0
Every day such person continues in custody	0	3	4
Attendance each day on any hearing or trial	0	5	0

HENRY JAMES STONOR,
Chief Commissioner.

FREDERIC ROGERS,
Assistant Commissioner.

19th October, 1864.

SOLICITOR'S FEES AND CHARGES.

TABLE OF FEES AND CHARGES ALLOWED TO SOLICITORS PRACTISING IN THE COURT.

INSTRUCTIONS.

Instructions for petitions and abstracts, included in charge for preparation	.	.	.
„ claims and objections	. 0	13	4
„ special affidavits or declarations	. 0	6	8
„ conveyances and orders for partition, exchange, or division	. 0	6	8
„ advertisements and particulars of sale	. 0	6	8
„ schedule of incumbrances	0	13	4
„ brief on motion	. 0	13	4

PREPARATION OF DOCUMENTS.

Instructions for, and drawing petition for sale, including schedules and affidavit verifying same, and copy for the Court	. 5	5	0
Instructions for, and drawing abstract and copy, per sheet of eight folios	. 0	10	0
Drawing claims, objections, notices, schedules, advertisements, particulars, conveyances, and affidavits, per folio	. 0	1	0
Drawing briefs, observations, or special instructions for counsel, per folio	. 0	0	8
Drawing bills of costs, and copy, per folio	0	0	4

PERUSALS.

Perusing petitions, claims, objections, special affidavits, special notices, and schedules	. 0	6	8
Perusing abstract per 3 sheets of 8 folios	. 0	6	8
Perusing draft conveyance, per skin of 15 folios	. 0	5	0
Examining engrossment with draft, per skin of 15 folios	. 0	3	4

COPIES.

Copies of all documents, per folio	. 0	0	4
Attested copies, per folio	. 0	0	6
Engrossing on paper	. 0	0	4
Engrossing on parchment	. 0	0	8

ATTENDANCES.

Attendance on client	0	6	8
„ or per hour	0	6	8
„ on Counsel with instructions or brief	0	6	8
„ on Counsel at consultation	0	13	4
„ at Office to lodge petition and Abstract	0	14	0
„ to file claims or objections or affidavit	0	6	8
„ to enter appearance	0	6	8
„ at sale	1	1	0
„ before Commissioner, on motion or hearing, or for directions	0	13	4
„ before Commissioner on settle- ment of schedule of incum- brances	1	1	0
„ or per hour	0	6	8
„ before Secretary for directions	0	6	8
„ at Bank to lodge or draw money, including obtaining order and returning receipt .	1	1	0
„ before Secretary on taking ac- counts	0	13	4
„ or per hour	0	6	8
„ for appointment to tax	0	6	8
„ on taxation of costs per 25 fos.	0	6	8
„ on witness	0	6	8
„ with witness to examination	0	6	8
„ with witness to swear affidavit	0	6	8
„ at Office for copies of documents	0	6	8
„ at Office to lodge deeds or do- cuments	0	6	8
„ at Office to bespeak service of notice or summons	0		8
„ to insert advertisement in news- paper	0	6	8
„ on printer with instructions	0	6	8
„ examining deeds, per hour	0	6	8
„ on auctioneer with instructions	0	6	8

MISCELLANEOUS.

Letters—Ordinary	0	3	6
„ Special	0	5	0
„ Circulars (after the first)	0	1	1
„ and Messengers	1	1	0

REPORTS OF CASES.

I.

WEST INDIAN INCUMBERED ESTATES
COURT.

8, Park-street, Westminster, March 27, 30, 1858.
(Before HENRY JAMES STONOR, Esq., Chief Commissioner).

Re GREATHEED.
Ex parte BURGESS.*

West Indian Incumbered Estates Act—Yearly value when estate uncultivated—Sale subject to jointure—Objection by jointress.

The net yearly value of the estate must be calculated according to its actual produce during the last seven years, though it has been abandoned and uncultivated during part of the time.

The Commissioners cannot sell an estate free of a jointure thereon, without consent.†

Considerations as to expediency of sale.

This was a petition under the West Indian Incumbered Estates Act, 1854 (17 and 18 Vict., c. 117), for the sale of an estate in the island of St. Vincent, called "The Arnos Vale Estate." The facts of the case appear in the judgment.

Field, of the common-law bar, opposed the petition.
Lever appeared in support of it.

March 30.—The Chief Commissioner delivered judgment as follows:—The petition in this case has been duly presented under the 17 and 18 Vict., c. 117, constituting and regulating the practice of this Court for the sale of an estate called "The Arnos Vale Estate," situate in the island of St. Vincent, one of the West Indian colonies, which, by an Order made by her Majesty in Council upon an address from the Colonial Legislature, has come within the operation of the Act. The proper schedules, affidavit, and abstract accompany the petition. From these documents it appears that the estate is charged, as to one moiety,

* 4 Jurist N.S., 288.

† See now 21 & 22 Vict. c. 117.

with a jointure to Mrs. Sophia Greatheed, the widow of the late Samuel Greatheed, Esq. (who died in 1827), under a settlement executed by that gentleman in his lifetime, and that the entirety of the estate is charged under his will with a sum of £24,000 for the portions of his three younger children, viz., John Greatheed, Esq., Sophia the wife of the Rev. Richard Burgess (who is the petitioner), and Mary the wife of Barnard Trollope, Esq., in equal shares, the shares of the daughters being settled upon them and their issue. There are also some other incumbrances, to which it is not necessary for me to refer, further than to state that they include the unascertained costs of a suit in Chancery of *Greatheed v. Greatheed*, which appear to have priority over the other portions; and I may notice that another Chancery suit, *Greatheed v. Elliott*, has also been instituted concerning this property. Payments have at various times, since the decease of Samuel Greatheed, been made to the jointress in respect of her jointure, and to the younger children in respect of the principal and interest of their portions, by the owner of the estate, and by the Commissioners of the West Indian Slave Compensation Fund; but both the jointure and the interest of the unpaid portions have eventually fallen into great arrear, and at the filing of the petition about £2,000 arrears of jointure were due to the widow, and £3,276 principal due to each of the younger children, with interest for a very considerable period. The estate, on the other hand, is now entirely unproductive, and has been so, at all events, from the year 1854, when the jointress distrained on the crops and stock for her arrears, since which time no purchaser or tenant has been found for the property. It is stated that it would require a very considerable sum to be laid out on it to bring it into cultivation again, which sum a purchaser must regard as part of the purchase-money, and to be deducted therefrom. The parties before the Court have made various statements as to the probable price for which the property would sell, into the consideration of which, however, it is not necessary or expedient for me to go, further than to observe that all agree in considering the estate at present to be insolvent, and unable to meet the charges upon it, and to be wholly unproductive and profitless.

The usual conditional order for sale was made upon

the 14th of August last, and a time was appointed for parties to show cause against that order being made absolute. That time expired without cause having been shown, and, in strictness, the order should then have been made absolute : but, on entering upon the duties of my office in February last, I thought it right, under the circumstances of this case, and in exercise of powers reserved to me by the Act, to give an extended time to all parties for showing cause against the order ; and on the 3rd March (being the last day allowed) three objections were filed by Mrs. Sophia Greatheed, the jointress, and are as follows :—First, that the yearly value of the estate during the last seven years cannot be ascertained, the same having been abandoned by the owner, and left uncultivated for several years ; secondly, that the Commissioners are not authorised by the Act to sell the estate discharged from the jointure of £600 a-year charged on one moiety thereof in favour of the said Sophia Greatheed, without her consent, which consent she withholds ; and, thirdly, that it would be unjust and inexpedient that a sale should be made. On the same day Mr. John Greatheed also filed two objections, identical with the first and third objections filed by Mrs. Greatheed.

Mr. Field appeared as counsel for Mr. and Mrs. Greatheed, in support of the above objections, and I am extremely glad to have had his valuable assistance. It is now my duty to give my decision upon their validity, involving also the question whether the conditional order should be made absolute.

Before doing so, however, I would remark that no affidavits having been filed by the parties, my decision is founded solely on the documents of record in this matter, and the facts thereby appearing ; at the same time I shall bear in mind and advert to the statements made in the course of the argument, for the purpose of showing that, even had the facts stated been in evidence, they would not have been material on the present occasion ; and, were this otherwise, I should certainly be disposed, even now, to give time for the purpose of bringing such facts before the Court.

I proceed to the consideration of the first objection, which is filed both by Mr. and Mrs. Greatheed, viz., “that the yearly value of the estate during the last seven years cannot be ascertained, the same having

been abandoned by the owner, and left uncultivated for several years."

The objection is an endeavour to bring the present case, not substantially indeed, but formally, within the first of the two restrictions contained in the 32nd clause of the Act, which alone limits the powers of this Court over land within its jurisdiction. That restriction directs, "that no sale shall be made where the amount of yearly interest on the incumbrances attaching to the land in respect of which any application is made does not exceed one-half of the net yearly value of such land;" and then proceeds parenthetically—"such yearly value to be calculated on the average profits derived therefrom, after deducting all necessary outgoings, during the preceding seven years, or during such other period as the Commissioners may, having regard to any special circumstances, think fit." Now, it is not for one moment contended that the yearly interest of the incumbrances on the property does not exceed one-half of the yearly value, which at present is absolutely nothing, or that it has exceeded that amount, on an average, for the last seven years; but it is argued that, because actually there has been no income and no outgoings during several years past, there are no means of calculating the yearly value of the estate, or ascertaining the question whether or not the present case falls within the restriction. My answer is, that if this were so, it would be the misfortune of the objector, upon whom lies the *onus probandi* of showing that the general policy and provision of the Act, so strongly applicable to this case, are controlled by the restriction in question. But I deny that this is so; for I think it quite competent for the parties, having ascertained the exact amount of yearly interest accruing due, to inquire also the amount of income which has arisen from the estate during the last seven years (which term I see no reason to depart from on this occasion); and if it is found that the annual income of the estate is absolutely nothing during a portion of that period (which is the present case), or even during the whole of the period, it will be only so much the clearer that the interest exceeds one-half of the yearly value of the land. With regard to the parenthetic clause as to the mode of calculation, it appears to me to be only directory as to the nature of the credits and debits

which are to be allowed in estimating the value of the estate where such credits and debits exist; and where the same, or either of them, do not exist—namely, where there are no profits or no outgoings, or neither profits nor outgoings—this clause ceases to have any operation.

Having thus answered the technical objection which has been made, I must add that the object of the first restriction in the 32nd clause is the prevention of the forced sale of a solvent estate, of which it is not shown that there is any danger or possibility in the present case, but every reason for presuming the contrary. I therefore think that, both on technical grounds and on principle, the objection fails to bring the present case within the restriction in question, and must be overruled.

As to the second objection made by Mrs. Greatheed, “that the Commissioners are not authorised by the Act to sell the estate discharged from the jointure of £600 a year charged on one moiety thereof in favour of the said Sophia Greatheed, without her consent, which consent she withholds,” it appears to me that this is an objection only to the mode of the sale, or rather an assertion of her rights in that respect, and not an objection to the absolute order for sale, except so far as it may be included in the third objection, which I am next about to consider. I should observe, however, that this objection raises directly a very important and difficult question on the construction of the Act, as to the power of the Commissioners to deal with jointures and similar interests, and to which I will fully advert in considering the remaining objection; and, without prejudice to the consideration of this objection, and the questions involved in it, so far as they are included in the next objection, this objection must be overruled. I think it right to add, that it appears to me to be a sufficient answer to the objection (and to any other open to the same) that it is not found expressly on either of the restrictions contained in the 32nd clause, which are the only limitations to the jurisdiction of the Commissioner, and the only valid grounds for objecting to the order for sale, which is *prima facie* the petitioner’s right.

The remaining objection, which is filed both by Mr. and Mrs. Greatheed, is, “that it would be unjust and inexpedient that a sale” should be made.

The object of the parties making this objection is to bring the present case within the second restriction contained in the 32nd section of the Act. The objection follows the terms employed in the section, which are very wide and extensive, and impose a considerable responsibility on the Commissioners. The argument in support of it has rested on the fact of Mrs. Greatheed's jointure extending over an undivided moiety of the land, the inability of the Commissioners to sell the land discharged from it without her consent (which raises the important and difficult question to which I have already referred), and the great sacrifice which will be incurred by selling without such consent, which at present she withholds. It was also further stated that in all probability the property, under these circumstances, will sell for less than the costs and the expenses of the sale, and the charges in the schedule prior to the portions of the younger children, including the petitioners. The first question is, whether the Commissioners are unable to sell the estates discharged from the jointure without Mrs. Greatheed's consent. The second question will be, whether, if this is the case, that circumstance, and the other facts stated, supposing them to be true, and to be properly evidenced, are such as to make it appear to the Commissioners that this sale would be unreasonable and unjust.

With regard to the point on the construction of the Act, I think that the Commissioners have no power to sell the property, discharged from this lady's jointure, without her consent. The questions mainly depend on the 44th and 45th clauses. The first directs "that in cases where any land to be sold is subject to dower, or any interests in the nature of dower, to any annual or contingent incumbrances, or to any incumbrance under the terms of which the incumbrancer cannot be required to accept payment of the principal money for a term of years yet to come, the Commissioners shall deal with such interests in one of the two following ways—that is to say, they shall either make the sale, subject to such dower, interest, or incumbrances, or they may, with the consent of the parties entitled to such dower, interest, or incumbrances, cause the same to be valued at a gross amount, assigning thereto such priority as they think just." Under this clause there can be no doubt that the Commissioners have no power

to sell, discharged of a jointure, without the jointress's consent. But the 45th clause further provides, that "in cases where it appears to the Commissioners unjust or inexpedient that a valuation should be made of such interests and incumbrances as they are hereinbefore authorised to cause to be valued at a gross sum, it shall be lawful for them to set aside and invest any portion of the money arising from any sale in such manner as they think fit, to meet the claims of any such interested persons or incumbrancers;" and thus provides for a third mode of dealing with these interests; and the question arises, whether the Commissioner can adopt that third mode without the consent of the incumbrancers entitled to such interests. The clause itself is silent on the point; but as it is only a proviso, substituting such third mode for the second of the two modes peremptorily pointed out in the 34th section, and as such second mode can only be adopted with the consent of the incumbrancers, I think that, in the absence of an express provision, it must be held that this substitutionary mode can only be adopted with the like consent. The terms employed in the 45th clause also in some measure support this construction, as the power given to the Commissioners is only given to them with respect to such interests as they are before authorised to cause to be valued at a gross sum, and they have no authority so to value the interests in question except under the 34th section, with the consent of the incumbrancers. Again with regard to yearly tenancies and other interests, the Commissioners are, under the 33rd and 45th sections of the West Indian Incumbered Estates Act, clearly empowered to deal with them in all three modes, without any consent of the incumbrancers; and in the Irish Incumbered Estates Act, 12 and 13 Vict., c. 77, s. 34 (which provides *inter alia*, for annual charges like the present), the peremptory direction as to the two first modes of procedure is omitted; and the third mode is given to the Commissioners absolutely, without any reference to the second mode, and not merely as a substitute for it. These marked differences between the provisions made by the Legislature as to similar interests in the present Act, and as to identical interests in another Act having the same objects, evidently afford strong additional reasons for the construction which I have adopted.

The last question in the case, therefore, only remains for consideration, whether under all the circumstances the sale is unreasonable or unjust. *Prima facie* it is impossible to suppose a case coming more strongly within the policy of the Act than the present. The property is charged far beyond its present value, is daily becoming more hopelessly insolvent, is subject to two Chancery suits, and is wholly uncultivated, and apparently without any prospect of improvement. No circumstances could more strongly demand the interference of this Court to redeem it from its embarrassments, and restore it to cultivation and to commerce, the primary object of the Act. The objection now raised, that the jointress, by withholding her consent under the power which I feel it my duty to concede to her, may injure the sale of the estate, and may totally disappoint the younger children of their portions, appears to me to be a most unreasonable objection on her part, though as regards the other incumbrancers there is some force in it; and it will deserve their consideration how far it is expedient for them to press on a sale without obtaining such consent, or without obtaining a partition under the powers of the Act, ascertaining and dividing the money charged with her jointure from that which is not so charged. These, however, are matters for their consideration, and for the future consideration of the Court, upon proper applications, but they form no objection to the absolute order for sale, to which the petitioner, in my opinion, is clearly entitled. In Mr. M'Nevin's valuable "Treatise on the Irish Incumbered Estates Act," the principles which have been laid down by the Commissioners of that Act for their guidance in similar cases are thus stated (p. 66, 2nd ed.):—"No matter what supposed or real injury may be shown as likely to result to the owner, or any other party interested, by making the order absolute, it should be understood that considerations of that description are not grounds to prevent an incumbrancer availing himself of the provisions of the Act. At the same time, where a clear case can be made out for a postponement of sale, such as the owners being on the eve of procuring money to pay off the petitioner and other incumbrancers, the Commissioners have made the order absolute, but directed no further proceedings for a limited time. The application for a postponement,

or to stay proceedings, however, is quite distinct from showing cause; and if there be substantial grounds for it, the fact of the order having been made absolute does not make his position worse." Accordingly, in the case of *Lord Portarlington's Estates* (Id. 67), where there were very strong reasons for supposing that the estate would even become solvent by delay, and the petitioner's incumbrance was very trifling, Baron Richards, C. C., remarked, "that the Court would be always open to any applications to defer sales, but that the circumstances of the whole rental being administered by receivers brought this case strongly within the policy of the Act, and would of itself induce the Court to disallow the cause shown against the order." So also in this case, the Court will readily listen to any proper application for delay, and will exert all its powers to procure an advantageous sale; but it is clearly of opinion that the circumstances of this case, particularly the present insolvency of the estate, and the absence of any present income from it—in other words, its ruin and abandonment—being it most strongly within the policy of the Act, and that the sale is neither unreasonable nor unjust, but, on the contrary, is both reasonable and just, for the purpose of carrying out the public objects of the Act, and for affording to the petitioner and other incumbrancers the relief for them intended by the Legislature. I therefore overrule the remaining objection, as well as the two others, and make the conditional order for sale absolute.

 II.

 WEST INDIAN INCUMBERED ESTATES
 COURT.

8, Park-street, Westminster, November 1, 1858.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

 Re GREATHEED,
 Exparte BURGESS.*

Sale by Auction.

The first sale by auction in this Court took place on the 1st November, 1858, at twelve o'clock, and was

* 4, Jur., N.S., 485.

numerously attended. The estate offered for sale was the Arnos Vale Estate, in the island of St. Vincent, containing about 454 acres.

The Chief Commissioner, H. J. Stonor, Esq., made the following observations before the sale:—

“As this is the first sale by auction in this Court, I think that it will be of advantage if, before the sale takes place, I make a few observations as to the title which this Court is authorised to give to the purchaser, the mode of sale, the form of the conveyance, the terms for the payment of the purchase money, and the means for obtaining possession of the property; after which Mr. Leifchild (whom we have employed to act as auctioneer) will read the particulars of sale, stating the nature of the property, and will receive the biddings which will be made for it.

“And first, as to the title which this Court is authorised to give, I have to refer you to the Act 21 & 22 Vict., c. 96, passed this year for the amendment of the original Act of the 17 & 18 Vict. c. 117, creating and regulating this commission, and from the passing of which Amendment Act must be dated the real operation of this commission. The 10th section of the 21 & 22 Vict., c. 96, enacts, that ‘every conveyance executed by the Commissioners, in pursuance of these Acts, shall be effectual to pass the fee-simple and inheritance and absolute interest of and in the land thereby expressed to be conveyed, or such lesser estate or interest as may in such conveyance be specified, subject to such rights and uncommuted payments, if any, as are referred to in the 36th section of the Principal Act’ (namely, crown rents, tithes, and similar payments), ‘and to such tenancies, leases, underleases, incumbrances, and interest as shall be expressed or referred to in the said conveyance as aforesaid’ (there are none in the present case), ‘but save as aforesaid, discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever of her Majesty, her heirs and successors, and of all other persons whatsoever; and no conveyance made by the Commissioners shall be set aside on the ground of their not having jurisdiction over the subject-matter thereof.’ This section is quite clear in its language, and it is unnecessary for me to add any comment. Upon it is based the purchaser’s title, and, together with the conveyance from the Commissioners,

it forms the whole of his title, and saves him and all future purchasers any trouble, expense, or care as to the earlier title, or the evidence required for its support.

“ In the next place, as to the mode of sale and conveyance, the estate will be offered by the auctioneer at an upset price, and the biddings received at a certain rate, varying in each case. In the present case the upset price will be £5,000, and no purchaser will offer less than £50 advanced price at each bidding; but, probably, at first, purchasers will make larger advances to save time. The Commissioners have the power to buy in the estate, or, to speak more accurately, to refuse all the biddings, and postpone the sale to a fixed day, or otherwise. This power, however, will be exercised very sparingly, and in ordinary cases the highest bidder will be declared the purchaser. Immediately on a bidding being so received, an order will be made declaring the person offering it to be the purchaser, and directing the payment of the purchase-money into the Bank of England, generally, as in the present case, in the following manner—one-fourth as a deposit within fourteen days, and the balance within three months; and authority will be given to the Bank to receive the same. On the payment of the purchase-money the conveyance will be executed under the seal of the Court. It must be prepared at the expense of the purchaser, which will, however, be very trifling, and Mr. Cust, the Secretary to the Commissioners, will give every information and assistance for its preparation. Under the 13th section of the Amendment Act the conveyance is exempt from stamp duty. The purchaser will also receive a certificate, under the seal of the Court, of his purchase, which will be evidence to all persons of his having been declared the purchaser, and which will correspond with the order made by the Court.

“ Thirdly, with regard to possession: generally upon payment of the deposit, and not before, the purchaser will receive an order on the parties in possession to deliver up the property. In the present case, however, the peculiar circumstances of the climate and season rendering immediate possession indispensable for the cultivation of the estate for the next ten months, I have, in consequence of several applications, and with the consent of the petitioner, determined to give

the order for possession upon the guarantee of any London banker for payment of the deposit within fourteen days.

“Lastly, in order to guarantee obedience to this order for possession on the parties, an order will also be made on the Provost-marshal, the sheriff of the colony, requiring him to vindicate the purchaser’s rights in case of resistance, which, however, is not to be anticipated, as any disobedience or resistance to the order will be attended with liability to all costs and expenses incurred, and committal for contempt of this Court. The purchaser will further be entitled to every assistance from the Supreme Court of the colony, and a letter will be addressed to the Chief Justice, the Local Commissioner under the Act, informing him of the sale and of the purchaser. Whilst these are the purchaser’s rights, his liabilities are simply to the payment of the deposit and the purchase-money on the days appointed; and in the event of non-compliance, the purchaser will be in contempt, and liable to committal; besides which, he will be required to pay interest at £5 per cent. for every day during which his payments may be in arrear, and the estate may be resold by order of the Court, and the purchaser held liable to make good any deficiency in price at a subsequent sale. I have only to add that every information and facility will be given by the Court to the purchaser, and that, as the West Indian mail goes to-night, Mr. Cust and I will continue in attendance during the whole of the day, if required.”

Mr. Leifchild, the auctioneer of the Court, then read the particulars, and offered the property for sale, which ultimately, after a spirited competition, was purchased by the Reverend F. R. Braithwaite, who, it is understood, is connected with the colony, at the sum of £10,050. This sum was considerably higher than was expected, and augurs well for future sales. Immediately on the conclusion of the sale an order for delivery of possession to the purchaser was given, and went out by the same night’s mail.

III.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, May 12, 1859.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re GREATHEED.*Exparte* DAVIS and BODDINGTON.*Exparte* CHAPMAN.¹*Consignees—Priority.*

The consignee of a West Indian estate is entitled to priority over all other incumbrances for the balance due to him in respect of advances made by him for supplies or for the interest of incumbrances.

These were claims on the moneys arising from the sale of an estate in the island of St. Vincent, under the West Indian Incumbered Estates Act, 1854, 1858.

The facts of the case appear in the judgment.

Cotton, of the equity bar, appeared in support of the first three claims.

Humphry, of the same bar, appeared on the other side.

The Chief Commissioner delivered judgment as follows:—The three claims which now stand for my decision, viz., those of Messrs. Davis and Boddington, Mr. Thomas Chapman, and Mr. W. S. Greatheed, and the claim of Mr. John Greatheed, partly opened the other day, but directed to stand over for amendment, rest on the same ground, viz., the moral obligation on the incumbrancers of the estate to allow out of the purchase-money, in priority to their incumbrances, moneys alleged to have been advanced by the different claimants for the benefit of that estate, and expended in its cultivation, and the payment of interest on incumbrances affecting it; and the question in all four cases is, whether this Court (which it is unnecessary for me to say is a Court of Equity) is able to recognise that obligation. But although the claims

¹ 3 Sol. Journ., 544.

of the several parties are so far similar, the circumstances of each case are very different, and it will be necessary for me to consider them separately. The first claim which I shall consider will be Chapman's. He appears to have been the last regularly appointed consignee of the estate, and to have acted as such consignee from 1850 to 1855. He has filed a claim for £734 15s., being the balance of principal and interest appearing due to him on an account referred to in his affidavit for moneys advanced by him for the cultivation of the estate during the above period, after giving credit for the proceeds of the sugar consigned to him, and other credits, with yearly rests in computing interest, according to the custom of merchants: being, in fact, compound interest. In his affidavit he swears that he advanced the principal sums in question for the cultivation of the estate, and that he believes that they were so applied. There is no evidence to the contrary, nor do I understand that there is any question as to this fact: but if there be, an opportunity will be afforded to all parties of fully raising it on the examination of this account by Mr. Cust, the Secretary and Examiner to this Court. I assume for the present that the sums were advanced and duly applied, and on this assumption I feel no difficulty in deciding, upon the grounds which I shall shortly state, that Chapman's claim is entitled to stand second on the schedule, immediately after the costs of the sale, for the balance due to him on such account, including interest as claimed during the period for which he acted as consignee, and interest at £4 per cent. from his ceasing to act as such. With regard to the principal sums advanced during the period of his consigneeship, the case of *Scott and Nesbitt* (14 Ves. 443) appears to me to be a direct authority in favour of his lien. The only distinction between that case and the present appears to me to be, that the former was the case of an account between the various parties, and not the application of the moneys arising by the sale of the estate (although one-third of the estate appears to have been directed to be sold), while a lien is now sought to be established against moneys which have arisen from the sale of the estate under the statutes regulating this Court. The cases of *Farquharson v. Balfour* (8 Sim. 210), and *Morrison v. Morrison* (2 Sm. & Giff. 544),

however, satisfy me that no substantial distinction can be raised in this respect. In those cases liens were sought to be enforced against slave compensation moneys arising from the compulsory emancipation, under the Act of Parliament of the slaves, who were previously regarded as real estate; and as to the application of those funds it was admitted in the first case and decided in the second by Vice-Chancellor Stuart, that the consignee was entitled to a lien, and to be repaid in priority to the incumbrancers. It is true that the consignee in the latter case was appointed by the Court, and some stress is laid upon this fact both in the argument and judgment, but it is clear from the arguments in both these cases that the different judges who decided them were of opinion that the consignee, whether appointed by the Court or not, had a clear equitable right to be first paid out of the proceeds of the estate, and, if those failed in consequence of the compulsory sale of the estate, out of the purchase-money arising from such sale, and the judgment of Lord Eldon in *Scott v. Nesbitt*, already cited, also supports this view. The case *Shaw v. Simpson* (1 You. & Coll. C.C. 732), which was cited by Mr. Humphry against this view, appears to me merely to reserve the question whether a consignee ought to be paid for advances in respect of supplies out of the slave compensation money in a case where a large portion of the estate still remained unsold, and, as far as appears, the consignee still remained consignee, while, on the other hand, it decides that he ought to be paid at once for advances made on account of an annuity affecting the estate. In the present case the fund arises from the compulsory sale of the whole estate, and the consignee *ex necessitate* can no longer be consignee, can have no longer any lien on the proceeds of the estate. The present case, therefore, falls within the case of *Morrison v. Morrison*, and is not affected by the case of *Shaw v. Simpson*. The case of *In re Tharp*, also cited by Mr. Humphry, and which is reported in a note to the case of *Morrison v. Morrison*, principally relates to the relative liability of a tenant for life (a lunatic) and the remainder men, and contains no decision of the Court, nor any expression of opinion directly bearing on this case; and it is noticed by Vice-Chancellor Stuart in deciding the case of *Morrison v.*

Morrison, and did not appear to him to militate against the conclusions at which he arrived. I have next to consider the question of interest, and during the period of consigneeship I think from the nature of the transaction compound interest is properly chargeable, inasmuch as it is a mercantile transaction founded on a mercantile relation, and of which, according to mercantile practice, yearly balances, including current interest, are struck, and, so far as I can see, this must have been so in all the cases cited; but when the mercantile relationship ceased, and the consignee is no longer bound to make further advances, or keep further accounts, he is surely bound to enforce his claim, or to rest satisfied with the ordinary rate of £4 per cent. This was the rate allowed in *Morrison v. Morrison*; and I am truly glad to have the authority of the learned judge who decided that case to guide me upon this, as upon the main point arising on this claim. It only remains for me to notice the priority which I have thought right to give to this claim over the similar claim of Messrs. Davis and Boddington, and the other incumbrancers, and which I have given on the simple ground that all the incumbrancers, including Messrs. Davis and Boddington (who were consignees of the estate at an earlier period), were benefitted by this subsequent endeavour to cultivate and carry on the estate, and all should therefore equally yield priority to the claim which is founded upon it. The case of necessaries supplied to ships in foreign ports upon bottomry bonds, and for which a lien is given on the ship, much resembles the present case, and there it has been decided that the last should prevail. In "Abbott on Shipping," page 128, it is laid down, with regard to such securities, that "if they are given at different periods of a voyage, and the value of the ship is insufficient to discharge them all, the last in point of date is entitled to priority of payment, because the last loan furnished the means of preserving the ship, and without it the former lenders would entirely have lost their security," and the reason here given appears to apply also to the lien now claimed, at least in principle. The order which I shall make on the claim will be—Let Thomas Chapman be placed second on the schedule, for such sum as shall appear due to him in respect of his receipts and payments as consignee of the Arnos Vale Estate, with interest at the rate of £5

per cent., with annual rests during the time he acted as consignee, and at the rate of £4 per cent. on the balance (if any) found due to him on ceasing to act as consignee, until June 30, 1856, to the time of payment, and let an account be taken of the same by the Examiner of the Court; the costs of this claim to be reserved till the account is taken.

2. The next claim which I shall consider is that of Messrs. Davis and Boddington, for the sum of £3,286 15s. 2d., claimed by them on the balance of an account current in respect of advances made by them to Sophia Greatheed, John Greatheed, Barnard Trollope, and Mary his wife, and the Rev. Richard Burgess, and Sophia his wife, in the said draught schedule respectively named, on account of their interests in the estates in question in this matter, and also in respect of advances made by them for the cultivation and management of the estate in question, with interest on such balance from the 1st day of May, 1858. In support of this claim an affidavit is filed, in which Mr. Boddington deposes that "in the month of April, 1843, Samuel Greatheed, the then owner of the estate, was indebted to his then firm, consisting of Samuel Boddington, Esq., since deceased, the said Richard Davis, and the deponent, in the sum of £5,261 15s. 5d., on the balance of an account current, for moneys which, as to the principal thereof, had, as he believed, been advanced and paid by his said firm, for carrying on the cultivation and management of the said estate, and as to other considerable part thereof had been advanced and paid to Sophia Greatheed, John Greatheed, Barnard Trollope, and Mary his wife, and the Rev. R. Burgess and Sophia his wife, respectively named in the draught schedule of incumbrances and claims in this matter in respect of their interests in the said estate, and being so indebted the said Samuel Greatheed, on or about the 22nd day of June, 1843, executed to the said Richard Davis and deponent, as surviving partners of this firm, a mortgage of the said estate of that date for securing the repayment to the said Richard Davis and deponent of the said sum of £5,261 15s. 5d., and all such further sums as should thereafter become due to them from the said Samuel Greatheed on the balance of his account current, not exceeding in the whole the principal sum of £10,000, and the said Samuel Great-

heed, by such mortgage, covenanted to pay the said sum of £5,261 15s. 5d., and all such further sums as aforesaid, together with interest thereon, and also to consign to the said firm the produce of the said estate, except as therein mentioned." The claimants rely on their lien as consignees, using the mortgage merely as evidence of their account. Now, the first question is, whether the acceptance of the mortgage as a security for past and future advances was a waiver of their lien as consignees. And upon this point I think that it was not a waiver. The cases concerning a vendor's lien for the purchase-money of an estate appeared to me much in point. They are collected in Sugden's "Vendors and Purchasers," 11th edition, p. 862, and it will be seen that where a vendor has accepted another security, or even taken a mortgage for part of his claim on the estate on which he had previously a lien, it had been held that he lost his lien; but in the case of *Mackreth v. Symmons*, 15th Ves., Lord Eldon says, "The Master of the Rolls having before observed that there may be a security which will have the effect of a waiver, proceeds to express his opinion that if the security be totally distinct and independent, it will then become a case of substitution for the lien, instead of a credit given on account of the lien, meaning that not a security, but the nature of the security, may amount to satisfactory evidence that a lien was not intended to be reserved," and puts the case of a mortgage of "another estate, or any other pledge, as evidence of an intention that the estate sold shall remain free and unencumbered. It must not, however, be understood that a mortgage taken is to be considered a conclusive ground for the inference that a lien was not intended; as I could put many instances that a mortgage of another estate for the purchase-money would not be decisive evidence of an intention to give up the lien; though in the ordinary case a man has greater security for his money upon a mortgage than value for his money upon a purchase; and the question must be whether, under the circumstances of that particular case, attending to the worth of that very mortgage, the inference arises;" and, further on, "the doctrine as to taking a mortgage or a pledge would be carried too far, if it is understood as applicable to all cases that a man taking one pledge therefore necessarily gives up another, which must, I think, be laid down upon the circum-

stances of each case rather than universally ;” from which, at all events, it is clear that, in the opinion of Lord Eldon, there was no waiver where the mortgage was on the same estate for the whole sum, nor where the circumstances of the case did not warrant the inference. In the present case the consignees took a mortgage of the whole estate of far less value than their lien, and they remained consignees after the execution of the mortgage as before ; and I think that the nature of the security and the circumstances attending it rebut any presumption of waiver. Davis and Boddington having thus still a lien as consignees, they are undoubtedly entitled to the same order as Chapman : but I confess that I see very great difficulties in taking the account in their case. The account filed by them commences with a balance of £5,261 15s. 5d. against Samuel Greathead, and then proceeds in the regular course, except that it includes several items which evidently ought not to have been included in their account as consignees. I take two of these—£6 15s. insurance on Lanford-lodge, Mr. Greathead’s residence in England, and £58 0s. 4d. Messrs. Teesdale’s costs for mortgage—and it may turn out that the balance of £5,261 15s. 5d. was made up of many similar items. Boddington’s affidavit only says that the “principal part of the balance was advanced for carrying on the cultivation and management of the estate,” and “as to other, considerable part thereof” was advanced and paid to incumbancers. On the other hand, it is obvious that all the proceeds of the estate credited in the account must be set off against the legitimate payments made by them as consignees, and it is possible that the former may exceed the latter. It was argued, indeed, that an order of the Court of Chancery, pronounced in the year 1846, mentioning that a balance of £1,117 17s 7d. and interest was due upon the mortgage of June, 1843, and ordering that Robert Tippler (an intended consignee) be at liberty to pay the defendants Davis and Boddington the said principal sum and interest and their costs ; and upon such payment Davis and Boddington were to deliver up their mortgage and execute a transfer thereof, and that the mortgage should remain a security to Tippler for such sum, and which balance or sum of £1,727 11s. 7d. tallies with the account furnished—that that order is

finally binding and conclusive on all parties; but on consideration I do not think that the order in question can be held to be so binding and conclusive. This order was made in a suit of *Greatheed v. Greatheed* to carry out the trusts of the will of Samuel Greatheed, and a supplemental suit of *Greatheed v. Greatheed*, to which most, if not all, the parties interested in this estate were parties, some, however, being infants. It was made on a motion for a reference to the master to whom the first cause stood referred, to appoint some proper person or persons to be consignee or consignees in England of the produce of this estate. Now there does not appear to me to be anything in this order, particularly considering the terms of the motion on which it is made, and the provisions of the mortgage itself, which makes it binding or conclusive, even on the parties to the suit, to assume (as contended) that the balance therein mentioned to be due to Davis and Boddington was due to them as consignees. The order itself merely mentions that such balance was due on the mortgage, and directs that, on paying that balance, and getting a transfer, Tippler, the proposed new consignee, should be admitted as consignee. But this might equally be, whether or not that mortgage was wholly or partly for advances made by Davis and Boddington, as consignees. The terms of the motion throw some light on the order, as it was originally prayed that a reference might be made to the master, to take accounts of certain advances made by the consignees, and that new consignees might be appointed; but on Tippler's consenting to take the mortgage (*quantum valeat*), he is appointed consignee, without any accounts. Lastly, the terms of the mortgage itself throw additional light on the order. It recites that Samuel Greatheed was indebted to Davis and Boddington in £5,261 15s. 5d., but there is no mention how this debt was incurred, or what it included. It is also made subject to all existing incumbrances, and it is redeemable only on payment of all moneys advanced to Samuel Greatheed on any account: and, in fact, by the account now filed it appears that both before and since that order many sums were advanced to Mr. Samuel Greatheed on his private account. I cannot think that this order, under these circumstances, could be binding and conclusive as contended, even if it had

been acted on by Davis and Boddington and Tippler. This order, however, appears to have been never acted on, and I think it must be considered as altogether null for the present purpose. The consequence will be that Davis and Boddington will have their lien as consignees for what was advanced by them as consignees, and the debt as mortgages in their due priority, not only for their own but for all other moneys advanced to Samuel Greatheed. The accounts being, therefore, still open, it remains for me to consider of what they are composed, exclusively of the objectionable items to which I have referred, and they appear to embrace two species of advances, viz., advances for supplies and management, and advances for payment of interest and incumbrances, therein differing from Chapman's, on which the advances were wholly for supplies or management. Now, I think that both are proper debits in this account, and the cases already cited, of *Shaw v. Simpson* and *Morrison v. Morrison*, are direct authorities for this. On the other hand, we must consider the credits which should be set off against them, and it is clear to me that the whole proceeds received by the accounting parties must be set off against them without reference to any other items improperly introduced into the account. It was also argued by Mr. Cotton that Davis and Boddington had a claim on each incumbrancer's share of the purchase-money for any advance made by them on account of the interest due to such incumbrancer, and I think that this is correct, provided that the relationship of borrower and lender can be proved between the incumbrancer and consignees, and provided that all receipts are duly accounted for. On consideration, however, it appears to me that Davis and Boddington were in this matter merely the agents of the owner, and that there was not the relationship which I have mentioned, but if I am wrong on this point, still it is clear that they were bound to set off the proceeds against this and other legitimate payments only, and not against the private debt of the owner. It is, however, unnecessary for me to go further into these points, because the consignees assert and are conceded a lien for all their advances as such before the whole of the incumbrancers, and it only remains for them to pass their accounts, which, as I have before said, are still open and unsettled. The difficulty in

doing this will arise from their having mixed the private debts of the owner with their payments and receipts on account of the estate, and until the former are withdrawn from the account it is impossible to say what balance, if any, is due to them. Should a balance prove due to them, they would, of course, have interest upon it in the same manner as Chapman; but I do not think that they can claim interest on the balance due to them on ceasing to be consignees beyond the period of six years. The Statute of Limitations (3 and 4 Will. IV. c. 27) appears to me to apply both to the principal and interest claimed (sections 2, 24, 34, and 42). As to the former (the principal), the period of twenty years allowed is not yet run; but as to the latter, the right and remedy is barred beyond the period I have mentioned, viz., six years. The case of *Courtenay v. Williams*, cited on the point, appears to me not to apply—first, because in that case the funds were in the hands of the person claiming the lien; 2nd, because (and this is the better reason) that case was not upon the statute of Will. IV. but of Jas. I., which took away the remedy, but not the right. With regard to the priority of their claim, I shall place them next to Chapman, but subject (if I should hereafter so decide) to be postponed to the claims of W. S. Greatheed and John Greatheed, which I am about to mention, but on which I shall give no decision to-day, the latter, indeed, not having been fully argued. With regard to the priority claimed on the Bon Bon estate, under the mortgage for principal and interest, this point involving a question both of fact and of law, remains to be argued, and must also be reserved. The order I will make will be as follows:—Let Davis and Boddington be placed third in the schedule for such sum as shall appear due to them, in respect of their receipts and payments as consignees of the Arnos Vale Estate, with interest at the rate of £5 per cent., with annual rests, during the time they acted as consignees, and at the rate of £4 per cent. on the balance (if any) found due to them on ceasing to act as consignees for a period of six years, and let an account be taken of the same by the examiner. Let this order be without prejudice to the claims of W. S. Greatheed and John Greatheed, and also to the said claim of Davis and Boddington for priority as to

the portion of the estate called Bon Bon under their mortgage of the 22nd of June, 1843, and to any order which the Court may make as to the same respectively. The costs to be reserved as in Chapman's case. In the course of the argument on this claim a question has been raised whether a consignee's advances in favour of the interest of a puisne mortgagee made *bona fide* would rank above the principal and arrears of interest of a prior mortgage, but it is not necessary for me, I think, to offer any opinion upon it, inasmuch as in the present case there is no dispute as to the priority of the incumbrancers to whom interest has been advanced, and due credit will be given by them for such advances on the present claims. There is a case of *Sayers v. Whitfield* (1 Knapp, 133) before the Privy Council, which was not cited in the course of the argument, but appears to me strongly to support the conclusions to which I have arrived, and contains some valuable observations on the case of *Scott v. Nesbitt*.

3. Mr. William Samuel Greatheed's claims comes next, and is one of very great difficulty, and has caused me much anxious consideration. He appears on coming of age to have inherited an insolvent estate, and to have sacrificed his means, and in some measure his prospects in life, by selling a commission which he held in the army, and applying the proceeds to the management of the estate, and to have devoted himself to its management at the same ordinary salary of a manager or agent. It is possible that a hope of the estate ultimately becoming solvent may have stimulated his exertions, but it is certain that there was no reasonable probability of such a result, and that the contrary is now the case. From 1850 to 1853 he acted as manager and receiver to the estate with the consent of some of the principal incumbrancers, and with the acquiescence or, at least, with the permission or toleration of all. He received advances from Messrs. Chapman, the consignees, and consigned the produce to them, and conducted the estate successfully until, by an ill-judged act of a third party, to which I shall presently advert, his management was virtually determined. Previously to entering on his management he guaranteed Messrs. Chapman the payment of their first and most necessary advances out of the proceeds of his commission,

which were vested in Consois, and were subsequently sold and received by them accordingly; and it is in respect of this sum he now claims. The advances which it went to repay were expended in providing mules, implements of cultivation, and other necessaries for the management of the said estate. From this expenditure and his management large proceeds arose, and the estate was restored to a comparatively profitable condition, when Mrs. Greatheed, a jointress on a moiety of the estate, in 1855 distrained on the mules and other chattels, and threw the estate out of cultivation. Under these circumstances, it must be admitted that there are strong grounds for this claim, assuming, of course, that the claimant duly accounted for all his receipts and payments as manager of the estate. As yet, however, I have been unable to discover any authority for extending the lien for advances which is accorded to consignees for the benefit of West Indian interests and of commerce to any other class of persons, and particularly to owners of estates under any circumstances, and I am aware that very grave objections may be urged against so extending it. For the present I shall reserve my judgment on this claim until the claim of Mr. John Greatheed, which in some respects resembles it, has been argued.¹ If I should ultimately feel justified in declaring Mr. W. Samuel Greatheed to have a lien for this sum, he will come next after Chapman (who, it is to be observed, could and would undoubtedly have included the amount in his claim if it had not been repaid to him by W. S. Greatheed), and it will, of course, be on the terms of W. S. Greatheed accounting for his receipts during the time he was in the management of the estate.

4. With regard to Mr. John Greatheed's claim, which is that of an incumbrancer of the estate making advances for supplies, I will say nothing at present, except that if I decide in his favour it will also be on his rendering all proper accounts.¹ As to the two claims upon which I have made orders, I shall, under the provisions of the Act, give all parties liberty to appeal within one month.

¹ See post, p. 235.

IV.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, May 27, 1859.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner)

Re GREATHEED:
Ex parte M'DOWAL.¹*Annuity—Charge on Real Estate.**Gift of "an annuity or clear rent-charge" of £40, in a codicil, held to charge all the estates devised by the will.**Confirmation presumed from long acquiescence.*

John Greatheed, by his will, dated the 18th September, 1786, charged all his real estate with the legacies bequeathed by it, and devised a moiety of the estate now in question to his mother, Mary Greatheed, in tail, and devised all the "rest and residue" of his real and personal estate, which included the reversion of the other moiety, to his mother, her heirs and assigns, and appointed her and three others executrix and executors of his will. By a codicil, dated the 25th May, 1790, executed so as to pass real estate, he gave "an annuity or clear rent-charge" of £40, colonial currency, to the claimant, Anne M'Dowal, which had been paid to her by the devisee, and various owners of the estate claiming under the devisee, for a period of sixty years.

Hawkins (of the Equity bar), for the claimant, contended, first, that by force of the word "rent-charge" the annuity or rent-charge in question was charged on all the testator's real estate; secondly, that under the terms of the residuary devise and bequest it was a charge on the moiety included in that disposition, according to the case of *Francis v. Clemow* (Kay, 435).

Humphry (of the same bar), on the other side.

Before delivering judgment on this claim, the Chief Commissioner said, "I think it right to give either party the option of having a case for the opinion of a

¹ 5 Jur. N.S., 553.

Court of Law or Equity on this claim, inasmuch as it involves at least one point wholly untouched by judicial decision, or even the expression of judicial opinion; at the same time, I do not, under all the circumstances, feel justified in putting the parties to the expense and delay of a case unless it is applied for."

The parties having by their counsel elected to abide by the decision of the Chief Commissioner, he delivered judgment as follows:—I think, on the first point, after much consideration, that the word "rent-charge" does create a charge upon all the lands devised by the will. The first proposition established by Sir James Wigram, in his elaborate work on Wills, viz., "That a testator is always presumed to use the words in which he expresses himself according to their strict and primary acceptation, unless from the context of the will it appears that he has used them in a different sense"—appears to me to apply. For there can be no doubt that the word "rent-charge," in its strict primary sense, imports a yearly sum charged on land, whilst an annuity is merely a personal obligation. In 2 Bl. Com. c. 3, it is said, "An annuity is a thing very distinct from a rent-charge, with which it is very frequently confounded, a rent-charge being a burthen imposed upon and issuing out of lands, whereas an annuity is a yearly sum chargeable only upon the person of the grantor. Therefore, if a man *by deed* grant to another the sum of £20 per annum, without expressing out of what lands it shall issue, no land at all shall be charged with it, but it is a mere personal annuity." It must be observed that the last remark is limited to a grant by *deed* of a *yearly sum*, and that the present case is that of a gift by will or codicil of a "rent-charge," and, applying the rule laid down by Sir James Wigram, it appears to me unquestionable that the testator intended to give a yearly sum payable out of lands; and the attestation of the codicil by three witnesses confirms this view, as also the word "clear" prefixed to the word "rent-charge," and not to the word "annuity," which appears to apply to land tax, or similar burdens imposed on real estate, and has been held so to apply in a case in Douglas' Reports, p. 602.¹ The testator thus intending to charge this yearly sum on land, the next question is, on what land he did intend so to charge it; and I think that he intended to charge it on all

¹ See *Tyrconnel v. Ancaster*, Amb. 237.

his lands without distinction, and that, as between the moiety included in the specific or (to speak more correctly) particular devise, and the moiety included in the residuary devise, both are equally liable. The only other course would be to hold that the testator intended to charge the annuity on the moiety and other real estates (if any) included in the residuary devise, and not on the moiety comprised in the specific or particular devise—or at least on the former primarily, and in exoneration of the latter. (The judgment of Lord Manners in *Spong v. Spong* (2 Blich, N.S., 84), where he says, "By the general rule, a specific devisee or legatee shall not contribute to make good a pecuniary legacy," favours this view; but Lord Cottenham, in *Mirehouse v. Scaife* (3 My. and Cr. 695), comments very strongly on the passage, which he calls a mere dictum, and says "that the case put by Lord Hardwicke in *Hanby v. Roberts* (Amb. 127, Dick, 104), and the decision of the House of Lords in *Spong v. Spong*, do not determine that the devise of lands as a residue is not a specific devise, but that upon the construction of the wills, and according to the intentions of the testators in those cases, such devises were subject to the charges in priority to the other property specifically given." The question, according to Lord Cottenham, is therefore simply one of construction and intention, and I can see no reason for so construing this will, or for believing the intention of the testator here to have been such, that the legacy or rent-charge should be borne by the residue, in exoneration of the particular devise. On the other hand, there appear to me to be good grounds for the contrary presumption, from the fact that by his will he charged the legacies bequeathed by it on all his lands; and there are obviously equal, if not stronger, reasons for so charging the life annuity given by the codicil. I therefore think that, upon the construction of the will and codicil, and the intention of the testator, this rent-charge is charged on all his lands equally, and that the two moieties of the estate now in question are liable *pari passu*. But there is another distinct ground on which I am of opinion that this claim should be allowed. It has been proved that the rent-charge in question has been paid for sixty years by various owners of the entire estate claiming under

the devisee, in exoneration of the personal estate of the testator, to which the devisee was also entitled as residuary legatee; and I think that from these circumstances, having regard to the disposition of the will, a court of law would presume a grant, confirmation, or agreement to have been executed by the devisee to the annuitant charging the estate. In "Best on Presumptions," 144, it is laid down, "That there is hardly a species of act or document, public or private (including records), that will not be presumed in support of possession"—a proposition fully supported by the authorities there cited; and there is a case of *Steward v. Bridger* (2 Vern. 516), in which a grant of a rent was presumed after twenty-four years' payment. In the present case there seems to me to be no difficulty in presuming a grant, confirmation, or agreement charging this estate in relief of the testator's personal assets, to which the devisee was also entitled, as I before observed. The fact of the first moiety being devised to her in tail does not appear to me to militate against the conclusions to which I have come, either in the construction of the will, or the presumption of a grant, which I have mentioned. As to the construction of the will, the testator could, of course, have charged the moiety devised in tail if he had so desired; and (as I have already said) it appears to me that such was his desire; and as to the presumption of a grant, the devisee would have charged the moiety devised to her in tail by a deed duly executed and inrolled, or without such a deed, subject to the right of the heir in tail to avoid such charge, or to confirm it, as he pleased; and, in point of fact, the devisee in tail subsequently devised the moiety in tail, together with the other moiety; and the heir in tail confirmed that will, and must now be held to have confirmed the charge, or to be barred by the Statute of Limitations. There are some other circumstances appearing on the affidavits, and also admissions by the owner and a principal incumbrancer, which appear to me further to support this claim on the construction of the will, and the presumption of a grant or confirmation; but I do not think it necessary for me to go into them. With regard to the second point argued by Mr. Hawkins, it is now unnecessary for me to consider it; but it may be satisfactory to the parties

if I state my opinion, that if this rent-charge were not, under the terms of the will, or by force of the presumption to which I have adverted, a charge on the estate, I think that it would, under the terms of the residuary devise, according to the decision of Sir W. P. Wood, V.C., in the case of *Francis v. Clemow*, have been charged on the moiety included in such devise, as intended, and possibly on the whole estate, the decree in that case merely declaring generally that the legacy was a charge on the real estate of the testator. But, as I have already said, it is not necessary for me to go into this point. The order on this claim will be—Let the claimant stand fourth on the schedule for six years' arrears of her rent-charge, and for the value of the annuity computed from the day of the sale, and for her costs. Let this order be without prejudice, as in *Davis and Boddington's* claim, already allowed. Liberty to appeal for fourteen days.

V.

WEST INDIAN INCUMBERED ESTATES
COURT.

8, Park-street, Westminster, June 24, 1859.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re GREATHEED.

Exparte W. S. GREATHEED.

Exparte JOHN GREATHEED.

Exparte FRASER.

Consignee—Manager—Lien.

The lien of a consignee will not be extended to the owner, incumbrancer, or manager of a West Indian estate, without authority.

Cotton, Hawkins, and Westlake (all of the Equity bar) appeared in support of these claims respectively. *Humphry*, of the same bar, opposed them.

The Chief Commissioner delivered judgment as follows:—

These three claims appear to me to involve the consideration whether any person other than the consignee of a West Indian estate is entitled to a lien

or charge on the corpus of the estate, for moneys advanced for its cultivation; or, at all events, whether these three claimants, who are not consignees of the estate now in question, are so entitled under the peculiar circumstances of their respective cases. I have not forgotten that the last claimant endeavoured to make out that his testator was a consignee, and was in that capacity entitled to a lien, according to the decision of this Court in the case of *ex parte Chapman and ex parte Davis and Boddington*,¹ but I think that he failed in this part of his case, as I shall presently show. The law as to liens of this description, apart from the reported decisions and dicta of judges, appears to be as follows:—There is no general usage or custom in the West Indian colonies which authorises them. In certain of the colonies, viz., Antigua, Nevis, the Virgin Islands, St. Kitts, and Montserrat, they exist to a limited extent by express legislative enactment, which probably negative any further implied lien in those colonies. As to the remaining colonies, including St. Vincent, where the property now in question is situate, this lien is governed by the general rules of equity, as administered in the Court of Chancery in England: upon this branch of the subject I will refer to “Burge’s Commentaries on Colonial and Foreign Laws,” vol. iii., p. 346, title “Tacit Hypothecs,” and I will proceed, in the next place, to consider separately the reported decisions and dicta of the judges as regards these liens. The earliest case of importance is that of *Scott v. Nesbitt*, 14 Ves., 438, which is approved of by Lord Cottenham, in the case of *ex parte Pollard*, 4 Deacon, 25. It decides that a part owner, who was also a consignee, and recognised as such, but not appointed by the Court of Chancery, was by the law of England, independently of colonial usage, entitled, in his accounts with the persons entitled to the other share, including incumbancers, to take credit for advances made by him as consignee, and so to have a lien on the profits of the estate; but it does not appear that the question whether he was also entitled to a lien on the corpus of the estate was distinctly raised, although the sale of the last-mentioned share was in fact directed, and some parts of the judgment points to this conclusion. *Sayers v. Whitfield*, 1 Knapp, 145, decides that

¹ Ante, p. 219.

consignees, who were also mortgagees, were entitled to add the amount of their advances, as consignees, to their mortgage debt, as against the owner, and so far affected the corpus of the estate. *Farquharson v. Balfour*, 8 Sim. 210, only decides that a consignee was not entitled, during the continuance of his office, to be paid the balance due to him out of the compensation money awarded under the Act for the Abolition of Slavery. *Shaw v. Simpson*, 1 You. & Coll., C.C. 732, is the first direct decision in favour of this lien as regards the corpus of the estate. It decides that the consignee of a West Indian estate, who had been appointed by the Court, and had out of his own moneys made payments on account of an annuity charged on the estate, was entitled to be reimbursed such payments out of compensation money, which had been awarded under the Act for the Abolition of Slavery, and the question was reserved whether the consignee had a lien on the corpus of the estate for moneys expended by him in its cultivation. *Morrison v. Morrison*, 2 Sm. and Giff. 564, decides that a consignee of West Indian estates, appointed by the Court, and discharged at his own request, and to whom a large balance was due on his current account, was entitled to be indemnified out of the slaves' compensation money. This case was appealed against, and confirmed by the Lords Justices, as I was informed, before I delivered my judgment in the case of *ex parte Chapman* and *ex parte Davis and Boddington*; but I have since found that it was so confirmed, on the ground that the consignees in that case were the officers of the Court, and had acted under its directions, and that the general question was reserved in the judgment of the Court. It is to be observed that in all these cases, except *Sayers v. Whitfield*, the consignee had been appointed or recognised by the Court. I now come to the dicta of the judges in the various cases; and, first, in *Scott v. Nesbitt*, Lord Eldon says: "The concerns of a West Indian estate cannot be carried on without consignees, and all moral justice requires that for what in the fair discharge of their duty they became liable to in respect of the management of the estate, they should be indemnified with priority to the claim of those who have interests in the estate to be so managed before any person can

have any benefit from it," and "the dealing with the estate creating a personal contract in respect of which the estate is liable;" from which, I think, there can be little doubt that the opinion of Lord Eldon was in favour of a lien by the consignee on the corpus of the estate without reference to his being or not being an officer of the Court; and this appears to be assumed in the arguments and judgments in the cases of *Farquharson v. Balfour* and *Morrison v. Morrison*. The opinion of Vice-Chancellor Shadwell in *Farquharson v. Balfour* is expressed as follows:—"It is clear that when a balance is found due to a consignee on a final settlement of accounts, he cannot be discharged until that balance is paid, and if payment cannot be made without interfering with the inheritance or corpus of the estate, the Court would be justified in resorting to it for the purpose of doing justice to the consignee." The opinion of Vice-Chancellor Stuart is also the same, as appears by his elaborate judgment in the case of *Morison v. Morison*, where all the authorities are cited, except the case of *Sayers v. Whitfield*, but which case only further confirms his views, and contains in the judgment of the Privy Council, as delivered by Lord Wynford, many general observations on the lien of a consignee, from which I think it right to read the following passages:—After referring to the ordinary terms of agreement between the owner and the consignee, his lordship proceeds as follows:—"We know from the inquiries which we have made, and from the authority of Lord Eldon, that this is the known mode of dealing between planters and merchants. The putting a stop to an established practice often produces a mischievous derangement of business. A decision having that effect should never be made, unless the evil arising from such a practice greatly counterbalances the good. This practice is beneficial to the mortgagee, inasmuch as he derives from it the security of the produce, and the power of applying the proceeds in liquidation of his debt. It is more, it is beneficial to the mortgagor, who, when his produce is consigned to his creditor, is certain of getting its value. In the event of the bankruptcy of the mortgagee, his debt will be awarded to him under that clause of the bankrupt laws, 6th Geo. IV., c. 16, s. 50, which allows mutual debts and credits to be justly set off one against the

other ; and he will not be obliged to come in under the commission, and be contented with his dividend with the other creditors. If his produce were consigned to one who was not his creditor, he might, in the event of the failure of his consignee, lose the whole, or a considerable part of it, for there would be no debt against which it could be set off. According to this practice his property is always secure ; if the practice be departed from, he is always in some degree of danger. It is desired, too, by all persons that their pecuniary wants should not be disclosed to the world. The pecuniary wants of a planter must soon be known by his consignee ; if those wants are not to be supplied by the consignee, but by some other person, his credit must be exposed to several, instead of the knowledge of his difficulties being confined to one who is interested in keeping them as secret as possible. The uncertainty of the returns of West Indian property makes planters particularly liable to sudden pecuniary distress. There are no persons to whom they can have so ready a recourse as to their consignees, who (I am confident, from the high character of British West Indian merchants), will always be disposed to give the most prompt and liberal assistance that the circumstances of the planter will justify them in affording." Again, his lordship says, "There is no reason why this court should adopt any measures which would have the effect of placing our colonial possessions in greater embarrassments than those under which they at present unfortunately labour. It would be the duty of this, and every other Court, as far as it could, to afford assistance to these valuable appendages to the British Crown. They have difficulties enough to contend with. This Court would add to these difficulties if it put an end to a practice sanctioned by long usage, and which, in the view we take of it, is a practice as advantageous to the planter as it is to the merchant. If it were interrupted, too, it might prevent capitalists from lending their money in the British West Indies, and to deprive our own possessions of the advantage which they now hold over the colonies of all other European nations, in having the aid of the greatest capitalists in the world to enable them to cultivate their estates. This would be a great public injury, because it might both prevent

capital from being beneficially employed, and deprive one of the most productive branches of industry of the necessary means of support." And again, "If the slaves on these estates are not furnished with the necessaries of life, if the works are not kept in order, or, to use a comprehensive term familiar to colonists, the necessary supplies and contingencies are not provided, the plantation must be ruined, for it is only by means of these that it is made productive and derives its value. The land is worth little without the means of cultivating it, and fitting its produce for the market. Free labourers cannot be hired. Either a stock of slaves must be kept up, or the land must remain uncultivated and unproductive. When the crop is taken from the land it requires mills to get the sugar from the canes, and all the implements of a distillery to produce the rum. The management of such property is more like that of a manufactory than of a farm in England. The slaves and machinery may be easily removed; and as they constitute the principal part of the value of the estate, the person who furnishes supplies has not the same security as a man who trusts to the owner of an English estate, which cannot be taken away out of the reach of the execution of the creditor. The interest of all who have any concern in West Indian estates, and, what is more important, humanity to the slaves, makes it expedient that those who furnish supplies should be able to charge the amount of those supplies against the estate." The last case appears to me to contain a clear expression of opinion in favour of the general lien of the consignees, and also a full explanation of the principles on which it is grounded. Whilst on the one side we have these judicial decisions and dicta in favour of the lien of the consignee, there does not appear to be a single judicial dictum on the other side, but only the reservation of points which it was found unnecessary to decide in particular cases, and some expressions of doubt, as in *Shaw v. Simpson* and the appeal in *Morison v. Morison*. There is, however, the opinion of Mr. Burge in his Commentaries, vol. iii., p. 357, that this lien exists as against the owner, but not against an incumbrancer; and the reason given is that "the consignee has notice of the incumbrance, and makes his advances to the mortgagor, at the risk of his being dispossessed." With great deference to so learned an

opinion contained in a book of the greatest possible service to this Court, I think that it is clearly opposed to the views of all the very eminent judges whom I have named, and that the reason given for it is not satisfactory. A consignee may have no notice whatever of an incumbrance on the estate; and on the other hand, an incumbrancer will always, *ex necessitate*, have notice of a consignee's lien. Mr. Burge also appears to disapprove in some measure of the judgment in *Sayers v. Whitfield* as reported, or of the conclusions which naturally follow from it. I confess that I cannot agree with him in his observations on this case. Fully adhering to the decisions of this Court in the cases of *ex parte Chapman* and *ex parte Davis and Boddington*, viz., that the consignee is entitled to a lien in priority to all incumbrancers, I have thought it right, on this occasion, to review the authorities in support of those decisions, in consequence of the course which the arguments took on the present claims. On all of them it was contended that the claimants possessed the same equity as the consignees, founded on the same principles; and it remains for me to consider them separately, in order to see if such be the case. No direct authority to this effect has been cited in the argument on any one of these claims, and I have been unable to discover any such authority. The case of *Morris v. Elme* (1 Ves. jun., 139), which was cited by Mr. Westlake on Fraser's claim, appears to me to relate only to the duties and powers of managers with regard to the produce of the estate, and not to affect the question now at issue, viz., the liability of the corpus, as to which I repeat that I can find no authority whatever; and in examining each case I must necessarily be governed only by general principles and considerations.

The first claim is that of Mr. William Samuel Greathead, the owner of the estate. The circumstances of it are fully stated in my judgment in the cases of *ex parte Chapman* and *ex parte Davis and Boddington*, ante 229; the leading features of it are that he made the advances in question out of moneys raised by the sale of his commission in the army, being at the time the owner of the estate, and acting as manager with the consent of some of the principal incumbrancers and the permission or toleration of all. In the

absence of any direct authority, I do not think that the Court would be justified in giving priority to this claim. There is a great and material distinction between it and all the cases and authorities which I have cited, viz., that the latter all evidently regard the particular office of a consignee, the duties attached to it, the contracts implied as well as expressed which are incidental to it, and the public benefits which result therefrom, as the true reasons or grounds for the lien in question. It is obvious that none of these reasons or grounds apply in the present case. The owner particularly appears to be excluded from the benefit of this lien, as the clear presumption is that any advances he makes are intended for his own ultimate benefit, in respect of his equity of redemption, and also in exoneration of his primary liability for all advances. It was argued that because Mr. W. S. Greatheed acted as manager to the estate, he was entitled, in that capacity, to this lien; but I cannot think so in the absence of any express agreement binding on the parties before this Court, even if he had not been the owner of the estate (as will be seen by the observations I shall presently make on Fraser's claim); but as Mr. W. S. Greatheed's case now stands, I think that his position as owner is clearly fatal to his claim. Two of the parties interested have very honourably supported this claim, which, I have no doubt, is a very fair one under the circumstances; but I do not think that I should be doing my duty in deciding in favour of it beyond the interests which those parties represent, and which, of course, they can bind so far as they think right, without the interference of the Court. This claim will, therefore, be disallowed as to the lien now asserted; and the question as to the land termed the Bon Bon estate, also involved in it, having already been virtually disposed of by my decision on Davis and Boddington's claim, the present claim will be disallowed altogether.

The next claim is Mr. John Greatheed's, which is that of a mortgagee not in possession, who has made advances forsuppliesto the estate without any authority from his co-mortgagees, or from the owner; and I think that this must also be disallowed on the same ground as the last, viz., that the claimant did not fill

the one single office to which this lien has hitherto been attached by the decisions or the opinions of the judges of the Court of Chancery; but I think it right to add that I consider this claim also to be a fair one under the circumstances.

The last claim is that of John Fraser, the executor of William Gordon McGregor Grant, the manager of the estate; and after much consideration I think it my duty to disallow this claim also, on the same grounds as the two former, viz., that he did not fill the office of a consignee. This circumstance was admitted in the two other cases, but denied in the present, inasmuch as it was argued that by taking up the bills of consignees of the estate, and by shipping produce to brokers in England, who sold the same, Grant virtually became a consignee himself; but I cannot think that these acts, without any appointment or recognition of that character in his regard by the owner or incumbancers, could constitute him a consignee, or alter his character of a manager. There is one feature of great hardship in this part of his case, viz., that he actually took up and paid bills, which he, as manager, had drawn on the consignees for payment of supplies to the estate, and which bills the latter had dishonoured; and that, although there is no doubt that the consignees could have charged the account against the estate if they had paid the bills, he is unable to do so. The same hardship, however, exists in a different form both in Mr. W. S. Greatheed's and Mr. John Greatheed's cases. The former gave the proceeds of his commission to repay advances made by the consignee; the latter made with his own moneys most necessary advances, which the consignees declined to make; and although in both cases the consignees would undoubtedly have had a lien for the same, yet have I felt obliged to deny to those parties also a similar right. It may be urged that the lien in question ought to be extended to the present and like cases, and, in fact, to every person who advances money for the necessary supplies of a West Indian estate; and there is one passage in the judgment of Lord Eldon, in the case of *Scott v. Nesbitt*, which appears to favour this view. There is also an allusion made in several of the cases to the doctrine of "salvage," which would also tend to support this conclusion. With regard to the expression

of Lord Eldon, I think it must be limited by the context to cases of moneys advanced by consignees; and with regard to the illustration furnished by the doctrine of "salvage," I think that must also be limited in the same manner. The contrary conclusion would lead to the result that every successive owner or his representatives, every incumbrancer, every agent, every factor, every tradesman who had ever provided or furnished supplies to the estate, would be entitled to a lien (the last in time being first in payment), and the administration of a West Indian estate would be nearly impracticable. At all events, if this would not be the result, it would have to be guarded against by limits and rules to be prescribed by the Courts of equity with great care and circumspection; and it would not be right for this Court, in the absence of any authority, to decide in favour of the extension of a lien of such importance and difficulty. In the first vol. of Vesey's Reports, page 155, will be found the case of *Buxton v. Snee*, where it was decided (in favour of what the Lord Chancellor termed a "harsh defence") "that there was no lien on a ship or proceeds from sale of it, for repairs done, except in course of a voyage," although undoubtedly such lien clearly existed for repairs done in the course of the voyage, and the Lord Chancellor commented on this decision as follows:—"It is said that this sounds harsh in a Court of Equity, for even admitting there is no lien on the body of the ship, yet the defendants having received the benefit should make satisfaction; but that follows not as an equitable consequence; for suppose the owner of a house lays out a great sum of money in repairs, upon its descending to his heir-at-law he cannot be affected with the debt for these repairs, although he receives the benefit, for though it be the law of Holland that it is a lien on the house, it is not so here; for if whoever receives a casual benefit should be liable to make satisfaction, it would extend to several cases where it ought not." In the second vol. of Vesey and Beame's Reports, page 243, is a case of *ex parte Young*, in which it was decided that there was no lien on the share of part owners of a ship who had become bankrupt for a balance due to the other owners for the freight and earnings of the ship, after taking credit for the outfit, which the bankrupts had not paid for, and the other

owners were obliged to pay. It is impossible to show more clearly than these cases how reluctant the Court of Chancery is to extend equities of this kind; and I think it follows that a tribunal constituted like the Commission over which I have the honour to preside, ought not to take upon itself the responsibility of so doing, unless in very clear cases, or when fortified by decisions, or a strong current of judicial opinion, and the consequent practice and usage of commercial and other interests founded thereon. When so justified, I have not shrunk from such responsibility, as in the cases of *ex parte Chapman*, and *ex parte Davis and Boddington*; but I do not think it right to incur it in the present, or (as at present advised) in any other cases, with reference to the lien in question, especially as its extension appears to me, after much consideration, to be of very doubtful expediency or practicability. On all these three claims I shall give no costs either way, except as to that part of Mr. W. S. Greatheed's claim which relates to the Bon-Bon estate, of which I will give him the costs out of the fund in Court. I should have liked to have given all the parties their costs; but as they would have been subject to accounts if I had made orders in their favour, when the costs would have followed the balance, and as in all three cases the accounts are disputed, I do not think that it would be just to allow them now. There will be liberty to appeal on all these cases for twenty-one days, and for two months on limiting the amount of the claims to the balances now appearing, waiving costs, and consenting to the distribution of the remainder of the funds; and so far as the Court and the public are concerned, I shall be very glad if all or any of the cases are brought before the Privy Council.¹

¹ The case of *ex parte Fraser* was subsequently carried to the Privy Council.—See post, p. 246.

VI.

IN THE PRIVY COUNCIL.

(On Appeal from the West Indian Incumbered Estates Court.)

February 7, March 29, 1860.

(Before Lord KINGSDOWN, Lord Justice KNIGHT BRUCE, Lord Justice TURNER, and Sir JOHN COLERIDGE.)

FRASER v. BURGESS.¹

Lien—Consignee—Manager of West Indian Estate.

The manager of a West Indian estate, as such, has no lien on the inheritance for advances made by him for cultivation.

A manager appointed by a trustee stands in the place of the trustee who employs him, and is entitled to be reimbursed his advances out of the trust estate.

A manager appointed by the Court of Chancery is presumed to act for the benefit of all parties, and is entitled to the same remedies as a trustee.

Acquiescence or interference on the part of the mortgagees, or of one mortgagee presumably on behalf of all, may postpone their securities to the manager's claim.

The facts of this case sufficiently appear by the previous report, ante p. 235, and by the judgment.

Selwyn, Q.C., and Westlake, for the appellants.

Roundell Palmer, Q.C., and Humphry, for the respondents.

The following cases and authorities were cited in the course of the argument:—*Scott v. Nesbitt*, 14 Ves. 438; *Sayers v. Whitfield*, 1 Knapp, 146; *Shaw v. Simpson*, 1 Yo. & Coll. C. C. 732; *Morrison v. Morrison*, 2 Sm. & G. 564; 7 De G. M. & G. 214; *Re Tharp*, 2 Sm. & G. 578n; *Ex parte Chapman*, 3 Sol. Journal, 544; *Cust's West Indian Incumbered Estates Acts* (1st edition), 156; *Steele v. Murphy*, 3

¹ 8 Weekly Reporter, 376; 13 Moore, P.C.C., 314.

Moore, 445; *Cooper v. Cook*, 20 Beav. 639; *Miles v. Atherton*, 3 Burge's Colonial Law, 353; *Morris v. Adams*, 1 Ves. jun, 139; *Farquharson v. Balfour*, 8 Sim. 210; *Scott v. Smith*, 3 Burge's Colonial Law, 357.

March 29. Lord Kingsdown delivered the judgment of their Lordships.

This was an appeal from the Court of the Commissioners for Sale of Incumbered Estates in the West Indies, and it came before us on a joint case of the appellant and respondent; John Fraser being the appellant and Sophia Burgess the respondent. The question raised by the appeal was, whether an order by the Chief Commissioner disallowing the claim of the appellant to have a lien on the purchase-money of the Arnos Vale Estate, in the island of St. Vincent, ought to be reversed or varied.

The facts of the case are somewhat complicated. So far as it appears necessary to state them, in order to make the grounds of our judgment intelligible, they were in substance as follows:—In the year 1823, Samuel Greatheed was tenant in fee-simple of an undivided moiety of the Arnos Vale Estate, subject to a charge of £600 a-year, by way of jointure, to his wife Sophia, if she should survive him, which she did. He was tenant-in-tail of the other undivided moiety. He had two sons, Samuel and John, and two daughters, Mary and Sophia; and on the 26th of May, 1823, he made his will, by which he charged, or attempted to charge, the entirety of the estate with the sum of £24,000, as portions for his younger children, and, subject thereto, devised the whole estate, with the stock and crops thereon, to his eldest son, or such other son as should first attain the age of twenty-one years, and the heirs of his body; and he appointed his two sons Samuel and John trustees of his estates and executors of his will. The testator died on the 10th of July, 1829, leaving his wife and his four children surviving. On the death of his father, Samuel, the eldest son, became tenant-in-tail in possession of one moiety of the estate, subject to the charges created by his father's will, and to the jointure of Mrs. Greatheed; and tenant-in-tail of the other moiety, free from any charges, except so far as a case of election might be raised against him in equity. In the year 1830, Samuel Greatheed, the son, having attained twenty-

one, suffered a recovery, and barred the entail on both moieties of the estate.

In Hilary Term, 1833, a suit was instituted in the Court of Chancery in England by John Greatheed, against his brother Samuel and the other members of the family, for the purpose of carrying into execution the trusts of the father's will, and putting Samuel to his election whether he would take under or against the will; and the bill prayed the appointment of a manager and a conveyance of the estate. Samuel elected to take under the will; and, on the 14th of December, 1833, a decree was made establishing the will, and directing the trusts to be performed, and declaring that the entirety of the estate was liable in equity to the charges of the will, subject as to one moiety to the first charge of the widow's jointure. Samuel Greatheed was at this time in possession of the estate; and it was ordered that, on his giving security to account for the surplus rents of the estate from the 10th of July, 1832, after keeping down the annuity and paying the interest on the charges, and to be answerable for what might be found due upon such accounts when required by the Court, he should be permitted to continue in possession of the estate.

The security proposed to be given by Samuel, in pursuance of this order, was afterwards waived by the parties interested, Samuel having agreed to pay at once a large sum in part of the £24,000 charge. A sum of above £10,000 was accordingly advanced by him, and out of this amount, and the sum allotted by way of compensation for the manumission of the slaves on the estate, the charges were very considerably reduced. There still, however, remained a large sum unpaid, which is stated in the case to amount to the sum of £9,500. A portion of this belongs to the respondent, Sophia Burgess, one of the daughters of the testator, for her separate use for her life; and the trustees of her marriage settlement, and her husband and children, are interested in it. It is in respect of her interest in this charge that this lady is respondent on the present appeal.

On the 22nd of June, 1843, Samuel Greatheed mortgaged the plantation to Messrs. Davis and Bodington to secure the sum of £5,261 15s. 5d., and all such further sums as they should advance not exceeding £10,000, and he engaged to consign to them the produce of the estate.

At this time Mr. W. G. McG. Grant was in possession of the estate as manager. He had been appointed to his office by a power of attorney, executed by S. Greatheed on the 16th of December, 1839, which is in the usual form, and gives power to Grant to do all acts in the management of the estate which S. Greatheed himself could have done.

It appears that Davis and Boddington, from the date of their mortgage, received those portions of the crops of the estate which, according to the usual practice, are transmitted for sale to Europe, and, according to the same practice, furnished for a time those supplies to the plantation which it is the custom to send out from Europe. The course of dealing seems to have been that the necessary supplies were ordered by Grant, and that he drew bills for the amount on S. Greatheed, who accepted them, and sent them to Davis and Boddington, to be taken up and paid when due out of the proceeds of the estate consigned to them. Grant, as the manager on the island, made advances out of his own funds for the expenses of the plantation, and in the course of the year 1845 a large balance became due to him.

In this state of things Davis and Boddington, in the summer of 1845, declined to make any further advances for supplies, and they refused to pay a bill for £784 19s. 8d., drawn by Grant upon S. Greatheed, and accepted by him in August, 1845. This bill, and another bill afterwards drawn for £300, were dishonoured and returned to Grant, who already was in advance on his account as manager to a considerable amount, and S. Greatheed refused to be at any further expense in sending out the necessary supplies to the estate. The incumbrancers, therefore, were in this position. Grant could not, of course, be expected to continue in the management of the estate, unless the amount due to him was paid, and he would probably use whatever power he possessed over the plantation and the crops in his character of manager to secure his reimbursement. On the other hand, without the necessary supplies from England, the cultivation could not be carried on; and it was obvious that unless some arrangement could be made to remove these difficulties, the working of the plantation must be abandoned, and the incumbrancers would in all probability lose what was still due to them, amounting, as it seems, to

near £10,000. Hereupon communications took place between Grant, the manager in the island, and John Greatheed, one of the incumbancers, acting (with or without authority) on behalf of all, with a view to provide for the continued working of the plantation, and for the satisfaction of the debt which was due to Grant for his advances, and for his relief from the liability to which he was subject in respect of the bills which he had drawn for supplies, and which had been dishonoured.

It is to be inferred from the letters set out in the affidavits contained in the Appendix that John Greatheed represented to Grant that he would effect these objects by means of an application to the Court of Chancery. At page 15 of the Appendix are found extracts from several letters of Grant to John Greatheed on this subject in the months of April, June, and September, 1845, which show the position of the estate at that time and the measures which were in contemplation. On the 26th September he writes as follows:—

“I have had a letter from your brother, complaining bitterly of your proceedings against him, and of the impossibility of his carrying on any longer, and requesting me not to draw any more bills on him. The arrears of wages and other current expenses will require provisions being made for their settlement, and whatever is intended to be done I trust may be so without delay, as it is important that the estate should not get into bad credit.”

On the 11th October, 1845, he writes again:—

“I am sorry your brother and you do not correspond. I shall send him a list of stores; but he wrote me last that he would accept no bills on estate's account; and how are matters to be carried on if so, until the receiver is appointed by the Court?”

On the 26th October, he writes:—

“I have had a long letter from your brother deploring the state of matters, and mentioning that the bill I had drawn upon him to pay labour and current expenses on the estate would not be accepted for payment by Boddington; and that in all probability it would come back. Now, if this should happen again, it will prove serious to us here, and, much in arrear

with the Bank already, no further indulgence will be shown. For some time past I have been compelled to carry on the cultivation by raising money on my own responsibility depending upon your seeing to the same being duly paid, either before or after, by order of the Court, when your bill is filed; otherwise the estate must stand still."

Soon after the date of this letter, on the 28th Nov., 1845, John Greatheed filed his supplemental bill in the Court of Chancery against all parties interested, including the respondent and her husband and children, praying to have the benefit of the former suit and proceedings, to have what was due for the incumbrances raised, and for the appointment of a manager and consignee.

After the institution of the suit, Grant continued in the management of the estate, as before, and the subsequent letters to J. Greatheed are to the same effect with those written previously.

On the 10th February, 1846, he writes:—

"The crop at Arnos Vale cannot go on without stores, and to purchase in the island would be madness, seeing how far I am already involved in supplying the estate, and no prospect of payment. Indeed, I have been treated very badly, and have, in endeavouring to protect the interests of the legatees, been led into a labyrinth, out of which I trust you will assist me."

On the 26th February, 1846, he says:—

"Your brother has advised me to sell stock from Arnos Vale to pay protested drafts, and to appropriate the produce just made to the same purpose, which I shall have to do unless some arrangement be made for the payment of the necessary expenses. The produce, therefore, as shipped, will have to be insured; and for this purpose, ten hogsheads sugar, on board the *Cruikshank*, from Arnos Vale, I had requested my friend Mr. Geddes to effect insurance on, pending your suit in Chancery; and as your brother will not move in the matter, I must do what I can to protect the interest of the legatees."

It is clear that, during the period of this correspondence, Grant was acting in the management of the estate, not under the direction and on the credit of S. Greatheed, the owner, but of the incumbrancers, or at

all events, of John Greatheed, professing to act for them.

In pursuance of the arrangement with Grant, notice of motion was given by the plaintiff John Greatheed, that it might be referred to the Master to appoint some proper person or persons to be consignee or consignees in England of the produce of the plantation, and also to appoint some proper person or persons to be manager or managers of the same plantation, with the usual directions; and that it also might be referred to the Master to inquire whether any, and what, sum or sums of money were or was justly due and owing upon any and what bills of exchange drawn by Mr. W. G. McG. Grant, of the island of St. Vincent, the person theretofore and then employed by the defendant, S. Greatheed, as manager of the said plantation or estate, for or in respect of supplies made to, or expenses properly incurred on account of, the said plantation or estate, and whether or not it would be for the benefit of the persons interested in the plantation or estate that such sums or sum of money, if any, should be paid by the consignee or consignees to be appointed as aforesaid; and if the said Master should be of opinion that it would be for the benefit of the persons so interested that such sums of money should be paid, then, that the said consignee or consignees might be at liberty to pay the same, and be allowed the same on passing their accounts before the Master. Upon this motion, all the defendants in the suit, including the present respondent and her husband and children, appeared by counsel.

Before the motion came on for hearing, a negotiation had been entered into with a gentleman of the name of Tippler to pay off what was due to Davis and Boddington on their mortgage, and to become consignee of the estate; and an arrangement was made with the consent of all parties, for continuing Grant as manager of the estate on the island. On the 29th of June, 1846, the following order was made upon the motion:—

“ Upon hearing what was alleged by the counsel on both sides, by consent of the plaintiff and of such of the defendants as are of age (the other defendants being infants, not opposing), and without prejudice to any question in these causes, or either of them, and the defendant Samuel Greatheed, and the defendants

Richard Davis and Thomas Boddington, respectively, admitting that the principal sum of £1,717 11s. 7d., together with interest thereon, from the 1st day of May, 1846, remains due to the defendants, Richard Davis and Thomas Boddington, on the mortgage of the plantation or estate called Arnos Vale, created by the indenture of the 22nd day of June, 1843, as in the pleadings in the second cause mentioned; and the defendants, Richard Davis and Thomas Boddington, consenting to accept immediate payment of the said principal sum and interest, and, on payment thereof, together with their costs, charges, and expenses properly incurred, and to be incurred, in and about the suit, and their said mortgage security, and the transfer thereof respectively, to execute a transfer of such security, his Lordship doth order that Robert Tippler, he being willing so to do, be at liberty to pay to the defendants, Richard Davis and Thomas Boddington, the said principal sum of £1,717 11s. 7d., together with interest thereon, at the rate of £5 per cent. per annum, from the said 1st day of May, 1846, up to the time of payment, together, also, with the total amount of their costs, charges, and expenses, properly incurred and to be incurred, in and about this suit, and their said mortgage security, and in relation thereto, and the transfer thereof respectively."

Directions are then given for the transfer of the mortgage of Davis and Boddington to Tippler:—

"And on the due execution of the said deed or deeds, it is ordered that the bill in the second-mentioned cause stand dismissed out of this Court, as against the defendants, Richard Davis and Thomas Boddington; and the defendant, Samuel Greathed, by his counsel, undertaking to execute the said deed or deeds to the said Robert Tippler, and undertaking, in the meantime, and until the said deed or deeds shall be duly executed, to employ the defendants, Richard Davis and Thomas Boddington, as consignees of the said plantation, upon the usual terms, and undertaking, from and after the execution of the said deed or deeds, to employ the said Robert Tippler as the consignee of such produce, and to consign such produce, or cause the same to be consigned, to the said Robert Tippler accordingly, and undertaking also to continue William Gordon McGregor Grant, the present manager, as the manager of the said plan-

tation or estate in the island of St. Vincent, it is ordered that the said defendant, Samuel Greathead, do continue in possession of the said plantation or estate until the further order of this Court; and it is ordered that the costs of all parties of this application, except the costs of the defendants, Richard Davis and Thomas Boddington, which are before provided for, be considered as costs in these causes; and it is ordered that the rest of the said motion do stand over, and any of the parties are to be at liberty to apply to this Court as there shall be occasion."

The proposed arrangement with Tippler seems not to have taken effect, and, consequently, the dishonoured bills on which Grant was liable were not taken up. It is stated in the case that the order of the 29th June, 1846, was not carried into execution, and that no further proceedings were ever had in the cause. But it is clear that very important dealings with the estate afterwards took place on the footing of the order, and in reliance on the rights which it created, or was supposed to create. Grant remained in the management of the estate, and provided, as well as he could, for the supplies by drawing bills against the consignments, and making the delivery of the produce to the consignee subject to the condition of paying bills drawn against them; and he appears to have considered himself as acting under the authority and as the officer of the Court. On the 26th July, 1847, he writes to J. Greathead:—"Insurance should, under all circumstances, be effected, acting, as I am, under the Court, in case of accident."

Samuel Greathead died on the 4th April, 1847, intestate as to his real estate in the West Indies, which descended on W. S. Greathead, his eldest son. Mr. Grant continued during the life of S. Greathead, and afterwards until his own death, in the management of the plantation in question, on the same terms as before. He died in the month of September, 1849, having a balance due to him, in respect of his management of the estate, amounting, as it is stated, to above £1,800. The present appellant is Grant's executor. Under an order of the Court below, made in the month of March, 1850, the Arnos Vale Estate was sold at the instance of the incumbrancers, and produced the sum of £10,050. This sum is insufficient to pay all the charges and incumbrances upon

the estate in question, and the appellant claims to have what is due to the estate of Grant, as manager, paid out of the proceeds in preference to the incumbrancers. The Chief Commissioner, in a judgment of remarkable learning and ability, has decided against him; and from that decision the present appeal is brought.

We will consider the case, first, as it stands upon principle, without reference to the authorities. Mr. Grant was originally merely the agent and attorney of S. Greatheed, the son, the owner of the estate, subject to the charges. As such agent or attorney he stood in no relation whatever to the incumbrancers; he was subject to no control on their part, and liable to no responsibility to them for his management, on the one hand; and on the other, he could have no claim upon them for any advances which he might make, or bills which he might draw in the discharge of the duties of his office. As against them he could stand in no better situation than his principal. The owner of the estate continuing in possession could have no claim upon the incumbrancers for any loss which he might incur in the cultivation of it. He might throw up the estate, if it was not equal to the charges, and leave the incumbrancers to sell it, if it could be sold, or to take the risk of management; but if he chose to continue in possession, he must hold the possession with the risk which belonged to it. The incumbrancers taking possession could not come on the owner for bygone profits, nor could he call upon them to contribute to past losses.

The decree of the 14th December, 1833, does not seem to have wrought any material change in the position of the parties. The incumbrancers were entitled (their charges being in arrear) to have a manager and receiver appointed; but they waived that right, and permitted Samuel Greatheed to remain in possession upon certain terms specified in the order. As those terms were not complied with, Samuel Greatheed remained in possession of the estate, in the same character in which he had previously held it, viz., owner in fee, subject to the charges.

There seems to be no principle for holding as a general proposition that the agent employed in the management of an estate in the West Indies by the

owner of the estate, subject to charges upon it, can, without more, have a lien on the inheritance of the estate for the advances which he has made for its cultivation, not only against his employer but against those whose title is prior to that of his employer, and who have had nothing whatever to do with the expenditure. When a trustee is in possession of the plantation, managing it on behalf of all parties, and employs a manager for the purpose, the expenses and proper advances of the manager for the benefit of the estate are the expenses and advances of the trustee, who is entitled to be reimbursed out of the estate, and if the manager were held entitled to be paid out of the estate, it would be as standing in the place of the trustee who employed him. Again, when the Court of Chancery takes possession of the estate by the appointment of a manager and receiver, it is, by its officers, in possession on behalf and for the benefit of all persons interested, parties to the suit; and its officers stand in at least as favourable a position as the officers appointed by trustees, and are entitled to at least as extensive remedies against the estate.

When the authorities are examined, the question in what cases, and against what parties, and to what extent, a consignee is entitled to a lien on the corpus of the estate, seems left in some degree of uncertainty.

It is laid down by Vice-Chancellor Shadwell, in the case of *Farquharson v. Balfour*, that "when a balance is found due to a consignee on a final settlement of accounts, he cannot be discharged until that balance is paid, and that if payment cannot be made without interfering with the inheritance or corpus of the estate, the Court would be justified in resorting to it for the purpose of doing justice to the consignee." But great doubt was thrown on this doctrine by Vice-Chancellor Knight Bruce, in the subsequent case of *Shaw v. Simpson*, in which *Farquharson v. Balfour* was cited. His Honour observed in the course of the argument, "that with respect to the claim of the petitioner to have the corpus of the estate sold, he saw no solid ground of distinction between the case of a consignee of West Indian produce and the agent of a copper mine or colliery, who never could be heard to insist on a sale of the estate for the pay-

ment of the balance due to him." The point, however, was not decided, his Honour observing, in the conclusion of his judgment, "The estate, in respect of the care and management of which the balance due has arisen, is still in possession of the Court, and must possibly so remain for some time longer, it being unsold. Whether, at some future time, the petitioner's remaining balance may not, if necessary, be paid out of the corpus of the estate, I do not now say or express an opinion."

In the subsequent case of *Morrison v. Morrison*, Vice-Chancellor Stuart was of opinion that in a suit instituted for the administration of a testator's estate, a consignee appointed by the Court was entitled to a lien on the corpus of a West Indian plantation, for the balance due to him not only against persons claiming under the testator and parties to the suit, but also against a mortgagee whose incumbrance was a charge on the plantation prior to the interest of the testator himself, and who was not a party to the suit. The ground of this opinion is, that the mortgagee having permitted the Court to take possession on behalf of those claiming under the mortgagor, without bringing forward his claim, and taking possession himself, as he might have done, must be considered to have acquiesced in and recognised such possession, and to be bound by the result. This case was taken by appeal to the Lords Justices, who affirmed the order, but upon different grounds from those on which it had been pronounced, and their decision cannot be considered as affecting the general question, as to the lien of a consignee of a West Indian estate on the corpus of the estate; a question on which Lord Justice Turner stated that he had never been able to make up his mind.

To this extent, however, the cases all agree, that when the Court of Chancery has taken possession of a West Indian estate by a manager and consignee, it will, as against all parties for whose benefit the possession has been held, refuse to permit its officers to be discharged until the amount due to them has been paid. But the cases seem to go further, and to establish, that where the possession has been held by the attorney and manager of the mortgagor, yet if the mortgagees have so recognised the possession of the manager that he can be considered as acting on their behalf and for their benefit, the same consequences

will follow, as regards their interests, as if he had been appointed under the authority of the Court.

In the case of *Scott v. Nesbitt*, which is the foundation of the subsequent authorities, Nesbitt and Co. were not consignees under the order of the Court when their debt was contracted, nor did Franks fill that character at the time when he paid the balance due to them. In that case it was laid down by Lord Eldon, that a West Indian estate was not to be treated as an ordinary landed estate in England, but was rather to be regarded as a trading concern, like a mine or alum works, in which one tenant in common managing the concern on behalf of the rest, would be entitled to a lien on the shares of the others for what might be due in respect of the expenses incurred in carrying on the trade. But one of the grounds on which he allowed the payment made by Franks to the former consignees, not only as against creditors of the estate claiming a charge under his will, but as against a mortgagee (who seems to have appeared by counsel, though the particulars of his mortgage are not stated), was this: that those who could claim under the will could not enjoy any of the advantage from the property without the employment of a consignee; that if the actual state of things had been laid before the Court, it would have appointed a consignee, and in that case would not have taken the possession from him unless his demand was paid; that the creditors, the tenant for life, and all parties interested in the estate, stood by and permitted the consignments from time to time, whether under due authority or not, to be sent to the house of Nesbitt and Co.; and that there was an equity on the part of those who were called upon in respect of their personal liability to insist that the Court ought to reimburse them the expenses which would have been allowed if the Court had put the estate in the hands of a consignee and manager. The report of *Scott v. Nesbitt* seems to be very imperfect, and it is not easy to collect from it with accuracy the principles which were laid down by the great judge who decided it.

It is very difficult to understand what difference there can be between the case of a manager and that of a consignee of a West Indian estate with respect to the right of lien. Both are equally necessary to carry on the trade—for as such it seems to be regarded—

and in the case of *Scott v. Smith*, before the Privy Council on May 13, 1829, referred to by Mr. Burge in his third volume, page 357, the question arose in the case of a manager. We have examined the printed papers in that case. Both the points stated by Mr. Burge to have been then decided were raised in it. The respondents were mortgagees and consignees of a plantation in Jamaica called Leith Hall. Reddin was the owner of the estate subject to the mortgage. He appointed the appellant to take possession and manage the estate as his attorney. The appellant did so, and incurred expenses in the management which, for some time, were paid by the respondents out of the consignments which they received. In 1823, the respondents filed a bill in the Court of Chancery in Jamaica for a foreclosure of the mortgage, and obtained an order appointing a receiver of the estate. The appellant, being in advance for the management of the plantation, applied by petition to have what was due to him as such manager paid out of the first moneys to come to the hands of the receiver, insisting that he had been in the management with the assent of the respondents, and had made his advances on the faith of being paid by them. He also claimed commissions on his transactions. The Chancellor of Jamaica made an order limiting the demand of the appellant to the expenses incurred by him in respect of the crop of which the new manager would reap the benefit. Against this order, Scott appealed to his Majesty in Council; and his first reason was, "because the respondents trusted the appellant, and authorised him to consider himself as their agent in the management of the plantation, giving directions through their attorney with respect to the working expenses, and directing him to consign to them the whole produce, out of which such contingent expenses would otherwise have been paid." The respondents by their reasons insisted "that the appellant, being in possession of the mortgaged premises as the attorney, not of the respondents who are mortgagees, but of the mortgagor, Peter Reddin, could have no right to charge them or the proceeds of the mortgaged property with the amount of any expenses which he had incurred, unless the respondents had given him authority to incur the same on the credit of themselves or of the mortgaged premises,

which they denied that they had done. With respect to the commissions, they insisted "that such claim was sustainable only by the appellant against Peter Reddin deceased, whose attorney he was, and not against the respondents, whose attorney he was not." The respondents' reasons are signed by Mr. Burge, and it is probable, therefore, that he was counsel at the hearing, and that the points which he refers to the case as deciding, were laid down by the Court in giving judgment. The order, though it does not establish them in terms, is quite consistent with such an hypothesis. The minute is in the handwriting of Vice-Chancellor Shadwell, and alters the decision of the Court below by directing "a general account of all the payments made by the appellant while he was in possession and management of the plantation under the power of attorney granted by Reddin, and of what such costs, claims, and demands consist particularly." It dismisses the appeal, however, as regards commission, and reserves further directions.

In applying the principles furnished by this authority to the case before us, the claim of Grant to be considered as having been in possession on behalf of the incombrancers, and under the sanction of the Court, seems very strong. He had become manager, no doubt, originally, as in the case of *Scott v. Smith*, under a power of attorney, executed by the owner, subject to the charge. But his continuance in that character had not only been acquiesced in by the incombrancers, but had been insisted on by them as the condition on which the owner should be permitted to continue in possession. The Court had sanctioned this arrangement, and had abstained on that ground from appointing a manager and consignee. The case, therefore, in this respect, seems stronger than either *Scott v. Nesbitt* or *Scott v. Smith*.

The question whether the Court, at the instance of a consignee, would order the balance due to him to be raised by sale or mortgage of the estate, when a sale or mortgage is not required for any other purpose, does not in this case arise. The rule that the lien exists as against the income of the estate, has been extended to the case where a portion of the estate has been converted into money by the Legislature, substituting for the slaves on the estate the compensation-money awarded in respect of their compulsory emanci-

pation. The same principle seems properly applicable to a case like the present, where the incumbrancers, by procuring a sale of the estate, have put a stop to the profits on which the manager would have a lien. The trade, if that analogy be adopted, has in effect been sold, and the proceeds of the sale are subject to the claims of those who would have had a demand on the profits while it remained unsold.

On the whole, after a painful examination of the evidence, and a full consideration of the case, their lordships have come to the conclusion that Mr. Grant must be considered to have been in the management of this estate on behalf of all parties interested, and under the authority of the Court of Chancery; and that the proceeds arising from the sale being now to be distributed according to the rights of the several parties having claims upon it, the appellant, as the executor of Mr. Grant, is entitled to be paid what is due to him in respect of his management, in priority to the claims of the persons having charges under the will.

Their Lordships, therefore, are of opinion that the order appealed from must be reversed; that the amount due to Grant's estate for principal and interest must be ascertained, and that the costs of the appellant of making his claim, and of this appeal, must be added to the amount, and paid out of the fund in Court, and that the respondents be allowed to add their costs to their security (costs to be taxed if parties require it).

They will humbly report their opinion to her Majesty accordingly.

VII.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, Feb. 4, 1862.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re PARKER,
Ex parte WILLIAM RICKETTS PARKER.¹*Practice—Objections.*

THIS was a motion on behalf of the petitioner, Colonel Dawkins, to make absolute a conditional order for the sale of five estates in the island of Jamaica, called Hill-side, Brazaletto, Chesterfield, Bourkesfield, and Coles Penn. An objection had been filed, as to the two last named estates, on the part of William Ricketts Parker, who claimed to be interested as owner, or first incumbrancer.

Mr. Cutler, solicitor, appeared in support of the objection.

Mr. Frederick Smith, solicitor, in support of the motion.

The Chief Commissioner held that W. R. Parker had failed to prove himself the owner, and, therefore, under the 8th section of the West Indian Incumbered Estates Act, 1858, had no *locus standi* on the present occasion; but that he had made out a *prima facie* title as incumbrancer, and would be entitled to apply for a postponement of the sale, or for the carriage of the order for sale, or to get credit for his incumbrance in the biddings on the sale.

The objection was consequently disallowed, and the order for sale made absolute as to all the estates.

¹ 6 Sol. Journ., 250.

VIII.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, March 26, 1862.

(Before HENRY JAMES STONOR, Esq., Chief Com-
missioner.)*Re* PARKER,
Exparte WILKINSON,¹
Exparte HENRY JAMES PARKER.*Practice—Objections.*

IN this case special leave had been obtained by Sarah Mackenzie Wilkinson and Henry James Parker to file objections to an order for the sale of the Chesterfield estate, included, in the same petition, with other extensive estates in the island of Jamaica.

Mr. *Bull*, solicitor, in support of the objections.

Mr. *Frederick Smith*, solicitor, *contra*.

The objections were, substantially, that estates, subject to different incumbrances, and held under different titles, were included in one petition and abstract. The Chief Commissioner overruled the objections, but ordered that the costs of the objections should be paid out of the estate; and intimated that, as a general rule in similar cases, separate petitions and abstracts of title ought to be lodged.

Objections overruled.

¹ 6 Sol. Journ., 399.

IX.

WEST INDIAN INCUMBERED ESTATES
COURT,

S, Park-street, Westminster, March 25, 27, 1862.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re DONOVAN,
Ex parte DONOVAN.¹

Will—Construction.

THIS was an objection taken by the owner to order for sale of the Belmont estate, in the island of Tortola, one of the Virgin Islands, on the ground that the petitioner was not entitled to the incumbrance in respect of which the sale was prayed.

Humphry for the owner, in support of the objections.

Westlake for the petitioner.

The circumstances of the case and the authorities cited appear in the judgment.

March 27.—The Chief Commissioner delivered judgment as follows:—Daniel Donovan, by his will, dated the 23rd day of March, 1801, after giving legacies of £2,000 to each of his sons on their attaining twenty-one years of age, and £3,000 to each of his daughters on their attaining that age, or being married, proceeds as follows:—"But I do hereby direct, and my will is, that the said several sums of £2,000 and £3,000 so payable to my said two younger sons and three daughters as aforesaid, shall be payable in manner following—that is to say, each of my said sons and daughters shall, on their attaining either of those events hereinbefore limited, on the happening of which their said portions will respectively become payable, be entitled to receive only £500 of like sterling money, and the like sum of £500 sterling every year till their respective portions or sums of £2,000 or £3,000 shall be wholly paid off and discharged; but I also direct that part of

¹ 6 Sol. Journ. 414.

the said several sums which shall by virtue of this bequest remain unpaid, shall bear interest at the rate of £5 per centum per annum till the whole is paid off. And my further will is, that if any or either of my said sons or daughters shall die without attaining any or either of those periods or events when and on which their several legacies or portions become respectively payable, or if they or any of them shall attain any or either of such events or periods, but shall die without either a husband, a wife, or a child or children, lawfully begotten, him or her surviving, then and in every such case the portion or sum of money hereinbefore given and bequeathed to such son or daughter so dying, or such part or parts thereof as shall at such his or her death remain due and unpaid, shall go and sink into the residue of my estate, and be disposed of as hereinafter directed."

One of the daughters attained twenty-one, and died many years afterwards, having long survived the period appointed for the payment of the instalments of the legacy, but without having received payment of a considerable portion of it. The question raised by this objection is, whether the petitioner, who is her assignee, is entitled to the unpaid portion of the legacy, or whether, at her decease, it passed under the clause I have just read to the residuary legatee, who is also the heir-at-law of the testator.

It appears from the following cases cited by Mr. Humphry in support of the objection—viz., *Gaskell v. Harman*, 6 Ves. 159, and 11 Ves. 489; *Elwyn v. Elwyn*, 8 Ves. 546; *Bernard v. Montague*, 1 Mer. 422; and *Law v. Thompson*, 4 Russ. 192—that an intention on the part of a testator to make the absolute vesting of a legacy contingent on the accidental circumstance of a legatee living to receive actual payment is "not to be collected unless clearly expressed" where there is no express direction for the payment prior to such contingency, and *à fortiori* where, as in the present case, there is such an express direction.

The questions in this case are, therefore—1st, whether there is reason to ascribe such an intention to the testator; and, 2nd, whether, if there be reason to ascribe such an intention to him, he has so clearly expressed it in his will as is required by the above authorities.

The direction in his will is this, that in the events

mentioned the legacy "or such part or parts thereof as shall remain due and unpaid," shall fall into the residue.

Now, according to the 24th rule laid down by Mr. Jarman for the construction of wills, cited by Mr. Westlake, "a testator is rather to be presumed to calculate on the dispositions in his will taking effect than the contrary;" and I will venture to add, upon the directions of his will being duly and implicitly followed, and in the present case, I think that the testator must be held to have contemplated the punctual payment of the legacies by the instalments he directed, and that in the clause now in question he therefore only disposed of the legacy in the event of no part having become due and paid, or in the event of part having become due and paid of such part as shall remain due and unpaid, according to the directions previously contained in his will, or, to use the expression employed by the testator in the clause as to interest, "by virtue of this bequest," assuming such directions and bequests to be faithfully complied with.

This construction reconciles the bequest, the direction for payment, and the clause giving the legacy over in certain events; it prevents the monstrous inconvenience of the heir-at-law, who is also the residuary devisee, possibly becoming entitled to a fund through his own neglect or wrong in withholding payment of the legacies beyond the times prescribed by the testator, and is evidently most consistent with equity and common sense.

Assuming, however, but not admitting, that there are some grounds in the present case for ascribing the contrary intention to the testator, it follows, from what I have said, that, in my judgment, such an intention is not so clearly expressed as is required by the cases cited.

Upon these grounds I shall hold that the petitioner, as the assignee of the daughter, is entitled to her legacy under the circumstances of the case, and I shall overrule the objection which has been taken; but considering the obscurity of the will, I think that the owner is entitled to his costs of making this objection as regards the construction of the will out of the estate. I shall also give him special leave as applied for to file another objection raising the question whether the legacy is now barred by the Statute of

Limitations on the terms of his receiving no costs of that objection in any event; and in the event of his succeeding, paying the petitioner the costs of the objection now overruled.

X.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, August 6, 1862.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re HARRIOTT,
Ex parte PENGELLEY.¹

Practice—Title.

A title must be shown, in all cases, for the usual period, unless the Court, under special circumstances, dispenses with it.

THIS was an application that the sale of certain lands might proceed, notwithstanding the petitioners had only deduced the title for forty-one years. The fact appears in the judgment.

W. Mackeson, of the equity bar, appeared in support of the petition.

Messrs. *Tuke* and *Valpy* for the other parties.

The Chief Commissioner delivered judgment as follows:—The additional abstract in this case has now been furnished, and Mr. Mackeson, formerly a member of the Jamaica bar, has attended this Court, and afforded very valuable assistance on its consideration. The circumstances appear to be these. The petition prays for the sale of three estates called Mexico, Santa Cruz, and Sally Hall. With regard to Santa Cruz, and by far the greater part of Mexico (both in value and extent) a sixty years' title has been shown, but with regard to the remaining portion of the Mexico estate, called Blackgrounds, (about 180 acres) there is shown only a title of forty-one years, commencing with a conveyance by Fisher to Harriott,

¹ 6 Sol. Jur. 738.

in the year 1821, and continued possession ever since, under that conveyance and Harriott's will. With regard to Sally Hall, a title of forty years, commencing with Harriott's will, or the codicil to it, and a continued possession ever since, is attempted to be shown, but it is admitted that no conveyance of this property was ever executed. The whole of these estates have been for a considerable time and now are in the possession of the trustees of Harriott's will under an order of the Court of Chancery of Jamaica, dated the 5th of February, 1838, in a suit of *Coke v. Harriott*. The petitioner, who is an incumbrancer, and her solicitor, know of no earlier or other title as to Blackgrounds or Sally Hall than what I have stated, but satisfactory searches and inquiries in the registry and records of the island and elsewhere in this respect do not yet appear to have been made. If the matter rested here, I should feel obliged to postpone the sale of Blackgrounds and Sally Hall, inasmuch as the rule of the Court of Chancery, requiring a sixty years' title, prevails in this Court with respect to lands for the sale of which applications are made; except in colonies in which the rule is affected by local Acts; and this does not appear to be the case in Jamaica, where the lands are situate, although some statutes (especially 4 Geo. 2) certainly fortify a merely possessory title very materially. There are, however, circumstances in the present petition which, I think, may justify me in allowing all these estates to be sold, provided I am fully satisfied as to the facts involved. The first incumbrance appearing in this schedule is a lien, claimed by one of the trustees in possession, a manager, and possibly also a consignee, under the order of the Court of Chancery already referred to in respect of advances for management and cultivation of the estates. The amount of that lien is, I believe, questioned, and other liens having priority to it may be hereafter inserted, but the existence of this lien to some amount is unquestioned. Now, having regard to the numerous authorities on the subject cited in the judgment of this Court in *Ex parte Davis and Boddington*, and *Ex parte Chapman* (ante p. 219), and the judgment of the Privy Council in *Fraser v. Burgess* (ante p. 246), it appears to me clear that this lien is a valid charge in this Court against all persons whomsoever, and that if the trustee and manager

had himself petitioned for a sale, I should have been bound to order it. Practically he has already concurred in this application, and upon his doing so formally by filing a claim duly verified, and supporting by himself or his solicitor the application for an immediate sale, I shall, unless his lien is disputed *in toto*, allow the sale of Blackgrounds and Sally Hall, as well as Mexico, to proceed. All the searches and inquiries which I have mentioned, and also searches and inquiries as to certain contingent charges which appear on the title as to Blackgrounds, will probably be necessary hereafter before the final allocation of the purchase-moneys, and as to which the petitioner's solicitor will receive the direction of the Court. It is satisfactory to me to think that the conclusion to which I have come will certainly be for the benefit of all persons concerned, even for possible adverse owners or incumbrancers, who will be able hereafter to assert their right (if any) against the purchase-moneys, which will be doubtless augmented, and the expenses of the sale diminished by all the estates being offered for sale together. It remains only to satisfy the Court of the existence of the trustee's lien. If this cannot be done, there will be no alternative but to postpone the sale of Blackgrounds and Sally Hall, and also of the Mexico estate if it cannot be sold to advantage separately.

 XI.

 WEST INDIAN INCUMBERED ESTATES
 COURT,

8, Park-street, Westminster, April 21, 1864.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

 Re M'DOWALL,
 Ex parte NORMAND.

Practice—Order for Sale.

Order for sale made absolute, without notice to an owner, who had failed to support his objections, the same appearing by the record to be insufficient.

THE petition in this case was for a partition and sale of two-thirds of the Park Hill estate, in the

island of St. Vincent, and was filed on the 28th of November, 1862, by the assignees of a statutory mortgage to the West Indian Relief Commissioners. Notice of objections on the part of the owner was received on the 17th of March, 1863. The time to file objections expired on the 13th of April, 1863. The owner had not applied to have his objections argued, and the petitioners applied to have the conditional order made absolute, without notice being served on the owner, who was resident in the island of St. Vincent.

The Chief Commissioner held that the petitioners were entitled to the order, unless the objections were of such a nature that upon the record they appeared to be fatal to the prayer of the petition, or unless they disclosed matter which, upon further evidence, might have ripened into valid objections. The objections which had been filed in this case fell into neither category. The first was that the owner's mother had a prior interest to that of the petitioner, which was not released. Assuming the facts stated in this objection to be true, it was no valid objection to the order for sale, although it might possibly be a ground for an application for a postponement, or to stay proceedings, or to have credit in the biddings, or priority on the purchase-money (*Re Lord Portarlington*, M'Nevin's Irish Incumbered Estates Acts, p. 57; *Re Greatheed, Ex parte Burgess*, ante p. 207). But the interest in question appeared in fact, by the record and deeds lodged in the Court, to have been released. The second objection was that the petitioner's incumbrance was transferred by the West Indian Relief Commissioners to the petitioner within twenty years, contrary to an understanding to that effect. The mortgage to the Commissioners contained no stipulation of the kind, and it was not averred that the petitioner had any notice of the understanding. It also appeared that the Commissioners had an absolute power of transfer under the statute 7 Vict., c. 17, and such an understanding would appear to be contrary to the Act. At all events, it was clear that the violation of the alleged understanding by the Commissioners could not affect the present petitioners.

The order was made absolute.

XII.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, July 28, 1863.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re HARRIOTT,
Exparte PENGELLEY.
Exparte COKE.¹*Consignee—Priority.*

The consignee or trustee in possession of a West Indian estate is entitled to a lien on the corpus of the estate for advances made by him for its cultivation, in priority to all other incumbrancers.

A consignee or trustee in possession is not bound to see to the application of moneys properly advanced by him to a properly appointed manager.

THIS case stood for judgment on the final settlement of the schedule. The judgment contains a statement of the facts.

W. Mackeson, of the Chancery bar, appeared for the petitioner and a claimant.

Tripp, of the same bar, for other incumbrancers.

The Chief Commissioner delivered judgment as follows:—This is a motion, by the petitioners, that the schedule of incumbrances may be finally settled; that the certificate of the Secretary on the claim of Captain Pengelley may be confirmed; and that the petition for a transfer of the proceedings in this case to the Local Commissioners may be finally disposed of. In relation to the first part of the motion, the claim which has been filed by Mrs. Juliana Coke and her two children, and to which I shall hereafter fully refer, demands special consideration. The first part of the motion, as to the final settlement of the schedule, involves the question whether the claim of Captain Pengelley for advances made by him for the cultivation of the estate as a consignee of its produce, and also as one of three trustees in possession under a decree of the Court of Chancery, is to have the priority which it has at

¹ 7 Sol. Journ. 733.

present in the draft schedule over all the other incumbrancers, including Mrs. Coke and her children, for the amount found due by the Secretary's certificate. The second part of the motion, as to the confirmation of the Secretary's certificate in respect of the amount of Captain Pengelley's claim, is a matter of course, as no items in the accounts are disputed in point of fact, unless in the consideration of the claim it should appear that any items ought to be struck out on legal grounds, in which case (although possibly immaterial) it would be proper to direct their omission. The third part of the motion, as to the disposal of the petition for a transfer of the proceedings to the Local Commissioners in the colony, which has been presented with a view to the further investigation by *vivâ voce* examination of the mode in which the sums advanced by Captain Pengelley were expended, must evidently depend in a great degree on the opinion of the Court as to the nature of Captain Pengelley's claim, and its right to priority over the other incumbrances. It is therefore necessary for me in the first place to consider the nature of Captain Pengelley's claim, and its right to priority as over all other incumbrances. The claim in question has arisen as follows:—William Harriott, by his will dated the 16th day of September, 1818, devised the estates included in this petition to three trustees upon trust to manage and cultivate the same "in the manner they should think the most advisable," or as he had been accustomed to do, with power to employ consignees and appoint managers, and a declaration that the trustees should not be answerable for mismanagement by such managers. He directed the trustees to apply and dispose of the produce and income of his estates in the payment of certain debts, annuities, and legacies, including a legacy of £4,000 to his daughter Juliana, the wife of Mr. E. F. Coke, in settlement, and a similar legacy to his daughter Charlotte, the wife of Captain Pengelley, also in settlement. The testator made a codicil to his will, dated the 22nd of August, 1821 (which is not material), and died shortly afterwards, and administration with the will annexed was, in April, 1822, granted to the Rev. William Harriott, one of the testator's sons. The three trustees named in the will disclaimed the trusts. By a decree of the Court of Chancery of Jamaica, in a suit in which Mr. Coke and his wife were plaintiffs, and

the Rev. William Harriott and Captain Pengelley and his wife and others were defendants, dated the 5th of February, 1838, it was ordered that the principal sum of £4,000 claimed as a marriage portion of Juliana Coke, together with considerable arrears of interest, should be a lien and charge on the real and personal estate of the testator William Harriott, prior and preferable to the several annuities and legacies charged thereon by his will: and it was further ordered that the Hon. John Salmon, Mr. E. F. Coke, and Captain Pengelley, should be appointed trustees of the said will: and that they should apply all such sums of money as should from time to time come to their hands from the real and personal estate of the testator, after payment of the annual contingencies and other charges necessarily incurred in the management, cultivation, and conduct of the estates, in payment of the arrears of interest upon the sum of £4,000, the marriage portion of Juliana Coke, and thereafter until the sum of £4,000 sterling should be invested, according to the directions of the said will, in payment to Mr. E. F. Coke and Juliana Coke of the annual sum of £200 sterling, as interest on the said sum of £4,000, and after payment and satisfaction as aforesaid, to pay and apply the balance of the said moneys in payment of the other annuities and legacies given by the will *pari passu*. It will be observed that there is an omission in the decree of any express direction to pay the £4,000; but, as it is declared to be a first charge, and the annuity of £200 is to be paid until it is discharged, the omission does not appear to be material. The three trustees appointed by the decree took possession of the estates, and the practical management of the estates appears to have been undertaken by every one of them at different times, separately, and complaints have been made by every one of them of the management of the others of them, into which it does not appear to me necessary to enter, except so far as they relate to the period during which Captain Pengelley made the advances in respect of which he now claims—viz., from the month of September, 1860, to the 25th of November last. In using the term “practical management,” I must be understood to mean personal active attention to the affairs and accounts of these estates, but not actual personal superintendence of their cultivation; and accord-

ingly, during the period in question, in respect of which Captain Pengeley makes the present claim for advances, the actual personal superintendence of the cultivation of the estates was undertaken first—from July, 1860, to July, 1862—by Mr. Dalley, and from the latter period to the sale of the estates in December, 1862, by Mr. MacCubbin. With reference to Mr. Dalley's management, a difference of opinion has arisen. He was originally selected by Captain Pengeley, and the other trustees confirmed the selection, and all three executed the power of attorney to him; but it is asserted that his management was injudicious and wasteful, and that Captain Pengeley continued him improperly as manager after being warned of such mismanagement by the other trustees. With regard to Mr. MacCubbin's management no such assertions are made. Under these circumstances, from July, 1860, to the sale of the estate in December, 1862, Captain Pengeley, with the approval of his co-trustees, and in pursuance of a mutual agreement and arrangement in writing, acted as consignee of the produce of the estates, and advanced large sums of money for the cultivation of the estate to the respective managers, and the balance of which, after giving credit for the net proceeds of the estate, the proper and usual charges of a consignee, and lastly, for the proceeds of the stock on the estate at the time of the sale—viz., £818 4s. 3d.—amounts, as finally allowed by the certificate, to £1,468 1s. 11d. None of the items of this account are disputed except the charge for commission on proceeds of sale, which has been objected to on the grounds that a trustee cannot fill the legal character of a consignee, or that if he does so he forfeits his claim to the remuneration in question. All the advances by Captain Pengeley to the managers are therefore admitted, and Mrs. Coke and one of her children, Mr. H. Coke, by their counsel, and the other of her children, the Rev. E. F. Coke personally, have disclaimed any imputation of *mala fides* upon Captain Pengeley or Mr. Dalley. It has, however, been lastly contended, on the part of Mrs. Coke and her children, that should the claim of Captain Pengeley be allowed *primâ facie* to have priority over all the other incumbrances, the claim filed by them, which is in respect of a sum of £617 16s. 1d. Consols, which arose from the surplus rents of the estates

after payment of the annuity of £200, and which is asserted on the one hand, and denied on the other, to have been appropriated towards the capital of Mrs. Coke's portion, and which was certainly subsequently sold out, and advanced by the three trustees for charges connected with the cultivation of the estate, together with the amount of the dividends from the time of that sale, should have priority over this as well as all other claims.

The first question to be considered is, whether Captain Pengelley, as consignee of the produce of these estates, is *primá facie* entitled to a lien on the purchase money for the balance of his account, either including or excluding the charges for commission. The next question is, whether, if he is not so entitled as consignee, he is so entitled as a trustee in possession under the decree of the Court of Chancery. The third question is, if he be so entitled, either as consignee, or trustee, or both, the injudicious and wasteful management of the manager ought to affect his claim if proved, or in the absence of proof, be the subject of further inquiry in this or the Local Court. And the fourth question is, whether, if Captain Pengelley is so entitled, and his claim is not affected by the charge of mismanagement, the claim of Mrs. Coke and her children for the sum of Consols and dividends which I have mentioned, is entitled to priority over his claim.

Upon the first question, I am of opinion, on the authority of the cases cited, and for the reasons given in the judgments of this Court, in the cases of *ex parte Davis and Boddington*, and *ex parte Chapman*, (ante p. 219), and *ex parte Fraser*, (ante p. 235), that a consignee of the produce of a West Indian estate is *primá facie* entitled to a lien, not only on the produce of the estate, but also on the corpus of the estate, for advances made for its cultivation; and that if the estate be sold, and it becomes the duty of a Court of Equity to distribute the proceeds, that lien must have priority over all others. I am aware that the point is reserved by Lord Kingsdown in *Fraser v. Burgess*, (ante p. 246,) and by Lord Justice Turner in *Daniel v. Trotman*, 11 W. R. 717, but the balance of judicial decisions and dicta appears to me to be so overwhelming in favour of the lien in question, that I am compelled to adhere to the former decision of this

Court, although I cannot but feel the great responsibility of so doing.

With regard to the objection that Captain Pengelley could not act as consignee because he was a trustee, I have heard no authority cited, and I can see no valid reason why a trustee cannot act in the capacity of a consignee, especially as it might often be impossible to get any other person so to do; with regard, however, to the commission on the proceeds of sale, I think, considering the strict rules of the Court of Chancery against any profits being derived by a trustee from his trust estate, that it is very doubtful whether he is entitled to it, but as I understand this item (about £14) to have been withdrawn by Captain Pengelley's counsel, it is unnecessary for me to decide the point. Upon the main question, however, viz., Captain Pengelley's lien for his advances, my responsibility is, I think, much lessened by the fact that Captain Pengelley was not only consignee of these estates, but also a trustee in possession under a decree of the Court of Chancery, and as such is, I think, clearly entitled to priority for his advances over all other incumbrancers, or, at all events, over all other incumbrancers claiming under the decree, which includes all the other claimants now before the Court, according to the case of *Morrison v. Morrison*, 2 Sm. & Giff. 544, 7 De G., M. & G. 214, and *Fraser v. Burgess*. In the latter case Lord Kingsdown says—"When a trustee is in the possession of the plantation, managing it on behalf of all parties, and employs a manager for the purpose, the expenses and proper advances of the manager for the benefit of the estate are the expenses and advances of the trustee, who is entitled to be reimbursed out of the estate." Accordingly, in that case the Court decided in favour of the manager's lien. In the present case the trustee, who is in possession under the decree of the Court of Chancery, has made advances, and not the manager for him; and he is evidently *à fortiori* entitled to the same lien.

This brings me to the consideration of the next question, whether, assuming Captain Pengelley to have priority as consignee or trustee, or as both, and the management of Mr. Dalley to have been injudicious and wasteful as asserted, but without *mala fides* on his part, and much less on the part of Captain Pengelley, such mismanagement ought to affect his claim, and I

am of opinion that it ought not; and upon this point some observations contained in the judgment of the Privy Council, delivered by Lord Justice Turner in the case of *Daniel v. Trotman*, 11 W. R., 717, appear to me in point. His lordship there says—"We collect from the order under appeal, that in the opinion of the Court of Barbadoes the appellant, a consignee, was bound to see to the application of the moneys advanced by him under any agreement" (very similar to the one which was entered into in the present case); "but however this may have been in the view which the Court of Barbadoes took of the case, we are of opinion that, as the case really stands, no such obligation rests on the applicant. The moneys advanced by him were not meant or intended to be applied to any defined or special purpose; they were of necessity to be applied at the discretion of the 'trustees' (in the present case it would be in the discretion of the manager), to whom they were advanced. To hold that the appellants' firms were bound to see to the application of these advances would in effect render it impossible that any such advances could be made. The principle which governs the cases as to the obligation of seeing to the application of money applicable to the payment of debts, seems to their Lordships to settle this question." These observations appear to me to apply equally to the case of Captain Pengelley, whether we regard him as a consignee or trustee. Declining, therefore, to go into the question of Mr. Dalley's alleged mismanagement, for the reasons I have stated, particularly the absence of any charge of *mala fides* against him or Captain Pengelley, I think it right nevertheless to state that the balance of the evidence before the Court at present is not in my opinion by any means in favour of the charge of injudiciousness or extravagance which has been made. It is to be observed that, during the whole of his management, the most accurate accounts were regularly furnished at very short periods (I believe monthly), and were carefully examined by Captain Pengelley and communicated by him to his co-trustees. No complaints were made till, after two unusually bad seasons, the balance turned against the estate, and then Mr. Dalley was dismissed by Captain Pengelley at the desire of his co-trustees, without any unnecessary delay, and perhaps, indeed, rather

hastily, before his management had had a fair trial. I think it right to say this much in justice to Mr. Dalley, especially as I do not feel justified in directing any further investigation of the charges against his management.

The fourth and remaining question is, whether the claim of Mrs. Coke and her children, in respect of the sum of £617 16s. 1d. Consols and dividends ought to have priority over the claim of Captain Pengelley, and all the other claims; and it appears to me that there is no reason for admitting this claim at all upon the schedule, except so far as it is included in the claim for £4,000, and arrears of annuity of £200 already appearing on the schedule. The inclination of my opinion is very strongly that there never was any appropriation of this sum of Consols to meet the principal of Mrs. Coke's portion, and that, whether there was such an appropriation as is contended or not, the trustees were justified, under the decree of the Court of Chancery and the will, in subsequently selling the same, and applying the proceeds for the cultivation of the estate. But assuming the contrary, and that a breach of trust was committed by Captain Pengelley and his co-trustees, and that they are now liable to Mrs. Coke and her children, the latter may have their remedy against him in the Court of Chancery; but they do not appear to me to have any priority over or lien upon the first charge which he has acquired on this estate by the last advances made for its cultivation, according to the rule of the civil law: *Interdum posterior potior est priori; ut puta, si in rem ipsam conservandam impensum est quod sequens credidit. Hujus enim pecunia salvam fecit totius pignoris causam.*" It follows, therefore, that the schedule ought now to be finally settled, giving priority to Captain Pengelley's claim for the amount found due on the Secretary's certificate, less the amount charged as commission on produce of sales, which has been waived; that the certificate should be confirmed, subject to this deduction; and that, inasmuch as any injudicious or wasteful management by Mr. Dalley would not under the circumstances affect this or any other claim on the schedule, the petition for a transfer of these proceedings, with a view to a further investigation of such mismanagement, must be dismissed.

XIII.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, February 16, 1864.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner).

Re PARKER,*Exparte* WILLIAM RICKETTS PARKER.¹*Mortgage—Statutes of Limitations—Possessory
Acts of Jamaica.*

The Possessory Acts of Jamaica (4 Geo. 2, c. 4. and 14 Geo. 3, c. 5—Jamaica Statutes), which enact that persons in the peaceable possession of lands in Jamaica for seven years should hold and enjoy them against all persons whomsoever, do not operate to bar a mortgagee from enforcing his mortgage at any time while it subsists, notwithstanding the mortgagor and those claiming under him may have remained in possession more than seven years.

The possession of the mortgagor in such a case is deemed to be the possession of the mortgagee.

THE following case is of considerable importance to those interested in West Indian property in its present state of embarrassment. The nature of the motion and the circumstances under which it was made, appear in the judgment.

Mr. *Jolliffe*, Mr. *Roberts*, and Mr. *Maskelyne*, all of the Chancery bar, appeared for different parties interested.

The Chief Commissioner delivered judgment as follows:—This is a motion to discharge the absolute order for sale in this matter as to two estates, called Bourkesfield and Coles Pen, which have not yet been sold, and is made under the following circumstances: Thomas John Parker, at the end of the last century and beginning of the present, created certain mortgages or incumbrances on these two estates and three other considerable estates, called Hillside, Brazaletto, and Chesterfield, some one or more of which incumbrances (subject to any questions of account) is or are now vested in the petitioner, Colonel Dawkins. Thomas John Parker died on the

3rd of April, 1823, having by his will, dated the 25th day of March, 1823, devised Chesterfield to his eldest son, Henry Parker, in fee; Hillside and Brazaletto, subject to certain legacies and annuities to his son, Henry Parker, and his issue in settlement; and Bourkesfield and Coles Pen to his wife, Mrs. Parker, in fee. Mrs. Parker died on the 4th of July, 1858, having devised all her real estate to William Ricketts Parker and Loftus Ricketts. Upon the decease of Thomas John Parker, in 1823, Mrs. Parker entered into possession of Bourkesfield and Coles Pen, and so continued until the year 1861, when the petitioner, by his attorney, took possession of these two estates. During the whole of the period which elapsed from the death of the testator to the time when the petitioner took possession, the incumbrancers, under whom the petitioner claims, and the petitioner, received no payment, and made no demand, on these two estates, or the owners, but, during the same period, received divers payments from, or on account of, the owners of the three other estates (Chesterfield, Hillside, and Brazaletto), and, for considerably more than twenty years, have been in possession of the latter estates, and received the rents and profits on account of their securities. Certain sums, also, which were paid as slave compensation money, were also applied in reduction of principal and interest, in pursuance of orders of the Court of Chancery, made on the 24th of May, 1839, and 31st of July, 1852, in a suit of *Pearse v. Brooke*, for the redemption of all these estates; but it does not appear by those orders, or otherwise, in respect of what estates such compensation money was paid. The petitioner has obtained an order in this Court for the sale of all the estates comprised in his securities, under which order Hillside, Brazaletto, and Chesterfield, have been sold, but Bourkesfield and Coles Pen have not yet been sold, in consequence of the opposition made by William Ricketts Parker, who now moves to discharge the order for the sale of these two estates on the following grounds:—first, that those estates were erroneously included in the incumbrances vested in the petitioner; and, secondly, that if intentionally included in such incumbrances, the petitioner is barred of his remedy by the local statutes, 4 Geo. 2, c. 4, and 14 Geo. 3, c. 5, giving a title by possession for seven years, under certain circumstances, and subject to certain savings.

The first ground upon which this motion rests appears to me to fail altogether. There is, at least, one incumbrance vested in the petitioner which cannot be disputed; I mean the mortgage of the 3rd of May, 1808, reciting Thomas John Parker's seisin of the two estates in question, "nominating" and conveying the same to Poole and Fletcher, to secure £36,035 7s. 9d. due to them, and which mortgage is now vested in the petitioner (subject to any questions of account), and it is, therefore, unnecessary for me to consider whether these estates are properly included in any of the other incumbrances also vested in the petitioner.

The remaining ground of objection is very serious, and I have given it great consideration. It resolves itself into the question whether a mortgagee whose mortgage comprises two estates, the equity of redemption in which has devolved on different persons, is, by the local Acts cited, barred of his remedy against one of those estates, by reason of his not having made any claim against such estate, or its owner, for seven years, although his mortgage has clearly been kept alive against the other estate, by payments on account of principal or interest, or by receipt of the rents and profits, as mortgagee in possession. It is to be observed that the general Statute of Limitation in civil actions relating to land, in operation in Jamaica, is 21 Jac. 1, c. 16, and that there is also a special Statute of Limitation in that colony with respect to mortgages and other specialties, viz., 29 Geo. 3, c. 13, which renders the same void where no payment has been made or demanded for the space of twenty years. Neither of these statutes, it is evident, can affect the petitioner's rights to enter upon any of the lands comprised in his securities, as the possession of the mortgagor, and those claiming under him, in the present case, would certainly not be held to be adverse to the mortgagee within the statute of 21 Jac. 1, and, payments having been made on account of the mortgages under which he claims without intermission by the owners, or out of the rents and profits, and also by slave compensation money, arising from some of the estates in question, from the death of Thomas John Parker to the present time, it is clear that such mortgages are not barred by the Act 29 Geo. 3. Besides the statutes to which I have referred, there are three other local statutes in Jamaica which have been

termed Possessory Acts, and which confer a title by possession for seven years under certain circumstances and subject to certain savings, and it remains for me attentively to consider the provisions of those statutes with reference to the present case.

The first of those statutes was passed in the 33 Car. 2, and was confined to persons then in possession of lands, in Jamaica, and, of course, does not apply to the present case, but throws some light on the construction of the two subsequent statutes, as I shall notice hereafter, only remarking, in this place, that it contains no savings of the rights of mortgagees, or any persons whomsoever. The second Possessory Act is the 4 Geo. 2, c. 4, which enacts "that after the 1st day of May, 1732, all and every persons and person who hold any lands, tenements, negroes, or hereditaments, by virtue of any deed, will, or conveyance whatsoever, of any patent for which quit-rent hath been paid for twenty years, at the least, or from the date of such patent, though the same, or any assignment thereof, may have been lost, or that hold by virtue of any order, and have paid quit-rent for time aforesaid, and hath or have been in peaceable and quiet possession of any lands, tenements, negroes, or other hereditaments, for and during the space of seven years last past, before the making of this Act, or shall continue in such possession of the same for the space of seven years, from and after the said 1st of May, 1732, or shall at any time hereafter be and continue in such possession for the space of seven years from their first possessing of the same, either by themselves or those under whom they claim, shall have and enjoy such lands, tenements, negroes, or other hereditaments, to them and their heirs for ever against his Majesty, and his heirs, and all other persons whatsoever." It then provides that the Act may be pleaded in bar of all suits and demands, with a saving for infants, feme covert, and lunatics (which is not necessary for me to consider), and concludes with the following proviso:—"Provided, nevertheless, that this Act, or anything therein contained, shall not extend, or be deemed, held, taken, or construed to extend, to confirm, or to give title to any person or persons seised or possessed of any lands conveyed or devised to any charitable use or uses, mortgagee, lessee of any lands, tenements, negro or other slaves, or hereditaments mortgaged, or

in lease, or to any other person or persons, to any lands, tenements, negro or other slaves, or hereditaments, by her, him, or them possessed, or attorney, or guardian, or otherwise in right of another, or to any particular use, trust, courtesy, dower, estates for years or for life or entail, or to any person or persons whatsoever claiming or to claim by, from, or under any mortgagee or lessee, or to any attorney or guardian or other person seised or possessed to the use, or in trust for another, or under such tenants by the courtesy in dower for years or for life; but that the same remain and be, to all intents and purposes, as before making of this Act." The third Possessory Act is the 14 Geo. 3, c. 5, which recites the enacting part of the statute 4 Geo. 2, and declares "That the true intent and meaning of the hereinbefore recited part of the said Act is, and that the same ought to have been construed and understood from the time the said hereinbefore recited part of the said Act took effect, that all and every person and persons who then held or should hereafter hold any lands, tenements, negroes, or hereditaments under any deed or will or conveyance whatsoever, or under any patent for which quit rent had been or should be paid for twenty years at the least from the date of such patent, though the same or any assignment thereof had been or should be lost, or who held or should hold under any order, and had paid or should pay quit-rent for the time aforesaid, and had been or should be in the actual, peaceable, and quiet possession and occupation of such lands, tenements, negroes, or hereditaments, so held or to be held for seven years from their first possessing the same, either by themselves or those under whom they claim, and who by mistake should have fallen, cleared, improved by building, cultivated, or fenced, such land, whether belonging to his Majesty or to any other person or persons whatsoever, should hold and enjoy the same against his Majesty, his heirs and successors, and against all and every other person and persons whomsoever. The savings contained in the Act 4 Geo. 2 are not affected by this Act, and, therefore, continue in force. The material alterations introduced in the enacting part of the former by the latter appear to be, first, the making its prospective operations more certain by the introduction of the words "who should thereafter hold, &c.;" and, secondly, the imposition of

an additional condition to bring any case within the operation of the Act, viz., that the person holding land for seven years should "by mistake have fallen, cleared, improved by building, cultivated, or fenced such lands."

It is now contended that Mrs. Parker, having been in the actual possession of Bourkesfield and Coles Pen, under the will of T. J. Parker, for more than seven years, her devisees are now under the two last-mentioned statutes entitled to hold and enjoy the same against the petitioner and all other persons, and, *prima facie*, the case does seem to fall within the words of the enacting clause contained in the first of these statutes, as explained by the second, provided that it can be shown that Mrs. Parker improved and cultivated the land as required by the second Act, and as to which inquiry, if necessary, must be made. This construction, however, is so contrary to the rights of mortgagees under the statute of 21 James 1, and also under the local Act 29 Geo. 3, c. 13, already cited, and I may add to the provisions of the modern English statutes, 3 and 4 Will. 4, c. 27, and 7 Will. 4, and 1 Vict., c. 28, and lastly to equity and common sense, that I am very reluctant to come to the conclusion that such was the intention of the Local Legislature; and, after much consideration, I am of opinion that (in the absence of any judicial decision on the point) Mrs. Parker ought not to be held for the purposes of the Act to be in possession of these estates under the will of her husband, but in the same manner as he himself was in possession—viz., as tenant at will to the mortgagee. His tenancy expired at his death, and her tenancy commenced on her entering into possession, and determined at her death, and her devisees' tenancy commenced on their taking possession, and was determined by the petitioner in 1861. This view, by excluding mortgagees in possession from the enactments of the last-mentioned statutes, as also from the earlier Act of Charles II., appears to me to reconcile their provisions with the provisions of the statute 21 Jac. 1, and the local Act, 29 Geo. 3, already referred to, and also with the modern English statute to which I have already referred, and common sense and equity. But if the present case ought to be held to fall within the enactments of 4 George 2 and 13 Geo. 3, it must still

be considered whether it would not fall within the saving clause contained in the former, and I cannot help thinking that Mrs. Parker, as tenant at will to the mortgagee, would be held to have been possessed as a lessee, or in right of another, or a person claiming under a mortgagee, within the terms of that saving, sooner than permit the injustice that a mortgagee, whose debt has been kept alive by payments, should be barred by the possession of the mortgagor, or his representatives, as tenant at will; for it is to be observed that if these Acts would give a title to Mrs. Parker, they would also have given a title to Thomas John Parker, and would also give a title to any mortgagor in possession at the end of seven years from the date of his mortgage, however punctually the interest may have been paid in the meanwhile.

There is an important case of *Doe v. Eyre*, 17 Q. B., 366, which throws much light on this subject. It arose upon the construction of the statute 7 Will. 4 and 1 Vict., c. 28, which was passed to remove a doubt on the present Limitations Act, 3 & 4 Will. 4, c. 27, whether a mortgagee who had not been in possession within twenty years was not barred by his ejection by the 2nd and 3rd sections of that statute, although interest had regularly been paid in the meanwhile. It was admitted that he would not have been barred by the statute 21 Jac. 1, and that the 7 Will. 4, and 1 Vict., c. 28, was intended to preserve to the mortgagee, at any time within twenty years after the payment of any part of the principal and interest, the same right of entry as if the statute 3 & 4 Will. 4, c. 27, had not passed, and it was held that the mortgagee, under very peculiar circumstances, was entitled to recover against a tenant who had acquired a title under the Act against the mortgagor. In the course of his judgment, Lord Campbell observed that, "in the vast majority of mortgages in England, the mortgagor is not in the actual possession of the mortgaged lands, when the mortgage is executed, and they afterwards remain in the possession of his tenants. The mortgagee and those who advise him are perfectly satisfied if, upon reference to a conveyancer, the title to the premises to be mortgaged is pronounced good, and, upon a reference to a surveyor, the value is found to be sufficient. If the mortgagee receives regular payment of his interest under the mortgage, he never

inquires and he would not be allowed to inquire whether rent is regularly paid by the tenants to the mortgagor. The mortgagor, therefore, according to the defendant's construction of the statute, by omitting to receive rent for twenty years, or to obtain a written acknowledgment from a tenant, may place the mortgagee in a position of suddenly finding that for the repayment of the mortgage money he must look only to the personal credit of an insolvent." These observations of Lord Campbell apply to the case of a tenant who had dispossessed the mortgagor during a period of upwards of twenty years, whilst interest was regularly paid to the mortgagee, and who claimed adversely to the mortgagor, but they would evidently apply with greater force to any persons claiming under the mortgagor, especially volunteers. It is possible that, from the circumstances of the case, the mortgagor, Thomas John Parker, and Mrs. Parker, and her devisees may (according to certain authorities) be held to have been not tenants at will, but tenants from year to year to the mortgagee. I do not think that this would alter the case in respect of the enactment of 4 Geo. 2, as explained by the 14 Geo. 3, and it would perhaps bring it more strongly within the term "lessee," and other terms employed in the saving clause of the former. It remains for me to notice the authorities which were cited in support of the motion.¹

The case of *Beckford v. Wade*, in the Privy Council, reported 17 Ves., 87, is, undoubtedly, an important authority on the construction of the statute 4 Geo. 2, and, indeed, of statutes generally. It establishes, in the words of Sir William Grant's elaborate judgment, "that general words in a statute, must receive a general construction, unless there is in the statute itself some ground for restraining their meaning by reasonable construction, not by arbitrary addition or retrenchment," and, accordingly, it was held that no exception in favour of absentees could be introduced into the Act besides the exceptions contained in it, and that a constructive trust was not included in the particular (or express) use and trust excepted in the Act. But my contention is, that in holding the mortgagor in possession not to be within the terms em-

¹ See *Woodcock v. Titterton*, 12 W. R., 865. *Chinnery v. Evans*, 13 W. R., 20.

ployed in the enacting clause, viz., a person who holds any lands by virtue of any deed, &c., I am by no means restraining the meaning of the words in the Act, but simply deciding that the case of a mortgagor who holds as a tenant at will does not fall within those terms, and in further holding that a mortgagor in possession would come within the terms employed in the saving clause to which I have adverted, I have added no exception to those already contained in the Act, but only decided that a mortgagor, as tenant at will to his mortgagee, properly falls within the terms employed in the clause. The case of *Bolding v. Lane*, 32 L. J., Ch., 219, 11 W. R., 385, only decides that an acknowledgment by a devisee of a mortgagor that more than six years' interest was due so as to take the case out of the Statute of Limitations, did not bind a second mortgagee, and does not appear to me to apply to the present case, inasmuch as the mortgage debts now in question have never been barred by the statute. *Dickinson v. Teasdale*, 32 L. J., Ch., 37, was a case where a testator devised to each of his nephews one moiety of his estate at F., and charged each moiety with the payment of half his debts in aid of his personal estate, and the Master of the Rolls held "that, notwithstanding a general charge at the end of the will, it was clearly a charge of half the debts on A.'s moiety and half on B.'s moiety, and that if A. thought fit to keep up the debt that would not affect B." *Cockrill v. Spark*, 32 L. J., Ex., 118, is a case upon the Mercantile Law Amendment Act of 1856, which relates only to contracts and personal actions, and not to actions of ejectment or right of entry, and, accordingly, refers to the 23rd section of 21 Jac. 1, c. 16, only, and not to the 1st section; it would not, therefore, affect the mortgagee's right to enter in the present case, nor do I believe that this statute has been adopted by the local Legislature in Jamaica. No cases in the courts of Jamaica have been cited before me, and I must, therefore, assume that there are none in point. On the whole, being, for the reasons I have mentioned, clearly of opinion that Mrs. Parker was not in possession of the estates in question within the meaning of the enacting clause of the 4 Geo. 2, as explained by the 14 Geo. 3, and that, if she were, she would still fall within the saving clause of the former of these two Acts, and finding no authority to the contrary, I feel it my duty to refuse this motion.

XIV.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, February 24, 1864.
(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re PARKER,
Ex parte PEARSE,
Ex parte WILKINSON AND OTHERS.

*Practice—Effect of Conveyance—Solicitor and Client
—Effect of Conveyance.*

THESE were two applications to re-open the accounts of mortgagees and consignees of the estates in question for forty years, although they had been arranged and compromised under an order of the Court of Chancery in the above cause in 1849, or to compel the mortgagees to divide the purchase-money in Court equally with the owners of the equity of redemption, according to an alleged agreement, and were made on the following grounds:—

1. That George Craggs Parker, one of the parties interested in the equity of redemption, did not authorise the compromise in question, and was dead at the date of the order confirming it. 2. That such accounts were admitted *pro formâ* and in consideration of the alleged agreement.

Roberts and Maskelyne for the appellants.

Jolliffe for the petitioner.

The Chief Commissioner delivered judgment as follows:—This is a hearing to settle the joint schedule of incumbrances on certain estates called Hillside and Brazaletto, and likewise the separate schedule of incumbrances on another estate called Chesterfield, which have been sold in this matter, and upon which two applications are now made. The first is on the part of Mr. Pearse, in right of his wife Mary Pearse, formerly the widow of James Craggs Parker, deceased, and the administratrix of the said George Craggs Parker, deceased, who was interested in certain incumbrances affecting these estates, and likewise in the ultimate equity of redemption of the same. The object of the application is to have accounts taken of what is due

to the petitioner on the foot of certain mortgage securities now appearing Nos. 4 and 5 on the schedule of incumbrances affecting the Hillside and Brazaletto estates, and a mortgage security now appearing No. 4 on the schedule of incumbrances affecting the Chesterfield estate. The amounts appearing on the schedules were virtually ascertained by a compromise entered into in the year 1849, between the different parties interested or their solicitors, and which was carried out by an order made by the Vice Chancellor of England, on the 24th of May, 1849, in the cause of *Pearse v. Brooke*, instituted for taking, amongst other accounts, the accounts of what were due on these very mortgages, and ascertaining their priorities, and which order was finally confirmed (subject to certain alterations) by an order made by Vice Chancellor Kindersley, on the 31st day of July, 1852; but Mr. Pearse alleges that such compromise and orders were not binding on George Craggs Parker, because he never authorised his solicitor, Mr. Bull, to enter into the compromise in question, and because he died previously to the order of 1849, and that, consequently, such compromise and the subsequent proceedings in Chancery are not binding on his representatives. On the other hand, it is alleged by the petitioner that Mr. Bull had authority from George Craggs Parker to enter into this compromise, and in support of their allegation they examined Mr. Bull himself, who deposes that Mr. George Craggs Parker left the entire control of the suit to him, under the direction of a Mr. Wynne, who was an employer and also a creditor of George Craggs Parker, and that he consented to the compromise, with Mr. Wynne's sanction, in the absence of Mr. George Craggs Parker, shortly before his death. An affidavit of Henry James Parker has also been filed in support of this view, but I think rather militates against it, so it would thereby appear that George Craggs Parker left Mr. Wynne's service, and contemplated enlisting and going to sea in 1846. The date of the death of George Craggs Parker is not shown, and it is therefore possible that he was alive at the date of the order.¹ For the present I express no opinion whether upon the evidence adduced Mr. Bull can be held to have had express authority to compromise the matters in question on the part of George Craggs Parker, and still

¹ It ultimately appeared that George Craggs Parker was still living. See post, p. 307.

more the wide question whether as solicitor to a party in a suit, he has an implied right to compromise it without express instructions, according to the cases of *Swinfen v. Lord Chelmsford*, 5 Hurl. & Nor., 919; *Fray v. Voules*, 7 W. R., 446, and *Cudlip v. Smedley*, 12 W. R., 200. But it is further alleged by the petitioner that even supposing Mr. Bull to have had no such authority, and George Craggs Parker to have been dead at the date of the order, Mr. Pearse and his wife were parties to the compromise in question, and to the suits in which the above orders were made in other capacities, and are, therefore, bound by those proceedings in her fiduciary capacity of administratrix. But I cannot agree to this, and I think we must look farther and see who are the parties beneficially interested in George Craggs Parker's estate, and whether they were parties to and bound by the compromise in question.

Now, the estate of George Craggs Parker has been administered in the Court of Chancery, and it appears that there is a clear surplus, to which his next of kin are entitled. It also appears that such next of kin are his mother, Mrs. Pearse, three children by her first husband, and a daughter by her present husband, whose rights appear very singularly to have been disregarded hitherto in the distribution of the estate. It also appears that Mrs. Pearse and her present husband, and her three children by her former husband, were all parties to the suit of *Pearse v. Brooke*, and were bound by the proceedings which I have mentioned; for I apprehend it is clear that when a suit in Chancery abates by the death of a defendant, as regards his interests, it nevertheless remains in full force as regards all other parties and their interests. Mrs. Pearse's daughter by her present husband, however, was not a party to this suit, and, therefore, was not bound by the proceedings in question, and I cannot help thinking that (subject to the general rules of the Court of Chancery in affording relief) Mrs. Pearse, as administratrix of George C. Parker, and trustee for her daughter, and likewise her daughter in her own right, are entitled to an account against the petitioner as to the mortgage securities in question, supposing Mr. Bull had no authority to enter into the compromise for George Craggs Parker.

Before I proceed further with this application, I think it better now to consider the second application before

me, which has been made by Mrs Wilkinson, Mr. Henry James Parker, and Mrs. Davies, who have similar interests in the incumbrances upon the estates, and the equity of redemption of the same, to that which was possessed by George C. Parker. Their application is made in the alternative either to re-open the accounts as to the sums due on the petitioner's securities, or to remove his claims from the places which they now occupy on the schedules, in order that the purchase-moneys of the estates in question may be divided between the petitioner and the applicants, according to an agreement which is alleged to have been entered into at the time of the compromise, although contrary to its terms. In support of this application it is alleged that the accounts were admitted by the compromise, and orders in Chancery merely *pro formâ* to explain the division of certain funds mentioned in the orders, and which were divided between the mortgagees' and the mortgagors' representatives substantially in equal moieties, and that it was agreed at the time of the compromise that the proceeds of the estates, when sold, were to be divided in the same manner as the funds in Court. These allegations are so contrary to the precise and clear terms employed in the compromise and orders of the Court, that it is evidently incumbent on the applicants to support them by the strongest evidence; and evidence, certainly, of a very remarkable character has been produced. It consists principally of three letters, which I will briefly notice. On the 12th of March, 1858, Mr. Dobinson, one of the two joint mortgagees and consignees under whom the petitioner claims, writes to Thomas Parker, one of the owners of the equity of redemption, with reference to a negotiation for a sale of these estates, "I beg to say that I will agree to the sale, and that the proceeds should be divided *according to the compromise*, on the condition that I am not to incur any expense." This negotiation failed, and another was entered into between Mr. Dobinson and the executors of his co-mortgagee, Mr. Timperon, for the sale and transfer of their mortgage securities (not of the estates) to the petitioner. On the 2nd of November, 1859, Mr. Dobinson's solicitors wrote to the petitioner's solicitor as follows:—"On the part of our client, Mr. Dobinson, and so far as we can on the part also of Mr. Timperon's executors, for whom we are not concerned, but who would probably

take the same course with Mr. Dobinson, we are willing to accept £3,500 for Messrs. Timperon and Dobinson's mortgage debt of £20,000 and upwards against the estates of Chesterfield, Hillside, and Brazaletto, and the wharf if included in their securities, leaving you to deal with the other parties, whose interests you have been treated as amounting to one half of the entirety;" and on the 28th of the same month of November, Mr. Bull, on behalf of some of the Parker family, writes to the petitioners' solicitors as follows:—

"I would observe that the title of the respective clients for whom I am concerned is quite as clear and patent upon the orders as is that of Messrs. Timperon and Dobinson; and to give you an idea of what is their worth of taking the scale of £7,000, as the basis upon which to calculate their worth, they would be as follows:—

Timperon and Dobinson, one-half	£3,500	0	0
Mrs. Bullock (Cutler's client) one-sixteenth		437	10 0
Mr. Thomas Parker, one-sixteenth	£437	10	0
* Mr. Thomas Parker, one-fifth of one-sixteenth	87	10	0
* Mr. George Craggs Parker, one-fifth of one-sixteenth		87	10 0
Mr. Wynne (assignee of Mrs. Wilkinson)		87	10 0
Mr. Henry James Parker		87	10 0
* Mr. and Mrs. Davies		87	10 0
		4,812	10 0
Purchase money	£7,000	0	0
Application of part thereof, as above.		4,812	10 0
Balance		2,187	10 0

This balance would be applicable to the payment of all the costs in the first place, and the residue might be considered as the value of Hillside. My advice is that you at once treat for the purchase of these interests in detail at the prices suggested according to the above scale subject to the payment of the costs, and I can at once secure to Colonel Dawkins the purchase of the shares marked thus * at the prices fixed, and then

there would be no difficulty in perfecting title in the way suggested in Mr. Holmes' letter, to whom I have written."

On the 7th of December, 1859, Mr. Bull wrote to Mr. Smith a letter which concluded as follows:—"Promptitude in action is what I recommend, and you shall have every facility from me in so doing, it being considered that all my costs are to be provided for;" to which Mr. Smith, on the same day, replied as follows:—"As regards the last paragraph in your note, the payment of your costs will depend upon the parties interested making Colonel Dawkins—the petitioner—such a proposal as I can advise him to accept." Now it certainly is a very strong circumstance in favour of the proposition contended for by the applicants, viz., that the real estate ought to be sold, and the produce divided, according to the alleged agreement, in equal moieties between the mortgagors and the mortgagees, when we find one of the two first mortgagees himself declaring such to be the case on the sale of his securities to the petitioner; and the solicitor of one of the owners of the puisne incumbrances and owner of the equity of redemption corresponding with the petitioner as to the purchase of the interests of such parties in the manner we have seen. Another very strong circumstance is that the petitioner did, shortly after his purchase of these mortgages, also purchase the rights of the party chiefly interested in the equity of redemption, Mr. Thomas Parker (as recommended by Mr. Bull), so as to dispose of his claim altogether, which certainly gives rise to the inference that the petitioner considers the party entitled to the puisne incumbrances and equity of redemption to have substantial claims upon the estates. I do not say that these circumstances, unaided by further evidence, are or are not sufficient to outweigh the effect of the express terms of the compromise and the orders in Chancery, and the absolute transfer of the securities; but I do say that they raise a substantial doubt in favour of the applicants.

With regard, however, to some of the questions which have been raised on these applications do I consider it necessary or proper to express any final opinion at present. If no suit in Chancery had already been instituted in which these matters could properly be decided, it would have been a grave question whether I should not have sent a case for the opinion

of that Court under the 24th section of the West Indian Incumbered Estates Act, 1854, or transferred the whole purchase-moneys into the name of the Accountant-General, to be dealt with by the Court of Chancery, under the 48th section of the same Act. As it is, I think that the best course will be for the parties to revive the suit of *Pearse v. Brooke*, and to obtain the decision of the learned Vice-Chancellor, before whom it stands, upon the several important and complicated questions which have been raised by the applicants. It may at first be imagined that the Acts which regulate this Court oust the jurisdiction of the Court of Chancery in the present case, but on examination it will be found that this is not so. All proceedings in the Court of Chancery for the sale of estates in this Court are stayed previously to a sale, upon the receipt of our certificate, under the 54th section, and subsequently to a sale by the effect of our conveyance under the 10th section of the Act of 1858; and as to the distribution of the purchase money, the discretion of this Court is absolute, subject to an appeal to the Privy Council, but there is nothing to prevent the mutual accounts of any of the parties being taken, and their rights being declared by the Court of Chancery, without prejudice, of course, to the proceedings in this Court. I shall therefore order that these two applications, and the consideration of the schedules (at least as far as they are concerned) shall stand over for three weeks, during which time any party will have the opportunity of reviving the suit of *Pearse v. Brooke*, and instituting any supplemental suit which may be necessary. Should any party adopt that course, I will then consider what further order ought to be made in this matter to protect the rights of all parties. Should no party adopt that course, I shall then be ready to reconsider the present application, with any further evidence which may be then adduced, and to hear any application which may be made to send a case to the Court of Chancery.

In consequence of some observations made in argument by counsel, I think it right to add that, whatever may be the ultimate distribution of the purchase-moneys, the rights of the purchaser will not be affected in that capacity, although he happens to be the petitioner, and he will, on the pay-

ment of the balance of his purchase money at once, or of such part as hereafter may be found left due (regard being had to his rights as an incumbrancer), be entitled to a conveyance, with an indisputable title, both in law and in equity.

May 31, 1864.

The above case having been re-argued on the points reserved, the Chief Commissioner delivered judgment as follows :—

An application was made in February last on the part of Mr. Pearse in right of his wife, Mary Pearse, formerly the widow of James Craggs Parker, and the administratrix of their son, George Craggs Parker, to have accounts taken of what was due to the petitioner, Colonel Dawkins, on foot of certain mortgages now appearing Nos. 4 and 5 on the schedule of incumbrances, affecting the Hillside and Brazalette estates, and a mortgage security now appearing on the schedule of incumbrances affecting the Chesterfield estate.

The amounts appearing on the schedule were virtually ascertained by a compromise which was carried out by orders of the Court of Chancery in the cause of *Pearse v. Brooke* dated the 24th May, 1849, and the 31st of July, 1852. Mr. Pearse, however, alleged that such compromise and orders were not binding upon him personally, because he never authorised or consented to them, and that they were not binding on him as the representative of George Craggs Parker, because he never authorised or consented to them, and died before the orders in Chancery were made, whereby the suit abated.

On the former hearing of this application I went fully into all the circumstances of the case, and expressed my opinion that if no suit in Chancery had been instituted in these matters, I should probably have sent a case for the opinion of that Court, or transferred the whole of the purchase moneys into the name of the Accountant-General, to be dealt with under the West Indian Incumbered Estates Act, 1854, secs. 24 and 48; and that an application to the Court of Chancery in the above suit was the proper course to determine the questions at issue, and I adjourned the further hearing of the application, and of similar applications by other parties, to enable any party to apply to

the Court of Chancery, if so advised. Since then Mrs. Pearse has died, and administration to her effects has been granted to Mr. Pearse, but administration to the effects of George Craggs Parker, left unadministered by her, has been granted to his brother Henry James Parker. Mr. Pearse, therefore, is no longer, in the right of his wife, or otherwise, the representative of George Craggs Parker, but he is interested in a share of the personal estate of George Craggs Parker, as the administrator of Mrs. Pearse. In the course of the arguments on the previous occasion, and in my judgment, it was assumed that George Craggs Parker was a defendant in the cause of *Pearse v. Brooke*; but it now appears that he was a co-plaintiff, which, it is contended, makes an important difference in the effects of the abatement consequent on his death, whenever it takes place. No application has yet been made to the Court of Chancery, and the suit of *Pearse v. Brooke*, and another suit for the administration of George Craggs Parker's estate, still remain abated. Under these circumstances Mr. Pearse renews his application of February last—1st, in respect of arrears of an annuity of £150, charged upon all or some of those estates which were due to Mrs. Pearse at her decease; 2ndly, in respect of certain advances for the maintenance of her children, which was also a charge on all or some of those estates; and 3rdly, in respect of the beneficial interest which he has in George Craggs Parker's estate.

As to the first and second of these claims, it is clear that, *primâ facie*, he is entitled at once to the account prayed. It is, however, alleged on the other side that he is deprived of this right by the compromise of 1849, carried out by the orders of the Court of Chancery, in the cause of *Pearse v. Brooke* in that year and in 1852. The question, therefore, for consideration as regards the two claims is, whether the compromise and orders in Chancery are binding on Mr. Pearse; and it appears to me that, although some doubt might have originally been entertained as to the compromise and the order of 1849, the subsequent order of 1852, varying and finally confirming and carrying out the former order and compromise upon which Mr. Pearse appeared in person, must be held to be binding upon him as to all the subject matters of such order (including the accounts now in question). As to the third claim made

by Mr. Pearse, the question or consideration is whether Mr. George Craggs Parker is bound by the compromise and orders, which appears to depend on the preliminary questions whether he authorised his solicitor, Mr. Bull, to consent to the compromise and orders in question, and whether he was alive at the dates of those orders. With regard to the authority of Mr. Bull to enter into and carry out the compromise in question, the evidence is certainly not direct or clear ; and I think it somewhat doubtful whether the circumstances disclosed are such as would lead the Court of Chancery to presume that such an authority was actually given. It appears from Henry James Parker's affidavit that at the time George Craggs Parker was last seen, in 1846, he was aware that negotiations for a compromise were going on, and that he intended to go to sea for a voyage or two, "when he thought the law suit would be settled." It also appears by Mr. Bull's evidence that, previously to that time, he had seen very little of George Craggs Parker, and had communicated as to the conduct of the suit chiefly with his elder sister, Mrs. Wilkinson, and with a friend and creditor of his, Mr. Wynne. The observations made by Mr. Roberts, who appears as counsel for Mr. Pearse, that the mere knowledge and approval of negotiations for a compromise cannot be held to be an authority finally to enter into any compromise, whether beneficial or prejudicial, has certainly great force, and considering the recent decisions against any general or implied authority of a solicitor to compromise a suit without particular and express instructions contained in any former judgment, it seems probable that if George Craggs Parker had, shortly after the order of 1849, made an application to the Court of Chancery to set aside that order, and denied on oath that he ever gave Mr. Bull any authority to enter into the compromise, the application would have been successful; but whether at this distance of time, and under all the circumstances of the case, George Craggs Parker, if he were alive and were to give such a denial, or his administrator, who, of course, could not give such a denial, ought now to be allowed to set aside those orders, are different questions.

As to the death of George Craggs Parker, the evidence before me is very slight, if any ; all that is certain is that Henry James Parker saw him last in the

¹ See post, p. 307.

year 1846, when he expressed an intention of going to sea for two years, and that, notwithstanding many inquiries, he has not been heard of since. At the end of seven years a legal presumption arose that he was dead, and long since that time letters of administration have been granted of his effects, but I feel no doubt that, in the absence of further evidence, the Court of Chancery would hold the suit of *Pearse v. Brooke* not to have abated by his death previously to the date of the order of 1852, and I do not therefore think it necessary at present to consider the effects of such abatement. I am, moreover, still of opinion that all the points raised on this application in respect of George Cragg Parker's estate are proper only for the decision of the Court of Chancery, inasmuch as they involve the reversal or review of a recorded decision of that Court. They are properly raiseable in the first instance by the administrator of George Craggs Parker, who, in the administration suit, can obtain the authority and protection of the Court of Chancery in raising them. In the event of his not raising them they are raiseable by Mr. Pearse or any of the parties beneficially interested in George Craggs Parker's estate. If it be decided by the Court of Chancery that the former orders were not binding on George Craggs Parker, the accounts now prayed for would, of course, be granted, and taken under the direction of the Court of Chancery, and if a balance were found due to George Craggs Parker's estate, his administrator would undoubtedly have claims against the persons amongst whom the slave compensation money was divided, or some of them, as well as against the moneys in this Court, but until those orders have been set aside as against George Craggs Parker and his representatives, I must, under the circumstances of the case, hold them to be binding in this Court, and refuse the present application.

XV.]

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, June 28, 1864.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re MAC FEE (deceased),
Ex parte GRANT.¹*Practice—Crops.*

Where no reference is made to growing crops in the particulars of sale, the Commissioners are bound, under the 28th General Rule, to secure them to the parties in possession, but will not compel a purchaser to complete under such circumstances.

AT a sale of estates in this matter on the 21st of June, James Graham had been declared the purchaser of a moiety of the Sans Souci Estate, in the island of St. Vincent, at the sum of £3,700. After the sale, but before the payment of the deposit, the petitioners, who were in possession of the estate as mortgagees, moved to set aside the sale, unless the crops (which were of considerable value, and, owing to the dryness of the season, were still standing) were reserved to them; and they offered, if required, to become the purchasers of the land, without the crops, at the sum offered by Graham. It was contended, on behalf of Graham, that as it was not stated in the particulars that the crops were reserved, they passed, according to the ordinary practice in England and the West Indies, to the purchaser of the land.

Mr. Tweedie, solicitor, for the petitioners (Messrs. Grant).

Mr. Cotterill, solicitor, for the purchaser (Mr. Graham).

The Chief Commissioner said that he could not enforce this contract against the purchaser, as the crops were not mentioned in the particulars of sale, but on the other hand he felt bound by the 28th General Rule to declare the right of the petitioners to the

¹ 8 Sol. Jour., 704.

crops, and to secure them to the petitioners; he, therefore gave the purchaser the option to abandon the contract, to purchase the crops at a valuation, or to secure the crops to the petitioners.

The purchaser elected to stand by his purchase, and to secure the crops to the petitioners, and an arrangement was entered into to that effect, the costs of the motion being paid by the petitioners.

The Chief Commissioner directed that in all future particulars of sale it should be distinctly stated whether the crops were or were not included.

XVI.

WEST INDIAN INCUMBERED ESTATES COURT,

8, Park-street, Westminster, August 10, 1864.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re MAC DOWALL,
Ex parte NORMAND,
Ex parte GRAHAM.¹

Consignee—Lien.

The consignee of a West Indian estate is entitled to a lien on the corpus of the estate for advances made by him for its cultivation, in priority to all other incumbrancers, including the assignees of a Crown mortgage, under the Hurricane Loan Act, 2 & 3 Will. 4, c. 125.

THIS case stood for judgment on the final settlement of the schedule. The judgment contains a statement of the facts.

Colt appeared for Mr. Normand.

W. Mackeson for Messrs. Graham and Co.

The Chief Commissioner delivered judgment¹ as follows:—

These are objections filed by James Normand and others (the petitioners in this case), to the draft schedule of incumbrances as settled by the Secretary,

¹ 8 Sol. Jour., 851.

seeking that the same may be varied, by giving the incumbrance of the petitioners priority over that of Messrs. Graham, Porter, and Co., consignees of the estate, which now stands first.

The moneys to which the schedule relates arise from two undivided third parts of the Park Hill estate, in the island of St. Vincent, which were sold, with the remaining one-third part (held under a different title), by order of this Court, on the 8th of March last.

The following appear to be the material circumstances of the case:—The Park Hill estate formerly belonged to Allan MacDowall, who, by indentures dated the 19th and 20th of May, 1834, made under the 2 & 3 Will. 4, c. 125 (commonly called the Hurricane Loan Act), mortgaged the two-thirds in question to the Crown, to secure a loan of £2,650, advanced under the above Acts. All the existing incumbrancers on the estate concurred in the above mortgage, and postponed their securities¹; but, independently of such postponement, it is provided by the statute that all mortgages made thereunder should have priority over all other mortgages and securities charged or chargeable upon the property.

This mortgage was, on the 12th of October, 1844, transferred by the Hurricane Loan Commissioners, under the powers conferred by the statute 7 and 8 Vict., c. 17, to Messrs. Muir and Donaldson: and, after divers mesne assignments, it was, on the 4th May, 1859, assigned to the petitioners. It is not disputed that this mortgage has priority, either by date or by postponement, or by the force of the above statute, over all incumbrances other than that of Messrs. Graham, Porter, and Co., the consignees, which has arisen in the following manner.

In 1835 Walter Cockburn became consignee of the whole estate, under an agreement to which Allan MacDowall and a great number of persons interested in the estate (including the owners of certain judgment debts, which have also become vested in the petitioners, but not including the Crown mortgagees) were parties, and large sums were advanced by Walter Cockburn for the cultivation and management.

Allan MacDowall died in 1837, having devised the estate, subject to certain charges, to his son, John Vincent MacDowall.

¹ See ante p. 269.

On the 2nd of November, 1839, a further agreement was made between certain persons, all creditors of Allan MacDowall, including probably the owners of the judgment debts now vested in the petitioners, but not the Crown mortgagees and Walter Cockburn, whereby Walter Cockburn was continued as consignee.

Walter Cockburn died in February, 1840, shortly after the date of the last-mentioned agreement, at which time a sum of £2,407 appears to have been due to his estate; but the business of consignee was, by the consent of all parties, carried on by his executors and representatives until the 8th of March, 1854, when George Stoddart, who then represented the estate of Walter Cockburn, assigned the debt due to that estate from the Park Hill estate, amounting to £5,409 6s. 4d., for the sum of £700, to Legall, Graham, and Co., who thereupon became, and remained, consignees of the estate up to the date of the sale in this Court.

Contemporaneously with the above assignment, the parties entitled to the estate under the will of Allan MacDowall executed a legal mortgage of the estate to Legall, Graham, and Co., to secure the further sum of £1,500 then due for the cultivation of the estate and further advances. The firm of Legall, Graham, and Co., is now represented by Graham, Porter, and Co., and they have brought in a claim against the estate, amounting to £4,847 in respect of moneys paid by them for the management and cultivation of the estate since they became consignees, including the above sums of £700 and £1,500.

It appears by the affidavits of Mr. James Graham and Mr. Rennie, and letters and receipts which have been given in evidence, that the petitioners, as well as their predecessors in title, both as to the Crown mortgage and the judgment debts already referred to, were fully aware that Messrs. Graham and Porter and their predecessors acted as consignees, communicated with them as such, and received payments of interest from them in respect of the said mortgage.

On the part of the petitioners, and in support of their objections, it has been contended substantially—1st, that consignees have no lien in the absence of contract; 2ndly, that no contract exists in the present

case; 3rdly, that the Act 2 & 3 Will. 4 gives the Crown mortgage assigned to the petitioners a priority over all other incumbrances, discharged even of any lien which may have arisen by any contract entered into by them, or those under whom they claim.

On the first point, I am of opinion, on the authority of the cases cited, and for the reasons given in my judgments in the cases of *ex parte Chapman*, and *ex parte Fraser* (ante pp. 219, 235), which have obtained the honour of Lord Kingsdown's praise in delivering the judgment of the Privy Council in the case of *Fraser v. Burgess* (ante p. 246), and which I have since followed in the case of *Ex parte Pungelley* (ante p. 271) and others, that a consignee of the produce of a West Indian estate is *primâ facie* entitled to a lien not only on the produce of the estate, but also on the corpus of the estate, for the advances made for its cultivation, independently of any contract; and that if the estate be sold, and it becomes the duty of a Court of Equity to distribute the proceeds, that lien must have priority over all others. There is, indeed, no precise decision to this effect, and Lord Justice Turner has stated that he has never been able to make up his mind on the point, whilst doubts, and even contrary opinions, to what I have expressed have been entertained by some learned judges, as noticed in the judgments of this Court already referred to. But, on the other hand, the balance of judicial decisions and dicta, from the case of *Scott v. Nesbitt*, before Lord Eldon, to the case of *Morrison v. Morrison*, before Vice-Chancellor Stuart, and, I may add, the case of *Fraser v. Burgess*, appears to me so overwhelming in favour of the lien of the consignee, and the reliance which the commercial interests have undoubtedly placed upon this lien has confessedly been so explicit, that I feel compelled to adhere to the former decisions of this Court, although, as I have observed on other occasions, I cannot help feeling the great responsibility which is thus cast on me. The point is, I am aware, expressly reserved in the judgment of Lord Kingsdown in the case of *Fraser v. Burgess*, and again by Lord Justice Turner, in delivering a more recent judgment of the Privy Council in *Daniel v. Trotman*, 11 W. R., 717. But there are some observations of Lord Kingsdown in the former case which appear to me to favour very

strongly the conclusion to which I have come. He says, "The question whether the Court, at the instance of a consignee, would order the balance due to him to be raised by sale or mortgage of the estate, when a sale or mortgage is not required for any other purpose, does not in this case arise. The rule that the lien exists as against the income of the estate, has been extended to the case where a portion of the estate has been converted into money by the Legislature substituting for the slaves on the estate the compensation-money awarded in respect of the compulsory emancipation. The same principle seems properly applicable to a case like the present, where the incumbrancers, by procuring a sale of the estate, have put a stop to the profits, on which the consignee would have a lien. The trade, if that analogy be adopted, has in effect been sold, and the proceeds of the sale are subject to the claims of those who would have had a demand on the profits while it remained unsold." The concluding words which I have quoted from Lord Kingsdown's judgment appear to me to apply most precisely to the present case.

On the second point, I am of opinion that there is some evidence in this case in support of an implied contract between these incumbrancers and the consignee, that the latter (supposing them not to have a lien for their advances by the general or special rules of equity) should be entitled to such lien, at all events on the produce of the estate; and the estate being now sold on the petition of the incumbrancers, that such lien would apparently become transferred to the corpus, according to the *dictum* of Lord Kingsdown already cited. Entertaining, however, the view that I do as to the right of the consignees to the lien in question, independently of contract, I do not consider it necessary for me to consider minutely the weight of that evidence. Moreover, there is great obscurity as to portions of it; and if my decision is desired upon this point, I must direct it to be re-argued, with liberty to adduce further evidence.

On the third point, I am of opinion that the Act 2 & 3 Will. 4, c. 125, gives the Crown mortgagee priority over all incumbrances existing at the date of the mortgage, but not against any lien arising subsequently, by the general or special rules of equity, or by express or implied contract of the parties entitled

to the Crown mortgage; and being of opinion that the consignees have acquired a lien by such rules, and also probably by contract, I think that it has priority over the Crown mortgage. The advances are for the benefit of the Crown mortgagees as much as, and probably more than, any other incumbrancers, and there is no reason why they should not be subject to the same liability in respect of them.

It has also been urged by the petitioners, that, although the consignees have a claim for advances by them for supplies, they ought not to be allowed a claim for their advances for interest paid to incumbrancers. This is a peculiarly hard objection from those who have received the interest in question themselves, and I think that the case of *Shaw v. Simpson* (1 Yo. & Coll. C. C. 732) is an authority that the interest is a proper claim, and, if anything, more favoured by the Court of Chancery than the claim for supplies. The only distinction between this case and the present is, that in the former the consignee was appointed or continued by the Court of Chancery; but if this distinction could prevail in the present case so as to defeat the rights of the consignees, it ought equally to prevail in all other cases where consignees have not been appointed or continued by the Court of Chancery, to defeat their rights *in toto*.

In the course of the argument it was contended by the petitioner's counsel that the acceptance by Legall, Graham, and Porter of the mortgage of £1,500, as a security for past and future advances, was a waiver of their lien as consignees. The same point arose in the case of *ex parte Davis and Boddington*, (ante p. 219), and was overruled by me on the grounds there stated—and I see no reason to vary my decision in this case, and I only mention the point in case of an appeal from my present decision. With the same view, I will mention an argument urged by Mr. Mackeson, counsel of the consignees, viz., that this estate, being held in tenancy in common, and the consignees having an undoubted lien on one-third, they therefore, *ex necessitate*, had a lien on the other two-thirds. The learned counsel illustrated this by the practice of the Jamaica muleteer, who, he states, wears only one spur, well knowing that if he can get one side of the mule to progress, the other will follow. I ventured to remind him of a passage in the first canto of "Hudi-

bras," where the same idea is expressed more pointedly; but, even with such illustration, I think the argument fails. The general rule of English law is, that no man can acquire a lien for advances made for the benefit of another man's property without his authority, although it is said to be otherwise according to the law of other countries, where the civil law prevails (*Buxton v. Smee*, 1 Ves. 155). The property, consisting of undivided parts, does not appear to me to constitute an exception to the rule. The case of *Bernard v. Davies*, 11 W. R., '48, was cited in argument. It relates only to the lien of managers, and the question as to the lien of consignees, on which Lord Justice Turner and so many learned judges have reserved their judgments, did not properly arise, and was not fully considered in it.

I therefore think that the consignees have been rightly placed first on this schedule for the amount due to them, subject to any questions of account; and I overrule these objections unless a further hearing is desired on the point which I have mentioned.

The usual account of what is due to the consignees, for advances made by them on account of interest as well as of supplies, will be taken by the Secretary, if the parties require it.

XVII.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, December 7, 1864.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.

Re BROOKS,
Ex parte MAYO.

Practice—Conditional Order—Local Act.

In this case an estate in the island of Antigua was mortgaged by an enrolled deed, executed by a tenant in tail under the Local Act.

The abstract did not show whether any new limitations were made as to the equity of redemption, and the deed itself was in the colony.

The Chief Commissioner held that, in the absence of any express limitations as to the equity of redemption, the estate tail was still subsisting therein. The Colonial Act only gave the deed the effect of a common recovery, and did not contain the special provisions of the 3 & 4 W. IV. c. 74, s. 21. There being, however, some doubts as to the contents of the deed, the Chief Commissioner directed the conditional order to be served both on the tenant in tail and the party claiming adversely as owner of the estate. If either or both these parties were unnecessarily served and put to expense, the petitioners must pay their costs.

XVIII.

WEST INDIAN INCUMBERED ESTATES
COURT,

8, Park-street, Westminster, December 4, 1864.

(Before HENRY JAMES STONOR, Esq., Chief Commissioner.)

Re PARKER,
Ex parte PEARSE,
Ex parte GEORGE CRAGGS PARKER.

Settlement of Schedule.

This was an adjourned meeting for the settlement of the schedule of incumbrances in this difficult and complicated case, which has occupied the Court of Chancery for a great many years, and has been brought to a final conclusion in this Court.

A very remarkable incident at the hearing to-day was the appearance, as a claimant, of Mr. George Craggs Parker, a gentleman who was supposed to have died during the disturbances in Paris in 1848, and to whose estate letters of administration had been granted, and his personal property administered, and actually divided amongst his relatives by the Court of Chancery several years since.¹

¹ See ante, p. 289.

An attempt was again made on behalf of Mr. Pearse to reopen the compromise, and the accounts settled by the Court of Chancery in 1850, but Mr. George Craggs Parker having elected to adopt and stand by the compromise which had been made in his name, the matter was, after some discussion, finally adjourned to the 22nd inst.

December 22, 1864.

The above matter being again brought before the Court, Mr. Pearse, who had appeared by counsel on several previous occasions in opposition to the draft schedule, appeared in person, and intimated that in consequence of the unexpected re-appearance of his step-son, Mr. George Craggs Parker, as whose representative he had hitherto claimed, he should not continue his opposition in this Court, but that he would re-open the accounts as against the parties personally in the Court of Chancery.

There being no further opposition to the draft schedule, the Chief Commissioner finally settled the same,

PARLIAMENTARY RETURN.

(Moved for by Mr. Cave.)

LAID BEFORE PARLIAMENT 11TH JULY, 1864.

Copy of a Circular Despatch from the Right Honourable Sir George Cornwall Lewis to the Governors of the West Indian Colonies on the subject of the West Indian Incumbered Estates Acts.

(Circular).

Downing-street, 6th September, 1860.

SIR,—I have to call your attention to the Incumbered Estates Acts, which were passed by the Imperial Parliament in 1854 and 1858, and I shall be glad to be apprised whether there is any likelihood of the Colony under your Government availing itself of the provision of these Acts.

Her Majesty's Government attach great importance to this measure, and experience has proved its utility in the few instances in which it has been adopted. It should be borne in mind that the expense for salaries of the Commissioner and other officers in this country devolves entirely on Imperial funds, and the question will naturally arise how long her Majesty's Government will be justified in recommending Parliament to make provision for these expenses at their present amount, unless the West Indian Colonies take advantage more generally of the Acts.

I have, &c.,

(Signed) G. C. LEWIS.

PARLIAMENTARY RETURN.

(Moved for by Mr. Cave.)

LAI'D BEFORE PARLIAMENT 11TH JULY, 1864.

Memorial to the Treasury from Solicitors practising in London applying for the removal of the offices of the Commissioners to the vicinity of Lincoln's Inn.

July, 1863.

SIR,—As solicitors having had occasion to conduct business in the West Indian Incumbered Estates Court, we venture to represent to her Majesty's Government, through you, the great inconvenience arising from the situation of the Court at Westminster, where at present the judicial business is transacted, and the official auctions held.

The nature of the business over which the Court has jurisdiction embraces the official transfer of land and the marshalling of the incumbrances thereon, involving the principles of equity and conveyancing, and the district of Lincoln's Inn is fully recognised in the legal profession as the centre of all such business, as the Chancery Courts sit there, and it is there that almost all the equity and conveyancing counsel have their chambers.

From the records of the Court it appears that of the several London legal firms or practitioners who have hitherto conducted business in the Court not one have or has offices further West than Lincoln's Inn Fields, whilst most have offices in and around Lincoln's Inn, and several further East, in the vicinity of the Bank of England.

Much loss of time is necessarily involved in attendances at Westminster by counsel, solicitors, and their clerks, involving additional expense and delay to their clients. So much has this inconvenience been felt, that the Chief Commissioner has frequently, at the request of the parties interested, adjourned the hearing of matters to his private chambers in the neighbour-

hood of Lincoln's Inn, while the officers of the Court have gone out of their way to produce and deliver documents in such last-mentioned locality, and but for their invariable efforts to facilitate business, much additional inconvenience would have been experienced.

All auctions are conducted at Westminster, where merchants and others mostly engaged in the City are obliged to attend, some having difficulty even to find the locality of the Court, while the accommodation afforded is insufficient and inconvenient, and the only means of access is up a narrow stone back staircase three storeys high, lit in part with gas. It is believed that the official auctions would be better attended if held at Lincoln's Inn, or on some occasions at one of the well-known auction marts in the City.

It is, therefore, respectfully submitted and urged that the sittings of the Court should be transferred to a suitable locality in or near Lincoln's-inn, and that the official auctions should be held there, or in such place in the City as the Commissioners may in any case appoint.

We are, &c.

Freshfields and Newman, 5, Bank-buildings.
 Chas. Druce and Sons, 10, Billiter-square.
 Hunter, Gwatkin, and Hunter, Lincoln's-inn.
 Whitakers and Woolbert, 12, Lincoln's-inn-fields.
 Pownall and Co., Staple-inn.
 Wm. Braikenridge and Sons, 16, Bartlett's-buildings.
 Bell, Steward, and Lloyd, 49, Lincoln's-inn-fields.
 Hy. Wm. Bull, 25, Ely-place.
 Boys and Tweedies, Ely-place.
 Cardale, Iliffe, and Russell, 2, Bedford-row.
 Robert Marshall, 7, Leadenhall-street.
 Symes and Sandilands, 33, Fenchurch-street.
 T. K. Edwards, 3, Laurence Pountney-hill, E.C.
 Ashurst, Morris, and Knight, 6, Old Jewry.
 Lever and Son, 15, Bedford-row.
 Tuke and Valpy, 17, Lincoln's-inn-fields.
 John Hawley, 8, Coleman-street, E.C.
 Thos. F. Hill, P.W.S.
 Stephens and Son, 30, Bedford-row, W.C.

To the Secretary of the Treasury.

PARLIAMENTARY RETURN.

(Moved for by Mr. John Abel Smith.)

LAI'D BEFORE PARLIAMENT APRIL, 1864.

1.—RETURN of the number, names, and acreage of estates sold since the 17th day of July, 1862 (when the West India Incumbered Estates Act, 1862, authorising commissions or per-centages passed), with the Dates of Sales, and amount of purchase-moneys, where the purchase-moneys have been fully administered.

Name of Estate.	Acreage.	Colony.	Date of Sale.	Purchase Moneys.
1. Round Hill ...	100	Jamaica ...	10 Feb. 1863	£ 100
2. Mexico	1,444	" ...	22 Dec. 1862	650
3. Sally Hall	290	" ...	22 Dec. "	200
4. Santa Cruz Park	387	" ...	22 Dec. "	120
5. Drax Hall... ..	2,388	" ...	14 April 1863	4,500
6. Mocho	361	" ...	14 April "	100
7. Sunbury	1,130	" ...	14 April "	100
8. Up Park Pen ...	682	" ...	23 June "	1,500
9. Swanswick ...	1,162	" ...	23 June "	2,300
	7,944			9,570

2.—RETURN of the number, names, and acreage of estates sold since the 17th day of July, 1862, with the dates of sales and amount of purchase-moneys, where the purchase-moneys are now in course of administration.

Name of Estate.	Acreage.	Colony.	Date of Sale.	Purchase Moneys.
				£
1. Barrowallie or Kearton's ...	230	St. Vincent	9 Feb. 1864	510
2. Worthy Park or Luidas ...	2,922	Jamaica ...	23 June 1863	} 8,550
3. Cocoree ...	1,200	" ...	23 June "	
4. Mickleton ...	623	" ...	23 June "	
5. Hillside ...	4,336	" ...	22 Dec. 1862	3,100
6. Brazaletto ...	1,080	" ...	22 Dec. "	800
7. Chesterfield ...	609	" ...	22 Dec. "	2,300
[8. Parker's or Salt River Wharf	157	" ...	22 Dec. "	1,010
9. Garbrand Hall & Mullet Hall ...	6,500	" ...	8 Mar. 1864	1,210
10. Mile Gully ...	2,033	" ...	8 Mar. "	} 2,120
11. Spitzbergen ...	3,081	" ...	8 Mar. "	
12. Paradise ...	988	" ...	8 Mar. "	570
13. Smith's or Pipers	949	" ...	8 Mar. "	310
14. Harman's Run	928	" ...	8 Mar. "	100
15. Mumbies ...	323	" ...	8 Mar. "	} 140
16. Blackwall ...	10	" ...	8 Mar. "	
17. Park Hill, $\frac{3}{4}$ parts	596	St. Vincent	8 Mar. "	1,010
18. Haughton Tower	1,040	Jamaica ...	9 Feb. "	2,050
19. Park Hill, $\frac{1}{4}$ parts	As above	St. Vincent	8 Mar. "	510
	27,605			24,590

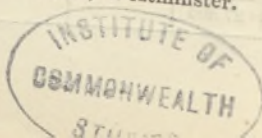
3.—RETURN of the number, names, and acreage of estates for the sale of which petitions are now pending, with the dates of sales when fixed.

Name of Estate.	Acreage.	Colony.	Date of Sale.
1. Bourkesfield and Coles Pen... ..	201	Jamaica ...	Not fixed.
2. Belmont or Donovan's... ..	400	Tortola, Virgin Islands }	"
3. Petit Bordell and Sharpe's	320	St. Vincent...	"
4. Mount Alexander .	300	"	"
5. Spur Tree	1,700	Jamaica ...	"
6. Waterloo	610	St. Vincent...	"
7. Orange Hill	630	"	"
8. Farm	466	Jamaica ...	"
9. Soho	307	"	"
10. Woodstock Pen	1,800	"	"
11. Friendship	800	"	"
12. Sans Souci (moiety)	297	St. Vincent...	7 June 1864
13. Mount Greenan	366	"	7 June "
14. Penniston's	200	"	7 June "
15. Jambou Vale	300	"	7 June "
16. Escape	200	"	7 June "
17. Peruvian Vale	332	"	7 June "
18. Henry's Vale	302	"	7 June "
19. Hermitage	240	St. Christo-pher... ..	21 June "
20. Hampden	200	Tobago	12 July "
21. Pigeon Point	115	"	12 July "
22. New Grange... ..	259	"	12 July "
23. Old Grange	250	"	12 July "
24. Buccoo Point	17	"	12 July "
25. Grafton	300	"	12 July "
26. Kendal Place	300	"	12 July "
27. Rosebank	300	"	12 July "
28. Campbelton	500	"	12 July "
29. Hermitage	300	"	12 July "
30. Hyde	3,077	Jamaica ...	12 July "
	15,389		Not fixed.

These Returns are made up to the 12th day of April, 1864.

HENRY JAMES STONOR,
Chief Commissioner.

West Indian Incumbered Estates Commission,
8, Park-street, Westminster.



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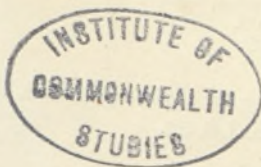
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The Library,

COLONIAL OFFICE,

DOWNING STREET, S.W.1.

RECEIVED

25 MAY 1936

Ans^d 25 MAY 1936

23rd May, 1936.

Dear Sir,

I have received your letter No.7099 of the 21st May, 1936 about the West Indian Incumbered Estates Act. The West Indian Incumbered Estates Courts were set up under the authority of the West Indian Incumbered Estates Act, 1858 (21-22 Vic. C.96), the West Indian Incumbered Estates Act, 1862 (25-26 Vic. C.45) and the West Indian Incumbered Estates Act, 1864 (27-28 Vic. C.108) These three Acts were virtually repealed by 49-50 Vic. C.36 "An Act to provide for the determination of the Acts respecting the Sale and Transfer of Incumbered Estates in the West Indies" a copy of which is enclosed herewith for perusal and return.

It will be noticed from section 2 of the Act that Her Majesty was empowered by Order in Council from

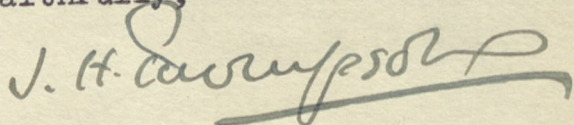
time

r Algernon Aspinall, C.M.G., C.B.E.

time to time to direct that the West Indian Incumbered Estates Acts should cease to be in operation in the Colony as from the date mentioned in the Order. I have traced such Orders in Council in respect of Jamaica, St. Vincent, Grenada, Tobago and the Leeward Islands. I enclose for perusal and return a copy of the Order relating to Jamaica.

The decision to repeal the various West Indies Incumbered Estates Acts arose out of a Report by Colonel Crossman, C.M.G., R.E. and George Baden-Powell which was printed together with a letter from the West India Incumbered Estates Commission in Parliamentary Paper C - 3982 of 1884. Further correspondence on the subject was printed in Parliamentary Paper C - 4234 of 1884. These Parliamentary Papers can of course be seen in the Library.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "J. H. Lawrence", written in a cursive style with a long horizontal flourish at the end.

REGISTRAR OF COLONIAL LAWS.