

LAND LAW AND CONVEYANCING ACT, 1981

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Fifth Session First Parliament Republic of Trinidad  
and Tobago

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REPUBLIC OF TRINIDAD AND TOBAGO

**Act No. 20 of 1981**

AN ACT to reform Land Law and the Law of Conveyancing.

*[Assented to 24th July, 1981]*

ENACTED by the Parliament of Trinidad and Tobago as Enactment  
follows:

1. (1) This Act may be cited as the Land Law and Short title and  
Conveyancing Act, 1981, commencement

(2) This Act shall come into operation on a date to be fixed by the President by proclamation published in the *Gazette*.

## PART I

### INTERPRETATION

#### Interpretation

2. (1) In this Act:—

“assurance” means the vesting otherwise than by will, of property or an interest therein in any person;

“bankruptcy” includes liquidation by arrangement and, in relation to a corporation, means the winding up thereof;

“building” includes the stratum of airspace occupied or encompassed by it and sub-divided part of a building has a corresponding meaning;

“building lease” means a lease for building purposes or purposes connected therewith;

“building purposes” includes the erecting, improving of, adding to and repairing of buildings;

“capital money” means the proceeds of sale or mortgage of land held upon the statutory trusts, a fine levied in connection with a lease of such land and the proceeds of sale or mortgage of any asset in which capital money has been invested;

“conveyance” includes any instrument, other than a will, consisting of or comprising a transfer, mortgage or other charge, lease, assent, vesting declaration, disclaimer, release or other assurance of property or of an interest therein; and “convey” has a corresponding meaning;

“court” means the High Court;

- “covenant”, when used as a noun in reference to a lease, includes a promise in a written lease which is not a deed, but not so as to effect the law relating to limitation of actions; and the verb “covenant” has a corresponding meaning;
- “demise”, when used as a noun, means the grant of a leasehold term; and the verb “demise” and the adjective “demised” have corresponding meanings;
- “disposition” includes a conveyance and also a devise, bequest or appointment of property by will; and “dispose of” has a corresponding meaning;
- “equitable interests” has the meaning assigned by section 3(8);
- “equitable powers” has the meaning assigned by section 3(8);
- “estate” has the meaning assigned by section 3(4);
- “fee simple absolute” has the meaning assigned by section 4;
- “fine” includes a premium or foregift and any payment, consideration or benefit in the nature of a fine, premium or foregift;
- “income” includes rents and profits;
- “incumbrance” includes a legal or equitable mortgage, a trust for securing money, a lien and a charge of a portion, annuity or other capital or annual sum; and “incumbrancer” has a corresponding meaning and includes every person entitled to the benefit of an incumbrance or entitled to require payment or discharge thereof;
- “instrument” does not include a statute, unless the statute creates a settlement;

“land” means the surface of the earth, the airspace above it and the things, other than chattels, below it, and includes—

- (a) buildings on land and parts of buildings whether the division is vertical, horizontal, or made in any other way;
- (b) mines and minerals, whether or not held apart from the surface;
- (c) land covered by water;
- (d) legal estates in land, whether or not they give a right to possession of the soil;
- (e) equitable interests in land;

1981 No.

“Land Commission” means the body established under Part III of the Land Registration Act, 1981;

1981 No.

“Land Registration” means the person appointed under section 4 of the Land Registration Act, 1981;

“landlord” includes a lessor and any other person entitled to the reversion expectant upon the determination of a leasehold term;

“lease” means an instrument, including a sub-lease, by which a leasehold term is created;

“leasehold term” has the meaning assigned by section 5;

“legal estates” has the meaning assigned by section 3(4);

“legal mortgage” means a mortgage by charge in accordance with section 120 and a legal mortgage subsisting at the commencement of this Act; and “legal mortgagee” has a corresponding meaning;

“legal power” includes a power vested in a chargee by way of a legal mortgage, or in an estate owner, under which a legal estate can be transferred or created;

“lessee” means a person, including a sublessee, in whom a leasehold term is vested by a lease or conveyance thereof;

“lessor” means a person, including a sublessor, entitled to the reversion expectant upon the determination of a leasehold term created by a lease;

“mines and minerals” includes any strata or seam of minerals or substances in or under any land and powers of working or getting the same;

“mining lease” means a lease for mining purposes, that is to say, 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 in writing for mining purposes;

“mortgage” includes any charge or lien on any property for securing money or money’s worth;

“mortgagee” includes a person from time to time deriving title under the original mortgage; and “mortgagee in possession” means a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property;

“mortgage money” means money or money’s worth secured by a mortgage;

“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;

“notice” includes constructive notice;

“personal representative” has the meaning assigned by section 2(1) of the Succession Act, 1981; 1981 No.

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

“property” includes any thing in action and any interest in land, chattels or rights which are treated commercially as property;

1981 No.

“Public Trustee” has the meaning assigned by section 2 of the Trustee Act, 1981;

“purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration acquires an interest in property (except that in Part II, and elsewhere where so expressly provided, “purchaser” means only a person who acquires an interest in or charge on property for money or money’s worth); and, in reference to a legal estate, “purchaser” includes a chargee by way of a legal mortgage; and, where the context so requires, “purchaser” includes an intending purchaser; and “purchase” has a meaning corresponding with that of “purchaser”;

1981 No.

“registered land” has the meaning assigned by section 2 of the Land Registration Act, 1981;

“rent” includes a rent service or rent charge or other rent, toll, duty, royalty or annual or periodic payment in money or money’s worth, reserved or issuing out of or charged upon land, but does not include mortgage interest;

“settlement” means an instrument by which, or by virtue of which, land is settled upon the statutory trusts or upon trust for sale;

“statutory trusts” has the meaning assigned by section 17;

“tenant” means a person holding a leasehold term and includes a lessee, any other person entitled to a leasehold term and a tenant at will, but does not include a tenant at sufferance, a licensee or any person who is in possession of

land otherwise than by agreement, express or implied, of a landlord; and "tenancy" has a corresponding meaning;

"trust", except where expressly provided otherwise, does not include the duties of a mortgagee; but, subject to that provision, "trust" includes an implied or constructive trust and the duties incident to the office of a personal representative, and extends to cases where the trustee has a beneficial interest in the property held on trust;

"trust corporation" means the Public Trustee and a trust corporation as defined by section 2 of 1981 No. the Trustee Act, 1981;

"trust land" means land held upon the statutory trusts;

"trustee" means a person who holds property on trust, and includes a personal representative;

"unregistered land" has the meaning assigned by section 2 of the Land Registration Act, 1981; 1981 No.

"valuable consideration" includes marriage but does not include nominal consideration in money.

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the creation of an interest or power include references to any interest or power so arising.

legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner.

**Definition of  
leasehold term**

5. (1) For the purposes of this Act, a leasehold term means a term—

- (a) taking effect in possession or in future;
- (b) whether or not at a rent;
- (c) subject or not to another legal estate;
- (d) with or without impeachment for waste;
- (e) either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest);

and includes a term—

- (i) for less than a year; or
- (ii) for a year or years and a fraction of a year; or
- (iii) from year to year or other periodic tenancy;

but does not include any term determinable with life or lives or with the cesser of a determinable life interest.

(2) Any lease at a rent or in consideration of a fine for a life or lives, or contract therefor, or power to grant such a lease, takes effect as a lease, contract therefor, or power to grant a lease, for a term of ninety years determinable after the death of the original lessee, or the survivor of the original lessee, by at least one month's notice in writing to determine the same on one of the quarter days applicable to the tenancy given, either by the lessor to the person entitled to the leasehold term or by the person in whom the leasehold term is vested to the lessor.

(3) Any lease at a rent or in consideration of a fine for a leasehold term determinable with life or lives, or on the marriage of a specified person (including the lessee), or on the happening of any other event, or contract therefor, or power to grant such a lease, takes effect as a lease, contract therefor, or power to grant a lease, for the said leasehold term determinable after the death or marriage of the specified person or on the happening of the other event (as the case may be), by at least one month's notice in writing given in accordance with sub-section (2).

land otherwise than by agreement, express or implied, of a landlord; and "tenancy" has a corresponding meaning;

"trust", except where expressly provided otherwise, does not include the duties of a mortgagee; but, subject to that provision, "trust" includes an implied or constructive trust and the duties incident to the office of a personal representative, and extends to cases where the trustee has a beneficial interest in the property held on trust;

"trust corporation" means the Public Trustee and a trust corporation as defined by section 2 of 1981 No. the Trustee Act, 1981;

"trust land" means land held upon the statutory trusts;

"trustee" means a person who holds property on trust, and includes a personal representative;

"unregistered land" has the meaning assigned by section 2 of the Land Registration Act, 1981; 1981 No.

"valuable consideration" includes marriage but does not include nominal consideration in money.

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the creation of an interest or power include references to any interest or power so arising.

## PART II

## ESTATES, INTERESTS AND POWERS

Definition of legal estates equitable interests and powers

3. (1) The only estates in land which are capable of subsisting or of being conveyed or created at law are:

- (a) an estate in fee simple absolute in possession;
- (b) a leasehold term.

(2) The only interests or charges in or over land which are capable of subsisting or being conveyed or created at law are:

- (a) an easement, right or privilege in or over land for an interest equivalent to a legal estate;
- (b) a rentcharge in possession (not being one limited to take effect in remainder after or expectant on the failure or determination or some other interest) issuing out of or charged on land and created for an interest equivalent to a legal estate, including one where the payments are limited to commence or accrue at some time subsequent to its creation;
- (c) a charge by way of legal mortgage;
- (d) any statutory or public charge on land not created by an instrument;
- (e) a right of entry or re-entry exercisable over or for an estate in fee simple absolute in possession or a leasehold term;
- (f) a possibility of reverter on the determination of a determinable fee.

(3) All other estates, interests and charges in or over land take effect as equitable interests.

(4) The estates, interests and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as "legal estates", and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as an "estate owner" and his legal estate is referred to as his "estate".

(5) A legal estate may subsist concurrently with, or subject to, any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

(6) A legal estate is not capable of being held by a minor.

(7) Every power of appointment over, or power to convey or charge, land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another in his name and on his behalf), operates only in equity.

(8) Estates, interests and charges in or over land which are not legal estates are in this Act referred to as "equitable interests", and powers which by this Act are to operate in equity only are in this Act referred to as "equitable powers."

(9) The provisions in any statute or other instrument requiring land to be conveyed to uses take effect as directions that the land shall (subject to creating or reserving thereout any legal estate, authorised by this Act, which may be required) be conveyed to a person, not being a minor, upon the requisite trusts.

4. (1) For the purposes of this Act, a fee simple absolute includes—

- Definition of  
fee simple  
absolute and  
exercise of  
statutory  
powers
- (a) a determinable fee, including a fee simple which, by virtue of any statute, is liable to be divested, and which will remain liable to be divested as if this Act had not been passed;
  - (b) a fee simple subject to a right of entry or re-entry;

but does not include a fee simple subject to an executory limitation, gift or disposition over on failure of issue or in any other event.

(2) The provisions of any statute conferring special facilities or prescribing special modes for disposing of or acquiring land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate, remain in full force.

(3) Where any power contained in the provisions referred to in sub-section (2) for disposing of or creating a

legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner.

Definition of  
leasehold term

5. (1) For the purposes of this Act, a leasehold term means a term—

- (a) taking effect in possession or in future;
- (b) whether or not at a rent;
- (c) subject or not to another legal estate;
- (d) with or without impeachment for waste;
- (e) either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest);

and includes a term—

- (i) for less than a year; or
- (ii) for a year or years and a fraction of a year; or
- (iii) from year to year or other periodic tenancy;

but does not include any term determinable with life or lives or with the cesser of a determinable life interest.

(2) Any lease at a rent or in consideration of a fine for a life or lives, or contract therefor, or power to grant such a lease, takes effect as a lease, contract therefor, or power to grant a lease, for a term of ninety years determinable after the death of the original lessee, or the survivor of the original lessee, by at least one month's notice in writing to determine the same on one of the quarter days applicable to the tenancy given, either by the lessor to the person entitled to the leasehold term or by the person in whom the leasehold term is vested to the lessor.

(3) Any lease at a rent or in consideration of a fine for a leasehold term determinable with life or lives, or on the marriage of a specified person (including the lessee), or on the happening of any other event, or contract therefor, or power to grant such a lease, takes effect as a lease, contract therefor, or power to grant a lease, for the said leasehold term determinable after the death or marriage of the specified person or on the happening of the other event (as the case may be), by at least one month's notice in writing given in accordance with sub-section (2).

(4) For the purposes of sub-sections (2) and (3)—

- (a) if the lease, contract therefor or power to grant a lease, is made determinable on the dropping of the lives of persons other than or besides the lessee, then the notice of a determination may be served after the death of any person or the survivor of any persons (whether or not including the lessee) on the cesser of whose life or lives the lease, contract or power is made determinable, instead of after the death of the original lessee or the survivor of the original lessees;
- (b) if there are no quarter days specially applicable to the tenancy in question, notice may be given to determine the tenancy on one of the following days, that is to say, March 31, June 30, September 30 and December 31.

(5) Sub-sections (2) to (4) apply only to leases, contracts and powers created after the commencement of this Act.

6. (1) In any instrument coming into operation after the commencement of this Act, a limitation which, if this Act had not been passed, would have created an estate tail (legal or equitable) in any land in favour of any person creates an estate in fee simple absolute in possession (or an equitable fee simple, as the case may be) in that land in favour of that person to the exclusion of all estates or interests limited to take effect after the determination of any such estate tail, but not of estates or interests limited to take effect in defeasance of such estate tail and which would be valid if limited to take effect in defeasance of a fee simple.

(2) Where, at the commencement of this Act, any person is entitled to an estate tail (legal or equitable), whether in possession, reversion or remainder, in any land, that person, save as hereinafter mentioned, shall be entitled to an estate in fee simple absolute in possession (or an equitable fee simple, as the case may be) in that land to the exclusion of all estates or interests limited to take effect after the determination of any such estate tail, but not of estates or interests limited to take effect in defeasance of such estate tail and which would be valid if limited to take effect in defeasance of a fee simple.

(3) In this section, the expression "estate tail" includes—

- (a) that estate in fee into which an estate tail is converted where the issue in tail is barred, but the persons claiming estates by way of remainder are not barred;
- (b) an estate in fee voidable or determinable by the entry of the issue in tail;

but does not include the estate of a tenant in tail after possibility of issue extinct, or any other unbarrable entail.

Overreaching of  
certain equitable  
interests and  
powers

7. (1) Subject to the provisions of sub-sections (2) and (3), a conveyance to a purchaser of a legal estate in land overreaches any equitable interest or power affecting that estate, whether or not he has notice thereof, if the conveyance is made—

- (a) under the powers conferred on the trustees upon the statutory trusts by Parts III and IV, or under any additional powers conferred by the settlement upon the statutory trusts, or by trustees for sale, and the statutory requirements respecting payment of capital money arising under the settlement upon the statutory trusts or of proceeds of sale arising under the trust for sale are complied with; or
- (b) by a mortgagee or personal representative in exercise of his paramount powers, and any capital money arising from the transaction is paid to the mortgagee or personal representative; or
- (c) under an order of the court and the equitable interest or power is bound by such order, and any capital money arising from the transaction is paid into, or in accordance with the order of, the court.

(2) The following equitable interests and powers are not overreached under the provisions contained or in the manner referred to in this section, but a purchaser of a legal estate takes subject thereto only if he has notice thereof, namely—

- (a) any equitable interest protected by a deposit of documents relating to the legal estate affected;

- (b) any equitable interest in the nature of an easement, liberty or privilege over or affecting land;
- (c) the benefit of any covenant or agreement affecting land which operates in equity only;
- (d) the benefit of any contract to convey or create a legal estate, including a contract conferring either expressly or by implication a valid option to purchase, a right of pre-emption or any other like right.

(3) Nothing in this section affects the rights of any owner of an equitable interest created by a deed registered under Part IV of the Land Registration Act, 1981 or Part III of the Companies Ordinance.

1981 No.  
Ch. 31. No. 1

8. (1) All equitable interests and powers in or over land are enforceable against the estate owner affected in the manner following (that is to say)—

Giving effect  
to equitable  
interests and  
powers

- (a) where the legal estate is vested in trustees upon the statutory trusts or in trustees for sale, they are bound to give effect to the equitable interests and powers in the manner provided by Parts III and IV;
- (b) where the legal estate is vested in neither trustees upon the statutory trusts nor trustees for sale, the estate owner is bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities, but this provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for the purposes of administration.

(2) Effect may be given by means of a legal mortgage to an agreement for a mortgage, or to a charge or lien (whether or not arising by operation of law) if the agreement, charge or lien ought to have priority over the statutory trusts or trusts for sale.

(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry or re-entry taking effect, or for any other reason a person becomes entitled to require a legal estate to be vested in him, then

and in any such case the estate owner whose estate is affected is bound to convey or create such legal estate as the case may require.

(4) If any question arises whether any and what legal estate ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Act.

(5) If the estate owners refuse or neglect for one month after demand to transfer or create any such legal estate, or if, by reason of their being out of the State or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating a legal estate in the manner provided by this Act.

(6) This section does not affect a purchaser of a legal estate taking free from an equitable interest or power.

Creation and  
disposition of  
certain  
interests

9. (1) Interests in land validly created or arising after the commencement of this Act, which are not capable of subsisting as legal estates, take effect as equitable interests, and interests in land (other than a fee tail) which could, before the commencement of this Act, have been created as legal interests, and capable of being created as equitable interests.

(2) All rights and interests in land may be disposed of, including—

(4) 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 or re-entry into or upon land whether immediate or future and whether vested or contingent;

(c) a possibility or reverter.

(3) All rights of entry or re-entry affecting a legal estate which are exercisable on condition broken or for any other reason, and all possibilities of reverter on the determination of a determinable fee simple, may, after the

commencement of this Act, be made exercisable or enjoyable by any person and the persons deriving title under him but subject to section 75.

10. (1) Where the purposes of a leasehold term created or limited at any time out of freehold land become satisfied either before or after the commencement of this Act (whether or not that term either by express declaration or by construction of law becomes attendant upon the freehold reversion), it merges in the reversion expectant thereon and ceases accordingly. Merger of satisfied terms

(2) Where the purposes of a leasehold term created or limited, at any time, out of leasehold land becomes satisfied after the commencement of this Act, that term merges in the reversion expectant thereon and ceases accordingly.

(3) Where the purposes are satisfied only as respects part of the land comprised in a leasehold term, this section has effect as if a separate term has been created in regard to that part of the land.

11. (1) Where title is shown to a legal estate in land it is not necessary to deduce title through an instrument relating only to interests or powers which will be overreached by the conveyancing of the estate; but nothing in this Act affects the liability of any person to disclose an equitable interest or power which will not be overreached or to deduce title through any instrument creating or affecting the same. Deduction of title

(2) A solicitor or barrister deducing title in accordance with this Act does not incur any liability on account of an omission to include therein an instrument which, under this section is not necessary or proper to be included, nor is any liability implied by reason of the inclusion of any such instrument.

12. (1) Every such order, declaration or conveyance as is hereinafter mentioned, namely— Operation of vesting orders and dispositions of legal estates

- (a) every vesting order made by any court or other competent authority;
- (b) every vesting declaration (express or implied) under any statutory power;
- (c) every conveyance by a person appointed for the purpose under an order of the court or

authorised under any statutory power to convey in the name or on behalf of an estate owner;

- (d) every conveyance made under any power reserved or conferred by this Act;

which is made or executed for the purpose of vesting, conveying or creating a legal estate, operates to convey or create the legal estate disposed of in like manner as if the same had been a conveyance executed by the owner of the legal estate to which the order, declaration, vesting instrument or conveyance relates.

(2) Where the order, declaration or conveyance is made in favour of a purchaser, the provisions of this Act relating to a conveyance of a legal estate to a purchaser apply thereto.

1981 No.

(3) The provisions of the Trustee Act 1981 relating to vesting orders and orders appointing a person to convey apply to all vesting orders authorised to be made by this Act.

Presumption as to full age

13. The persons expressed to be parties to any conveyance are, until the contrary is proved, presumed to be of full age at the date thereof.

Savings

14. (1) Nothing in this Part of this Act affects prejudicially—

- (a) the operation of any statute or the general law for the limitation of actions or proceedings relating to land or with reference to the acquisition of easements or rights over or in respect of land;
- (b) the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land;
- (c) the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

(2) All leases or tenancies at a rent for a leasehold term authorised to be granted by a mortgagor or mortgagee or by Part III or by any other statute (whether or not extended by any instrument) may be granted in the name and on behalf of the estate owner by the person empowered

to grant the same, whether being the estate owner or not, with the same effect and priority as if this Part of this Act had not been passed.

(3) Sub-section (2) does not (except as respects the usual qualified covenant for quiet enjoyment) authorise any person granting a lease in the name of an estate owner to impose any personal liability on him.

(4) Where a rent charge is held for a legal estate, the owner thereof may under the statutory power, or under any corresponding power, create a legal leasehold term for securing or compelling payment of the same; but in other cases terms created under any such power take effect as equitable interests only unless and until the estate owner of the land gives legal effect to the transaction.

### PART III

#### SETTLEMENTS

15. (1) Any deed, will, agreement for a settlement or other agreement, Act, or other instrument, or any number of instruments whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land is for the time being—

Settlements  
upon the  
statutory  
trusts

(a) held on trust for any persons by way of succession; or

(b) held on trust for any person—

(i) being a minor, for a legal estate; or

(ii) in fee simple or for any other interest contingently on the happening of any event; or

(c) subject to the payment of an annuity, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, for the life of any person or any less period, or subject to the payment of any capital money, annual or periodical sums for the portions, advancement, maintenance or otherwise for the benefit of any persons;

creates or is or, in the case of two or more such instruments, together create or are for the purposes of this Act a settlement upon the statutory trusts.

(2) Where a minor becomes beneficially entitled to any estate or interest in land under an intestacy or otherwise and there is no instrument under which the estate or interest of the minor arises or is acquired, a settlement upon the statutory trusts for the benefit of the minor arises notwithstanding the absence of any instrument within the meaning of sub-section (1).

(3) An estate or interest not disposed of by a settlement within sub-section (1) and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

(4) Where a settlement creates an entailed interest which is incapable of being barred or defeated, the reversion upon the cessor of the interest so created or settled is for the purposes of this Act an interest comprised in the subject of the settlement, and limited by the settlement.

(5) Notwithstanding paragraph (c) of sub-section (1), where, before the commencement of this Act, land has been conveyed to a purchaser for money or money's worth subject to any annuity or other liability mentioned in the said paragraph created prior to the conveyance to the purchaser (whether or not the land was expressed to be exonerated from, or the grantor agreed to indemnify the purchaser against, such prior annuity or other liability), the purchaser continues to hold such land for the estate or interest conveyed to him (subject to and with the benefit of any liabilities or indemnities as are expressed in the conveyance) and the land is not subject to the statutory trusts nor is any rent charge to secure the annuity one created by or under a settlement.

(6) This section does not apply to land held upon trust for sale.

**Conveyance  
to a minor**

16. (1) An instrument which, but for this Act, would have operated as a conveyance of a legal estate in land to a minor alone or to two or more persons jointly, both or all of whom are minors, for his or their own benefit, operates only as a declaration that such legal estate is held by the person who made the conveyance upon the statutory trusts for the benefit of the minor or minors.

(2) A devise or bequest of a legal estate in land to a minor alone or to two or more persons jointly, both or all of whom are minors, for his or their benefit operates only as a declaration that such legal estate is vested in the personal representatives of the testator, subject and without prejudice to the rights and powers of such personal representatives for purposes of administration, upon the statutory trusts for the benefit of the minor or minors.

17. (1) For the purposes of this Act and of any assurance of land to trustees after the passing of this Act or of any document relating to land so assured, land which is or is to be held upon "the statutory trusts" shall be held upon trust to receive the net rents and profits thereof after payment of rates, taxes, cost of insurance, repairs and other outgoings, and the trustees shall hold such land together with such net rent and profits upon trust to give effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.

Definition of  
"the statutory  
trusts"

(2) Trustees holding land upon the statutory trusts may exercise with respect to the same the powers conferred by the succeeding provisions of this part, and any monies arising from, or property acquired as a result of, the exercise of such powers shall be held upon the same trusts as formerly affected the land the subject of the settlement.

18. Subject to sub-sections (2) and (3) of section 7, a purchaser from trustees upon the statutory trusts or from trustees for sale takes the estate or interest which is the subject of the conveyance discharged from all limitations, powers and provisions of the settlement, and for all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of—

Overreaching

- (a) all legal estates and charges by deed by way of legal mortgage which have been conveyed or created in respect of the full amount secured and owing thereunder, provided that such part of the full amount as represents capital has been actually raised at the date of the conveyance to the purchaser; and
- (b) all leases and grants of easements or other rights or privileges which were before the date of the conveyance granted or imposed by

any person beneficially interested under the settlement or by the trustees thereof pursuant to any statutory or other power and which are at the date otherwise binding on the said person or the trustees.

Construction  
of certain  
settlements

19. (1) A settlement coming into operation after the commencement of this Act which contains a trust under which the trustees have alternative duties of retaining or selling lands is deemed to be a settlement upon the statutory trusts.

(2) Where a settlement coming into operation before or after the commencement of this Act contains a trust to sell the land, the following powers are exercisable by the trustees unless a contrary intention appears—

- (a) a power to postpone, for as long as they may think proper, the sale without being liable in any way for doing so; and
- (b) the powers (if any) conferred by the settlement or the power conferred by law upon trustees not being trustees upon the statutory trusts;

and a purchaser of a legal estate is not concerned with any directions respecting the postponement of the sale.

Consents to  
execution of  
trust for or  
power of sale

20. (1) If the consent of more than two persons would (but for this sub-section) be required to a sale pursuant to a trust for or power of sale, then, in favour of the trustees and a purchaser, the consent of any two such persons to the sale operates as the consent of all of them; and where there is no notice of the requirement of a consent in any document properly forming part of the title of the trustees, the title of a purchaser from those trustees is not impeachable on the ground that the consent was not obtained.

(2) It is not necessary, in favour of a purchaser, for the trustees to obtain the consent of any person whose consent is required to a sale pursuant to a trust for or power of sale, if that person is not *sui juris* or becomes subject to disability; but the trustees may, if that person is a minor, obtain the consent of his parent or testamentary or other guardian or, if he is a mentally ill person within the meaning of the Mental Health Act, 1975, of any committee, receiver or guardian appointed in respect of his

estate and, where they do so, the trustees are not guilty of any breach of trust by reason of their acting without the minor's or patient's consent.

(3) A recital in an instrument that any consents required by law to the making of an instrument by trustees have been obtained is conclusive in favour of the successors in title to a purchaser from the trustees, but nothing in this sub-section absolves any trustee from any liability he may incur by reason of acting without any such consent.

(4) In this section, a reference to a consent required to a sale is a reference to a consent required by a provision which is not void under section 41(b).

21. The trustees upon the statutory trusts or, unless a contrary intention appears in the instrument declaring the trust, of a trust for sale shall, in exercising any of their powers, so far as practicable, consult the persons of full age for the time being beneficially interested in possession of the land or the rents and profits thereof, and shall, so far as consistent with the interests as a whole of the present and future beneficiaries of the trust, give effect to the wishes of such persons or, in the case of a dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser is not concerned to see that the provisions of this section have been complied with.

Consultation with  
beneficiaries

22. A purchaser of a legal estate from trustees upon the statutory trusts or upon trust for sale is not concerned with the trusts affecting the trust land, the capital money representing the same or, in the case of a trust for sale, the proceeds of sale, whether or not the trusts are declared by an instrument forming part of the title of the trustees to the trust land or, as the case may be, the land which is the subject of the trust for sale.

Purchasers  
not concerned  
with trusts

23. (1) Subject to sub-section (2), in the case of a settlement made before or after the commencement of this Act, any of the powers of and incidental to leasing and management conferred on trustees upon the statutory trusts or upon trust for sale by this Act or otherwise may, until sale of the land and in their absolute discretion, be revocably delegated from time to time, by writing, signed by the trustees, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the trust land or to the net rents and profits of the

Delegation of  
trustees'  
powers

land during his life or for any less period; and in favour of a lessee such writing is, unless the contrary appears, sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing is, unless the contrary appears, sufficient evidence that the delegation has not been revoked.

Ch. 27.. No. 15.

(2) Subject to any order made under the Leases and Sales of Settled Estates Ordinance, in the case of a settlement made before the commencement of this Act (not being a settlement by way of trust for sale), the trustees are deemed to have validly and irrevocably delegated the powers of and incidental to leasing and management conferred upon them by this Act or otherwise to the person of full age (not being merely an annuitant) who at the commencement of this Act and at the time of exercise of the said powers was beneficially entitled in possession to the trust land during his life or for any less period, and the trustees are bound to confirm such delegation in writing at the request of the person in whose favour it is made.

(3) In the case of a settlement by way of trust for sale made before the commencement of this Act, the trustees have, at the commencement of this Act, the power of delegation conferred upon trustees for sale by sub-section (1).

(4) Any power so delegated or deemed to have been delegated shall be exercised only in the names and on behalf of the trustees.

(5) The trustees are not, in relation to the exercise or purported exercise of the power, liable for the acts or defaults of the person to whom the power is delegated, but that person is, in relation to the exercise of the power by him, in the position and has the duties and liabilities of a trustee.

1981 No.

(6) Nothing in this section prejudices the power of the Public Trustee under the Trustee Act, 1981, to delegate any of his functions.

Exercise of  
trustees'  
powers

24. (1) If the trustees upon the statutory trusts or upon trust for sale refuse to sell, or propose to exercise or refuse to exercise any of the powers conferred on them by this Part or Part IV, or if any requisite consent cannot be obtained, any person interested, whether in the capacity of trustee or beneficiary or otherwise, may (without prejudice to any other action available to him) apply to the court:

for a vesting or other order for giving effect to a transaction or directing the trustees to refrain from exercising their powers or for an order directing such course of action to be taken by such persons with respect to a transaction as the court may think fit, and the court may make any such order, or refuse to make an order (having regard in every case to the interests of all the beneficiaries), in its absolute discretion.

(2) Nothing in this section prejudices the provisions of section 12 of the Trustee Act, 1981.

1981 No.

25. (1) Where trustees upon the statutory trusts are mortgagees of property which becomes, by virtue of the law relating to limitation of actions or otherwise, discharged from the right of redemption, it shall be held by them upon the statutory trusts. Trusts of mortgaged property

(2) Where trustees otherwise than upon the statutory trusts are mortgagees of property which becomes, by virtue of the law relating to limitation or actions or otherwise, discharged from the right of redemption, it shall be held by them upon trust for sale.

(3) This section applies whether the right of redemption was discharged before or after the commencement of this Act, but has effect without prejudice to any dealings or arrangements made before that date.

26. (1) Where there is a trust of property other than land or a trust for sale of any property and capital money arising by virtue of the exercise by the trustees of their power of sale or any proceeds of sale are invested in land in accordance with any power, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits, after payment of rates, taxes, costs of insurance, repairs and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested otherwise than in land. Trusts of personal property

(2) This section applies to settlements (including wills) and trusts coming into operation after the commencement of this Act.

Existing  
settled land

27. Where any land (other than land held upon trust for sale) was, immediately before the commencement of this Act, limited to or in trust for any persons by way of succession or vested in a minor or trustees for a minor, subject to section 8 the same is, from the commencement of this Act, held by the trustees in whom the land is at that time vested, or, if none, by the Public Trustee or trustees or other persons specified in section 28, on trust to give effect to the rights of the persons to or in trust for whom the land is limited.

Vesting  
settled land  
in trustees

28. Where land (other than land held upon trust for sale) is limited to or in trust for any persons by way of succession or vested in a minor or trustees for a minor within the meaning of section 27 and the legal estate therein the subject of the settlement is not vested or not entirely vested in trustees at the commencement of this Act, the legal estate the subject of the settlement is hereby vested in the persons (if any) who were, immediately before such time, trustees of the settlement for the purposes of the Leases and Sales of Settled Estates Ordinance or section 77 of the Conveyancing and Law of Property Ordinance (as the case may be), but subject to the provisions of section 16:

Ch. 27. No. 15.

Ch. 27. No. 12

Provided that where there are no such trustees the legal estate in the trust land vests in the Public Trustee pending an appointment by the court pursuant to any such power of appointing trustees conferred by law.

Trustees for  
the purposes  
of this Act

29. (1) Any instrument coming into effect after the commencement of this Act, creating or being for the purposes of this Act a settlement upon the statutory trusts, operates, subject to section 38, to vest the land in the persons and upon the trusts specified in this section.

(2) The land vests in—

- (a) the persons appointed by the instrument as trustees of the land; or, if there are no such persons, then
- (b) the persons, if any, appointed by the instrument as trustees, whether or not of the settlement or for the purposes of any particular statute; or, if there are no such persons, then
- (c) the persons, if any, upon whom power of sale of the land or power of consent to or approval

of the exercise of the power of sale is by the instrument conferred; or, if there are no such persons, then

- (d) the persons, if any, who are for the time being under the instrument trustees with power of, or upon trust for, sale of any other land comprised therein and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale; or, if there are no such persons, then
- (e) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not; or, if there are no such persons, then
- (f) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who, at the date of such deed, were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the land in equity for the whole estate the subject of the settlement; or, if there are no such persons, then
- (g) the Public Trustee.

(3) Nothing in this Act operates to prevent the appointment as trustee of the settlement of one or more of the persons of full age for the time being beneficially interested in the rents and profits of the land.

(4) Where a settlement is created by will or arises by virtue of an intestacy and, apart from this sub-section, there would be no trustees, then the personal representatives of the deceased are, until other trustees are appointed, the trustees of the trust land, but where there is a sole personal representative, not being a trust corporation, he shall appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the Trustee Act, 1981, relating to the appointment of trustees and the vesting of trust property, apply accordingly. 1981 No.

(5) Pending the grant of probate or letters of administration the trust land vests in the Administrator General in accordance with the provisions of the Succession Act, 1981.

1981 No.

Referential settlements

30. (1) Where a settlement upon the statutory trusts is made by reference (with or without variation) to the limitations, powers and provisions of any other settlement, the trustees for the time being of the settled property are, in the absence of an express appointment of trustees of the settlement made by reference, the trustees of the settlement made by reference, and the land the subject of the settlement made by reference vests in them accordingly.

(2) This section applies to all settlements declared by section 15 to be settlements upon the statutory trusts, but has effect without prejudice to any appointment made by the court before the commencement of this Act of trustees of a settlement made by reference.

General powers of trustees upon the statutory trusts

31. Trustees upon the statutory trusts may sell, exchange, partition, lease, mortgage or otherwise convey the trust land or any part thereof or any interest therein or grant options to purchase the trust land or any part thereof with all the powers for these purposes of an absolute owner except in so far as such powers are restricted by this Part.

Conveyances to be for best consideration

32. (1) Every conveyance of trust land shall be made for the best consideration that can reasonably be obtained.

(2) Nothing in sub-section (1) operates to prevent the trustees from making a conveyance of the trust land for less than the best consideration or for no consideration provided that the conveyance is for public purposes and is also, by virtue of interests reserved to the beneficiaries or otherwise, in the interest of those beneficially entitled under the settlement.

Leasing powers

33. (1) The trustees upon the statutory trusts may lease the trust land for any purpose permitted by law, whether involving waste or not, for any term not exceeding thirty-five years save that where the trust land is held by the trustees for a term exceeding thirty-five years the trustees may make, on such terms and conditions as they may think proper, an underlease of the trust land or

any part thereof with a nominal reversion where such underlease amounts in substance to a sale and the trustees have satisfied themselves that it is the most appropriate method of disposing of the land.

(2) A lease for a term not exceeding thirty-five years containing an option to renew for a specified term is not a lease authorised by this section if the term for which it may be renewed and the term for which it was originally granted, added together, exceed a period of thirty-five years.

(3) Nothing in this section affects the validity of subsisting leases granted before the commencement of this Act or of any lease granted under section 35.

34. (1) Every grant of a lease in order to be a valid exercise of the power conferred by section 33 shall— Regulations  
concerning  
leases

(a) be by deed and be made to take effect in possession not later than twelve months after its date or in reversion after an existing lease having not more than seven years to run at the date of the new lease;

(b) reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the trust land, and generally to the circumstances of the case.

(2) Where such lease is granted for a period exceeding seven years, it shall contain a proviso that the rent payable thereunder for the second and subsequent periods of seven years from the date thereof (or fractional parts of such periods) shall be the higher of the rent payable for the first period of seven years and such sum shall be assessed as a reasonable rent (having regard to the rent originally payable and any subsequent change in the value of money) for the second and subsequent periods as aforesaid, such assessment to be made either—

(a) by agreement between the trustees (or any person to whom the power of leasing has been delegated) and the lessee made in writing at least six months before the expiry of the first period of seven years from the date of the lease; or, failing any such written agreement;

(b) by two arbitrators, one to be appointed by each party in accordance with, and subject to the provisions of, the Arbitration Ordinance.

Ch. 7. No. 1

Provided that nothing in this section operates to prevent the inclusion in any lease of a proviso for rent revision where there is no statutory obligation to include such a proviso or to prevent the inclusion of a rent revision clause in a lease granted for a period exceeding seven years to take effect more frequently than the intervals specified in this section.

(3) Every lease shall contain an agreement 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.

(4) A duplicate of every lease shall be executed by the lessee and delivered to the trustees, of which execution and delivery the execution of the lease by the trustees shall be sufficient evidence.

(5) A statement, contained in a lease or in an indorsement thereon, signed by the trustees, respecting any matter of fact or of calculation under this Act in relation to the lease shall, in favour of the lessee and those claiming under him, be sufficient evidence of the matter stated.

(6) A fine received on a grant of a lease under any power conferred by this Act is capital money and shall be applied by the trustees accordingly.

Leases for  
special objects

35. The leasing power of the trustees extends to the making of—

- (a) a lease for giving effect (in such manner and so far as the law permits) to an agreement or covenant for renewal, performance whereof could be enforced against the owner for the time being of the trust land; and
- (b) a lease for reinstating or confirming a previous lease being void or voidable, but so that every lease, as and when reinstated or confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act or otherwise.

36. (1) Any money raised under a mortgage referred <sup>Mortgages</sup> to in section 31 which is for one or more of the following purposes, namely—

- (a) raising the purchase money or any part thereof with which trust land is acquired or discharging an incumbrance on the trust land or part thereof;
- (b) providing money which is required to be raised (for the purpose of paying portions or otherwise) under the terms of the settlement;
- (c) paying for any repair of or improvement to the trust land or any buildings thereon;
- (d) equality of exchange;
- (e) where the trust land is held for a leasehold term or otherwise subject to any annual rent or charge, buying out such rent or charge and the superior interests or any of them;
- (f) payment of the costs of any transaction authorised by this section or costs directed to be paid under section 45;

is capital money and shall be applied for the purpose for which it was raised.

(2) Where the money is raised for any other purpose the money arising is to be treated as if it were capital money arising from a sale of the trust land.

37. (1) Capital money or proceeds of sale arising out of the exercise by trustees of any power vested in them or out of the execution of a trust for sale shall, when received and subject to any power to advance trust funds to any beneficiary entitled, be invested or otherwise applied wholly in one, or partly in one and partly in the other, of the following:—

- (a) in investment in the manner authorised by the law relating to the investment of trust funds, but subject to any enlargement or restriction of the trustees' powers of investment contained in the instrument creating the trust;
- (b) in the fulfilment of any of the purposes contained in section 36(1) for which trust land may be mortgaged.

(2) Capital money representing the proceeds of sale or other disposition of land held for an entailed interest or the securities in which an investment of any such capital money is made shall be held for and go to the same persons successively, in the same manner and for the same estates and interests and on the same trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

Number of trustees

38. (1) In the case of trusts of land held upon the statutory trusts or upon trust for sale made or coming into operation by virtue of or after the commencement of this Act:—

(a) the number of trustees thereof shall not exceed four, and where more than four persons are named as such trustees, the four first named, who are able and willing to act shall alone be the trustees and by virtue of section 28 or section 29 the legal estate the subject of the settlement vests in such persons as joint tenants, accordingly;

(b) the number of the trustees shall not be increased beyond four.

(2) This section does not apply:—

(a) in the case of land vested in trustees for charitable, ecclesiastical or public purposes; or

(b) where the net proceeds of the sale of the land are held for like purposes.

Payment of capital money

39. (1) Notwithstanding anything in this Act (except section 50) or in a trust instrument, capital money arising under this Act or money arising on the execution of a trust for sale shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees for the time being of the land and a conveyance to a purchaser of the land takes effect under this Act only if the capital or other money arising is paid accordingly or into court and a receipt evidencing such payment is continued in, endorsed on or annexed to the deed or other document (in the case of unregistered land) or instrument of transfer (in the case of registered land) giving effect to the transaction from which the capital money arises.

(2) The restrictions imposed by this section do not affect:—

- (a) the right of a personal representative in whom the trust land may be vested to convey or deal with the land for the purposes of administration;
- (b) the right of a person of full age who has become absolutely entitled to the trust land, free from all limitations, powers and charges taking effect under the trust instrument, to require the land to be conveyed to him.

40. The trustees of the trust property may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them. Trustees' expenses

41. If, in any settlement, will, assurance or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act, a provision is inserted:— Void provisions

- (a) purporting or attempting, by way of direction, declaration or otherwise, to forbid the trustees of land held upon the statutory trusts or upon trust for sale to exercise any power under this Part or to execute the trust for sale; or
- (b) attempting or tending, or intended by the imposition of any condition (other than the obtaining of the consent to a disposition by any person interested under a settlement or trust for sale, provided his beneficial interest is not affected in consequence of giving such consent) or by forfeiture, or in any other manner whatever, to prohibit or prevent them from exercising, or to induce them to abstain from exercising any power under this Part, or whereby, if such power were exercised, the existing interest in the trust property of any beneficiary would be unduly prejudiced in consequence thereof, or to induce the trustee to abstain from exercising a trust for sale;

that provision, as far as it purports, attempts, tends or is intended to have, or would or might have the operation aforesaid, is void and the trusts take effect as far as possible as if the void provision were omitted from the settlement, will, assurance or other instrument.

## Other powers

42. (1) Nothing in this Act takes away, abridges or affects prejudicially any power (not being a power created by a provision in conflict with a provision of this Part) for the time being subsisting under a settlement, or by statute or otherwise, and the powers given by this Part are cumulative.

(2) In case of conflict between the provisions of a settlement and the provisions of this Part, relative to any matter in respect whereof the trustees exercise or contract or intend to exercise any power under this Part, the provisions of this Part prevail; and, notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the trust land thereby conferred on the tenant for life or other persons exercisable for any purpose, whether or not provided for in this Part, is, after the commencement of this Act, exercisable by the trustees as if it were an additional power conferred on the trustees within section 43 and not otherwise.

(3) If a question arises or a doubt is entertained respecting any matter within this section, the trustees of the land or any other person interested under the settlement may apply to the court for its decision thereon, and the court may make such order respecting the matter as the court thinks fit.

Additional  
or larger  
powers

43. (1) Nothing in this Act precludes a settler from conferring on the trustees of the land any powers additional to or larger than those conferred by this Act.

(2) Any additional or larger powers so conferred, as far as may be, notwithstanding anything in this Act, operate and are exerciseable in the like manner, and with all the like incidents, effects and consequences, as if they were conferred by this Part and, if relating to the trust land, as if they were conferred by this Part on the trustees.

Protection of  
purchasers

44. On a sale, exchange, lease, mortgage or other disposition, a purchaser dealing in good faith with the trustees of the land shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration or rent, as the case may require, that could reasonably be obtained.

45. Where the court directs that any costs, charges or expenses be paid out of property subject to the statutory trusts or held on trust for sale the same shall, subject and according to the directions of the court, be raised and paid:—

Payment  
of costs

- (a) out of any money forming part of the capital of the trust; or, failing that,
- (b) out of the proceeds of any disposition of securities representing such money; or, failing that,
- (c) out of accumulations of income of trust land, money or securities; or, failing that,
- (d) by the proceeds of any disposition of the trust land authorised by this Part.

46. (1) Where a beneficiary in possession of trust land is impeachable for waste in respect of timber and there is on the trust land any timber ripe and fit for cutting, such beneficiary may cut and sell that timber or any part thereof.

Timber

(2) Three-fourth parts of the net proceeds of the sale shall be appropriated to the capital of the trust (as if it were capital money to be dealt with in accordance with section 37) and the other fourth part shall be treated as income thereof.

47. (1) If any person of full age becomes absolutely entitled to the trust land (whether beneficially or as personal representative or as trustee or otherwise) free from all limitations, powers, charges and annuities (whether or not charged on the land) taking effect under the settlement, the trustees of the land shall at his request convey the land to him, and if more persons than one become absolutely entitled as aforesaid, the land shall be conveyed to them as joint tenants.

Termination of  
settlements  
and trusts

(2) Where land is, either before or after the commencement of this Act, held by trustees upon the statutory trusts or on trust for sale, such trust is, so far as regards the safety and protection of any purchaser thereunder, deemed to be subsisting until the land has been conveyed to or under the direction of the person of full age absolutely entitled to the trust land or the proceeds of sale.

## PART IV

## CO-OWNERSHIP

Partition of  
land

48. (1) Any person in whom, together with another person or other persons, land is vested in undivided shares or jointly may apply to the Land Commission for an order of—

- (a) partition of the land, or any part thereof, between the said persons; or
- (b) sale of the land, or any part thereof, in lieu of partition and division of the proceeds of sale amongst the said persons, in accordance with sub-section (3).

(2) The Land Commission may direct a sale of land in an action for partition and for the purposes of this section:—

- (a) an action for partition includes an action for sale and distribution of the proceeds;
- (b) in an action for partition it is sufficient to claim a sale and distribution of the proceeds and it is not necessary to claim a partition.

(3) The Land Commission may, if it thinks fit, direct a sale in lieu of partition—

- (a) on the request of any of the persons interested in the land, and notwithstanding the dissent or disability of any other of them, where it appears to the Land Commission that by reason of—
  - (i) the nature of the land to which the action relates; or
  - (ii) the number of persons interested or appearing to be interested therein; or
  - (iii) the absence or disability of some of those persons; or
  - (iv) any other circumstance, a sale of the land and a distribution of the proceeds would be more beneficial for the persons interested than a division between or among them,

- (b) on the request of any person or persons interested, individually or collectively to the extent of one moiety or upwards, in the land to which the action relates, unless the Land Commission sees good reason to the contrary; or
- (c) on the request of any person interested in the land to which the action relates, unless the other persons so interested, or some of them, undertake to purchase the share of the person requesting the sale, in which case the Land Commission may order a valuation of that share in such manner as it thinks fit.

and may give all necessary or proper consequential directions.

(4) On any sale under this section, the Land Commission may, if it thinks fit, allow any of the persons interested in the land to bid at the sale, on such terms as to non-payment of deposit, or as to setting-off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters as to the Land Commission seem reasonable.

(5) Where the Land Commission directs a sale under this section, the Registrar of the Land Commission shall convey the land to the purchaser thereof, and every such conveyance has the same force and effect as if it had been executed by the several tenants of the land, being parties to the action.

(6) Rules may be made under section 10 of the Land Registration Act, 1981, governing the practice and procedure of the Land Commission concerning matters arising under this section and, without prejudice to the generality of the foregoing provision, these rules may govern—

- (a) the parties entitled to appear in or be heard in proceedings under this section;
- (b) the enquiries as to the nature of the land, and the persons interested therein, and other matters, which may be directed by the Land Commission;
- (c) service of notice of proceedings under this section and of any order made thereupon, and dispensation of such service;

- (d) the persons bound by orders made this section and the extent to which, and the circumstances under which, they are so bound;
- (e) the distribution of the proceeds of a sale directed under this section.

(7) Where two or more sales are directed under this section in relation to the same land and any person who has been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

1975 No. 30

(8) Any application, request or undertaking which may be made under this section may be made on behalf of a mentally ill person within the meaning of the Mental Health Act, 1975 by any committee, receiver or guardian appointed in respect of his estate, and, on behalf of a person subject to any other disability, by the person entitled to administer his estate but the Land Commission is not bound to act on or comply with any such application, request or undertaking unless it appears that this will be for the benefit of the person on whose behalf the application, request or undertaking is made.

(9) Subject to any rules which may be made, the Land Commission may make such order as it thinks just respecting costs incurred in relation to any proceedings under this section.

(10) This section takes effects subject to the provisions of—

- (a) town and country planning legislation;
- (b) the Condominiums Act, 1981.

1981 No.

Dispositions  
on trust for  
co-owners

49. (1) Where a legal estate is conveyed to trustees on trust for any persons whether in undivided shares or jointly, the conveyance (notwithstanding anything to the

contrary therein) operates to convey the legal estate to the trustees as joint tenants upon the following trusts, namely—

- (a) if the conveyance declares that the legal estate is vested in the trustees upon trust for sale then, subject to the foregoing, the legal estate is held accordingly and upon such trusts, and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land;
- (b) if the instrument contains no such declaration then, subject to the foregoing, the legal estate is held by the trustees upon the statutory trusts.

(2) A charge by deed by way of legal mortgage in favour of more than one person operates to vest the ownership of the charge jointly in the chargees named therein, or such four of them being *sui juris* as are first named therein, as joint tenants and the money advanced is deemed to belong to them on joint account, but without prejudice to the beneficial interests in the money advanced and interest.

(3) A devise, bequest or testamentary appointment, coming into operation after the commencement of this Act, of land to or in trust for two or more persons, operates as a devise, bequest or appointment of the land to the trustees (if any) thereof appointed by the will or, if there are no trustees, then to the personal representatives of the testator, and in each case (but without prejudice to the rights and powers of the personal representatives for purposes of administration) upon the same trusts and in the same manner as if the will had been a conveyance mentioned in subsection (1) and such trustees or personal representatives had been the trustees thereunder.

(4) For the purposes of subsection (3), where an equitable interest in land devolves, after the commencement of this Act, by virtue of an intestacy upon a beneficiary and is held in common with another, such beneficiary is in the same position as if he had taken under a devise, bequest or testamentary appointment within subsection (3).

## Joint tenancies

50. (1) A body corporate is capable of acquiring and holding any land or other property in joint tenancy in the same manner as if it were an individual; and where a body corporate and an individual or two or more bodies corporate become entitled to any such property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy, they are entitled to the property as joint tenants.

(2) Where a body corporate is joint tenant of any property then on its dissolution the property devolves on the other joint tenant.

(3) Where land is vested in joint tenants beneficially, or is held in trust for them, and any tenant desires to sever the joint tenancy in equity, he may give to the other joint tenants notice in writing of such desire or do such other acts or things as are effectual to sever the tenancy in equity and thereupon the equitable interests in the land, or in the net proceeds of sale thereof, and the net rents and profits until sale are held upon the statutory trusts in order to give effect to the beneficial interests as if there had been an actual severance.

1981 No.

(4) For the avoidance of doubt, it is hereby declared that notwithstanding section 13(1) of the Land Registration Act, 1981, a notice in writing given under this section may be registered as a deed under Part IV of the said Act, in accordance with the proviso to section 51(1) of this Act.

1981 No.

(5) Nothing in this section prevents a beneficial joint tenant in equity of registered land from giving effect to a notice of severance by lodging a caveat under the Land Registration Act, 1981.

## Protection of purchasers

51. (1) The survivor of two or more joint tenants is, in favour of a purchaser of the legal estate acting in good faith, notwithstanding section 39, able to deal with the legal estate free from any trust if he conveys as beneficial owner or the conveyance includes a statement that he is solely and beneficially interested:

Provided that the foregoing provisions of this subsection do not apply if, at any time before the date of the conveyance by the survivor:

1981 No.

(a) in the case of unregistered land, an instrument evidencing a severance has been registered under Part IV of the Land Registration Act, 1981; or

- (b) in the case of registered land, a caveat is lodged under Part XIX of the said Act to protect a person who claims there has been a severance; or
- (c) an adjudication in bankruptcy made against any of the joint tenants, or a petition for such an order, has been registered under any law, being an adjudication of which the purchaser has notice by virtue of the registration, on the date of the conveyance by the survivor.

(2) The foregoing provisions of this section apply with the necessary modifications in relation to a conveyance by the personal representatives of the survivor of joint tenants as they apply in relation to a conveyance by such survivor.

(3) A person to whom the legal estate has been conveyed as sole beneficial owner is, in favour of a purchaser of the legal estate in good faith, notwithstanding section 39, able to deal with the legal estate free from any trust if he conveys as beneficial owner or the conveyance contains a statement that he is solely and beneficially interested:

Provided that the foregoing provisions do not apply if, at any time before the conveyance to the purchaser:

- (a) in the case of unregistered land, an instrument declaring that the legal estate is held on trust has been registered under Part IV of the Land Registration Act, 1981;
- (b) in the case of registered land, a caveat has been lodged under Part XIX of the said Act to protect a person who claims under any such trust.

52. (1) Where, under the trusts affecting the legal estate in land, either the net rents and profits thereof until sale are, or the equitable interest in the land is, absolutely vested in persons of full age, whether in undivided shares or jointly (and whether or not the shares or interests are subject to a derivative trust), the trustees may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the land or the net rents and profits thereof until sale:—

Partition of  
land subject  
to trusts

- (a) partition the land or any part thereof; and

- (b) provide (by way of mortgage or otherwise) for payment of any equality money;

and, upon such partition being arranged, the trustees shall give effect thereto by conveying the land so partitioned in severalty (subject or not to any charge by way of legal mortgage created for raising equality money) to persons of full age and either absolutely or on the trusts formerly affecting the whole or partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a purchaser is not concerned to see or inquire whether any such consent as aforesaid has been given:

Provided that:

- (i) if a share or interest belongs to a mentally ill person within the meaning of the Mental Health Act, 1975, the written consent of his committee, receiver or guardian is sufficient to protect the trustees;
- (ii) if a share or interest is affected by an incumbrance the trustees may either give effect thereto or provide for the discharge thereof by the property allotted in respect of such share, as they may consider expedient.

1975 No. 30

(2) This section takes effect subject to the provisions of:—

- (a) town and country planning legislation;
- (b) the Condominiums Act, 1981.

1981 No.

Party structures

53. (1) Where, under a disposition or other arrangement, a wall or other structure is or is expressed to be made a party wall or structure, it is and remains severed as between the respective owners so that each owner is the absolute owner of half the structure, and the owner of each part has a right to support and of user over the rest of the structure, subject to the obligation to maintain and keep in repair his part of the structure for the benefit of the whole.

(2) Any person interested may, in case of dispute, apply to the court for an order declaring the rights and interests under this section of the persons interested in any such party structure, and the court may make such order as it thinks fit.

1981 No.

(3) Nothing in this section prejudices the operation of the Condominiums Act, 1981.

## PART V

## POWERS GENERALLY

54. 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. <sup>Release of power</sup>

55. (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, cannot exercise or join in the exercise of the power. <sup>Disclaimer of power</sup>

(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.

56. An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, is not (save as hereinafter provided) void on the ground of fraud on the power as against a purchaser in good faith. <sup>Protection of certain purchasers</sup>

Provided that, if the interest appointed exceeds, in amount or value, the interest in the property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances, the protection afforded by this section to a purchaser does not extend to the excess.

(2) In this section, "a purchaser in good faith" means a person dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

(3) Persons deriving title under any purchaser entitled to the benefit of the section are entitled to the like benefit.

(4) This section applies only to dealings effected after the commencement of this Act.

Validation  
of certain  
appointments

57. (1) No appointment made in exercise of any power to appoint any property among two or more objects is invalid on the ground that—

- (a) an insubstantial, illusory or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or
- (b) any object of the power is thereby altogether excluded;

but every such appointment is valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

Execution  
of non-  
testamentary  
power

58. (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 1st October, 1864.

Application  
of Part V

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

## PART VI

## EQUITABLE INTERESTS

60. Where, by any instrument coming into operation after the commencement of this Act, an interest in any property is expressed to be given to the heir or heirs or to any particular heir or any class of heirs or issue of any person in words which, under the rule of the law known as the rule in *Shelley's Case*, would have operated—

Abolition  
of the rule  
in *Shelley's*  
*Case*

- (a) but for this section, to give to that person an interest in fee simple; or
- (b) but for this section and section 6, to give to that person an entailed interest;

those words operate in equity as words of purchase and not of limitation and shall be construed and have effect accordingly.

(2) In any such instrument—

- (a) the words “heir of the body” or “heirs of the body” of any person shall be construed to mean the issue of that person;
- (b) the words “heir male of the body” or “heirs male of the body” of any person shall be construed to mean the male issue of that person;
- (c) the words “heir female of the body” or “heirs female of the body” of any person shall be construed to mean the female issue of that person.

(3) In subsection (2), the “issue” of any person means—

- (a) the children of that person; and
- (b) the heirs of any deceased child of that person.

(4) Subsection (2) applies only if and so far as a contrary or other intention does not appear in the instrument, and has effect subject to the terms of the instrument and to the provisions therein contained.

(5) All persons, if more than one, taking under this section, take as tenants in common.

61. (1) Where a person is entitled to any interest in any property subject to a condition precedent or subsequent (whether or not giving rise to an executory limitation)

References  
to failing  
of issue

importing a default or failure of issue of any person, whether within or at any specified time or not, in his life-time, at the time of his death or thereafter (including an indefinite failure of issue), the provisions of this section apply to that condition.

(2) Unless a contrary intention appears from the instrument imposing the condition, the words of the condition shall be construed to import a default or failure of the issue of the said person only in the lifetime of that person.

(3) If the condition gives rise to an executory limitation over, a right of entry or any right equivalent thereto, a possibility of reverter or a possibility of a resulting trust on default or failure of any of the said person's issue, whether or not—

(a) the construction is governed by subsection (2); and

(b) the default or failure is to be within any specified period of time;

if and as soon as there is living any issue, who has attained the age of eighteen or married, to whose default or failure the condition relates, a default or failure ceases to be possible and the limitation over, right or possibility, as the case may be, ceases to exist.

(4) Subsection (2) applies to wills coming into operation before or after the commencement of this Act, but does not apply to any condition contained in any other instrument coming into operation before such commencement.

(5) Subsection (3), in relation to instruments coming into operation before the commencement of this Act, applies—

(a) only to executory limitations;

(b) as if for the words "eighteen or married" there were substituted the word "twenty-one"; and

(c) only where the executory limitation is in defeasance of an estate or interest in land.

Equitable  
waste

62. An equitable interest for life without impeachment of waste does not confer upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears from the instrument creating the equitable interest.

## PART VII

## PERPETUITIES

63. (1) Subject to subsection (2) and section 168(3), where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, is of a duration equal to such number of years not exceeding eighty years as is specified in that behalf in the instrument. Power to specify period

(2) Subsection (1) does not have effect where the disposition is made in exercise of a special power of appointment, but where a period is specified under that subsection in the instrument creating such a power the period applies in relation to the power itself.

64. (1) Where, in any proceedings, there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then— Presumption and evidence as to future parenthood

(a) subject to paragraph (b), it shall be presumed that a male can have a child at the age of fourteen years or over, but not under that age, and that a female can have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years; but

(b) in the case of a living person evidence may be given to show that he or she will or will not be able to have a child at the time in question.

(2) Where any such question is decided by treating a person as unable to have a child at a particular time, and he or she does so, the court may, on an application made to it, make such order as it thinks fit for placing the persons interested in the property comprised in the disposition, so far as may be just, in the position they would have held if the question had not been so decided.

(3) Subject to subsection (2), where any such question is decided in relation to a disposition by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(4) In the foregoing provisions of this section, references to having a child are references to begetting or giving birth to a child, but those provisions [except subsection (1)(b)] apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.

(5) Subsections (1) to (4) apply to any question as to the right of beneficiaries to put an end to accumulations of income under any disposition as they apply to any question arising on the rule against perpetuities.

Uncertainty  
as to  
remoteness

65. (1) Where, apart from the provisions of this section and section 66 and 67, a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition is not, until such time (if any) as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, subject to the rule against perpetuities; and its becoming so established does not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where, apart from the provisions mentioned in subsection (1), a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition is not, until such time (if any) as it becomes established that the power will not be exercisable within the perpetuity period, subject to the rule against perpetuities.

(3) Where, apart from the provisions mentioned in subsection (1), a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time, the disposition is not, as regards any exercise of the right within the perpetuity period, subject to the rule against perpetuities and, subject to the said provision, is void for remoteness only if, and so far as, the right is not fully exercised within that period.

(4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 63 or section 72, it shall be determined as follows—

- (a) where any persons falling within sub-section (5) are individuals in being and (except in the case of a spouse within subsection (5)(f)) ascertainable at the commencement of the perpetuity period, the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description of persons falling within paragraph (b) or paragraph (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor;
  - (b) where there are no lives under paragraph (a), the period is twenty-one years.
- (5) The said persons are as follows—
- (a) the person by whom the disposition was made;
  - (b) a person to whom or in whose favour the disposition was made, that is to say—
    - (i) in the case of a disposition to a class of persons, any member or potential member of the class;
    - (ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;
    - (iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class;
    - (iv) in the case of a special power of appointment, exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;

- (v) in the case of any power, option or other right, the person on whom the right is conferred.
- (c) a person having a child or grandchild within subparagraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those subparagraphs, or any of whose grandchildren, if subsequently born, would by virtue of his or her birth take a vested interest under the disposition;
- (d) any person on the failure or determination of whose prior interest the disposition is limited, either mediately or immediately, to take effect;
- (e) a person having a child or grandchild within paragraph (d);
- (f) a spouse of any person within paragraphs (b)(i) to (iv) and (c).

Age  
reduction  
and class  
exclusion

66. (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—

- (a) that the disposition would, apart from this section, be void for remoteness; but
- (b) that it would not be so void if the specified age had been twenty-one years;

the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.

(2) Where, in the case of any disposition, different ages exceeding twenty-one years are specified in relation to different persons—

- (a) the reference in subsection (1)(b) to the specified age shall be construed as a reference to all the specified ages; and
- (b) that subsection operates to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons, being potential members of a class of unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being void for remoteness, those persons are thenceforth for all the purposes of the disposition excluded from the class, and the said provisions thereupon have effect accordingly.

(4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class of unborn persons who at birth would become members or potential members of the class, would cause the disposition to be treated as void for remoteness, those persons are, unless their exclusion would exhaust the class, thenceforth for all the purposes of the disposition excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 65 applies, the operation of this section does not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

67. Where a disposition is limited by reference to the time of death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, and that time has not arrived at the end of the perpetuity period, the disposition shall be treated for all purposes, where to do so would save it from being void for remoteness, as if it had instead been limited by reference to the time immediately before the end of that period.

Surviving  
spouse  
condition

68. A disposition is not void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest is not prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

Saving and  
acceleration  
of expectant  
interests

Powers of  
appointment

69. (1) Subject to subsection (2), for the purposes of the rule against perpetuities, a power of appointment is a special power unless—

- (a) in the instrument creating the power it is expressed to be exercisable by one person only; and
- (b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating to the mode of exercise of the power.

(2) For the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness, the power is a general power where it would have fallen to be so treated if exercisable by deed.

Administrative  
powers of  
trustees

70. (1) The rule against perpetuities does not invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration (as opposed to the distribution) of any property, and does not prevent the payment to trustees or other persons of reasonable remuneration for their services.

(2) Subsection (1) applies for the purpose of enabling a power to be exercised at any time after the commencement of this Act notwithstanding that the power itself is conferred by an instrument which took effect before that commencement.

Other  
restrictions

71. (1) It is hereby declared that the rule against perpetuities does not apply, and never applied, to—

- (a) any power to distrain on or to take possession of land or the income thereof given by way of indemnity against rent, whether charged upon or payable in respect of any part of that land or not; or
- (b) any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may arise or become payable only on breach of a condition or stipulation; or

- (c) any power, whether exercisable on breach or a condition or stipulation or not, to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or
- (d) any grant, exemption or reservation of any right of entry on, or user of, the surface of land or of any easements, rights or privileges over or under land for the purposes of—
  - (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away and disposing of mines and minerals;
  - (ii) inspecting, grubbing up, felling and carrying away timber and other trees, and the tops thereof;
  - (iii) executing repairs, alterations or additions to any adjoining land or the buildings and erections thereon;
  - (iv) constructing, laying down, altering, repairing, renewing, cleansing and maintaining sewers, watercourses, cess-pools, gutters, drains, water-pipes, electric wires or cables or other like works.

(2) Sub-section (1) applies to instruments coming into operation at any time before or after the commencement of this Act.

72. (1) The rule against perpetuities does not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on any leasehold term, if—

- (a) the option is exercisable only by the lessee or his successors in title; and
- (b) it ceases to be exercisable at or before the expiration of one year following the determination of the term of years.

(2) Subsection (1) applies in relation to an agreement for a leasehold term, as it applies in relation to a leasehold term, and “lessee” shall be construed accordingly.

(3) In the case of a disposition consisting of the conferring of an option to acquire for valuable consideration

any interest in land [other than such a disposition as is mentioned in sub-section (1)], the perpetuity period under the rule against perpetuities is twenty-one years, and section 63 does not apply.

Contractual  
and other  
rights

73. (1) Where a contract or other disposition *inter vivos* would fall to be treated as void for remoteness if the rights and duties thereunder were capable of transmission to persons other than the original parties and had been so transmitted, it is void as between the person by whom it was made and the person to whom or in whose favour it was made or any successor of his, and no remedy lies in contract or otherwise for giving effect to it or making restitution for its lack of effect.

(2) Subsection (1) applies only to a contract or other disposition creating an interest in or right over property.

Rights for  
enforcement of  
rent charges

74. Notwithstanding section 75, the rule against perpetuities does not apply to any powers or remedies for recovering or compelling the payment of an annual sum to which section 154 applies, or otherwise becoming exercisable or enforceable on the breach of any condition or other requirement relating to that sum.

Rights of  
entry and  
other rights

75. (1) Subject to the succeeding provisions of this section, the following rights are not exercisable after the end of the perpetuity period—

- (a) a right of entry or re-entry in respect of a fee simple exercisable for condition broken or for any other reason; or
- (b) in relation to property other than land, any right equivalent to a right mentioned in paragraph (a).

(2) Where a disposition creates—

- (a) a possibility of reverter on the determination of a determinable fee simple; or
- (b) a possibility of a resulting trust on the determination of any other determinable interest in property;

the possibility of reverter or of a resulting trust, as the case may be, ceases to exist at the end of the perpetuity period, and accordingly the fee or interest in question ceases to be determinable.

## (4) Where a disposition—

- (a) is subject to any exception or reservation or to any condition subsequent giving rise, or breach thereof, to any such right as is mentioned in subsection (1); or
- (b) creates any such possibility as is mentioned in subsection (3);

the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the exception, reservation, condition subsequent or possibility.

76. (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest to his unborn child or other issue is hereby abolished, but without prejudice to the rule against perpetuities.

Abolition of  
the rule in  
Whitby v.  
Mitchell

(2) This section applies only to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

## 77. (1) In this Part—

“disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest or right disposed of shall be construed accordingly;

“in being” means living or *en ventre sa mere*;

“power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;

Interpretation  
and application

and for the purposes of this Act a disposition contained in a will is made at the death of the testator.

(2) For the purposes of this Part, a person is a member of a class if in his case all the conditions identifying a member of the class are satisfied, and is a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

(3) Nothing in this Part affects the operations of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(4) Except as provided otherwise, this Part applies only in relation to instruments taking effect after the commencement of this Act, and, in the case of an instrument made in the exercise of a special power of appointment, applies only where the instrument creating the power takes effect after that date, so however that section 69 applies in all cases for construing the foregoing reference to a special power of appointment.

(5) This Part applies in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

## PART VIII

### CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

Contracts  
relating  
to land

78. (1) No action may be brought upon any contract for the sale or other disposition of land 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.

Stipulations  
as to time

79. Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, are also to be constructed and have effect at law in accordance with the same rules.

Stipulations  
as to legal  
estate

80. (1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest is void, if a title can be made under this Act or any other statute discharged from the equitable interest without such concurrence.

(2) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser, or that no objection is to be taken on account of an outstanding legal estate, is void.

(3) If the subject matter of a contract for the sale or exchange of land is an equitable interest capable of subsisting as a legal estate, and the vendor has power to vest such legal estate in himself or in the purchaser or to require the same to be so vested, the contract extends to such legal estate.

(4) This section applies only in favour of a purchaser for money or money's worth.

81. (1) After the commencement of this Act, fifteen years is the period of commencement of title which a purchaser of land may require; nevertheless earlier title than fifteen years may be required in cases similar to those in which earlier title than thirty years might immediately before the commencement of this Act have been required.

Statutory  
provisions  
as to title

(2) Under a contract made after the commencement of this Act to grant a term of more than thirty-five years, the intended lessee is entitled to call for the title to—

- (a) the fee simple absolute in possession where the term is to be directly derived out of the said fee simple absolute in possession; or
- (b) the grantor's term where the term is to be derived out of a leasehold term;

and any stipulation or agreement to the contrary is void, and where the lease has been granted without the lessor's title being investigated, because of the lessor's refusal to allow such investigation, such lease is voidable at the lessee's option.

(3) Where a lessee is entitled under subsection (2) to call for the title of the lessor, any stipulation by the lessor that the lessee shall accept a title based on the statute of limitation is void, unless the lessor makes a statutory declaration that he can prove no other title.

(4) Under a contract to grant a term of thirty-five years or less to be derived out of fee simple absolute in possession, to grant a leasehold term to be derived out of another leasehold term or to assign a leasehold term, the intended lessee or assignee is not entitled to call for the title to the fee simple absolute in possession.

(5) Under a contract to grant or assign a leasehold term derived or to be derived out of another leasehold term, the intended lessee or assignee is not entitled to call

for the title to the term or terms out of which the grantor's or assignor's term is mediately or immediately derived.

(6) Where, by reason of subsection (4) or (5), an intending lessee or assignee is not entitled to call for the title to the fee simple absolute or to a reversionary leasehold term, as the case may be, he is not, where the contract is made after the commencement of this Act, 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.

(7) A purchaser is not and never has 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 statute, or by any rule of law, he might have had notice, unless he actually makes such investigations or inquiries.

(8) No preliminary contract for or relating to the lease shall, for the purpose of the deduction of title to an intended assignee, form part of the title, or evidence of the title, to the lease.

(9) This section, save where otherwise expressly provided, applies to contracts for sale whether 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.

(10) This section applies, except for subsections (2) and (3), only if and so far as a contrary intention is not expressed in the contract.

82. (1) A purchaser of any property shall not require—

- (a) the production, or any copy or any abstract, 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 produced to, or a copy is produced to, or abstracted in the abstract produced to, the purchaser; or
- (b) require any information, or make any requisition, objection, or enquiry, with respect to

any such deed, will or other 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 intention appears, that the recitals contained in the documents produced, or of which copies are produced, or in the abstracted instruments, of any deed, will or other documents forming part of that prior title, are correct, and give all the materials contents of the deed, will or other document so recited, and that every document so recited was duly executed by all the necessary parties, and perfected, if and as required, by acknowledgement, registration or otherwise.

(2) Subsection (1) does not deprive a purchaser of the right to require the production, or an abstract or copy of any document or of any certificate or statutory declaration relating to—

- (a) any power of attorney under which any document produced, or copy of which is produced, or any abstracted document is executed; or
- (b) 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 a document produced, or a copy of which is produced, or by an abstracted document; or
- (c) any document creating any limitation or trust by reference to which any part of the property is disposed of by a document produced, or copy of which is produced, or by an abstracted document.

(3) Where land is held by lease (other than an underlease), 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.

(4) Where land is held by underlease, the purchaser shall assume, unless the contrary appears, that the underlease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the underlease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the underlease 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.

(5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, has no right to more than one abstract of the common title, or more than one copy of any document forming part of the common title, except at his own expense.

(6) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament or statutory declarations, fifteen years old at the date of the contract, are, unless and except so far as they may be proved to be inaccurate, sufficient evidence of the truth of such facts, matters and descriptions.

(7) On sale of any property, the following expenses shall be borne by the purchaser when he requires them to be incurred for the purpose of verifying any matter relating to the title investigated, that is to say—

- (a) the expenses of the production and inspection of all Acts, records, proceedings of court 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 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.

(8) 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.

(9) Nothing in this section is to 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.

83. (1) Where, after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money is, on completion of the contract, held or receivable by the vendor on behalf of the purchaser, and shall be paid by the vendor to the purchaser on completion of the sale or exchange or so soon thereafter as the same is received by the vendor. <sup>Insurance money</sup>

(2) For the purposes of this section, cover provided by such a policy maintained by the vendor extends until the date of completion, and money does not cease to become payable to the vendor merely because the risk has passed to the purchaser.

(3) This section applies only to contracts made after the commencement of this Act, and has effect subject to—

- (a) any stipulation to the contrary contained in the contract or policy; and
- (b) the payment by the purchaser, at the time of completion or earlier if required by the vendor, of the proportionate part of the premium from the date of the contract.

(4) Where the vendor does not or ceases to maintain such a policy of insurance as is referred to in sub-section (1) or the policy contains such a stipulation as is referred to in paragraph (a) of sub-section (3), he must inform the purchaser of this fact before the date of the contract for sale or exchange or give the purchaser at least seven days notice before such an event occurs after the date of the contract and before the date of its completion.

(5) Failure by the vendor to comply with sub-section (4) gives the purchaser a right to rescind, by written notice served on the vendor or his solicitor, any uncompleted contract for sale or exchange entered into with respect to the property in question as soon as he becomes aware of the relevant fact or event.

(6) Upon such rescission, the purchaser is entitled to return of the deposit or any other money paid under the contract, with interest, and to payment by the vendor of all costs and expenses reasonably incurred in respect of the transaction up to the date of rescission.

(7) Any dispute as to the matters referred to in sub-section (6) may be determined by the court.

(8) This section applies to a sale or exchange by an order of the court, as if—

- (a) for references to the “vendor” there were substituted references to the “person bound by the order”;
- (b) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into court;
- (c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

Vendor and  
purchaser  
applications

84. (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, objections, 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 appears 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 the deposit or any part thereof.

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

85. (1) All lands and all interests therein lie in grant Lands lie in grant only and are incapable of being conveyed by livery, livery and seisin, feoffment or 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.

(3) Every limitation which at any time hereto before might have been made by way of use may be made without the intervention of uses.

86. (1) Subject to sub-section (2), 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. Conveyances to be by deed

(2) This section does not apply to—

- (a) disclaimers made in accordance with section 57 of the Bankruptcy Ordinance and section 253 of the Companies Ordinance, or not required to be evidenced in writing; Ch. 6. No. 6 Ch. 31. No. 1
- (b) surrenders not required to be effected by deed;
- (c) leases or tenancies or other assurances not required by law to be made by deed or in writing, including assignments of tenancies which can be created by parol;
- (d) receipts not required by law to be by deed;
- (e) vesting orders of the court or other competent authority;
- (f) conveyances taking effect by operation of law.

87. (1) No equitable interest in any property can be created except by writing signed by the person creating the same, or by his agent thereunto lawfully authorised in writing, or by operation of law. Instruments to be in writing

(2) A declaration of trust respecting any property or any interest therein must be manifested and proved by some writing signed by the person who is entitled to declare such trust.

(3) A disposition of an equitable interest in any property, subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing, or by will.

(4) Any written instrument to which this section applies may, if it affects unregistered land, be registered under Part IV of the Land Registration Act, 1981, as if it were a deed affecting such land.

1981 No.

(5) Nothing in this section affects—

- (a) the creation or operation of resulting, implied or constructive trusts;
- (b) the right to acquire an interest in land by virtue of taking possession;
- (c) the operation of the law relating to part performance;
- (d) tenancies which can be validly created by parol agreement;
- (e) trusts or interests created, declared or disposed of by will;
- (f) interests validly created before the commencement of this Act; or
- (g) the creation of an equitable mortgage by deposit of title documents.

Persons not  
parties  
to deeds

88. (1) Where a deed is expressed to confer, or by its express terms purports to confer, an immediate or other interest in property, or the benefit of any condition, right of entry or re-entry, covenant or agreement over or respecting any property, upon a third person, it is enforceable by the third person in his own name whether or not he is a party to the deed.

(2) For the avoidance of doubt, it is hereby declared that, without prejudice to the generality of section 2(1), in this section “property” includes all other forms of property as well as land.

89. Any instrument (whether executed before or after the commencement of this Act) expressed to be supplemental to a previous instrument, shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instrument, but this section does not give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

Supplemental  
instruments

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

Conditions  
and  
covenants  
not implied

(2) The word "give" or "grant" does not, in a deed made after the date aforesaid, imply any covenant in law, save where otherwise provided by statute.

91. (1) A conveyance of land without words of limitation, or any equivalent expression, passes the fee simple absolute in possession or other whole estate or interest which the party conveying had power to dispose of or create, unless a contrary intention appears in the conveyance.

Words of  
limitation  
not required

(2) A conveyance of land to a corporation sole by his corporate designation without the word "successors" passes the fee simple absolute in possession or other whole estate or interest which the party conveying had power to dispose of or create, unless a contrary intention appears in the conveyance.

(3) Sub-sections (1) and (2) apply only to conveyances and deed executed after 1st September, 1939.

(4) In a deed executed after 1st 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 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."

## Voluntary conveyances

92. (1) In a voluntary conveyance, a resulting trust for the grantor is not implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.

(2) This section applies only to conveyances and deeds executed after the commencement of this Act.

## Construction of certain expressions

93. In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, unless the context otherwise requires—

- (a) "month" means calendar month;
- (b) "person" includes a corporation;
- (c) the singular includes the plural and vice versa;
- (d) the masculine includes the feminine and vice versa;
- (e) "land" has the meaning assigned to it by section 2(1).

## General words

94. (1) A conveyance of land includes, and operates to convey with the land, all buildings, erections, fixtures, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights and advantages appertaining or annexed to the land or any part thereof.

(2) A conveyance of land having houses or other buildings thereon includes, and operates 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, appertaining or annexed 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) It is hereby declared that, from the commencement of this Act, this section does not operate to create in respect of or impose on any other land any easements, profits *a prendre* or similar rights and obligations.

(6) This section, except sub-section (5) applies to conveyances made after 1st January, 1885.

95. (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 have power to convey in, to or on the same. All estate clause

(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 provision therein contained.

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

96. (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 has effect as in this section provided. Production and safe custody of documents

(2) An acknowledgment binds 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 binds 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 is 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;
- (b) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in the State, 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 obligations imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6) An acknowledgment does 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 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 satisfies 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 imposes 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, uncanceled 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 satisfies any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgment or an undertaking under this section are in addition to all such other rights relative to the production, inspection or obtaining of copies of documents, as are not satisfied by the giving of the acknowledgment or undertaking, and 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 liability respecting documents incurred, after January 1, 1885.

97. (1) A reservation of a legal estate operates at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made, or any regrant by him, so as to create the legal estate reserved and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made, and annex it to the land, if any, for the benefit of which the reservation was made.

Reservation  
of legal  
estates

(2) A conveyance of a legal estate expressed to be made subject to another legal estate, not in existence immediately before the date of the conveyance, operates as a reservation unless a contrary intention appears.

(3) A reservation taking effect under this section shall not be construed as operating as a regrant by the grantee of the conveyance in which it is contained, when any question as to the effect of that conveyance arises.

(4) This section applies only to reservations made after the commencement of this Act.

**Confirmation  
of past  
transactions**

98. (1) A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable under this Act of subsisting as legal estates which, at some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, operates to the extent of the estate of the estate owner, but without prejudice to the restrictions imposed by this Act in the case of mortgages, to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

(2) The powers conferred by this section may be exercised by a trustee (being an estate owner) as well as by an absolute owner, but if exercised by any person other than an absolute owner, only with the leave of the court.

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

**Execution  
of deeds**

99. (1) Every document satisfying the requirements of sub-section (2) is a deed notwithstanding that it has not been sealed.

(2) The requirements referred to in sub-section (1) are that the document be—

- (a) signed by the party to be bound by it;
- (b) executed in the presence of and attested by at least one witness not being a party thereto; and
- (c) delivered by the party to be bound by it as his act and deed.

(3) Nothing in this section affects—

- (a) the need for a deed to be sealed if the party to be bound by the deed is a corporation; or
- (b) the requirements of due execution for the purposes of registration.

(4) A deed shall, in favour of a purchaser, be deemed to have been delivered by a party if the testimonium or attestation clause in the deed states that it was signed and delivered by that party.

(5) Nothing in this section gives an unregistered deed any effect or operation which is dependent on registration.

(6) This section applies to documents executed before or after the commencement of this Act.

**100.** (1) Any deed under seal, whether or not being an indenture may be described (at the commencement thereof or otherwise) simply as a deed, or as a conveyance, assurance, mortgage, settlement, covenant, bond, specialty or otherwise, according to the nature of the transaction intended to be effected. Description  
of deeds

(2) A deed between parties, to effect its objects, has the effect of an indenture though not indented or expressed to be an indenture.

**101.** Where an individual executes a deed, he shall either sign or place his mark upon the same and a seal alone is not sufficient. Execution by  
an individual

**102.** (1) In favour of a purchaser, a deed is deemed to have been duly executed by a corporation aggregate if its seal is affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and, where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed is deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly. Execution  
by or on  
behalf of  
a corporation

(2) For the avoidance of doubt, it is hereby declared that it is and always has been possible for a corporation to deliver a deed in escrow, but where execution is in accordance with this section delivery is deemed to have been made

unconditionally and the deed is deemed to have been duly executed in favour of a purchaser under sub-section (1).

(3) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent, either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(4) Where—

(a) 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; or

(b) a corporation aggregate 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 any other person;

the provisions of section 168 apply.

(5) The foregoing provisions of this section apply to transactions whenever effected, but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, is (in addition to the modes authorised by this section) as effectual as if this section had not been passed.

Right of  
purchaser

103. On a sale, the purchaser is not entitled to require that the conveyance to him be executed in his presence or in that of his solicitor or barrister, but is entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may be his solicitor or barrister.

Receipt  
in deed  
sufficient

104. (1) A receipt for consideration money or securities in the body of a deed is conclusive 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 1st January, 1885.

105. (1) A receipt for consideration money or other consideration in the body of a deed or endorsed thereon is, 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), conclusive evidence of the payment or giving of the whole amount thereof.

Receipt  
in deed or  
endorsed  
evidence

(2) This section applies to deeds executed after 1st January, 1885.

106. (1) Where a solicitor or barrister produces a deed, having in the body thereof or endorsed thereon or annexed thereto a receipt for consideration money or other consideration, the deed being executed, or the endorsed or annexed receipt being signed, by the person entitled to give a receipt for that consideration, the deed is conclusive authority to the person liable to pay or give the same for his paying or giving the same to the solicitor or barrister, without the solicitor or barrister producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

Receipt in deed  
or endorsed  
authority  
for payment  
to solicitor

(2) For the avoidance of doubt, it is hereby declared that sub-section (1) applies, and always has applied, to a clerk or other employee of, or to another solicitor or barrister appointed as his agent in the transaction by, the solicitor or barrister acting for the person who executed or signed the deed or receipt.

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

107. (1) A release from a rentcharge of part of the land charged therewith does not extinguish the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge 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.

Partial  
Release of  
security from a  
rent charge

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

Release of  
part of land  
from a  
judgment

**108.** (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 land 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 1st October, 1864.

Conveyance  
by a person  
to himself  
and others

**109.** (1) A person may convey property to himself jointly with another person, and has been capable of doing so—

(a) as regards personal property, including leaseholds, since 1st October, 1864; and

(b) as respects freehold land and things in action, since 1st January, 1885.

in like manner as he could convey it to a third person.

(2) A person may, and has been capable of doing so since 1st September, 1939, convey, but not lease, land to himself.

(3) Two or more persons (whether or not they are trustees or personal representatives) may convey, and have always been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could convey it to a third person; but 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 is liable to be set aside.

(4) Without prejudice to section 116, this section does not affect any rule of law under which a covenant or agreement entered into by a person with himself is unenforceable.

Implied  
covenants  
for title

**110** (1) In a conveyance there are, in the several cases mentioned in this section, implied covenants to the effect stated in this section and to the extent stated in paragraph 1 of the First Schedule, by the person or by each person who conveys, so far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person 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 (when the law permits) made as tenants in common, that is to say—

- (a) in a conveyance for valuable consideration, other than a mortgage, covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 2 of the First Schedule;
- (b) in a conveyance of a leasehold term for valuable consideration, other than a mortgage, further covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 3 of the First Schedule;
- (c) in a conveyance by way of mortgage, covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 4 of the First Schedule;
- (d) in a conveyance by way of mortgage of a leasehold term, further covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 5 of the First Schedule;
- (e) in a conveyance by way of settlement, a covenant by a person who is expressed to convey “as settlor” in the terms set out in paragraph 6 of the First Schedule;
- (f) in any conveyance, a covenant by every person who is expressed to convey “as trustee”, “as mortgagee”, “as personal representative”, or under an order of the court, in the terms set out in paragraph 7 of the First Schedule.

(2) Where in a conveyance it is expressed that a person conveys, by direction of another person expressed to direct “as beneficial owner”, then the person giving the direction, whether expressed to convey “as beneficial owner” or not, is to be treated as if he had been expressed to convey “as beneficial owner” the subject-matter so conveyed by his direction; and the covenants on his part are implied as if he had been expressed to convey “as beneficial owner” the subject-matter so conveyed by his direction.

(3) Where in a conveyance a person conveying is not expressed to convey “as beneficial owner”, “as settlor”, “as trustee”, “as mortgagee”, “as personal representative”,

under an order of the court or by direction of a person "as beneficial owner", no covenant on the part of the person conveying is implied in the conveyance.

(4) In this section—

- (a) a conveyance does not include a lease;
- (b) valuable consideration does not include marriage;
- (c) any reference to a person being expressed to "convey" does not mean that the word "convey" must be used.

(5) The benefit of a covenant implied as aforesaid is annexed and incident to, and goes with, the estate or interest of the implied covenantee, his mortgagee or lessee, and is capable of being enforced by every person, including a mortgagee or lessee, in whom that estate or interest, any part thereof, or any estate or interest derived thereout is from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended by deed and, as so varied or extended operates 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.

(7) Where a conveyance is not required to be by deed, the word "covenant" in this Part includes an agreement in such a conveyance.

Implied  
covenants on  
assignment of  
leasehold term

111. (1) In addition to the covenants implied under section 110, there are, in the several cases mentioned in this section, implied covenants to the effect stated in this section and to the extent stated in paragraph 1 of the First Schedule by and with such persons as are hereinafter mentioned, that is to say—

- (a) in a conveyance for valuable consideration, other than a mortgage, of—
  - (i) the entirety of the land comprised in a lease; or
  - (ii) part of the land comprised in a lease, subject to a part of the rent which has been or is by the conveyance apportioned with the consent of the lessor;

for the residue of the term or interest created by the lease, covenants by the assignee or

joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them, if more than one, in the terms set out in paragraph 8 of the First Schedule;

(b) in a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor) in respect of the land conveyed—

(i) a covenant by the assignee, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph 9 of the First Schedule;

(ii) a covenant by a person who is expressed to convey as “beneficial owner”, or joint and several covenants by the persons who are expressed so to convey, if at the date of the conveyance any part of the land comprised in the lease is retained, with the assignee of the land and with each of them (if more than one) in the terms set out in paragraph 10 of the First Schedule.

(2) Where in a conveyance for valuable consideration, other than a mortgage, part of land comprised in a lease is, without the consent of the lessor, expressed to be conveyed,

(a) subject to the entire rent, then paragraph (b)(i) of subsection (1) has effect as if the entire rent were the apportioned rent;

(b) exonerated from the entire rent, then paragraph (b)(ii) of subsection (1) has effect as if the entire rent were the balance of the rent, and the words “(other than the covenant to pay the entire rent)” had been omitted from the covenant.

(3) In this section—

(a) a conveyance does not include a lease;

(b) any reference to a person being expressed to “convey” does not mean that the word “convey” must be used.

(4) Any covenant which would be implied under this section by reason of a person being expressed to convey “as beneficial owner” may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who is expressed to convey “as settlor”, “as trustee”, “as mortgagee”, “as personal representative” or under an order of the court.

(5) The benefit of a covenant implied as aforesaid is annexed and incident to, and goes with, the estate or interest of the implied covenantee, his mortgagee or lessee, and is capable of being enforced by every person, including a mortgagee or lessee, in whom that estate or interest, or any part thereof or any estate derived thereout is from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended by deed, and as so varied or extended, operates 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.

(7) In particular, any covenant implied under this section may be extended by providing that—

(a) the land conveyed; or

(b) the part of the land demised which remains vested in the covenantor;

shall stand charged with the payment of all money which may become payable under the implied covenant.

(8) This section applies only to conveyances made after the commencement of this Act.

Benefit of  
covenants  
relating to  
land

112. (1) A covenant relating to any land of the covenantee is deemed to be made with the covenantee and his successor in title and the persons deriving title under him or them and has effect as if such successors and other persons were expressed.

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

113. (1) A covenant relating to any land of a covenantor, or capable of being bound by him by covenant, is, unless the contrary intention is expressed, deemed to be made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them, and, subject as aforesaid, has effect as if such successors and other persons were expressed. Burden of covenants relating to land

(2) This section—

- (a) applies to covenants made after the commencement of this Act;
- (b) extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

114. (1) A covenant, bond, obligation or contract by deed made after 1st 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. Covenants binding land

(2) Subsection (1) extends to a covenant implied by virtue of this or any other Act.

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

(4) The benefit of a covenant relating to land, whether entered into before or 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 1st September, 1939.

(5) For the purposes of this section, a covenant runs with the land when the benefit and 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

115. (1) A covenant, bond, obligation or contract by deed made with two or more jointly, to pay money, make a conveyance or to do any other act to them or for their benefit, implies an obligation to do the act to, or for the benefit of, any other person on whom devolves the right to sue on the covenant, bond, obligation or contract.

(2) This section—

(a) extends to a covenant implied by virtue of this or any other Act;

(b) 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 provisions therein contained.

Covenants by a  
person with him-  
self and another  
or others

116. (1) A covenant or an agreement entered into by a person with himself and another or others shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section—

(a) extends to a covenant implied by virtue of this or any other Act;

(b) covenants or agreements entered into or implied before or after the commencement of this Act.

Covenants with  
two or more  
persons

117. (1) Subject to the provisions of this Act, where under a covenant more persons than one are—

(a) covenantors, the covenant binds the covenantors and any two or more of them jointly and severally and each of them severally;

(b) covenantees, the covenant shall be construed as being also made with each of them.

(2) This section—

(a) extends to a covenant implied under this or any other Act;

(b) applies only if and as far as a contrary intention is not expressed in the covenant, and applies only to covenants entered into after the commencement of this Act or implied by this or any other Act.

118. (1) Any covenant or agreement which imposes in respect of land (hereinafter referred to as "the servient land") for the benefit of other land (hereinafter referred to as "the dominant land") an obligation—

Enforcement of  
freehold  
covenants

- (a) restricting the use of, or the execution of works on, the servient land; or
- (b) to execute any works on the servient land; or
- (c) to pay, or contribute to, the cost of works to be carried out on the dominant land; or
- (d) of any other negative or positive nature concerning the dominant and servient land;

is enforceable by action by the owner or occupier for the time being of the dominant land, or any part thereof, against the owner or occupier for the time being of the servient land, or any part thereof, or any person interfering with the performance or observance of the obligations.

(2) No covenant or agreement is enforceable under sub-section (1) by or against any person whose interest in, or occupation of the dominant or servient land has ceased.

(3) For the purposes of this section, "works" includes not only constructional works but also the planting of trees and hedges, the digging of ditches, the making of drains and the maintenance, repair, cleansing and replacement of any works.

(4) This section applies only—

- (a) to covenants or agreements affecting freehold land and entered into after the commencement of this Act;
- (b) to covenants or agreements contained in a deed registered under Part IV of the Land Registration Act, 1980, or entered on a certificate of title relating to registered land;
- (c) if and so far as a contrary intention is not expressed in the covenant or agreement and has effect subject to the provisions contained therein.

(5) Upon application by any interested person, or on reference by the Land Registrar, the Court may determine any question as to the enforceability of covenants or agreements under this section and, upon such determination, may make all such orders, including orders as to costs, as it thinks fit.

Abolition of the  
rule in *Bain v.*  
*Fothergill*

119. (1) In an action for breach of a contract for the sale or other disposition of land, a purchaser is not restricted in respect of the damages recoverable by the rule of law known as the rule in *Bain v. Fothergill*, which rule is hereby abolished.

(2) Sub-section (1) applies only to contracts entered into after the commencement of this Act.

## PART IX

### MORTGAGES

Form of  
mortgage

120. (1) A mortgage of a legal estate in land can be effected at law only by a charge by deed expressed to be by way of legal mortgage.

(2) A first mortgagee has the same right to the possession of documents as if his security had been effected by conveyance or assignment to him of the legal estate of the mortgagor.

(3) A purported conveyance, assignment or demise of a legal estate in land by way of mortgage, any other purported legal mortgage by deed, and any other transaction by an instrument which is declared by statute to operate as a mortgage, made after the commencement of this Act, operates as if it were a charge by deed expressed to be by way of legal mortgage.

(4) In sub-section (3)—

(a) such a purported conveyance includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this section, would operate in effect to vest the fee simple absolute in possession in a mortgagee subject to redemption;

(b) such a purported assignment includes an absolute assignment with a deed of defeasance and any other assurance which, but for this section, would operate in effect to vest the leasehold term of the mortgagor in a mortgagee subject to redemption; and

(c) such a purported demise includes an absolute demise with a deed of defeasance and any other assurance which, but for this section,

would operate in effect to vest a leasehold term in a mortgagee subject to redemption.

(5) This section applies whether the land is registered land (but subject to the provisions of the Land Registration Act, 1980) or unregistered land, or the mortgage is made by way of sub-mortgage, or is expressed to be by way of trust for sale or otherwise. 1980 No.

(6) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of a legal estate in land operates as a power to mortgage the estate by charge by deed expressed to be by way of legal mortgage or to lend on such security.

121. (1) Subject to subsection (2), when a legal mortgage of land is created after the commencement of this Act, the mortgagee has (subject to the rights of the mortgagor as mortgagor) the same protection, powers and remedies as he would have had if his security had been effected by conveyance or assignment to him of the legal estate of the mortgagor. Position of mortgagee

(2) A mortgagee may apply to the court in a summary manner for possession of the mortgaged property, or any part thereof, and on such application the court may, if it thinks proper to do so, order possession of that property or part to be granted to the applicant, but—

- (a) the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest; and
- (b) the right of a legal mortgagee to possession otherwise than in accordance with this subsection is hereby abolished, whether the mortgage was made before or after the commencement of this Act, but this is without prejudice to the right of a mortgagee to take possession in order to facilitate a bona fide exercise of his power of sale.

(3) The court may, in order to allow time for redemption, adjourn an application made under sub-section (2), or make an order for possession subject to such conditions as to stay of execution or otherwise as the court thinks fit.

Conveyance by  
mortgagee

122. (1) When an estate in fee simple has been mortgaged and the mortgagee sells under his statutory or express power of sale, the conveyance by him operates to vest in the purchaser the fee simple estate in the land conveyed, subject to any mortgage or other incumbrance or trust having priority to the mortgage in right of which the sale is made and to any money thereby secured; and when a leasehold term has been mortgaged and the mortgagee so sells, the conveyance by him operates to vest the term in the purchaser subject as aforesaid.

(2) A conveyance coming within subsection (1) operates to extinguish the mortgage in right of which the sale is made and any mortgage not having priority there-over as respects the land conveyed, but does not affect any personal liability of the mortgagor to the mortgagee except to the extent that such liability is discharged out of the proceeds of sale.

(3) Such a conveyance may be made in the name of the owner of the estate to be vested in the purchaser.

(4) Where a licence to assign is required on a sale by a mortgagee, that licence shall not be unreasonably refused.

(5) When time has run under the statute of limitation in favour of a mortgagee of a legal estate so as to bar the right to redeem the mortgage, the mortgagee may apply to the court for an order declaring that the fee simple absolute in possession or leasehold term, as the case may be, is vested in him discharged from any mortgage in respect of which the right to redeem has been so barred, and the legal estate shall (without giving rise to a forfeiture for want of a licence to assign) vest subject to subsection (6).

(6) Where an order made under subsection (5) relates to—

- (a) unregistered land, the Land Registrar shall, on production of the order, register the same as a deed under Part IV of the Land Registration Act, 1981;

(b) registered land, the mortgagee shall lodge the order, together with the duplicate certificate of title, with the Land Registrar who shall then—

- (i) endorse a memorial of such order on the certificate of title relating to the said land entered in the Register and on its duplicate;
- (ii) deliver the said duplicate, so endorsed, to the mortgagee or other person entitled to its delivery;

and thereupon the order has the effect provided for by sub-section (5).

(7) Where the mortgage includes fixtures or chattels personal, any statutory power of sale extends and any order for possession may extend to the absolute or other interest therein affected by the charge.

(8) In the case of a sub-mortgage, the foregoing provisions of this section operate so as to enable the sub-mortgagee to deal with the property of the head mortgagor as they enable the mortgagee to deal with that property.

(9) This section does not apply to a mortgage of a leasehold term where the mortgage does not extend to the whole of the land demised by the lease, unless the rent (if any) payable in respect of the land demised has been apportioned as respects the land mortgaged, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land mortgaged.

(10) This section applies to a mortgage whether executed before or after the commencement of this Act.

123. (1) Where an order for sale is made by the court in reference to an equitable mortgage of a legal estate in land, the court may, in favour of a purchaser, make a vesting order conveying the legal estate, or may appoint a person to convey the land or make an order conferring on the mortgagee the same power to carry out the sale as he would have had under this Act if the mortgage had been created by deed, but without prejudice to any mortgage or other incumbrance or trust having priority to the equitable mortgage, unless the person entitled to priority over the equitable mortgage consents to the sale.

Realisation of  
equitable mort-  
gages by the  
court

(2) This section applies to equitable mortgages made or arising before or after the commencement of this Act, but not to a mortgage which has been overreached under the powers conferred by this Act or otherwise.

Sale in redemption and other actions

124. (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 for redemption alone for sale alone or for sale or redemption in the alternative.

(2) In any action for—

(a) foreclosure; or

(b) redemption; or

(c) sale; or

(d) the raising and payment in any manner of mortgage money;

on the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, the court 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; and the court may so direct—

(i) notwithstanding that any person dissents; and

(ii) notwithstanding that the mortgagee or any person interested in the mortgage money or in the right of redemption does not appear; and

(iii) allowing or not allowing any time for redemption or for the payment of any mortgage money.

(3) 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, 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 incumbrancers.

(5) This section applies to actions brought before or after the commencement of this Act.

(6) In this section, "mortgaged property" includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.

(7) 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 incumbrance, as the court may think fit; or, in the case of an equitable mortgage, not made by deed, of a legal estate in land, may make an order conferring on the mortgagee the same power to carry out the sale as he would have had under this Act if the mortgage had been created by a deed not excluding or restricting the power of sale.

125. (1) Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorise him to dispose—

Mines and  
minerals

(a) of the land, with an exception of all of any mines and minerals and with or without reservation of rights and powers of or incidental to the working, getting or carrying away of minerals; or

(b) of all of any mines and minerals, with or without the said rights or powers, separately from the land;

and thenceforth the powers so conferred shall have effect as if they were contained in the mortgage.

126. (1) Subject to sub-section (2), the right of consolidation applies to mortgages made after the commencement of this Act without any necessity to reserve that right in the mortgage.

Consolidation

(2) A mortgage may contain a stipulation excluding the right of consolidation, and, if it does, a mortgagor seeking to redeem that 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.

(3) For the removal of doubt, it is hereby declared that 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, on property comprised in the mortgage which he seeks to redeem.

**Tacking**

127. (1) From the commencement of this Act, where a mortgage to secure a specified sum or an unlimited sum is expressed to be created on any property for the purpose of securing (whether with or without present advances) future advances to an amount not exceeding the specified sum or, in the case of a mortgage to secure an unlimited sum, the amount in aggregate for which the mortgage is currently stamped, the mortgagee is entitled in priority to any subsequent mortgagee to the payment of any sum due to him in respect of advances up to the full amount of the specified sum or, in the case of a mortgage to secure an unlimited sum, the amount in aggregate for which the mortgage is currently stamped—

- (a) if an arrangement has been made to that effect with the subsequent mortgagee; or
- (b) if he had no notice of the subsequent mortgage at the time of making the advance; or
- (c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such future advances.

(2) The expression “future advances” in this section includes sums from time to time due on a current account, and all sums which, by agreement or the course of business between the parties, are considered to be advances on the security of the mortgage.

(3) Save in regard to the making of future advances as aforesaid, the right to tack is hereby abolished.

(4) Nothing in this Act affects any priority acquired before the commencement of this Act by tacking, or in respect of advances made without notice of a subsequent incumbrancer or by arrangement with the subsequent incumbrancer.

(5) This section applies to mortgages made before or after the commencement of this Act and applies to charges on registered land as it applies to other mortgages.

**Transfer in lieu  
of discharge**

128. (1) Where a mortgagor is entitled to redeem, then, subject to compliance with the terms on compliance with which he would be entitled to require a discharge, he is entitled to require the mortgagee, instead of discharging

the mortgage, to assign the mortgage debt and transfer the mortgage to any third person, as the mortgagor directs; and the mortgagee is bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer prevails over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

(3) The foregoing provisions of this section do 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 takes effect notwithstanding any stipulation to the contrary.

129. (1) A mortgagor, as long as his right to redeem subsists, is entitled from time to time, at reasonable times, on his request, 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 documents relating to the mortgaged property in the custody or power of the mortgagee. Inspection, production and delivery of documents

(2) Subsection (1) applies to mortgages made after 1st January, 1885, and takes effect notwithstanding any stipulation to the contrary.

(4) A mortgagee, whose mortgage is surrendered or otherwise extinguished, is not liable on account of delivering documents relating to the mortgaged property 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 re-conveyance or otherwise.

130. (1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to seek possession or to enter into the receipt of the rents and profits thereof, may sue for such possession, for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong Action for possession by mortgagor

relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.

(3) This section applies whether the mortgage was made before or after the commencement of this Act.

Leasing powers  
of mortgagor  
and mortgagee  
in possession

**131.** (1) A mortgagor of land while in possession, as against every incumbrancer other than a mortgagee, and as against every mortgagee whose agreement in writing (whether or not contained in the mortgage deed) has been obtained, has power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised:

Provided that, in the case of a mortgage made before the commencement of this Act, the consent of the mortgagee is not required unless the mortgage deed requires it.

(2) A mortgagee of land while in possession, as against all prior incumbrances, if any, and as against the mortgagor, has power to make from time to time any such lease as aforesaid.

(3) The leases which this section authorises are—

- (a) agricultural or occupation leases for any term not exceeding twenty-one years, or, in the case of a mortgage made after the commencement of this Act, thirty-five years; and
- (b) mining leases for any term not exceeding thirty-five years; and
- (c) building leases for any term not exceeding ninety-nine years.

(4) Nothing in this section affects the validity of any lease granted by a mortgagor in possession before the commencement of this Act.

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

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

(7) Every such lease shall reserve the best rent that can be reasonably be obtained, regard being had to the circumstances of the case including the amount of any fine taken and, in the event of a fine being taken the following provisions apply, namely—

- (a) in the case of a lease by a mortgagor, the amount of the fine or, if the amount of the fine is greater than that of the mortgage debt, then, the amount thereof required for that purpose, shall be applied in or towards the discharge of the principal money, whether or not the date for redemption has arrived;
- (b) in the case of a lease by a mortgagee, the amount of the fine shall be applied, as if it constituted proceeds of sale, in accordance with section 138;

and the provisions of section 34(2) apply to every such lease with the following modification, namely, that for the words "the trustees (or any person to whom the power of leasing has been delegated)" there should be substituted the words "the lessor".

(8) 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 specified not exceeding thirty days.

(9) A copy of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor is, in favour of the lessee and all persons deriving title under him, sufficient evidence.

(10) 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.

(11) 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 that term.

(12) In the case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee or, where there are more than one, to the mortgagees first in priority, a copy of the lease duly executed by the lessee, but the lessee is not concerned to see that this provision is complied with.

(13) 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.

(14) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(15) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor, 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 are exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred do not affect prejudicially the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(16) Nothing in this Act enables a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than those which could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act and the enactments replaced by this section had not been passed:

Provided that, in the case of a mortgage of a leasehold term, a lease granted under this section shall reserve a reversion of not less than one day.

(17) Subject as aforesaid, this section applies to any mortgage made after 1st January, 1885, but the provisions thereof, or any of them, may, by agreement in writing made after that date between mortgagor and mortgagee, be

applied to a mortgage made before that date, so that nevertheless any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(18) The provisions of this section referring to a lease extend and apply, as far as circumstances admit, to any letting, whether in writing or not, of all or part of the mortgaged premises for a leasehold term, and to an agreement, whether in writing or not, for a lease or for any such letting.

(19) For the purposes of this section, "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(20) The powers of leasing conferred by this section are, 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, exercisable by such a mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if that mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

132. (1) For the purpose only of enabling a lease authorised under section 131, 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 has, as against every incumbrancer, 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 comprises part only of the land or mines and minerals leased, the rent may be apportioned.

Powers of  
mortgagor and  
mortgagee

(2) For the same purpose, a mortgagee of land while in possession has, as against all prior or other incumbrancers, if any, and as against the mortgagor, 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 incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

(5) No surrender is rendered valid by this section 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 leasehold term 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 a lease of 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 a lease of 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 the new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

(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, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

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

(9) The provisions of this section referring to a lease 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) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor, mortgagee or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved are exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred shall not affect prejudicially the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(11) Nothing in this section operates 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 incumbrancers if this Act and the enactments replaced by this section had not been passed.

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

(13) The powers of accepting surrenders conferred by this section are, 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, exercisable by such a mortgagee instead

of by the mortgagor as respects any land affected by the receivership, in like manner as if that mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Powers incident  
to interest of  
mortgagee

133. (1) A mortgagee, where the mortgage is made by deed, has the following powers, to the like extent as if they had been in terms conferred by the mortgage deed but not further, namely—

- (a) the power, at any time after the date of the mortgage, to sell or to concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior changes or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, evidence of title or other matters as the mortgagee thinks fit, with power to vary any contract for sale, to buy in at an auction or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and
- (b) a power, at any time after the date of the mortgage, to insure and keep insured against loss or damage by fire, flood, earthquake, hurricane, storm, tempest, explosion, riots, malicious damage and strikes, any building or any effects or property of an insurable nature, whether affixed to the land 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 become 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, at any time after the date of the mortgage, to appoint a receiver of the income of the mortgaged property or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodic sum, a receiver of that 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 power of sale aforesaid includes 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 of 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 all 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 connected with building or other purposes, on the property remaining in mortgage or any part thereof, or on any property sold; and

(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 or on the property remaining unsold or any part thereof or to or on any property sold; and

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

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

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

(5) Subsection (2) applies where the mortgage deed is executed after 20th May, 1924, subsection (1)(a) and (c) applies where the mortgage deed is executed after the commencement of this Act and subsection (1)(b) applies to risk other than fire only where the mortgage deed is executed after the commencement of this Act but this section otherwise applies where the mortgage deed is executed after 1st January, 1885.

(6) The power of sale conferred by this section includes such power of selling the estate of the mortgagor as is conferred by section 122.

**Undivided shares  
in land**

134. (1) A person who is a mortgagee of an undivided share in land to which section 49 applies has the same power to sell his equitable interest in the land or in the proceeds of sale of the land as, independently of any trust, he would have had in regard to the share in the land; and has also a right to require the trustees of the land to account to him for the income attributable to that share or to appoint a receiver to receive the same from the trustees corresponding to the right which, independently of any trust, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.

(2) The powers conferred by this section are exercisable by persons deriving title under such a mortgagee

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

Regulation of  
exercise of  
power of sale

- (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, or (in the case of mortgage money repayable by instalments) some instalment representing partly interest and partly repayment of mortgage money, 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, or in an enactment replaced by 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 beside a covenant for payment of the mortgage money or interest thereon:

Provided that the exercise by the mortgagee of his power of sale under paragraph (c) is subject to the conditions set out in section 64 of the Landlord and Tenant Act, 1980, as if that exercise were the enforcement of a right of re-entry within that section and the mortgagee were a landlord and the mortgagor the tenant.

1980 No.

136. (1) A mortgagee exercising the power of sale conferred by this Act has power, by deed to convey the property sold, for such estate and interest therein as he is by this Act authorised to sell or convey or may be 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.

Conveyance  
on sale

(2) Where a conveyance is made in exercise of the power of sale conferred by this Act, or any enactment replaced by this Act, the title of the purchaser is not impeachable on the ground that—

- (a) no case had arisen to authorise the sale; or
- (b) due notice was not given; or

- (c) where the mortgage is made after the commencement of this Act, leave of the Court, when so required, was not obtained; or
- (d) whether the mortgage was made before or after such commencement, the power was otherwise improperly or irregularly exercised;

and a purchaser is not, 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; but any person damnified by an unauthorised, improper or irregular exercise of the power has a remedy in damages against the person exercising the power.

(3) A conveyance on sale by a mortgagee, made after the commencement of this Act, is made in exercise of a power of sale conferred by this Act unless a contrary intention appears.

Duty to  
obtain best  
price

137. (1) It is the duty of a mortgagee, in the exercise after the commencement of this Act of his statutory or express power of sale, to take reasonable care to ensure that the price at which the property is sold is the best price that can reasonably be obtained.

(2) An agreement is void to the extent that it purports to relieve, or might have the effect of relieving, a mortgagee from the duty imposed by this section.

(3) Within twenty-eight days from the completion of the sale, the mortgagee shall send by registered post to the mortgagor, at the mortgagor's last known address, a notice containing the prescribed particulars of the sale.

(4) The title of the purchaser is not impeachable on the ground that the mortgagee has committed a breach of any duty imposed by this section; but any person damnified by the breach of duty has a remedy in damages against the mortgagee exercising the power of sale.

(5) If a mortgagee fails without reasonable excuse to comply with subsection (3), he is guilty of an offence; and, where the mortgagee who has so failed is a building, friendly, industrial or provident society, the following persons are also guilty of an offence, namely, every officer of the society who is bound by the rules of the society to fulfil the duty imposed by subsection (3), or, if there is

no such officer, every director of the society, with whose consent or connivance the offence has been committed.

(6) A society or other person guilty of an offence under sub-section (5) is liable on summary conviction to a fine not exceeding \$100, and to an additional fine not exceeding \$25 for each week during which the offence continues.

(7) Nothing in this section affects, the operation of any rule of law relating to the duty of a mortgagee to account to a mortgagor.

138. (1) The money which is received by the mortgagee arising from the sale, after discharge of prior incumbrances to which the sale is not made subject if any, or payment into court under this Act of a sum to meet any such prior incumbrances, shall be applied by him in the following order—

Application  
of proceeds  
of sale

- (a) in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale or otherwise;
- (b) in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage;

and any residue of the money so received shall be held on trust by him to be paid to the person (if any) who would, but for the sale, be the mortgagee secured on the property sold next in priority after the mortgagee selling, or who is otherwise authorised to give receipts for the money so received, or, if there is no such person, the mortgagor.

(2) Where, in accordance with sub-section (1), the mortgagee selling carries out his trust of the said residue by paying it to a subsequent mortgagee, the latter shall apply it in discharge of the mortgage money, interests and costs, and other money, if any, due under his mortgage, and any residue still remaining shall be held on trust by him to be paid to the person (if any) who would, but for the sale, be the mortgagee secured on the property sold next in priority after him, or, if there is no such person, the mortgagor, and similar duties attach to each subsequent mortgagee who receives any such residue.

139. (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.

Exercise of  
power of  
sale

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

(3) The mortgagee is not answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, of any trust connected therewith or, as regards mortgages executed after 20th 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 power may demand and recover from any person, other than a person having in the mortgaged property an estate or right in priority to the mortgage, all the documents relating to the property, or to the title hereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

**Mortgagees' receipt**

140. (1) The receipt in writing of a mortgagee is 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 is not concerned to inquire whether any money remains due under the 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 section 138 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 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**

141. (1) The amount of an insurance effected by a mortgagee 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 specified therein, the maximum amount that would be required, in case of total destruction, fully to reinstate 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 any enactment replaced by 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 any enactment replaced by 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.

142. (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. Receivers

(2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, is the agent of the mortgagor; and the mortgagor is solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

(3) The receiver has 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 is not 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 is 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, flood, earthquake, hurricane, storm, tempest, explosion, riots, malicious damage and strikes, out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the land 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, namely—

- (a) first, in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and
- (b) secondly, 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; and
- (c) thirdly, 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 or proper repairs directed in writing by the mortgagee; and

- (d) fourthly, in payment of the interest accruing due in respect of any principal money due under the mortgage; and
- (e) fifthly, 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.

143. (1) Where the statutory or express power of a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, that power shall not, without the leave of the court, be exercised only on account of the act of bankruptcy or adjudication. Effect of mortgagor's bankruptcy

(2) This section applies only where the mortgage deed is executed after the commencement of this Act; and in this section "act of bankruptcy" has the same meaning as in section 3 of the Bankruptcy Ordinance. Ch. 6. No. 6

144. (1) Where—

- (a) in a mortgage, 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
- (b) in a mortgage, such an obligation or such a transfer is made to more persons than one jointly;

the mortgaged money, or other money or money's worth, for the time being due to those persons on the mortgage or obligation, is, as between them and the mortgagor or obligor, deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, is a

Advance on joint account

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 only 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.

**Notice of trusts**

145. (1) Where, on the transfer of a mortgage, the stamp duty, if payable according to the amount of the debt transferred, would exceed the amount for which the instrument is actually stamped, a purchaser is not, by reason only of the transfer bearing a stamp of that amount, whether adjudicated or not, 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.

**Trusts affecting mortgage debts**

146. (1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged, released or postponed as to the whole or any part of the mortgaged property, is not concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage, that—

(a) the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and

(b) the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof;

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section applies to mortgages made before or after the commencement of this Act, but only as respects dealings effected after such commencement.

(3) This section does not affect the liability of any person, in whom the mortgage debt is vested for the purposes of any trust, to give effect to that trust.

147. (1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof operates, unless a contrary intention is expressed therein, and subject to any provisions contained therein, to transfer to the transferee—

Transfer of mortgages

- (a) 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
- (b) the benefit of all securities for the same, the benefit of and the right to sue on all covenants with the mortgagee and the right to exercise all powers of the mortgagee; and
- (c) all the interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such interest subject to the right of redemption then subsisting.

(2) In this section, “transferee” includes his personal representatives and assignees.

(3) A transfer of mortgage may be made in Form No. 1 contained in the Second Schedule, with such variations and additions, if any, as the circumstances may require.

(4) This section applies whether the mortgage transferred was made before or after the commencement of this Act, but applies only to transfers made after the commencement of this Act.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

148. (1) A receipt endorsed on or annexed to a mortgage of unregistered land or, where the mortgage deed is registered under Part IV of the Land Registration Act, 1981, registered

Discharge by endorsed or annexed receipt 1981 No.

under sub-section (7) for all money thereby secured, which is executed by the mortgagee, operates, subject to sub-section (2) and to section 149, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under, the mortgage, and as a termination of the mortgage and of all the mortgagee's interest in the mortgaged property, but without prejudice to any term or other interest which is paramount to the interest of the mortgagee.

(2) Where it appears from such a receipt that the payment is by a person not entitled to the immediate equity of redemption, the receipt operates as a transfer of the mortgage to him unless—

(a) it is otherwise expressly provided; or

(b) the money is paid out of capital money, or other money, in the hands of a trustee, properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

(4) This section does not affect the right of any person to require a discharge or transfer to be executed in lieu of a receipt; but where a receipt operates as a transfer under sub-section (2) it has the like effect as a deed expressed to be a transfer by the mortgagee to the person paying the money, and is liable to the same stamp duty, except that nothing in this section renders any building or other society liable to any stamp duty to which it would not otherwise have been liable.

(5) A receipt discharging a mortgagee of unregistered land may be given in Form No. 2 contained in the Second Schedule, with or without variations and additions, or in the form set out in—

Ch. 38. No. 1

(a) the Schedule to the Building Societies Ordinance; or

Ch. 38. No. 2

(b) the Third Schedule to the Friendly Societies Ordinance;

and where it takes effect under this section, such a receipt is (subject as herein provided) liable to the same stamp duty as if it were a discharge by deed, and the same covenants are implied therein.

(6) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it is sufficient, for the purposes of this section, if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, provided it is endorsed on all the mortgage deeds.

(7) Where the mortgage relates to unregistered land, the Land Registrar shall, on production of a receipt intended to operate under sub-section (1) or sub-section (2), register the same as a deed under Part IV of the Land Registration Act, 1981, and thereupon it has the effect provided for by this section. 1981 No.

(8) This section applies to mortgages whenever made, but applies to mortgages made before the commencement of this Act only as respects discharges effected after such commencement.

(9) This section does not apply to the discharge of a charge or incumbrance on registered land.

149. (1) Where land subject to a mortgage is intended to be conveyed freed and discharged from the mortgage, but the conveyance is executed by the mortgagor or other persons entitled to the equity of redemption before the deed of release or discharge is executed by the mortgagee or a receipt within the meaning of section 148 is endorsed on or annexed to the mortgage or registered, the deed of release or discharge or the receipt, as the case may be, operates as a full discharge of the mortgage in favour of the person entitled to the equity of redemption at the time of execution of the deed of release or discharge or endorsement, annexation, or registration of the receipt, notwithstanding that such person is not a party to the deed or is not named in the receipt. Conveyance  
of land before  
discharge of  
mortgage

(2) This section applies to deeds of conveyance or deeds of release or discharge executed before or after, and to receipts endorsed, annexed or registered after, the commencement of this Act.

(3) This section does not apply to a mortgage or discharge of a mortgage of registered land.

Right of limited  
owner

150. Nothing in this Act prejudices the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise.

Form of charge  
by way of legal  
mortgage

151. (1) A mortgage may be made in Form No. 3 set out in the Second Schedule.

(2) This form may be used with or without variations.

(3) In such a mortgage deed, it is implied, so far as consistent with the variations, if any, that the sum for which the mortgaged property is expressed to be mortgaged is the principal sum charged on the mortgaged property, that that is the mortgaged money, that the mortgage is made in consideration of the payment of that amount of money by the mortgagee to the mortgagor, that the mortgagor acknowledges receipt of that sum, and that any rate of interest mentioned therein is a rate per annum.

(4) In such a mortgage deed, so far as consistent with the variations if any, the following terms are implied—

- (a) such covenants as would have been implied had the deed expressed the mortgagor to charge the mortgaged property as mortgagor and as beneficial owner;
- (b) a covenant with the mortgagee by the mortgagor that the mortgagor will, on the stated day, pay to the mortgagee the 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 (after as well as before any judgment be obtained under the mortgage) interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six months from the day stated for payment of the mortgage money; and
- (c) provision that if the mortgagor pays the mortgage money to the mortgagee on the stated

day, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, will discharge the mortgaged property or transfer the benefit of the mortgage as the mortgagor may direct.

(5) Sub-section (4), except for paragraph (a), applies to a mortgage made before the commencement of this Act in Form No. 4 set out in the Second Schedule, or in that form with variations, but with a substitution of a reference to "the person therein expressed to convey as mortgagor" for the reference in paragraph (b) of subsection (4) to "the mortgagor".

(6) A mortgage of unregistered land may be made by a deed in any form which could be used to create a registrable charge on registered land, and, so far as consistent with the terms of any such mortgage, subsections (3) and (4) apply to it.

152. (1) A transfer of a mortgage may be made by a deed expressed to be made by way of transfer or mortgage, being in one of the two forms (No. 5 or No. 6) set out in the Second Schedule as may be appropriate to the case. Forms of statutory transfer of charge by way of legal mortgage

(2) Those forms may be used with or without variations.

(3) In whichever of those two forms the deed or transfer is made, subsections (1) and (2) of section 147 apply to it.

(4) If a covenantor joins in the deed of transfer, there is implied therein a covenant with the transferee by the person expressed to join therein as covenantor that the covenantor will, on the next of the days fixed by the mortgage deed for payment of interest, pay to the transferee the 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 fixed by the mortgage deed for payment of interest.

(5) If the deed of transfer is made in the Form No. 6, it operates not only as a transfer of mortgage, but

also as a mortgage and the provisions of this section have effect in relation thereto accordingly; but it is not liable to and increased stamp duty by reason only of it being designated a mortgage.

(6) This section applies whether the mortgage transferred was made before or after the commencement of this Act, but applies only to transfers made after the commencement of this Act.

Implied covenants

153. In a deed of mortgage, or of transfer of mortgage, where more persons than one are expressed to charge as mortgagors, or to join as covenantors, the implied covenant on their part is a joint and several covenant by them; and, notwithstanding section 117, where there are more mortgagees or more transferees than one, the implied covenant with them is 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 is a covenant with each severally in respect of the share or distinct sum secured to him.

## PART X

### RENTCHARGES AND OTHER INCUMBRANCES

Remedies for  
recovery of  
annual sums  
charged on land

154. (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, so far only as those remedies might have been conferred by the instrument under which the annual sum arises.

(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 of 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.

(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 leasehold term, 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 cost of the preparation and execution of the trust 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) 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.

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

155. (1) A rentcharge or other annual sum (not being rent incident to a reversion) payable half-yearly or otherwise may be granted, reserved, charged or created out of

Rentcharge  
charged on  
another rent  
charge

or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or not of the income of land, in like manner as the same could have been made to issue out of land.

(2) If at any time the annual sum so created 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 shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Act relating to the appointment, powers, remuneration and duties of a receiver shall apply in like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Act, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.

(3) The power to appoint a receiver conferred by this section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land, by the last preceding section.

(4) This section applies to annual sums expressed to be created before as well as after the commencement of this Act, and, but without prejudice to any order of the court made before the commencement of this Act, operates to confirm any annual sum which would have been validly created if this section had been in force.

**Discharge of  
incumbrances**

156. (1) Where land subject to any incumbrance, whether immediately realisable or payable or not, is sold or exchanged, the parties to the sale or exchange (hereinafter referred to as "the parties") may agree with the person interested in the said incumbrance (hereinafter referred to as "the person interested") and pay to him or to the Public Trustee, a sum of money sufficient:—

- (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, when invested, 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 land, to meet the incumbrance and any interest due thereon;

plus in either case such additional amount as the parties and the interested person consider will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments.

(2) In the event of a dispute, the Land Commission shall determined the sum or sums of money specified in subsection (1).

(3) Upon payment of the sum or sums of money specified in subsection (1) to the interested person (to be specified by his joining in the conveyance and acknowledging receipt of the sum or sums) or, as the case may be, to the Public Trustee (to be signified by a receipt endorsed by the Public Trustee on the conveyance), the incumbrance shall be discharged and the land sold or exchanged shall be freed from this incumbrance.

(4) Without prejudice to the foregoing provisions, where land subject to any incumbrance, whether immediately realisable or payable or not, is sold or exchanged by order of 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 the sum or sums specified in subsection (1), including such additional amount as the court thinks fit to require.

(5) Thereupon the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the incumbrance to have been discharged and the land to be freed from the incumbrancer, and may make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange, and give direction for the retention and investment of the money in court and for the payment or application of the income thereof.

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

(7) On any application under subsection (4), 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.

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

(9) Subsections (4) to (8) apply to sales or exchanges whether made before or after the commencement of this Act.

## PART XI

### INCORPOREAL HEREDITAMENTS

Statutory  
easements

157. (1) Every landowner is under an obligation, for the benefit of any other landowner who may be adversely affected by any breach of it:—

- (a) not to interfere with the natural flow of water in a defined channel from other land on to his land and from his land on to other land, subject to the exercise of his rights as a riparian owner;
- (b) not to do anything on his land which will withdraw:—
  - (i) support from any other land or from any building on it;
  - (ii) shelter from any building on other land which is contiguous to any building on his land;
- (c) in addition to (b), not to excavate on his land in circumstances which give rise to a potential danger of withdrawing support or shelter from land or buildings of adjoining owners without following the procedure set out in Part I of the Third Schedule;
- (d) save as provided in Part II of the Third Schedule and in accordance with the procedure contained therein, not to demolish,

lower, raise, underpin, thicken, cut into or alter any party structure which stands on the line of junction between his land and that of an adjoining owner, but without prejudice to a landowner's right to maintain and repair his section of the structure;

(e) subject to the provisions of Part III of the Third Schedule, as to compensation and other matters, to allow an adjoining landowner who desires to build close up to the line of junction, where the adjoining land is not built on at that line or where it is built on at that line only to the extent of a boundary wall, to place under his land any projecting footings or foundations which are necessary for that purpose.

(2) Any obligation which arises under this section—

(a) is an easement and as such is enforceable by or against any landowner to whom it relates;

(b) may not be excluded or cut down in any way expressly or impliedly and any agreement or conveyance which purports to do so is void to that extent.

(3) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of any easement arising under this section:

(4) In this section—

(a) "landowner" means the owner of any interest in land;

(b) "party structure" means a party wall and also any floor or other structure separating buildings or parts of buildings.

(5) This section does not apply to landowners in respect of their lands which are comprised entirely within the same condominium scheme registered under the Condominiums Act, 1981.

158. (1) Where, by agreement or conveyance—

(a) the owner of land (hereinafter called "the vendor") divides it into two or more parcels and agrees to convey or conveys one or more of them; or

Implied  
easements and  
profits

- (b) the owner of two or more parcels of land (hereafter called "the vendor") agrees to convey or conveys one or more of them;

each parcel, including any parcel retained by the vendor, becomes, by implication of law, subject to such of the obligations set out in subsection (2) as are necessary to ensure that the owner of any other parcel, including any parcel retained by the vendor, will have—

- (i) all amenities or facilities which were previously available in respect of that other parcel and which in all the circumstances it is reasonable should continue to be available; and
- (ii) any new amenities or facilities which are necessary for the reasonable enjoyment of that other parcel or which in all the circumstances it is reasonable to contemplate as having been intended by the parties to be available in respect of it on completion of the transaction in question.

(2) The said obligations are—

- (a) to allow the owner of any such other parcel of land to pass and repass over roads, driveways, paths and other parts of the land;
- (b) to allow the passage or provision of water, sewage, drainage, electricity and other services (including telephone, radio and television services) through or by means of pipes, wires and cables for the time being existing in or on the land and used in connection with enjoyment of any such other parcel of land;
- (c) to allow the owner of any such other parcel of land to enter on the land for the purposes of pasturage, mining, quarrying, cutting timber, hunting or the exercise of similar rights;
- (d) to allow the owner of any such other parcel of land to make use of any other amenity or facility which conduces to the reasonable enjoyment of his land.

(3) Any obligation which is implied under this section is an easement or profit *a prendre*, as the case may be, and as such is enforceable by or against any owner of land to whom it relates.

(4) All ancillary rights and obligations reasonably necessary to make easements or profits *a prendre* effective apply in respect of any easement or profit *a prendre* implied under this section.

(5) This section—

(a) takes effect only if and as far as a contrary intention is not expressed in the agreement or conveyance and has effect subject to the terms of such agreement or conveyance and to the provisions therein contained;

(b) does not apply to landowners in respect of their lands which are comprised entirely within the same condominiums scheme registered under the Condominiums Act, 1981. 1981 No.

(6) In this section, “owner of land” means the owner of any interest in land.

159. (1) From the commencement of this Act—

Prescription

(a) no easement or profit *a prendre* may be acquired by prescription at common law or under the doctrine of lost modern grant;

(b) no easement of support, light or relating to the free passage of air, or any other negative easement nor any profit in gross may be acquired by prescription under this Act.

(2) For the avoidance of doubt it is hereby declared that acquisition of an easement or profit appurtenant by prescription under this Act is not based on any presumption of a grant.

(3) This Act does not apply to the acquisition of easements or profits *a prendre* by prescription based on user or enjoyment which began before the commencement of this Act.

160. (1) Where the owner or successive owners of land hereafter referred to as “the dominant land”) have enjoyed for any continuous period of 12 years (hereafter referred to as “the prescriptive period”) any right over other land (hereafter referred to as “the servient land”) capable of subsisting as an easement or profit appurtenant, the right shall, subject to subsection (5) and section 161, immediately upon expiration of the prescriptive period become an easement or profit, as the case may be, vested in the owner for

Acquisition  
of easement  
and profits by  
prescription

the time being of the dominant land (hereafter referred to as "the dominant owner") and binding the owner for the time being of the servient land (hereafter referred to as "the servient owner").

(2) Enjoyment of a right for the prescriptive period under subsection (1) means enjoyment of such a kind and, where the enjoyment is intermittent, of such frequency and regularity as, apart from the servient owner's agreement, would be justified only by the existence of an easement or profit such as that claimed to arise under the said subsection.

(3) No easement or profit arises under subsection (1) where the enjoyment of a right in question was—

(a) by means of force employed by or on behalf of the dominant owner;

(b) not known to the servient owner nor ought in all the circumstances reasonably to have been known to him, provided that, in the case of a mentally ill person within the meaning of the Mental Health Act, 1975, the knowledge which is relevant for these purposes is that of his committee, guardian or receiver appointed in respect of his estate;

(c) with the consent, written or oral, of the servient owner for a continuous period of at least twelve months during the prescriptive period;

(d) interrupted for a continuous period of at least twelve months during the prescriptive period or was notionally interrupted by registration of a notice under section 164.

(4) Any easement or profit which arises under subsection (1) is commensurate in respect of its character and extent with the right enjoyed during the prescriptive period and any dispute on this matter may be determined by the Land Commission.

(5) Where the easement or profit claimed to arise under this section relates to dominant land or servient land which is registered land, the easement or profit does not vest in the dominant owner or bind the servient owner until it is registered in accordance with the provisions of section 89 of the Land Registration Act, 1981.

161. (1) Where the dominant owner is—

Limited owners

- (a) a tenant, any easement or profit arising under subsection (1) of section 160 enures to the benefit of his landlord upon determination of his leasehold term;
- (b) a beneficiary under the trust, any easement or profit arising under subsection (1) of section 160 vests in the trustees for the benefit of the trust.

(2) Where the servient owner is—

- (a) a tenant, any easement or profit arising under subsection (1) of section 160 subsists as long as his leasehold term lasts or would have lasted but for its surrender or merger in a superior interest;
- (b) a beneficiary under a trust, any easement or profit arising under subsection (1) of section 160 vest in the dominant owner for an estate or interest equivalent to that vested in the trustees in respect of the servient land.

(3) For the avoidance of doubt, it is hereby declared that subsection (1) of section 160 applies as between a landlord and his tenant and as between tenants of the same landlord in respect of dominant and servient lands respectively occupied by them, but without prejudice to extinguishment of an easement or profit through unity of ownership and possession.

(4) For the purposes of paragraph (a) of subsection (2) "tenant" includes a tenant occupying land continuously for successive leasehold terms (including a statutory tenancy arising upon determination of a contractual tenancy) and, in such a case, the leasehold term referred to in the said paragraph is the term for which the tenant holds the land at the expiration of the prescriptive period.

162. (1) An easement or profit may arise under sub- *Ultra vires*  
section (1) of section 160 despite the fact that during the prescriptive period it was *ultra vires* the servient owner to make any express grant of such an easement or profit.

(2) An easement or profit does not arise under the said subsection where during the prescriptive period it was *ultra vires* the dominant owner to acquire such an easement or profit by express grant or to exercise rights under such an easement or profit.

(3) Subsection (2) does not prevent an easement or profit arising under subsection (1) of section 160 and vesting in a successor in title of such a dominant owner on the basis of a prescriptive period during part of which the right over the servient land was enjoyed by such dominant owner.

**Interference by  
third parties**

163. Where a person is enjoying a right over servient land in circumstances which, if continued, would result in an easement or profit vesting in him under subsection (1) of section 160, he has a right of action against any person interfering with his enjoyment of it other than the servient owner or any person acting on his authority.

**Notional  
interruption**

164. (1) A servient owner may interrupt the enjoyment of a right by a dominant owner at any time during the prescriptive period by registering a notice under this section.

(2) Such a notice shall—

- (a) give particulars of the servient owner and of his interest in the servient land;
- (b) describe the servient land by reference to a map;
- (c) give details of the right enjoyed by the dominant owner and of the interruption to take effect on registration of the notice, if necessary by reference to a map, plan or diagram;
- (d) give particulars of the dominant owner and of his interest in the dominant land;
- (e) describe the dominant land by reference to a map.

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(3) The Land Surveyors Ordinance, and the rules made thereunder, applies to any map, plan or diagram prepared or furnished under this section as it applies to any map, plan or diagram required under the Land Registration Act, 1981.

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(4) At least twenty-eight days before lodging an application for registration of a notice under this section, the servient owner shall—

- (a) inform the dominant owner in writing of his intention to register the notice; and
- (b) furnish the dominant owner with a copy of the notice intended to be registered.

(5) An application to register a notice under this section shall be accompanied by a statutory declaration by the servient owner that the requirements of subsection (4) have been met.

(6) On lodgment of an application to register a notice under this section, the Land Registrar may, before registering it, require—

- (a) notices to be served on persons or to be published in newspapers;
- (b) information to be furnished by the dominant owner or other persons;
- (c) such other steps to be taken as he thinks necessary to facilitate registration of the notice.

(7) Where the dominant land is unregistered land, the notice lodged for registration shall be contained in a deed and shall be registered as a deed under Part IV of the Land Registration Act, 1981, as if both the dominant and servient owners were parties to it. 1981 No.

(8) Where the dominant land is registered land, the notice shall be registered in accordance with the provisions of section 89 of the said Act.

(9) Once registered, such a notice has an effect, to the extent specified therein, equivalent to physical interruption of the enjoyment of the right enjoyed by the dominant owner for a continuous period of twelve months from the date of registration.

165. (1) Where any easement or profit *a prendre* has not been used or enjoyed for a continuous period of twelve years, it is to be deemed to be released or abandoned and ceases to have effect accordingly. Abandonment  
of easements  
or profits

(2) This section does not affect any implication or presumption of release or abandonment of easements or profits arising from circumstances other than lack of use or enjoyment.

166. (1) Subject to subsection (12), in this section,— Discharge or  
modification  
of obligations

(a) “obligation or restriction” means any obligation or restriction on land arising by virtue of the existence of an easement or profit *a prendre* or imposed by covenant or agreement;

(b) "dominant owner" means any person entitled to enforce any such obligations or restriction.

(2) On the application of any person interested in land subject to an obligation or restriction, the Land Commission may, by order, modify or wholly or partially discharge the obligation or restriction on being satisfied that—

(a) by reason of any change in the character of the neighbourhood or other circumstances of the case whatsoever, the obligation or restriction has become obsolete; or

(b) the obligation or restriction secures no practical benefit to the dominant owner; or

(c) the obligation or restriction—

(i) unreasonably restricts the owner's use or enjoyment of his land or unreasonably impedes the development of his land; and

(ii) does not secure to the dominant owner any practical benefit of substantial value or advantage to him, or is contrary to the public interest;

and the dominant owner can be adequately compensated for any loss or disadvantage he would suffer from the discharge or modification; or

(d) the dominant owner has agreed either expressly or by implication, by his acts or omissions, to the obligation or restriction being discharged or modified; or

(e) in the case of an obligation, it has become unduly onerous in comparison with the benefit which it confers.

(3) Where an order is made under subsection (2), the applicant may be directed to pay to the dominant owner either—

(a) a sum to make up for any loss or disadvantage suffered by him in consequence of the discharge or modification; or

(b) a sum to make up for any effect which the obligation or restriction had at the time when it was created or imposed, in reducing the consideration then received for the land affected by it.

(4) In determining whether an obligation or restriction ought to be discharged or modified, the Land Commission shall take into account the development plan (if any) and any declared or ascertainable pattern for the grant or refusal or planning permission in the relevant areas, as well as the period at which and the context in which the obligation or restriction was created or imposed and any other material circumstances.

(5) In exercising its power to modify an obligation or restriction under this section, the Land Commission has the power to add such further obligation or restriction as appears to it to be reasonable in view of the relaxation of the existing obligation or restriction, and as may be accepted by the applicant, so that the Land Commission may accordingly refuse to modify an obligation or restriction without some such addition.

(6) The Land Commission may, before making any order under this section, direct such inquiries, if any, to be made of any government department or local or public authority, and such notices, if any, to be given to such persons, and in such manner, whether by advertisement or otherwise, as it thinks fit.

(7) An order made under this section is, upon registration under subsection (10), binding on all persons, whether of full age or capacity or not, then entitled or thereafter to become entitled to enforce the obligation or restriction to which the order relates, and whether or not those persons are parties to the proceedings or have been served with notice of them.

(8) An order may be made under this section notwithstanding that any instrument which is alleged to create or impose the obligation or restriction intended to be discharged or modified may not have been produced to the Land Commission, and the Commission may act on such evidence of that instrument as it may think sufficient.

(9) Where, on an application for an order under this section a question arises as to whether or not any land is subject to an obligation or restriction or as to the nature or extent of the obligation or restriction, the Land Commission may determine the matter.

(10) Upon the making of an order under this section, the Land Commission shall lodge it with the Land Registrar, who shall thereupon—

(a) where the order relates to unregistered land,

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register the order under Part IV of the Land Registration Act, 1981, as if it were a deed to which the dominant owner and the applicant were parties;

- (b) where the order relates to registered land, register it in accordance with the provisions of section 91 of the said Act.

(11) Rules may be made under the said 1981 Act for regulating the practice and procedure of the Land Commission in respect of proceedings under this section.

(12) This section—

- (a) applies to obligations and restrictions created or imposed before or after the commencement of this Act;

(b) does not apply to—

- (i) any obligation or restriction arising under a condominium scheme registered under the Condominiums Act, 1981;

- (ii) any statutory easements within section 157 or implied easements or profits arising under section 158;

- (iii) any other obligation or restriction created or imposed by statute.

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Imposition of obligations and restrictions

167. (1) On the application of any owner who intends to improve or develop his land (hereinafter referred to as “the dominant land”) the Land Commission may by order declare neighbouring land (hereinafter referred to as “the servient land”) to be subject to any obligation or restriction in the nature of an easement or profit *a prendre* or such as may be created or imposed by a covenant or agreement affecting land for the benefit of the dominant land.

(2) Upon registration of such an order under subsection (5), the obligation or restriction is enforceable to the like extent as an easement, profit, covenant or agreement expressly created or entered into by the applicant and the owner of the servient land.

(3) No order shall be made under this section unless the Land Commission is satisfied that—

- (a) it is not contrary to the public interest that the dominant land should be improved or developed as the applicant intends;

- (b) the improvement or development could not reasonably be expected to be carried out unless such obligation or restriction were imposed on the servient land;
  - (c) the owner of the servient land could be adequately compensated in money for the adverse effect of the imposition of the obligation or restriction; and
  - (d) in all the circumstances of the case, refusal of the owner of the servient land to agree to such imposition is unreasonable.
- (4) Any order made under this section shall be subject to—
- (a) payment by the applicant of such compensation to the owner of the servient land as the Land Commission thinks fit;
  - (b) payment by the applicant, whether his application is successful or not, of all costs, including those reasonably incurred by the servient owner, arising from the application;
  - (c) deposit by the applicant with the Land Commission of such sum as security for the servient owner's costs as the commission requires; and
  - (d) the obtaining by the applicant of planning permission for the improvement or development or compliance with such other conditions (if any) as the Land Commission thinks fit to impose.
- (5) Upon the making of an order under this section, the Land Commission shall lodge it with the Land Registrar, who shall thereupon—
- (a) where the order relates to unregistered land, <sup>1981 No.</sup> register the order under Part IV of the Land Registration Act, 1981, as if it were a deed to which the applicant and the owner of the servient land were parties;
  - (b) where the order relates to registered land, register it in accordance with the provisions of section 91 of the said 1981 Act.
- (6) Rules may be made under the said 1981 Act for regulating the practice and procedure of the Land Commission in respect of proceedings under this section.

## PART XII

## POWERS OF ATTORNEY

Execution and  
registration of  
powers of  
attorney

168. (1) An instrument creating a power of attorney shall be executed in accordance with the requirements for due execution of a deed.

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(2) No power of attorney shall be admitted in evidence in any suit, action or other proceeding unless it is executed as required by subsection (1) and registered under Part IV of the Land Registration Act, 1981.

(3) For the removal of doubt it is hereby declared that a power of attorney may specify as donee of the power—

- (a) a corporation by reference to its corporate name;
- (b) the holder of an office by reference to that office;
- (c) any person by reference to his rank, title or position, whether in respect of service, employment or otherwise.

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(4) Nothing in this section affects the execution and registration of powers of attorney under Part XVII of the Land Registration Act, 1981.

Execution  
under a power  
of attorney

169. (1) The donee of a power of attorney may, if he thinks fit, execute any instrument with his own signature, but as otherwise required by law, and do any other thing in his own name, by the authority of the donor of the power; and any instrument executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature or, as the case may be, in the name, of the donor of the power.

(2) Where an instrument is to be executed by the donee of a power of attorney in the name or on behalf of a corporation, sole or aggregate, the donee may execute it by affixing the name of the corporation and with his own signature, but as otherwise required by law, and such execution shall be as effective as if executed by the corporation.

(3) For the removal of doubt it is declared that a corporation has and always has had the power by instrument under its common seal to appoint an attorney to execute deeds and other documents on its behalf in respect of any matter.

(4) This section is without prejudice to any statutory direction requiring an instrument to be executed in the name of an estate owner.

(5) This section applies to powers of attorney created before or after the commencement of this Act.

170. (1) Subject to subsection (2), a general power of attorney in the form set out in the Fourth Schedule, or in a form to the like effect but expressed to be made under this Act, operates to confer—

- (a) on the donee of the power; or
- (b) if there is more than one donee, on the donees acting jointly or acting jointly and severally, as the case may be,

authority to do on behalf of the donor anything which he can lawfully do by an attorney.

(2) This section does not apply to functions which the donor has as a trustee or personal representative.

(3) This section operates without prejudice to the provisions of section 95 of the Land Registration Act, 1981. 1981 No.

171. (1) Where a power of attorney is expressed to be irrevocable and is given to secure—

- (a) a proprietary interest of the donee of the power; or
- (b) the performance of an obligation owed to the donee,

then, so long as the donee has that interest or the obligation remains unchanged, the power shall not be revoked—

- (i) by the donor without the consent of the donee; or
- (ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a corporation, by its winding up or dissolution.

(2) A power of attorney given to secure a proprietary interest may be given to the person entitled to the interest and persons deriving title under him to that interest, and those persons shall be duly constituted donees of the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.

(3) This section applies to powers of attorney whenever created.

Protection of  
donee and third  
persons

172. (1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time he did not know that the power had been revoked.

(2) Where a power of attorney has been revoked and a person, without the knowledge of the revocation, deals with the donee of the power, the transaction between them is, in favour of that person, as valid as if the power had then been in existence.

(3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, he is entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of subsection (2) as having knowledge of the revocation only if he knows that it has been revoked in that manner.

(4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of subsection (2), it shall be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if—

- (a) the transaction between that person and the donee was completed within twelve months of the date on which the power came into operation; or
- (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he did not at the material time know of the revocation of the power.

(5) Without prejudice to subsection (3), for the purposes of this section knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.

(6) This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Act.

**173.** (1) Every power of attorney registered under Part IV or Part XVII, as the case may be, of the Land Registration Act, 1980, shall continue in force until revocation of the power by the donor is registered in accordance with the provisions of that Act.

Duration of powers of attorney 1980 No.

(2) All instruments executed and all acts done by the donor of the power in pursuance of its provisions before registration of such revocation are valid in favour of any person dealing with the donee without knowledge of the revocation.

(3) This section takes effect subject to—

(a) sections 171 and 172; and

(b) any contrary intention appearing in the instrument creating the power of attorney.

**174.** (1) Subject to section 171, a power of attorney may be revoked by—

Revocation of powers of attorney

(a) registration of a deed revoking it; or

(b) an entry in writing on the registered deed creating the power by the Land Registrar of the death, incapacity or bankruptcy of the donor or, if the donor is a corporation, of its winding up or dissolution.

(2) The Land Registrar shall make an entry under paragraph (b) of subsection (1) only upon production of evidence by statutory declaration of the fact to which the entry relates or such other evidence as the Land Registrar shall require.

(3) Nothing in this section affects the revocation of powers of attorney registered under Part XVII of the Land Registration Act, 1981.

1981 No.

## PART XIII

## VOIDABLE DISPOSITIONS

Voluntary conveyances to defraud creditors

175. (1) Save as provided in this section, every conveyance or transfer of property, made before or after the commencement of this Act, with intent to defraud creditors, is voidable at the instance of any person prejudiced by it.

(2) This section does not affect the law of bankruptcy.

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

Voluntary disposition of land

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

(2) For the purpose of this section, no voluntary disposition is to be considered as intended to defraud merely because a subsequent conveyance for valuable consideration was made.

(3) Subsection (2) applies only where the subsequent conveyance was made after 29th December, 1915.

Sales of reversions

177. (1) No acquisition in good faith, without fraud or unfair dealing, of any reversionary interest in land or other property, for valuable consideration, is voidable merely on the ground of under value.

(2) In this section, "reversion" includes an expectancy or possibility.

(3) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

## PART XIV

## MISCELLANEOUS

178. (1) Where, either before or after the commencement of this Act, any property or any interest therein is or has been vested in a corporation sole (including the State), the same (unless and until otherwise disposed of by the corporation) passes, devolves upon and vests in and shall be deemed always to have passed, devolved upon or vested in the successors from time to time of such corporation, and any estate or interest of the corporator sole in the property of the corporation ceases on his death.

Provisions as to  
corporations

(2) Where, either before or after the commencement of this Act, there is or has been a vacancy in the office of a corporation sole, or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at a time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, then, notwithstanding the vacancy, the interest or charge—

(a) vests in the successor of such office on his appointment as a corporation sole, or in the corporation aggregate, as the case may be; and

(b) shall be deemed to have so vested; but without prejudice to the right of the successor, or of the corporation aggregate after the appointment of its head officer, to disclaim that interest or charge.

(3) Where, either after or before the commencement of this Act, any contract or other transaction is or has been expressed or purported to be made with a corporation sole, or a corporation sole is or has been appointed trustee, at a time when there was a vacancy in the office, then, on the vacancy being filled, the transaction or appointment takes effect, and shall be deemed to have taken effect, as if the vacancy had been filled before the transaction or appointment was expressed or purported to be made or was capable of taking effect, and, on the appointment of a successor, is capable of being enforced, accepted, disclaimed or renounced by him to the same extent as that to which it would have been capable of being enforced, accepted, disclaimed or renounced had he been the corporator sole at the time the transaction or appointment was made.

Protection  
of solicitors,  
barristers  
and trustees  
adopting Act

179. (1) The powers given by this Act to any person, and the covenants, provisions, stipulations and words which, under this Act, are deemed to be included or are implied in any instrument, or are made by this Act applicable to any contract for sale or other transaction, are powers, covenants, provisions, stipulations and words proper to be given by or contained in any such instrument, or to be adopted in connection with or applied to any such contract or transaction.

(2) A solicitor or barrister is not guilty of neglect or breach of duty, or in any way liable, by reason only 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 of them, in any case where the provisions of this Act would allow him to do so.

(3) Save as expressly provided by this Act, nothing in this Act means 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.

(4) Where the solicitor is acting for trustees or other persons in a fiduciary position, those persons are protected in like manner.

(5) Where such persons are acting without a solicitor, they are also protected in like manner.

Stipulations  
as to choice of  
conveyance

180. Any stipulation which purports to restrict a purchaser in the selection of a solicitor or barrister to act on his behalf in relation to any interest in land agreed to be purchased is void.

Fraudulent  
concealment  
of documents  
and giving false  
information

181. (1) Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the solicitor, barrister or other agent of such person who—

(a) conceals from the purchaser any instrument or incumbrance material to the title; or

(b) gives false information in order to induce the purchaser to accept the title,

with intent in any such case to defraud, is guilty of an offence punishable by fine, or by imprisonment for two years, or by both.

(2) Any such person or his solicitor, barrister 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 incumbrance; or
- (b) any claim made for a person whose right was concealed by such false information 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 the 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.

182. An estate does not merge by operation of law only <sup>Merger</sup> if the beneficial interest therein would not be merged or extinguished in equity.

183. All statutory and other rights of pre-emption affecting a legal estate are, and are deemed always to have been, <sup>Rights of pre-emption</sup> capable of release and, unless released, remain in force as equitable interests only.

184. Where any chattels belong to persons jointly or in <sup>Division of chattels</sup> undivided shares:—

- (a) one of two or (if more than two) the majority of the persons entitled jointly thereto; or
- (b) the persons entitled to a moiety or more thereof;

may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

Indemnities  
against rent

Ch. 31. No. 8

185. (1) A power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land, or against the breach of any covenant or condition in relation to land, is not and shall not be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Ordinance.

(2) The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, is and shall be deemed always to have been annexed to the land to which the indemnity is intended to relate, and may be enforced by the estate owner for the time being of the whole or any part of the land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

Regulations  
respecting  
notices

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

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor is sufficient, although 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 a disability, unborn or unascertained.

(3) Any notice required or authorised by this Act to be served is sufficiently served if it is left at the last known place of abode or business in the State of the lessee, lessor, mortgagee, mortgagor or other person to be served, or in the 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 the 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 is also 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.

(5) Service under subsection (4) shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(6) The provisions of this section extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act, unless a contrary intention appears in the instrument.

(7) This section does not apply to notices served in proceedings in the court.

187. (1) A purchaser is not affected prejudicially by virtue of any instrument, matter, fact or thing unless:—

Restrictions  
on constructive  
notice

(a) it is within his own knowledge or would have come to his knowledge if such enquiries or 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 counsel, as such, or of his solicitor, barrister or other agent, as such, or would have come to the knowledge of his solicitor, barrister or other agent, as such if such enquiries and inspections had been made as ought reasonably to have been made by the solicitor, barrister or other agent.

(2) This section does 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 is not, by reason of anything in this section, affected by notice in any case where he would not have been so affected if this section had been enacted.

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

## PART XV

## JURISDICTION AND GENERAL PROVISIONS

Payment into court, jurisdiction and procedure

188. (1) Payment of money into court effectively exonerates the person making the payment from his obligation to pay that amount.

- (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 has full power and discretion to make such orders as it thinks fit respecting the costs, charges and expenses of all or any of the parties to any application.

Orders of court conclusive

189. (1) Without prejudice to any ground of appeal against any order, an order of the court under any statutory or other jurisdiction is not invalid, as against a purchaser, on the ground of want of:—

- (a) jurisdiction; or
- (b) any concurrence, consent, notice or service;

whether the purchaser has notice of any such want or not.

(2) Subsection (1) has effect with respect to any lease, sale or other act, under the authority of the court and purporting to be in pursuance of any statutory power, notwithstanding any exception in such statute, and validates the said lease, sale or other act in favour of the purchaser unless he is a party to or has notice of any fraud relating to the transaction in question before it is completed.

(3) Subsection (1) applies to all orders made before or after, and subsection (2) applies to those made after, the commencement of this Act.

190. Rules of court may be made by the Rules Committee under section 76 of the Supreme Court of Judicature Act, 1962, for regulating the practice and procedure in respect, of proceedings of any kind under this Act. Rules of court  
1962 No. 12

191. The Minister may make rules or regulations governing any matter to be prescribed under this Act or respecting any matter necessary or convenient to carry out effectively the intent and purposes of this Act. Rules or  
regulations

192. (1) The enactments specified in the first column of the Fifth Schedule are repealed to the extent specified in the second column thereof. Repeals and  
amendments

(2) The enactments specified in the first column of the Sixth Schedule are amended in the manner specified in the second column thereof.

(3) All statutes of general application of the Imperial Parliament relating to the subject-matter of this Act and still in force in the State by virtue of section 12 of the Supreme Court of Judicature Act, 1962, are repealed to the extent that they so relate. 1962 No. 12

193. References in any document to any provision repealed by this Act shall be construed as references to the corresponding provision of this Act. Adaptation of  
references

194. (1) Subject to subsection (2), this Act binds the State. Application  
to State

(2) Nothing in this Act shall be construed as rendering any property of the State subject to distress or liable to be taken or disposed of by means of any distress.

195. For the purpose of effecting the transition from the law existing immediately prior to the commencement of this Act to the law enacted by this Act, the provisions set out in the Seventh Schedule have effect. Transitional  
provisions

## FIRST SCHEDULE

(Sections 110 and 111)

*Implied Covenants*

## Extent of burden

1. In this Schedule, unless either the context requires otherwise or the contrary is expressed, the covenantor's liability in respect of any covenant set out herein extends to the acts or omissions only of the persons within any of the following classes:—

- (i) the covenantor and any person conveying by his directions;
- (ii) any person through whom the covenantor derives title otherwise than by purchase for value;
- (iii) any person (including a mortgagee) who either holds or has held a derivative title from the covenantor for less than the estate or interest vested in the covenantor or who holds or has held such a derivative title from any predecessor in title of the covenantor who is also a person within class (ii);
- (iv) any person who holds or has held in trust for the covenantor;

Provided that it is not a breach of covenant contained in this Schedule where the conveyance by the covenantor was made expressly subject to the act, matter or thing which, but for this *proviso*, would or might have caused such a breach, or where such covenant had been expressly negatived or varied by the covenant.

On conveyance  
for value by  
beneficial  
owner

2. In a conveyance for valuable consideration other than a mortgage, covenants are implied by a person who is expressed to convey "as beneficial owner"—

- (1) That the covenantor has the right to convey the estate or interest purported to be conveyed, save that the covenantor's liability is only in respect of any acts or omissions of himself or persons within class (ii) of paragraph 1;
- (2) That the person to whom the conveyance is made shall quietly enjoy the land conveyed without disturbance from any person within any class in paragraph 1;
- (3) That the estate or interest conveyed is free from all incumbrances, other estates, claims and demands;
- (4) That the covenantor will, at the cost of the person requiring the same, take such action as may be necessary for the better assuring of the estate or interest purported to be conveyed by him as may from time to time be reasonably required by the person to whom the conveyance is made and the person deriving title under him.

On conveyance  
of leasehold term  
for value by  
beneficial owner

3. In a conveyance of a leasehold term for valuable consideration, further covenants are implied by a person who is expressed to convey "as beneficial owner"—

- (1) That the lease the subject-matter of the conveyance is at the time thereof valid and effectual;
- (2) That the rent reserved by the said lease has up to the time of the conveyance been paid and the covenants and conditions expressly or impliedly contained in the lease have been performed and observed by the lessee;

Provided that the covenantor's liability in respect of both of the foregoing covenants is restricted to—

- (a) any acts or omissions of himself or persons within class (ii) of paragraph 1; and
- (b) as regards the said covenants and conditions, breaches caused by such acts and omissions the consequences of which could not be discovered on reasonable inspection of the property conveyed.

4. In a conveyance by way of mortgage, covenants in the terms of the covenants set out in paragraph 2 are implied by a person who is expressed to convey "as beneficial owner", but with the variations that—

On mortgage  
by beneficial  
owner

- (a) liability in respect of any breach of any of the said covenants extends to the acts or omissions of any person whether or not such person is within the class of persons set out in paragraph 1;
- (b) the covenant set out in paragraph 2(2) (for quiet enjoyment) is not implied against any mortgagor until the mortgagee has lawfully entered into possession of the property conveyed;
- (c) the covenant set out in paragraph 2(4) (for further assurance) shall be performed at the cost of the covenantor during the subsistence of the mortgage.

5. In a conveyance by way of mortgage of a leasehold term, further covenants, in addition to those set out or referred to in paragraph 4, are implied by a person who is expressed to convey "as beneficial owner"—

On mortgage  
of leasehold  
term by  
beneficial owner

- (1) That the lease the subject-matter of the conveyance is at the time thereof valid and the rent thereby reserved has up to that time been paid and the covenants and conditions expressed or implied in the lease have been performed and observed; and
- (2) That the covenantor will from time to time, so long as any money remains owing on the security of the property conveyed, pay the rent reserved by the lease and perform and observe the covenants and conditions therein and will indemnify the person to whom the conveyance is made in respect of any consequences of the breach of this covenant.

6. In a conveyance by way of settlement, a covenant is implied by a person who is expressed to convey "as settlor"—

On a Settlement

That the covenantor covenants in the terms of the covenant set out in paragraph 2(4) (for further assurance), save that liability under this covenant shall not attach to persons other than the covenantor and the persons deriving title under him.

## FIRST SCHEDULE—CONTINUED

(Sections 110 and 111)

*Implied Covenants*

On conveyance  
by trustee, etc.

7. In any conveyance, a covenant is implied by every person who is expressed to convey "as trustee", "as mortgagee", "as personal representative" or under an order of court—

That the covenantor has not, by virtue of any act or omission of his, caused the title of the estate or interest conveyed to be liable to be impeached through the existence of any incumbrance or rendered himself unable to convey the said estate or interest conveyed in the manner in which it is expressed to be conveyed.

On assignment  
of entirety  
of land in lease

8. In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, covenants are implied—

- (1) That the assignee, or the persons deriving title under him, will at all times, from the date of the conveyance or other date therein stated, duly pay all rent becoming due under the lease creating the term or interest for which the land is conveyed, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the lessee to be observed and performed;
- (2) That the assignee will at all times, from the said date, indemnify the conveying parties and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

On assignment  
of part of land  
in lease

9. In a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part (not legally apportioned) of that rent, covenants are implied—

- (1) That the assignee will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent), agreements and conditions contained in the lease creating the term or interest for which the land is conveyed, and thenceforth on the part of the lessee to be observed and performed, so far as the same relate to the land conveyed;
- (2) That the assignee will at all times, from the date aforesaid, indemnify the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions as far as the same relate as aforesaid.

On assignment  
of part of land  
in lease by  
beneficial owner

10. In a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in the lease, for the residue of the term or interest created by the lease subject to a part (not legally apportioned) of that rent, covenants are implied by a person who is expressed to convey "as beneficial owner"—

- (1) That the assignor, or the person deriving title under him,

will at all times, from the date of the conveyance, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants (other than the covenant to pay the entire rent), agreements and conditions contained in the lease and on the part of the lessee to be observed and performed so far as the same relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the assignor;

- (2) That the assignor will at all times, from the date aforesaid, indemnify the assignee and his estate and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

SECOND SCHEDULE

MORTGAGE FORMS

FORM No. 1

[Section 147(3)]

FORM OF TRANSFER OF MORTGAGE

This Deed of Transfer of Mortgage made the.....day of  
 .....19....., between M. of [etc.] and T. of [etc.],  
 supplemental to a Mortgage dated [etc.] and made between [etc.], and to a  
 Further Charge dated [etc.], and made between [etc.] affecting [etc.]  
 [here state short particulars of the mortgaged property]

WITNESSES that in consideration of the sum of \$                      and \$  
 [interest] now paid by T. to M., being the respective amounts of the  
 mortgage money and interest owed in respect of the said mortgage and  
 further charge (the receipt of which sums M. hereby acknowledges), M.,  
 as mortgagee, hereby transfers to T. the said mortgage and further charge.

M. signed this deed in my presence  
 M. [Signature of Mortgagee]  
 W. [Signature of Witness]  
 [Abode and calling or description  
 of Witness]

FORM No. 2

[Section 148(5)]

FORM OF RECEIPT ON DISCHARGE OF A MORTGAGE

I, M., of [etc.] hereby acknowledge that I have this .....  
 day of.....19....., received the sum of \$                      ,  
 representing all moneys [or the balance remaining owing in respect of  
 moneys] secured by the within written [or above written or annexed]  
 mortgage [and by a further charge dated [ etc.], [or as otherwise required],  
 from A.B., being entitled to the equity of redemption [or from A.B., not  
 being entitled to the equity of redemption, who paid the money out of a  
 fund applicable to the discharge of the mortgage or from A.B., in discharge  
 of the mortgage].

M. signed this receipt in my presence  
 M. [Signature of Mortgagee]  
 W. [Signature of Witness]  
 [Abode and calling or description  
 of Witness]

NOTE:  
 The receipt need not be attested or witnessed. It need only be stamped as a  
 receipt. The payer need not be named.

FORM No. 3

[Section 151(1)]

CHARGE BY WAY OF LEGAL MORTGAGE

This Deed of Charge by way of Legal Mortgage made the..... day of.....19....., between A. of [etc.] and M. of [etc.]

WITNESSES that A. hereby mortgages [estate and premises] to M. for \$ [Principal sum] payable on.....day of..... 19 , at.....% interest.

This mortgage was signed ) A. [Signature of Mortgagor] in my presence ) W. [Witness to A's signature] [Abode and calling or description of Witness]

FORM No. 4

[Section 151(5)]

DEED OF STATUTORY MORTGAGE

This Deed made by way of statutory mortgage the.....day of .....19....., 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.....19....., of the principal sum of \$......as the mortgage money with interest thereon at the rate of [ ] per centum per annum.

In witness, etc.

NOTE: Variations in this form were permitted, if required, for leasehold land or for giving effect to special arrangements.

SECOND SCHEDULE—CONTINUED  
MORTGAGE FORMS

FORM No. 5

[Section 152(1)]

TRANSFER OF MORTGAGE, COVENANTOR JOINING

This Deed of Transfer of Mortgage made the.....day of  
.....19....., between A. of [etc.] and C. of [etc.]  
supplemental to a Mortgage dated [etc.] and made between [etc.]

WITNESSES that, in consideration of the sum of \$ now paid by C. to A. (being the mortgage money due in respect of the said mortgage, no interest being now due or payable thereon, the receipt of which sum A. hereby acknowledges), A., as mortgagee, with the concurrence of B., who joins herein as covenantor, hereby transfers to C. the said mortgage.

A. [*Signature of Mortgagee*]  
B. [*Signature of Covenantor*]

This transfer of mortgage was signed }  
by A. and B. in my presence }

W. [*Witness to above Signatures*]  
[*Abode and calling or description of  
Witness*]

FORM No. 6

[Section 152(1)]

TRANSFER AND MORTGAGE COMBINED

This Deed of Transfer and Charge by way of legal Mortgage is made  
the.....day of.....19....., between A. of  
[etc.], B. of [etc.] and C. of [etc.], supplemental to a Mortgage dated  
[etc.] and made between [etc.]

Whereas a principal sum of \$ remains due as the mortgage  
money in respect of the said mortgage and no interest is now due thereon;

And Whereas B. is seised in fee simple of the land comprised in the  
said mortgage, subject to that mortgage,

Now this deed WITNESSES as follows:—

1. In consideration of the sum of \$ now paid by C. to A. (the  
receipt of which sum A. and B. hereby acknowledge),\* A., as mortgagee,  
hereby conveys and transfers to C. the said mortgage.

2. For the consideration aforesaid, B.,\*\* as beneficial owner, hereby charges by way of legal mortgage all the premises comprised in the said mortgage with the payment to C., on the.....day of.....  
 .....19....., of the sum of \$\*\*\* as the mortgage money with interest thereon at the rate of \_\_\_\_\_ per centum per annum.

A. [*Signature of Mortgagee*]  
 B. [*Signature of Mortgagor*]

This transfer and mortgage was signed }  
 by A. and B. in my presence

W. [*Witness to above signatures*]  
 [*Abode and calling or description of Witness*]

NOTES:

\*In the case of a further advance, after "acknowledge", insert: "and of the further sum of \$ \_\_\_\_\_ now paid by C. to B. (the receipt of which sum B. hereby acknowledges)", and

\*\*in the case of a further advance, before "as beneficial owner" insert "as mortgagor and", and

\*\*\*in the case of a further advance, instead of "of the sum of \$ \_\_\_\_\_", put "of the sums of \$ \_\_\_\_\_ and \$ \_\_\_\_\_, making together the sum of \$ \_\_\_\_\_".

## THIRD SCHEDULE

## BUILDING PROCEDURES

(Section 157)

## PART I

1. The landowner shall, at least one month before beginning to excavate, serve on all adjoining landowners who may be adversely affected notice in writing of his intention to do so and shall state therein whether he proposes to underpin or otherwise strengthen or safeguard the foundations of the building or protect the land of the adjoining landowner.

2. The notice shall be accompanied by plans and diagrams showing the site of the building or structure (if any) proposed to be erected and the depth to which the landowner proposes to excavate.

3. Within fourteen days after service of the notice under paragraph 1, the adjoining owner may serve notice in writing on the landowner that he disputes the necessity of or requires, as the case may be, the underpinning or strengthening or the safeguarding of the foundations of his building.

4. If the adjoining owner serves such a notice, a dispute shall be deemed to have arisen between him and the landowner which shall be settled in accordance with the provisions of Part IV.

5. The landowner shall compensate the adjoining owner and any adjoining occupier for any inconvenience, loss or damage which may result to any of them by reason of any work executed in pursuance of section 157(1)(c).

6. On completion of the work the landowner shall, if so requested in writing by the adjoining owner, supply him with particulars, including plans and diagrams, of the work.

7. Plans and diagrams supplied under this Schedule shall comply with the provisions of the Land Surveyors Ordinance, and the rules made thereunder, governing plans and diagrams attached to deeds.

8. Nothing in this Schedule relieves the landowner from any liability to which he would otherwise be subject for injury to the adjoining owner or any adjoining occupier by reason of work executed by him.

## PART II

1. The landowner shall, at least two months before beginning any work, serve on the adjoining owner notice in writing stating the nature and particulars of the proposed work and the time at which it will be begun and, where the landowner proposes to construct special foundations, those particulars shall include plans and diagrams thereof and reasonable particulars of the loads to be carried thereby.

2. The adjoining owner may, within one month of service of such notice, serve a counter notice—

- (a) requiring the landowner to build in or on the party structure to which the notice relates such piers or recesses or other like works as may reasonably be required for the convenience of the adjoining owner;
- (b) requiring the landowner where he proposes to construct special foundations, to place them at a specified greater depth than that proposed by the landowner or to construct them of sufficient strength to bear the load to be carried; and
- (c) specifying the works required by the counter notice to be executed and supplying plans and diagrams thereof.

3. The landowner on whom the counter notice has been served must comply with its requirements unless the execution of the works required by it would be injurious to him or cause unnecessary inconvenience to him or unnecessary delay in the execution of the works pursuant to the landowner's notice.

4. A notice served by the landowner is not effective unless the work to which it relates is begun within six months after its service and is prosecuted with due diligence.

5. Where an adjoining owner on whom a notice has been served or a landowner on whom a counter notice has been served does not within fourteen days thereafter express his consent thereto in writing, he shall be deemed to have dissented therefrom and a dispute shall be deemed to have arisen between the adjoining owner and the landowner, which dispute shall be settled in accordance with the provisions of Part IV.

## PART III

1. The adjoining owner who desires to build shall, at least one month before beginning any work, serve notice in writing on the landowner of his intention to do so.

2. He then has the right at his own expense, within six months from the date of the service of the notice, to place on the land of the landowner, below the level of such land, any projecting footings or foundations, making compensation to the landowner or any occupier of the land or both of them for any damage occasioned thereby.

3. In the event of a dispute over the amount of compensation, the amount shall be determined in accordance with Part IV.

THIRD SCHEDULE—CONTINUED  
BUILDING PROCEDURES

PART IV

Where a dispute arises or is deemed to arise between a landowner and an adjoining owner, it shall be settled by two arbitrators, one to be appointed by each party, in accordance with, and subject to the provisions of, the Arbitration Ordinance.

Ch. 7. No. 1

FOURTH SCHEDULE

POWER OF ATTORNEY FORM [Section 170(1)]

THIS GENERAL POWER OF ATTORNEY is made this      day of  
19      , by A.B. of  
I appoint C.D. of      [or C D. of  
and E.F. of      jointly or  
jointly and severally] to be my attorney[s] in accordance with section 170  
of the Land Law and Conveyancing Act, 1980.

In Witness, etc.

## FIFTH SCHEDULE

[Section 191(1)]

FIRST COLUMN	SECOND COLUMN
<i>Enactment</i>	<i>Extent of Repeal</i>
Prescription Ordinance, Ch. 5. No. 8	The Whole Ordinance.
Infants Ordinance, Ch. 5. No. 12	Section <u>22</u> and Part <u>IV</u> .
Conveyancing and Law of Property Ordinance, Ch. 27. No. 12	The Whole Ordinance.
Partition Ordinance, Ch. 27. No. 14	The Whole Ordinance.
Leases and Sales of Settled Estates Ordinance, Ch. 27. No. 15	The Whole Ordinance.
Mortgages of Produce Ordinance, Ch. 27. No. 12	The Whole Ordinance.
Estate and Succession Duties Ordinance, Ch. 33. No. 5	Section 27(2).
Interpretation Act, No. 2 of 1962	Section 19A.
Supreme Court of Judicature Act, No. 12 of 1962	Section 23(2), (3), (4) and (7).
Law Reform (Property) Act, No. 51 of 1976	Sections 2 and 4.

## SIXTH SCHEDULE

## FIRST COLUMN

## SECOND COLUMN

*Enactment**Extent of Amendment*

Building Societies Ordinance, Ch. 38. No. 1	Substitute a new section for section 50 as follows— “50. In the case of a mortgage or further charge of or upon unregistered land given to a society under this Ordinance, a receipt issued by the society is not effective for the purposes of section 148 of the Land Law and Conveyancing Act, 1981 unless it is a receipt under the seal of the society, countersigned by the secretary or manager, in the form specified in the Schedule hereto but section 148(2) applies to such receipt only if the receipt states the name of the person who pays the money”.
Act No. of 1981	
Friendly Societies Ordinance, Ch. 38. No. 2	Substitute a new section for section 49 as follows— “49. In the case of any mortgage or other assurance of unregistered land to secure money to a society or branch under this Ordinance, a receipt issued by the society is not effective for the purposes of section 148 of the Land Law and Conveyancing Act, 1981 unless it is a receipt in the form contained in the Third Schedule hereto, but section 148(2) applies to such a receipt only if the receipt states the name of the person who pays the money”.
Sugar Industry Labour Welfare Committee (Incorporation) Ordinance, No. 40 of 1951	In section <sup>7</sup> 6 substitute the words “has the same effect as a receipt endorsed on or annexed to a mortgage under section 148 of the Land Law and Conveyancing Act, 1981” for the words “shall vest the estate of and in the property comprised in the mortgage in the person for the time being entitled to the equity of redemption without any reconveyance whatever”.
Housing Act, No. 3 of 1962	In section 13(4) substitute the words “138 of the Land Law and Conveyancing Act, 1981” for the words “43 of the Conveyancing and Law of Property Ordinance” and substitute “Act No. of 1981” for the marginal note.

Should read Sec. 7

## FIRST COLUMN

## SECOND COLUMN

*Enactment**Extent of Amendment*

In section 25(1) substitute the words "this has the same effect, where it concerns unregistered land, as a receipt endorsed on or annexed to a mortgage under section 148 of the Land Law and Conveyancing Act, 1981" for the words "thereupon the estate or interest charged if it is not held under the Real Property Ordinance vests without reconveyance or other formality, in the person entitled to the equity of redemption" and substitute "Act No. of 1981" for the marginal note.

Water and Sewerage Act, No. 16 of 1965 In section 76(5) substitute the words "Land Registration Act, 1981" for the words "Conveyancing and Law of property Ordinance" and substitute "Act No. of 1981" for the marginal note.

Agricultural Development Bank Act, No. 3 of 1968 In section 40(3) substitute the words "has the same effect as a receipt endorsed on or annexed to a mortgage under section 148 of the Land Law and Conveyancing Act, 1981" for the words "shall vest the estate of and in the property comprised in the mortgage in the person for the time being entitled to the equity of redemption without any reconveyance whatever".

Highways Act, No. 3 of 1970 In section 91(2) substitute the words "Land Law and Conveyancing Act, 1981" for the words "Conveyancing and Law of Property Ordinance" and "Act No. of 1981" for the marginal note.

## SEVENTH SCHEDULE

(Section 194)

## TRANSITIONAL PROVISIONS

Conversion  
of certain  
existing legal  
estates into  
equitable  
interests

1. All estates, interests and charges in or over land, including fees determinable, whether by limitation or condition, which immediately before the commencement of this Act were estates, interests or charges, subsisting at law or capable of taking effect as such, but which by virtue of Part II of this Act are not capable of taking effect as legal estates, are, as from the commencement of this Act converted into an equitable interest, either in the land or in the proceeds of sale thereof, but, the priority of any such estate, charge or interest over other equitable interests is not affected.

Vesting of legal  
estates

2. Subject to sub-paragraph (2), any person of the age of majority who, immediately after the commencement of this Act, is entitled to an equitable interest capable of subsisting as a legal estate which has priority over any legal estate in the same land, is deemed to be entitled to require a legal estate to be vested in him for an interest of a like nature, not exceeding in extent or duration the equitable interest, and the legal estate by virtue of this Act vests in him accordingly.

(2) This paragraph does not—

- (a) apply where the equitable interest is capable of being overreached by virtue of a subsisting settlement upon the statutory trusts or of a trust;
- (b) operate to prevent such person from acquiring any other legal estate under this paragraph to which he may be entitled.

Settled land  
to be held by  
trustees upon  
statutory trusts

3. Where any land (other than land held upon trust for sale) was, immediately before the commencement of this Act, limited to or in trust for any persons by way of succession or vested in a minor or trustees for a minor either solely or concurrently with one or more other persons whether minors or of the age of majority, then, subject to section 38, the same is, from the commencement of this Act, held by the trustees in whom the land is at that time vested, or, if none, by the trustees or other persons specified in paragraph 4, on trust to give effect to the rights of the persons to or in trust for whom the land is limited.

Vesting of land  
previously settled  
in trustees

4. (1) Where land (other than land held upon trust for sale) is limited to or in trust for any person by way of succession or vested in a minor or trustees for a minor within the meaning of paragraph 3 and the legal estate therein, the subject of the settlement, is not vested or not entirely vested in trustees at the commencement of this Act, the legal estate, the subject of the settlement, vests in the persons (if any) who were, immediately before such time, trustees of the settlement for the purposes of the Leases and Sales of Settled Estates Ordinance.

Ch. 27. No. 15

(2) Where there are no such trustees the legal estate in the trust land vests in the Public Trustee pending the appointment by the court in accordance with any such power of appointing trustees conferred by law.

5. (1) Where, immediately before the commencement of this Act, <sup>Party structures</sup> a party wall or structure, is held in co-ownership, it is deemed to be severed so that each owner is the absolute owner of half of the structure and the owner of each part has such rights of support and user over the rest of the structure, and is subject to such obligations in respect of it, as may be requisite for conferring rights and imposing obligations corresponding to those subsisting at the commencement of this Act.

(2) Any person interested may, in case of dispute, apply to the Land Commission for an order declaring the rights and interests, under this paragraph, of the persons interested in any such structure, and the Commission may make such order as it thinks fit.

6. (1) A mortgage made before the commencement of this Act which conveyed a legal estate in fee simple in possession or granted or assigned a leasehold term to a mortgagee subject to a right of redemption or a provision for cesser corresponding to a right of redemption by virtue of this Act operates as if it were a charge by deed made in accordance with this Act. <sup>Conversion of existing mortgages into charges by deed</sup>

(2) Nothing in this paragraph affects—

- (a) the operation of an equitable mortgage made before the commencement of this Act;
- (b) the priorities or rights of any mortgagee to retain documents; or
- (c) the mortgagee's title to or rights over any fixtures or chattels personal comprised in the mortgage.

Passed in the House of Representatives this 24th day of April, 1981.

R. L. GRIFFITH  
*Acting Clerk of the House*

Passed in the Senate this 16th day of June, 1981.

M. A. CARRINGTON  
*Acting Clerk of the Senate*