

THE CONVEYANCING ACT

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THE CONVEYANCING ACT

[1st December, 1889.]

Cap. 73.
Law
51 of 1957.
Act
1 of 1979,
1st Sch.

1. This Act may be cited as the Conveyancing Act.

Short title.

I. *Preliminary*

2. Nothing in this Act shall apply to land brought under the operation of the Registration of Titles Act. Limitation

3. In this Act—

Interpre-
tation.

“Property” unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

“Land” unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land;

“Income” in relation to land, includes rents and profits, and possession includes receipt of income;

“Conveyance” unless a contrary intention appears, includes assignment, appointment, lease, settlement and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise or settlement, of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance;

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

“Incumbrance” includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;

“Purchaser” includes a lessee or mortgagee, or an intending purchaser, lessee or mortgagee, or other person who, for valuable consideration, takes or deals for any property; and purchase has a meaning corresponding with that of purchaser;

“Rent” includes yearly or other rent, toll, duty, royalty or other reservation, by the acre, the ton or otherwise; and fine includes premium or foregift, and any payment, consideration or benefit, in the nature of a fine, premium or foregift;

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

“Mining Lease” is a lease for mining purposes, that is, the searching for, winning, working, getting, making

merchantable, carrying away or disposing of, mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

“will” includes codicil;

“instrument” includes deed, will, and Statute Law;

“securities” includes stocks, funds, debentures and shares;

“bankruptcy” includes liquidation by arrangement, and any other act or proceeding in law having, under any enactment for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy;

“writing” includes print; and words referring to any instrument, copy, extract, abstract or other document, include any such instrument, copy, extract, abstract, or other document, being in writing or in print, or partly in writing and partly in print;

“person” includes a corporation.

The Supreme Court is referred to as “the Court”.

4. Nothing in this Act contained shall be taken to alter the practice heretofore existing in this Island in conveyancing, by which where there is no agreement to the contrary the following conditions always attach—

Old practice retained as to preparation, investigation, etc., of documents.

- (a) The attorney-at-law of the vendor, lessor and mortgagee has the right to prepare and complete the conveyance, lease or mortgage.
- (b) The purchaser or lessee pays to the vendor or lessor one-half of the vendor’s or lessor’s costs so incurred, including stamping the conveyance or lease and, in the case of a lease, of recording it also.
- (c) The purchaser records his conveyance at his expense.

- (d) The vendor perfects his title on the record at his own expense.
- (e) The mortgagor pays all the costs of the mortgage, including all the mortgagee's costs for investigating the title and stamping and recording the mortgage.
- (f) The purchaser on a sale examines into the vendor's title and approves of the conveyance at his sole cost.
- (g) No vendor is required to give to a purchaser any abstract of title, but in submitting the draft conveyance he furnishes the purchaser's attorney-at-law with any information he may have of the title.

II.—*Sales and Other Transactions*

NOTICE

Notice.

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

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

(2) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision or restriction, contained in any instrument under which his title is derived, mediately

or immediately, and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

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

(4) This section applies to purchases made either before or after the commencement of this Act; save that where an action is pending at the commencement of this Act the rights of the parties shall not be affected by this section.

CONTRACTS FOR SALE

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

Application
of stated
conditions
of sale to
all pur-
chases.

(2) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document dated or made before the time prescribed by law or stipulated for commencement of the title, even though the same creates a power subsequently exercised by an instrument making up the vendor's claim of title; nor shall he require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title, is recited, covenanted to be produced or noticed; and he shall assume, unless the contrary appears, that the recitals contained in such instruments, of any deed, will or other document, forming part of that prior title are correct, and give all the material contents of the deed, will or other document so recited, and that every document so recited was duly executed by all necessary parties and perfected,

if and as required, by fine, recovery, acknowledgement, enrolment or otherwise.

(3) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

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

(5) On a sale of any property, the expenses of the production and inspection of all Statutes, whether of Jamaica or of the United Kingdom, records, proceedings of courts, deeds, wills, probates, letters of administration and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying and producing, all certificates, declarations, evidences and information, not in the vendor's possession, and all attested, stamped, office or other copies, or abstracts of or extracts from any Statutes or other documents aforesaid not in the vendor's possession, if any such

production, inspection, journey, search, procuring, making or verifying is required by a purchaser, either for verification of the title, or of any abstract delivered, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor 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 :

Provided that the vendor may not retain any document relating only to the title of the property sold :

Provided also that nothing in this subsection shall restrict the purchaser's rights to require at the expense of the vendor the enrolment in the Record Office of all instruments necessarily making up his vendor's title for the period during which the vendor is required by law or by agreement to make title.

(6) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

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

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

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

7.—(1) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee for

Completion
of contract
after death.

the sale of the fee simple, or other freehold interest descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition, or as heir or next of kin of a testator or intestate.

(3) This section applies only in cases of death after the commencement of this Act.

DISCHARGE OF INCUMBRANCES ON SALE

Provision
by Court
for incum-
brances, and
sale freed
therefrom.

8.—(1) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court or out of court, the Court may, if it think fit, on the application of any party to the sale, direct or allow payment into court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government Securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court, for special reason, thinks fit to require a larger additional amount.

(2) Thereupon the Court may, if it think fit, and either after or without any notice to the incumbrancer, as

the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

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

(4) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

GENERAL WORDS

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

General words in conveyances of land or buildings.

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

or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed, or any of them, or any part thereof.

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

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

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

COVENANTS FOR TITLE

Covenants
for title to
be implied.

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

In convey-
ances for
value by
beneficial
owner.

(A) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner, namely—
that, notwithstanding anything by the person who so conveys, or any one through whom he derives title

otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and that, notwithstanding anything as aforesaid, that subject matter shall remain to and be quietly entered upon, received and held, occupied, enjoyed and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or rightfully claiming or to claim by, through, under or in trust, for the person who so conveys, or any person conveying by his direction, or by, through or under any one, not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derive title otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims and demands, other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned or suffered, by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under or in trust, for the person who so conveys, or by, through or under any person conveying by his direction or by,

through or under any one through whom the person who so conveys derives title otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under or in trust for, the person who so conveys, or by, through or under any person conveying by his direction, or by, through or under any one through whom the person who so conveys derives title otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required;

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage).

In conveyances of leasehold property for value, by beneficial owner.

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

that notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the

lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee, and the persons deriving title under him, to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance;

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage).

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

In mortgages by beneficial owner.

that the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed by him, subject as, if so expressed and in the manner in which it is expressed to be conveyed; and also that if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provisions in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive and thenceforth quietly hold, occupy and enjoy, or take and have, the subject matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys,

or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against all estates, incumbrances, claims and demands whatever, other than those subject whereto the conveyance is expressly made; and further that the person who so conveys, and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will, from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of conveyance, and every part thereof, to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

In mortgages of leaseholds by beneficial owner.

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

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that the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited and unsurrendered, and in nowise become void or voidable, and that all rents reserved by, and all the covenants, conditions and agreements, contained in, the lease or grant and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance; and also that the person so conveying or the persons deriving title under him, will, at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements, contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them.

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

that the person so conveying, and every person deriving title under him by deed, or act or operation of law, in his life time subsequent to that conveyance, or

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

In conveyances by trustee or mortgagee.

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

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

In conveyances by direction of beneficial owner.

(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to

convey and to be expressed to convey as beneficial owner the subject matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

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

Implied
covenants in
conveyances
by husband
and wife.

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

(5) In this section a conveyance does not include a demise implied in the conveyance.

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

(7) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such varia-

tions or extensions were directed in this section to be implied.

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

EXECUTION OF PURCHASE DEED

Rights of purchaser as to execution.

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

III. Leases

Rent and benefit of lessee's covenants to run with reversion.

12. Rent reserved by a lease, and the benefit of every covenant or provision therein contained having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

This section applies only to leases made after the commencement of this Act.

Obligation of lessor's covenants to run with reversion.

13. The obligation of a covenant entered into by a lessor with reference to the subject matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the

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

This section applies only to leases made after the commencement of this Act.

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

Apportionment of conditions on severance, etc.

This section applies only to leases made after the commencement of this Act.

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

On sub-demise, title to leasehold reversion not to be required.

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

Contract for lease not part of title to lease.

16. Where a lease is made under a power contained in a settlement, will, statute or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title or evidence of the title to the lease.

This section applies only to leases made after the commencement of this Act.

FORFEITURE

Restrictions on and relief against forfeiture of leases.

17.—(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

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

compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case, thinks fit.

(3) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators and assigns, of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor; and the heirs, executors, administrators and assigns, of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any statute.

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

(6) This section does not extend—

- (i) to a covenant or condition against the assigning, underletting, parting with the possession or disposing of, the land leased, or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (ii) in case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records,

weighing machines or other things, or to enter or inspect the mine or the workings thereof.

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

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

IV. *Mortgages*

Obligation on mortgagee to transfer instead of re-conveying or satisfying the record.

18.—(1) Where a mortgagor is entitled to redeem he shall by virtue of this Act have power to require the mortgagee, instead of re-conveying or of entering satisfaction on the margin of the record in the Record Office of the mortgage, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

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

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

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

19. A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

Power for mortgagor to inspect title deeds.

This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

20.—(1) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be 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 other than that comprised in the mortgage which he seeks to redeem.

Restriction on consolidation of mortgages.

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

LEASES

21.—(1) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

Leasing powers of mortgagor and of mortgagee in possession.

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

(3) The leases which this section authorizes are—

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

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

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

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

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

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

(8) Every such lease shall be recorded in the Record Office, if wholly executed in Jamaica within ninety days of its execution, or if wholly or partly executed out of this Island within twelve months of its execution.

(9) 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.

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

(11) In case of a lease by the mortgagor he shall within thirty days after recording the lease deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a copy of the lease with a note thereon of the date of the recording thereof; but the lessee shall not be concerned to see that this provision is complied with.

(12) A contract to make or accept a lease under this section may be enforced within six months of the making thereof by or against every person on whom the lease, if granted, would be binding.

(13) 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 shall have effect subject to the terms of the mortgage deed or of any such writing, and to the provisions therein contained.

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

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

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

SALE, INSURANCE, RECEIVER, TIMBER

Powers
incident to
estate or
interest of
mortgagee.

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

- (a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale and to resell, without being answerable for any loss occasioned thereby; and
- (b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, 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 to the mortgagee from time to time to sue for and recover from the mortgagor any premiums under the aforesaid power, together with interest, as for money paid at the request of the mortgagor, and may recover the same although such money may have been added to the principal loan; and

- (d) a power, when the mortgage money has become due, to appoint a Receiver of the income of the mortgaged property, or of any part thereof; and
- (e) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

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

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

23.—(1) 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 several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (b) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concur-

ring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Conveyance,
receipt, etc.,
on sale by
mortgagee
and applica-
tion of
proceeds.

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

(2) Where a conveyance is made in professed exercise of the power of sale conferred by this Act the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3) 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 after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale or otherwise, and secondly, in discharge of the mortgage money, interest and costs, and other money if any due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

(4) 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.

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

(6) The mortgagee, his executors, administrators or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith.

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

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

Mortgagee's
receipts,
discharges,
etc.

(2) Money received by a mortgagee under his mortgage, or from the proceeds of securities comprised in his mortgage, shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities

and of conversion of securities into money, instead of those incident to sale.

Amount and
application
of insurance
money.

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

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

- (a) where there is a declaration in the mortgage deed that no insurance is required;
- (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is by this Act authorized to insure, and notice thereof given to the mortgagee.

(3) All money received on an insurance effected under the mortgage deed or under this Act 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 be applied in or towards discharge of the money due under his mortgage.

27.—(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, and such appointment shall be recorded in the Record Office before or within thirty days of its being acted upon.

Appointment,
powers remuneration
and duties
of Receiver.

(2) The Receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the Receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3) The Receiver shall have power to demand and recover all the income of the property 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.

(4) A person paying money to the Receiver shall not be concerned to inquire whether any case has happened to authorize 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 and recorded as aforesaid.

(6) The Receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses, incurred by him as Receiver, a commission at such rate, not exceeding five *per centum* on the gross amount of all money received, as is specified in his appointment, and if no rate is so speci-

fied, then at the rate of five *per centum* on that gross amount, or at such higher 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 and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property, comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) The Receiver shall apply all money received by him as follows, namely—

- (a) in discharge of all rents, taxes, rates and outgoings, whatever effecting the mortgaged property; and
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is Receiver; and
- (c) in payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage, and shall pay the residue 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 the mortgaged property, or who is otherwise entitled to that property.

ACTION RESPECTING MORTGAGES

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

Sale of mortgaged property in action for foreclosure, etc.

[The inclusion of this page is authorized by L.N. 480/1973]

redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2) In any action, whether for foreclosure or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants, or any of them.

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

V. *Statutory Mortgage*

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

Form of
statutory
mortgage.
First
Schedule.

Such deed if wholly executed in this Island shall be recorded in the Record Office within thirty days of its date, but if executed wholly or partly out of this Island then within six months of its date.

Covenants
and provisos
implied
therein.

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

First, a covenant with the mortgagee, by the person expressed therein to convey as mortgagor, to the effect following, namely—

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

Secondly, a proviso to the effect following, namely—

that if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Statutory
transfer of
mortgage.

30.—(1) A transfer of statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three Forms A, and B

and C, given in Part II of the First Schedule as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto. First
Schedule.

(2) In whichever of those three Forms the deed of transfer is made, it shall have effect as follows, namely—

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

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

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

unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4) If the deed of transfer is made in the Form C, it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage.

Implied covenants, joint and several.

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

Form of re-conveyance of statutory mortgage.

First Schedule.

32. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the Form given in Part III of the First Schedule, with such variations and additions, if any, as circumstances may require.

VI. *Trust and Mortgage Estates on Death*

Devolution of trust and mortgage estates on death.

33. Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposi-

tion, devolve to and become vested in his personal representatives or representative, from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives for the time being of the deceased shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

This section applies only in cases of death after the commencement of this Act.

VII. *Trustee and Executors*

34.—(1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees, and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustees desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

Retirement
of trustee.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the

terms of that instrument, and to any provisions therein contained.

(4) Every such deed or assurance made under this section, and every order of a court appointing a new trustee, shall be recorded in the Record Office.

Powers of
new trustees
appointed
by court.

35. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting of
trust
property in
new or
continuing
trustees.

36.—(1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as in this section mentioned by retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest, or right, to which the declaration relates.

(3) This section does not extend to any legal estate or interest in or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share,

stock, annuity or property, as is only transferable in books kept by a company or other body, or in manner prescribed by or under any statute.

(4) For purposes of registration of the deed in the Record Office, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

37.—(1) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots by public auction or private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction or to rescind any contract for sale and to resell, without being answerable for any loss.

Power for trustees for sale to sell by auction, etc.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(3) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

38. The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects, payable, transferable or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring or delivering, the same from seeing to the application, or being answerable for any loss or misapplication thereof.

Trustees' receipts.

Power for
executors
and trustees
to com-
pound, etc.

39.—(1) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor, or two or more trustees acting together or a sole acting trustee where, by the instrument (if any) creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, claim or thing whatever, relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute and do, such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3) As regards trustees this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

POWERS

Disclaimer
of power by
trustees.

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

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

VIII. *Married Women*

41. Notwithstanding that a married woman is restrained from anticipation the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

Power of Court to bind interest of married woman.

42. A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were of full age, by deed to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

Power of attorney of married women.

IX. *Infants*

43.—(1) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or trustees appointed for the purposes of the Settled Land Act, or if there are none, then any person appointed as trustee for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

Management of land and receipt and application of income during minority.

(2) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild and repair, houses and other buildings and erec-

tions, and to continue the working of mines, minerals, and quarries, which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases of tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

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

(4) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper according to the infant's age, for his or her maintenance, education or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law authorized to invest trust money, with power to vary investments, and shall accumulate the income of the investment so made in the way of compound interest, by from time to time similarly investing such income, and the resulting income of investments,

and shall stand possessed of the accumulated fund arising from income of the land, and from investments of income, on the trusts following, namely—

- (a) if the infant attains the age of eighteen years, then in trust for the infant; 1/1979
1st Sch.
- (b) if the infant is a woman and marries while an infant then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but
- (c) if the infant dies while an infant, and being a woman without having been married, then where the infant was under a settlement tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, in any, declared of the accumulated fund by that settlement; but, where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate,

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

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

(7) This section applies only if and as far as contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect

subject to the terms of that instrument, and to the provisions therein contained.

(8) This section applies only where that instrument comes into operation after the commencement of this Act.

Application
by trustees
of income of
property of
infant for
main-
tenance, etc.
1/1979
1st Sch.

44.—(1) Where any property is held by trustee in trust for an infant either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of eighteen years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply, for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3) This section applies only if and so far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

Executory
limitations,
restriction
on.

45.—(1) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life, with an executory limita-

tion over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect if and as soon as there is living any issue who has attained the age of eighteen years of the class on default or failure whereof the limitation over was to take effect.

1/1979
1st Sch.

(2) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

X. *Rent-charges and other Annual Sums*

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

Remedy for
recovery of
annual sums
charged on
land.

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

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

(4) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust by mortgage or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject

to the terms of that instrument, and to the provisions therein contained.

(6) This section applies only where that instrument comes into operation after the commencement of this Act.

XI. *Powers of Attorney*

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

Execution under power of attorney.

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

Effect of power of attorney for value made absolutely irrevocable.

- (a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind or bankruptcy, of the donor of the power; and
- (b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind or bankruptcy of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power

without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind or bankruptcy, of the donor of the power.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

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

- (a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind or bankruptcy, of the donor of the power; and
- (b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power, without the concurrency of the donee of the power, or the death, marriage, lunacy, unsoundness of mind or bankruptcy, of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind or bankruptcy, of the donor of the power within that fixed time.

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

50.—(1) Any person making or doing any payment or act in good faith in pursuance of a power of attorney shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died, or become lunatic, of unsound mind or bankrupt, or had

revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy or revocation, was not at the time of the payment or act known to the person making or doing the same.

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

51. An instrument creating a power of attorney must be duly proved and recorded in the Record Office. The recording of such instrument shall be necessary for its completion, and no person whose rights depend upon an exercise of the power shall be required to recognize the existence of such power until the same is so duly recorded.

Powers of attorney to be proved and recorded.

XII. Construction and Effect of Deeds and Other Instruments

52. The use of no formal words is necessary in order to convey lands, or tenements or hereditaments, corporeal or incorporeal.

Use of formal words unnecessary.

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

Conveyance by person to himself, etc.

54. In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words "in fee simple" without the word "heirs", and in the limitation of an estate in tail, to use the words "in tail" without the words "heirs of the body", and in the limitation of an estate in tail male

Words of limitation in fee or in tail.

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”.

This section applies only to deeds executed after the commencement of this Act.

Powers
simply
collateral.

55. 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.

Construction
of supple-
mental or
annexed deed
or document.
51/1957
S. 2.

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

Receipt in
deed
sufficient.

57. A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

Receipt in
deed or
indorsed,
evidence for
subsequent
purchaser.

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

Receipt in
deed or
indorsed,
authority for
payment to
attorney-at-
law.

59. Where an attorney-at-law produces a deed having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the attorney-at-law, without

the attorney-at-law producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

This section applies to trustees as well as to other persons.

60. Deeds in the form of and using the expressions in the Forms given in the Second Schedule, or in the like form, or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

Sufficiency of Forms I, II, III and IV, in Second Schedule.

61.—(1) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

Covenants to bind heirs, etc.

(2) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed.

(3) This section applies only to covenants made after the commencement of this Act.

62.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

Covenants to extend to heirs, etc.

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

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the terms

of the covenant, contract, bond or obligation, and to the provisions therein contained.

(4) This section applies only to a covenant, contract, bond or obligation, made or implied after the commencement of this Act.

Effect of
covenant
with two or
more jointly.

63.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money, or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall by virtue of this Act imply, an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person to whom the right to sue on the covenant, contract, bond or obligation, devolves.

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

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

(4) This section applies only to a covenant, contract, bond or obligation, made or implied after the commencement of this Act.

Effect of
advance on
joint account.

64.—(1) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly and not in shares, the mortgage money, or other money or money's worth, for the time being due to those

persons on the mortgage or obligation shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

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

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

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

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

66.—(1) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim and demand, which the conveying parties respectively have in, to or on, the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to or on, the same.

Provision for all the estate, etc.

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

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

Construction
of implied
covenants.

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

XIII. *Long Terms*

Enlarge-
ment of resi-
due of long
term into
fee simple.

68.—(1) Where a residue unexpired of not less than two hundred years of a term which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a pepper corn rent, or other rent having no money value, incident to the reversion, or having had a rent not being merely a pepper corn rent, or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2) Each of the following persons, namely—

- (a) any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence of her husband unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

- (b) any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;
- (c) any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not,

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that from and after the execution of the deed the term shall be enlarged into a fee simple.

(3) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4) This section shall apply to and include every such term as aforesaid, whether having as the immediate reversion thereon the freehold or not, but not—

- (a) any term liable to be determined by re-entry for condition broken; or
- (b) any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

(5) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(6) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interests in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(7) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right or in fact.

XIV. *Adoption of Act*

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

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

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

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

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

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

XV. *Miscellaneous*

70.—(1) Any person not being an attorney-at-law admitted to practise in this Island, who shall for reward act in this Island in the preparation or completion of, or in the advising on, any contract, conveyance, lease, mortgage, will or other instrument, shall be guilty of an offence against this Act, and on summary conviction shall be liable on a first conviction to pay a fine not exceeding one hundred dollars or less than forty dollars, and on default of payment to imprisonment not exceeding thirty days, and on a subsequent conviction for an offence committed subsequent to a previous conviction to a like penalty with imprisonment not exceeding thirty days.

Persons not being admitted attorneys-at-law practising for reward, subject to penalties.

(2) Should such persons be under articles of clerkship to an attorney-at-law, upon such conviction his articles shall become void.

(3) Provided always that lapse of time after the committing of the offence shall not be a bar to any prosecu-

tion under this Act, provided that such prosecution is begun within three months of the offence coming to the knowledge of the informant, and within two years of the committal of the offence.

Regulations
respecting
notice.

71.—(1) Any notice required or authorized by this Act to be served shall be in writing.

(2) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the person interested without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.

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

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

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

XVI. *Court; Procedure; Orders*

72.—(1) Payment of money into court shall effectually exonerate therefrom the person making the payment.

Regulations respecting payments into court and applications to the Court.

(2) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(3) On an application by a purchaser, notice shall be served in the first instance on the vendor.

(4) On an application by a vendor, notice shall be served in the first instance on the purchaser.

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

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

(7) General rules for purposes of this Act shall be deemed rules of court, and may be made accordingly.

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

Orders of Court conclusive.

(2) This section shall have effect with respect to any lease, sale or other act, under the authority of the Court.

OPERATION OF CONVEYANCES

74. All deeds and other conveyances whatsoever, at any time made before the year 1711, and duly executed, acknowledged or proved, and recorded, although no valuable consideration be therein inserted, and all deeds and

What conveyances of land are to have same operation as fine or recovery.

other conveyances whatsoever thereafter made for valuable consideration of any lands, tenements, or hereditaments within this Island (excepting such as have or shall be made by infants during their infancy, and persons of non-sane memory, during the time they continue so) shall be valid and effectual to pass and convey such lands, tenements, and hereditaments and they are hereby declared to have passed and to be conveyed as fully to all intents and purposes as any real estate in England might or could have passed by a fine levied with proclamations or by a common recovery suffered of such lands, tenements or hereditaments, any law, custom, or usage to the contrary thereof in anywise notwithstanding.

FIRST SCHEDULE

(Section 29)

STATUTORY MORTGAGE

PART I. *Deed of Statutory Mortgage*

This Indenture 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 (four) per centum per annum.

In witness, etc.

Variations in this and subsequent Forms to be made, if required, for leasehold land or other matter.

PART II

FORM A

(Section 30)

Deed of Statutory Transfer, Mortgagor not joining

This Indenture made by way of statutory transfer of mortgage the day of 19 between M. of (etc.) of the one part and T. (etc.) of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 19 and made between (etc.) Witnesseth that in consideration of the sum of \$ now paid to M. by T. being the aggregate amount of \$ mortgage money and \$ interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, etc.

FORM B

(Section 30)

Deed of Statutory Transfer, a Covenantor joining

This Indenture made by way of statutory transfer of mortgage the day of 19 between A. of (etc.) of the first part B. of (etc.) of the second part and C. of (etc.) of the third part supplemental to an indenture made by way of statutory mortgage, dated the day of 19 and made between (etc.) Witnesseth that in consideration of the sum of \$ now paid to A. by C. being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the

concurrence of B. who joins herein as covenantor hereby conveys and transfers to C. the benefit of the said mortgage.

In witness, etc.

(Section 30)

FORM C

Statutory Transfer and Statutory Mortgage combined

This Indenture made by way of statutory mortgage the day of 19 between A. of (etc.) of the first part B. of (etc.) of the second part and C. of (etc.) of the third part, supplemental to an indenture made by way of statutory mortgage dated the day of 19 and made between (etc.) Whereas the principal sum of \$ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon: And whereas B. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage: Now this Indenture witnesseth that in consideration of the sum of \$ now paid to A. by C. of which sum A. hereby acknowledges the receipt and B. hereby acknowledges the payment and receipt as aforesaid* A. as mortgagee hereby conveys and transfers to C. the benefit of the said mortgage: And this Indenture also witnesseth that for the same consideration A. as mortgagee and according to his estate and by direction of B. hereby conveys and B. as beneficial owner hereby conveys and confirms to C. all that (etc.) To Hold to and to use of C. in fees simple for securing payment on the day of 19 of† the sum of \$ as the mortgage money with interest thereon at the rate of (four) per centum per annum.

In witness, etc.

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

*** Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

(Section 32)

PART III. *Deed of Statutory Re-conveyance of Mortgage*

This Indenture made by way of statutory re-conveyance of mortgage the day of 19 between C. of (etc.) of the one part and B. of (etc.) of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 19 and made between (etc.)

Witnesseth that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest C. hereby acknowledges the receipt C. as mortgagee hereby conveys to B. all the lands and hereditaments now vested in C. under the said indenture to hold to and to the use of B. in fee simple dis-

*** Variations as noted above.

charged from all principal and interest secured by and from all claims and demands under the said indenture.

In witness, etc.

SECOND SCHEDULE

(Section 60)

SHORT FORMS OF DEEDS

I.—Mortgage

This Indenture of Mortgage made the _____ day of _____ 19____ between *A.* of (*etc.*) of the one part and *B.* of (*etc.*) and *C.* of (*etc.*) of the other part Witnesseth that in consideration of the sum of \$ _____ paid to *A.* by *B.* and *C.* out of money belonging to them on joint account of which sum *A.* acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay them on the _____ day of _____ 19____ the sum of \$ _____ with interest thereon in the meantime at the rate of (*four*) *per centum* per annum and also as long after that day as the principal money remains due under this mortgage to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the _____ day of _____ and the _____ day of _____. And this indenture also witnesseth that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* in fee simple subject to the proviso for redemption following (namely) that if *A.* or any person claiming under him shall on the _____ day of _____ 19____ pay to *B.* and *C.* the sum of _____ and interest thereon at the rate aforesaid then *B.* and *C.* or the persons claiming under them will at the request and cost of *A.* or the persons claiming under him reconvey the premises to *A.* or the person claiming under him and *A.* hereby covenants with *B.* as follows (*here add covenant as to fire insurance or other special covenants required*).

In witness, etc.

II.—Further Charge

(Section 60)

This Indenture made the _____ day of _____ 19____ between (*the same parties as the foregoing mortgage*) and supplemental to an indenture of mortgage dated the _____ day of _____ 19____ and made between the same parties for securing the sum of \$ _____ and interest at (*four*) *per centum* per annum on property at (*etc.*) Witnesseth that in consideration of the further sum of \$ _____ an interest at (*four*) *per centum* per annum on property joint account (*add receipt and covenant as in the foregoing mortgage*) and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of \$ _____ and the interest thereon hereinbefore covenanted to be paid as well as the sum of \$ _____ and interest secured by the same indenture.

In witness, etc.

(Section 60)

III.—*Conveyance on Sale*

This Indenture made the _____ day of _____ 19____
 between *A.* of (*etc.*) of the first part *B.* of (*etc.*) and *C.* of (*etc.*) of
 the second part and *M.* of (*etc.*) of the third part Whereas by an
 indenture dated (*etc.*) and made between (*etc.*) the lands hereinafter
 mentioned were conveyed by *A.* to *B.* and *C.* in fee simple by way of
 mortgage for securing \$ _____ and interest and by a supple-
 mental indenture dated (*etc.*) and made between the same parties
 those lands were charged by *A.* with the payment to *B.* and *C.* of the
 further sum of \$ _____ and interest thereon. And whereas a
 principal sum of \$ _____ remains due under the two before-
 mentioned indentures but all interest thereon has been paid as *B.* and
C. hereby acknowledge. Now this indenture witnesseth that in con-
 sideration of the sum of \$ _____ paid by the direction of *A.*
 to *B.* and *C.* and of the sum of \$ _____ paid to *A.* those two
 sums making together the total sum of \$ _____ paid by *M.* for
 the purchase of the fee simple of the lands hereinafter mentioned of
 which sum of \$ _____ *B.* and *C.* hereby acknowledge the receipt
 and of which total sum of _____ *A.* hereby acknowledges the
 payment and receipt in manner before-mentioned *B.* and *C.* as
 mortgagees and by the direction of *A.* as beneficial owner hereby
 conveys and confirms to *M.* all that (*etc.*) to hold to and to the use of
M. in fee simple discharged from all money secured by and from all
 claims under the before-mentioned indentures (*add if required*, and *A.*
 hereby acknowledges the right of *M.* to production of the documents of
 title mentioned in the Schedule hereto and to delivery of copies
 thereof and hereby undertakes for the safe custody thereof).

In witness, etc.

(The Schedule above referred to.

To contain list of documents retained by A.)

(Section 60)

IV.—*Married Settlement*

This Indenture made the _____ day of _____ 19____
 between *John M.* (*etc.*) of the first part *Jane S.* of (*etc.*) of the second
 part and *X.* of (*etc.*) and *Y.* of (*etc.*) of the third part Witnesseth
 that in consideration of the intended marriage between *John M.* and
Jane S., *John M.* as settlor hereby conveys to *X.* and *Y.* all that (*etc.*)
 To hold to *X.* and *Y.* in fee to the use of *John M.* in fee simple
 until the marriage and after the marriage to the use of *John M.* during
 his life without impeachment of waste with remainder after his death to
 the use that *Jane S.* if she survives him may receive during the rest of
 her life a yearly jointure rent-charge of \$ _____ to commence from
 his life without impeachment of waste with remainder after his death
 to be made at the end of six calendar months from his death if she is
 then living or if not a proportional part to be paid at her death and
 subject to the before-mentioned rent-charge to the use of *X.* and *Y.*

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

In witness, etc.