

LAW OF PROPERTY BILL, 2010

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LAW OF PROPERTY BILL, 2010

A BILL FOR AN ACT FOR THE CONSOLIDATION AND REFORM OF THE LAWS RELATING TO PROPERTY AND CONVEYANCING AND FOR CONNECTED PURPOSES.

Enacted by the Parliament of The Bahamas

PART 1—PRELIMINARY

1. Short title.

- (1) This Act may be cited as The Law of Property Act, 2010.
- (2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette, appoint.

2. Interpretation.

In this Act —

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

“**building purposes**” includes 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;

“**conveyance**” 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” has a meaning corresponding with that of conveyance;

- “court”** means the Supreme Court;
- “declaration”** means a declaration made under the Oaths Act, *Ch. 60*;
- “encumbrance”** includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and “encumbrancer” has a meaning corresponding with that of encumbrance, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof;
- “estate owner”** means the owner of a legal estate;
- “income”** in relation to land, includes rents and profits, and “possession” includes receipt of income;
- “instrument”** includes deed, will and Act;
- “land”** includes land of any tenure and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; a manor, an advowson, and a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in, over or derived from land; and “hereditaments” mean any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir;
- “lease”** includes an agreement for a lease where the lessee has become entitled to have his lease granted; and “underlease” includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted; and “underlessee” includes any person deriving title under or from an underlessee;
- “mortgage”** includes any charge on any property for securing money or money's worth; and “mortgage money” means money or money's worth secured by a mortgage; and “mortgagor” includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest or right, in the mortgaged property; and “mortgagee” includes any person from time to time deriving title under the original mortgagee; and “mortgagee in possession” 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;
- “property”** 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;
- “purchaser”** includes a lessee or mortgagee, and an intending purchaser, lessee or mortgagee, or other person, who for valuable consideration, acquires an interest in property; and “purchase” has a

meaning corresponding with that of purchaser; but “sale” means only a sale properly so called;

“**rent**” includes yearly or other rent, toll, duty, royalty or other reservation, by the acre, or otherwise; and “**fine**” includes premium or fore-gift, and any payment, consideration or benefit in the nature of a fine, premium or fore-gift; and “**fore-gift**” means an advance payment or premium paid by a tenant on taking or renewing a lease;

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

“**trust for sale**” in relation to land means an immediate trust for sale, whether or not exercisable at the request of or with the consent of any person;

“**trustees for sale**” mean the persons (including a personal representative) holding land on trust for sale;

“**will**” includes codicil;

“**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.

3. Certain equitable interests.

- (1) Every power of appointment over or power to convey or charge land or any interest therein whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee and exercisable by him or by another person on his behalf) operates only in equity.
- (2) The provisions in any Act or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to the creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.
- (3) The repeal of the provisions of the Statute of Uses specified in the Fourth Schedule does not affect the operation thereof in regard to dealings taking effect before the commencement of this Act.

4. Manner of giving effect to equitable interests and powers.

- (1) All equitable interests and powers in or over land shall be enforceable against the estate owner of the legal estate affected in manner following (that is to say) the estate owner shall be bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities. This provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration.

- (2) Where, by reason of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him then and in any such case the estate owner whose estate is affected shall be bound to convey or create such legal estate as the case may require.
- (3) If any question arises as to whether any and what legal estate ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Act.
- (4) If the estate owners refuse or neglect for one month after demand to transfer or create any such legal estate, or if by reason of their being out of The Bahamas or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating a legal estate in the manner provided by this Act.

5. Creation and disposition of interests.

- (1) Interests in land validly created or arising after the commencement of this Act, which are not capable of subsisting as legal estates, shall take effect as equitable interests, and, except as otherwise expressly provided by statute, interests in land which under the Statute of Uses or otherwise could before the commencement of this Act have been created as legal interests, shall be capable of being created as equitable interests:

Provided that, after the commencement of this Act (and except as hereinafter expressly enacted), an equitable interest in land shall only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created before such commencement.

- (2) All rights and interests in land may be disposed of, including —
 - (a) a contingent, executory or future equitable interest in any land, or possibility coupled with an interest in any land, whether or not the object of the gift or limitation of such interest or possibility be ascertained;
 - (b) a right of entry, into or upon land whether immediate or future, and whether vested or contingent.
- (3) All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may after the commencement of this Act, be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee simple (not being a rentcharge held for a legal estate) only within the period authorised by the rule relating to perpetuities.

6. Satisfied terms to cease.

- (1) Where the purposes of a term of years created or limited at any time out of freehold land, become satisfied either before or after the commencement of this Act (whether or not that term either by express declaration or by construction of law becomes attendant upon the freehold reversion) it shall merge in the reversion expectant thereon and shall cease accordingly.
- (2) Where the purposes of a term of years created or limited, at any time, out of leasehold land, become satisfied after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.
- (3) Where the purposes are satisfied only as respects part of the land comprised in a term, this section shall have effect as if a separate term had been created in this regard to that part of the land.

7. Trust of mortgaged property where right of redemption barred.

- (1) Where any property vested in trustees by way of security becomes by virtue of statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them in trust.
- (2) The net proceeds of any sale, after payment of costs and expenses shall be applied in like manner as the mortgage debt if received would have been applicable and the income of the property until any sale shall be applied in like manner as the income, if received would have been applicable, but this subsection shall operate without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.
- (3) This section applies whether the right of redemption was discharged before or after the commencement of this Act but has effect without prejudice to any dealings or arrangements made before that date.

8. Effect of future dispositions to tenants in common.

- (1) Where after the commencement of this Act, land is expressed to be conveyed to any persons as tenants in common in undivided shares the conveyance shall (notwithstanding anything to the contrary in this Act) operate as if the land had been expressed to be conveyed to the grantees or if there were more than four grantees to the first four grantees named in the conveyance as joint tenants in trust for the persons interested in the land.
- (2) A devise, bequest or testamentary appointment coming into operation after the commencement of this Act, of land to two or more persons as tenants in common in undivided shares shall operate as a devise, bequest or appoint of the land to the personal representatives of the testator (but

without prejudice to the rights and powers of the personal representatives for purposes of administration) in trust for the persons interested in the land.

- (3) In subsections (1) and (2) references to the persons interested in the land include persons interested as trustees or personal representatives (as well as persons beneficially interested).

9. Joint tenancies.

- (1) Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held in trust, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.
- (2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

- (3) Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held in trust.
- (4) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

10. Rights of husband and wife.

A husband and wife shall for all purposes of acquisition of any interest in property under a disposition made or coming into operation after the commencement of this Act, be treated as two persons.

11. Protection of contingent reminders.

A contingent remainder existing after the thirty first day of December eighteen hundred and forty-four, shall be, and if created before the fourth day of August

eighteen hundred and forty–five shall be deemed to have been capable of taking effect notwithstanding the determination by forfeiture, surrender or merger of any preceding estate of freehold, in the same manner as if such determination had not happened.

12. Power for corporations to hold property as joint tenants.

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

Provided that the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

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

13. Entailed interests.

- (1) Where a person purports by an instrument coming into operation after the commencement of this Act to grant to another person an entailed interest in real or personal property, the instrument —
 - (a) is not effective to grant an entailed interest; but
 - (b) operates instead as a declaration that the property is held in trust absolutely for the person to whom an entailed interest in the property was purportedly granted.
- (2) Where a person purports by an instrument coming into operation after the commencement of this Act to declare himself a tenant in tail of real or personal property, the instrument is not effective to create an entailed interest.
- (3) In respect of entailed interests created before the commencement of this Act, every actual tenant in tail shall have the same and the like power to dispose of the lands entailed for an estate in fee simple absolute or for any less estate as any tenant in tail in England can, under the provisions of the Fines and Recoveries Act 1833, now dispose of the lands of which he is tenant in tail.

PART II—TRUSTS OF LAND

14. Meaning of “trust of land”.

- (1) In this Part —
 - (a) “trust of land” means (subject to subsection (3)) any trust of property which consists of or includes land; and
 - (b) “trustees of land” means trustees of a trust of land.
- (2) The reference in subsection (1)(a) to a trust —
 - (a) is to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust; and
 - (b) includes a trust created, or arising, before the commencement of this Act.
- (3) The reference to land in subsection (1)(a) does not include land which (despite section 15) is settled land.

15. Trusts in place of settlements.

- (1) No settlement created after the commencement of this Act is a settlement for the purposes of this Act but is instead deemed to be a trust of land for the purposes of this Act.
- (2) Subsection (1) does not apply to a settlement created on the occasion of an alteration in any interest in, or of a person becoming entitled under, a settlement which —
 - (a) is in existence at the commencement of this Act; or
 - (b) derives from a settlement within paragraph (a) or this paragraph.
- (3) No land held on charitable, ecclesiastical or public trusts shall be or be deemed to be settled land after the commencement of this Act, even if it was or was deemed to be settled land before that commencement.

16. Abolition of doctrine of conversion.

- (1) Where land is held by trustees subject to a trust for sale, the land is not to be regarded as personal property; and where personal property is subject to a trust for sale in order that the trustees may acquire land, the personal property is not to be regarded as land.
- (2) Subsection (1) does not apply to a trust created by a will if the testator died before the commencement of this Act.
- (3) Subject to that, subsection (1) applies to a trust whether it is created, or arises, before or after that commencement.

17. Express trusts for sale as trusts of land.

- (1) In the case of every trust for sale of land created by a disposition there is to be implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land; and the trustees are not liable in any way for postponing sale of the land, in the exercise of their discretion, for an indefinite period.
- (2) Subsection (1) applies to a trust whether it is created, or arises, before or after the commencement of this Act.
- (3) Subsection (1) does not affect any liability incurred by trustees before that commencement.

18. General powers of trustees.

- (1) For the purpose of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner.
- (2) Where in the case of any land subject to a trust of land each of the beneficiaries interested in the land is a person of full age and capacity who is absolutely entitled to the land, the powers conferred on the trustees by subsection (1) include the power to convey the land to the beneficiaries even though they have not required the trustees to do so; and where land is conveyed by virtue of this subsection —
 - (a) the beneficiaries shall do whatever is necessary to secure that it vests in them; and
 - (b) if they fail to do so, the court may make an order requiring them to do so.
- (3) The trustees of land have power to purchase a legal estate in any land in The Bahamas.
- (4) The power conferred by subsection (3) may be exercised by trustees to purchase land —
 - (a) by way of investment;
 - (b) for occupation by any beneficiary; or
 - (c) for any other reason.
- (5) In exercising the powers conferred by this section trustees shall have regard to the rights of the beneficiaries.
- (6) The powers conferred by this section shall not be exercised in contravention of, or of any order made in pursuance of, any other written law or any rule of law or equity.
- (7) The reference in subsection (6) to an order includes an order of any court.

- (8) Where any written law other than this section confers on trustees authority to act subject to any restriction, limitation or condition, trustees of land may not exercise the powers conferred by this section to do any act which they are prevented from doing under the other written law by reason of the restriction, limitation or condition.

19. Partition by trustees.

- (1) The trustees of land may, where beneficiaries of full age are absolutely entitled in undivided shares to land subject to the trust, partition the land, or any part of it, and provide (by way of mortgage or otherwise) for the payment of any equality money.
- (2) The trustees shall give effect to any such partition by conveying the partitioned land in severalty (whether or not subject to any legal mortgage created for raising equality money), either absolutely or in trust, in accordance with the rights of those beneficiaries.
- (3) Before exercising their powers under subsection (2) the trustees shall obtain the consent of each of those beneficiaries.
- (4) Where a share in the land is affected by an encumbrance, the trustees may either give effect to it or provide for its discharge from the property allotted to that share as they think fit.
- (5) If a share in the land is absolutely vested in a minor, subsections (1) to (4) apply as if he were of full age, except that the trustees may act on his behalf and retain land or other property representing his share in trust for him.

20. Exclusion and restriction of powers.

- (1) Sections 18 and 19 do not apply in the case of a trust of land created by a disposition in so far as provision to the effect that they do not apply is made by the disposition.
- (2) If the disposition creating such a trust makes provision requiring any consent to be obtained to the exercise of any power conferred by section 18 or 19, the power may not be exercised without that consent.
- (3) Subsection (1) does not apply in the case of charitable, ecclesiastical or public trusts.
- (4) Subsections (1) and (2) have effect subject to any written law which prohibits or restricts the effect of provision of the description mentioned in them.

21. Delegation by trustees.

- (1) The trustees of land may, by power of attorney, delegate to any beneficiary or beneficiaries of full age and beneficially entitled to an interest in possession in land subject to the trust any of their functions as trustees which relate to the land.
- (2) Where trustees purport to delegate to a person by a power of attorney under subsection (1) functions relating to any land and another person in good faith deals with him in relation to the land, he shall be presumed in favour of that other person to have been a person to whom the functions could be delegated unless that other person has knowledge at the time of the transaction that he was not such a person. And it shall be conclusively presumed in favour of any purchaser whose interest depends on the validity of that transaction that that other person dealt in good faith and did not have such knowledge if that other person makes a statutory declaration to that effect before or within three months after the completion of the purchase.
- (3) A power of attorney under subsection (1) shall be given by all the trustees jointly and (unless expressed to be irrevocable and to be given by way of security) may be revoked by any one or more of them, and such a power is revoked by the appointment as a trustee of a person other than those by whom it is given (though not by any of those persons dying or otherwise ceasing to be a trustee).
- (4) Where a beneficiary to whom functions are delegated by a power of attorney under subsection (1) ceases to be a person beneficially entitled to an interest in possession in land subject to the trust —
 - (a) if the functions are delegated to him alone, the power is revoked;
 - (b) if the functions are delegated to him and to other beneficiaries to be exercised by them jointly (but not separately), the power is revoked if each of the other beneficiaries ceases to be so entitled (but otherwise functions exercisable in accordance with the power are so exercisable by the remaining beneficiary or beneficiaries); and
 - (c) if the functions are delegated to him and to other beneficiaries to be exercised by them separately (or either separately or jointly), the power is revoked in so far as it relates to him.
- (5) A delegation under subsection (1) may be for any period or indefinite.
- (6) A power of attorney under subsection (1) cannot be an enduring power within the meaning of the Powers of Attorney Act, Ch. 81.
- (7) Beneficiaries to whom functions have been delegated under subsection (1) are, in relation to the exercise of the functions, in the same position as trustees (with the same duties and liabilities); but such beneficiaries shall not be regarded as trustees for any other purposes (including, in particular,

the purposes of any written law permitting the delegation of functions by trustees or imposing requirements relating to the payment of capital money).

- (8) Where any function has been delegated to a beneficiary or beneficiaries under subsection (1), the trustees are jointly and severally liable for any act or default of the beneficiary, or any of the beneficiaries, in the exercise of the function if, and only if, the trustees did not exercise reasonable care in deciding to delegate the function to the beneficiary or beneficiaries.
- (9) This section does not affect the operation after the commencement of this Act of any delegation effected before that commencement.

22. Consents.

- (1) If a disposition creating a trust of land requires the consent of more than two persons to the exercise by the trustees of any function relating to the land, the consent of any two of them to the exercise of the function is sufficient in favour of a purchaser.
- (2) Subsection (1) does not apply to the exercise of a function by trustees of land held on charitable, ecclesiastical or public trusts.
- (3) Where at any time a person whose consent is expressed by a disposition creating a trust of land to be required to the exercise by the trustees of any function relating to the land is not of full age —
 - (a) his consent is not, in favour of a purchaser, required to the exercise of the function; but
 - (b) the trustees shall obtain the consent of a parent who has parental responsibility for him or of a guardian of his (within the meaning of the Child Protection Act, 2007).

23. Consultation with beneficiaries.

- (1) The trustees of land shall in the exercise of any function relating to land subject to the trust —
 - (a) so far as practicable, consult the beneficiaries of full age and beneficially entitled to an interest in possession in the land; and
 - (b) so far as consistent with the general interest of the trust, give effect to the wishes of those beneficiaries, or (in case of dispute) of the majority (according to the value of their combined interests).
- (2) Subsection (1) does not apply —
 - (a) in relation to a trust created by a disposition in so far as provision that it does not apply is made by the disposition;
 - (b) in relation to a trust created or arising under a will made before the commencement of this Act; or

- (c) in relation to the exercise of the power mentioned in section 18(2).
- (3) Subsection (1) does not apply to a trust created before the commencement of this Act by a disposition, or a trust created after that commencement by reference to such a trust, unless provision to the effect that it is to apply is made by a deed executed —
 - (a) in a case in which the trust was created by one person and he is of full capacity, by that person; or
 - (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.
- (4) A deed executed for the purposes of subsection (3) is irrevocable.

24. The right to occupy.

- (1) A beneficiary who is beneficially entitled to an interest in possession in land subject to a trust of land is entitled by reason of his interest to occupy the land at any time if at that time —
 - (a) the purposes of the trust include making the land available for his occupation (or for the occupation of beneficiaries of a class of which he is a member or of beneficiaries in general); or
 - (b) the land is held by the trustees so as to be so available.
- (2) Subsection (1) does not confer on a beneficiary a right to occupy land if it is either unavailable or unsuitable for occupation by him.
- (3) This section is subject to section 25.

25. Exclusion and restriction of right to occupy.

- (1) Where two or more beneficiaries are (or apart from this subsection would be) entitled under section 24 to occupy land, the trustees of land may exclude or restrict the entitlement of any one or more (but not all) of them.
- (2) Trustees may not under subsection (1) —
 - (a) unreasonably exclude any beneficiary's entitlement to occupy land; or
 - (b) restrict any such entitlement to an unreasonable extent.
- (3) The trustees of land may from time to time impose reasonable conditions on any beneficiary in relation to his occupation of land by reason of his entitlement under section 24.
- (4) The matters to which trustees are to have regard in exercising the powers conferred by this section include —
 - (a) the intentions of the person or persons (if any) who created the trust;

- (b) the purposes for which the land is held; and
 - (c) the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 24.
- (5) The conditions which may be imposed on a beneficiary under subsection (3) include, in particular, conditions requiring him —
 - (a) to pay any outgoings or expenses in respect of the land; or
 - (b) to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.
- (6) Where the entitlement of any beneficiary to occupy land under section 24 has been excluded or restricted, the conditions which may be imposed on any other beneficiary under subsection (3) include, in particular, conditions requiring him to —
 - (a) make payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted; or
 - (b) forgo any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit that beneficiary.
- (7) The powers conferred on trustees by this section may not be exercised —
 - (a) so as to prevent any person who is in occupation of land (whether or not by reason of an entitlement under section 24) from continuing to occupy the land; or
 - (b) in a manner likely to result in in any such person ceasing to occupy the land,unless he consents or the court has given approval.
- (8) The matters to which the court is to have regard in determining whether to give approval under subsection (7) include the matters mentioned in subsection (4)(a) to (c).

26. Application for order.

- (1) Any person who is a trustee of land or has an interest in property subject to a trust of land may make an application to the court for an order under this section.
- (2) On an application for an order under this section the court may make any such order —
 - (a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions); or

- (b) declaring the nature or extent of a person's interest in property subject to the trust,
as the court thinks fit.
- (3) The court may not under this section make any order as to the appointment or removal of trustees.
- (4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this Act.

27. Matters relevant in determining applications.

- (1) The matters to which the court is to have regard in determining an application for an order under section 26 include —
 - (a) the intentions of the person or persons (if any) who created the trust;
 - (b) the purposes for which the property subject to the trust is held;
 - (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home; and
 - (d) the interests of any secured creditor of any beneficiary.
- (2) In the case of an application relating to the exercise in relation to any land of the powers conferred on the trustees by section 25, the matters to which the court is to have regard also include the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 24.
- (3) In the case of any other application, other than one relating to the exercise of the power mentioned in section 18 (2), the matters to which the court is to have regard also include the circumstances and wishes of any beneficiaries of full age and entitled to an interest in possession in property subject to the trust or (in case of dispute) of the majority (according to the value of their combined interests).

28. Protection of purchasers.

- (1) A purchaser of land which is or has been subject to a trust need not be concerned to see that any requirement imposed on the trustees by section 18(5), 19(3) or 23(1) has been complied with.
- (2) Where —
 - (a) trustees of land who convey land which (immediately before it is conveyed) is subject to the trust contravene section 18(6) or (8); but

- (b) the purchaser of the land from the trustees has no actual notice of the contravention,
the contravention does not invalidate the conveyance.
- (3) Where the powers of trustees of land are limited by virtue of section 20 —
 - (a) the trustees shall take all reasonable steps to bring the limitation to the notice of any purchaser of the land from them; but
 - (b) the limitation does not invalidate any conveyance by the trustees to a purchaser who has no actual notice of the limitation.
- (4) Where trustees of land convey land which (immediately before it is conveyed) is subject to the trust to persons believed by them to be beneficiaries absolutely entitled to the land under the trust and of full age and capacity —
 - (a) the trustees shall execute a deed declaring that they are discharged from the trust in relation to that land; and
 - (b) if they fail to do so, the court may make an order requiring them to do so.
- (5) A purchaser of land to which a deed under subsection (4) relates is entitled to assume that, as from the date of the deed, the land is not subject to the trust unless he has actual notice that the trustees were mistaken in their belief that the land was conveyed to beneficiaries absolutely entitled to the land under the trust and of full age and capacity.
- (6) Subsections (2) and (3) do not apply to land held on charitable, ecclesiastical or public trusts.
- (7) This section does not apply to registered land.

29. Application of provisions to trusts of proceeds of sale.

- (1) Section 18(3) applies in relation to trustees of a trust of proceeds of sale of land as in relation to trustees of land.
- (2) Section 26 applies in relation to a trust of proceeds of sale of land and trustees of such a trust as in relation to a trust of land and trustees of land.
- (3) In this section “trust of proceeds of sale of land” means (subject to subsection (5)) any trust of property (other than a trust of land) which consists of or includes —
 - (a) any proceeds of a disposition of land held in trust (including settled land); or
 - (b) any property representing any such proceeds.
- (4) The references in subsection (3) to a trust —
 - (a) are to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust; and

- (b) include a trust created, or arising, before the commencement of this Act.
- (5) In subsection (3) “disposition” includes any disposition made, or coming into operation, before the commencement of this Act.

30. Application of Part to personal representatives.

- (1) The provisions of this Part relating to trustees, other than sections 22, 23 and 26, apply to personal representatives, but with appropriate modifications and without prejudice to the functions of personal representatives for the purposes of administration.
- (2) The appropriate modifications include —
 - (a) the substitution of references to persons interested in the due administration of the estate for references to beneficiaries; and
 - (b) the substitution of references to the will for references to the disposition creating the trust.
- (3) Section 16(1) does not apply to personal representatives if the death occurs before the commencement of this Act.

31. Appointment and retirement of trustee at instance of beneficiaries.

- (1) This section applies in the case of a trust where —
 - (a) there is no person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; and
 - (b) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give a direction or directions of either or both of the following descriptions —
 - (a) a written direction to a trustee or trustees to retire from the trust; and
 - (b) a written direction to the trustees or trustee for the time being (or, if there are none, to the personal representative of the last person who was a trustee) to appoint by writing to be a trustee or trustees the person or persons specified in the direction.
- (3) Where —
 - (a) a trustee has been given a direction under subsection (2)(a);
 - (b) reasonable arrangements have been made for the protection of any rights of his in connection with the trust;
 - (c) after he has retired there will be either a trust corporation or at least two persons to act as trustees to perform the trust; and

- (d) either another person is to be appointed to be a new trustee on his retirement (whether in compliance with a direction under subsection (2)(b) or otherwise) or the continuing trustees by deed consent to his retirement,
he shall make a deed declaring his retirement and shall be deemed to have retired and be discharged from the trust.
- (4) Where a trustee retires under subsection (3) he and the continuing trustees (together with any new trustee) shall (subject to any arrangements for the protection of his rights) do anything necessary to vest the trust property in the continuing trustees (or the continuing and new trustees).
- (5) This section has effect subject to the restrictions imposed by the Trustee Act, Ch. 176 on the number of trustees.

32. Appointment of substitute for incapable trustee.

- (1) This section applies where —
 - (a) a trustee is incapable by reason of mental disorder of exercising his functions as trustee;
 - (b) there is no person who is both entitled and willing and able to appoint a trustee in place of him under section 42(1) of the Trustee Act, Ch. 176; and
 - (c) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give to —
 - (a) a receiver of the trustee;
 - (b) an attorney acting for him under the authority of a power of attorney created by an instrument which is registered under section 6 of the Powers of Attorney Act, Ch. 81; or
 - (c) a person authorised for the purpose by the authority having jurisdiction under Part VIII of the Mental Health Act, Ch. 230,
a written direction to appoint by writing the person or persons specified in the direction to be a trustee or trustees in place of the incapable trustee.

33. Supplementary.

- (1) For the purposes of section 31 or 32 a direction is given by beneficiaries if —
 - (a) a single direction is jointly given by all of them; or
 - (b) (subject to subsection (2)) a direction is given by each of them (whether solely or jointly with one or more, but not all, of the others),

and none of them by writing withdraws the direction given by him before it has been complied with.

- (2) Where more than one direction is given each must specify for appointment or retirement the same person or persons.
- (3) Subsection (7) of section 42 of the Trustee Act, Ch. 176 applies to a trustee appointed under section 31 or 32 as if he were appointed under that section.
- (4) Sections 31 and 32 do not apply in relation to a trust created by a disposition in so far as provision that they do not apply is made by the disposition.
- (5) Sections 31 and 32 do not apply in relation to a trust created before the commencement of this Act by a disposition in so far as provision to the effect that they do not apply is made by a deed executed —
 - (a) in a case in which the trust was created by one person and he is of full capacity, by that person; or
 - (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.
- (6) A deed executed for the purposes of subsection (5) is irrevocable.
- (7) Where a deed is executed for the purposes of subsection (5) —
 - (a) it does not affect anything done before its execution to comply with a direction under section 31 or 32; but
 - (b) a direction under section 31 or 32 which has been given but not complied with before its execution shall cease to have effect.

34. Miscellaneous.

- (1) In this Part “beneficiary”, in relation to a trust, means any person who under the trust has an interest in property subject to the trust (including a person who has such an interest as a trustee or a personal representative).
- (2) In this Part references to a beneficiary who is beneficially entitled do not include a beneficiary who has an interest in property subject to the trust only by reason of being a trustee or personal representative.
- (3) For the purposes of this Part a person who is a beneficiary only by reason of being an annuitant is not to be regarded as entitled to an interest in possession in land subject to the trust.
- (4) The provisions of this Part do not affect any entailed interest created before the commencement of this Act..

- (5) The provisions of this Part made in consequence of section 16 —
 - (a) do not affect a trust created by a will if the testator died before the commencement of this Act; and
 - (b) do not affect personal representatives of a person who died before that commencement.

PART III—CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

35. Statutory commencement of title.

- (1) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by the Crown or a certificate of title granted by the court in accordance with the provisions of The Quieting Titles Act, Ch. 393 whichever period shall be the shorter.
- (2) Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.
- (3) 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.
- (4) 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.
- (5) When by reason of subsection (2), (3) or (4) an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not where the contract is made after the commencement of this Act, be deemed to be affected with notice or any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.
- (6) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act or by any other Act or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.
- (7) Where a lease whether made before or after the commencement of this Act is made under a power contained in a settlement, will, Act 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.

- (8) This section, except where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Act and applies to contracts for exchange in like manner as it applies to contracts for sale save that it applies only to contracts for exchange made after such commencement.
- (9) This section applies only if and so far as a contrary intention is not expressed in the contract.

36. Other statutory conditions of sale.

- (1) A purchaser of any property shall not —
 - (a) require the production, or any abstract or copy, of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or
 - (b) require any information, or make any requisition, objection or 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, agreed to be produced, or noticed;

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

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

- (i) any power of attorney under which any abstracted document is executed,
- (ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired and subject to which any part of the property is disposed of by an abstracted document, or
- (iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

- (2) Where land sold is held by lease (other than an underlease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.
- (3) Where land sold is held by underlease, the purchaser shall assume, unless the contrary appears, that the underlease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the underlease before the date of actual completion of the purchase, he shall assume unless the contrary appears, that all the covenants and provisions of the underlease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.
- (4) On a sale of any property, the expenses of the production and inspection of all Acts, records, proceedings of courts, deeds, wills, probates, letters of administration and other documents, not in the possession of the vendor or his mortgagee or trustee and 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 possession of the vendor or his mortgagee or trustee and all attested, stamped, office or other copies or abstracts of, or extracts from, any Acts or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.
- (5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.
- (6) Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.
- (7) A vendor shall be entitled to retain documents or title where —

- (a) he retains any part of the land to which the documents relate; or
 - (b) the document consists of a trust instrument or instrument creating a trust which is still subsisting or an instrument relating to an appointment or discharge of a trustee of a subsisting trust.
- (8) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.
- (9) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.
- (10) Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense and the vendor shall bear the expense of perusal and execution on behalf of and by himself and on behalf of and by necessary parties other than the purchaser.
- (11) A vendor shall be entitled to retain documents of title where —
- (a) he retains any part of the land to which the documents relate; or
 - (b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.
- (12) This section applies to contracts for sale made before or after the commencement of this Act and applies to contracts for exchange in like manner as to contracts for sale, except that it applies only to contracts for exchange made after such commencement:
- Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.
- (13) 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.

37. Application of insurance money on completion of sale or exchange.

- (1) When after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the

vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

- (2) This section applies to contracts whether made before or after the commencement of this Act and has effect subject to —
 - (a) any stipulation to the contrary contained in the contract;
 - (b) any requisite consents of the insurers;
 - (c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.
- (3) This section applies to a sale or exchange by an order of the court as if —
 - (a) for references to the “vendor” there were substituted references to the “person bound by the order”;
 - (b) for the reference to the completion of the contract there were substituted a references to the payment of the purchase or equality money (if any) into court;
 - (c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

38. Vendor or purchaser may obtain decision of court.

- (1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way to the court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, (not being a question affecting the existence or validity of the contract) and the court shall make such order upon the application as to the court may appear just, and may order how and by whom all or any of the costs of and incident to the application shall be borne and paid.
- (2) When the court refuses to grant specific performance of a contract or in any action for the return of a deposit the court may if it thinks fit, order the repayment of any deposit.
- (3) This section applies to a contract for the sale or exchange of any interest in land.

39. Discharge of encumbrances on sale.

- (1) Where land subject to any encumbrance, whether immediately realisable or payable or not, is sold or exchanged by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court, 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 securities of the Government of The Bahamas, 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 encumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interests, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

- (2) Thereupon, the court may, if it thinks fit, and either after or without any notice to the encumbrancer, as the court thinks fit, declare the land to be freed from the encumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.
- (3) The court may declare all other land, if any, affected by the encumbrance (besides the land sold or exchanged) to be freed from the encumbrance, and this power may be exercised either after or without notice to the encumbrancer, and notwithstanding that on a previous occasion an order, relating to the same encumbrance, has been made by the court which was confined to the land then sold or exchanged.
- (4) On any application under this section, the court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which would otherwise require to be served on the vendor or purchaser.
- (5) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.
- (6) This section applies to sales or exchanges whether made before or after the commencement of this Act and to encumbrances whether created by Act or otherwise.

40. Lands lie in Grant.

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

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

41. Conveyances to be by deed.

- (1) All conveyances of land or of any interest in land are void for the purpose of conveying or creating a legal estate unless made by deed.
- (2) This section does not apply to:
 - (a) disclaimers made under section 21 of the Bankruptcy Act, Ch. 69 or not required to be evidenced in writing;
 - (b) surrenders by operation of law including surrenders which may by law be effected without writing;
 - (c) leases or tenancies or other assurances not required by law to be made in writing;
 - (d) receipts not required by law to be under seal;
 - (e) vesting orders of the court or other competent authority;
 - (f) conveyances taking effect by operation of law.

42. Description of deeds.

Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected.

43. Deeds and their execution.

- (1) Any rule of law which —
 - (a) restricts the substances on which a deed may be written;
 - (b) requires a seal for the valid execution of an instrument as a deed by an individual; or
 - (c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed,is abolished.
- (2) An instrument shall not be a deed unless —
 - (a) it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and
 - (b) it is validly executed as a deed by that person or, as the case may be, one or more of those parties.

- (3) An instrument is validly executed as a deed by an individual if, and only if—
 - (a) it is signed—
 - (i) by him in the presence of a witness who attests the signature, or
 - (ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and
 - (b) it is delivered as a deed by him or a person authorised to do so on his behalf.
- (4) In subsections (2) and (3) “sign”, in relation to an instrument, includes making one's mark on the instrument and “signature” is to be construed accordingly.
- (5) Where a counsel and attorney, or an agent or employee of a counsel and attorney, in the course of or in connection with a transaction involving the disposition or creation of an interest in land, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.
- (6) In this section and section 44—

“interest in land” means any estate, interest or charge in or over land or in or over the proceeds of sale of land.
- (7) Where an instrument under seal that constitutes a deed is required for the purposes of an Act passed before this section comes into force, this section shall have effect as to signing, sealing or delivery of an instrument by an individual in place of any provision of that Act as to signing, sealing or delivery.
- (8) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (7) to signing, sealing or delivery by an individual does not include signing, sealing or delivery by such a corporation.
- (9) Nothing in this section applies in relation to instruments delivered as deeds before this section comes into force.

44. Contracts for sale etc. of land to be made by signed writing.

- (1) A contract for the sale of other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.
- (2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.

- (3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.
- (4) Where a contract for the sale or other disposition of an interest in land satisfies the conditions of this section by reason only of the rectification of one or more documents in pursuance of an order of a court, the contract shall come into being, or be deemed to have come into being, at such time as may be specified in the order.
- (5) This section does not apply in relation to a contract made in the course of a public auction.
- (6) Nothing in this section affects the creation or operation of resulting, implied or constructive trusts.
- (7) Nothing in this section shall apply in relation to contracts made before this section comes into force.
- (8) The rule of law known as the rule in *Bain v. Fothergill* is abolished in relation to contracts made after this Act comes into force.

45. Persons taking who are not parties: indentures.

- (1) A person may take an immediate or other interest in land (or other property) or the benefit of any condition, right of entry, covenant or agreement over or in respect of land (or other property), although he may not be named as a party to the conveyance or other instrument.
- (2) A deed between parties, to effect its objects, has the effect of an indenture though not intended or expressed to be an indenture.

46. Provisions as to supplemental instruments.

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

47. Conditions and certain covenants not implied.

- (1) An exchange or partition of land made by deed after the first day of October eighteen hundred and forty-five, does not imply any condition in law.

- (2) The word “give” or “grant” does not, in a deed made after the date aforesaid, imply any covenant in law except where otherwise provided by any Act.

48. Abolition of technicalities in regard to conveyances and deeds.

- (1) A conveyance of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.
- (2) A conveyance of freehold land to a corporation sole by his corporate designation without the word “successors” shall pass to the corporation the fee simple or other the whole interest which the grantor had power to convey in such land unless a contrary intention appears in the conveyance.
- (3) In a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantor.
- (4) This section shall apply only to conveyances and deeds executed after the commencement of this Act:

Provided that in a deed executed after the twenty-second day of August nineteen hundred and nine, it shall be sufficient in the limitation of an estate in fee simple to use the words “in fee simple” without the word “heirs”.

49. Construction of expression used in deeds and other instruments.

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

- (a) “month” means calendar month;
- (b) “person” includes a corporation;
- (c) the singular includes the plural and vice versa;
- (d) the masculine includes the feminine.

50. Words implied in conveyances.

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

- (2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, tanks, 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 to conveyances made after the twenty-second day of August nineteen hundred and nine.

51. All estate clause implied.

- (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.
- (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 to conveyances made after the twenty-second day of August nineteen hundred and nine.

52. Production and safe custody of documents.

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

- (2) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual, possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.
- (3) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.
- (4) The obligations imposed under this section by an acknowledgment are —
 - (a) an obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorised in writing;
 - (b) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in The Bahamas, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and
 - (c) an obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.
- (5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.
- (6) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.
- (7) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the court may, if it thinks fit, order production, or

production and delivery, accordingly, and may give directions respecting the time, place, terms and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

- (8) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.
- (9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the document safe, whole, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.
- (10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.
- (11) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.
- (12) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.
- (13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.
- (14) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the twenty-second day of August nineteen hundred and nine.

53. Confirmation of past transactions.

- (1) A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable of subsisting at law which at some prior date were expressed to have been transferred or

created and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, shall, to the extent of the estate of the estate owner operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

- (2) The powers conferred by this section may be exercised by a tenant for life, trustee of land or personal representative (being in each case an estate owner) as well as by an absolute owner but if exercised by any person other than an absolute owner, only with the leave of the court.
- (3) This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

54. Receipt in deed sufficient.

- (1) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the deed.
- (2) This section applies to deeds executed after the twenty-second day of August nineteen hundred and nine.

55. Receipt in deed or endorsed evidence for subsequent purchaser.

- (1) A receipt for consideration money or other consideration in the body of a deed or endorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.
- (2) This section applies to deeds executed after the twenty-second day of August nineteen hundred and nine.

56. Receipt in deed or endorsed authority for payment to counsel and attorney.

- (1) Where a counsel and attorney produces a deed, having in the body thereof or endorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the counsel and attorney, without the counsel and attorney producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

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

57. Reservation of legal estates.

- (1) A reservation of a legal estate shall operate at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made or any regrant by him, so as to create the legal estate reserved and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made.
- (2) A conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance shall operate as a reservation unless a contrary intention appears.
- (3) This section applies only to reservations made after the commencement of this Act.

58. Partial release of security from rentcharge.

- (1) A release from a rentcharge of part of the land charged therewith does not extinguish the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge out of the land released without prejudice to the rights of any persons interested in the land remaining unreleased and not concurring in or confirming the release.
- (2) This section applies to releases made after the twelfth day of August eighteen hundred and fifty-nine.

59. Release of part of land affected from a judgment.

- (1) A release from a judgment (including any writ or order imposing a charge) of part of any land charged therewith does not affect the validity of the judgment as respects any land not specifically released.
- (2) This section operates without prejudice to the rights of any persons interested in the property remaining unreleased and not concurring in or confirming the release.
- (3) This section applies to releases made after the twelfth day of August eighteen hundred and fifty-nine.

60. Conveyance by a person to himself, etc.

- (1) In conveyances made after the twelfth day of August eighteen hundred and fifty-nine, personal property, including chattels real, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

- (2) In conveyances made after the twenty-second day of August nineteen hundred and nine freehold land or a thing in action may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person; and may in like manner be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.
- (3) After the commencement of this Act a person may convey land to or vest land in himself.
- (4) Two or more persons (whether or not being trustees or personal representatives) may convey and shall be deemed always to have been capable of conveying any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party; provided that if the persons in whose favour the conveyance is made, are by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

61. Execution of instruments by or on behalf of corporation.

- (1) In favour of a purchaser an instrument shall be deemed to have been duly executed by a corporation aggregate if its seal is affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy and a member of the board of directors, council or other governing body of the corporation, and when a seal purporting to be the seal of a corporation has been affixed to an instrument, attested by persons purporting to be persons holding such office as aforesaid, the instrument shall be deemed to have been executed in accordance with the requirements of this section and to have taken effect accordingly.
- (2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.
- (3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness who attests the signature, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.
- (4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name of or on behalf of any other person (including another

corporation) an officer appointed for the purpose by the board of directors, council or other governing body of the corporation, by resolution or otherwise, may execute the instrument by signing it in the name of such other person or if the instrument is to be a deed, by so signing it in the presence of a witness who attests the signature; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

- (5) The foregoing provisions shall apply to transactions wherever effected but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointment of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.
- (6) Notwithstanding anything contained in this section any mode or execution or attestation authorised by law or by practice or by the Act, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

62. Execution of instrument as a deed.

- (1) An instrument is validly executed by a corporation aggregate as a deed for the purposes of section 43(2)(b) if and only if —
 - (a) it is duly executed by the corporation; and
 - (b) it is delivered as a deed.
- (2) As instrument shall be presumed to be delivered for the purposes of subsection (1)(b) upon its being executed unless a contrary intention is proved.

63. Rights of purchaser as to execution.

- (1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his counsel and attorney, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit be his counsel and attorney.
- (2) This section applies to sales made after the twenty–second day of August nineteen hundred and nine.

PART IV—COVENANTS

64. Covenants to be implied on a disposition of property.

- (1) In an instrument effecting or purporting to effect a disposition of property there shall be implied on the part of the person making the disposition, whether or not the disposition is for valuable consideration, such of the covenants specified in sections 65 to 68 as are applicable to the disposition.
- (2) Of those sections —
 - (a) sections 65, 66(1) and (2), 67 and 68 apply where dispositions are expressed to be made with full title guarantee; and
 - (b) sections 65, 66(3), 67 and 68 apply where dispositions are expressed to be made with limited title guarantee.
- (3) Sections 65 to 67 have effect subject to section 69 and sections 65 to 68 have effect subject to section 71(1).
- (4) In this Part —
 - “disposition” includes the creation of a term of years;
 - “instrument” includes an instrument which is not a deed.

65. Right to dispose and further assurance.

- (1) If the disposition is expressed to be made with full title guarantee or with limited title guarantee there shall be implied the following covenants —
 - (a) that the person making the disposition has the right (with the concurrence of any other person conveying the property) to dispose of the property as he purports to; and
 - (b) that the person will at his own cost do all that he reasonably can to give the person to whom he disposes of the property the title he purports to give.
- (2) The latter obligation includes —
 - (a) in relation to a disposition of an interest in land the title to which is registered, doing all that he reasonably can to ensure that the person to whom the disposition is made is entitled to be registered as proprietor with at least the class of title registered immediately before the disposition; and
 - (b) in relation to a disposition of an interest in land the title to which is required to be registered by virtue of the disposition, giving all reasonable assistance fully to establish to the satisfaction of the

Registrar for land the right of the person to whom the disposition is made to registration as proprietor.

- (3) In the case of a disposition of an existing legal interest in land, the following presumptions apply, subject to the terms of the instrument, in ascertaining for the purposes of the covenants implied by this section what the person making the disposition purports to dispose of —
 - (a) where the title to the interest is registered, it shall be presumed that the disposition is of the whole of that interest;
 - (b) where the title to the interest is not registered, then —
 - (i) if it appears from the instrument that the interest is a leasehold interest, it should be presumed that the disposition is of the property for the unexpired portion of the term of years created by the lease, and
 - (ii) in any other case, it shall be presumed that what is disposed of is the fee simple.

66. Charges, encumbrances and third party rights.

- (1) If the disposition is expressed to be made with full title guarantee there shall be implied a covenant that the person making the disposition is disposing of the property free —
 - (a) from all charges and encumbrances (whether monetary or not); and
 - (b) from all other rights exercisable by third parties,other than any charges, encumbrances or rights which that person does not and could not reasonably be expected to know about.
- (2) In its application to charges, encumbrances and other third party rights subsection (1) extends to liabilities imposed and rights conferred by or under any written law, except to the extent that such liabilities and rights are, by reason of —
 - (a) being, at the time of the disposition, only potential liabilities and rights in relation to the property; or
 - (b) being liabilities and rights imposed or conferred in relation to property generally,not such as to constitute defects in title.
- (3) If the disposition is expressed to be made with limited title guarantee there shall be implied a covenant that the person making the disposition has not since the last disposition for value —
 - (a) charged or encumbered the property by means of any charge or encumbrance which subsists at the time when the disposition is made, or granted third party rights in relation to the property which so subsist; or

- (b) suffered the property to be so charged or encumbered or subjected to any such rights,
- and that he is not aware that anyone else has done so since the last disposition for value.

67. Validity of Lease.

- (1) Where the disposition is of leasehold land and is expressed to be made with full title guarantee or with limited title guarantee, the following covenants shall also be implied —
 - (a) that the lease is subsisting at the time of the disposition; and
 - (b) that there is no subsisting breach of a condition or tenant's obligation, and nothing which at that time would render the lease liable to forfeiture.
- (2) If the disposition is the grant of an underlease, the references to “the lease” in subsection (1) are references to the lease out of which the underlease is created.

68. Discharge of obligations where property subject to rentcharge or leasehold land.

- (1) Where the disposition is a mortgage of property subject to a rentcharge, or of leasehold land, and is expressed to be made with full title guarantee or with limited title guarantee, the following covenants shall also be implied.
- (2) If the property is subject to a rentcharge, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the instrument creating the rentcharge that are for the time being enforceable with respect to the property by the owner of the rentcharge in his capacity as such.
- (3) If the property is leasehold land, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the lease subject to the mortgage that are for the time being imposed on him in his capacity as tenant under the lease.
- (4) In this section “mortgage” includes charge, and “mortgagor” shall be construed accordingly.

69. No liability under covenants in certain cases.

- (1) The person making the disposition is not liable under the covenants implied by virtue of section 65, 66 or 67 in respect of any particular matter to which the disposition is expressly made subject.

- (2) Furthermore that person is not liable under any of those covenants for anything (not falling within subsection (1)) —
 - (a) which at the time of the disposition is within the actual knowledge;
or
 - (b) which is a necessary consequence of facts that are then within the actual knowledge,
of the person to whom the disposition is made.

70. Annexation of benefit of covenants.

The benefit of a covenant implied by virtue of this Part shall be annexed and incident to, and shall go with, the estate or interest of the person to whom the disposition is made, and shall be capable of being enforced by every person in whom that estate or interest is (in whole or in part) for the time being vested.

71. Supplementary provisions.

- (1) The operation of any covenant implied in an instrument by virtue of this Part may be limited or extended by a term of that instrument.
- (2) Section 80 applies to a covenant implied by virtue of this Part as it applies to a covenant implied by virtue of that section.
- (3) Where in an instrument effecting or purporting to effect a disposition of property a person is expressed to direct the disposition, this Part applies to him as if he were the person making the disposition.

72. Modifications of statutory forms.

Where a form set out in a written law, or in an instrument made under a written law, includes words which (in an appropriate case) would have resulted in the implication of a covenant by virtue of section 7 of the repealed Conveyancing and Law of Property Act, the form shall be taken to authorise instead the use of the words “with full title guarantee” or “with limited title guarantee”.

73. General saving for covenants in old form.

Except as provided by section 74, the repeal of section 7 of the repealed Conveyancing and Law of Property Act shall not affect the enforcement of a covenant implied by virtue of that section on a disposition made before the commencement of this Part.

74. Covenants in old form implied in certain cases.

- (1) Section 7 of the repealed Conveyancing and Law of Property Act applies in relation to a disposition of property made after the commencement of this Part in pursuance of a contract entered into before commencement where —

- (a) the contract contains a term providing for a disposition to which that section would have applied if the disposition had been made before commencement; and
- (b) the existence of the contract and of that term is apparent on the face of the instrument effecting the disposition,

unless there has been an intervening disposition of the property expressed, in accordance with this Part, to be made with full title guarantee.

- (2) In subsection (1) an “intervening disposition” means a disposition after the commencement of this Part to, or to a predecessor in title of, the person by whom the disposition in question is made.
- (3) Where in order for subsection (1) to apply it is necessary for certain matters to be apparent on the face of the instrument effecting the disposition, the contract shall be deemed to contain an implied term that they should so appear.

75. Covenants in new form to be implied in other cases.

- (1) This section applies to a contract for the disposition of property entered into before the commencement of this Part where the disposition is made after commencement and section 74 does not apply because there has been an intervening disposition expressed, in accordance with this Part, to be with full title guarantee.
- (2) A contract which contains a term that the person making the disposition shall do so as beneficial owner shall be construed as requiring that person to do so by an instrument expressed to be made with full title guarantee.
- (3) A contract which contains a term that the person making the disposition shall do so —
 - (a) as settlor; or
 - (b) as trustee or mortgagee or personal representative,shall be construed as requiring that person to do so by an instrument expressed to be made with limited title guarantee.
- (4) A contract for the disposition of a leasehold interest in land entered into at a date when the title to the leasehold interest was registered shall be construed as requiring the person making the disposition for which it provides to do so by an instrument expressed to be made with full title guarantee.
- (5) Where this section applies and the contract provides that any of the covenants to be implied by virtue of section 7 of the repealed Conveyancing and Law of Property Act shall be implied in a modified form, the contract shall be construed as requiring a corresponding modification of the covenants implied by virtue of this Part.

76. Application of transitional provisions in relation to options.

For the purposes of sections 74 and 75 as they apply in relation to a disposition of property in accordance with an option granted before the commencement of this Part and exercised after commencement, the contract for the disposition shall be deemed to have been entered into on the grant of the option.

77. Benefit of covenants relating to land.

- (1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee, and his successors in title and the persons deriving title under him or them and shall have effect as if such successors and other persons were expressed.
- (2) For the purposes of this subsection in connection with covenants restrictive of the user of the land “successors in title” shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.
- (3) This section applies to covenants made after the commencement of this Act but the repeal of section 47 of the Conveyancing and Law of Property Act does not affect the operation of covenants to which that section applied.

78. Burden of covenants relating to land.

- (1) A covenant relating to any land of a covenantor or capable of being bound by him shall unless a contrary intention is expressed be deemed to be made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them and subject as aforesaid shall have effect as if such successors and other persons were expressed.
- (2) Subsection (1) extends to a covenant to do some act relating to land notwithstanding that the subject matter may not be in existence when the covenant is made.
- (3) For the purposes of this section in connection with covenants restrictive of the user of land “successors in title” shall be deemed to include the owners and occupiers for the time being of such land.
- (4) This section applies only to covenants made after the commencement of this Act.

79. Covenants binding land.

- (1) A covenant, contract, bond or obligation under seal made after the twenty-second day of August nineteen hundred and nine or executed as a deed in accordance with section 43 binds the real estate, as well as the personal estate, of the person making the same, if and as far as a contrary

intention is not expressed in the covenant, contract, bond or obligation, and this subsection extends to a covenant implied by virtue of this Act.

- (2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any written law affecting the devolution of the land, and accordingly the benefit or burden of any such covenant shall vest in or bind the persons who by virtue of any such written law or otherwise succeed to the title of the covenantor or the covenantee, as the case may be.
- (3) The benefit of a covenant relating to land entered into after the commencement of this Act, may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act.
- (4) For the purposes of this section a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantor or the covenantee, as the case may be.

80. Effect of covenant with two or more jointly.

- (1) A covenant, contract, bond or obligation executed as a deed in accordance with section 43 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 and where made after the commencement of this Act shall be construed as being also made with each of them.
- (2) This section extends to a covenant implied by virtue of this Act.
- (3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.
- (4) Except where otherwise expressly provided this section applies only to a covenant, contract, bond or obligation made or implied after the twenty-second day of August nineteen hundred and nine.

81. Covenants and agreements entered into by a person with himself and another or others.

- (1) Any covenant, whether expressed or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.
- (2) This section applies to covenants or agreements entered into before or after the commencement of this Act and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons but without prejudice to any order of the court made before such commencement.

82. Power to discharge or modify restrictive covenants affecting land.

- (1) The court shall have power, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied —
 - (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material the restriction ought to be deemed obsolete or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user;
 - (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or fee tail or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication by their acts or omissions, to the same being discharged or modified; or
 - (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation when the person claiming the compensation proves

that by reason of the imposition of the restriction, the amount of the consideration paid for the acquisition of the land was reduced.

- (2) The court shall have power on the application of any party interested —
 - (a) to declare whether or not in any particular case any freehold land is affected by a restriction imposed by any instrument;
 - (b) to declare what upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is enforceable and if so by whom.
- (3) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified or dealt with may not have been produced to the court and the court may act on such evidence of that instrument as it may think fit.
- (4) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter but this section does not apply when the restriction was imposed on the occasion of the disposition made gratuitously or for a nominal consideration for public purposes.
- (5) When a term of more than forty years is created in land (whether before or after the commencement of this Act) this section shall after the expiration of twenty-five years of the term apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold.

PART V—MORTGAGES, DEVOLUTION OF TRUST AND MORTGAGE ESTATES

83. Obligation on mortgagee to transfer instead of reconveying.

- (1) Where a mortgagor is entitled to redeem he shall, by virtue of this Act, have power to require the mortgagee, instead of reconveying, and on the terms on which he would be bound to 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) The rights given by this section to a mortgagor shall belong to and be capable of being enforced by each encumbrancer, or by the mortgagor, notwithstanding any intermediate encumbrance; but a requisition of the mortgagor, and, as between encumbrancers, a requisition of a prior encumbrancer shall prevail over a requisition of a subsequent encumbrancer.

- (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.

84. Inspection, production and delivery of documents.

- (1) 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.
- (2) A mortgagee whose mortgage is surrendered or otherwise extinguished shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto unless he has notice of the right or claim of a person having a better right whether by virtue of a right to require a surrender or reconveyance or otherwise.
- (3) This section applies only to mortgages made after the twenty second day of August nineteen hundred and nine and shall have effect notwithstanding any stipulation to the contrary.

85. Restriction on consolidation of mortgages.

- (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, solely on property other than that comprised in the mortgage which he seeks to redeem.
- (2) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.
- (3) This section applies only where all the mortgages were made after the twenty-second day of August nineteen hundred and nine.
- (4) Except as aforesaid nothing in this Act in reference to mortgages affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the commencement of this Act reserving a right to consolidate.

86. Tacking and further advances.

- (1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable) —

- (a) if an arrangement has been made to that effect with the subsequent mortgagees;
- (b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or
- (c) whether or not he had such notice as aforesaid where the mortgage imposes an obligation on him to make such further advances;

and this subsection applies whether or not the prior mortgage was made expressly for securing further advances.

- (2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was recorded under the provisions of the Registration of Records Act, Ch. 187 if it was not so recorded at the time when the original mortgage was created or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened; and this subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

- (3) Except in regard to the making of further advances as aforesaid, the right to tack is hereby abolished:

Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent encumbrance or by arrangement with the subsequent encumbrancer.

- (4) This section applies to mortgages of land made before or after the commencement of this Act.

87. Leasing powers of mortgagor and mortgagee in possession.

- (1) A mortgagor of land while in possession shall, as against every encumbrancer 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 authorised.
- (2) A mortgagee of land while in possession shall, as against all prior encumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease aforesaid.
- (3) The leases which this section authorises are —
 - (a) an agricultural or occupational 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) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.
- (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 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 one month after making the lease, deliver to the mortgagee, or where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; 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 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) The mortgagor and mortgagee may by agreement in writing within or not contained in the mortgage deed reserve to or confer 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:

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

- (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 encumbrancers, if this Act and the written laws replaced by this section had not been passed:

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

- (16) Subject as aforesaid this section applies to any mortgage made after the twenty-second day of August nineteen hundred and nine but the provisions thereof, or any of them may, by agreement in writing made after that date between mortgagor and mortgagee, be applied to a mortgage made before that date so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining or adopting the agreement.
- (17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (18) For the purposes of this section “mortgagor” does not include an encumbrancer deriving title under the original mortgagor.
- (19) The powers of leasing conferred by this section shall after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, in writing, delegate any of such powers to the receiver.

88. Powers of mortgagor and mortgagee in possession to accept surrender of lease.

- (1) For the purpose only of enabling a lease authorised under section 87 or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against any encumbrancer, have by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of any mines and

- minerals therein and on a surrender of the lease so far as it comprises part only of the land or mines and minerals leased the rent may be apportioned.
- (2) For the same purpose a mortgagee of land while in possession shall as against all prior or other encumbrancers, if any, and as against the mortgagor, have by virtue of this Act power to accept from time to time any such surrender as aforesaid.
 - (3) On a surrender of part only of the land leased, the original lease may be varied provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and on a surrender and the making of a new or other lease, whether for the same or for any extended or other term and whether subject or not to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of rent to be reserved and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.
 - (4) Where any consideration for the surrender, other than an agreement to accept an authorised lease is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the encumbrancers, or authorises a surrender to a second or subsequent encumbrancer without the consent of every prior encumbrancer.
 - (5) No surrender shall by virtue of this section be rendered valid unless —
 - (a) an authorised lease is granted of the whole of the land comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender;
 - (b) the term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
 - (c) where the whole of the land originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and the new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.
 - (6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

- (7) This section applies only in so 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 any such writing and to the provisions therein contained.
- (8) This section applies to a mortgage made after the date of commencement of this Act but the provisions of this section or any of them may by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.
- (9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting and to an agreement, whether in writing or not, for leasing or letting.
- (10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, with all the like incidents, effects and consequences:

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

- (11) Nothing in this section shall operate to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the encumbrancers if this Act had not been passed.
- (12) For the purposes of this section “mortgagor” does not include an encumbrancer deriving title under the original mortgagor.
- (13) The powers of accepting surrenders conferred by this section shall after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under this Act and so long as the receiver acts be exercisable by such mortgagee instead of by the mortgagor as respects any land affected by the receivership in like manner as if such mortgagee were in possession of the land; and the mortgagee may by writing delegate any of such powers to the receiver.

89. Power incident to estate or interest of mortgage.

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

- (a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby;
- (b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money;
- (c) 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; or if the mortgaged property consists of an interest in income or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof;
- (d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract:

Provided that the power hereby given shall not include the power to cut or sell any fruit bearing trees.

- (2) When the mortgage deed is executed after the date of commencement of this Act the power of sale aforesaid includes the following powers as incident thereto (namely) —
 - (a) a power to impose or reserve or make binding as far as the law permits by covenant, condition or otherwise on the unsold part of the mortgaged property or any part thereof or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of the land for the purpose of the more beneficial working thereof or with respect to any other thing;
 - (b) a power to sell the mortgaged property or any part thereof —
 - (i) with or without a grant or reservation of rights of way, rights of water, easements, rights and privileges for or

connected with building or other purposes in relation to the property remaining in mortgage or any part thereof or to any property sold,

- (ii) with or without covenants by the purchaser to expend money on the land sold.
- (3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in this Act.
- (4) 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.
- (5) This section applies only where the mortgage deed is executed after the twenty-second day of August nineteen hundred and nine.

90. Regulation of exercise of power of sale.

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

- (a) 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;
- (b) some interest under the mortgage is in arrears and unpaid for two months after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for the payment of the mortgage money or interest thereon.

91. Conveyance on sale.

- (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, or by any written law replaced by this Act, the title of the purchaser shall not be impeachable on the ground that —

- (a) no case had arisen to authorise the sale;
- (b) due notice was not given; or
- (c) the power was otherwise improperly or irregularly exercised;

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

- (3) A conveyance on sale by a mortgagee made after the commencement of this Act shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

92. Application of proceeds of sale.

The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior encumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

93. Provisions as to exercise of power of sale.

- (1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.
- (2) The power of sale conferred by this Act shall not affect the right of foreclosure.
- (3) 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 or as regards mortgages executed after the commencement of this Act, of any power or provision contained in the mortgage deed.
- (4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, 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.

94. Mortgagee's receipts, discharges, etc.

- (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 inquire whether any money remains due under the mortgage.
- (2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in 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.

95. Amount and application of insurance money.

- (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 thirds part 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 in this Act, be effected by a mortgagee in any of the following cases (namely) —
 - (a) where there is a declaration in the mortgage deed that no insurance is required;
 - (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
 - (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee, to the amount in which the mortgagee is by this Act authorised to insure.
- (3) All money received on an insurance effected under the mortgage deed or under this Act or under any written law repealed by 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 the mortgage.

96. Appointment, powers, remuneration and duties of receiver.

- (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.
- (2) 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 and to exercise any powers which may be delegated to him pursuant to this Act.
- (4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.
- (5) The receiver may be removed, and a new receiver may be appointed, from time to time, by the mortgagee by writing under his hand.
- (6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of 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 to the extent, if any to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the moneys 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) Subject to the provisions of this Act as to the application of insurance money the receiver shall apply all money received by him as follows, namely —
 - (a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;

- (b) in keeping down all annual sums or other payments, and the interests on all principal sums, having priority to the mortgage in right whereof he is receiver;
- (c) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage; and
- (e) in or towards discharge of the principal money if so directed in writing by the mortgagee,

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

97. Effect of advance on joint account.

- (1) Where in a mortgage, or an obligation for payment of money, or a transfer of 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, 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.
- (3) This section applies only to a mortgage, or obligation, or transfer made after the twenty-second day of August nineteen hundred and nine.

98. Notice of trusts affecting mortgage debts.

- (1) A person dealing in good faith with a mortgagee or with the mortgagor if the mortgage has been discharged, released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof

whether or not he has notice of the trust and may assume unless the contrary is expressly stated in the instruments relating to the mortgage —

- (a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account;
- (b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof,

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

- (2) This section applies to mortgages made before or after the commencement of this Act, but only as respect dealings effected after such commencement.
- (3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

99. Sale of mortgaged property in action for foreclosure or redemption.

- (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale 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 direct a sale of the mortgaged property, on such terms as it thinks fit including the deposit in court of a reasonable sum fixed by the court, to meet the expenses of sale and to secure performance of the terms.
- (3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.
- (4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of encumbrances.

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

100. Reconveyance of mortgage by endorsed receipt.

- (1) A receipt endorsed on, written at the foot of or annexed to a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate without any reconveyance, surrender or release —
- (a) where a mortgage takes effect by demise or subdemise as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereof;
 - (b) where the mortgage does not take effect by demise or subdemise, as a reconveyance thereof to the extent of the interest, which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under, the mortgage but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

- (2) Provided that where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him unless —
- (a) it is otherwise provided; or
 - (b) the mortgage money is paid off out of capital money or other money in the hand of a personal representative or trustee properly applicable for the discharge of the mortgage and it is not expressly provided that the receipt is to operate as a transfer.
- (3) Nothing in this section confers upon a mortgagor a right to keep alive a mortgage paid off by him so as to affect prejudicially any subsequent encumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.
- (4) This section does not affect the right of any person to require a reassignment, surrender, release or transfer to be executed in lieu of a receipt.
- (5) A receipt may be given in the form contained in the Third Schedule with such variation and addition, if any, as may be deemed expedient, and

where it takes effect under this section it shall, be liable to the same duty as would be payable if it were a conveyance under seal.

- (6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee subject to any interest which is paramount to the mortgage.
- (7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing and is endorsed on, written at the foot of, or annexed to one of the mortgage deeds.
- (8) This section applies to a discharge of a mortgage whether made by way of statutory mortgage or not, executed before or after the commencement of this Act; but only as respects discharges effected after such commencement.
- (9) In this section “mortgaged property” means the property remaining subject to the mortgage at the date of the receipt.

101. Form of statutory mortgage.

- (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 and the provisions of this section shall apply thereto.
- (2) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed —
 - (a) covenants with the mortgagee by the person expressed therein to convey as mortgagor to the effect as follows (namely) —
 - (i) 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 months from the day stated for payment of the mortgage money, and
 - (ii) that the mortgagor will pay all rates and taxes payable in respect of the mortgaged property, before the latter becomes liable to forfeiture or sale under any Act

relating to a tax on real property, or house property tax, and will if called upon so to do by the mortgagee produce to the latter within ten days after demand or within such shorter period as may exist before the property becomes liable as aforesaid, a receipt for the rates or taxes;

- (b) a proviso to the effect as follows (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.

102. Form of statutory transfer of mortgage.

- (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 2 of the First Schedule as may be appropriate to the case and the provisions of this section shall apply thereto.
- (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 lands 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 as follows (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.

103. Implied covenants, joint and several.

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.

104. Form of re-conveyance of statutory mortgage.

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 (D) given in the First Schedule.

105. Variation of forms.

The forms specified in sections 101, 102 and 104 may be used with such variations and additions, if any, as circumstances may require.

PART VI—LEASES

106. Effect of extinguishment of reversion.

- (1) Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.
- (2) This section applies to surrenders or mergers effected on or after the first day of October eighteen hundred and forty-five.

107. Apportionment of conditions on severance.

- (1) Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.
- (2) In this section “right of re-entry” includes a right to determine the lease by notice to quit or otherwise; but where the notice is severed by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.
- (3) This section applies to leases made before or after the commencement of this Act and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such commencement:

Provided that where the lease was made before the thirteenth day of August eighteen hundred and fifty-nine nothing in this section shall affect the operation of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before the commencement of this Act.

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

- (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed 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 without prejudice to any liability affecting a covenantor or his estate.
- (2) Any such rent, covenant, right, or condition shall be capable of being recovered, received, enforced and taken advantage of, by the person from

time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

- (3) Where that person becomes entitled by conveyance or otherwise, such rent, covenant or possession may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.
- (4) This section applies to leases made after the twelfth day of August eighteen hundred and fifty-nine but does not affect the operation of —
 - (a) any severance of the reversionary estate; or
 - (b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or other provision, effected before the commencement of this Act.

109. Obligation of lessor's covenants to run with reversion.

- (1) 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, is and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.
- (2) This section applies only to leases made after the twelfth day of August eighteen hundred and fifty-nine.

110. Effect of licence granted to lessee.

- (1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only —
 - (a) to the permission actually given;
 - (b) to the specific breach of any provision or covenant referred to; or
 - (c) to any other matter thereby specifically authorised to be done;and the licence does not prevent any proceeding for any subsequent breach unless specified in the licence.
- (2) Notwithstanding any such licence —

- (a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and
 - (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, except in respect of the particular matter authorised to be done.
- (3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted —
- (a) to any one of two or more lessees to do any act or to deal with his equitable share or interest; or
 - (b) to any lessee, or to any one of two or more lessees to assign or underlet part only of the property or to do any act in respect of part only of the property,
- the licence shall not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property or by the lessee or lessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property but the right of entry shall remain in force in respect of the shares, interests or property not the subject of the licence.
- (4) This section applies to licences granted after the twelfth day of August eighteen hundred and fifty nine.

111. No fine to be exacted for licence to assign.

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

112. Restrictions on and relief against forfeiture of leases.

- (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 for 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) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a counsel and attorney and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved, under the provisions of this Act.
- (4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as underlessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case shall think fit, but in no case shall any such underlessee be entitled to require a lease to be granted to him for any longer term than he had under his original sublease.
- (5) For the purposes of this section —
 - (a) “lease” includes an original or derivative underlease, also an agreement for a lease where the lessee has become entitled to have his lease granted; also a grant at a fee farm rent, or securing a rent by condition;
 - (b) “lessee” includes an original or derivative underlessee and the persons deriving title under him, also a grantee under any such grant as aforesaid and the persons deriving title under him;

- (c) “lessor” includes an original or derivative underlessor and the persons deriving title under a lessor, also a person making such a grant as aforesaid and the persons deriving title under him;
 - (d) “underlease” includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted;
 - (e) “underlessee” includes any person deriving title under an underlessee.
- (6) 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 Act.
 - (7) 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.
 - (8) This section does not extend to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest.
 - (9) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.
 - (10) This section applies to leases made after the twenty second day of August nineteen hundred and nine and shall have effect notwithstanding any stipulation to the contrary.

113. Waiver of a covenant in a lease.

- (1) Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition except that to which such waiver specially relates nor operate as a general waiver of the benefit of any such covenant or condition.
- (2) This section applies unless a contrary intention appears and extends to waivers effected after the commencement of this Act.

114. Abolition of interesse termini, and as to reversionary leases and for leases for lives.

- (1) The doctrine of “interesse termini” is hereby abolished.
- (2) As from the commencement of this Act all terms of years absolute shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity, according to the estate interest

or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

- (3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall, likewise be void; but this subsection does not apply to any term taking effect in equity under a settlement, or under an equitable power for mortgage, indemnity or other like purposes.
- (4) Nothing in subsections (1) and (2) prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions or, as respects terms or interests created before the commencement of this Act, operates to vary any statutory or other obligations imposed in respect of such terms or interests.
- (5) Nothing in this Act affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

115. Surrender of lease without prejudice to underleases with a view to the grant of new lease.

- (1) A lease may be surrendered with a view to the acceptance of a new lease in place thereof without a surrender of any underlease derived thereout.
- (2) A new lease may be granted and accepted, in place of any lease so surrendered, without any such surrender of an underlease as aforesaid, and the new lease operates as if all underleases derived out of the surrendered lease had been surrendered before the surrender of that lease was effected.
- (3) The lessee under the new lease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any underlease as if the original lease had not been surrendered but was or remained vested in him.
- (4) Each underlessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his underlease (subject to the payment of any rent reserved by, and to the observance of the covenants, agreements and conditions contained in, the underlease) as if the lease out of which the underlease was derived had not been surrendered.
- (5) The lessor granting the new lease and any person deriving title under him is entitled to the same remedies, by distress or entry in and upon the land comprised in any such underlease for rent reserved by or for breach of any covenant, agreement or condition contained in the new lease (so far only as the rents reserved by or the covenants, agreements or conditions

contained in the new lease do not exceed or impose greater burdens than those reserved by or contained in the original lease out of which the underlease is derived) as he would have had —

- (a) if the original lease had remained ongoing; or
 - (b) if a new underlease derived out of the new lease had been granted to the underlessee or a person deriving title under him,
- as the case may require.

- (6) This section does not affect the powers of the court to give relief against forfeiture.

116. Provisions as to attornments by tenants.

- (1) Where land is subject to a lease —
 - (a) the conveyance of a reversion in the land expectant on the determination of the lease; or
 - (b) the creation or conveyance of a rentcharge to issue or issuing out of the land,shall be valid without any attornment of the lessee.
- (2) Nothing in subsection (1) —
 - (a) affects the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or
 - (b) renders the lessee liable for any breach of covenant to pay rent on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.
- (3) An attornment by the lessee in respect of any land to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor, shall be void.
- (4) Subsection (3) does not apply to an attornment —
 - (a) made pursuant to a judgment of a court of competent jurisdiction;
 - (b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or
 - (c) to any other person rightfully deriving title under the lessor.

117. Leases invalidated by reason of non-compliance with terms of powers.

- (1) Where in the intended exercise of any power of leasing, whether conferred by an Act or any other instrument, a lease (in this section referred to as an invalid lease) is granted, which by reason of any failure to comply with the terms of the power is invalid then —
 - (a) as against the person entitled after the determination of the interest of the grantor to the reversion; or
 - (b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease,

the lease, if it was made in good faith, and the lessee had entered thereunder, shall take effect in equity as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that a lessee under an invalid lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

- (2) Where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease shall take effect as a valid lease in like manner as if it had been granted at that time.
- (3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof. Confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.
- (4) Where a receipt or a memorandum in writing confirming an invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against that person be deemed to be a confirmation of the lease.

- (5) The foregoing provisions of this section do not affect prejudicially —
 - (a) any right of action or other right or remedy to which, but for those provisions or any written law replaced by those provisions, the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or
 - (b) any right of re-entry or other right or remedy to which, but for those provisions or any written law replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.
- (6) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.
- (7) This section does not apply to a lease of land held on charitable, ecclesiastical or public trusts.
- (8) This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

118. Application of Part to existing leases.

This Part, except where otherwise expressly provided, applies to leases created before or after the commencement of this Act and “lease” includes an underlease or other tenancy.

PART VII—PERPETUITIES AND ACCUMULATIONS

119. Abolition of the double possibility rule.

- (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.
- (2) This section only applies to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

120. Restrictions on the perpetuity rule.

- (1) For removing doubts, it is hereby declared that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied —
 - (a) to any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not;
 - (b) to any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may only arise or become payable on breach of a condition or stipulation;
 - (c) to any power, whether exercisable on breach of a condition or stipulation or not, to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or
 - (d) to any grant, exception, or reservation of any right of entry on, or user of, the surface of land or of any easements, rights, or privileges over or under land for the purpose of —
 - (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away, and disposing of mines and minerals,
 - (ii) inspecting, grubbing up, felling and carrying away timber and other trees, and the tops and lops thereof,
 - (iii) executing repairs, alterations, or additions to any adjoining land, or the buildings and erections thereon,
 - (iv) constructing, laying down, altering, repairing, renewing, cleansing, and maintaining sewers, watercourses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.
- (2) This section applies to instruments coming into operation before or after the commencement of this Act.

121. General restrictions on accumulation of income.

- (1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for a longer period than one of the following, namely —
 - (a) the life of the grantor or settlor;
 - (b) a term of twenty-one years from the death of the grantor, settlor or testator;
 - (c) the duration of the minority or respective minorities of any person or persons living or en ventre sa mere at the death of the grantor, settlor or testator; or

- (d) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated;

and in every case where any accumulation is directed otherwise than as aforesaid, the direction shall (except as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed.

- (2) This section does not extend to any provision —
 - (a) for payment of the debts of any grantor, settlor, testator or other person;
 - (b) for raising portions for —
 - (i) any child, children or remoter issue of any grantor, settlor or testator, or
 - (ii) any child, children or remoter issue of a person taking any interest under any settlement or other disposition directing the accumulations or to whom any interest is thereby limited;
 - (c) respecting the accumulation of the produce of the timber or wood;and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

122. Qualification of restrictions on accumulation.

Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by section 121, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

123. Restriction on accumulation for the purchase of land.

No person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only, for any longer period than the duration of the minority or respective minorities of any person or persons who, under the limitations of the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income so directed to be accumulated.

PART VIII—VOIDABLE DISPOSITIONS

124. Voluntary conveyances to defraud creditors voidable.

- (1) Except as provided in this section, every conveyance of property made whether before or after the commencement of this Act, with intent to defraud creditors shall be voidable at the instance of any person thereby prejudiced.
- (2) This section does not affect the operation of a disentailing assurance, or the law of bankruptcy for the time being in force.
- (3) This section does not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon good consideration and in good faith to any person not having at the time of the conveyance notice of the intent to defraud creditors.

125. Voluntary disposition of land: how far voidable as against purchasers.

- (1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.
- (2) For the purposes of this section no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made if such subsequent conveyance was made before or after the commencement of this Act.

126. Acquisition of reversion at an under value.

- (1) No acquisition made in good faith without fraud or unfair dealing of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.
- (2) In this section “reversionary interest” includes an expectancy or possibility.
- (3) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

PART IX—POWERS

127. Powers simply collateral.

- (1) 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.
- (2) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

128. Disclaimer of power.

- (1) A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim the power and after disclaimer shall not be capable of exercising or joining in the exercise of the power.
- (2) On such disclaimer the power may be exercised by the other person or persons or the survivor or the survivors of the other person to whom the power is given, unless the contrary is expressed in the instrument creating the power.

129. Execution of powers not testamentary.

- (1) A deed executed in the presence of and attested by two or more persons is so far as respects the execution and attestation thereof, a valid execution of a power of appointment by deed or by any instrument in writing not testamentary notwithstanding that it is expressly required that a deed or instrument in writing made in exercise of the power is to be executed or attested with some additional or other form of execution or attestation or solemnity.
- (2) This section does not operate to defeat any direction in the instrument creating the power that —
 - (a) the consent of any particular person is to be necessary to a valid execution; or
 - (b) in order to give validity to any appointment any act is to be performed having no relation to the mode of executing and attesting the instrument.
- (3) This section does not prevent the donee of a power from executing it in accordance with the power by writing or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

PART X—MISCELLANEOUS

130. Abolition of rule in Shelley's case.

Where by any instrument coming into operation after the commencement of this Act, an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which but for this section would under the rule of law known as the Rule in Shelley's Case have operated to give that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular class of heirs, the same person shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of this Act.

131. Restriction on executory limitations.

- (1) Where there is a person entitled to land for an estate in fee simple or for a term of years absolute or determinable on life with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect if and as soon as there is living any issue who has attained the age of eighteen years of the class on default or failure whereof the limitation over was to take effect.
- (2) This section applies where the executory limitation is contained in an instrument coming into operation on or after the commencement of this Act.

132. Legal assignment of choses in action.

- (1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or chose in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice —
 - (a) the legal right to such debt or chose in action;
 - (b) all legal and other remedies for the same; and
 - (c) the power to give a good discharge for the same without the concurrence of the assignor.
- (2) Notwithstanding subsection (1), if the debtor, trustee or other person liable in respect of such debt or chose in action has notice —

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to such debt or chose in action,

he may if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same or pay the debt or other chose in action into court to be dealt with according to the orders of the court.

133. Protection of counsel and attorney and trustee adopting Act.

- (1) The powers given by this Act to any person, and the covenants, provisions, stipulations and words which under this Act are to be deemed 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 a counsel and attorney 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 counsel and attorney 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 a counsel and attorney they shall also be protected in like manner.

134. Regulations respecting notices.

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

to be affected by the notice is absent, under disability, unborn or unascertained.

- (3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in The Bahamas of the lessee, lessor, mortgagee, mortgagor or other person to be served, or, in the case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage.
- (4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business or post office box, 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) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.
- (6) This section does not apply to notices served in proceedings in the court.

135. Restrictions on constructive notice.

- (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 or would have come, to the knowledge of his counsel and attorney, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the counsel and attorney 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.

136. Payment into court: Procedure.

- (1) Payment of money into court shall effectually exonerate therefrom the person making payment.
- (2) Subject to any rules of court to the contrary —
 - (a) every application to the court under this Act shall, save as otherwise expressly provided, be by summons at chambers;
 - (b) on an application by a purchaser notice shall be served in the first instance on the vendor;
 - (c) on an application by a vendor notice shall be served in the first instance on the purchaser;
 - (d) on any application notice shall be served on such persons, if any, as the court thinks fit.

137. Orders of court conclusive.

- (1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service whether the purchaser has notice of any such want or not.
- (2) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

138. Sufficiency of forms.

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.

139. Rules.

The Rules Committee established under section 75 of The Supreme Court Act, Ch. 53 may make rules for any of the following purposes —

- (a) for fixing the fees to be taken in the Registry in respect of the powers of attorney deposited in the Registry and other matters provided for by this Act;

(b) generally for carrying out the objects of this Act.

140. Crown application.

This Act binds the Crown.

141. Repeal.

The Acts specified in the first and second columns of the Fourth Schedule are repealed to the extent respectively set out in the third column of that schedule.

FIRST SCHEDULE

(Sections 101, 102 and 104)

STATUTORY MORTGAGE

PART I

DEED OF STATUTORY MORTGAGE

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

In witness, etc.

[Variations in this and subsequent forms to be made, if required, for leasehold
land, or other matter]

PART II

(A)

DEED OF STATUTORY TRANSFER, MORTGAGOR NOT JOINING

THIS INDENTURE made by way of statutory transfer of mortgage the day of 20 between M. of [etc.] of the one part and T. of [etc.] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of and made between [etc.] WITNESSETH that in consideration of the sum of \$ now paid to M. by T. (being the aggregate amount of \$ mortgage money and \$ interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt) M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, etc.

(B)

DEED OF STATUTORY TRANSFER, A COVENANTOR JOINING

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

In witness, etc.

(C)

STATUTORY TRANSFER AND STATUTORY MORTGAGE COMBINED

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 20 between A of [etc.] of the first part B of [etc.] of the second part and C. of [etc.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 20 and made between [etc.] WHEREAS the principal sum of \$ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS B. is seised in fee simple of the land comprised in

the said mortgage subject to that mortgage NOW THIS 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 the use of C. in fee simple for securing payment on the _____ day of 20 _____ of the sum of \$ _____ as the mortgage money with interest thereon at the rate of [] per centum per annum.

In witness, etc.

[Or, in case of further advance, after “aforesaid” 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 the” insert “sums 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.

(D)

DEED OF STATUTORY RE-CONVEYANCE OF MORTGAGE

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of _____ 20 _____ 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 _____ 20 _____ 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 and to and to the use of B. in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, etc.

Variations as noted above.

SECOND SCHEDULE

(Section 138)

SHORT FORMS

1. MORTGAGE

THIS INDENTURE OF MORTGAGE made the _____ day of _____ 20____ between A. of [etc.] of the one part and B. of [etc.] and C. of [etc.] of the other part WITNESSETH that in consideration of the sum of \$ _____ paid to A. by B. and C. out of money belonging to them on a joint account of which sum A. hereby acknowledges the receipt A. hereby covenants with B. and C. to pay to them on the day of _____ 20____, the sum of \$ _____ with interest thereon in the meantime at the rate of [] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the _____ day of _____ 20____ and the day of _____ 20____. AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as beneficial owner hereby conveys to B. and C. All that [etc.] To hold to and to the use of B. and C. in fee simple subject to the proviso for redemption following (namely) that if A. or any person claiming under him shall on the day of _____ 20____ pay to B. and C. the sum of \$ _____ and interest thereon at the rate aforesaid then B. and C. or the person claiming under them will at the request and cost of A. or the persons claiming under him reconvey the premises to A. or the persons claiming under him AND A. hereby covenants with B. as follows [here add covenant as to fire insurance or other special covenant required].

In witness, etc.

2. FURTHER CHARGE

THIS INDENTURE made the _____ day of _____ 20____ between [the same parties as the foregoing mortgage] and supplemental to an indenture of mortgage dated the day of _____ 20____ and made between the same parties for securing the sum of \$ _____ and interest at _____ per centum per annum on property at [etc.] WITNESSETH that in consideration of the further sum of \$ _____ paid to A. by B. and C. out of money belonging to them on a joint account [add receipt and covenant as in the foregoing mortgage] and further that all the property comprised in the before-mentioned 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.

3. CONVEYANCE OF SALE

THIS INDENTURE made the _____ day of _____ 20 _____ between A. of [etc.] of the first part B. 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 supplemental 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 consideration of the sum of \$ _____ paid by the direction of A. to B. and C. and of the sum of \$ _____ paid to A. those two sums making together the total sum of \$ _____ paid by M. for the purchase of fee simple of the lands hereinafter mentioned of which sum of \$ _____ B. and C. hereby acknowledge the receipt and of which total sum of \$ _____ A. hereby acknowledges the payment and receipt in manner before-mentioned B. and C. as mortgagees and by the direction of A. as beneficial owner hereby convey and A. as beneficial owner hereby conveys and confirms to M. All that [etc.] To hold to and to the use of M. in fee simple discharged from all money secured by and from all claims under the before-mentioned 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.]

4. SHORT FORM OF CONVEYANCE

THIS INDENTURE made the _____ day of _____ 20 _____ between A. B. of (hereinafter called the grantor) and C. D. of (hereinafter called the grantee) WITNESSETH that in consideration of the sum of \$ _____ paid to him by the grantee, the receipt whereof the grantor hereby acknowledges, the grantor as beneficial owner conveys to the grantee All that [insert boundaries and description of the land conveyed] To hold to and to the use of the grantee in fee simple.

In witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

THIRD SCHEDULE

(Section 100)

FORM OF RECEIPT ON DISCHARGE OF A MORTGAGE

I, A. B. of [etc.] hereby acknowledge that I have this day of 20, received the sum of \$ representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by a further charge dated, etc.] together with all interest and costs, the payment having been made by C. D. of [etc.] and E. F. of [etc.]

As witness, etc.

Note – If the persons paying are not entitled to the equity of redemption, state that they are paying the money out of a fund applicable to the discharge of the mortgage

FOURTH SCHEDULE

(Section 141)

ACTS REPEALED

| CHAPTER | SHORT TITLE | EXTENT OF REPEAL |
|--------------------|--|-------------------------|
| 137 (1987 Rev.) | The Statute of Uses | The whole Act |
| 138 | The Conveyancing and Law of Property Act | The Whole Act |
| 143 | The Estates Tail Barring Act | The Whole Act |
| 144 | The Voluntary Conveyances Act | The Whole Act |
| 145 | The Voluntary Conveyances (Removal of Presumption of Resulting Trusts) Act | The Whole Act |

| | | |
|-----|---|---------------|
| 146 | The Rule against Perpetuities (Application to Future Easements) Act | The Whole Act |
| 147 | The Bodies Corporate (Joint Tenancy) Act | The Whole Act |
| 148 | The Choses in Action Act | The Whole Act |
| 149 | The Fraudulent Gifts Act | The Whole Act |
| 150 | The Fraudulent Conveyances Act | The Whole Act |
| 151 | The Clandestine Mortgages Act | The Whole Act |
| 154 | Statute of Frauds | The Whole Act |
| 156 | The Mortgages Act | The Whole Act |
| 165 | The Distress for Rent (No. 2) Act | Section 11 |
| 169 | The Real Property Act | The Whole Act |
| 170 | The Law of Property Act | The Whole Act |

OBJECTS AND REASONS

The present law relating to property and conveyancing is old fashioned and can in many ways be criticized as being inappropriate to meet the needs of modern society. It can perhaps best be generally described as being the English law in force at the end of the nineteenth century, but that description is not accurate since some of the reforms which were introduced into the English law during that century have not been extended or re-enacted in The Bahamas. The most comprehensive of the present Acts is the Conveyancing and Law of Property Act (Ch. 138), which closely follows the English Conveyancing Act 1881 including some of the amendments made to that Act by the Conveyancing Act, 1882 and the Conveyancing and Law of Property Act, 1892, but having been enacted in 1909 and not having been subsequently appropriately amended, does not include the amendments made to the English Act of 1881 by the Conveyancing Act, 1911.

Besides Chapter 138 there are some fourteen other Acts concerned principally with property and conveyancing which are now in force in The Bahamas. These are the Acts set out in the Fourth Schedule to the Bill. They may be said to fall into one or other of two categories, English Acts from the sixteenth to the nineteenth century

extended to The Bahamas by the Declaratory Act (Chapter 2), such as the Statute of Uses (1535) and the Real Property Act (1845), or else local Acts re-enacting the provisions of English Acts such as Chapter 138 itself. But since Chapter 138, i.e. 1909, the Acts seem to have been confined to dealing with individual matters, ad hoc, without any attempt being made at any comprehensive modernization or reform.

There seems therefore to be a case both for reform and for consolidation of the existing law, and since the law has always been so closely allied to the English Law, it seemed that the best model to follow was the Law of Property Act 1925 of England as amended, which reformed the law in England and swept away so many of the anomalies and difficulties which had arisen during the centuries.

This Bill is divided into ten parts and consists of one hundred and forty-one sections with Schedules containing relevant forms.—