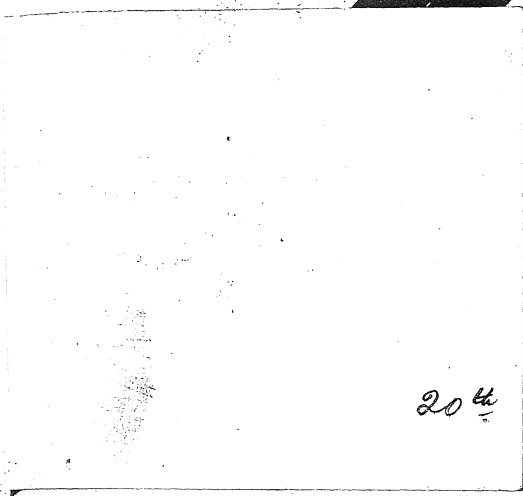


TRINIDAD AND TOBAGO.

No. 11 1924.



I ASSENT,

B. A. Wilson
Governor.

20th May, 1924.

AN ORDINANCE to amend the Conveyancing Ordinance, No. 72.

[20th May, 1924.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows :—

1. This Ordinance may be cited as the Conveyancing (Amendment) Ordinance, 1924, and shall be read as one with the Conveyancing Ordinance, No. 72, hereinafter called the Principal Ordinance. Short title. Construction.

2. On any application under section 7 of the Principal Ordinance the Court may, if it thinks fit, as respects any purchaser or vendor, dispense with the service of any notice which is, by section 67 of that Ordinance, required to be served on the purchaser or vendor. Notices on discharge of encumbrances by the Court.

3.—(1) Section 13 of the Principal Ordinance shall apply to the benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease, so as to enable the same to be enforced Benefit of condition already broken to run with reversion.

[Price 6d.]

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, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable, provided that he became so entitled as aforesaid after the commencement of this Ordinance.

Saving as to waiver and release.

(2) This section shall not render enforceable any condition of re-entry or other condition waived or released before the person became entitled as aforesaid.

Powers (with a view only to the grant of an authorised lease) for mortgagor and mortgagee in possession to accept surrenders of leases.

4.—(1) For the purpose only of enabling a lease, authorised under section 20 of the Principal Ordinance, as varied by this section, or under any agreement made pursuant to section 20 aforesaid, 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, in like manner as if the legal estate were vested in him and as against every encumbrancer, have, by virtue of this Ordinance, 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 all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them, and, on a surrender of part only of the land or mines and minerals leased, the rent may be apportioned.

Mortgagee in possession.

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

Varying lease on surrender of part.

(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.

Taking lessee's interest into account in determining rent, &c., in new lease.

(4) Nothing in this section shall, where any consideration (except an agreement to accept an authorised lease) for the surrender is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, authorise a surrender to a mortgagor without the consent of the encumbrancers, or authorise a surrender to a second or subsequent encumbrancer without the consent of any prior encumbrancer.

Encumbrancers' consent necessary where consideration given for surrender.

(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.

Application of
section.

(7) Sub-sections (13), (16) and (17) of section 20 of the Principal Ordinance shall have effect as if they were re-enacted in this section, and references to the commencement of that Ordinance shall, for the purposes of this section be read as references to the commencement of this Ordinance.

Conferring
further or
other powers
by mortgage.

(8) 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 Ordinance, and with the like results, unless a contrary intention is expressed in the mortgage deed.

Saving as to
surrenders.

(9) Nothing in this section shall operate to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor, with the concurrence of all the encumbrancers, if this Ordinance had not been passed.

Definition of
"Mortgagor."

(10) For the purposes of this section, and of sub-section (1) of section 20 of the Principal Ordinance, the expression " mortgagor " does not include an encumbrancer deriving title under the original mortgagor.

Provisions
after
appointment
of receiver.

(11) The powers of leasing and of accepting surrenders respectively conferred by section 20 of the Principal Ordinance, and this section, shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee, under that Ordinance, 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.

5.—(1) The power of sale conferred on a mortgagee by section 21 of the Principal Ordinance shall include the following powers as incident thereto (namely):—

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

(i) 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.

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

(a) 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;

(b) 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.

(c) With or without covenants by the purchaser to expend money on the land sold.

(2) Sub-sections (2) and (3) of section 21 of the Principal Ordinance shall apply to the foregoing powers conferred by this section.

Application section.

(3) This section applies only where the mortgage deed is executed after the commencement of this Ordinance.

Protection of mortgagees and purchaser.

6.—(1) Upon any sale made in professed exercise of the power conferred on mortgagees by the Principal Ordinance, a purchaser is not, and never has been, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised.

(2) Sub-section (6) of section 23 of the Principal Ordinance shall, as regards mortgages executed after the commencement of this Ordinance, be read as if the words "or of any power or provision contained in the mortgage deed" were added at the end thereof.

7. The following shall be inserted after section 42 of the Principal Ordinance:

Rent Charges and other annual sums.

Remedies for recovery of annual sums charged on land.

42A—(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 rentcharge 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.

(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.

Entry into
possession on
40 days
arrears.

(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 Ordinance, 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 Ordinance.

Power for court to bind interest of married woman.

8.—(1) Where a married woman is restrained from anticipation or from alienation in respect of any property or any interest in property belonging to her, or is by law unable to dispose of or bind such property or her interest therein, including a reversionary interest arising under her marriage settlement, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in such property.

(2) This section applies only to judgments or orders made after the commencement of this Ordinance.

Repeal.

(3) Section 24 of Ordinance No. 65 is hereby repealed.

Survivorship of trusts and powers.

9.—(1) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, then, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee.

(2) This section shall take effect subject to any direction to the contrary expressed in the instrument, if any, creating the power or trust.

(3) This section applies only to trusts constituted after or created by instruments coming into operation after the commencement of the Principal Ordinance.

(4) In this section "personal representative" means an executor (original or by representation) or administrator, but does not include an executor who has renounced or has not proved.

10.—(1) Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale, with power to postpone such sale for such a period as they may think proper.

Provisions respecting mortgaged property held by trustees where the right of redemption is barred.

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this sub-section shall operate without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

Application of proceeds.

(3) This section shall not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

Right to require conveyance.

(4) This section applies to property the right of redemption whereof is discharged before as well as after the commencement of this Ordinance.

Application of section.

11.—(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 ten shillings, a purchaser shall not, by reason only of the transfer bearing a ten shilling stamp, 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 appointment of a new trustee.

Notice of trusts on transfer of mortgage.

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


Application of section.

12. 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, 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

Power of Court to relieve under-lessees on forfeiture of superior lease.

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 shall 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.

Passed in Council this ninth day of May, in the year of Our Lord one thousand nine hundred and twenty-four.


David W. Lanza
Acting Clerk of the Council.
