



Fines and Recoveries Act 1833

1833 CHAPTER 74 3 and 4 Will 4

An Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance. [28th August 1833]

Modifications etc. (not altering text)

- C1 Short title “The Fines and Recoveries Act, 1833” given by short [Titles Act 1896 \(c. 14\)](#)
- C2 Words of enactment and certain other words repealed by [Statute Law Revision \(No.2\) Act 1888 \(c. 57\)](#), [Statute Law Revision Act 1890 \(c. 33\)](#) and [Statute Law Revision Act 1892 \(c. 19\)](#)
- C3 This Act is not necessarily in the form in which it has effect in Northern Ireland

Commencement Information

- I1 Act wholly in force at Royal Assent

[1.] **Meaning of certain words and expressions. Estate. Lands. Base fee. Estate tail. Actual tenant in tail. Tenant in tail. Tenant in tail entitled to a base fee. Money. Person. Number and gender. Settlement.**

In the construction of this Act the word “Lands” shall extend to manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments of any tenure (except copy of court roll), and whether corporeal or incorporeal [^{F1}, and any undivided share thereof], but when accompanied by some expression including or denoting the tenure by copy of court roll, shall extend to manors, messuages, lands, tenements, and hereditaments of that tenure [^{F1}, and any undivided share thereof]; and the word “estate” shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands; and the expression “base fee” shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression “estate tail,” in addition to its usual meaning, shall mean a base fee into which an estate tail shall have been converted; and the expression “actual tenant in tail” shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed

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an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression “tenant in tail” shall mean not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression “tenant in tail entitled to a base fee” shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression “money subject to be invested in the purchase of lands” shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to lands held by copy of court roll, and also to lands of any tenure, in Ireland or elsewhere out of England, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and the word “person” shall extend to a body politic, corporate, or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and every assurance already made or hereafter to be made, whether by deed, will, private Act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and where any such settlement is or shall be made by will, the time of the death of the testator shall be considered the time when such settlement was made: Provided always, that those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is any thing in the subject or context repugnant to such construction.

Textual Amendments
F1 Words in s. 1 repealed (E.W.)(1.1.1997) by 1996 c. 47, s. 25(2), Sch.4 (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, art.2

2—14. F2

Textual Amendments
F2 Ss. 2–14, 16 repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), Sch. 10

15 Power after the 31st Dec. 1833, to dispose of lands entailed, in fee simple or for a less estate, saving the rights of certain persons.

After the thirty-first day of December one thousand eight hundred and thirty-three every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of for an estate in fee simple absolute, or

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous Act would have been vested in or might have been claimed by, the person making the disposition, at the time of his making the same, and also as against all persons, including the King's most excellent Majesty, whose estates are to take effect after the determination or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made.

16 F3

Textual Amendments

F3 Ss. 2–14, 16 repealed by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\)](#), **Sch. 10**

17 F4

Textual Amendments

F4 S. 17 repealed by [Statute Law Revision Act 1874 \(c. 35\)](#)

18 The power of disposition not to extend to certain tenants in tail.

Provided always, that the power of disposition herein-before contained shall not extend to tenants of estates tail who, by an Act passed in the thirty-fourth and thirty-fifth years of the reign of his Majesty King Henry the Eighth, intituled an Act to embar feigned recovery of lands wherein the King is in reversion, or by any other Act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct.

19 Power, after the 31st Dec. 1883, to enlarge base fees; saving the rights of certain persons.

After the thirty-first day of December one thousand eight hundred and thirty-three, in every case in which an estate tail in any lands shall have been barred and converted into a base fee, either before or on or after that day, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the King's most excellent Majesty, whose estates are to take effect after the determination or in defeasance of the base fee into which the estate tail shall have been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons in respect of estates prior to the estate tail which shall have been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made.

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

20 Issue inheritable not to bar expectancies.

Provided always, that nothing in this Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein.

21 Extent of the estate created by a tenant in tail by way of mortgage or for any other limited purpose.

Provided always, that if a tenant in tail of lands shall make a disposition of the same, under this Act, by way of mortgage, or for any other limited purpose, then and in such case such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity as well as at law to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: Provided always, that if the estate created by such disposition shall be only an estate pour autre vie, or for years absolute or determinable, or if, by a disposition under this Act by a tenant in tail of lands, an interest, charge, lien, or incumbrance shall be created without a term of years absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, lien, charge, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected.

22 The owner of the first existing estate under a settlement prior to an estate tail under the same settlement, to be the protector of the settlement.

If at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands or any of them, under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), prior to the estate tail, then the person who shall be the owner of the prior estate, or the first of such prior estates if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made, (the first of such prior estate, if more than one, being for all the purposes of this Act deemed the prior estate,) shall be the protector of the settlement so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this Act be deemed the owner of such prior estate, although the same may have been charged or incumbered either by the owner thereof or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and that an estate by the curtesy, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust to or for the settlor shall be deemed an estate under the same settlement within the meaning of this clause.

23 Each of two or more owners of a prior estate to be the sole protector as to his share.

Provided always, that where two or more persons shall be owners, under a settlement within the meaning of this Act, of a prior estate, the sole owner of which estate, if there

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

had been only one, would in respect thereof have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall for all the purposes of this Act be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement to the extent of such undivided share.

24 F5

Textual Amendments

F5 S. 24 repealed by Law Reform (Married Women and Tortfeasors) Act 1935 (c. 30), Sch. 2

25 **As to estates confirmed or restored by settlement.**

Provided always, that, except in the case of a lease herein-after provided for, where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate, in either of those cases such estate shall for the purposes of this Act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement.

26 **As to leases at rent created by settlement.**

Provided always, that where a lease at a rent shall be created or confirmed by a settlement, the person in whose favour such lease shall be created or confirmed shall not in respect thereof be the protector of such settlement.

27 †**No tenant in dower, heir, executor, &c. to be protector.**

Provided always, that . . . F6 no bare trustee, heir, executor, administrator, or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator, or assign, shall be the protector of a settlement.

Textual Amendments

F6 Words repealed with saving by Administration of Estates Act 1925 (c. 23), s. 56, Sch. 2 Pt. I and by Statute Law (Repeals) Act 1969 (c. 52), Sch. Pt. III

Modifications etc. (not altering text)

C4 A dagger appended to a marginal note means that it is no longer accurate

28 **Who shall be the protector where the owner of the prior estate shall, by the 2 last clauses, be excluded.**

Provided always, that where under any settlement there shall be more than one estate prior to an estate tail, and the person who shall be the owner within the meaning of this Act of any such prior estate, in respect of which but for the two last preceding clauses, or either of them, he would have been the protector of the settlement, shall by virtue of such clauses, or either of them, be excluded from being the protector, then and in

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

such case the person (if any) who if such estate did not exist would be the protector of the settlement shall be such protector.

29— F7
31.

Textual Amendments

F7 Ss. 29–31 repealed by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\)](#), [Sch. 10](#)

32 F8

Textual Amendments

F8 S. 32 repealed with saving by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\)](#), [Sch. 1](#) and [Law of Property Act 1925 \(c. 20\)](#), s. 207, [Sch. 7](#)

33 †**In cases of lunacy, the Lord Chancellor or Lord Keeper or Lords Commissioner, or other persons intrusted with lunatics, or in cases of treason or felony, &c. the Court of Chancery to be the protector.**

Provided always, that if any person, protector of a settlement, [^{F9} lacks capacity (within the meaning of the Mental Capacity Act 2005) to manage his property and affairs, the Court of Protection is to take his place as protector of the settlement while he lacks capacity]; . . . ^{F10}; or if in any case where there shall be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate shall be sufficient to qualify the owner thereof to be protector of the settlement, and there shall happen at any time to be no protector of the settlement as to the lands in which the prior estate shall be subsisting, the said Court of Chancery shall, while there shall be no such protector, and the prior estate shall be subsisting, be the protector of the settlement as to such lands.

Textual Amendments

F9 Words in s. 33 substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 1\(2\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897](#), art. 2(1)(d)

F10 Word repealed by [Criminal Law Act 1967 \(c. 58\)](#), [Sch. 3 Pt. I](#)

Modifications etc. (not altering text)

C5 A dagger appended to a marginal note means that it is no longer accurate

34 **Where there is a protector, his consent requisite to enable an actual tenant in tail to create a larger estate than a base fee.**

Provided always, that if at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, shall be desirous of making under this Act a disposition of the lands entailed, there shall be a protector of such settlement,

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

then and in every such case the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is herein-before authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the lands entailed, which shall be good against all persons who, by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed.

35 Where a base fee, and a protector, his consent requisite to the exercising of a power of disposition.

Provided always, that where an estate tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred to exercise, as to the lands in respect of which there shall be such protector, the power of disposition herein-before contained.

36 The protector to be subject to no control in the exercise of his power of consenting.

Any device, shift, or contrivance by which it shall be attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and that the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a court of equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust.

37 Certain rules of equity not to apply between the protector and tenant in tail.

Provided always, that the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act.

38 A voidable estate by a tenant in tail, in favour of a purchaser, confirmed by a subsequent disposition of such tenant in tail under this Act, but not against a purchaser without notice.

Provided always, that when a tenant in tail of lands under a settlement shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and shall afterwards under this Act, by any assurance other than a lease not requiring enrolment, make a disposition of the lands in which such voidable estate shall be created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there shall be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

its full extent as against all persons except those whose rights are saved by this Act; but if at the time of making the disposition there shall be a protector of the settlement, and such protector shall not consent to the disposition, and the tenant in tail shall not without such consent be capable under this Act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent: Provided always, that if such disposition shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him.

39 Base fees when united with the immediate reversions, enlarged instead of being merged.

If a base fee in any lands, and the remainder or reversion in fee in the same lands, shall at the time of the passing of this Act, or at any time afterwards, be united in the same person, and at any time after the passing of this Act there shall be no intermediate estate between the base fee and the remainder or reversion, then and in such case the base fee shall not merge, but shall be ipso facto enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act, if such remainder or reversion had been vested in any other person.

40 †Tenant in tail to make a disposition by deed as if seised in fee, but not by will or contract; and if a married woman, with her husband’s concurrence.

Every disposition of lands under this Act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute: Provided nevertheless, that no disposition by a tenant in tail shall be of any force either at law or in equity, under this Act, unless made or evidenced by deed; and that no disposition by a tenant in tail resting only in contract, either expressed or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this Act, notwithstanding such disposition shall be made or evidenced by deed; . . . ^{F11}

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Textual Amendments

F11 Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\), Sch. Pt. III](#)

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Modifications etc. (not altering text)

C6 A dagger appended to a marginal note means that it is no longer accurate

C7 [S. 40](#) amended by [Law of Property Act 1925 \(c. 20\), s. 167](#)

41 ^{F12}

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Textual Amendments

F12 [Ss. 41, 46, 50–54](#) repealed by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\), Sch. 10](#)

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

42 Consent of the protector, how to be given.

The consent of the protector of a settlement to the disposition under this Act of a tenant in tail shall be given either by the same assurance by which the disposition shall be effected, or by a deed distinct from the assurance, and to be executed either on or at any time before the day on which the assurance shall be made, otherwise the consent shall be void.

43 If by distinct deed.

If the protector of a settlement shall, by a distinct deed, give his consent to the disposition of a tenant in tail, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he shall refer to the particular assurance by which the disposition shall be effected, and shall confine his consent to the disposition thereby made.

44 Protector not to revoke his consent.

It shall not be lawful for the protector of a settlement who, under this Act, shall have given his consent to the disposition of a tenant in tail, to revoke such consent.

45 Consent of a married woman protector.

Any married woman, being either alone or jointly with her husband protector of a settlement, may under this Act, in the same manner as if she were a feme sole, give her consent to the disposition of a tenant in tail.

Modifications etc. (not altering text)

C8 S. 45 extended by [Married Women's Property Act 1907 \(c. 18\)](#), s. 3

46 **F13**

Textual Amendments

F13 Ss. 41, 46, 50–54 repealed by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\)](#), Sch. 10

47 Courts of equity excluded from giving any effect to dispositions by tenants in tail, or consents of protectors of settlements, which in courts of law would not be effectual.

In cases of dispositions of lands under this Act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this Act by tenants in tail thereof, the jurisdiction of courts of equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts, and the supplying of defects in the execution either of the powers of disposition given by this Act to tenants in tail, or of the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

to any act or deed by a tenant in tail or protector of a settlement which in a court of law would not be an effectual disposition or consent under this Act; and that no disposition of lands under this Act by a tenant in tail thereof in equity, and no consent by a protector of a settlement to a disposition of lands under this Act by a tenant in tail thereof in equity, shall be of any force unless such disposition or consent would in case of an estate tail at law be an effectual disposition or consent under this Act in a court of law.

48 Lord Chancellor, &c. to have power to consent to a disposition by a tenant in tail, and to make such orders as shall be thought necessary; and if any other person shall be joint protector the disposition not to be valid without his consent.

Provided always, that in every case in which the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal, or other person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement, such Lord High Chancellor, Lord Keeper or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), while protector of such settlement, shall, on the motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition under this Act by such tenant in tail and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid shall be such as shall be approved of by such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be); and it shall be lawful for such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), to make such orders in the matter as shall be thought necessary; and if such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person protector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person being protector as aforesaid shall consent thereto in the manner in which the consent of the protector is by this Act required to be given.

Modifications etc. (not altering text)

- C9** Ss. 48, 49 amended by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 1\(b\)](#)
- C10** S. 48 amended by [Mental Health Act 1959 \(c. 72\)](#), [Sch. 7 Pt. I](#) with the substitution for references to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal or other persons intrusted of references to the judge having jurisdiction under [Mental Health Act 1959 \(c. 72\)](#), [Pt. VIII](#)
- C11** Jurisdiction of High Court of Chancery now exercisable by High Court of Justice (E.W.): [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), s. 18
- C12** S. 48 amended (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 1\(3\)](#) (with ss. 27-29, 62)

49 Order of the Lord Chancellor, &c. to be evidence of consent.

Provided always, that in every case in which the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal, or other the person or

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made.

Modifications etc. (not altering text)

- C13** Ss. 48, 49 amended by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, **Sch. 4 para. 1(b)**
- C14** S. 49 amended by [Mental Health Act 1959 \(c. 72\)](#), **Sch. 7 Pt. I** with the substitution for references to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal or other persons intrusted of references to the judge having jurisdiction under [Mental Health Act 1959 \(c. 72\)](#), **Pt. VIII**
- C15** Jurisdiction of High Court of Chancery now exercisable by High Court of Justice (E.W.): [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), **s. 18**
- C16** S. 49 amended (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), **Sch. 6 para. 1(3)** (with ss. 27-29, 62)

50—54 **F14**

Textual Amendments

- F14** Ss. 41, 46, 50–54 repealed by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\)](#), **Sch. 10**

55 **F15**

Textual Amendments

- F15** [S. 55](#) repealed by [Statute Law Revision Act 1874 \(c. 35\)](#)

56 The Commissioner in the case of an actual tenant in tail becoming bankrupt after the 31st Dec. 1833, by deed to dispose of the lands of the bankrupt to a purchaser.

Any Commissioner acting in the execution of any fiat which after the thirty-first day of December one thousand eight hundred and thirty-three shall be issued in pursuance of the said Act passed in the first and second years of the reign of King William the Fourth, under which any person shall be adjudged a bankrupt who at the time of issuing such fiat, or at any time afterwards, before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become bankrupt, could have done under this Act at the time of such disposition: Provided always, that if at the time of the disposition of such lands, or any of them, by such Commissioner as aforesaid, there shall be a protector of the settlement by which the estate of such actual tenant in tail in the lands disposed of by such Commissioner was created, and the consent of

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

such protector would have been requisite to have enabled the actual tenant in tail, if he had not become bankrupt, to have disposed of such lands to the full extent to which, if there had been no such protector, he could under this Act have disposed of the same, and such protector shall not consent to the disposition, then and in such case the estate created in such lands, or any of them, by the disposition of such Commissioner, shall be as large an estate as the actual tenant in tail, if he had not become bankrupt, could at the time of such disposition have created under this Act in such lands without the consent of the protector.

57 If a tenant in tail entitled to a base fee becomes bankrupt, and if there is no protector, the Commissioner to dispose of the lands of the bankrupt.

Any Commissioner acting in the execution of any such fiat as aforesaid under which any person shall be adjudged a bankrupt who at the time of issuing such fiat, or at any time afterwards before he shall have obtained his certificate, shall be a tenant in tail entitled to a base fee in lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created; and by such disposition the base fee shall be enlarged into as large an estate as the same could at the time of such disposition have been enlarged into under this Act by the person so entitled if he had not become bankrupt.

Modifications etc. (not altering text)

C17 Ss. 57, 58, 60–65, 67, 69, 71 applied by Bankruptcy Act 1914 (c. 59), s. 55(5) which is repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III**

58 As to the consent of the protector in case of bankruptcy.

The Commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee (as the case may be), was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, as far as regards the consent of such protector; and the disposition of such lands, or any of them, by such Commissioner as aforesaid, if made with the consent of such protector, shall, whether such Commissioner may have made under this Act a prior disposition of the same lands without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not, under the said Acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any Acts hereafter to be passed concerning bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become bankrupt, and such disposition had been made by him under this Act, with the consent of such protector; and all the previous clauses in this Act, in regard to the consent of the protector to the disposition of a tenant in tail of lands not held by copy of court roll, and in regard to the time and manner of giving such consent, . . .^{F16} apply to every consent that may be given by virtue of this present clause.

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

Textual Amendments

F16 Words repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), **Sch. 10** and Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

Modifications etc. (not altering text)

C18 Ss. 57, 58, 60–65, 67, 69, 71 applied by Bankruptcy Act 1914 (c. 59), **s. 55(5)** which is repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III**

59 **F17**

Textual Amendments

F17 Ss. 59, 66 repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), **Sch. 10**

60 Subsequent enlargement of base fees created by the disposition of the Commissioner.

If any Commissioner acting in the execution of any such fiat as aforesaid shall, under this Act, dispose of any lands of any tenure of which the bankrupt shall be actual tenant in tail, and in consequence of there being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands, and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this Act if at the time of the disposition by such Commissioner as aforesaid there had been no such protector.

Modifications etc. (not altering text)

C19 Ss. 57, 58, 60–65, 67, 69, 71 applied by Bankruptcy Act 1914 (c. 59), **s. 55(5)** which is repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III**

61 Enlargement of base fees subsequent to the sale or conveyance of the same under the Bankrupt Acts.

If a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt at the time when there shall be a protector of the settlement by which the estate tail converted into the base fee was created, and if such lands shall be sold or conveyed under the said Acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other Acts hereafter to be passed concerning bankrupts, and if at any time afterwards during the continuance of the base fee in such lands there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, the base fee in such lands shall be enlarged into the same estate into which the same could have been enlarged under this Act if at the time of the adjudication of such bankruptcy there had been no such protector, and the Commissioner acting in the execution of the fiat under

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

which the tenant in tail so entitled shall have been adjudged a bankrupt had disposed of such lands under this Act.

Modifications etc. (not altering text)

C20 Ss. 57, 58, 60–65, 67, 69, 71 applied by [Bankruptcy Act 1914 \(c. 59\)](#), s. **55(5)** which is repealed (E.W.) by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. III](#)

62 A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee becoming bankrupt, confirmed by the disposition of the Commissioner, if no protector, or being such with his consent, or on there ceasing to be a protector; but not against a purchaser, without notice.

Provided always, that where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a bankrupt under any such fiat as aforesaid, and the Commissioner acting in the execution of such fiat shall make any disposition under this Act of the lands in which such voidable estate shall be created, or any of them, then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such commissioner as aforesaid, whether such Commissioner may have made under this Act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said Acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other Acts hereafter to be passed concerning bankrupts, the disposition by such Commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act; and if at the time of the disposition by such Commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the disposition by such Commissioner, and such actual tenant in tail, if he had not been adjudged a bankrupt, would not without such consent have been capable under this Act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such actual tenant in tail, if he had not been adjudged a bankrupt, could at the time of such disposition have been capable under this Act of confirming the same without such consent; and if at any time after the disposition of such lands by such Commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a protector of such settlement, and such protector shall not have consented to the disposition by such Commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this Act: Provided always, that if the disposition by any such Commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him.

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

Modifications etc. (not altering text)

C21 Ss. 57, 58, 60–65, 67, 69, 71 applied by Bankruptcy Act 1914 (c. 59), s. 55(5) which is repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III**

63 Acts of a bankrupt tenant in tail void against any disposition under this Act by the Commissioner.

All acts and deeds done and executed by a tenant in tail of lands of any tenure, who shall be adjudged a bankrupt under any such fiat as aforesaid, and which shall affect such lands or any of them, and which, if he had been seised of or entitled to such lands in fee simple absolute, would have been void against the assignees of the bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this Act by such Commissioner as aforesaid.

Modifications etc. (not altering text)

C22 Ss. 57, 58, 60–65, 67, 69, 71 applied by Bankruptcy Act 1914 (c. 59), s. 55(5) which is repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III**

64 Subject to the powers given to the Commissioner and to the estate in the assignees, a bankrupt tenant in tail shall retain his powers of disposition.

Provided always, that, subject and without prejudice to the powers of disposition given by this Act to the Commissioner acting in the execution of any such fiat as aforesaid, under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt, and also subject and without prejudice to the estate in such lands which may be vested in the assignees of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid shall have the same powers of disposition under this Act in regard to such lands as he would have had if he had not become bankrupt.

Modifications etc. (not altering text)

C23 Ss. 57, 58, 60–65, 67, 69, 71 applied by Bankruptcy Act 1914 (c. 59), s. 55(5) which is repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III**

65 The disposition by the Commissioner of the lands of a bankrupt tenant in tail shall, if the bankrupt be dead, have in the cases herein mentioned the same operation as if he were alive.

Any disposition under this Act of lands of any tenure by any Commissioner acting in the execution of any such fiat as aforesaid under which a person being or before obtaining his certificate becoming an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands, shall be adjudged a bankrupt, shall, although the bankrupt be dead at the time of the disposition, be in the following cases as valid and effectual as the same would have been, and have the same operation under this Act

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

as the same would have had, if the bankrupt were alive; (that is to say,) in case at the time of the bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created; or in case the bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement who, in the manner required by this Act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue who if the base fee had not been created would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement who, in the manner required by this Act, shall consent to the disposition.

Modifications etc. (not altering text)

C24 Ss. 57, 58, 60–65, 67, 69, 71 applied by [Bankruptcy Act 1914 \(c. 59\)](#), s. 55(5) which is repealed (E.W.) by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. III](#)

66 F18

Textual Amendments

F18 Ss. 59, 66 repealed by [Law of Property \(Amendment\) Act 1924 \(15 & 16 Geo. 5 c. 5\)](#), [Sch. 10](#)

67 Assignees to recover rents of the lands of a bankrupt, of which the Commissioner has power to make disposition, and to enforce covenants, as if entitled to the reversion. This clause to apply to all copyhold land; but as to other lands, only to such as the Commissioner may dispose of after the bankrupt's death.

The rents and profits of any lands of which any commissioner acting in the execution of any such fiat as aforesaid hath power to make disposition under this Act shall in the meantime and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person [^{F19}made] bankrupt under the fiat, be received by the assignees of the estate of the bankrupt, for the benefit of his creditors; and the assignees may proceed by action of debt for the recovery of such rents and profits, [^{F20} or, so far as the power under section 72(1) of the Tribunals, Courts and Enforcement Act 2007 (commercial rent arrears recovery) is exercisable to recover any of those rents and profits, may exercise that power, as if they were the landlord, on behalf of the creditors;] and such assignees, and their bailiffs, agents, and servants, shall also have all such and the same remedies, powers, privileges, and advantages of pleading, avowing, and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents, and servants, are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions, and agreements in respect of the lands of which such Commissioner as aforesaid hath the power of disposition under this Act, and in respect of the rents and profits thereof,

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

and of entry into and upon the same lands for the non-observance of any such covenant, condition, and agreement, and of expelling and amoving therefrom the tenants or other occupiers thereof, and thereby determining and putting an end to the estate of the persons who shall not have observed such covenants, conditions, and agreements, as the bankrupt would have had in case he had not been [^{F19}made] a bankrupt: Provided always, that this clause shall apply to all lands held by copy of court roll, but shall only apply to those lands of any other tenure which any Commissioner acting in the execution of any such fiat as aforesaid may have power to dispose of under this Act after the bankrupt's decease.

Textual Amendments

- F19** Word in s. 67 substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\), reg. 1, Sch. 1 para. 18](#)
- F20** Words in s. 67 substituted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 148, Sch. 14 para. 6 \(with s. 89\); S.I. 2014/768, art. 2\(1\)\(b\)](#)

Modifications etc. (not altering text)

- C25** Ss. 57, 58, 60–65, 67, 69, 71 applied by [Bankruptcy Act 1914 \(c. 59\), s. 55\(5\)](#) which is repealed (E.W.) by [Insolvency Act 1985 \(c. 65, SIF 66\), s. 235\(3\), Sch. 10 Pt. III](#)

68 All the provisions of the Act in regard to bankrupts shall apply to their lands in Ireland.

All the provisions in this Act contained for the benefit of the creditors of persons who under such fiats as aforesaid shall be adjudged bankrupts after the thirty-first day of December one thousand eight hundred and thirty-three, and for the confirmation in consequence of bankruptcy of voidable estates created by them, shall extend and apply to the lands of any tenure in Ireland of such persons as fully and effectually as if this Act had throughout extended to the lands of any tenure in Ireland; saving always the rights of the King's most excellent Majesty to any reversion or remainder in the crown lands in Ireland.

Modifications etc. (not altering text)

- C26** The text of S. 68 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

69 Deeds relating to the lands of bankrupts in Ireland to be inrolled there.

Provided always, that in all cases of bankruptcy, every deed of disposition under this Act of lands in Ireland by any Commissioner acting in the execution of any such fiat as aforesaid, and also every deed by which the protector of a settlement of lands in Ireland shall consent, shall be inrolled in his Majesty's High Court of Chancery in Ireland within six calendar months after the execution thereof, and not in his Majesty's High Court of Chancery in England.

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

Modifications etc. (not altering text)

C27 Ss. 57, 58, 60–65, 67, 69, 71 applied by [Bankruptcy Act 1914 \(c. 59\)](#), [s. 55\(5\)](#) which is repealed (E.W.) by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. III](#)

70 ^{F21}

Textual Amendments

F21 [S. 70](#) repealed by [Statute Law Revision Act 1874 \(c. 35\)](#)

71 †**The previous clauses, with certain variations, to apply to lands of any tenure to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and where money is subject to be invested in like manner.**

Lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this Act be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; . . . ^{F22}

Textual Amendments

F22 Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

Modifications etc. (not altering text)

C28 A dagger appended to a marginal note means that it is no longer accurate

C29 Ss. 57, 58, 60–65, 67, 69, 71 applied by [Bankruptcy Act 1914 \(c. 59\)](#), [s. 55\(5\)](#) which is repealed (E.W.) by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. III](#)

72 **The preceding clause shall, in cases of bankruptcy, apply to lands of any tenure in Ireland, to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and also to money which is subject to be invested in lands.**

So far as regards any person adjudged a bankrupt under any such fiat as aforesaid, the provisions of the clause lastly herein-before contained shall, for the benefit of the creditors of the bankrupt, apply to lands in Ireland to be sold whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, and also to money under the control of any court of equity in Ireland or of or to which any individuals as trustees may be possessed or entitled in Ireland, and which shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, as fully and effectually as if this Act had

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

throughout extended to Ireland: Provided always, that every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to lands in Ireland to be sold as aforesaid, shall be inrolled in his Majesty's [High court of Chancery in Ireland] within six calender months after the execution thereof; . . . ^{F23} ; saving always the rights of the King's most excellent Majesty, to any reversion or remainder in in the crown lands in Ireland to be sold.

Textual Amendments

F23 Words repealed by Statute Law Repeals Act 1969(c. 52), Sch.Pt.111

Modifications etc. (not altering text)

C30 The text of S. 72 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and,except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

73 ^{F24}

Textual Amendments

F24 Ss. 73, 74 repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), **Sch. 10**

74 ^{F25}

Textual Amendments

F25 Ss. 73, 74 repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), **Sch. 10**

75 ^{F26}

Textual Amendments

F26 S. 75 repealed by Supreme Court of Judicature (Officers) Act 1879 (c. 78), **s. 29**

76 ^{F27}

Textual Amendments

F27 S. 76 repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), **Sch. 10**

77 ^{F28}

Changes to legislation: There are currently no known outstanding effects for the Fines and Recoveries Act 1833. (See end of Document for details)

Textual Amendments

F28 Ss. 77, 78 repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

78 **F29**

Textual Amendments

F29 Ss. 77, 78 repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

79— **F30**
90.

Textual Amendments

F30 Ss. 79–90 repealed by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), **Sch. 10**

91 **F31**

Textual Amendments

F31 S. 91 repealed by Statute Law (Repeals) Act 1969 (c. 52)

92 **Ireland.**

This Act shall not extend to Ireland, except where the same is expressly mentioned.

93 **F32**

Textual Amendments

F32 S. 93 repealed by Statute Law Revision Act 1874 (c.35)

Changes to legislation:

There are currently no known outstanding effects for the Fines and Recoveries Act 1833.