LAWS OF TRINIDAD AND TOBAGO

CONVEYANCING AND LAW OF PROPERTY ACT

CHAPTER 56:01

Ordinance No. 18 of 1939
Amended by
28 of 1973
51 of 1976
52 of 1976
136/1976
*47 of 1980
*20 of 1981
72 of 2000

**See* Note of page 2

Current Authorised Pages

Pages (inclusive)		*Authorised by L.R.O.*
1–78	..	*1/2006*

Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on
Charges for Common Law Conveyancing Transactions

For charges for common law conveyancing transactions ***see*** "The Attorneys-at-law (Remuneration) (Non-Contentious Business) Rules, 1997 (LN 77/1997)" contained in the Real Property Act (Ch. 56:02) and the Legal Profession Act (Ch. 90.03).

Note on Act No. 47 of 1980

The fines imposed by this Act have been increased by the manner and the formula contained in section 8 of, and the Second Schedule to, the Law Reform (Miscellaneous Provisions) Act 1980 (Act No. 47 of 1980).

Note on Act No. 20 of 1981

The Land Law and Conveyancing Act, 1981 (Act No. 20 of 1981) purported to repeal (in the Fifth Schedule) the Act. However, Act No. 20 of 1981 had not, at the date of the revision of this Act, been brought into operation.

CHAPTER 56:01

CONVEYANCING AND LAW OF PROPERTY ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.

PART I

PRELIMINARY

2. Interpretation.
3. Deed to have same effect and questions arising thereon to be decided as in England.

PART II

SALES AND OTHER TRANSACTIONS

CONTRACTS

4. Contracts for sale, etc., of land to be in writing.
5. Statutory commencement.
6. Regulation of obligations and rights of vendor and purchaser.
7. Applications to the Court by vendor and purchaser.
8. Discharge of encumbrances by the Court on sales or exchanges.

DEEDS

9. Lands lie in grant only.
10. Conveyances to be by Deed.
11. Sufficiency of forms in First Schedule.
12. Taker of estate not party to Deed.
13. Conditions and certain covenants not implied.
14. Construction of supplemental or annexed Deed.
15. Abolition of technicalities in regard to conveyances and Deeds.
16. General words implied in conveyances.
17. All estate clause implied.

PRODUCTION AND CUSTODY OF DOCUMENTS

18. Production and safe custody of documents.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

EASEMENTS

19. Grants of easements, etc., by way of use.

RECEIPT IN DEED

20. Receipt in Deed sufficient.
21. Receipt in Deed or endorsed evidence.
22. Receipt in Deed of endorsed authority for payment to Attorney-at-law.

RELEASES

23. Partial release of security from rent charge.
24. Release of part of land affected by a judgment.

CONVEYANCES BY A PERSON TO HIMSELF, ETC.

25. Conveyances by a person to himself, etc.

EXECUTION OF PURCHASE DEED

26. Rights of purchaser as to execution.

COVENANTS

27. Covenants for title.
On conveyance for value by beneficial owner.
Right to convey.
Quiet enjoyment.
Freedom from encumbrances.
Further assurance.
On conveyance of leaseholds for value by beneficial owner.
On mortgage by beneficial owner.
Right to convey.
Quiet enjoyment.
Futher assurance.
On mortgage of leaseholds by beneficial owner.
Validity of lease.
On settlement.
For further assurance limited.
On conveyance by trustee or mortgagee.
Against encumbrances.
Effect of conveyance by direction of beneficial owner.
Conveyance by husband and wife as beneficial owners.
No implied covenants except in above cases.
Devolution of benefit of implied covenant.

SECTION

Variation or extension of implied covenant.
Application of section.

28. Benefit of covenants relating to land.

29. Covenants binding land.

30. Effect of covenant with two or more jointly.

31. Construction of implied covenants.

PART III

MORTGAGES

32. Mortgages may be made by way of sale, demise or assignment, as in England.

32A. Conveyance of land subject to mortgage after release of mortgage.

33. Power of mortgagor to require transfer instead of reconveyance.
Extension of mortgagor's right.
Application of section.

34. Regulations respecting inspection, production and delivery of documents and priorities.

35. Restriction on consolidation of mortgages.

36. Notice of trusts on transfer of mortgage.

37. Leasing powers of mortgagor and mortgagee in possession.
Leases authorised.
Time of taking effect.
Reserving best rent.
Covenant for payment of rent.
Building provisions.
Nominal rent for five years.
Enforcing contract for lease.
Application of section.
Mortgage Deed may contain different powers.

38. Powers of mortgagor and mortgagee in possession to accept surrenders of lease.
Enforcing contract for surrender.

39. Powers incident to estate or interest of mortgagee.

40. Powers incident to mortgagee's power of sale, without application to Court.
Application of section.

41. Regulation of exercise of power of sale.

42. Power to mortgagee to convey on sale.

43. Application of proceeds of sale.

44. Provisions as to exercise of power of sale.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

45. Mortgagee's receipt sufficient discharge.
Application of money received under mortgage.
46. Amount and application of insurance money.
47. Appointment, powers, remuneration and duties of receiver.
48. Effect of advance on joint account, etc.
49. Sale of mortgaged property in action for redemption or foreclosure.

PART IV

STATUTORY MORTGAGES

50. Form of statutory mortgage.
Implied covenant.
Implied proviso for redemption.
51. Forms of statutory transfer of mortgage.
Effect of transfer.
52. Implied covenants, joint and several.
53. Form of reconveyance of statutory mortgage.

PART V

RENT CHARGES

54. Remedies for recovery of annual sums charged on land.
Entry and distraint on 21 days' arrears.
Entry into possession on 40 days' arrears.

PART VI

POWERS OF ATTORNEY

55. Execution under power of attorney.
56. Payment by attorney under power without notice of death, etc.
57. Effect of irrevocable power of attorney for value.
58. Effect of power of attorney irrevocable for a fixed time.
59. Duration of registered power of attorney.
60. Power of attorney—how revoked.

PART VII

CONTINGENT INTERESTS

61. Contingent or other interests.

SECTION

62. Contingent remainder.
63. Restriction on executory limitations.

PART VIII

LEASES

64. Effect of extinguishment of reversion.
65. Apportionment of conditions on severance.
66. Rent and benefit of lessee's covenants.
67. Obligation of lessor's covenants to run with reversion.
68. Effect of licence granted to lessee.
69. No fine to be exacted for licence to assign.
70. Restrictions on and relief against forfeiture of leases and under-leases.

PART IX

POWERS

71. Release of powers simply collateral.
72. Disclaimer of power.
73. Execution of powers not testamentary.
74. Application of this Part to existing powers.

PART X

MARRIED WOMEN AND INFANTS

MARRIED WOMEN

75.
76. } ***(Repealed by Act No. 52 of 1976).***

INFANTS

77. Management of land during minority or pending contingency.

PART XI

VOIDABLE DISPOSITIONS

78. Voluntary conveyances to defraud creditors voidable.
79. Voluntary disposition of land how far voidable as against purchasers.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

PART XII

NOTICE

80. Restriction on constructive notice.
81. Regulations respecting notice.

PART XIII

GENERAL

82. Protection of Attorneys-at-law and trustees adopting Act.
83. Fraudulent concealment of documents and falsification of pedigrees.
84. Consideration or rent reserved must be truly stated.
Reward to informer.
85. Return of consideration or rent not stated.
86. Aiding in untrue statement of consideration or rent.
87. Payment into Court, jurisdiction and procedure.
88. Orders of Court conclusive.
89. Power to make Rules of Court.

FIRST SCHEDULE.
SECOND SCHEDULE.

CHAPTER 56:01

CONVEYANCING AND LAW OF PROPERTY ACT

An Act relating to Conveyancing and the Law of Property.

Ordinance Ch. 27. No. 12. 1940.

[1ST SEPTEMBER 1939]

Commencement.

1. This Act may be cited as the Conveyancing and Law of Property Act.

Short title.

PART I

PRELIMINARY

2. In this Act—

Interpretation.

"bankruptcy" includes liquidation by arrangement, also in relation to a corporation means the winding up thereof;

"building purposes" include the erecting and improving of, and the adding to, and the repairing of buildings; and a "building lease" is a lease for building purposes or purposes connected therewith;

"conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a Will; "convey" has a corresponding meaning; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a Will; and "dispose of" has a corresponding meaning;

"Court" means the Supreme Court;

"encumbrance" includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and "encumbrancer" has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof;

"income" includes rents and profits;

"land" includes land of any tenure, houses and other buildings, mines and minerals, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and also an undivided share in land; and in this definition "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and winning the same; and "hereditaments" mean real property which under an intestacy devolve on the next of kin;

"lessor" includes an under-lessor and a person deriving title under a lessor or under-lessor; " lessee" includes an under-lessee and a person deriving title under a lessee or under-lessee; and " lease" includes an under-lease or other tenancy;

"mining lease" means a lease for mining purposes; that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

"mortgage" includes any charge on any property for securing money or money's worth; and "mortgage money" means money, or money's worth, secured by a mortgage; and "mortgagor" includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right in the mortgaged property; and "mortgagee" includes any person from time to time deriving title under the original mortgagee; and "mortgagee in possession" means a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property;

"personal representative" means the executor or administrator for the time being of a deceased person and includes the Administrator General;

"possession" includes receipt of rents and profits or the right to receive the same, if any;

"property" includes anything in action, and any interest in real or personal property;

"purchaser" includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and "purchase" has a corresponding meaning;

"rent" includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise reserved or issuing out of or charged upon land, but does not include mortgage interest; "fine" includes a premium or fore-gift, and any payment, consideration or benefit in the nature of a fine, premium or fore-gift;

"sale" means a sale properly so called;

"securities" include stocks, funds and shares;

"Will" includes codicil.

Deed to have same effect and questions arising thereon to be decided as in England.

3. Every Deed made after the 10th of June, 1844, shall be taken to have the same effect as the same would have by the law of England in force on the 1st of April, 1858, subject however, to the provisions of any statutory enactments for the time being in force in Trinidad and Tobago, and where any question shall arise in any suit, action, or other proceeding in any Court or before any Judge or Magistrate, as to the operation or construction of any such Deed, or as to the estate, use, trust, confidence, or interest of or in any real or personal property, created or given by, or arising or resulting by the implication or construction of law from, any such deed, or as to the quality, quantity, vesting, transfer, or extinguishment of, or the incidents to any such estate, use, trust, confidence, or interest; or whether the estate, possession, and seisin of any lands, or the posession and seisin of any annual rent is executed unto the person having the use, confidence, or trust of such lands, or the title, interest, or use of such rent; or as to the validity or effect of any condition contained in any such Deed, or as to any power or the execution of any power given by any such Deed; every such question shall be decided according to the law of England in force on the 1st of April, 1858, subject however, to the provisions of any statutory enactments for the time being in force in Trinidad and Tobago.

PART II

SALES AND OTHER TRANSACTIONS

CONTRACTS

Contracts for sale, etc., of land to be in writing.

4. (1) No action may be brought upon any contract for the sale or other disposition of and or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the Court.

Statutory commencement. [72 of 2000].

5. In the completion of any contract of sale of land after the 13th October, 2000 and subject to any stipulation to the contrary in the contract, twenty years shall be the period of commencement of the title which a purchaser may require.

Regulation of obligations and rights of vendor and purchaser.

6. (1) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

(2) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(3) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(4) Where by reason of any of the three last preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement

of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(5) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other Act or Ordinance, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

(6) Where a lease whether made before or after the commencement of this Act, is made under a power contained in a settlement, Will, Order-in-Council, Act or Ordinance, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(7) Recitals, statements, and descriptions of facts, matters, and parties contained in Deeds, instruments, Acts or Ordinances, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

(8) A purchaser of any property shall not—

(a) require the production, or any abstract or copy, of any Deed, Will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or

(b) require any information, or make any requisition, objection, or enquiry, with respect to any such Deed, Will, or document, or the title prior to that time, notwithstanding that any such Deed, Will, or other document, or that prior title, is recited, agreed to be produced, or noticed,

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any Deed, Will, or other document, forming part of that prior title, are correct, and give all the material contents of the Deed, Will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected if and as required, by acknowledgment, registration, or otherwise:

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document ; or

(iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

(9) Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(10) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all

rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(11) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say:

(a) the expenses of the production and inspection of all Acts or Ordinances, records, proceedings of Courts, Deeds, Wills, Probates, Letters of Administration, and other documents, not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and

(b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts or Ordinances or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee,

and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(12) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(13) This section applies to contracts for sale made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, except that it applies only to contracts for exchange made after such commencement:

Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.

(14) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Applications to the Court by vendor and purchaser.

7. (1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way to the Court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.

(2) Where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the Court may, if it thinks fit, order the repayment of any deposit.

(3) This section applies to a contract for the sale or exchange of any interest in land.

Discharge of encumbrances by the Court on sales or exchanges.

8. (1) Where land subject to any encumbrance, whether immediately realisable or payable or not, is sold or exchanged by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into Court of such sum as is hereinafter mentioned, that is to say—

(a) in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into Court shall be of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(b) in any other case of capital money charged on the land, the sum to be paid into Court shall be of an amount sufficient to meet the encumbrance and any interest due thereon,

but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interests, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2) Thereupon the Court may, if it thinks fit, and either after or without any notice to the encumbrancer, as the Court thinks fit, declare the land to be freed from the encumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange and give directions for the retention and investment of the money in Court and for the payment or application of the income thereof.

(3) The Court may declare all other land, if any, affected by the encumbrance (besides the land sold or exchanged) to be freed from the encumbrance, and this power may be exercised either after or without notice to the encumbrancer, and notwithstanding that on a previous occasion an order relating to the same encumbrance, has been made by the Court which was confined to the land then sold or exchanged.

(4) On any application under this section the Court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which would otherwise be required to be served on the vendor or purchaser.

(5) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(6) This section applies to sales or exchanges whether made before or after the commencement of this Act.

DEEDS

Lands lie in grant only.

9. (1) All lands and all interests therein lie in grant and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof without actual entry, but subject to all prior rights thereto.

(2) The use of the word "grant" is not necessary to convey land or to create any interest therein.

Conveyances to be by Deed.

10. (1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by Deed.

(2) This section does not apply to—

(a) disclaimers made under section 57 of the Bankruptcy Act, and under the Companies Act;

Ch. 9:70.
Ch. 81:01.

(b) surrenders by operation of law, including surrenders which may, by law, be effected without writing;

(c) leases or tenancies or other assurances not required by law to be made in writing;

(d) receipts not required to be by Deed;

(e) vesting orders of the Court;

(f) conveyances taking effect by operation of law.

Sufficiency of forms in First Schedule.

11. Deeds in the form of and using the expressions in the forms given in the First Schedule hereto, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act be sufficient.

Taker of estate not party to Deed.

12. A person may take an immediate or other interest in land or other property or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he may not be named as a party to the conveyance or other instrument.

Conditions and certain covenants not implied.

13. (1) An exchange or other conveyance of land made by Deed after the 10th of June, 1844, does not imply any condition in law.

(2) The word "give" or "grant" does not, in a Deed made after the date mentioned in subsection (1), imply any covenant in law.

Construction of supplemental or annexed deed.

14. (1) A Deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the Deed so expressed or directed were made by way of endorsement on the previous Deed, or contained a full recital thereof.

(2) This section applies to Deeds executed either before or after the commencement of this Act.

Abolition of technicalities in regard to conveyances and deeds.

15. (1) A conveyance of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

(2) A conveyance of freehold land to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

(3) The foregoing provisions of this section apply only to conveyances and Deeds executed after the commencement of this Act:

Provided that in a Deed executed after the 1st of January, 1885, it is sufficient—

(a) in the limitation of an estate in fee simple, to use the words "in fee simple" without the word "heirs";

(b) in the limitation of an estate tail, to use the words "in tail" without the words "heirs of the body"; and

(c) in the limitation of an estate in tail male or in tail female, to use the words "in tail male" or

"in tail female", as the case requires, without the words "heirs male of the body", or "heirs female of the body".

General words implied in conveyances.

16. (1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(4) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(5) This section applies to conveyances made after the 1st of January, 1885.

All estate clause implied.

17. (1) Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies to conveyances made after the 1st of January, 1885.

PRODUCTION AND CUSTODY OF DOCUMENTS

Production and safe custody of documents.

18. (1) Where a person retains possession of documents and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4) The obligations imposed under this section by an acknowledgment are—

(a) an obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorised in writing; and

(b) an obligation to produce the documents or any of them at any trial, hearing or exmination in any Court, or in the execution of any commission, or elsewhere in Trinidad and Tobago, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(c) an obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14) This section applies to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the 1st of January, 1885.

EASEMENTS

Grants of easements, etc., by way of use.

19. (1) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him shall have, use, and enjoy the same accordingly.

(2) This section applies only to conveyances made after the 1st of January, 1885.

RECEIPT IN DEED

Receipt in Deed sufficient.

20. (1) A receipt for consideration money or securities in the body of a Deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the Deed.

(2) This section applies to Deeds executed after the 1st of January, 1885.

Receipt in deed or endorsed evidence.

21. (1) A receipt for consideration money or other consideration in the body of a Deed or endorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2) This section applies to Deeds executed after the 1st of January, 1885.

Receipt in Deed of endorsed authority for payment to Attorney-at-law.

22. (1) Where an Attorney-at-law produces a Deed, having in the body thereof or endorsed thereon a receipt for consideration money or other consideration, the Deed being executed, or the endorsed receipt being signed, by the person entitled to give a

receipt for that consideration, the Deed shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the Attorney-at-law, without the Attorney-at-law producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2) This section applies whether the consideration was paid or given before or after the commencement of this Act.

RELEASES

Partial release of security from rent charge.

23. (1) A release from a rent charge of part of the land charged therewith does not extinguish the whole rent charge, but operates only to bar the right to recover any part of the rent charge out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release.

(2) This section applies to releases made after the 1st of October, 1864.

Release of part of land affected by a judgment.

24. (1) A release from a judgment (including any writ or order imposing a charge) of part of any land charged therewith does not affect the validity of the judgment as respects any lands not specifically released.

(2) This section operates without prejudice to the rights of any persons interested in the property remaining unreleased and not concurring in or confirming the release.

(3) This section applies to releases made after the 1st of October, 1864.

CONVEYANCES BY A PERSON TO HIMSELF, ETC.

Conveyances by a person to himself, etc.

25. (1) In conveyances made after the 1st of October, 1864, personal property, including chattels real, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

(2) In conveyances made after the 1st of January, 1885, freehold land, or a thing in action, may be conveyed by a person to

himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(3) After the commencement of this Act a person may convey land to or vest land in himself.

(4) Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party: Provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

EXECUTION OF PURCHASE DEED

Rights of purchaser as to execution.

26. (1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his Attorney-at-law, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his Attorney-at-law.

(2) This section applies to sales made before or after the commencement of this Act.

COVENANTS

Covenants for title.

27. (1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject matter or share of subject matter expressed to be conveyed by him, with the person if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as

joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say—

(A.) In a conveyance for valuable consideration other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner, namely: On conveyance for value by beneficial owner.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and that that subject matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, encumbrances, claims, and demands whatever other than those subject to which the conveyance is expressly made; and further that the person who so conveys, and any person conveying by his directions, and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to

Right to convey.

Quiet enjoyment.

Freedom from encumbrances.

Further assurance.

be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

On conveyance of leaseholds for value by beneficial owner.

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

That the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

On mortgage by beneficial owner.

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

Right to convey.

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full pover to convey the subject matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any

Quiet enjoyment.

part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, encumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys, and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming an estate or interest in the subject matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will, from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the

Further assurance.

conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

On mortgage of leaseholds by beneficial owner.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

Validity of lease.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims, and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them:

On settlement.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor, namely:

For further assurance limited.

That the person so conveying, and every person deriving title under him by Deed or act or operation

of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law on his death, will, from time to time and at all times after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required:

On conveyance by trustee or mortgagee.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a person of unsound mind, or as committee of an insane person so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only, namely:

Against encumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any Deed or thing, whereby or by means whereof the subject matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or encumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

Effect of conveyance by direction of beneficial owner.

(2) Where, in a conveyance, it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

Conveyance by husband and wife as beneficial owners.

(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

No implied covenants except in above cases.

(4) Where, in a conveyance, a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a person of unsound mind, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

Devolution of benefit of implied covenant.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

Variation or extension of implied covenant.

(6) A covenant implied as aforesaid may be varied or extended by Deed, and, as so varied or extended shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

Application of section.

(7) This section applies only to conveyances made after the 1st of January, 1885.

Benefit of covenants relating to land.

28. (1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the person deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

For the purposes of this subsection in connection with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefitted.

(2) This section applies to covenants made after the 1st of January, 1885.

Covenants binding land.

29. (1) A covenant, bond, obligation, or contract by Deed made after the 1st of January, 1885, binds the real estate as well as the personal estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation, or contract.

This subsection extends to a covenant implied by virtue of this Act.

(2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor as the case may be.

(3) The benefit of a covenant relating to land entered into after the commencement of this Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act.

(4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

Effect of covenant with two or more jointly.

30. (1) A covenant, bond, obligation, or contract by Deed made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of any other person to whom the right to sue on the covenant, bond, obligation, or contract devolves, and where made after the 1st of January, 1885, shall be construed as being also made with each of them.

(2) This section extends to a covenant implied by virtue of this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, bond, obligation, or contract, and has effect subject to the covenant, bond, obligation or contract, and to the provisions therein contained.

(4) Except as otherwise expressly provided, this section applies to a covenant, bond, obligation or contract made or implied after the 1st of January, 1885.

Construction of implied covenants.

31. In the construction of a covenant or proviso, or other provision, implied in a Deed or assent by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

PART III

MORTGAGES

Mortgages may be made by way of sale, demise or assignment, as in England.

32. Subject to the provisions in any statutory enactments for the time being in force in Trinidad and Tobago, all mortgages of any land or chattels, debts, or other property in Trinidad and Tobago may be made by way of sale, or demise, or assignment, according to the nature of the property mortgaged, subject to a proviso or condition for making void the same or for the reconveyance or re-assignment of the property thereby sold, demised, or assigned according to the forms used in the like cases in England as on the 11th of December, 1845, and every mortgage so made shall vest in the mortgagee the same legal estate and interest in the property comprised in such mortgage as the mortgagee would take in the like case according to the law of England at that date, subject nevertheless to the same equity of redemption as the mortgagor or those claiming through him would be entitled to in the like case according to the course and practice of the Courts of equity in England at that date.

Conveyance of land subject to mortgage after release of mortgage. [51 of 1976].

32A. (1) Subject to section 16 and any other provision of this Act, where a Deed of conveyance of land that is subject to a mortgage is executed by the mortgagor or other person entitled to the equity of redemption and the Deed of release of the mortgage is subsequently executed by the mortgagee or his successor in title, all the estate right, title, interest, claim or demand that the Deed of release is effectual to pass shall be deemed to vest in the person

entitled to the equity of redemption at the time of the execution of the Deed of release although such person is not a party to the Deed of release.

(2) This section does not apply to a mortgage or discharge of a mortgage effected under the Real Property Act. Ch. 56:02.

(3) This section applies to a Deed of conveyance or Deed of release of a mortgage executed before or after 24th December 1976.

(4) In this section:—

"Deed of release" includes a Deed of reconveyance and a partial Deed of release or reconveyance;

"mortgage" includes a statutory mortgage under Part IV; and

"mortgagor" shall be construed accordingly.

Power of mortgagor to require transfer instead of reconveyance.

33. (1) Where a mortgagor is entitled to redeem he shall, by virtue of this Act, have, power to require the mortgagee, instead of reconveying, and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

Extension of mortgagor's right.

(2) This right shall belong to and be capable of being enforced by each encumbrancer, or by the mortgagor, notwithstanding any intermediate encumbrance; but a requisition of an encumbrancer shall prevail over a requisition of the mortgagor, and, as between encumbrancers, a requisition of a prior encumbrancer shall prevail over a requisition of a subsequent encumbrancer.

Application of section.

(3) This section does not apply in the case of a Mortgagee being or having been in possession.

(4) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Regulations respecting inspection, production and delivery of documents and priorities.

34. (1) A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's

costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

This subsection applies to mortgages made after the 1st of January, 1885.

(2) A mortgagee, whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender or reconveyance or otherwise.

Restriction on consolidation of mortgages.

35. (1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

(2) This section applies only if and as far as a contrary intention is not expressed in the mortgage Deeds or one of them.

Notice of trusts on transfer of mortgage.

36. (1) Where, on the transfer of a mortgage, the stamp duty, if payable according to the amount of the debt transferred, would exceed the sum of $2.40, a purchaser shall not, by reason only of the transfer bearing a stamp of that amount, whether adjudicated or not, be deemed to have or to have had notice of any trust, or that the transfer was made for effectuating the discharge of a trustee or the appointment of a new trustee.

(2) This section applies to transfers made before as well as after the commencement of this Act.

Leasing powers of mortgagor and mortgagee in possession.

37. (1) A mortgagor of land while in possession shall, as against every encumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised.

(2) A mortgagee of land while in possession shall, as against all prior encumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as is by this section authorised.

Leases authorised.

(3) The leases which this section authorises are—

(a) an agricultural or occupation lease for any term not exceeding twenty-one years;

(b) a mining lease for any term not exceeding thirty-five years; and

(c) a building lease for any term not exceeding ninety-nine years.

(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

Time of taking effect.

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

Reserving best rent.

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

Covenant for payment of rent.

(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

Building provisions.

(8) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes.

Nominal rent for five years.

(9) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

Enforcing contract for lease.

(10) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

Application of section.

(11) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage Deed, and shall have effect subject to the terms of such Deed and to the provisions therein contained.

Mortgage Deed may contain different powers.

(12) Nothing in this Act shall prevent the mortgage Deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage Deed.

(13) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the encumbrancers, if this Act had not been passed.

(14) Subject as aforesaid, this section applies to any mortgage made after the 1st of January, 1885, but the provisions thereof, or any of them, may, by Deed made after that date between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such Deed shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the Deed.

(15) For the purposes of this section "mortgagor" does not include an encumbrancer deriving title under the original mortgagor.

(16) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

(17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Powers of mortgagor and mortgagee in possession to accept surrenders of lease.

38. (1) For the purpose only of enabling a lease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage Deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against every encumbrancer,

have, by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprised part only of the land or mines and minerals leased, the rent may be apportioned.

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other encumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied: Provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(4) Where any consideration for the surrender, other than an agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the encumbrancers, or authorises a surrender to a second or subsequent encumbrancer without the consent of every prior encumbrancer.

(5) No surrender shall, by virtue of this section, be rendered valid unless—

(a) an authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and

(b) the term certain or interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting

under the original lease if that lease had not been surrendered; and

(c) where the whole of the land, mines, and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

Enforcing contract for surrender.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the Mortgage Deed, and shall have effect subject to the terms of the Mortgage Deed and to the provisions therein contained.

(8) This section applies to a mortgage made after the 20th of May, 1924, but the provisions of this section, or any of them, may, by Deed made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such Deed shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the Deed.

(9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(10) Nothing in this section shall prevent the Mortgage Deed from reserving to or conferring on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this section, and with the like results, unless a contrary intention is expressed in the Mortgage Deed.

(11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which could have been accepted by the mortgagor with the concurrence of all the encumbrancers if this Act had not been passed.

(12) For the purposes of this section "mortgagor" does not include an encumbrancer deriving title under the original mortgagor.

(13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Powers incident to estate or interest of mortgagee.

39. (1) A mortgagee, where the mortgage is made by Deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the Mortgage Deed, but not further, namely:

(a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots by public auction or by private contract, subject to such conditions respecting title, or evidence of title or other matter as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby; and

(b) a power, at any time after the date of the Mortgage Deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such

insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(c) a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property or any part thereof; and

(d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the Mortgage Deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the Mortgage Deed, and shall have effect subject to the terms of the Mortgage Deed and to the provisions therein contained.

(4) This section applies only where the Mortgage Deed is executed after the 1st of January, 1885.

Powers incident to mortgagee's power of sale, without application to Court.

40. (1) The power of sale conferred on a mortgagee by section 39 shall include the following powers as incident thereto, namely:

(a) a power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other

user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;

(b) a power to sell the mortgaged property, or any part thereof, or any mines and minerals apart from the surface—

(i) with or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold;

(ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold;

(iii) with or without covenants by the purchaser to expend money on the land sold.

(2) Subsections (2) and (3) of section 39 shall apply to the foregoing powers conferred by this section.

Application of section.

(3) This section applies only where the Mortgage Deed is executed after the 20th of May, 1924.

Regulation of exercise of power of sale.

41. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(a) notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(c) there has been a breach of some provision contained in the Mortgage Deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Power to mortgagee to convey on sale.

42. (1) A mortgagee exercising the power of sale conferred by this Act shall have power, by Deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage.

(2) Where a conveyance is made in exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground—

(a) that no case had arisen to authorise the sale; or

(b) that due notice was not given; or

(c) whether the mortgage was made before or after the commencement of this Act, that the power was otherwise improperly or irregularly exercised,

and a purchaser is not, either before or on conveyance, concerned to see or enquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

Application of proceeds of sale.

43. The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior encumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs,

charges, and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

Provisions as to exercise of power of sale.

44. (1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Act does not affect the right of foreclosure.

(3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith, or, as regards mortgages executed after the 20th of May, 1924, of any power or provision contained in the Mortgage Deed.

(4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the Deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipt sufficient discharge.

45. (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to enquire whether any money remains due under the mortgage.

Application of money received under mortgage.

(2) Money received by a mortgagee under his mortgage, or from the proceeds of securities comprised in his mortgage, shall

be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money.

46. (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the Mortgage Deed, or, if no amount is therein specified, two-third parts of the amount that would be required, in case of total destruction to restore the property insured.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases, namely:

(a) where there is a declaration in the Mortgage Deed that no insurance is required;

(b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the Mortgage Deed;

(c) where the Mortgage Deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Act authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or on an insurance for the maintenance of which the mortgagor is liable under the Mortgage Deed, shall if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require

that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or on an insurance for the maintenance of which the mortgagor is liable under the Mortgage Deed, be applied in or towards the discharge of the Mortgage money.

Appointment, powers, remuneration and duties of receiver.

47. (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Act, shall he deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the Mortgage Deed otherwise provides.

(3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding eight per centum on the gross amount of all money received as is specified in his appointment, and if no rate is so specified, then at the rate of eight per centum on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any buildings, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows:

(a) in discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property;

(b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(c) in payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the Mortgage Deed or under this Act, and the cost of executing necessary repairs directed in writing by the mortgagee;

(d) in payment of the interest accruing due in respect of any principal money due under the mortgage; and

(e) in or towards discharge of the principal money if so directed in writing by the mortgagee,

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

Effect of advance on joint account, etc.

48. (1) Where, in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a

mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligator; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and has effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions therein contained.

(3) This section applies to any mortgage, obligation or transfer made after the 1st of January, 1885.

Sale of mortgaged property in action for redemption or foreclosure.

49. (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that—

(a) any other person dissents, or

(b) the mortgagee or any person so interested does not appear in the action,

and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the

application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of encumbrancers.

(5) For the purposes of this section the Court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any encumbrance, as the Court may think fit.

PART IV

STATUTORY MORTGAGES

Form of statutory mortgage. Second Schedule. Part I.

50. (1) A mortgage of freehold or leasehold land may be made by a Deed expressed to be made by way of statutory mortgage, being in the form given in Part I of the Second Schedule hereto, with such variations and additions, if any, as circumstances may require; and the provisions of this section shall apply thereto.

(2) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the Mortgage Deed—

Implied covenant.

(A.) A covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following, namely:

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal quarterly payments, the first thereof to be made at the end of three calendar months from the day stated for payment of the mortgage money:

Implied proviso for redemption.

(B.) A proviso to the effect following, namely:

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with

interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall reconvey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory transfer of mortgage. Second Schedule. Part II.

51. (1) A transfer of a statutory mortgage may be made by a Deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A), (B) or (C) given in Part II of the Second Schedule hereto as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

Effect of transfer.

(2) In whichever of those three forms the Deed of transfer is made, it shall have effect as follows, namely:

(a) there shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee;

(b) all the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3) If the Deed of transfer is made in the form (B), there shall also be deemed to be included, and there shall, by virtue of this Act, be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following, namely:

That the covenantor will, on the next of the days by the Mortgage Deed fixed for payment of

interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the Mortgage Deed fixed for payment of interest.

(4) If the Deed of transfer is made in the form (C), it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly.

Implied covenants, joint and several.

52. In a Deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Form of re-conveyance of statutory mortgage. Second Schedule. Part III.

53. A reconveyance of a statutory mortgage may be made by a Deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III of the Second Schedule hereto, with such variations and additions, if any, as circumstances may require.

PART V

RENT CHARGES

Remedies for recovery of annual sums charged on land.

54. (1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable

half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

Entry and distraint on 21 days' arrears.

(2) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

Entry into possession on 40 days' arrears.

(3) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4) In the like case the person entitled to the annual charge, whether taking possession or not, may also by Deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the

preparation and execution of the Deed of demise, and the costs of the execution of the trusts of that Deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that Deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5) It is hereby declared that the rule of law relating to perpetuities does not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

(6) The powers and remedies conferred by this section are exercisable whether the annual sum is created under a power contained in an instrument coming into operation before or after the commencement of this Act, and take effect unless the instrument creating the power or under which the annual sum is created otherwise directs.

(7) This section applies to powers and remedies conferred by or implied in an instrument executed before as well as after the commencement of this Act.

PART VI

POWERS OF ATTORNEY

Execution under power of attorney. [51 of 1976].

55. (1) The donee of a power of attorney other than a power of attorney to which subsection (2) applies may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate

he may as attorney execute the conveyance by affixing the name of the corporation and his own signature thereto in the presence of at least one witness not being a party thereto, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(3) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

Payment by attorney under power without notice of death, etc.

56. (1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2) This section does not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3) This section applies only to payment and acts made and done after the 1st of January, 1885.

Effect of irrevocable power of attorney for value.

57. (1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability, or bankruptcy of the donor of the power; and

(b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and

(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by

notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed after the 1st of January, 1885.

Effect of power of attorney irrevocable for a fixed time.

58. (1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser—

(a) the power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and

(b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power had not been done or happened; and

(c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.

(2) This section applies to powers of attorney created by instruments executed after the 1st of January, 1885.

Duration of registered power of attorney.

59. Every power of attorney not falling within the provisions of section 57 or section 58, registered in the office of the Registrar General, shall, unless a contrary intention appears therein, continue in force until the revocation of such power by the principal shall,

be registered, or an entry is made thereon as hereinafter provided, and every act, Deed, or instrument of the attorney after revocation and before registration of revocation shall be valid in favour of any person *bona fide* and without notice dealing with the attorney in the name of the principal.

Power of attorney—how revoked.

60. Every power of attorney may be revoked by the registration of any Deed revoking the same, or by an entry in writing under the hand of the Registrar General on the power of attorney registered in his office of the death, unsoundness of mind, or bankruptcy of the principal, upon evidence by statutory declaration sufficient to satisfy the Registrar General of such death or disability.

PART VII

CONTINGENT INTERESTS

Contingent or other interests.

61. All rights and interests in land may be disposed of, including—

(a) a contingent, executory, or future equitable interest in any land, or a possibility coupled with an interest in any land, whether or not the object of the gift or limitation of such interest or possibility be ascertained;

(b) a right of entry, into or upon land whether immediate or future, and whether vested or contingent.

Contingent remainder.

62. (1) A contingent remainder shall be deemed to be capable of taking effect notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold in the same manner in all respects as if such determination had not happened.

(2) Every contingent remainder which would have been valid as a springing or shifting use had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use.

Restriction on executory limitations.

63. (1) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2) This section applies only where the executory limitation is contained in an instrument coming into operation after the 1st of January, 1885.

PART VIII

LEASES

Effect of extinguishment of reversion.

64. Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land; shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

Apportionment of conditions on severance.

65. (1) Notwithstanding the severance by conveyance surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) This section applies only to leases made after the 1st of January, 1885.

Rent and benefit of lessee's covenants.

66. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed and performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced, and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where that person becomes entitled by conveyance or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to leases made before or after the commencement of this Act, but does not affect the operation of—

(a) any severance of the reversionary estate, or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision,

effected before the commencement of this Act.

Obligation of lessor's covenants to run with reversion.

67. (1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding

severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies to leases made before or after the commencement of this Act, whether the severance of the reversionary estate was effected before or after such commencement:

Provided that, where the lease was made before the 1st of January, 1885, nothing in this section shall affect the operation of any severance of the reversionary estate effected before such date.

This section takes effect without prejudice to any liability affecting a covenantor or his estate.

Effect of licence granted to lessee.

68. (1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only—

(a) to the permission actually given; or

(b) to the specific breach of any provision or covenant referred to; or

(c) to any other matter thereby specifically authorised to be done,

and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

(a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and

(b) the condition or right of entry remains in force in all respects as if the licence had not been granted save in respect of the particular matter authorised to be done.

(3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted—

(a) to any one of two or more lessees to do any act or to deal with his equitable share or interest,

(b) to any lessee, or to any one of two or more lessees to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of covenant, or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rent of the property as the case may be in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the licence.

(4) This section applies to licences granted after the 1st of October, 1864.

No fine to be exacted for licence to assign.

69. In all leases containing a covenant, condition, or agreement against assigning; underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

Restrictions on and relief against forfeiture of leases and under-leases.

70. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach,

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case, thinks fit.

(3) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any Deed, or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the Court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

(4) For the purposes of this section—

(a) "lease" includes an original or derivative under-lease; also an agreement for a lease where the

lessee has become entitled to have his lease granted; also a grant at a fee farm rent, or securing a rent by condition;

(b) "lessee" includes an original or derivative under-lessee, and the persons deriving title under a lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;

(c) "lessor" includes an original or derivative under-lessor, and the persons deriving title under a lessor; also a person making such grant as aforesaid and the persons deriving title under him;

(d) "under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

(e) "under-lessee" includes any person deriving title under an under-lessee.

(5) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Order-in-Council or Act or Ordinance or other law.

(6) For the purposes of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(7) This section does not extend—

(a) to a covenant or condition against the assigning, underletting, parting with the possession, or disposing, of the land leased; or to conditions for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(b) in case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing instruments, or other things, or to enter or inspect the mine or the workings thereof.

(8) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

PART IX

POWERS

Release of powers simply collateral.

71. A person to whom any power, whether coupled with an interest or not, is given, may by Deed release, or contract not to exercise, the power.

Disclaimer of power.

72. (1) A person to whom any power, whether coupled with an interest or not, is given, may by Deed disclaim the power, and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2) On such disclaimer, the power may be exercised by the other person or persons or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power.

Execution of powers not testamentary.

73. (1) A Deed executed and attested in the manner in which Deeds are required by law to be executed and attested is so far as respects the execution and attestation thereof a valid execution of a power of appointment by Deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a Deed or instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) This section does not operate to defeat any direction in the instrument creating the power that—

(a) the consent of any particular person is to be necessary to a valid execution;

(b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

(4) This section applies to appointments by deed made after the 1st of October, 1864.

74. This Part of this Act applies to powers created or arising either before or after the commencement of this Act.

Application of this Part to existing powers.

PART X

MARRIED WOMEN AND INFANTS

MARRIED WOMEN

75.
76.

(*Repealed by Act No. 52 of 1976*).

INFANTS

77. (1) If and as long as any person who is entitled to a beneficial interest in possession affecting land is an infant, the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the Court whereby they or their predecessors in office were appointed to be such trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the Court on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land on behalf of the infant, and in every such case the subsequent provisions of this section shall apply.

Management of land during minority or pending contingency. [28 of 1973].

(2) The trustees shall manage or superintend the management of the land, with full power—

(a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise;

(b) to erect, pull down, rebuild, and repair houses, and other buildings and erection;

(c) to continue the working of mines, minerals, and quarries which have usually been worked;

(d) to drain or otherwise improve the land or any part thereof;

(e) to insure against loss by fire;

(f) to make allowances to and arrangements with tenants and others;

(g) to determine tenancies, and to accept surrenders of leases and tenancies; and

(h) generally to deal with the land in a proper and due course of management,

but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions on and subject to which the infant could; if of full age, cut the same.

(3) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4) Where the infant's estate or interest is an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(5) This section has effect subject to an express appointment by the settlement, or the Court, of trustees for the purposes of this section or of any enactment replaced by this section.

(6) Where any person is contingently entitled to land, this section shall, subject to any prior interests or charges affecting that land, apply until his interest vests, or, if his interest vests during his minority, until he attains the age of twenty-one years.

This subsection applies only where a person becomes contingently entitled under an instrument coming into operation after the 1st of January, 1885.

(7) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, under which the interest of the infant or person contingently entitled as aforesaid arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

PART XI

VOIDABLE DISPOSITIONS

Voluntary conveyances to defraud creditors voidable.

78. (1) Save as provided in this section, every conveyance of property, made whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.

(2) This section does not affect the operation of a disentailing assurance, or the law of bankruptcy for the time being in force.

(3) This section does not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon good consideration and in good faith to any person not having at the time of the conveyance, notice of the intent to defraud creditors.

Voluntary disposition of land how far voidable as against purchasers.

79. (1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent disposition for valuable consideration was made, if such subsequent disposition was made after the 29th of December, 1915.

(3) In this section, the expression "disposition" includes a transfer under the provisions of the Real Property Act, and also includes every mode of conveyance or disposition mentioned or referred to in the Act 27 Elizabeth, Chapter 4. Ch. 56:02.

PART XII

NOTICE

Restriction on constructive notice.

80. (1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

(a) it is within his own knowledge, or would have come to his knowledge, if such enquiries and inspections had been made as ought reasonably to have been made by him; or

(b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his Attorney-at-law, as such, or of his other agent, as such, or would have come to the knowledge of his Attorney-at-law or other agent, as such, if such enquiries and inspections had been made as ought reasonably to have been made by the Attorney-at-law or other agent.

(2) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3) A purchaser shall not, by reason of anything in this section, be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Act.

Regulations respecting notice.

81. (1) Any notice required or authorised by this Act to be served shall be in writing.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name,

and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in Trinidad and Tobago of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served, on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person, to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the Post Office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) This section does not apply to notices served in proceedings in the Court.

PART XIII

GENERAL

Protection of Attorney-at-law and trustees adopting Act.

82. (1) The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed to be included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction, and an Attorney-at-law shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers,

covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2) But, save as expressly provided by this Act, nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3) Where the Attorney-at-law is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4) Where such persons are acting without an Attorney-at-law, they shall also be protected in like manner.

Fraudulent concealment of documents and falsification of pedigrees.

83. (1) Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the Attorney-at-law or other agent of such person, who—

(a) conceals from the purchaser any instrument or encumbrance material to the title, or

(b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept title offered or produced,

with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for two years, or by both.

(2) Any such person or his Attorney-at-law or agent is also liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—

(a) the concealment of the instrument or encumbrance;

(b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

(3) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons

deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

(4) No prosecution for any offence under this section shall be commenced without leave of the Director of Public Prosecutions.

(5) Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such notice of the application for leave to prosecute as the Director of Public Prosecutions may direct.

Consideration or rent reserved must be truly stated.

84. Where by any Deed any lands are sold, mortgaged, leased, assigned, or otherwise disposed of for valuable consideration, the full consideration money or rent directly or indirectly paid, reserved, secured, or agreed to be paid for the same shall be truly expressed in words at length in or upon such Deed, or the principal of such Deeds if there be more than one. And if such full consideration money or rent is not truly expressed as aforesaid, both the payer or person agreeing to pay the same, and the seller, lessor, or person agreeing to accept the same, shall forfeit the sum of two hundred and forty dollars, and shall also be charged with the payment of five times the excess of fee which would have been payable for such Deed in respect of the full consideration money in case the same had been truly expressed; and such penalty and quintuple excess shall be deemed to constitute a debt due to the State, and may be sued for and recovered accordingly:

Reward to informer.

Provided that if any party by this section made liable to the payment of such penalty and quintuple excess as aforesaid, gives information to the Registrar General whereby such penalty, or quintuple excess, or any part thereof, is recovered, the party giving the information shall not only be indemnified and discharged from his liability, but may also be rewarded by the President out of the penalty or quintuple excess so recovered, to such extent as the President thinks proper. And where any other person gives information whereby any such penalty or quintuple excess is recovered, he may be rewarded in like manner.

Return of consideration or rent not stated.

85. Where the full consideration money or rent reserved is not truly expressed in the manner by this Act directed, it shall be lawful, where any money has been paid in the name of such

consideration or rent, for the payer, his executors or administrators, to recover back from the payee, his executors or administrators, so much of such consideration money or rent as is not expressed as aforesaid, or the whole thereof if not part of the same is so expressed.

Aiding in untrue statement of consideration or rent.

86. Any Attorney-at-law or other person employed in or about the preparing of any Deed in or upon which the full consideration money or rent reserved is required to be truly expressed as aforesaid, or employed for any of the parties to such Deed in any manner about or relating to the transaction therein mentioned, who knowingly and wilfully inserts or expresses, or causes to be inserted or expressed, in or upon any such Deed, any other than the full and true consideration money or rent directly or indirectly paid, reserved, secured, or agreed to be paid for the same, or who in anywise aids or assists in any of the acts aforesaid, shall, for every such offence, forfeit the sum of two thousand four hundred dollars, which may be sued for and recovered as a debt due to the State. And every Attorney-at-law so offending, and being thereof lawfully convicted, shall thenceforth be disabled to practise as an Attorney-at-law:

Provided that no party, Attorney-at-law, or other person shall be liable to any penalty, disability, or forfeiture by reason of the full consideration money or rent reserved not being truly expressed in or upon any Deed, unless the fees actually paid for the same are less than would have been payable in case the full consideration money or rent reserved had been truly expressed according to the directions of this Act.

Payment into Court, jurisdiction and procedure.

87. (1) Payment of money into Court effectually exonerates therefrom the person making the payment.

(2) Subject to any Rules of Court to the contrary—

(a) every application to the Court under this Act shall, save as otherwise expressly provided, be by summons at Chambers;

(b) on an application by a purchaser notice shall be served in the first instance on the vendor;

(c) on an application by a vendor notice shall be served in the first instance on the purchaser;

(d) on any application notice shall be served on such persons, if any, as the Court thinks fit.

(3) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges and expenses of all or any of the parties to any application.

Orders of Court conclusive.

88. (1) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

(2) This section applies to all orders made before or after the commencement of this Act.

Powers to make Rules of Court.

89. (1) The Chief Justice, with the concurrence of a Puisne Judge, may make Rules of Court for regulating the practice and procedure in respect of proceedings of any kind under this Act.

Ch. 4:01.

(2) The provisions of the Supreme Court of Judicature Act shall apply to such rules in the same manner as they apply to Rules of Court made under that Act.

(Section 11).

FIRST SCHEDULE

SHORT FORMS OF DEEDS

I. MORTGAGE

THIS DEED OF MORTGAGE made the ..... day of ..... 20 ..... between *A*. of [etc.] of the one part and *B*. of [etc.] and *C*. of [etc.] of the other part. Witnesseth that in consideration of the sum of $ ..... paid to *A*. by *B*. and *C*. out of money belonging to them on a joint account of which sum *A*. hereby acknowledges the receipt, *A*. hereby covenants with *B*. and *C*. to pay to them on the ..... day of ..... 20 ..... the sum of $ ..... with interest thereon in the meantime at the rate of [.....] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B*. and *C*. interest thereon at the same rate by equal quarterly payments on the ..... day of ..... 20 ....., and the ..... day of..... , 20 .....

AND THIS DEED also witnesseth that for the same consideration *A*. as beneficial owner hereby conveys to *B*. and *C*. All that [etc.] To hold to and to the use of *B*. and *C*. in fee simple subject to the proviso for redemption following (namely) that if *A*. or any person claiming under him shall on the ..... day of ..... , 20 ..... , pay to *B*. and *C*. the sum of $ ..... and interest thereon at the rate aforesaid then *B*. and *C*. or the persons claiming under (them will at the request and cost of *A*. or the persons claiming under him reconvey the premises to *A*. or the persons claiming under him. And *A*. hereby covenants with *B*. as follows *[here add covenant as to fire insurance or other special covenant required]*.

In witness, etc.

II. FURTHER CHARGE

This Deed made the ..... day of ..... , 20 ..... , between *[the same parties as the forgoing mortgage]* and supplemental to a Deed of Mortgage dated the ..... day of ..... , 20 ..... , and made between the same parties for securing the sum of $ ..... and interest at [.....] per centum per annum on property at [etc.] Witnesseth that in consideration of the further sum of $ ..... paid to *A*. by *B*. and *C*. out of money belonging to them on a joint account *[add receipt and covenant as in the foregoing mortgage]* and further that all the property comprised in the before-mentioned Deed of Mortgage shall stand charged with the payment to *B*. and *C*. of the sum of $ ..... and the interest thereon hereinbefore covenated to be paid as well as the sum of $ ..... and interest secured by the same Deed.

In witness, etc.

III. CONVEYANCE ON SALE

THIS DEED made this ..... day of ....., 20 ..... between *A*. of [etc.] of the first part *B*. of [etc.] and *C*. of [etc.] of the second part and *M*. of [etc.] of the third part. WHEREAS by a Deed dated [etc.] and made between [etc.] the lands hereinafter mentioned were conveyed by *A*. to *B*. and *C*. in fee simple by way of mortgage for securing $ ..... and interest, and by a supplemental Deed dated [etc.] and made between the same parties those lands were charged by *A*. with the payment to *B*. and *C*. of the further sum of $ ..... and interest thereon. AND WHEREAS a principal sum of $ ..... remains due under the two before-mentioned Deeds but all interest thereon has been paid as *B*. and *C*. hereby acknowledge. Now this Deed witnesseth that in consideration of the sum of $ ..... paid by the direction of *A*. to *B*. and *C*. and of the sum of $ ..... paid to *A*. those two sums making together the total sum of $ ..... paid by *M*. for the purchase of the fee simple of the lands hereinafter mentioned of which sum of $ ..... *B*. and *C*. hereby acknowledge the receipt and of which total sum of $ ..... *A*. hereby acknowledges the payment and receipt in manner before-mentioned, *B*. and *C*. as mortgagees and by the direction of *A*. as beneficial owner hereby convey and *A*. as beneficial owner hereby conveys and confirms to *M*. All that [etc.] To hold to and to the use of *M*. in fee simple discharged from all money secured by and from all claims under the before-mentioned Deeds. *[Add, if required,* And *A*. hereby acknowledges the right of *M*. to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof].

In witness, etc.

[The Schedule above referred to].

[To contain list of documents retained by A.].

IV. MARRIAGE SETTLEMENT

THIS DEED made the ..... day of ....., 20 ....., between *John M*. of [etc.] of the first part *Jane S*. *of* [etc.] of the second part and *X*. of [etc.] and *Y*. of [etc.] of the third part Witnesseth that in consideration of the intended marriage between *John M*. and *Jane S*. *John M*. as settlor hereby conveys to *X*. and *Y*. All that [etc.] To hold to *X*. and *Y*. in fee simple to the use *of John M*. in fee simple until the marriage and after the marriage to the use of *John M*. during his life without impeachment of waste with remainder after his death to the use that *Jane S*. if she survives him may receive during the rest of her life a yearly jointure rent charge of $ ..... to commence from his death and to be paid be equal quarterly payments the first thereof to be made at the end of three calendar months from his death if she is then living or if not a proportional part to be paid at her death, and subject to the before-mentioned

rent charge to the use of *X*. and *Y*. for a term of five hundred years without impeachment of waste on the trusts hereinafter declared, and subject thereto to the use of the first and other sons of *John M*. and *Jane S*. successively according to seniority in tail male with remainder [*insert here, if thought desirable,* to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M*. and *Jane* S. in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M*. in fee simple. *[Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition and other powers and provisions, if and as, desired].*

In witness, etc.

(Section 50).

SECOND SCHEDULE

STATUTORY MORTGAGE

PART I

DEED OF STATUTORY MORTGAGE

THIS DEED made by way of statutory mortgage the ..... day of ..... , 20 ..... between *A*. of [etc.] of the one part and *M*. of [etc.] of the other part Witnesseth that in consideration of the sum of $ ..... now paid to *A*. by *M*. of which sum *A*. hereby acknowledges the receipt, *A*. as mortgagor and as beneficial owner hereby conveys to *M*. all that [etc.,] To hold to and to the use of *M*. in fee simple for securing payment on the ..... day of ..... , 20 ..... of the principal sum of $ ..... as the mortgage money with interest thereon at the rate of [ ] per centum per annum.

In witness, etc.

N.B. Variations in this and subsequent forms to be made, if required, for leasehold land, or for giving effect to special arrangements.

(Section 51).

PART II

(A)

DEED OF STATUTORY TRANSFER, MORTGAGOR NOT JOINING

THIS DEED made by way of statutory transfer of mortgage the ..... day of ..... , 20 ..... , between *M*. of [etc.] of the one part and *T*. of [etc.] of the other part, supplemental to a Deed made by way of statutory mortgage dated the ..... day of ..... , 20 ..... , and made

between [etc.] Witnesseth that in consideration of the sum of $ ..... now paid to *M*. by *T*. being the aggregate amount of $ ..... mortgage money and $ ..... interest due in respect of the said mortgage of which sum *M*. hereby acknowledges the receipt, *M*. as mortgagee hereby conveys and transfers to *T*. the benefit of the said mortgage.

In witness, etc.

(B)

DEED OF STATUTORY TRANSFER, A COVENANTOR JOINING

THIS DEED made by way of statutory transfer of mortgage the ..... day of ....., 20 ....., between *A*. of [etc.] of the first part, *B*. of [etc.] of the second part and *C*. of [etc.] of the third part, supplemental to a Deed made by way of statutory mortgage dated the ..... day of ..... 20 ..... , and made between [etc.] Witnesseth that in consideration of the sum of $ ..... now paid to *A*. by *C*. being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum *A*. hereby acknowledges the receipt, *A*. as mortgagee with the concurrence of *B*. who joins herein as covenantor hereby conveys and transfers to *C*. the benefit of the said mortgage.

In witness, etc.

(C)

STATUTORY TRANSFER AND STATUTORY MORTGAGE COMBINED

THIS DEED made by way of statutory transfer of mortgage and statutory mortgage the ..... day of ....., 20 ....., between *A*. of [etc.] of the first part *B*. of [etc.] of the second part and *C*. of [etc.] of the third part, supplemental to a Deed made by way of statutory mortgage dated the ..... day of ..... ,20 ..... and made between [etc.] Whereas the principal sum of $ ..... only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon. And whereas *B*. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage. Now this Deed witnesseth that in consideration of the sum of $ ..... now paid to *A*. by *C*. of which sum *A*. hereby acknowledges the receipt and *B*. hereby acknowledges the payment and receipt as aforesaid* *A*. as mortgagee hereby conveys and transfers to *C*. the benefit of the said mortgage. And this Deed also witnesseth that for the same consideration *A*. as mortgagee and according to his estate and by direction

of *B*. hereby conveys and *B*. as beneficial owner hereby conveys and confirms to *C*. All that [etc.] To hold to and to the use of *C*. in fee simple for securing payment on the ..... day of ..... ,20..... , of* the sum of $ ..... as the mortgage money with interest thereon at the rate of [ ] per centum per annum.

In witness, etc.

[Or, in case of further advance, after aforesaid *at* insert* and also in consideration of the further sum of $ ..... now paid by *C*. to *B*. of which sum *B*. hereby acknowledges the receipt, *and after* of *at* insert* the sums of $ ..... and $ ..... making together].

* *Variations to be made, as required, in case of the Deed being made be endorsement, or in respect of any other thing*.

(Section 53).

PART III

DEED OF STATUTORY RE-CONVEYANCE OF MORTGAGE

THIS DEED made by way of statutory reconveyance of mortgage the ..... day of ....., 20 ....., between *C*. of [etc.] of the one part and *B*. of [etc.] of the other part, supplemental to a Deed made by way of statutory transfer of mortgage dated the ..... day of ..... , 20 ..... , and made between [etc.] Witnesseth that in consideration of all principal money and interest due under that Deed having been paid of which principal and interest *C*. hereby acknowledges the receipt, *C*. as mortgagee hereby conveys to *B*. all the lands and hereditaments now vested in *C*. under the said Deed to hold to and to the use of *B*. in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said Deed.

In witness, etc.

N.B. Variations as noted above.