

## No. 11 of 1876.

### An Ordinance to amend the Law regulating the Entail and Settlement of Immovable Property.

(See No. 3 of 1890.)

**W**HEREAS it is expedient to amend the law regulating the entail and settlement of immovable property : It is therefore enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows :

Preamble.

**1** This Ordinance may be cited for all purposes as "The Entail and Settlement Ordinance, 1876," and shall come into operation from the date when the confirmation thereof by Her Majesty shall be proclaimed in the *Government Gazette*.<sup>\*</sup>

Short title.

**2** No prohibition, restriction, or condition against the alienation of any immovable property declared by or contained in any will, deed, or other instrument, which shall be executed after the proclamation of this Ordinance, shall be effectual to prevent or restrict the alienation of such property for a longer period than the lives of persons who are in existence or *en ventre sa mère* at the time when such will, deed, or instrument is executed and are named, described, or designated in such will, deed, or instrument, and the life of the survivor of such persons.

Prohibition against alienation limited to existing lives.

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\* Her Majesty's assent proclaimed 15th June, 1877.

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Such prohibition void as to the excess beyond existing lives. Persons in whose favour prohibition is created must be designated.

**3** Any such prohibition, restriction, or condition against alienation as aforesaid shall be null and void, so far as it prohibits or restricts alienation for a longer period than that limited in the preceding section. But where the will, deed, or instrument in which any prohibition, restriction, or condition against alienation is contained does not name, describe, or designate the person or persons in whose favour or for whose benefit such prohibition, restriction, or condition is provided, such prohibition, restriction, or condition shall be absolutely null and void.

Entailed property may be leased or sold by order of the court.

**4** Whenever any immovable property is now or shall hereafter be held under or subject to any entail, *fidei commissum*, or settlement, whereby the alienation of such property is prohibited or in any way restricted, it shall be lawful for the district court of the district in which such property is situate, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under such entail, *fidei commissum*, or settlement, and subject to the provisions and restrictions hereinafter contained, from time to time to authorize a lease, exchange, or sale of the whole or any part or parts of such property, upon such terms and subject to such conditions as the said court shall deem expedient. Provided that every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term not exceeding twenty-one years; and that on every such lease shall be reserved the best rent or reservation in the nature of rent that can be reasonably obtained, to be made payable half-yearly or oftener to the person or persons then lawfully entitled to the same, without taking any fine or foregift or other benefit in the nature of a fine or foregift.

Persons in possession may apply for a lease or sale.

**5** Any person entitled to the possession or to the receipt of the rents and profits of any immovable property now or which may hereafter become subject to such entail, *fidei commissum*, or settlement as aforesaid, or of any share thereof, may apply to the district court by petition in a summary way to exercise the powers conferred by this Ordinance.

Notice of application to parties interested.

**6** Before making any order authorizing any such lease, exchange, or sale as aforesaid, the district court shall require such notice, as it shall deem expedient, of the application to be given to all persons interested under the entail, *fidei commissum*, or settlement, who may be living at the time, and whose place of abode can, after reasonable inquiry, be ascertained. Such notice shall be sufficient if left at the last known place of abode in the island of the person to be affected thereby. Provided that if any person to whom notice has to be given shall be under the disability of minority, idiocy, or lunacy, it shall be sufficient if the notice is given to the guardian or curator of such person. It shall be competent for any person interested under the entail, *fidei commissum*, or settlement, to appear before the court and show cause against any such lease, exchange, or sale being authorized.

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**7** All money received under or by virtue of any sale effected under the authority of this Ordinance shall be applied, as the district court shall from time to time direct, to some one or more of the following purposes; (that is to say,)

Application of proceeds of sale of entailed property.

- (1) The discharge or redemption of any charge or incumbrance affecting the property, or affecting any other property subject to the same entail, *fidei commissum*, or settlement; or
- (2) The purchase of other immovable property to be settled in the same manner as the property in respect of which the money was paid; or
- (3) Investments in the Loan Board or in Government securities, the interest thereof being made payable to the party for the time being otherwise entitled to the rents and profits of the land sold; or
- (4) The payment to any person becoming absolutely entitled.

**8** Any property taken in exchange for any property exchanged under the provisions of this Ordinance shall become subject to the same entail, *fidei commissum*, or settlement, as the property for which it was given in exchange was subject to at the time of such exchange.

Property received in exchange to become affected by the same settlement as that for which it was exchanged.

**9** On every lease, exchange, or sale to be effected as hereinbefore mentioned, the court may direct what person or persons shall execute the deed of lease, transfer, or assurance; and the deed executed by such person or persons shall take effect as if all the persons interested or who might become interested in the property under the will or instrument by which the entail, *fidei commissum*, or settlement was created, had joined in such lease, transfer, or assurance. The court may also direct by whom and in what proportions the cost of such lease, transfer, or assurance, and of the proceedings taken under this Ordinance, shall be paid. Such costs may be recovered in the same way as costs in ordinary civil actions brought in district courts.

Court to direct what persons should execute the lease or transfer.

**10** Every order or direction of the district court made under any of the provisions of this Ordinance shall be subject to appeal to the Supreme Court, and such appeal shall be subject to and governed by the same rules and procedure as are applicable to appeals from interlocutory orders of district courts.

Orders of district court subject to appeal.

**11** Every petition to the district court made under section 5 shall bear a stamp of ten rupees: but no other stamps shall be required for any legal proceedings under this Ordinance.

Stamp duty on petition to court.

**12** Nothing in this Ordinance contained shall be held to apply to any immovable property held or possessed or which may hereafter be held or possessed by, or to any grant, devise, or conveyance to or for the benefit of any corporation, joint stock company, church or temple, or any charitable, religious, or educational institution.

Ordinance not to apply to corporations, &c.

6th December, 1876.