

CHAPTER 236

PROPERTY

1979-11

This Act came into operation on 1st January, 1980 by Proclamation (S.I. 1979 No. 187).

Amended by:

1979-44

1990-20

1998-39

1981-26

1996-26

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

1997

1991

1998

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 236

**PROPERTY
1979-11**

Arrangement of Sections

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

**GENERAL PRINCIPLES AS TO LEGAL ESTATES, TENURE, EQUITABLE
INTERESTS AND POWERS**

3. Definition of legal estates, equitable interests and powers
4. Definition of fee simple absolute, and exercise of power to dispose of or create a legal estate
5. Abolition of feudal tenure
6. Abolition of fee tail estate
7. Overreaching of certain equitable interests and powers by conveyance of a legal estate
8. Manner of giving effect to equitable interests and powers

9. Creation and disposition of equitable interests, and of certain legal interests
10. Effect of certain legal powers to grant leases
11. Operation of vesting orders and dispositions of legal estates as conveyances by an estate owner
12. Title to be shown to legal estate and liability of attorney-at-law

PART III

SETTLEMENTS

13. Constitution of a settlement upon statutory trusts
14. Effect of purported conveyance of a legal estate to a minor
15. Definition of “the statutory trusts”
16. Overreaching effect of conveyance of trust land
17. Construction of certain settlements
18. Consents to the execution of a trust for sale
19. Consultation by trustees with beneficiaries
20. Purchaser not to be concerned with trusts of capital money or proceeds of sale
21. Delegation of powers of management by trustees
22. Notice to trustees respecting the exercise of power of sale
23. Trusts of mortgaged property where right of redemption is barred

-
24. Land to be held on trust for sale where capital is invested therein by trustees of personal property
 25. Trustees for the purposes of this Act
 26. Trustees of referential settlements
 27. General powers of trustees upon statutory trusts
 28. Conveyances to be for the best consideration
 29. Leasing powers of trustees
 30. Regulations concerning leases
 31. Leasing powers for special objects
 32. Mortgage of trust land
 33. Modes of investment or application
 34. Limitation of the number of trustees
 35. To whom capital moneys or proceeds of sale are payable
 36. Trustees may reimburse themselves
 37. Prohibition or limitation of exercise of powers and provisions for forfeiture void
 38. Saving for and exercise of other powers
 39. Saving for additional or wider powers under settlement
 40. Protection of purchasers

- 41. Payment of costs out of trust property
- 42. Termination of settlements and trusts

PART IV

CO-OWNERSHIP

- 43. Severance of joint tenancies
- 44. Protection of purchaser on sale of land by survivor of joint tenants
- 45. Partition of land held by co-owners
- 46. Severance of party structures

PART V

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

- 47. Contracts for sale of land to be in writing
- 48. Stipulations as to time not the essence of a contract
- 49. Rights of purchaser of a legal estate
- 50. Twenty years to be the statutory length of title and other provisions as to root of title
- 51. Other statutory conditions of sale
- 52. Application of insurance money on completion of a sale or exchange
- 53. Stipulations restricting the choice of the purchaser's attorney-at-law void

-
54. Applications to the court by vendor and purchaser
 55. Lands lie in grant only
 56. Making and recording of deeds, to have effect of livery of seisin
 57. Effect of failure to record deeds
 58. Recording in Land Registry to be notice
 59. Conveyances to be by deed
 60. Instruments required to be in writing
 61. Persons taking who are not parties to a deed
 62. Provisions as to supplemental instruments
 63. Conditions and certain covenants not implied
 64. Words of limitation not required to convey or transfer fee simple and no resulting trust in voluntary conveyance
 65. Construction of certain expressions used in deeds and other instruments
 - 65A. Interpretation of “seashore or foreshore boundary” and “beach”
 66. Conveyance of land to include all rights belonging to or enjoyed with the land
 67. All estate clause implied
 68. Production and safe custody of documents
 69. Reservation of legal estates

- 70. Confirmation of past transactions
- 71. Certain documents to be deeds even though not under seal
- 72. Description of deeds
- 73. Execution of deeds by an individual
- 74. Execution of instruments by or on behalf of corporations
- 75. Rights of purchaser as to execution
- 76. Deed between parties to have same effect as indenture
- 77. Receipt in deed sufficient to discharge same
- 78. Receipt in or endorsed sufficient evidence
- 79. Receipt in deed or endorsed sufficient authority to pay attorney-at-law
- 80. Conveyance by a person to himself and others
- 81. Covenants for title
- 82. Implied covenants in conveyances subject to rents
- 83. Benefit of covenants relating to land
- 84. Burden of covenants relating to land
- 85. Covenants binding land
- 86. Effect of covenant with two or more persons jointly
- 87. Covenants or agreements entered into by a person with himself and another

88. Covenants with two or more persons

PART VI

FEES AND COMMISSIONS

89. Meaning of “lease” in this Part
90. Stipulation that party to sale or demise pay other party’s costs void
91. Stipulations restricting purchaser’s right to choose his attorney-at-law void
92. Stipulations respecting purchaser’s obligation to contribute to costs void
93. Stipulations that purchaser pay vendor’s agent void
94. Costs of attorney-at-law as mortgagee recoverable from mortgagor
95. Costs of attorney-at-law as mortgagee chargeable upon mortgaged property

PART VII

MORTGAGES

96. Form of mortgages
97. Covenants implied in a mortgage
98. Position of mortgagee
99. Conveyance by mortgagee
100. Realisation of equitable mortgages

101. Sale in redemption action
102. Mines and minerals
103. Consolidation
104. Tacking and further advances
105. Transfer in lieu of discharge
106. Inspection, production and delivery of documents and priorities
107. Action for possession by mortgagor
108. Mortgagor's power of leasing and accepting surrenders
109. Mortgagor's power of leasing and accepting surrenders
110. Powers incident to interest of mortgagee
111. Regulation of exercise of mortgagee's remedies
112. Conveyance on sale
113. Duty of mortgagee respecting mortgage and mortgagor
114. Application of proceeds of sale
115. Provisions as to exercise of power of sale
116. Mortgagee's receipts, discharges etc.
117. Amount and application of insurance money
118. Appointment, powers, remuneration and duties of receiver

- 119. Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver
- 120. Effect of advance on joint account
- 121. Notice of trusts affecting mortgage debts
- 122. Transfer of mortgages
- 123. Discharge of mortgage by endorsed or annexed receipt
- 124. Right of limited owner to prevent discharge on redemption
- 125. Form of charge by way of legal mortgage
- 126. Form of statutory transfer of charge by way of legal mortgage
- 127. Implied covenants joint and several

PART VIII

RENTCHARGES

- 128. Remedies for the recovery of annual sums charged on land
- 129. Creation of rentcharges charged on another rentcharge and remedies for recovery thereof

PART IX

POWERS GENERALLY

- 130. Release of power
- 131. Disclaimer of power

- 132. Protection of purchaser in good faith claiming under fraudulent appointment
- 133. Validation of appointment where object is excluded or takes illusory share
- 134. Execution of non-testamentary power
- 135. Application of Part IX

PART X

POWERS OF ATTORNEY

- 136. Definitions for purposes of Part X
- 137. Payments, etc., by attorney under power without notice of death etc.
- 138. Execution under power of attorney
- 139. Certified copies of powers
- 140. Notice of irrevocable power by way of security
- 141. Devolution of a power of attorney given to a purchaser

PART XI

EQUITABLE INTERESTS

- 142. Abolition of the rule in Shelley's case, and as to heirs taking by purchase
- 143. Construction and effect of references to failure of issue
- 144. Equitable waste

- 145. Extension of the rule in *Dearle v. Hall*
- 146. Power to nominate a trust corporation to receive notices
- 147. Notice to one of several trustees of dealing with equitable interest

PART XII

LESSOR AND LESSEE

- 148. Meaning of term of years absolute
- 149. Creation of relationship
- 150. Doctrine of *interesse termini* and reversionary leases
- 151. Attornment by lessees
- 152. Effect of extinguishment of reversion
- 153. Leases invalidated by reason of non-compliance with terms of powers under which they are granted
- 154. Licences granted to lessees
- 155. Waiver of covenants
- 156. Apportionment of conditions on severance
- 157. Lessor's implied covenants
- 158. Lessee's implied covenants
- 159. Meaning of "repair"

- 160. Running of lessee's covenants
- 161. Running of lessor's covenants
- 162. Assignment of term of years
- 163. Lessee's fixtures
- 164. Insurance of demised premises
- 165. Termination by surrender
- 166. Forfeiture
- 167. Notice before forfeiture
- 168. Relief against forfeiture

PART XIII

PERPETUITIES

- 169. Power to specify perpetuity period
- 170. Presumption and evidence as to future parenthood
- 171. Uncertainty as to remoteness
- 172. Reduction of age and exclusion of class members to avoid remoteness
- 173. Condition relating to death of surviving spouse
- 174. Saving and acceleration of expectant interests
- 175. Powers of appointment

- 176. Administrative powers of trustees
- 177. Other restrictions on the perpetuity rule
- 178. Options relating to land
- 179. Avoidance of contractual and other rights in cases of remoteness
- 180. Rights for enforcement of rentcharges
- 181. Conditions subsequent, possibilities of reverter etc.
- 182. Abrogation of the rule in *Whitby v Mitchell*
- 183. Interpretation for purposes of Part XIII

PART XIV

CAPACITY

- 184. Presumption as to age
- 185. Inability of minor to hold legal estate, or to be appointed trustee, but if married may give receipts
- 186. Husband and wife to be treated as separate persons
- 187. General position of married woman
- 188. Body corporate as joint tenant
- 189. Provisions as to corporations
- 190. Dissolution of a corporation

PART XV

HUSBAND AND WIFE

- 191.** Questions between husband and wife
- 192.** Saving of special position of spouses, and extension of presumption of advancement

PART XVI

VOIDABLE DISPOSITIONS

- 193.** Voluntary conveyances to defraud creditors
- 194.** Voluntary disposition of land in relation to subsequent purchaser
- 195.** Sales of reversions

PART XVII

DISCHARGE AND MODIFICATION OF LAND RESTRICTIONS

- 196.** Power to discharge or modify certain restrictions affecting land
- 197.** Stay of proceedings pending application to Judge in Chambers
- 198.** Interpretation of restrictions by court
- 199.** Position where instrument imposing restriction is not produced
- 200.** Register of orders to be kept in Land Registry
- 201.** Application of this Part

PART XVIII

MISCELLANEOUS

- 202. Power of personal representative of deceased vendor to complete contract
- 203. Protection of attorney-at-law and trustees adopting Act
- 204. Fraudulent concealment of documents and falsification of pedigrees
- 205. Merger
- 206. Release of right of pre-emption
- 207. Partial release of security from rentcharge
- 208. Release of part of land affected from a judgment
- 209. Power to direct division of chattels
- 210. Regulations respecting notices
- 211. Restriction on constructive notice
- 212. Orders of court conclusive
- 213. Abolition of the doctrine of conversion
- 214. Legal assignment of things in action
- 215. Repeal and savings
- 216. Adaptation of references in documents
- 217. Crown

218. Transitional provisions

219. Rules

FIRST SCHEDULE
COVENANTS IMPLIED IN CONVEYANCES

SECOND SCHEDULE
MORTGAGE FORMS

THIRD SCHEDULE
ENACTMENTS REPEALED

FOURTH SCHEDULE
TRANSITIONAL PROVISIONS

**BARBADOS****PROPERTY
1979-11**

An Act to make provisions respecting property.

[Commencement: 1st January, 1980]

**PART I
PRELIMINARY****Short title**

1. This Act may be cited as the *Property Act*.

Interpretation

- 2.(1) For the purposes of this Act,

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

“attorney-at-law” has the meaning assigned to it by section 2 of the *Legal Profession Act*, Cap. 370A;

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

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

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

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

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

“court” means the High Court;

“covenant”, when used as a noun in reference to a lease, includes a promise in a written lease which is not a deed; and “covenant”, when used as a verb, has a corresponding meaning;

“demise”, when used as a noun, means the grant of a term of years; and the verb “demise” and the adjective “demised” have corresponding meanings;

“disposition” includes a conveyance and also a devise, bequest or appointment of property by will; and “dispose of” has a corresponding meaning;

“encumbrance” includes a legal or equitable mortgage, a trust for securing money, a lien and a charge of a portion, annuity or other capital or annual sum; and judgment registered under the *Registration of Judgments Act*, Cap. 210;

“encumbrancer” has a meaning corresponding with that of “encumbrance”, and includes every person entitled to the benefit of an encumbrance or entitled to require payment or discharge thereof;

“equitable interest” means estates, interests and charges in or over land which are not legal estates;

-
- “equitable power” means a power which under this Act is to operate in equity only;
- “estate” means the legal estate of an estate owner;
- “estate owner” means the owner of a legal estate;
- “fee simple absolute” includes the estates defined in section 4(1);
- “fine” includes a premium or foregift and any payment, consideration or benefit in the nature of a fine, premium or foregift;
- “income” includes rents and profits;
- “instrument” does not include a statute, unless the statute creates a settlement;
- “land” means the surface of the earth, the space above it and the things below it, and includes
- (a) houses and other structures whatsoever and parts of structures (whether the division is horizontal, vertical or made in any other way);
 - (b) mines and minerals, whether or not held apart from the surface;
 - (c) land covered by water;
 - (d) a legal estate, whether or not it gives a right to possession of the soil;
 - (e) a legal interest in land;
 - (f) an equitable interest in land;
 - (g) an undivided share in land;
- “lease” means an instrument, including a sublease, by which a term of years is created;
- “legal estate” means any estate, interest or charge which is authorised to subsist under section 3;
- “legal mortgage” means a mortgage by charge, in accordance with section 96, and includes a legal mortgage subsisting at 1st January, 1980; and “legal mortgagee” has a corresponding meaning;

“legal power” includes a power vested in a legal mortgagee or in an estate owner, under which a legal estate can be transferred or created;

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

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

“mines and minerals” include any stratum or seam of minerals or substances in or under any land, and powers of working or getting the same;

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

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

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

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

“mortgagor” includes any person from time to time deriving title under an original mortgage or entitled to redeem a mortgage according to his estate, interest or right in mortgaged property;

“notice” includes constructive notice;

“personal representative” has the same meaning as in the *Succession Act*, Cap. 249;

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

- “property” includes any thing in action and any interest in land, chattels or rights which are treated commercially as property;
- “Public Trustee” means the Public Trustee established by the *Public Trustee Act*, Cap. 248;
- “purchaser” means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in property (except that in Part II, and elsewhere where so expressly provided, “purchaser” means only a person who acquires an interest in, or charge on, property for money’s worth); and, where the context so requires, “purchaser” includes an intending purchaser; and “purchase” has a meaning corresponding with that of “purchaser”;
- “rent” includes a rent service or a rentcharge or other rent, toll, duty, royalty or annual or periodic payment in money or money’s worth, reserved or issuing out of or charged upon land, but does not include mortgage interest;
- “right of entry” and “right of re-entry”, in relation to a term of years means a right to take proceedings to determine the term of years in accordance with section 166;
- “right of redemption” includes an option to repurchase if the substance of the option is the creation of a right of redemption by another form;
- “settlement” means an instrument by which, or by virtue of which, land is settled upon the statutory trusts in accordance with Part III or upon trust for sale;
- “statutory trusts” means the trusts set out in section 15;
- “term of years absolute” has the meaning assigned to it by section 148;
- “trust” and “trustee” have the meanings assigned to them by section 2 of the *Trustee Act*, Cap. 250.
- “trust corporation” means the Public Trustee and a corporation either appointed by the court in any particular case to be a trustee or any banking or insurance company or other body corporate entitled under subsection 6(5) of the *Public Trustee Act*, Cap. 248, to act as custodian trustee;

“trust land” means land held upon the statutory trusts;

“valuable consideration” includes marriage, but does not include a nominal consideration in money.

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

PART II

GENERAL PRINCIPLES AS TO LEGAL ESTATES, TENURE, EQUITABLE INTERESTS AND POWERS

Definition of legal estates, equitable interests and powers

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

- (a) an estate in fee simple absolute in possession; and
- (b) a term of years absolute.

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

- (a) an easement, right or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;
- (b) a mortgage by charge in accordance with section 96;
- (c) a right of entry exercisable over or in respect of an estate in fee simple absolute in possession;
- (d) a possibility of reverter on the determination of a determinable fee.
- (e) a rent charge in possession issuing out of or charged on land being either perpetual or for a lessor of years absolute.

[1979-44]

- (3) All other estates, interests and charges in or over land take effect as equitable interests.
- (4) The estates, interests and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as “legal estates”, and have the same incidents as legal estates subsisting at 1st January, 1980.
- (5) A legal estate may subsist concurrently with, or subject to, any other legal estate in the same land in like manner as it could have done before 1st January, 1980.
- (6) Every power of appointment over, or power to convey or charge, land or any interest therein, whether created by a statute or other instrument or implied by law and whether created before or after 1st January, 1980 (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another in his name and on his behalf), operates only in equity.
- (7) The provisions of any Act of the United Kingdom Parliament or of the Legislature of Barbados or of any instrument or document requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate, authorised by this Act, which may be required) be conveyed to a person, not being a minor, upon the requisite trusts.

Definition of fee simple absolute, and exercise of power to dispose of or create a legal estate

- 4.(1) For the purposes of this Act, a fee simple absolute includes
- (a) a determinable fee, and a fee simple which, by virtue of subsection 5(2) of the *Land Acquisition Act*, Cap. 228, has become vested in the Crown, but is liable to be divested under section 9 thereof, and which will remain liable to be divested as if this Act had not been passed;

- (b) a fee simple vested in the Crown in respect of any church school under the *Anglican Church Act*, Cap. 375 which is liable to revert to the Barbados Diocesan Trustees on ceasing to be used as a school;
- (c) a fee simple held under a disposition under which a perpetual rent, whether a rent service or a rent charge was reserved out of or charged upon the land disposed of;
- (d) a fee simple subject to a right of entry,

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

(2) The provisions of

- (a) *the Trade Unions Act*, Cap. 365,
- (b) *the Building Societies Act*, Cap. 377, *the Cooperatives Societies Act*, Cap. 378, *the Friendly Societies Act*, Cap. 379 and *the Industrial and Provident Societies Act*, Cap. 380, in regard to land to which these Acts apply; and
- (c) any other statutes conferring special facilities or prescribing special modes for disposing of or acquiring land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate (including the Crown);

shall remain in full force.

(3) Where any power contained in the provisions referred to in subsection (2) for disposing of or creating a legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner.

Abolition of feudal tenure

5.(1) A fee simple in possession (including any such estate of a corporation) is, subject to subsection (2), equivalent so far as the law permits to absolute ownership, and all feudal tenure of land is hereby abolished.

(2) This section does not affect prejudicially any estates, interests, encumbrances or equities to which a fee simple absolute in possession is subject.

(3) The abolition of feudal tenure does not affect the circumstances in which land passes to the Crown as *bona vacantia*.

(4) The abolition of feudal tenure does not affect the categorisation of land into freehold and leasehold.

Abolition of fee tail estate

6.(1) In any instrument coming into operation after 1st January, 1980, a limitation which, if this Act had not been passed, would have created an estate tail (legal or equitable) in any land in favour of any person creates an estate in fee simple absolute in possession (or an equitable fee simple, as the case may be) in that land in favour of that person to the exclusion of all estates or interests limited to take effect after the determination of any such estate tail, but not of estates or interests limited to take effect in defeasance of such estate tail and which would be valid if limited to take effect in defeasance of a fee simple.

(2) Where, at 1st January, 1980, any person is entitled to an estate tail (legal or equitable), whether in possession, reversion or remainder, in any land, that person, save as hereinafter mentioned, shall be entitled to an estate in fee simple absolute in possession (or an equitable fee simple, as the case may be) in that land to the exclusion of all estates or interests limited to take effect after the determination of any such estate tail, but not of estates or interests limited to take effect in defeasance of such estate tail and which would be valid if limited to take effect in defeasance of a fee simple.

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

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

Overreaching of certain equitable interests and powers by conveyance of a legal estate

7.(1) Subject to subsection (2), a conveyance to a purchaser of a legal estate in land overreaches any equitable interest or power affecting that estate, whether or not he had notice thereof, if the conveyance is made

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

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

- (a) any equitable interest protected by a deposit of documents relating to the legal estate affected;
[1996-26]
- (b) the benefit of any covenant or agreement restrictive of the user of land;
- (c) any easement, liberty or privilege over or affecting land and being merely an equitable interest;
- (d) the benefit of any contract to convey or create a legal estate, including a contract conferring either expressly or by implication a valid option to purchase, a right of pre-emption or any other like right.

Manner of giving effect to equitable interests and powers

8.(1) All equitable interests and powers in or over land are enforceable against the estate owner affected as follows

- (a) where the legal estate affected is vested in trustees upon the statutory trusts or in trustees for sale, they are bound to give effect to the equitable interests and powers in the manner provided by Part III;
 - (b) where the legal estate is vested in neither trustees upon the statutory trusts nor trustees for sale, the estate owner is bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities, but this provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for the purposes of administration.
- (2) Effect may be given by means of a legal mortgage to an agreement for a mortgage, or to a charge or lien (whether or not arising by operation of law) if the agreement, charge or lien ought to have priority over the statutory trusts or trusts for sale.

(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him, then, and in any such case the estate owner whose estate is affected is bound to convey or create such legal estate as the case may require.

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

(5) If the estate owners refuse or neglect for 1 month after demand to transfer or create any such legal estate, or if, by reason of their being out of Barbados or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating a legal estate in the manner provided by this Act.

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

Creation and disposition of equitable interests, and of certain legal interests

9.(1) Interests in land validly created or arising after 1st January, 1980, which are not capable of subsisting as legal estates, take effect as equitable interests, and interests in land (other than as fee tail) which could, before that date, have been created as legal interests, are capable of being created as equitable interests.

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

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

- (b) a right of entry into or upon land, whether immediate or future, and whether vested or contingent; and
 - (c) a possibility of reverter.
- (3) All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason, and all possibilities of reverter on the determination of a determinable fee simple, may after 1st January, 1980 be made exercisable or enjoyable by any person and the persons deriving title under him, but subject to section 181.

Effect of certain legal powers to grant leases

10. All leases or tenancies at a rent for a term of years authorised to be granted by a mortgagor or mortgagee or by Part III or by any other statute (whether or not extended by any instrument) may be granted in the name or on behalf of the estate owner by the person empowered to grant the same, whether being an estate owner or not, with the same effect and priority as if this Act had not been passed; but this section does not (except in respect of the usual qualified covenant for quiet enjoyment) authorise any person granting a lease in the name of an estate owner to impose any personal liability on him.

Operation of vesting orders and dispositions of legal estates as conveyances by an estate owner

- 11.(1)** Every order, declaration or conveyance as is hereinafter mentioned, namely
- (a) every vesting order made by any court or other competent authority;
 - (b) every vesting declaration (express or implied) under any statutory power;
 - (c) every conveyance by a person appointed for the purpose under an order of the court or authorised under any statutory power to convey in the name or on behalf of an estate owner;

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

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

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

(3) The provisions of the *Trustee Act*, Cap. 250, relating to vesting orders and orders appointing a person to convey, apply to all vesting orders authorised to be made by this Act.

Title to be shown to legal estate and liability of attorney-at-law

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

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

PART III
SETTLEMENTS

Constitution of a settlement upon statutory trusts

13.(1) Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, whether made or passed before or after, or partly before and partly after, 1st January 1980, under or by virtue of which instrument any land, after that date is for the time being

- (a) held on trust for any persons by way of succession; or
- (b) held on trust for any person
 - (i) being a minor, for an estate in fee simple or for a term of years absolute, or
 - (ii) in fee simple or for any other interest contingently on the happening of any event, or
- (c) subject to the payment of an annuity, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, for the life of any person or any less period, or subject to the payment of any capital, annual or periodical sums for the portions, advancement, maintenance or otherwise for the benefit of any person,

[1979-44]

creates or is for the purposes of this Act a settlement upon the statutory trusts.

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

(3) An estate or interest not disposed of by a settlement within subsection (1) and remaining in or reverting to the settlor, or any person deriving title under

him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

(4) Where a settlement creates an entailed interest which is incapable of being barred or defeated, whether or not the reversion is in the Crown, the reversion upon the cesser of the interest so created or settled is for the purposes of this Act an interest comprised in the subject of the settlement, and limited by the settlement.

(5) Notwithstanding subsection (1)(c), where, before 1st January, 1980, land has been conveyed to a purchaser for money or money's worth subject to any annuity or other liability mentioned in that subsection created prior to the conveyance to the purchaser (whether or not the land was expressed to be exonerated from, or the grantor agreed to indemnify the purchaser against, such prior annuity or other liability) the purchaser continues to hold such land for the estate or interest conveyed to him (subject to and with the benefit of any liabilities or indemnities as are expressed in the conveyance) and the land is not subject to the statutory trusts nor is any rentcharge to secure the annuity one created by or under a settlement.

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

Effect of purported conveyance of a legal estate to a minor

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

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

prejudice to the rights and powers of such personal representatives for purposes of administration, to convey the same to trustees for the benefit of the minor.

(3) A conveyance of a legal estate in land to a minor jointly or as a tenant in common with one or more other persons of the age of majority, operates to vest the legal estate in the other persons upon the statutory trusts for him and the minor or them and the minor as joint tenants or tenants in common, as the case may be.

(4) A conveyance of a legal estate to a minor alone or two or more persons jointly, both or all of whom are minors, upon trusts, operates as a declaration of trusts and is not effective to pass a legal estate.

(5) A conveyance of a legal estate to a minor jointly with one or more other persons of the age of majority upon any trusts operates as if the minor had not been named therein, but without prejudice to any beneficial interest intended to be thereby provided for the minor.

(6) A purported grant or transfer of a legal mortgage to a minor operates as an agreement for valuable consideration to hold any beneficial interest in the mortgage debt upon trust for the minor.

(7) Where a legal mortgage is purported to be made to a minor and any other person of the age of majority, it operates as if the minor had not been named therein, but without prejudice to any beneficial interest in the mortgage debts intended to be thereby provided for the minor.

Definition of “the statutory trusts”

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

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

Overreaching effect of conveyance of trust land

16. Subject to subsection 7(2), a purchaser from trustees upon the statutory trusts or from trustees for sale shall take the estate or interest which is the subject of the conveyance discharged from all limitations, powers and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of

- (a) all legal estates and charges by deed by way of legal mortgage which have been conveyed or created in respect of the full amount secured and owing thereunder, provided that such part of the full amount as represents capital has been actually raised at the date of the conveyance to the purchaser; and
- (b) all leases and all easements, liberties or privileges over or affecting trust land which were before the date of the conveyance granted or imposed by any person beneficially interested under the settlement or by the trustees thereof under any statutory or other power and which are at that date otherwise binding on the said person or the trustees.

Construction of certain settlements

17.(1) A settlement coming into operation after 1st January 1980 which contains a trust under which the trustees have alternative duties of retaining or selling land is deemed to be a settlement upon the statutory trusts.

(2) Where a settlement coming into operation before or after 1st January, 1980 contains a trust to sell the land, the following powers shall be exercisable by the trustees unless a contrary intention appears

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

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

Consents to the execution of a trust for sale

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

(2) It is not necessary, in favour of a purchaser, for the trustees to obtain the consent of any person whose consent is required to a sale under a trust for sale, if that person is not *sui juris* or becomes subject to disability; but the trustees may, if that person is a minor, obtain the consent of his parent or testamentary or other guardian, or, if he is a patient within the meaning of the *Mental Health Act*, Cap. 46, of any committee appointed in Barbados in respect of his estate, and, where they do so, the trustees shall not be guilty of any breach of trust by reason of their acting without his consent.

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

(4) This section applies to a trust coming into operation either before or after 1st January, 1980, or by virtue of, this Act.

Consultation by trustees with beneficiaries

19. The trustees upon the statutory trusts, or, unless a contrary intention appears in the instrument declaring the trust, of a trust for sale, shall, so far as practicable, consult the persons of the age of majority for the time being beneficially interested in possession of the land or the rents and profits thereof, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in the case of a dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser is protected whether or not the provisions of this section have been complied with.

Purchaser not to be concerned with trusts of capital money or proceeds of sale

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

Delegation of powers of management by trustees

21.(1) Subject to subsection (3), in the case of a settlement made before or after 1st January, 1980, any of the powers of and incidental to leasing and management conferred on trustees upon the statutory trusts, or upon trust for sale whether by this Act or otherwise, may, until sale of the land and in their absolute discretion, be revocably delegated from time to time, by writing, signed by the trustees, to any person of the age of majority (not being merely an annuitant) for the time being beneficially entitled in possession to the trust land or to be net rents and profits of the land during his life or for any less period; and in favour of a lessee such writing is, unless the contrary appears, sufficient evidence that the person named therein is a person to whom the powers may be delegated, and

the production of such writing is, unless the contrary appears, sufficient evidence that the delegation has not been revoked.

(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees.

(3) In the case of a settlement made before the 1st January, 1980 the trustees are deemed to have validly and irrevocably delegated the powers of and incidental to leasing and management conferred upon them by this Act or otherwise to the person of the age of majority (not being merely an annuitant) at 1st January, 1980 and at the time of the exercise of the said powers beneficially entitled in possession to the trust land during his life or for any less period, and the trustees are bound to confirm such delegation in writing at the request of the person in whose favour it is made.

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

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

Notice to trustees respecting the exercise of power of sale

22.(1) If the trustees upon the statutory trusts receive a notice in writing from the person of the age of majority (not being merely an annuitant) for the time being beneficially entitled in possession to the trust and indicating his desire that all or any part of the trust land should be sold, the trustees shall (unless the court orders to the contrary) accordingly, within a reasonable time of receipt of the notice, exercise the power of sale conferred on them by this Part.

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

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

Trusts of mortgaged property where right of redemption is barred

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

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

(3) This section applies whether the right of redemption was discharged before or after 1st January, 1980, but has effect without prejudice to any dealings or arrangements made before that date.

Land to be held on trust for sale where capital is invested therein by trustees of personal property

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

Trustees for the purposes of this Act

25.(1) Any instrument coming into effect after 1st January, 1980 creating or being for the purposes of this Act a settlement upon the statutory trusts, operates, subject to section 34, to vest the land in the persons and upon the trusts specified in this section.

(2) The land vests in

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

power, to dispose of the land in equity for the whole estate the subject of the settlement.

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

(4) Where a settlement is created by will or arises by virtue of an intestacy and, apart from this subsection, there would be no trustees, then the personal representatives of the deceased are, until other trustees are appointed, the trustees of the trust land, but where there is a sole personal representative, not being a trust corporation, he shall appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the *Trustee Act*, Cap. 250, relating to the appointment of trustees and the vesting of trust property, apply accordingly.

(5) If there are no trustees in whom the land vests under or by virtue of this section, the instrument is ineffective to create or transfer a legal estate in the land until the court appoints trustees on the application of any person interested under any such power of appointing trustees conferred by law, but nothing in this section affects the validity of the instrument as regards the creation or transfer of equitable interests.

Trustees of referential settlements

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

(2) This section applies to all settlements declared by section 13 to be settlements upon the statutory trusts, but has effect without prejudice to any appointment made by the court before 1st January, 1980 of trustees of a settlement made by reference.

General powers of trustees upon statutory trusts

27. Trustees upon the statutory trusts may sell, exchange, lease, mortgage or otherwise convey, and, subject to the provisions of the *Town and Country Planning Act*, Cap. 240, partition the trust land or any part thereof or any interest therein or grant options to purchase the trust land or any part thereof with all the powers for these purposes of an absolute owner except in so far as such powers are restricted by this Part.

Conveyances to be for the best consideration

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

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

Leasing powers of trustees

29.(1) The trustees upon the statutory trusts may lease the trust land for any purpose whatever, whether involving waste or not, for any term not exceeding 35 years, except that where the trust land is held by the trustees for a term of years exceeding 35, the trustees may make, on such terms and conditions as they may think proper, an underlease of the trust land or any part thereof with a nominal reversion where such underlease amounts in substance to a sale and the trustees have satisfied themselves that it is the most appropriate method of disposing of the land.

(2) A lease for a term not exceeding 35 years containing an option to renew for a specified term is not a lease authorised by this section if the term for which it may be renewed and the term for which it was originally granted, added together, exceed a period of 35 years.

(3) Nothing in this section affects the validity of subsisting leases granted before 1st January, 1980.

Regulations concerning leases

30.(1) Every grant of a lease in order to be a valid exercise of the power conferred by section 29 shall

- (a) be in writing and be made to take effect in possession not later than 12 months after its date or in reversion after an existing lease having not more than 7 years to run at the date of the new lease;
- (b) reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the trust land, and generally to the circumstances of the case.

(2) Where such lease is granted for a period exceeding 7 years, it shall contain a proviso that the rent payable thereunder for the second and subsequent periods of 7 years from the date thereof (or fractional parts of such periods) shall be the higher of the rent payable for the first period of 7 years and such sum as shall be assessed as a reasonable rent (having regard to the rent originally payable and any subsequent change in the value of money) for the second and subsequent periods as aforesaid, such assessment to be made either

- (a) by agreement between the trustees (or any person to whom the power of leasing has been delegated) and the lessee made in writing at least 6 months before the expiry of the first period of 7 years from the date of the lease; or, failing any such written agreement,
- (b) by a registered real estate agent appointed for that purpose by the trustees (or any person to whom the leasing power has been delegated) and the lessee, or, in default of agreement, by two arbitrators, one to be appointed by each party in accordance with, and subject to the provisions of, the *Arbitration Act*, Cap. 110.

(3) Nothing in this section operates to prevent the inclusion in any lease of a proviso for rent revision where there is no statutory obligation to include such a

proviso or to prevent the inclusion of a rent revision clause in a lease granted for a period exceeding 7 years to take effect more frequently than the intervals specified in this section.

(4) Every lease shall contain an agreement by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding 1 month.

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

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

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

Leasing powers for special objects

31. The leasing power of the trustees extends to the making of

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

Mortgage of trust land

32.(1) Any money raised under a mortgage by virtue of the power conferred by section 27 which is for one or more of the following purposes

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

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

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

Modes of investment or application

33.(1) Capital money or proceeds of sale arising out of the exercise by trustees of any power vested in them or out of the execution of a trust for sale shall, when received, and subject to any power to advance trust funds to any

beneficiary entitled, be invested or otherwise applied wholly in one, or partly in one and partly in the other, of the following

- (a) in investment in the manner authorised by the law relating to the investment of trust funds, but subject to any enlargement or restriction of the trustees' powers of investment contained in the instrument creating the trust;
 - (b) in the fulfilment of any of the purposes contained in subsection 32(1) for which trust land may be mortgaged.
- (2) Capital money representing the proceeds of sale or other disposition of land held for an entailed interest or the securities in which an investment of any such capital money is made shall be held for and go to the same persons successively, in the same manner and for the same estates and interests and on the same trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

Limitation of the number of trustees

34.(1) In the case of trusts of land held upon the statutory trusts or upon trust for sale made or coming into operation by virtue of or after 1st January, 1980

- (a) the number of trustees thereof shall not exceed four, and where more than four persons are named as such trustees, the four first named who are able and willing to act shall alone be the trustees and by virtue of paragraph 4 of the Fourth Schedule the legal estate the subject of the settlement vests in such persons accordingly;
 - (b) the number of the trustees shall not be increased beyond four.
- (2) This section does not apply
- (a) in the case of land vested in trustees for charitable, ecclesiastical or public purposes; or
 - (b) where the net proceeds of the sale of the land are held for like purposes.

To whom capital moneys or proceeds of sale are payable

35.(1) Notwithstanding anything in this Act (except section 42) or in a trust instrument, capital money arising under this Act or money arising on the execution of a trust for sale shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees for the time being of the land and a conveyance to a purchaser of the land takes effect under this Act only if the capital or other money arising is paid accordingly or into court.

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

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

Trustees may reimburse themselves

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

Prohibition or limitation of exercise of powers and provisions for forfeiture void

37. If, in any settlement, will, assurance or other instrument executed or made before or after, or partly before and partly after, 1st January, 1980, a provision is inserted

- (a) purporting or attempting, by way of direction, declaration or otherwise, to forbid the trustees of land held upon the statutory trusts or upon trust

for sale to exercise any power under this Part or to execute the trust for sale; or

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

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

Saving for and exercise of other powers

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

(2) In case of conflict between the provisions of a settlement and the provisions of this Part, relative to any matter in respect whereof the trustees exercise or contract or intend to exercise any power under this Part, the provisions of this Part prevail; and, notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the trust land thereby conferred on the tenant for life or other persons exercisable for any purpose, whether or not provided for in this Part, is, after 1st January, 1980, exercisable by the trustees as if it were an additional power conferred on the trustees within section 39 and not otherwise.

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

Saving for additional or wider powers under settlement

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

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

Protection of purchasers

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

Payment of costs out of trust property

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

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

- (d) by the proceeds of any disposition of the trust land authorised by this Part.

Termination of settlements and trusts

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

(2) Where land is, either before or after 1st January, 1980 held by trustees upon the statutory trusts or on trust for sale, such trust is, so far as regards the safety and protection of any purchaser thereunder, deemed to be subsisting until the land has been conveyed to or under the direction of the person of the age of majority absolutely entitled to the trust land or the proceeds of sale.

PART IV

CO-OWNERSHIP

Severance of joint tenancies

43.(1) Where land is vested in joint tenants, any tenant not being a trustee or personal representative may sever the joint tenancy by giving to the other joint tenants notice in writing of such desire or by doing such other acts or things as are effectual to sever the tenancy.

(2) Notwithstanding anything contained in this Act, it is hereby declared that a notice in writing given under this section is a conveyance for the purposes of being recorded under sections 56 to 58.

Protection of purchaser on sale of land by survivor of joint tenants

44.(1) The survivor of two or more joint tenants is, in favour of a purchaser of the legal estate acting in good faith, notwithstanding section 35, able to deal with the legal estate free from any trust if he conveys as beneficial owner or the conveyance includes a statement that he is solely beneficially interested.

(2) Subsection (1) does not apply if, at any time before the date of the conveyance by the survivor

- (a) an instrument evidencing a severance has been recorded under section 43; or
- (b) a memorandum of the severance (that is to say in any case a note or memorandum signed by the joint tenants or one of them and recording that the joint tenancy was severed on a date therein specified) has been endorsed on or annexed to the conveyance by virtue of which the legal estate was vested in the joint tenants; or
- (c) an adjudication in bankruptcy made against any of the joint tenants, or a petition for such an order, has been registered under any law, being an adjudication of which the purchaser has notice by virtue of the registration, on the date of the conveyance by the survivor.

(3) This section applies with the necessary modifications in relation to a conveyance by the personal representatives of the survivor of joint tenants as they apply in relation to a conveyance by such survivor.

(4) This section does not apply to registered land.

Partition of land held by co-owners

45.(1) Where the legal estate in land is vested in persons of the age of majority, whether in undivided shares or jointly, then, subject to the provisions of the *Town and Country Planning Act*, Cap. 240, they may partition the land among them in such parcels as they may agree, or in the absence of agreement

any one of them may apply to the court for an order partitioning the land as the court considers fit.

(2) The court may give effect to such an application by ordering the land to be conveyed in severalty to each co-owner in such parcels as the court determines, whether or not subject to any charge by way of legal mortgage created for raising equality money.

(3) A subsequent purchaser shall not be concerned to see or inquire whether any such agreement as is mentioned in subsection (1) has been made.

(4) An application for partition may be made on behalf of a mental patient within the meaning of the *Mental Health Act*, Cap. 46 by his committee, or other person authorised by the court to act on his behalf.

(5) Where a share or interest is affected by an encumbrance, the court may either give effect thereto or provide for the discharge thereof by the property allotted in respect of such share, as the court considers fit.

(6) Where a co-owner makes an application for a partition of any land for the purpose of selling his share therein and in the opinion of the Chief Town Planner partition would adversely affect the use of that land, the court may value the land and the shares therein and order a sale of the land or the shares therein by public auction or make such other order as it considers fit.

(7) Any co-owner is entitled to purchase at an auction or by private treaty land or any share in land which is the subject of an application to the court for partition and is ordered by the court to be sold.

(8) Nothing in this section affects proceedings for partition under section 31 of the *Condominium Act*, Cap. 224A.

Severance of party structures

46.(1) Where, under a disposition or other arrangement, a wall or other structure is or is expressed to be made a party wall or structure, it is and remains severed as between the respective owners so that each owner is the absolute owner of half the structure, and the owner of each part has a right to support and of user

over the rest of the structure, subject to the obligation to maintain and keep in repair his part of the structure for the benefit of the whole.

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

(3) Nothing in this section operates to prejudice the rights and duties of unit proprietors under the *Condominium Act*, Cap. 224A.

PART V

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

Contracts for sale of land to be in writing

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

(2) This section applies to contracts whether made before or after 1st January, 1980 and does not affect the law relating to part performance or sales by the court.

Stipulations as to time not the essence of a contract

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

Rights of purchaser of a legal estate

49.(1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest is

void, if a title can be made under this Act or any other statute discharged from the equitable interest without such concurrence.

(2) A stipulation contained in any contract for the sale or exchange of land made after 1st January, 1980 to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser, or that no objection is to be taken on account of an outstanding legal estate, is void.

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

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

Twenty years to be the statutory length of title and other provisions as to root of title

50.(1) After 1st January, 1980, 20 years is the period of commencement of title which a purchaser of land may require; nevertheless earlier title than 20 years may be required in cases similar to those in which earlier title than 60 years might, immediately before 1st January, 1980 have been required.

(2) Under a contract made after 1st January, 1980 to grant a term of not less than 10 years, the intended lessee is entitled to call for the title to

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

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

(3) Under a contract to grant a term of less than 10 years to be derived out of a fee simple absolute in possession, to grant a term of years to be derived out of another term of years or to assign a term of years, the intended lessee or assignee is not entitled to call for the title to the fee simple absolute in possession.

(4) Under a contract to assign or grant a term of years derived or to be derived out of another term of years, the intended lessee is not entitled to call for the title to the term or terms of years out of which the assignor's or grantor's term of years is mediately or immediately derived.

(5) Where, by reason of subsection (3) or (4), an intending lessee or assignee is not entitled to call for the title to the fee simple absolute or to a reversionary term of years, as the case may be, he is not, where the contract is made after 1st January, 1980 affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(6) A purchaser is not and never has been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other enactment, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

(7) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after 1st January, 1980 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 date.

(8) This section applies only if and so far as a contrary intention is not expressed in the contract.

Other statutory conditions of sale

51.(1) A purchaser of any property shall not

- (a) require the production of the original or copy of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same

creates a power subsequently exercised by an instrument produced to, or of which a copy is produced 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 documents produced, or of which copies are produced of any deed, will or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgement, enrolment or otherwise.

(2) Subsection (1) does not deprive a purchaser of the right to require the production of the original or 2 copies, of

- (a) any power of attorney under which any document produced, or copy of which is produced is executed; or
- (b) any document creating or disposing of any interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by a document produced, or a copy of which is produced;
- (c) any document creating any limitation or trust by reference to which any part of the property is disposed of by a document produced, or a copy of which is produced.

(3) 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.

(4) 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.

(5) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament or statutory declarations, 20 years old at the date of the contract, are, unless and except so far as they may be proved to be inaccurate, sufficient evidence of the truth of such recitals, statements and descriptions.

(6) Trustees may sell or buy or mortgage or charge or lend on mortgage or charge without excluding the application of subsection (5).

(7) Acknowledgements of the right of production or covenants for production, and undertakings or covenants for safe custody of documents as the purchaser can and does require, shall be furnished or made at his expense.

(8) A vendor is 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.

(9) This section applies to contracts for sale made before or after 1st January, 1980 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 date.

(10) This section applies subject to any stipulation or contrary intention expressed in the contract.

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

Application of insurance money on completion of a sale or exchange

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

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

(3) This section applies only to contracts made after 1st January, 1980 and has effect subject to

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

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

- (a) for references to the “vendor” there were substituted references to the “person bound by the order”;

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

Stipulations restricting the choice of the purchaser's attorney-at-law void

53. Any stipulation which purports to restrict a purchaser in the selection of an attorney-at-law to act on his behalf in relation to any interest in land agreed to be purchased is void.

Applications to the court by vendor and purchaser

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

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

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

Lands lie in grant only

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

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

Making and recording of deeds, to have effect of livery of seisin

56. All deeds already made and hereafter to be made by parties entitled to lands in Barbados and recorded in the Land Registry have the like effect as if livery of seisin had been given of such lands.

[1990-20]

Effect of failure to record deeds

57.(1) Where any deed conveying, mortgaging or charging any land is omitted to be recorded in the Land Registry within 3 months after its execution if executed in Barbados, or within 6 months if executed elsewhere, and any person being ignorant of such deed is induced to purchase or lend money by way of mortgage or charge on the security of such land and causes his deed of conveyance, mortgage or security deed to be proved and recorded in the Land Registry, such conveyance, mortgage or charge so omitted to be recorded shall be null and void as against such subsequent purchaser, or mortgagee or person having such charge for valuable consideration, but not otherwise.

[1990-20]

(2) The legal estate (if any) in the said land which has been conveyed or mortgaged by any such conveyance or mortgage so omitted to be recorded shall, so far as is necessary to give effect to this section, but not further or otherwise, be and remain vested in the subsequent purchaser or mortgagee for valuable consideration who has duly recorded his conveyance or mortgage as required by this Act.

(3) This section shall be retrospective in its operation.

[1990-20]

Recording in Land Registry to be notice

58.(1) The recording in the Land Registry of any instrument transferring, agreeing to transfer or creating a legal estate or a charge by way of a legal or equitable mortgage shall be deemed to constitute actual notice of the transfer of, agreement to transfer, or creation of the legal estate or the charge to all persons and for all purposes whatsoever, as from the date when the instrument is recorded.

(2) This section operates without prejudice to the provisions of this Act relating to the making of further advances by a mortgagee and only applies to property in Barbados.

Conveyances to be by deed

59.(1) Subject to subsection (2), all conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

(2) This section does not apply to

- (a) assents by a personal representative;
- (b) disclaimers made in accordance with section 54 of the *Bankruptcy Act*, Cap. 303 or not required to be evidenced in writing;
- (c) surrenders not required to be effected by deed;
- (d) leases or tenancies or other assurances not required by law to be made in writing;
- (e) receipts not required by law to be by deed;
- (f) vesting orders of the court or other competent authority;
- (g) conveyances taking effect by operation of law.

Instruments required to be in writing

60.(1) No interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent lawfully authorised in writing, by will or by operation of law.

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

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

(4) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(5) Nothing in this section affects

- (a) the creation or operation of resulting, implied or constructive trusts;
- (b) the right to acquire an interest in land by virtue of taking possession;
- (c) the operation of the law relating to part performance;
- (d) tenancies which can be validly created by parol agreement;
- (e) trusts or interests created, declared or disposed of by will; or
- (f) interests validly created before 1st January, 1980.

Persons taking who are not parties to a deed

61.(1) Where a deed is expressed to confer, or by its express terms purports to confer, an immediate or other interest in property, or the benefit of any condition, right of entry, covenant or agreement over or respecting property upon

a third person, it shall be enforceable by the third person in his own name whether or not he is a party to the deed.

(2) Notwithstanding the generality of section 2(1), it is hereby declared that “property” in this section includes all other forms of property as well as land.

Provisions as to supplemental instruments

62. Any instrument (whether executed before or after 1st January, 1980) 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 an abstract, or production, or a copy, 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.

Conditions and certain covenants not implied

63.(1) An exchange or other conveyance of land made by deed after 27th August, 1853, does not imply any condition in law.

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

Words of limitation not required to convey or transfer fee simple and no resulting trust in voluntary conveyance

64.(1) When land or any interest in land is conveyed, or, in the case of registered land, transferred, the conveyance or transfer passes the fee simple absolute in possession or other the whole estate or interest that the party conveying or transferring had power to dispose of or to create, unless a contrary intention appears in the instrument.

(2) In particular, a conveyance or transfer of land or any interest in land to a corporation sole by his corporate designation without the word “successors” passes the fee simple absolute in possession or other the whole estate or interest

that the party conveying or transferring had power to dispose of or to create, unless a contrary intention appears in the instrument.

(3) In a voluntary conveyance or in a conveyance where the consideration is nominal, a resulting trust for the grantor is not implied merely by reason of the absence of valuable consideration or of a substantial consideration or of any words expressly rebutting a resulting trust, or by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.

[1979-44]

(4) This section applies only to conveyances and deeds executed after 1st January, 1980.

Construction of certain expressions used in deeds and other instruments

65. In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after 1st January, 1980, unless the context otherwise requires

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

Interpretation of “seashore or foreshore boundary” and “beach”

65A.(1) In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after 1st May, 2000, unless the context otherwise requires, any reference to a seashore or foreshore boundary shall be construed as a reference to the high water mark as defined in the *Coastal Zone Management Act, 1998* (Act 1998-39).

(2) In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after 1st May, 2000, unless the context otherwise requires, any reference to the beach shall be construed as a reference to the beach as defined in the *Coastal Zone Management Act, 1998* (Act 1998-39).

Conveyance of land to include all rights belonging to or enjoyed with the land

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

(2) A conveyance of land having houses or other buildings thereon includes, and operates to convey, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and benefits of any covenants, appertaining or annexed to the land, houses or other buildings conveyed, or any of them, or any part thereof.

(3) This section applies only if and so far as a contrary intention is not expressed in the conveyance and has effect subject to the term 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 other than the title which the conveyance gives to him in respect of the land expressed to be conveyed or as conveying to him any property, right or thing in this section mentioned further or otherwise than as the same could have been conveyed to him by the conveying parties.

(5) This section applies only to conveyances made after 1st January, 1980.

All estate clause implied

67.(1) Every conveyance is effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have in, to or on the

property conveyed or expressed or intended so to be, or which they have power to convey in, to or on the same.

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

(3) This section applies only to conveyances made after 1st January, 1980.

Production and safe custody of documents

68.(1) Where a person retains possession of documents, and gives to another an acknowledgement in writing of the right of that other to production of those documents and to delivery of copies thereof (in this section called an acknowledgement), that acknowledgement has the effect as this section provides.

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

(3) The obligations imposed under this section by an acknowledgement are to be performed from time to time at the request in writing of the person to whom an acknowledgement 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 acknowledgement relates.

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

(a) an obligation to produce the documents or any of them at all reasonable times for the purposes of inspection and of comparison by the person

entitled to request production or by any person by him authorised in writing;

- (b) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in Barbados, 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 acknowledgement shall be paid by the person requesting performance.
- (6) An acknowledgement does not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.
- (7) Any person claiming to be entitled to the benefit of an acknowledgement 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 so determines, 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 determines respecting the costs of the application, or any other matter connected with the application.
- (8) An acknowledgement satisfies any liability to give a covenant for production and delivery of copies of or extracts from documents.
- (9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking imposes on the person giving it, and on every person having possession or control of the

documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

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

(11) An undertaking for safe custody of documents satisfies any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgement or an undertaking under this section are in addition to all other rights relative to the production, inspection or obtaining of copies of documents, as are not satisfied by the giving of the acknowledgement or undertaking, and have effect subject to the terms of the acknowledgement 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 acknowledgement or undertaking.

Reservation of legal estates

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

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

(3) This section applies only to the reservation made after 1st January, 1980.

Confirmation of past transactions

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

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

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after 1st January, 1980.

Certain documents to be deeds even though not under seal

71.(1) Subject to subsection (5), every document satisfying the requirements of subsection (2) is, if executed after 1st January, 1980, a deed notwithstanding that it has not been sealed.

- (2) The requirements referred to in subsection (1) are that the document be
- (a) signed by the party to be bound by it; and
 - (b) attested by at least one witness in accordance with subsection (3); and
 - (c) expressed to be a deed, conveyance, assurance, mortgage, charge, settlement, covenant, bond or specialty.

- (3) No particular form of words is requisite for the attestation referred to in subsection (2)(b), but if a deed is executed in Barbados the witness there referred to shall add to his signature his place of abode and calling or description.
- (4) Attestation of a document by an attorney-at-law has the same effect as acknowledgement of the parties or probate of the witnesses before the Judges or the Commissioners of Probate under section 16 of the *Evidence Act*, Cap. 121.
- (5) Nothing in this section affects
- (a) the need for a deed to be sealed if the party to be bound by the deed is a corporation; or
 - (b) the requirement of delivery; or
 - (c) the validity or operation of a deed, whether executed before or after 1st January, 1980, in respects other than the manner of its execution; or
 - (d) a deed executed after 1st January, 1980, signed in accordance with section 73, and otherwise executed in accordance with the law governing the execution of deeds before 1st January, 1980 as amended by section 72.

Description of deeds

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

Execution of deeds by an individual

73.(1) Where an individual executes a deed, he shall either sign or place his mark upon the same and sealing alone is not sufficient.

(2) This section applies only to deeds executed after 1st January, 1980.

Execution of instruments by or on behalf of corporations

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

(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) a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation; or
- (b) a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person,

the provisions of section 138 apply.

(4) The foregoing provisions of this section apply to transactions whenever effected, but only to deeds and instruments executed after 1st January, 1980, except that, in the case of powers of appointment of an agent or officer, they apply whether the power was conferred or the appointment was made before or after that date or by this Act.

(5) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter,

memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, is (in addition to the modes authorised by this section) as effectual as if this section had not been passed.

Rights of purchaser as to execution

75.(1) On a sale, the purchaser is not entitled to require that the conveyance to him be executed in his presence or in that of his attorney-at-law; but is entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may be his attorney-at-law.

(2) This section applies only to sales made after 1st January, 1980.

Deed between parties to have same effect as indenture

76. A deed between parties, to effect its objects, has the effect of an indenture, though not intended or expressed to be an indenture.

Receipt in deed sufficient to discharge same

77. A receipt for consideration money or securities in the body of a deed is 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.

Receipt in or endorsed sufficient evidence

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

(2) This section applies to deeds executed before or after 1st January, 1980.

Receipt in deed or endorsed sufficient authority to pay attorney-at-law

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

(2) This section applies only to the production of deeds after 1st January, 1980.

Conveyance by a person to. himself and others

80.(1) In conveyances made after 4th April, 1860, any personal property including chattels real may be conveyed by a person to himself jointly with another person by like means by which it might be conveyed by him to another person.

(2) In conveyances made after 1st January, 1980, freehold land, or a thing in action may be conveyed by a person to himself concurrently with another person by the like means by which it may be conveyed by him to another person; and may in the like manner be conveyed by a husband to his wife and by a wife to her husband alone or concurrently with another person.

(3) After 1st January, 1980 a person may convey, but not lease land to himself.

(4) Two or more persons (whether or not being trustees) may convey, and have always been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third person.

(5) Where the persons in whose favour the conveyance is made in accordance with this section are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance is liable to be set aside.

Covenants for title

81.(1) In a conveyance there are, in the several cases mentioned in this section, implied covenants to the effect stated in this section and to the extent stated in paragraph 1 of the First Schedule, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say

- (a) in a conveyance for valuable consideration, other than a mortgage, covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 2 of the First Schedule;
- (b) in a conveyance of a term of years for valuable consideration, other than a mortgage, further covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 3 of the First Schedule;
- (c) in a conveyance, covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 4 of the First Schedule;
- (d) in a conveyance of property held in fee simple subject to a rent or of a term of years, further covenants by a person who is expressed to convey “as beneficial owner” in the terms set out in paragraph 5 of the First Schedule;
- (e) in a conveyance by way of settlement, a covenant by a person who is expressed to convey “as settlor” in the terms set out in paragraph 6 of the First Schedule;

- (f) in any conveyance, a covenant by every person who is expressed to convey “as trustee”, “as mortgagee”, “as personal representative”, or as a committee of a mental patient within the meaning of the *Mental Health Act*, Cap. 46 or under an order of the court, in the terms set out in paragraph 7 of the First Schedule.
- (2) Where in a conveyance it is expressed that a person conveys, by direction of another person expressed to direct “as beneficial owner”, then the person giving the direction, whether expressed to convey “as beneficial owner” or not, is to be treated as if he had been expressed to convey “as beneficial owner” the subject-matter so conveyed by his direction; and the covenants on his part are implied as if he had been expressed to convey “as beneficial owner” the subject-matter so conveyed by his direction.
- (3) Where in a conveyance, other than an assent, a person conveying is not expressed to convey “as beneficial owner”, “as settlor”, “as trustee”, “as mortgagee”, as “personal representative”, or as a committee of a mental patient within the meaning of the *Mental Health Act*, Cap. 46 or under an order of the court or by direction of some person “as beneficial owner”, no covenant on the part of the person conveying is implied in the conveyance.
- (4) In this section
- (a) a conveyance does not include a lease;
 - (b) valuable consideration does not include marriage;
 - (c) any reference to a person being expressed to “convey” does not mean that the word “convey” must be used.
- (5) The benefit of a covenant implied as aforesaid is annexed and incident to, and goes with, the estate or interest of the implied covenantee, his mortgagee, or lessee, and is capable of being enforced by every person, including a mortgagee or lessee, in whom that estate or interest, any part thereof or any estate or interest derived therefrom is from time to time vested.
- (6) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and, as so varied or extended, operates in the like manner, and with all

the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

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

(8) This section applies to conveyance made after 1st January, 1980.

Implied covenants in conveyances subject to rents

82.(1) In addition to the covenants implied under section 81, there are, in the several cases mentioned in this section, implied covenants to the effect stated in this section, by and with such persons as are hereinafter mentioned, that is to say

- (a) in a conveyance for valuable consideration, other than a mortgage, of the entirety of the land affected by a rentcharge, covenants by the grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph 8 of the First Schedule; and where a rentcharge has been apportioned in respect of any land, with the consent of the owner of the rentcharge, the covenants in this paragraph are implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land;
- (b) in a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part of that rentcharge which has been or is by that conveyance apportioned (but in either case without the consent of the owner of the rentcharge) in respect of the land conveyed
 - (i) covenants by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in subparagraph (i) of paragraph 9 of the First Schedule,

- (ii) covenants by a person who is expressed to convey as beneficial owner, or joint and several covenants by the persons who are expressed to so convey, if at the date of the conveyance any part of the land affected by such rentcharge is retained, with the grantees of the land and with each of them (if more than one) in the terms set out in sub-paragraph (ii) of paragraph 9 of the First Schedule;
- (c) in a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, covenants by the assignee or joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them (if more than one) in the terms set out in paragraph 10 of the First Schedule; and where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this paragraph are implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land;
- (d) in a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor) in respect of the land conveyed
 - (i) covenants by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one in the terms set out in sub-paragraph (i) of paragraph 11 of the First Schedule,
 - (ii) covenants by a person who is expressed to convey as beneficial owner, or joint and several covenants by the persons who are expressed to so convey if at the date of the conveyance any part of the land comprised in the lease is retained, with the assignees

of the land and with each of them (if more than one) in the terms set out in sub-paragraph (ii) of paragraph 11 of the First Schedule.

(2) Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge, or part of the land comprised in a lease is, without the consent of the owner of the rent or of the lessor, as the case may be, expressed to be conveyed

- (i) subject to or charged with the entire rent, then, subsection (1)(b)(i) or (d)(i), as the case may require, has effect as if the entire rent were the apportioned rent; or
- (ii) discharged or exonerated from the entire rent, then, subsection (1)(b)(ii) or (d)(ii), as the case may require, has effect as if the entire rent were the balance of the rent, and the words “other than the covenant to pay the entire rent” had been omitted.

(3) In this section “conveyance” does not include a lease.

(4) Any covenant which would be implied under this section by reason of a person being expressed to convey as beneficial owner may, by express reference to this section, be implied with or without variation, in a conveyance, whether or not for valuable consideration, by a person who is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as a committee of a mental patient within the meaning of the *Mental Health Act*, Cap. 46, or under an order of the court.

(5) The benefit of a covenant implied under this section is annexed and incident to, and goes with, the estate or the interest of the implied covenantee, and is enforceable by every person including a mortgagee or lessee in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

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

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

- (a) the land conveyed; or
- (b) the part of the land affected by the rentcharge which remains vested in the covenantor; or
- (c) the part of the land demised which remains vested in the covenantor,

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

(8) This section applies only to conveyances made after 1st January, 1980.

Benefit of covenants relating to land

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

(2) For the purposes of this section, and of sections 84 and 85, “successors in title” 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 1st January 1980.

Burden of covenants relating to land

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

(2) This section extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

- (3) This section applies only to covenants made after 1st January 1980.

Covenants binding land

85.(1) A covenant (whether express or implied under this or any other Act), a bond and an obligation or contract by deed, binds the real estate as well as the personal estate of the person making the same unless a contrary intention is expressed in the covenant, bond, obligation or contract.

(2) The benefit of a covenant relating to land entered into after 1st January, 1980 may be made to run with the land, without the use of any technical expression, if the covenant is of such a nature that the benefit could have been made to run with the land before 1st January 1980 or runs under this Act.

(3) For the purposes of this section, the benefit of a covenant runs with the land when the benefit of it, whether at law or in equity, passes to the successors in title of the covenantee.

Effect of covenant with two or more persons jointly

86.(1) A covenant (whether express or implied under this or any other Act) and a contract, bond or obligation by deed, made with two or more persons jointly, to pay money, to make a conveyance, or to do any other act to them or for their benefit, implies an obligation to do the act to, or for the benefit of, the survivors of them, and to, or for the benefit of, any other person on whom devolves the right to sue on the covenant, contract, bond or obligation.

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

(3) This section applies only to covenants made after 1st January, 1980.

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

87.(1) A covenant (whether express or implied under this or any other Act) or an agreement entered into by a person with himself and another or others shall be construed and be capable of being enforced in like manner as if the covenant or agreement has been entered into with the other persons alone.

(2) This section applies to covenants and agreements entered into or implied before or after 1st January 1980.

Covenants with two or more persons

88.(1) Subject to this Act, where, under a covenant (whether express or implied under this or any other Act) more persons than one are

- (a) covenantors, the covenant binds the covenantors and any two or more of them jointly and each of them severally;
- (b) covenantees, the covenant shall be construed as being also made with each of them.

(2) This section applies only if and as far as a contrary intention is not expressed in the covenant, and applies only to covenants entered into after 1st January, 1980 or implied by this Act or any other enactment.

PART VI**FEEES AND COMMISSIONS****Meaning of “lease” in this Part**

89. In this Part, “lease” includes an agreement for a lease, and “lessor” and “lessee” have corresponding meanings.

Stipulation that party to sale or demise pay other party's costs void

90.(1) Any stipulation made on the sale or demise of any interest in land after 1st January 1980 to the effect that one party shall pay the whole or any part of any other party's attorney-at-law's costs of preparing or effecting the conveyance or lease, is void.

(2) In this section

“conveyance” does not include a mortgage;

“costs” includes fees, charges, disbursements (including stamp duty), expenses and remuneration.

(3) Nothing in this Act affects any right reserved to a vendor or lessor to furnish a form of conveyance or lease to a purchaser or lessee from which the draft can be prepared and to charge a reasonable fee therefor.

Stipulations restricting purchaser's right to choose his attorney-at-law void

91.(1) Any covenant or stipulation contained in, or entered into with reference to, any lease made before or after 1st January 1980

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or his attorney-at-law; or

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by an attorney-at-law appointed by him,

is void.

(2) Where any covenant or stipulation is rendered void by this section, there is implied in lieu thereof a covenant or stipulation that the lessee shall notify in writing the lessor or his attorney-at-law, within 6 months from the date thereof, or as soon after the expiration of that period as may be practicable of all conveyances and devolutions (including probates or letters of administration) affecting the lease and pay such fee as may be prescribed by the Judicial Advisory Council in respect of each notification, and any right which the lessor may have on breach of any covenant contained in the lease applies and extends to the breach of any covenant so to be implied.

Stipulations respecting purchaser's obligation to contribute to costs void

92. A stipulation that a purchaser for money or money's worth of a legal estate in land shall pay or contribute towards the costs of or incidental to

- (a) obtaining a vesting order or the appointment of trustees; or
- (b) the preparation, stamping or execution of a conveyance on trust,

is void.

Stipulations that purchaser pay vendor's agent void

93.(1) Where, on sale of land, a registered real estate agent, auctioneer or other person acting as agent for the vendor in the sale is entitled to be paid a commission, the payment of such commission is the responsibility of the vendor, and any stipulation the effect of which is to make the purchaser liable for such payment is void.

(2) This section applies to a commission on a fine on the granting of a lease as it applies to the commission on a sale of land.

[1979-44]

Costs of attorney-at-law as mortgagee recoverable from mortgagor

94.(1) Any attorney-at-law to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which that attorney-at-law is a member, is entitled to receive for all business transacted and acts done by that attorney-at-law or firm in negotiating the loan, deducing and investigating the title to the property and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if the mortgage had been made to a person not an attorney-at-law, and that person had retained and employed the attorney-at-law, or firm to transact the business and do the acts; and such charges and remuneration are accordingly recoverable from the mortgagor.

(2) This section applies to mortgages made and business transacted and acts done after 1st January 1980.

Costs of attorney-at-law as mortgagee chargeable upon mortgaged property

95.(1) The attorney-at-law to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which that attorney-at-law is a member, is entitled to receive and recover from the person on whose behalf the same is done or to charge against the security for all business transacted and acts done by the attorney-at-law or firm subsequent and in relation to the mortgage or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who is not an attorney-at-law, and that person had retained and employed the attorney-at-law or firm to transact the business and do the acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration.

(2) This section applies to mortgages made and business transacted and acts done after 1st January, 1980.

PART VII
MORTGAGES

Form of mortgages

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

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

(3) A purported conveyance, assignment or demise of a legal estate in land by way of mortgage, any other purported legal mortgage by deed, and any other transaction by an instrument which is declared by statute to operate as a mortgage, made after 1st January 1980 operates as if it were a charge by deed.

(4) In subsection (3)

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

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

(c) such a purported demise includes an absolute demise with a deed of defeasance and any other assurance which, but for this section, would operate in effect to vest a term of years in a mortgagee subject to redemption.

(5) This section applies whether the mortgage is made by way of sub-mortgage, or is expressed to be by way of trust for sale or otherwise.

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

Covenants implied in a mortgage

97.(1) There shall be implied in every mortgage, subject to express provisions to the contrary, covenants by the mortgagor with the mortgagee

- (a) such covenants as would have been implied had the deed expressed that the mortgagor charge the mortgaged property as mortgagor and as beneficial owner;
- (b) to pay the mortgage money on the day therein appointed and, so long as the mortgage money or any part thereof remains unpaid, to pay interest thereon or on the part remaining unpaid, as the case may be, at the rate and in the manner therein specified;
- (c) to pay the rates, taxes and other outgoings that are at any time payable in respect of the mortgaged property;
- (d) to repair and keep in repair all buildings and other improvements on the mortgaged land or comprised in the mortgaged lease, and to permit the mortgagee or his agent to enter at all reasonable times and inspect the state of such building or improvement;
- (e) to insure to the full value thereof in the joint names of the mortgagor and mortgagee with insurers approved by the mortgagee all buildings on the mortgaged land against loss or damage by fire, hurricane or earthquake;
- (f) in the case of a mortgage of agricultural land, to farm the land in accordance with the rules of good husbandry;
- (g) not to lease the mortgaged land or any part thereof or sub-lease the whole or any part of the land comprised in the mortgaged lease for any

period longer than 1 year without the prior consent in writing of the mortgagee which consent shall not be unreasonably withheld;

- (h) not to transfer the mortgaged land or mortgaged lease or any part of the land without the prior consent in writing of the mortgagee which consent shall not be unreasonably withheld;
- (i) during the continuance of a mortgage of a lease
 - (i) to pay the rent reserved by the lease, observe the agreements and perform the conditions thereof,
 - (ii) to keep the mortgagee indemnified against all proceedings, expenses or claims on account of the non-payment of rent or any part thereof or of breach of those agreements or conditions, and
 - (iii) if the lessee has an enforceable right, to renew the lease;
- (j) where the mortgage is a second or subsequent mortgage, that the mortgagor will pay the interest accruing due on each prior mortgage when it becomes due, and will, at the proper time, repay the principal money due on each prior mortgage; and
- (k) where the mortgagor fails to comply with any of the agreements implied by paragraph (c), (d), (e), (f), (i) or (j), that the mortgagee may spend such money as is necessary to remedy the breach, add the amount so spent to the mortgage money and that thereupon the amount shall be deemed for all purposes to be part of the mortgage money.

(2) There shall be implied in every mortgage, subject to express provisions to the contrary, a covenant by the mortgagee that if the mortgagor pays the mortgage money to the mortgagee on the stated day, with interest thereon at the rate specified, the mortgagee at any time thereafter at the request and cost of the mortgagor, will discharge the mortgaged property or transfer the benefit of the mortgage as the mortgagor may direct.

Position of mortgagee

98.(1) Subject to subsection (2), when a legal mortgage of land is created after 1st January 1980, the mortgagee has (subject to the rights of the mortgagor as mortgagor) the same protection, powers and remedies as he would have had if his security had been effected by conveyance or assignment to him of the legal estate of the mortgagor.

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

- (a) the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest; and
- (b) the right of a legal mortgagee to possession otherwise than in accordance with this subsection is hereby abolished, whether the mortgage was made before or after 1st January, 1980.

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

(4) Notwithstanding anything contained in this Act, it is hereby declared that sections 57 and 58 apply to a legal mortgage of land created after 1st January, 1980 as they apply to a conveyance or assignment of a legal estate in land.

Conveyance by mortgagee

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

a term of years has been mortgaged and the mortgagee so sells, the conveyance by him operates to vest the term of years in the purchaser subject as aforesaid.

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

(3) A conveyance coming within subsection (1) may be made in the name of the estate owner to be vested in the purchaser.

[1981-26]

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

(5) When time has run under the *Limitation and Prescription Act*, Cap. 232 in favour of a mortgagee of a legal estate so as to bar the right to redeem the mortgage, the mortgagee may by deed declare that the fee simple absolute in possession or term of years, as the case may be, is vested in him discharged from any mortgage in respect of which the right to redeem has been so barred, and the legal estate shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly.

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

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

(8) This section does not apply to a mortgage of a term of years where the mortgage does not extend to the whole of the land demised by the lease, unless the rent (if any) payable in respect of the land demised has been apportioned as respects the land mortgaged, or the rent is of no money value or no rent is reserved,

and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land mortgaged.

(9) This section applies to a mortgage whether executed before or after 1st January, 1980.

Realisation of equitable mortgages

100.(1) Where an order for sale is made by the court in reference to an equitable mortgage of a legal estate in land, the provisions of the *Judicial Sale of Land Act*, Cap. 227, shall apply thereto.

(2) This section applies to equitable mortgages made or arising before or after 1st January, 1980, but not to a mortgage which has been overreached under the powers conferred by this Act or otherwise.

Sale in redemption action

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

(2) In any action for

(a) redemption; or

(b) sale; or

(c) the raising and payment in any manner of mortgage money,

on the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, the court may direct a sale of the mortgaged property on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms; and the court may so direct

(i) notwithstanding that any person dissents, and

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

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

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

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

(5) This section applies to actions brought either before or after 1st January, 1980.

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

(7) For the purposes of this section, the court may, in favour of a purchaser, make a vesting order conveying the mortgaged property or appoint a person to do so, subject or not to any encumbrance, as the court may think fit; or, in the case of an equitable mortgage, not made by deed, of a legal estate in land, may make an order conferring on the mortgagee the same power to carry out the sale as he would have had under this Act if the mortgage had been created by a deed not excluding or restricting the power of sale.

Mines and minerals

102. Where a mortgagee’s power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorise him and the persons deriving title under him to dispose of

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

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

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

Consolidation

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

(2) Subsection (1) applies only if and as far as a contrary intention is not expressed in the mortgage deed or one of them.

(3) This section applies to mortgages made after 1st January, 1980.

(4) Except as specified in this section, 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 1st January, 1980 reserving a right to consolidate.

Tacking and further advances

104.(1) After 16th August, 1971, a prior mortgagee may, whether or not the prior mortgage was made expressly for the purpose of securing further advances, make further advances to rank in priority to subsequent mortgages, whether legal or equitable

- (a) if an arrangement to that effect has been made with the subsequent mortgagee; or
- (b) if he had no notice of such subsequent mortgages at the time when the further advances were made by him; or

- (c) whether or not he had notice as mentioned in paragraph (b) where the prior mortgage imposes an obligation on him to make such further advances.
- (2) In relation to the making of further advances after 16th August, 1971
- (a) where the prior mortgage was made expressly for securing a current account or other further advances, a mortgagee is not deemed to have notice of a mortgage merely by reason that it was recorded in the Land Registry, if it was not so recorded
- (i) at the time when the prior mortgage was created, or
- (ii) when the last search (if any) by him or on his behalf was made, whichever last happened;
[1990-20]
- (b) where the prior mortgage was not made expressly for securing a current account or other further advances, a prior mortgagee shall be deemed to have actual notice of a subsequent mortgage if it was recorded in the Land Registry at the time when the further advances were made by him.
[1990-20]
- (3) Subsections (1) and (2) apply to mortgages of land made before or after 16th August, 1971.
- (4) Save in regard to the making of further advances as provided by subsections (1) and (2) the right to tack is abolished.
- (5) Nothing in this section affects any priority acquired before 1st January 1980 by tacking or in respect of advances made without notice of a subsequent encumbrance or by arrangement with the subsequent encumbrancer.

Transfer in lieu of discharge

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

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

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

(3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

(4) This section applies to mortgages made either before or after 1st January, 1980 and takes effect notwithstanding any stipulation to the contrary.

Inspection, production and delivery of documents and priorities

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

(2) Subsection (1) applies to all mortgages, whenever made, and takes effect notwithstanding any stipulation to the contrary.

(3) A mortgagee, whose mortgage is surrendered or otherwise extinguished, is not 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 re-conveyance or otherwise.

Action for possession by mortgagor

107.(1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice

of his intention to seek possession or to enter into the receipt of the rents and profits therefore, may sue for such possession, for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

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

(3) This section applies whether the mortgage was made before or after 1st January 1980.

Mortgagor's power of leasing and accepting surrenders

108.(1) Subject to subsection (2), a mortgagor in possession has power to make a lease or sublease of the whole or any part of the land for any term exceeding 1 year as against every encumbrancer other than a mortgagee and as against every mortgagee whose consent in writing has been obtained, and for any shorter term without such consent.

(2) Where a mortgage is made before 1st January, 1980, the consent of the mortgagee is not required unless the mortgage deed so requires; and where the consent of the mortgagee is so required, it shall not be unreasonably withheld.

(3) Nothing in this section affects the validity of any lease granted by a mortgagor in possession before 1st January, 1980.

(4) A mortgagor shall, within 1 month after making the lease, deliver to the mortgagee, or where there are more than one, to the mortgagee first in priority, a copy of the lease duly executed by the lessee, but the lessee is not concerned to see that this provision is complied with.

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

-
- (6) This section applies only in so far as a contrary intention is not expressed in the mortgage deed or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing.
- (7) For the purpose of enabling a lease authorised by subsection (1) to be granted, a mortgagor has power to accept surrender of leases.
- (8) A mortgagor, making a lease or accepting a surrender under this section, may execute any instrument or do anything necessary or proper in that regard.

Mortgagor's power of leasing and accepting surrenders

- 109.**(1) A mortgagee who has appointed a receiver or is entitled to recover possession under this Part may, unless the mortgage otherwise provides
- (a) grant leases in respect of the property mortgaged;
 - (b) accept the surrender of leases;
 - (c) for the purposes of this section, execute in the stead of the mortgagor any instrument required to effect such lease or surrender.
- (2) A lease granted by a mortgagee shall
- (a) take effect in possession within 12 months after its date;
 - (b) reserve the best rent obtainable without taking a fine;
 - (c) be for a term not exceeding 21 years; and
 - (d) contain a declaration by the mortgagee that he has appointed a receiver on the date specified in the declaration.
- (3) Nothing in this section affects the validity of any lease granted by a mortgagee before 1st January 1980.

Powers incident to interest of mortgagee

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

- (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, evidence of title or other matters as the mortgagee thinks fit, with power to vary any contract for sale, to buy in at an auction or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby; and,
- (b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire, hurricane or earthquake any building or any effects or property of an insurable nature, whether affixed to the land or not, being or forming part of the property which, or an estate or interest wherein, is mortgaged, and the premiums paid for any such insurance become a charge on the mortgaged property or estate or interest in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
- (c) a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property or any part thereof; or, if the mortgaged property consists an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and
- (d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding 12 months from the making of the contract.

(2) The power of sale aforesaid includes the following powers as incident thereto

- (a) a power to impose or reserve or make binding, as far as the law permits, by covenant, condition or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;
- (b) a power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface
 - (i) with or without a grant or reservation of 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, and
 - (ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant, reservation or imposition of powers of working, and other powers and easements, rights and privileges, for or connected with mining purposes, in relation to the property remaining unsold or any part thereof or to any property sold.

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

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

(5) The power of sale conferred by this section includes such power of selling the estate of the mortgagor as is conferred by section 110.

(6) This section applies where the mortgage deed is executed after 1st January 1980.

Regulation of exercise of mortgagee's remedies

111.(1) Where

- (a) default is made in payment of the mortgage money or part thereof or some interest thereon or (in the case of mortgage money repayable by instalments) some instalment representing partly interest and partly payment of mortgage money; or
- (b) there is a breach of some provision contained in the mortgage deed or in this Act or in an enactment replaced by this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage to be observed or performed,

and in either case the default continues for a period exceeding 1 month, the mortgagee may serve on the mortgagor a notice in writing requiring him to pay the money owing or perform or observe the provision.

(2) Where a mortgagor fails, within 1 month, to comply with a notice served on him under subsection (1) the mortgagee may appoint a receiver of the income of the mortgaged property, or, subject to subsection (3), sell that property.

(3) Where a mortgagee has appointed a receiver, a power of sale under subsection (2) is not exercisable before a period of 6 months has elapsed since service of the notice under subsection (1).

Conveyance on sale

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

freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

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

- (a) no case had arisen to authorise the sale; or
- (b) due notice was not given; or
- (c) where the mortgage is made after 1st January, 1980, leave of the court, when so required, was not obtained; or
- (d) whether the mortgage was made before or after such date, the power was otherwise improperly or irregularly exercised,

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

(3) A conveyance on sale by a mortgagee, made after 1st January, 1980, is deemed to be made in exercise of a power of sale conferred by this Act unless a contrary intention appears.

Duty of mortgagee respecting mortgage and mortgagor

113.(1) It is the duty of a mortgagee, in the exercise after 1st January, 1980 of his statutory or express power of sale, to act in good faith and have regard to the interests of the mortgagor.

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

(3) The title of the purchaser is not impeachable on the ground that the mortgagee has committed a breach of any duty imposed by this section; but any

person damnified by the breach of duty has a remedy in damages against the mortgagee exercising the power of sale.

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

Application of proceeds of sale

114.(1) 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 payment into court under this Act of a sum to meet any such prior encumbrances shall be applied by him in the following order

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

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

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

Provisions as to exercise of power of sale

115.(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 mortgagee is not answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith or of any power or provision contained in the mortgage deed.

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

Mortgagee's receipts, discharges etc.

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

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as is directed in section 114 respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges and expenses payable include the costs, charges and expenses properly incurred in recovering and receiving the money or securities, and of conversion of securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money

117.(1) The amount of an insurance effected by a mortgagee under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is specified therein, the maximum amount due at any time under the mortgage.

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

- (a) where there is a declaration in the mortgage deed that no insurance is required; and
- (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed.

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

(4) Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire, hurricane, earthquake or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

Appointment, powers, remuneration and duties of receiver

118.(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by section 111 may, by writing under his hand, appoint such person as he thinks fit to be receiver.

-
- (2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, is the agent of the mortgagor, and the mortgagor is solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.
- (3) The receiver has power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name of the mortgagor, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same and to exercise any powers which may have been delegated to him by the mortgagee under this Act.
- (4) A person paying money to the receiver is not concerned to inquire whether any case has happened to authorise the receiver to act.
- (5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee in writing under his hand.
- (6) The receiver is entitled to retain out of any money received by him, for his remuneration and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding 10 per centum on the gross amount of all money received, as is specified in his appointment, or such other rate as the mortgagor and mortgagee, and other mortgagees, if any, agrees or the court, on application made for that purpose by the receiver, allows.
- (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, hurricane or earthquake out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the land or not, being of an insurable nature.
- (8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows
- (a) in discharge of all rents, rates, taxes and outgoings whatever affecting the mortgaged property; and

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

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

Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver

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

(2) This section applies only where the mortgage deed is executed after 1st January, 1980; and in this section “act of bankruptcy” has the meaning assigned to it by section 3 of the *Bankruptcy Act*, Cap. 303.

Effect of advance on joint account**120.(1)** Where

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

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

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

Notice of trusts affecting mortgage debts

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

of the trust, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage, that

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

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

(2) This section applies to mortgages made before or after 1st January, 1980, but only as respects dealings effected after such date.

(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.

Transfer of mortgages

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

- (a) the right to demand, sue for, recover and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon;
- (b) the benefit of all securities for the same, the benefit of and the right to sue on all covenants with the mortgagee and the right to exercise all powers of the mortgagee; and
- (c) all the interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such interest subject to the right of redemption then subsisting.

- (2) In this section, “transferee” includes his personal representatives and assignees.
- (3) A transfer of mortgage may be made in the form contained in the Second Schedule with such variations and additions, if any, as the circumstances may require.
[1979-44]
- (4) This section applies whether the mortgage transferred was made before or after 1st January, 1980, but applies only to transfers made after such date.
- (5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

Discharge of mortgage by endorsed or annexed receipt

- 123.(1)** A receipt endorsed on, written at the foot of or annexed to a mortgage for all money thereby secured, which is executed by the mortgagee, operates, subject to subsection (2) and to section 124, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, and as a termination of the mortgage and of all the mortgagee’s interest in the mortgaged property, but without prejudice to any term or other interest which is paramount to the interest of the mortgagee.
- (2) Where it appears from such a receipt that the payment is by a person not entitled to the immediate equity of redemption, the receipt operates as a transfer of the mortgage to him unless
- (a) it is otherwise expressly provided; or
 - (b) the money is paid out of capital money, or other money, in the hands of a trustee, properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.
- (3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent 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 discharge or transfer to be executed in lieu of a receipt; but where a receipt operates as a transfer under subsection (2) it has the like effect as a deed expressed to be a transfer by the mortgagee to the person paying the money, and is liable to the same stamp duty, except that nothing in this section renders any cooperative or other society liable to any stamp duty to which it would not otherwise have been liable.

(5) A receipt discharging a mortgage may be given in the form contained in the *Second Schedule*, with or without variations and additions, or in the form set out in

(a) Schedule 2 to the *Building Society Act*, Cap. 377; or

(b) in accordance with section 54 of the *Friendly Societies Act*, Cap. 379; or

(c) Schedule 4 to the *Industrial and Provident Societies Act*, Cap. 380,

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

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

(7) Notwithstanding anything contained in this section, a mortgagee whether having a legal or equitable charge may release any part of the land subject to the said charge without affecting its validity against any land not specifically discharged.

(8) Where a mortgage is registered in accordance with sections 56 to 58, the Registrar shall record the receipt produced to him under subsection (1) or (2).

(9) This section applies to mortgages whenever made, but applies to mortgages made before 1st January, 1980 only as respects discharges effected after such date.

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

(11) In this section, “Registrar” means “Registrar of Titles.”

[1990-20]

Right of limited owner to prevent discharge on redemption

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

Form of charge by way of legal mortgage

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

(2) The form referred to in subsection (1) may be used with or without variations.

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

(4) In such a mortgage deed, so far as consistent with the variations, if any, the provisions set out in section 97 are implied.

Form of statutory transfer of charge by way of legal mortgage

126.(1) A transfer of a mortgage may be made by a deed expressed to be made by way of transfer of mortgage, being in one of the two forms (No. 4 or No. 5) set out in the Second Schedule as may be appropriate to the case.

(2) The forms referred to in subsection (1) may be used with or without variations.

(3) In whichever of those two forms the deed of transfer is made, subsections 122(1) and (2) apply to it.

(4) If a covenantor joins in the deed of transfer, there is implied therein a covenant with the transferee by the person expressed to join therein as covenantor that the covenantor will, on the next of the days fixed by the mortgage deed for payment of interest, pay to the transferee the mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime at the rate stated in the mortgage deed; and will thereafter as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days fixed by the mortgage deed for payment of interest.

(5) If the deed of transfer is made in the Form No. 5, it operates not only as a transfer of mortgage, but also as a mortgage and accordingly the provisions of this section have effect in relation thereto.

(6) This section applies whether the mortgage transferred was made before or after 1st January, 1980, but applies only to transfers made after such date.

Implied covenants joint and several

127. In a deed of mortgage, or of transfer of mortgage, where more persons than one are expressed to charge as mortgagors, or to join as covenantors, the implied covenant on their part is a joint and several covenant by them; and, notwithstanding section 86, where there are more mortgagees or more transferees than one, the implied covenant with them is a covenant with them jointly, unless

the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them is a covenant with each severally in respect of the share or distinct sum secured to him.

PART VIII
RENTCHARGES

Remedies for the recovery of annual sums charged on land

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

(2) If at any time the annual sum or any part thereof is unpaid for 21 days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter upon and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent thereby or otherwise the annual sum and all arrears thereof, may be fully paid.

(3) If at any time the annual sum or any part thereof is unpaid for 40 days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4) Subject to subsection (5), where a person is entitled to the annual sum, whether taking possession or not, he may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by all or any of the means hereinafter mentioned, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed.

(5) Nothing in subsection (4) authorises the creation of a legal term of years absolute after 1st January, 1980, save where the annual sum is a rentcharge held for a legal estate.

(6) The surplus, if any, of the money raised, or of income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(7) The means by which such annual sum, arrears, costs and expenses may be raised includes

(a) the creation of a legal mortgage on a sale (effected by assignment or subdemise) of the term created in the land charged or any part thereof;

(b) the receipt of the income of the land comprised in the term.

(8) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

(9) The rule of law relating to perpetuities does not apply to any powers or remedies conferred by this section.

(10) The powers and remedies conferred by this section apply where the instrument creating the annual sum comes into operation after 1st January, 1980.

Creation of rentcharges charged on another rentcharge and remedies for recovery thereof

129.(1) A rentcharge or other annual sum (not being rent incident to a reversion) payable half-yearly or otherwise may be granted, reserved, charged or created out of or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in like manner as the same could have been made to issue out of land.

(2) If at any time the annual sum so created or any part thereof is unpaid for 21 days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Act relating to the appointment, powers, remuneration and duties of a receiver, shall apply in the like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Act, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.

(3) The power to appoint a receiver conferred by this section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land, by the last preceding section, but subsection (9) of that section shall apply and have effect as if herein re-enacted and in terms made applicable to the powers conferred by this section.

(4) This section applies to annual sums expressed to be created after 1st January, 1980.

PART IX
POWERS GENERALLY

Release of power

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

Disclaimer of power

131.(1) A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim the power, and, after disclaimer, cannot exercise or join in the exercise of the power.

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

Protection of purchaser in good faith claiming under fraudulent appointment

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

(2) Where the interest appointed exceeds, in amount or value, the interest in the property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the protection afforded by this section to a purchaser does not extend to the excess.

(3) In this section, “a purchaser in good faith” means a person dealing with an appointee of the age of not less than 25 years for valuable consideration in money

or money's worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

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

(5) This section applies only to dealings effected after 1st January, 1980.

Validation of appointment where object is excluded or takes illusory share

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

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

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

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

Execution of non-testamentary power

134.(1) A deed executed after 10th November, 1885 in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested at the time of the execution) is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of

the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

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

- (a) the consent of any particular person is to be necessary to a valid execution;
- (b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

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

Application of Part IX

135. This Part applies to powers created or arising either before or after 1st January, 1980.

PART X

POWERS OF ATTORNEY

Definitions for purposes of Part X

136. In this Part

“donor” means the person giving a power of attorney;

“donee” means the person to whom a power of attorney is given;

“power of attorney” means a power conferred by an instrument in writing by a donor upon a donee to execute on behalf of the donor such instruments (including instruments capable of being made by deed only) relating wholly

or in part to the acquisition or disposal of interest in land or to the execution of such other acts and things as are specified in particular or in general in the instrument creating such power;

“power” means a power of attorney.

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

137.(1) Any person making any payment or doing any act in accordance with or in pursuance of or in reliance on a power is not liable in respect of the payment or act by reason that before the payment or act the donor had died, become subject to disability, become bankrupt or revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same, and such act or payment is accordingly as effectual as if none of the said events had occurred.

- (2) (a) A statement in writing by a donee or any person dealing with him to the effect that he has not or had not at the date of any such payment or act received any notice or information of the revocation of the power, by death or otherwise, is, if made immediately before or within 3 months after any such payment or act as aforesaid or (as regards the transferee of any property transferred by the donee) immediately before or within the same time of any subsequent dealing with any property transferred, conclusive proof in favour of the person to whom the statement is made and his successors in title in the absence of any knowledge of such revocation by the maker of the statement at the time when the payment or act was made or done;
- (b) where the donee is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statement in like manner as if that officer had been the donee;
- (c) a donee or other person making a statement under this subsection which is knowingly false in regard to any such matter is liable in like manner as if the statement had been contained in an affidavit.

(3) Where probate or letters of administration have been granted to any person as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power.

(4) Nothing in this section affects the rights of any person entitled to money or property paid or transferred by the donee, and the person so entitled has the same remedy against the person to whom the money is paid or the property transferred as he would have had against the donee, provided that the person entitled can show that the payee or transferee had actual notice that the power had never come into operation or of the revocation of the power before such payment was made or property transferred.

(5) This section applies to payments made and acts done before or after 1st January 1980 and this section applies to a power implied by statute.

Execution under power of attorney

138.(1) The donee may, if he thinks fit, execute any instrument or do any act in and with his own name and signature and under his own seal, where sealing is required, by the authority of the donor; and every instrument so executed or act so done is as effectual in law as if it had been executed or done by the donee in the name and with the signature and seal, where sealing is required, of the donor.

(2) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, as an alternative to the procedure specified in subsection (1), he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and, in the case of a deed, by affixing his own seal, and such execution takes effect and is valid in like manner as if the corporation had executed the conveyance.

(3) 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 or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing

body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then, in favour of a purchaser the instrument is deemed to have been executed by an officer duly authorised.

(4) This section applies to powers created by instruments executed either before or after 1st January 1980 and operates without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner.

Certified copies of powers

139.(1) Where an instrument creating a power confers power to dispose of or deal with any interest in or charge upon land (not being registered land or a registered charge thereon) the instrument or a certified copy thereof or of such portions thereof as referred to or are necessary to the interpretation of such power, shall be recorded in the Registration Office or the Land Registry, as the case may be, and shall be admissible in evidence in any court in Barbados without further proof of the execution thereof.

(2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being registered land or a registered charge thereon) is entitled to have any instrument creating a power which affects his title, or, at the option of the donee, a copy thereof or of the material portions thereof, delivered to him free of expense.

(3) This section applies to instruments executed before or after 1st January, 1980, but no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

[1990-20]

Notice of irrevocable power by way of security

140.(1) If a power expressed to be given by way of security is, in the instrument creating it, also expressed to be irrevocable, either indefinitely or for a fixed period, then

- (a) the power shall not be revoked at any time during, the currency of the power without the concurrence of the donee, either by anything done by the donor or by the death, disability or bankruptcy of the donor; and
- (b) any act done at any time during the currency of the power in pursuance thereof is as valid as if anything done by the donor had not been done or the death, disability or bankruptcy of the donor had not happened, whether or not the donee or the persons dealing with him have notice thereof.

(2) A statement in writing by a donee to the effect that the power is operative at a particular date is conclusive proof of that fact in favour of a person dealing with the donee.

Devolution of a power of attorney given to a purchaser

141.(1) A power expressed to be given by way of security may be given, and shall be deemed to have always been capable of being given, to a purchaser of property or any interest therein and to the persons deriving title thereto under him, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any power to appoint substitutes.

(2) This section applies to powers created by instruments executed before or after 1st January, 1980.

PART XI
EQUITABLE INTERESTS

Abolition of the rule in Shelley’s case, and as to heirs taking by purchase

142.(1) Where, by any instrument coming into operation after 1st January, 1980, an interest in any property is expressed to be given to the heir or to any particular heir or any class of the heirs or issue of any person in words which, under the rule of law known as the rule in Shelly’s case, would have operated

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

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

(2) In any such instrument

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

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

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

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

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

Construction and effect of references to failure of issue

143.(1) Where a person is entitled to any interest in any property subject to a condition precedent or subsequent (whether or not giving rise to an executory limitation) importing a default or failure of the issue of any person, whether within or at any specified time or not, in his lifetime, at the time of his death or thereafter (including an indefinite failure of issue), the provisions of this section apply to that condition.

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

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

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

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

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

(4) Subsection (2) applies to wills coming into operation before or after 1st January 1980 but does not apply to any condition contained in any other instrument coming into operation before such date.

(5) Subsection (3), in relation to instruments coming into operation before 1st January 1980 applies

(a) only to executory limitations;

- (b) as if for the words “age of majority or married” there were substituted the word “18”; and
- (c) only where the executory limitation is in defeasance of an estate or interest in land.

Equitable waste

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

Extension of the rule in *Dearle v. Hall*

145.(1) This section does not apply to any dealing with an equitable interest which is required to be protected under the *Land Registration Act*, Cap. 229, or to be recorded under section 3 of this Act; and nothing in this section affects any priority acquired before 1st January 1980.

(2) The law applicable to dealings with equitable things in action which regulates the priority of competing interests therein shall, as respects dealings with equitable interests in land, capital money and securities representing capital money, effected after 1st January 1980 apply to and regulate the priority of competing interests therein (whether or not the money or securities are in court).

(3) In the case of a dealing with an equitable interest under the statutory trusts, capital money or securities representing capital money, the persons to be served with notice of the dealing are the trustees; and where the equitable interest is created by a derivative or subsidiary settlement on the statutory trusts, the persons to be served with notice are the trustees of the property comprised in the derivative or subsidiary settlement.

(4) In the case of a dealing with an equitable interest in the proceeds of sale of land or in the rents and profits until sale, the persons to be served with notice remain, as heretofore, the trustees for sale.

(5) In any other case, the person to be served with notice of a dealing with an equitable interest in land is the estate owner of the land affected.

(6) The persons on whom notice is served in accordance with subsection (3) to (5) are affected thereby in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose.

(7) Subsections (3) to (6) do not apply where the money or securities are in court.

(8) A notice given to, or received by, a trustee after 1st January 1980 as respects any dealing with an equitable interest in real or personal property, must be in writing in order to affect the priority of competing claims of purchasers in that equitable interest.

(9) Where, as respects any dealing with an equitable interest in real or personal property

- (a) the trustees are not persons to whom a valid notice of the dealings can be given; or
- (b) there are no trustees to whom a notice can be given; or
- (c) for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay,

a purchaser may, at his own cost require

- (i) that a memorandum of the dealing be endorsed on or annexed to the instrument creating the trust,
- (ii) that the instrument be produced to him by the person having the possession or custody thereof to prove that a sufficient memorandum has been endorsed thereon or annexed thereto.

(10) The memorandum referred to in subsection (9) operates as respects priorities, in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receive the notice at the time when the memorandum is endorsed on or annexed to the instrument creating the trust.

(11) Where the property affected is land held on trust, the memorandum shall be endorsed on or annexed to the instrument by which the equitable interest is created.

(12) Where the trust is created by statute or by operation of law, or in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof is, for the purposes of this section, the instrument creating the trust; but where the trust arises by reason of an intestacy, the grant of representation in force when the dealing was effected constitutes that instrument.

(13) Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property affected are entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and, subject to the payment of costs, any person interested in the equitable interest (including a person considering purchasing it) may require production of the notice.

(14) The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein corresponds to the liability of a trustee to produce documents and furnish information to persons entitled to equitable interests in the land or in the proceeds of sale of the land.

(15) In this section, “dealing” includes a disposition by operation of law.

Power to nominate a trust corporation to receive notices

146.(1) By any instrument creating a trust, a trust corporation may be nominated to whom notices of dealings affecting real or personal property may be given, whether or not under section 145, and in default of such nomination the trustees (if any), or the court on the application of any person interested, may make the nomination.

(2) The person having the possession or custody of any instrument on which notices under section 145 may be endorsed shall cause the name of the trust corporation to whom notices may be given to be endorsed upon that instrument.

(3) Notice given to any trust corporation whose name is so endorsed operates in the same way as a notice to all the trustees or endorsement under section 145.

(4) Where a trust corporation is acting for the purposes of this section, a notice given to a trustee of a dealing relating to the trust property shall forthwith be delivered or sent by post by the trustee to the trust corporation, and until received by the corporation does not affect any priority.

(5) A trust corporation shall not be nominated for the purposes of this section

(a) unless that corporation consents to act; or

(b) where that corporation has any beneficial interest in or charge upon the trust property; or

(c) where a trust corporation is acting as a trustee or one of the trustees.

(6) Where a trust corporation acting for the purposes of this section becomes entitled to any beneficial interest in or charge upon the trust property, the trustees shall nominate another trust corporation in its place and all documents relating to notices affecting the trust shall be delivered to the corporation so nominated.

(7) A trust corporation acting for the purposes of this section shall keep a separate register of notices of dealings in respect of each equitable interest and shall enter therein

(a) the date of the notice;

(b) the name of the person giving the notice;

(c) short particulars of the equitable interest intended to be affected; and

(d) short particulars of the effect of the dealing if mentioned in the notice.

- (8) The trust corporation may, before making any entry in the register, require the applicant to pay the prescribed fee.
- (9) Subject to the payment of a fee not exceeding the prescribed fee, the trust corporation shall permit any person who would, if the corporation had been the trustee, have been entitled to inspect notices served on the trustee, to inspect and take copies of the register and any notices held by the corporation.
- (10) Subject to the payment by the applicant of the prescribed fee, the trust corporation shall reply to all inquiries respecting notices received by the corporation in like manner and in the same circumstances as if the corporation had been the trustee.
- (11) In this section, “prescribed fee” means such fee as may be prescribed by the Judicial Advisory Council.

Notice to one of several trustees of dealing with equitable interest

147.(1) Where notice in writing is given of a dealing with an equitable interest in property to any trustee, but not to all the trustees, that notice is as effective in affecting the priority of competing claims of purchasers to that equitable interest as if it had been given to all the trustees, in respect of dealings with that equitable interest effected while at least one trustee who has received that notice remains a trustee of the property affected; but in respect of dealings effected after the trustee (or trustees) who received the notice has (or have all) ceased to be trustee (or trustees) of the property affected, such a notice ceases to be so effective unless

- (a) the trustees who did not receive the notice were informed of its existence or of the dealing to which it relates; or
 - (b) any trustee of whom a purchaser makes inquiries had been informed of its existence or of the dealing to which it relates; or
 - (c) at any time all the trustees for the time being of the property affected have been informed of its existence or of the dealing to which it relates;
- or

- (d) the notice or a memorandum of the dealing has been endorsed on or annexed to the instrument creating the trust, or by which the equitable interest is created, or which is evidence of the devolution thereof; or
 - (e) it is given to a trust corporation nominated in accordance with section 146.
- (2) This section applies to an estate owner on whom notice is to be served under subsection 145(5) as it applies to a trustee.
- (3) This section applies to dealings effected, notices given and changes in trusteeship occurring before or after 1st January, 1980.

PART XII

LESSOR AND LESSEE

Meaning of term of years absolute

148. For the purposes of this Act “term of years absolute”

- (a) means a term of years
 - (i) taking effect either in possession not later than 12 months after its date or in reversion after an existing lease having not more than 7 years to run at the date of the new lease,
 - (ii) whether or not at a rent,
 - (iii) with or without impeachment for waste,
 - (iv) subject or not to another legal estate,
 - (v) either certain or liable to determination by notice, reentry, operation of law, or by a provision for cesser on redemption, or in any other event;
- (b) includes a term
 - (i) for less than one year, or

- (ii) for one or more years and a fraction of a year, or
- (iii) from year to year or other periodic tenancy.

Creation of relationship

149.(1) The relationship of lessor and lessee shall, subject to subsections (2) and (3), be created only by an instrument in writing executed by the lessor or his agent thereunto authorised in writing.

(2) An instrument in writing is not necessary for the creation of the relationship

- (a) for a term of one year certain; or
- (b) for a fixed term for a period less than one year certain; or
- (c) from year to year or for any other periodic tenancy.

(3) Authorisation of the lessor's agent need not be in writing in any case where an instrument in writing is not necessary for the creation of the relationship of lessor and lessee.

Doctrine of *interesse termini* and reversionary leases

150.(1) From 1st January 1980, the doctrine of *interesse termini* is abolished and all terms of years absolute, whether created before or after such date, take effect at law or in equity, according to the estate, interest or powers of the grantor, from the date fixed for the commencement of the term without actual entry.

(2) Nothing in this section affects prejudicially 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 1st January, 1980, operates to vary any statutory or other obligations imposed in respect of such terms or interests

Attornment by lessees

151.(1) Where land is subject to a lease, the conveyance of a reversion in the land expectant on the determination of the lease is 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; 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, is void.

(4) Subsection (3) does not apply to an attornment

(a) made pursuant to a judgment of a court of competent jurisdiction; or

(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.

Effect of extinguishment of reversion

152. 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.

Leases invalidated by reason of non-compliance with terms of powers under which they are granted

153.(1) Subject to subsection (2), where, in the intended exercise of any power of leasing, whether conferred by statute 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, takes effect 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.

(2) A lessee under an invalid lease is not, by virtue of any such implied contract, 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.

(3) 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 takes effect as a valid lease in like manner as if it had been granted at that time.

(4) 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, is, at the request of the person so able to confirm the lease, bound to accept a confirmation thereof, and thereupon the lease has effect and is deemed to have had effect as a valid lease from the grant thereof.

(5) Where, upon or before acceptance of rent under an invalid lease, any receipt is signed or confirmation is given by or on behalf of the person accepting such rent, that acceptance is, as against that person, deemed to be a confirmation of the lease.

(6) Subsections (1) to (5) do not affect prejudicially

(a) any right of action or other right or remedy to which, but for those subsections or any enactment replaced thereby 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;

(b) any right of re-entry or other right or remedy to which, but for those subsections or any enactment 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.

(7) 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 is for the purposes of this section deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.

(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.

Licences granted to lessees

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

- (a) to the permission actually given; or
- (b) to the specific breach of any provision or covenant referred to; or
- (c) to any other matter thereby specifically authorised to be done,

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

(2) Notwithstanding any such licence

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

(3) Where, in any lease, there is a power or condition of reentry 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 does not operate to extinguish the right of entry in case of any breach of covenant or condition by, the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property (as the case may

be) in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the licence.

Waiver of covenants

155.(1) Unless a contrary intention appears in accordance with subsection (2), where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant, condition or agreement in any lease or tenancy agreement is proved to have taken place in any particular instance, such waiver does not extend to any instance, or to any breach of covenant or condition save that to which such waiver specifically relates, nor does it operate as a general waiver of the benefit of any such covenant, condition or agreement.

(2) A general waiver of a covenant, condition or agreement in any lease is not effective unless executed in writing by the lessor or his agent thereunto authorised in writing.

Apportionment of conditions on severance

156.(1) Where there is

- (a) severance by conveyance, surrender or otherwise of the reversion expectant on the termination of a lease; or
- (b) 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 reversion as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) This section applies to leases made before or after 1st January, 1980 and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such date; but where the lease was made before 19th June, 1897, nothing in this section affects the operation of a severance of a reversion or partial avoidance or cesser of the term which was effected before 1st January, 1980.

Lessor's implied covenants

157. There shall, subject to any provisions to the contrary, be implied in every lease a covenant by the lessor with the lessee

- (a) to give quiet enjoyment of the land forming the subject-matter of the lease without interruption by the lessor or any person claiming through him;
- (b) not to use or permit the use of adjoining or neighbouring land in the possession or control of the lessor that renders the leased land unfit for the purpose for which it is leased;
- (c) to keep in repair the roof, main walls and main drains, and where part only of the building is leased, the common passage and common installations;
- (d) in the case of a lease of a dwelling-house or part thereof, that the house or the part thereof is fit for human habitation at the commencement of the tenancy;
- (e) to repair the leased premises in the case of destruction by fire, earthquake, hurricane, flood or riot;
- (f) to pay the rates, taxes and other outgoings.

Lessee's implied covenants

158. There shall, subject to any provisions to the contrary, be implied in every lease a covenant by the lessee with the lessor

- (a) to pay the rent reserved by the lease;
- (b) in the case of a lease of agricultural land, to farm that land in accordance with the rules of good husbandry;
- (c) to keep the interior of the leased premises in good repair, reasonable wear and tear excepted;
- (d) when the lease is of furnished premises, to keep the furniture in as good condition as it was at the commencement of the lease, reasonable wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;
- (e) to permit the lessor or his agent to enter and inspect the premises;
- (f) not to transfer, charge, sublet or otherwise part with the possession of the leased premises or any part thereof without the written consent of the lessor.

Meaning of "repair"

159.(1) For the purposes of this Act, "repair" means the state of repair in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and location of the premises at the commencement of the lease.

(2) Nothing in this section shall be construed as requiring a lessee to put a building in a better state of repair than that in which it was at the commencement of the lease.

Running of lessee's covenants

160.(1) The lessor for the time being may enforce against the lessee for the time being all covenants, conditions and agreements, in respect of rent or otherwise, contained or implied in every lease or tenancy agreement, to be observed or performed by the lessee.

(2) A lessor may enforce all the said covenants, conditions and agreements notwithstanding

- (a) a severance of the reversion expectant on the termination of the lease or tenancy agreement, in respect of the severed parts of the reversion;
- (b) that he has become entitled to the income of the whole or part of the land after the condition of re-entry or forfeiture has become enforceable, but this does not render enforceable any condition of re-entry or other condition waived or released before the lessor became so entitled.

(3) This section

- (a) takes effect without prejudice to any liability arising under contract;
- (b) applies only if and as far as a contrary intention is not expressed or implied in the lease or tenancy agreement, and has effect subject to the terms of the lease or tenancy agreement and to the provisions therein contained;
- (c) applies to leases or tenancy agreements made before or after 1st January, 1980, but does not affect the operation of
 - (i) any severance of the reversion expectant on the termination of the lease or tenancy agreement,
 - (ii) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant, condition or agreement,

effected before 1st January, 1980.

Running of lessor's covenants

161.(1) The lessee for the time being may enforce against the lessor for the time being all covenants, conditions and agreements, contained or implied in every lease or tenancy agreement, to be observed or performed by the lessor.

(2) A lessee may enforce all the said covenants, conditions and agreements, notwithstanding a severance of the reversion expectant on the termination of the lease or tenancy agreement, in respect of the severed parts of the reversion.

(3) This section

(a) takes effect without prejudice to any liability arising under contract;

(b) applies to leases or tenancy agreements made before or after 1st January 1980, whether the severance of the reversion was effected before or after such date but, where the lease was made before 1st January, 1882, nothing in this section affects the operation of any severance of the reversion effected before 1st January 1980.

Assignment of term of years

162. The estate or interest of any tenant is assignable only by an instrument in writing executed by the lessee or his agent thereunto authorised in writing or by operation of law.

Lessee's fixtures

163.(1) Any chattel, engine, machinery, fencing or other fixture, or any building, erected on or affixed to the demised premises by the lessee at his sole expense, for any purpose of residence, trade, manufacture or agriculture, or for ornament or for the domestic convenience of the lessee in the occupation of the demised premises, but not so erected or affixed in accordance with any obligation or in violation of any agreement in that behalf, may be removed by the lessee at any time during the continuance of the lease.

- (2) The right conferred by subsection (1) is not exercisable where removal of the building or other fixtures, as the case may be, would cause irreparable damage to the demised premises, but so long as the said right is exercisable the fixture or building, as the case may be, remains the property of the lessee.
- (3) Where, in the case of a periodic tenancy, the length of the period of notice to determine the tenancy is not enough reasonably to enable the lessee to remove the building or other fixture, as the case may be, before the determination of the tenancy, the lessee may exercise the right conferred by subsection (1) for such period of time as is reasonably necessary for the removal of the building or other fixture, as the case may be, after the said determination.
- (4) Upon an application by the lessor, the court may, if it so determines, make an order vesting in the lessor the building or other fixture, as the case may be, provided reasonable compensation for the loss of the said building or other fixture is paid to the lessee.
- (5) The lessor is entitled to reasonable compensation for any damage caused to the demised premises by removal of any building or other fixture under this section.
- (6) This section applies
- (a) if and so far as only a contrary intention is not expressed or contained in, and takes effect subject to, the terms of, the lease or tenancy agreement;
 - (b) only to leases or tenancy agreements made or executed after 1st January 1980.

Insurance of demised premises

164.(1) From 1st January 1980.

- (a) where one party to the lease covenants to insure or repair the demised premises but instead the other party to the lease insures the demised premises, the latter shall be deemed to contract with respect to the said

insurance on behalf of the former, to the extent of the former's interest in the demised premises; and

- (b) all money received on an insurance of the demised premises against loss or damage by fire or otherwise shall be held on behalf of the lessor and lessee for their benefit, in the proportion of their respective interest in the demised premises.

(2) Where the lease contains no covenant to repair or insure by the lessor or lessee, and only one party to the lease insures the demised premises, that party shall be deemed to contract with respect to the said insurance on behalf of the other party, to the extent of the other party's interest in the demised premises, and subsection (1) (a) applies to all money received on an insurance of such demised premises against loss or damage by fire or otherwise.

(3) This section applies if and so far only as a contrary intention is not expressed in, and takes effect subject to the terms of, the lease.

Termination by surrender

165.(1) Subject to this Act, a term of years may be terminated by surrender by

- (a) express agreement in writing of the parties; or
(b) such unequivocal conduct of both parties as is inconsistent with the continuance of the existing lease or tenancy agreement.

(2) The surrender of a portion of the demised premises does not in any way prejudice or affect the rights of the lessor with respect to the residue of the said premises.

(3) A term of years may be surrendered for the purpose of obtaining a renewal thereof, without a surrender of any term of years derived thereout.

(4) The lessee under the new lease or tenancy agreement, 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 or subtenancy agreement, as if the original term of years had not been surrendered but was or remained vested in him.

(5) Each underlessee or subtenant, and any person deriving title under him, is entitled to hold and enjoy the land comprised in the underlease or subtenancy agreement (subject to the payment of any rent reserved by, and to the observance of the covenants, agreements and conditions in, the underlease or subtenancy agreement), as if the term of years out of which the subterm was derived had not been surrendered.

(6) The lessor granting the new term 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, the new lease or tenancy agreement (so far only as the said rent, covenants, agreements or conditions do not exceed or impose greater burdens than those reserved by, or contained in, the original lease or tenancy agreement out of which the underlease or subtenancy agreement is derived) as he would have had

- (a) if the original lease or tenancy agreement had remained on foot; or
- (b) if a new underlease or subtenancy agreement derived out of the new lease or tenancy agreement had been granted to the underlessee or subtenant or a person deriving title under him,

as the case may require.

(7) For the removal of doubt, it is hereby declared to be, and always to have been, the law that the lessor, upon the surrender of a term of years, is bound by any subterm validly created by the lessee to the same extent as that lessee would have been bound if there had been no such surrender.

(8) This section does not affect the power of the court to give relief against forfeiture.

Forfeiture

166.(1) The right of forfeiture may

- (a) be exercised by entering upon the land and remaining in possession thereof; or
- (b) be enforced by action before a court.

(2) A lessor may, subject to section 168 and any provision to the contrary in the lease, forfeit the lease if the lessee

- (a) commits a breach of any agreement or condition on his part expressed or implied in the lease;
- (b) is adjudicated bankrupt; or
- (c) being a company, goes into liquidation.

(3) The right to forfeit shall be construed as having been waived where the lessor

- (a) accepts rent that has become due since the breach that gave rise to forfeiture;
- (b) by some positive act, shows an intention to treat the lease as subsisting, and

is, or should by reasonable diligence have become, aware of the commission of the breach.

(4) The acceptance of rent after the lessor has commenced an action by virtue of subsection (1) shall not be construed as being a waiver of the right of forfeiture.

(5) The forfeiture of a lease terminates every sublease or other interest derived out of that lease.

- (6) Notwithstanding subsection (5)
- (a) where the forfeiture is set aside by the court on grounds of fraud on the sublessee; or
 - (b) where the court grants relief against forfeiture under section 167,
- every sublease or other interests relating to that lease shall be deemed to be subsisting.

Notice before forfeiture

167. Notwithstanding anything to the contrary contained in a lease, a lessor is not entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease until

- (a) the lessor has served on the lessee a notice
 - (i) specifying the breach complained of,
 - (ii) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice, and
 - (iii) in any case other than of non-payment of rent, requiring the lessee to make compensation in money for the breach; and
- (b) the lessee has failed
 - (i) to remedy the breach within a reasonable time, if it is capable of being remedied, or
 - (ii) to make reasonable compensation in money.

Relief against forfeiture

168.(1) A lessee upon whom a notice has been served under section 167 or against whom the lessor enforces his right of forfeiture by action or re-entry may apply to the court for relief and the court may, having regard to

- (a) the proceedings;

- (b) the conduct of the parties; and
- (c) all the circumstances of the case,

grant relief on such terms as it thinks fit.

(2) The court may, on the application of any person claiming as sublessee or mortgagee any interest in the property comprised in the lease for which forfeiture is sought, make an order vesting the property so claimed in that sublessee or mortgagee for the period of the lease.

PART XIII PERPETUITIES

Power to specify perpetuity period

169.(1) Subject to subsection (2) and section 178, where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, is of a duration equal to such number of years, not exceeding 80, as is specified in that behalf in the instrument.

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

Presumption and evidence as to future parenthood

170.(1) Where, in any proceedings, there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then

- (a) subject to paragraph (b), it shall be presumed that a male can have a child at the age of 14 years or over, but not under that age, and that a

female can have a child at the age of 12 or over, but not under that age or over the age of 55 years; but

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

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

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

(4) In subsections (1) to (3) references to having a child are references to begetting or giving birth to a child, but those provisions (except subsection (1) (b)) apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.

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

Uncertainty as to remoteness

171.(1) Where, apart from this section and sections 172 and 173, a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition is not, until such time (if any) as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, subject to the rule against perpetuities; and it becoming so established does not affect the validity of anything previously done in relation to the interest

disposed of by way of advancement, application of intermediate income or otherwise.

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

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

(4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 169 or subsection 178 (3), it shall be determined as follows

(a) where any persons falling within subsection (5) are individuals in being and (except in the case of a spouse within subsection (5) (f) ascertainable at the commencement of the perpetuity period), the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description of persons falling within paragraph (b) or paragraph (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor;

(b) where there are no lives under paragraph (a), the period is 18 years.

(5) The persons to whom subsection (4) applies are as follows

(a) the person by whom the disposition was made;

-
- (b) a person to whom or in whose favour the disposition was made, that is to say
- (i) in the case of a disposition to a class of persons, any member or potential member of the class,
 - (ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied,
 - (iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class,
 - (iv) in the case of a special power of appointment exercisable in favour of one person only, that person, or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied,
 - (v) in the case of any power, option or other right, the person on whom the right is conferred;
- (c) a person having a child or grandchild within subparagraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those sub-paragraphs, or any of whose grandchildren, if subsequently born, would by virtue of his or her birth take a vested interest under the disposition;
- (d) any person on the failure or determination of whose prior interest the disposition is limited either mediately or immediately to take effect;
- (e) a person having a child or grandchild within paragraph (d);
- (f) a spouse of any person within subparagraph (i) to (iv) of paragraph (b) and paragraph (c).

Reduction of age and exclusion of class members to avoid remoteness

172.(1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding 18 years and it is apparent at the time the disposition is made or becomes apparent at a subsequent time

(a) that the disposition would, apart from this section, be void for remoteness; but

(b) that it would not be so void if the specified age had been 18 years,

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

(2) Where, in the case of any disposition, different ages exceeding 18 years are specified in relation to different persons

(a) the reference in subsection (1) (b) to the specified age shall be construed as a reference to all the specified ages; and

(b) that subsection operates to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents subsections (1) and (2) from operating to save a disposition from being void for remoteness, those persons are thenceforth for all the purposes of the disposition excluded from the class, and those subsections thereupon have effect accordingly.

(4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the disposition to be

treated as void for remoteness, those persons are, unless their exclusion would exhaust the class, thenceforth for all the purposes of the disposition excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 173 applies, the operation of this section does not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

Condition relating to death of surviving spouse

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

Saving and acceleration of expectant interests

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

Powers of appointment

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

- (a) in the instrument creating the power it is expressed to be exercisable by one person only; and
- (b) it could, at all times during its currency when that person is of the age of majority and has capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power

without the consent of any other person or compliance with any other condition, not being a formal condition relating to the mode of exercise of the power.

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

Administrative powers of trustees

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

(2) Subsection (1) applies for the purpose of enabling a power to be exercised at any time after 1st January 1980 notwithstanding that the power is conferred by an instrument which took effect before that date.

Other restrictions on the perpetuity rule

177.(1) For the removal of doubt, it is hereby declared that the rule against perpetuities does not apply, and never applied to

- (a) any power 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; or
- (b) any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may arise or become payable only on breach of a condition or stipulation; or
- (c) any power, whether exercisable on breach 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) 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) Subsection (1) applies to instruments coming into operation at any time before or after 1st January 1980.

Options relating to land

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

- (a) the option is exercisable only by the lessee or his successors in title; and
- (b) it ceases to be exercisable at or before the expiration of 1 year following the determination of the term of years.

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

(3) In the case of a disposition consisting of the conferring of an option to acquire for valuable consideration any interest in land (other than such a disposition as is mentioned in subsection (1)), the perpetuity period under the rule against perpetuities is 18 years, and section 169 does not apply.

Avoidance of contractual and other rights in cases of remoteness

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

Rights for enforcement of rentcharges

180. Notwithstanding anything in section 181, the rule against perpetuities does not apply to any powers or remedies for recovering or compelling the payment, out of any land, or out of the income of any land, of any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise; nor does that rule apply to any such powers or remedies otherwise becoming exercisable or enforceable on the breach of any condition or other requirement relating to that sum.

Conditions subsequent, possibilities of reverter etc.

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

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

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

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

- (3) Where
- (a) a disposition is subject to any exception or reservation or to any condition subsequent giving rise, on breach thereof, to any such right as is mentioned in subsection (1); or
 - (b) a disposition creates any such possibility as is mentioned in subsection (2),

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

- (4) Subsection (1)(b) applies to instruments coming into operation at any time before or after 1st January, 1980.

Abrogation of the rule in *Whitby v Mitchell*

182. 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 abrogated.

Interpretation for purposes of Part XIII

183.(1) In this Part

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

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

“power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration, and for the purposes of this Part a disposition contained in a will is made at the death of the testator.

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

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

(4) This Part applies (except as provided in subsections 176(2), 177(2) and 181(4)), only in relation to instruments taking effect after 1st January, 1980, and, in the case of an instrument made in the exercise of a special power of appointment, applies only where the instrument creating the power takes effect after that date, so however, that section 175 applies in all cases for construing the foregoing reference to a special power of appointment.

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

PART XIV
CAPACITY

Presumption as to age

184. The parties to any conveyance are, until the contrary is proved, presumed to be of the age of majority at the date thereof.

Inability of minor to hold legal estate, or to be appointed trustee, but if married may give receipts

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

(2) The appointment of a minor to be trustee in relation to any settlement or trust is void, but without prejudice to the power to appoint a new trustee to fill the vacancy.

(3) A minor who is married has power to give valid receipts for all income (including statutory accumulations of income made during his minority) to which the minor may be entitled in like manner as if the minor were of the age of majority.

Husband and wife to be treated as separate persons

186. Without prejudice to the generality of section 187, a husband and wife shall, for the purposes of acquisition of any interest in property under a disposition made or coming into operation after 1st January, 1980, be treated as two persons.

General position of married woman

187. Subject to Part XV, a married woman is in the same position as a man or *femme sole* of like age with regard to the acquisition, holding, enjoyment and disposition of property and to dealings with or affecting property.

[1979-44]

Body corporate as joint tenant

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

(2) The acquisition and holding of property by a body corporate in joint tenancy is subject to the same conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

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

Provisions as to corporations

189.(1) Where, either after or before 14th May 1931, any property or any interest in property is or has been vested in a corporation sole (including the Crown), that property or interest (unless and until otherwise disposed of by the corporation) passes to, devolves upon and vests in the successors from time to time of such corporation, and shall be deemed always to have so passed, devolved and vested, and any estate or interest of the corporator sole in the property of the corporation ceases on his death.

(2) Nothing in subsection (1) shall be construed to mean that the property of a corporation sole passes on the succession of a corporator so as to render that property liable to estate duty.

(3) Where, either after or before 14th May 1931, there is or has been a vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at a time when, if there had been no vacancy, any interest in or charge

on property would have been acquired by the corporation, then, notwithstanding the vacancy, the interest or charge

- (a) vests in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate, as the case may be; and
- (b) shall be deemed to have so vested,

but without prejudice to the right of the successor, or of the corporation aggregate after the appointment of its head officer, to disclaim that interest or charge.

(4) Where, either after or before 14th May 1931, any contract or other transaction is or has been expressed or purported to be made with a corporation sole, or a corporation sole is or has been appointed trustee, at a time when there was vacancy in the office, then, on the vacancy being filled, the transaction or appointment takes effect, and shall be deemed to have taken effect, as if the vacancy had been filled before the transaction or appointment was expressed or purported to be made or was capable of taking effect, and, on the appointment of a successor, is capable of being enforced, accepted, disclaimed or renounced by him to the same extent as that to which it would have been capable of being enforced, accepted, disclaimed or renounced had he been the corporator sole at the time the transaction or appointment was made.

Dissolution of a corporation

190. Where, by reason of the dissolution of a corporation either before or after 1st January 1980, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

PART XV
HUSBAND AND WIFE

Questions between husband and wife

191.(1) In any question between husband and wife as to the title to or possession of property, either party may apply by summons or otherwise in a summary way to the court, and the Judge to whom application is made may make an order with respect to the property in dispute and as to the costs of and consequent on the application, as he determines, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in a manner as he determines.

(2) Any such order is subject to appeal to the Court of Appeal.

(3) The Judge to whom application is made under this section may, if so requested by either party, hear any such application in his chambers.

(4) The right of a wife to apply under this section includes the right to make such an application where it is claimed by the wife that her husband has had in his possession or under his control

(a) money to which, or to a share of which, she was beneficially entitled (whether by reason that it represented the proceeds of property to which, or to an interest in which, she was beneficially entitled, or for any other reason); or

(b) property (other than money) to which, or to an interest in which, she was beneficially entitled,

and that either that money or other property has ceased to be in his possession or under his control or that she does not know whether it is still in his possession or under his control.

- (5) Where, on an application made under this section, the Judge is satisfied
- (a) that the husband has had in his possession or under his control money or other property as mentioned in subsection (4) (a) or (b);
 - (b) that he has not made to the wife, in respect of that money or other property, such payment or disposition as would have been just and equitable in the circumstances,

the power to make orders under this section is extended in accordance with subsection (6).

- (6) Where subsection (5) applies, the power to make orders under this section includes power to order the husband to pay to the wife

- (a) in a case falling within subsection (4) (a) such sum in respect of the money to which the application relates, or the wife's share thereof, as the case may be; or
- (b) in a case falling within subsection (4) (b), such sum in respect of the value of the property to which the application relates, or the wife's interest therein, as the case may be,

as the Judge considers appropriate.

- (7) Where, on an application under this section, it appears to the Judge that there is any property which

- (a) represents the whole or part of the money or property in question; and
- (b) is property in respect of which an order could have been made under this section if an application had been made by the wife thereunder in a question as to the title to or possession of that property,

the Judge (either in substitution for or in addition to the making of an order in accordance with subsection (6)) may make any order under this section in respect of that property which he could have made on such an application as is mentioned in paragraph (b) of this subsection.

(8) Subsections (4) to (7) have effect in relation to a husband as they have effect in relation to a wife, as if any reference to the husband were a reference to the wife and any reference to the wife were a reference to the husband.

(9) For the avoidance of doubt, it is hereby declared that the power conferred by this section to make orders with respect to any property includes power to order a sale of the property and includes power to make orders with respect to the property of a husband or wife where their marriage has been dissolved after proceedings under this section have been commenced.

Saving of special position of spouses, and extension of presumption of advancement

192.(1) Nothing in this Part affects

- (a) any statute not expressly repealed by this Act;
- (b) any inherent jurisdiction of any court; or
- (c) any presumption of advancement (except as mentioned in subsection (2)) or other principle of equity.

(2) From 1st January, 1980, a presumption of advancement by a wife in favour of her husband shall arise in cases in which, and to the extent to which, had the roles of the parties been reversed, a presumption would have arisen of advancement by the husband in favour of his wife.

PART XVI

VOIDABLE DISPOSITIONS

Voluntary conveyances to defraud creditors

193.(1) Save as provided in this section, every conveyance of property, made before or after 1st January, 1980, with intent to defraud creditors, is voidable at the instance of any person prejudiced by it.

(2) This section does not affect the law of bankruptcy.

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

Voluntary disposition of land in relation to subsequent purchaser

194.(1) Every voluntary disposition of land 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 is to be considered as intended to defraud merely because a subsequent conveyance for valuable consideration was made.

Sales of reversions

195.(1) No acquisition in good faith, without fraud or unfair dealing, of any reversionary interest in land or other property, for valuable consideration, is voidable merely on the ground of under value.

(2) In this section, “reversion” includes an expectancy or possibility.

(3) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

PART XVII

DISCHARGE AND MODIFICATION OF LAND RESTRICTIONS

Power to discharge or modify certain restrictions affecting land

196.(1) A Judge in Chambers may from time to time, on the application, in the prescribed manner, of the Chief Town Planner or 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 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 because of changes in the character of the property or the neighbourhood or other circumstances of the case which the Judge may think material, the restriction ought to be deemed obsolete; or
- (b) that the continued existence of such restriction or the continued existence thereof without modification would impede the reasonable user of the land for public or private purposes without securing to any person practical benefits sufficient in nature or extent to justify the continued existence of such restriction; or, as the case may be, the continued existence thereof without modification; or
- (c) that the person of the age of majority 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 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
- (d) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.

(2) 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.

(3) The Judge shall, before making any order under this section, direct such inquiries as he determines to be made of the Chief Town Planner, and such notice as he determines, whether by way of advertisement or otherwise, to be given to the Chief Town Planner and any persons who appear to be entitled to the benefit of the restriction sought to be discharged, modified, or dealt with.

(4) Any order made under this section shall be binding on all persons, whether ascertained or of the age of majority or of capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not.

Stay of proceedings pending application to Judge in Chambers

197. Where any proceedings by action or otherwise are taken to enforce a restriction, any person against whom the proceedings are taken may in such proceedings apply to the court for an order giving leave to apply to a Judge in Chambers under section 196 and staying the proceedings in the meantime.

Interpretation of restrictions by court

198. The court shall have power on the application in the prescribed manner of the Chief Town Planner or any person interested

- (a) to declare whether or not in any particular case any freehold land is affected by a restriction imposed by any instrument or otherwise; or
- (b) to declare what is the nature and extent of such restriction and whether the same is enforceable and, if so, by whom.

Position where instrument imposing restriction is not produced

199. An order may be made under this Part 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, or to the Judge in Chambers, as the case may be, and the court or Judge may act on such evidence of that instrument as the court or Judge thinks sufficient.

Register of orders to be kept in Land Registry

200. Orders made under this Part shall be recorded in the Land Registry in a book (in this Act called “The Register”) which shall be kept in the prescribed manner and in which the prescribed particulars shall be entered.

[1990-20]

Application of this Part

201.(1) This Part applies

- (a) to restrictions whether subsisting at 16th March, 1967 or imposed thereafter; and
- (b) whether or not the title to the land affected by the restriction is recorded in the Registration Office or the Land Registry.

[1990-20]

(2) This Part shall not apply to restrictions created or imposed

- (a) for Naval, Military or Air Force purposes; or
- (b) for civil aviation purposes under powers conferred by any law for the time being in force in Barbados,

but subject to the foregoing provisions, shall be binding on the Crown.

(3) Where a term of more than 70 years is created in land (whether before or after 16th March, 1967) this Part shall, after the expiration of 25 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 XVIII
MISCELLANEOUS

Power of personal representative of deceased vendor to complete contract

202.(1) Where at the death of any person there is existing a contract enforceable against his estate for the sale of the fee simple or other freehold interest in any land vested in him, his personal representatives shall by virtue of this Act have power to convey the land for all the estates and interests so vested in any manner proper for giving effect to the contract.

(2) A conveyance made under this section shall not affect the beneficial rights of any person claiming under the will or upon the intestacy of the person in whom such fee simple or other freehold interest was vested at his death.

(3) This section applies only in cases of death after 10th November, 1885.

Protection of attorney-at-law and trustees adopting Act

203.(1) The powers given by this Act to any person, and the covenants, provisions, stipulations and words which, under this Act, are deemed to be included or are implied in any instrument, or are made by this Act applicable to any contract for sale or other transaction, are powers, covenants, provisions, stipulations and words proper to be given by or contained in any such instrument, or to be adopted in connection with or applied to any such contract or transaction.

(2) An attorney-at-law is not guilty of neglect or breach of duty, or in any way liable, by reason only of his omitting (in good faith) in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication or application of any of those powers, covenants, provisions, stipulations or words, or to insert or apply any others in place of them, in any case where the provisions of this Act would allow him to do so.

(3) Save as expressly provided by this Act, nothing in this Act means that the insertion in any such instrument, or the adoption in connection with, or the

application to, any contract or transaction of any further or other powers, covenants, provisions, stipulations or words is improper.

(4) Where the attorney-at-law is acting for trustees or other persons in a fiduciary position, those persons are protected in like manner.

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

Fraudulent concealment of documents and falsification of pedigrees

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

- (a) conceals from the purchaser any instrument or encumbrance material to the title; or
- (b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced,

with intent in any such case to defraud, is guilty of an offence and liable on summary conviction to a fine of \$5 000, or imprisonment for a term of 2 years, or both.

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

- (a) the concealment of the instrument or encumbrance; or
- (b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

(3) In estimating damages, where the property or any interest therein recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

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

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

Merger

205. An estate does not merge, by operation of law only, if the beneficial interest therein would not be merged or extinguished in equity.

Release of right of pre-emption

206. All statutory and other rights of pre-emption affecting a legal estate are, and are deemed always to have been, capable of release; and unless released remain in force as equitable interests only.

Partial release of security from rentcharge

207.(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 4th April, 1860.

Release of part of land affected from a judgment

208.(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 4th April, 1860.

Power to direct division of chattels

- 209.** Where any chattels belong to persons jointly or in undivided shares
- (a) one of two or (if more than two) the majority of the persons entitled jointly thereto; or
 - (b) the persons entitled to a moiety or more thereof,

may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

Regulations respecting notices

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

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

Restriction on constructive notice

- 211.(1)** A mortgagee shall not be prejudicially affected by notice of
- (a) any deed relating to a mortgage which is void as against him under section 57;
 - (b) any other instrument or matter or any fact or thing relating to a mortgage unless
 - (i) 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

- (ii) in the same transaction with respect to which a question of notice to him arises, it has come to the knowledge of his attorney-at-law or other agent, as such, or would have come to the knowledge of his attorney-at-law or other agent, as such, if such enquiries and inspections had been made as ought reasonably to have been made by such attorney-at-law or other agent.
- (2) A mortgagee 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.
- (3) This section applies to mortgages made before or after 1st January, 1980.

Orders of court conclusive

212.(1) Without prejudice to any ground of appeal against any order, an order of the court under any statutory or other jurisdiction is not invalid, as against a purchaser, on the ground of want of

- (a) jurisdiction; or
- (b) any concurrence, consent, notice or service,

whether the purchaser has notice of any such want or not.

- (2) This section has effect with respect to any lease, sale or other act, under the authority of the court and purporting to be in pursuance of any statutory power, notwithstanding any exception in such statute.
- (3) This section applies to all orders made before or after 1st January 1980.

Abolition of the doctrine of conversion

213. The equitable doctrine of conversion is abolished.

Legal assignment of things in action

214.(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 thing 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 thing 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 thing 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) Where the debtor, trustee or other person liable in respect of such debt or thing 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 thing 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 thing in action into court under the provisions of the *Trustee Act*, Cap. 250.

Repeal and savings

215.(1) The Acts mentioned in the second column of the Third Schedule are repealed to the extent specified in the third column thereof.

(2) Nothing in this Act affects the law of limitation of actions or proceedings relating to land, or the acquisition of easements or rights over or in respect of land.

(3) This Act does not affect prejudicially the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land.

(4) Nothing in this Act affects prejudicially the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

Adaptation of references in documents

216. References in any document to any provision repealed by this Act shall be construed as references to the corresponding provision of this Act.

Crown

217. This Act binds the Crown.

Transitional provisions

218. For the purpose of effecting the transition from the law existing immediately prior to 1st January, 1980 to the law enacted by this Act, the provisions set out in the Fourth Schedule to this Act shall have effect.

Rules

219. The Judicial Advisory Council may make rules respecting

- (a) applications under Part XVII;
- (b) the keeping of the Registers of orders including the particulars to be entered therein;
- (c) the fees to be charged in respect of any matter under this Act; and
- (d) anything required to be prescribed under this Act.

FIRST SCHEDULE*(Sections 81 and 82)***COVENANTS IMPLIED IN CONVEYANCES****Paragraph 1***Extent of the burden of covenants*

In this Schedule, unless either the context requires otherwise or the contrary is expressed, the covenantor's liability in respect of any covenant set out herein extends to the acts or omissions only of persons within any of the following classes

- (i) the covenantor and any person conveying by his direction;
- (ii) any person through whom the covenantor derives title otherwise than by purchase for value;
- (iii) any person (including a mortgagee) who either holds or has held a derivative title from the covenantor for less than the estate or interest vested in the covenantor or who holds or has held such a derivative title from any predecessor in title of the covenantor who is also a person within class (ii);
- (iv) any person who holds or has held in trust for the covenantor;

provided that it is not a breach of a covenant contained in this Schedule where the conveyance by the covenantor was made expressly subject to the act, matter or thing which, but for this proviso, would or might have caused such a breach, or where such covenant has been expressly negatived or varied by the covenantor.

Paragraph 2

Covenants implied in a conveyance for valuable consideration other than a mortgage by a person who is expressed to convey "as beneficial owner"

- (1) That the covenantor has the right to convey the estate or interest purported to be conveyed, save that the covenantor's liability is only in respect of any acts or omissions of himself or persons within class (ii) of paragraph 1;
- (2) That the person to whom the conveyance is made shall quietly enjoy the land conveyed without disturbance from any person within any class in paragraph 1;
- (3) That the estate or interest conveyed is free from all encumbrances, other estates, claims and demands;
- (4) That the covenantor will, at the cost of the person requiring the same, take such action as may be necessary for the better assuring of the estate or interest purported to be conveyed by him as may from time to time be reasonably required by the person to whom the conveyance is made and the persons deriving title under him.

Paragraph 3

Further covenants implied in a conveyance of a term of years for valuable consideration by a person who is expressed to convey "as beneficial owner"

- (1) That the lease the subject-matter of the conveyance is at the time thereof valid and effectual;
- (2) That the rent reserved by the said lease has up to the time of the conveyance been paid and the covenants and conditions expressly or impliedly contained in the lease have been performed and observed by the lessee;

provided that the covenantor's liability in respect of both of the foregoing covenants shall be restricted (a) to any acts or omissions of himself or persons within class (ii) of paragraph 1 and (b) as regards the said covenants and conditions, to breaches caused by such acts and omissions the consequences of

which could not be discovered on reasonable inspection of the property conveyed.

Paragraph 4

Covenants implied in a mortgage by a person who is expressed to mortgage "as beneficial owner"

That the covenantor covenants in the terms of the covenants set out in paragraph 2 with the variations following, that is to say

- (a) liability in respect of any breach of any of the said covenants extends to the acts or omissions of any person whether or not such person is within the classes of persons set out in paragraph 1;
- (b) the covenant set out in paragraph 2(2) (for quiet enjoyment) is not implied against any mortgagor until the mortgagee has lawfully entered into possession of the property conveyed;
- (c) the covenant set out in paragraph 2(4) (for further assurance) shall be performed at the cost of the covenantor during the subsistence of the mortgage.

Paragraph 5

Further covenants implied in a mortgage of property held in fee simple subject to a rent or of a term of years by a person who is expressed to mortgage "as beneficial owner"

That, in addition to covenanting in the terms of the covenants set out or referred to in paragraph 4, the covenantor covenants

- (a) that the lease or grant the subject-matter of the conveyance is at the time thereof valid and effectual and that the rent thereby reserved has up to that time been paid and that the covenants and conditions expressed or implied in the lease have been performed and observed; and

- (b) that the covenantor will from time to time, so long as any money remains owing on the security of the property conveyed, pay the rent reserved by the lease and perform and observe the covenants and conditions therein and will indemnify the person to whom the conveyance is made in respect of any consequences of the breach of this covenant.

Paragraph 6

Covenant implied in a conveyance by way of settlement by a person who is expressed to convey "as settlor"

That the covenantor covenants in the terms of the covenant set out in paragraph 2(4) (for further assurance) save that liability under this covenant shall not attach to persons other than the covenantor and the persons deriving title under him.

Paragraph 7

Covenant implied in any conveyance by every person who is expressed to convey "as trustee", "as mortgagee", "as personal representative", "as a committee of a mental patient" or under an order of court

That the covenantor has not, by virtue of any act or omission of his, caused the title to the estate or interest conveyed to be liable to be impeached through the existence of any encumbrance or rendered himself unable to convey the said estate or interest conveyed in the manner in which it is expressed to be conveyed.

Paragraph 8

Covenant implied in a conveyance for valuable consideration other than a mortgage, of the entirety of land affected by a rentcharge

That the grantees or the persons deriving title under them will at all times

- (1) from the date of the conveyance or other date therein stated, duly pay the said rentcharge and observe and perform all the covenants, agreements and

conditions contained in the deed or other document creating the rentcharge, and thenceforth on the part of the owner of the land to be observed and performed;

(2) from the date aforesaid, keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rentcharge or any part thereof, or any breach of any of the said covenants, agreements and conditions.

Paragraph 9

Subparagraph [i]

Covenants implied in a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part (not legally apportioned) of that rentcharge

That the grantees, or the persons deriving title under them, will at all times

- (a) from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent) and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land conveyed;
- (b) from the date aforesaid, keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent, or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid.

Subparagraph [ii]

That the conveying parties, or the persons deriving title under them, will at all times,

- (a) from the date of the conveyance or other date therein stated, pay the balance of the rentcharge (after deducting the apportioned rent aforesaid, and any other rent similarly apportioned in respect of land not retained), and observe and perform all the covenants, other than the

covenant to pay the entire rent, and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land not included in the conveyance and remaining vested in the covenantors;

- (b) from the date aforesaid, keep indemnified the grantees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rentcharge, or any breach of any of the said covenants and conditions so far as they relate as aforesaid.

Paragraph 10

Covenants in a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease for the residue of the term or interests created by the lease

That the assignees, or the persons deriving title under them, will at all times

- (1) from the date of the conveyance or other date therein stated, duly pay all rent becoming due under the lease creating the term or interest for which the land is conveyed, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the lessees to be observed and performed;
- (2) from the date aforesaid, save harmless and keep indemnified the conveying parties and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

Paragraph 11

Subparagraph [i]

Covenants implied in a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or

interest created by the lease, subject to a part (not legally apportioned) of that rent

That the assignees, or the person deriving title under them, will at all times

- (a) from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease creating the term or interest for which the land is conveyed, and thenceforth on the part of the lessees to be observed and performed, so far as the same relate to the land conveyed;
- (b) from the date aforesaid keep indemnified, the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants; agreements and conditions so far as the same relate as aforesaid.

Subparagraph [ii]

That the conveying parties, or the persons deriving title under them will at all times

- (a) from the date of the conveyance, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease and on the part of the lessees to be observed and performed so far as the same relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the covenantors;
- (b) from the date aforesaid, keep indemnified, the assignees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

Form No. 2

*(Section 123(5))***FORM OF RECEIPT ON DISCHARGE OF A MORTGAGE**

I, M., of [etc.] hereby acknowledge that I have this.....day of.....19
 , received the sum of \$, representing all moneys [representing the
 balance remaining owing in respect of moneys] secured by the within written [or
 above written or annexed] mortgage land by a further charge dated [etc.], [or as
 otherwise required], from A.B., being entitled to the equity of redemption [or
 from A.B., not being entitled to the equity of redemption, who paid the money
 out of a fund applicable to the discharge of the mortgage or from A.B., in
 discharge of the mortgage].

M. [signature of mortgagee]

M. signed this receipt on discharge in my presence.

W. [signature of witness]

[abode and calling or description of witness]

Note:

The receipt need not be attested or witnessed. It need only be stamped as a receipt.

The payer need not be named.

Form No. 3

*(Section 125(1))***CHARGE BY WAY OF LEGAL MORTGAGE**

This Deed of Charge by way of Legal Mortgage made the.....day of
19 , between A. of [etc.] and M. of [etc.]

WITNESSES that A. hereby mortgages [estate and premises] to M. for \$
 [principal sum] payable on.....day of.....19 , at.....%
 interest.

This mortgage was signed)
in my presence)

A. [signature of mortgagor]

W. [witness to A's signature]
[abode and calling or description]
of witness]

Form No. 4

*(Section 126(1))***TRANSFER OF MORTGAGE, COVENANTOR JOINING**

This Deed of Mortgage made the.....day of.....19 , between A. of [etc.] and C. of [etc.] supplemental to a Mortgage dated [etc.], and made between [etc.]

WITNESSES that, in consideration of the sum of \$ now paid by C. to A. (being the mortgage money due in respect of the said mortgage, no interest being now due or payable thereon, the receipt of which sum A. hereby acknowledges), A., as mortgagee, with the concurrence of B., who joins herein as covenantor, hereby transfers to C. the said mortgage.

A. [signature of mortgagee]

This transfer of mortgage was signed)
by A. and B. in my presence)

B. [signature of covenantor]

W. [witness to above signatures]
[abode and calling or description
of witness]

Form No. 5

*(Section 126(1))***TRANSFER AND MORTGAGE COMBINED**

This Deed of Transfer and Charge by way of legal Mortgage is made theday of.....19 , between A. of [etc.], B. of [etc.], and C. of [etc.], supplemental to a Mortgage dated [etc.], and made between [etc.].

Whereas a principal sum of \$ remains due as the mortgage money in respect of the said mortgage and no interest is now due thereon;

And Whereas B. is seised in fee simple of the land comprised in the said mortgage, subject to that mortgage,

Now this deed WITNESSES as follows

1. In consideration of the sum of \$ now paid by C. to A. (the receipt of which sum A. and B. hereby acknowledge), *A., as mortgagee, hereby conveys and transfers to C. the said mortgage.

**[In the case of a further advance, after "acknowledge," insert: "and of the further sum of \$ now paid by C. to B. (the receipt of which sum B. hereby acknowledges)," and]*

2. For the consideration aforesaid, B.,* as beneficial owner, hereby charges by way of legal mortgage all the premises comprised in the said mortgage with the payment to C., on the.....day of.....19 , of the sum of \$

*as the mortgage money with interest thereon at the rate of per
centum per annum.

**[in the case of a further advance, before "as beneficial owner" insert "as mortgagor and", and]*

**[in the case of a further advance, instead of "of the sum of \$ ", put "of the sums of \$ and \$, making together the sum of \$,".]*

This transfer and mortgage)
was signed by A. and B. in)
my presence)

A. [signature of mortgagor]

B. [signature of mortgagor]

W. [witness to above signature]
[abode and calling or descrip-
tion of witness]

THIRD SCHEDULE*(Section 215)****ENACTMENTS REPEALED***

<i>Citation</i>	<i>Short title</i>	<i>Extent of repeal</i>
27 Hen. 8C. 10	Statute of Uses, 1535	The whole Act to the extent of its application to Barbados.
13 Eliz. C.5	Fraudulent Conveyances, 1571	The whole Act to the extent of its application to Barbados.
27 Eliz. C.4	Fraudulent Conveyances, 1585	The whole Act to the extent of its application to Barbados.

FOURTH SCHEDULE*(Section 218)**TRANSITIONAL PROVISIONS***Conversion of certain existing legal estates into equitable interests**

1. All estates, interests and charges in or over land, including fees determinable, whether by limitation or condition, which immediately before 1st January 1980 were estates, interest or charges, subsisting at law or capable of taking effect as such, but which by virtue of Part II of this Act are not capable of taking effect as legal estates, shall as from that date be converted into an equitable interest, either in the land or in the proceeds of sale thereof, nor shall the priority of any such estate, charge or interest over other equitable interests be affected.

Vesting of legal estates

2.(1) Subject to sub-paragraph (2), any person of the age of majority who, immediately after 1st January 1980 is entitled to an equitable interest capable of subsisting as a legal estate which has priority over any legal estate in the same land, shall be deemed to be entitled to require a legal estate to be vested in him for an interest of a like nature, not exceeding in extent or duration the equitable interest, and the legal estate shall by virtue of this Act vest in him accordingly.

(2) This paragraph shall not

- (a)* apply where the equitable interest is capable of being over-reached by virtue of a subsisting settlement upon the statutory trusts or of a trust;
- (b)* operate to prevent such person from acquiring any other legal estate under this paragraph to which he may be entitled.

Settled land to be held by trustees upon statutory trusts

3. Where any land (other than land held upon trust for sale) was, immediately before 1st January 1980, limited to or in trust for any persons by

way of succession or vested in a minor or trustees for a minor, either solely or concurrently with one or more other persons, whether minors or of the age of majority, subject to section 34, the same is, from that date held by the trustees in whom the land is at that time vested, or, if none, by the trustees or other persons specified in paragraph 4, on trust to give effect to the rights of the persons to or in trust for whom the land is limited.

Vesting of land previously settled in trustees

4.(1) Where land (other than land held upon trust for sale) is limited to or in trust for any persons by way of succession or vested in a minor or trustees for a minor within the meaning of paragraph 3 and the legal estate therein, the subject of the settlement, is not vested or not entirely vested in trustees at 1st January 1980, the legal estate, the subject of the settlement, shall vest in the persons (if any) who were, immediately before such time, trustees of the settlement for the purposes of the *Settled Estates Act*, Cap. 236.*

**[Formerly Cap. 238 repealed by the Property Act, Cap. 236.]*

(2) Where there are no such trustees the legal estate in the trust land shall vest in the Public Trustee pending the appointment by the court in accordance with any such power of appointing trustees conferred by law.

Party structures

5.(1) Where, immediately before 1st January 1980 a party wall or structure, is held in co-ownership, it shall be deemed to be severed so that each owner is the absolute owner of half of the structure and the owner of each part has such rights of support and user over the rest of the structure, and be subject to such obligations in respect of it, as may be requisite for conferring rights and imposing obligations corresponding to those subsisting at that date.

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

Conversion of existing mortgages into charges by deed

6.(1) A mortgage made before 1st January 1980 which conveyed a legal estate in fee simple in possession or granted or assigned a legal term of years to a mortgagee subject to a right of redemption or a provision for cesser corresponding to a right of redemption shall by virtue of this Act operate as if it were a charge by deed made in accordance with this Act.

(2) Nothing in this paragraph affects

- (a) the operation of an equitable mortgage made before 1st January 1980;
- (b) the priorities or rights of any mortgagee to retain documents; or
- (c) the mortgagee's title to or rights over any fixtures or chattels personal comprised in the mortgage.