

CONVEYANCING (AMENDMENT)
ACT.

Act No. 44, 1930.

An Act to amend and consolidate the law of property and improve the practice of conveyancing; to amend the Conveyancing Act, 1919, the Wills, Probate and Administration Act, 1898, the Real Property Act, 1900, the Public Works Act, 1912, and certain other Acts; to validate certain matters, and for purposes connected therewith. [Assented to, 27th June, 1930.]

George V.
No. 44, 1930.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Conveyancing (Amendment) Act, 1930," and shall commence on a day to be fixed by the Governor and notified by proclamation published in the Gazette.

Short title
and com-
mencement

(2) This Act shall be read and construed with the Conveyancing Act, 1919, as amended by subsequent Acts. The said Act, as so amended, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Conveyancing Act, 1919-1930.

(4) A reference in any Act to the Conveyancing Act, 1919, shall be construed as a reference to that Act as amended by subsequent Acts.

2. The Imperial Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

Repeal.

3.

Conveyancing (Amendment) Act.

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Amendment
of Act No. 6,
1919.
Sec. 7.
(Interpreta-
tion.)

3. The Principal Act is amended—

(a) by inserting in section seven in appropriate positions having regard to alphabetical sequence the following definitions:—

“Assurance” includes a conveyance and a disposition made otherwise than by will; and “assure” has a corresponding meaning.

“Commonwealth” means Commonwealth of Australia, and “Commonwealth Act” (with or without descriptive words) means an Act passed by the Parliament of the Commonwealth and includes any Act amending or substituted for the same.

“Disposition” includes a conveyance, and also an acknowledgment under section eighty-three of the Wills, Probate and Administration Act, 1898, vesting instrument, declaration of trust, disclaimer, release and every other assurance of property by any instrument except a will, and also a release, devise, bequest, or an appointment of property contained in a will; and “dispose” has a corresponding meaning.

“Insane person,” “Insane patient,” and “Incapable person” have the same meaning as in the Lunacy Act, 1898.

“Personal representative” means the executor or administrator for the time being of a deceased person.

“Power to postpone sale” means power to postpone in the exercise of a discretion whether separately expressed or implied by the terms of the trust for sale.

“Sale” means only a sale properly so called.

“Trust corporation” means the Public Trustee or a trustee company, or the trustee as defined in the Commonwealth Bankruptcy Act, 1924-1929, or an official assignee or trustee in whom the estate of a bankrupt is vested.

“Trust

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“Trust for sale” means a binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone sale.

“Trustee company” means an incorporated company authorised by Act of Parliament of this State, to act as trustee in New South Wales.

“Trustees for sale” mean the persons holding property on trust for sale.

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

(b) by omitting from the same section the definition of “purchaser” and by inserting in lieu thereof the following definition:—

“Purchaser” means a purchaser for valuable consideration, and includes a lessee, mortgagee, or other person who for valuable consideration acquires an interest in property, except that in Part IV, Divisions 5 and 6 of this Act “purchaser” means only a person who acquires an interest in or charge on property for money or money’s worth; and purchase has a meaning corresponding with that of “purchaser.”

(c) by inserting at the end of the same section the following new subsection:—

(2) (a) Any deed, will, agreement for a settlement, or other agreement, Act, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after the commencement of the Conveyancing (Amendment) Act, 1930, under or by virtue of which instrument or instruments any land on or after such commencement stands for the time being—

- (i) limited to or in trust for any persons by way of succession; or
- (ii) vested in, or limited in trust for an infant in possession,

creates

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creates, or is for the purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires:

Provided that where land is the subject of a compound settlement references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

(b) Where an infant is beneficially entitled to land, and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate or by the person whose interest the infant has acquired.

(c) An estate or interest not disposed of by a settlement 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. The Principal Act is further amended as follows:—

Further amendment of Act No. 6, 1919.

Sec. 8.

Sec. 14.

Sec. 20.

Sec. 23, new subsecs. (2A), (2B).

Limitation of claim to land by official assignee or trustee of estate or trustee of assignment.

cf. C'wth Bankruptcy Act, 1924-1929, s. 98 (3).

- (a) by omitting section eight;
- (b) by omitting from section fourteen the word "conveyance" and by inserting in lieu thereof the word "assurance";
- (c) by omitting section twenty;
- (d) by inserting next after subsection two of section twenty-three the following new subsections:—
 - (2A) (a) After the expiration, whether before or after the commencement of the Conveyancing (Amendment) Act, 1930, of twenty years after—
 - (i) the date of the sequestration of the estate of a bankrupt under any Act relating to bankruptcy; or
 - (ii) the execution of an assignment for the benefit of the creditors of the assignor, no action, suit, or other proceeding instituted by the official assignee or the trustee of the assignment

assignment for the recovery of land which by any such Act or by the assignment was vested in the official assignee or the trustee of the assignment shall succeed against a purchaser from the bankrupt or assignor, or under a sale in execution, or against a successor in title of such purchaser.

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(b) This subsection shall not apply where the official assignee or trustee of the assignment was in actual possession of the land at the time of the purchase.

(c) This subsection shall not apply where the land is under the provisions of the Real Property Act, 1900.

(e) by inserting next after section twenty-three the following new section :—

New sec. 23A.

23A. (1) The rule of law prohibiting the limitation after a life interest to an unborn person of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

Abolition of the double possibility rule.

15 Geo. V, c. 20, s. 161.

(2) This section only applies to limitations or trusts created by an instrument coming into operation after the commencement of the Conveyancing (Amendment) Act, 1930.

5. The Principal Act is further amended by omitting the short heading "DIVISION 3.—*Property generally*" immediately before section twenty-four and by inserting in lieu thereof the following new Division :—

Further amendment of Act No. 6, 1919.

New Division 3.

DIVISION 3.—*Assurances of land.*

23B. (1) No assurance of land shall be valid to pass an interest at law unless made by deed.

Assurances of land to be by deed.

(2) This section does not apply to—

New sec. 23B.

(a) an acknowledgment under section eighty-three of the Wills, Probate and Administration Act, 1898 ;

15 Geo. V, c. 20, s. 52.

(b) a disclaimer made in accordance with section one hundred and four of the Commonwealth Bankruptcy Act, 1924–1929, or section sixty-two of the Bankruptcy Act, 1898, or not required to be evidenced in writing ;

(c)

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- (c) a surrender by operation of law, and a surrender which may, by law, be effected without writing;
- (d) a lease or tenancy or other assurance not required by law to be made in writing;
- (e) a vesting order;
- (f) any other assurance taking effect under any Act or Commonwealth Act.

(3) This section does not apply to land under the provisions of the Real Property Act, 1900.

Instruments
required to
be in writing.
New sec. 23c.
15 Geo. V,
c. 20, s. 53.

23c. (1) Subject to the provisions of this Act with respect to the creation of interests in land by parol—

- (a) 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 thereunto lawfully authorised in writing, or by will, or by operation of law;
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same or by his will, or by his agent thereunto lawfully authorised in writing.

(2) This section does not affect the creation or operation of resulting, implied, or constructive trusts.

Creation of
interests in
land by parol.
New sec. 23D.
Ibid. s. 54.

23D. (1) All interests in land created by parol and not put in writing and signed by the person so creating the same, or by his agent thereunto lawfully authorised in writing, shall have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2)

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(2) Nothing in this section or in sections 23B or 23c shall affect the creation by parol of a lease at the best rent which can reasonably be obtained without taking a fine taking effect in possession for a term not exceeding three years, with or without a right for the lessee to extend the term at the best rent which can reasonably be obtained without taking a fine for any period which with the term would not exceed three years.

23E. Nothing in section 23B, 23c, or 23D of this Act shall—

- (a) invalidate any disposition by will; or
- (b) affect any interest validly created before the commencement of the Conveyancing (Amendment) Act, 1930; or
- (c) affect the right to acquire an interest in land by virtue of taking possession; or
- (d) affect the operation of the law relating to part performance.

6. The Principal Act is further amended as follows:—

- (a) by inserting immediately before section twenty-four the following short heading:—

DIVISION 4.—*Property generally.*

- (b) by omitting section twenty-four and by inserting in lieu thereof the following new section:—

24. A person may assure property to himself, or to himself and others.

7. The Principal Act is further amended as follows:—

- (a) by inserting next after section twenty-nine the following new sections:—

29A. (1) An instrument purporting to exercise a legal or equitable power of appointment over property, which, in default of and subject to any appointment, is limited to or held in trust for a class or number of persons including the appointee, shall not be void on the ground of fraud on the power as against a purchaser in good faith:

Provided

Provided that, if the interest appointed exceeds in amount or value the interest in such 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 shall not extend to such excess.

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

(3) A successor in title to a purchaser entitled to the benefit of this section shall be entitled to the like benefit.

(4) This section applies only to dealings effected after the commencement of the Conveyancing (Amendment) Act, 1930, "but applies to powers created or arising either before or after such commencement."

Restriction
on executory
limitations
15 Geo. V,
c. 20, s. 134.

29B. (1) Where there is a person entitled to—

- (a) land for an estate in fee simple or for any less estate or interest, or
- (b) any other property,

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

(2)

(2) This section applies where the executory limitation is contained in an instrument coming into operation after the first day of July, one thousand nine hundred and twenty, save that, as regards instruments coming into operation before the commencement of the Conveyancing (Amendment) Act, 1930, it only applies to limitations of land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life.

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29c. (1) Where there is a person entitled to income (including an annuity or other periodical income) or any other property, subject to a condition of forfeiture on alienation, whether voluntary or involuntary, and whether with or without words of futurity, then—

Restrictions on operation of conditions of forfeiture.

- (a) unless the instrument containing the condition expressly provides to the contrary, no alienation, whether by way of charge or otherwise, of the income or other property, made or occurring before he becomes entitled to receive payment of the income, or to call for a conveyance or delivery of the other property, shall operate to create forfeiture under the condition unless the alienation is in operation at the time he becomes so entitled ;
- (b) notwithstanding any stipulation to the contrary in the instrument containing the condition no voluntary alienation made by him, with the sanction of the court, shall operate to create forfeiture under the condition.

(2) This section applies where the condition of forfeiture is contained in an instrument executed, made, or coming into operation before or after the commencement of the Conveyancing (Amendment) Act, 1930, but only in cases where such person becomes entitled to receive payment of the income, or to

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to call for an assurance or delivery of the other property, or, where the alienation with the sanction of the court is made after such commencement;

Sec. 30.

(b) by omitting section thirty;

Further amendment of Act No. 6, 1919. New sec. 31A.

8. The Principal Act is further amended by inserting next after section thirty-one the following new section :—

Qualification of restrictions on accumulation.

15 Geo. V, c. 20, s. 165.

31A. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of the Conveyancing (Amendment) Act, 1930) to be taken into account in determining the periods for which accumulations are permitted to be made by section thirty-one of this Act, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

Further amendment of Act No. 6, 1919. New secs. 36A, 36B, 36C, 36D.

9. The Principal Act is further amended by inserting next after section thirty-six the following new sections :—

Power to direct division of chattels.

15 Geo. V, c. 20, s. 188.

33A. Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards 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.

Contingent and future testamentary gifts to carry the intermediate income. cf. *Ibid.* s. 175.

36B. (1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property to trustees upon trust for a person whose interest is contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from

from the death of the testator except so far as such income, or any part thereof, may be otherwise expressly disposed of.

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(2) Where under an instrument other than a will property stands limited to a person for a contingent or future interest, or stands limited to trustees upon trust for a person whose interest is contingent or executory, such interest shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the time when the instrument comes into operation, except so far as such income or any part thereof may be otherwise expressly disposed of.

(3) This section applies only to wills and instruments coming into operation after the commencement of the Conveyancing (Amendment) Act, 1930.

36c. (1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant, or agreement over or respecting land or other property, although he may not be named as a party to the assurance or other instrument.

Persons taking who are not parties.

cf. 15 Geo. V, c. 20, s. 56 (1).

(2) Such person may sue, and shall be entitled to all rights and remedies in respect thereof as if he had been named as a party to the assurance or other instrument.

36d. Any instrument (whether executed before or after the commencement of the Conveyancing (Amendment) Act, 1930) 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 shall not operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

Provisions as to supplemental instruments.

15 Geo. V, c. 20, s. 58.

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Further amendment of Act No. 6, 1919. New Division, secs. 37A, 37B, 37C.

Voluntary alienation to defraud creditors voidable. cf. 15 Geo. V, c. 20, s. 172.

Voluntary alienation of land how far voidable as against purchasers. cf. *Ibid.* s. 173.Acquisitions of reversions at an under value. *Ibid.* s. 174.

10. The Principal Act is further amended by inserting next after section thirty-seven the following new Division :—

DIVISION 5.—*Voidable dispositions.*

37A. (1) Save as provided in this section, every alienation of property, made whether before or after the commencement of the Conveyancing (Amendment) Act, 1930, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.

(2) This section does not affect the law of bankruptcy for the time being in force.

(3) This section does not extend to any estate or interest in property aliened to a purchaser in good faith not having, at the time of the alienation, notice of the intent to defraud creditors.

37B. (1) Every instrument (other than a will) which operates, or on registration would operate as a voluntary alienation of land, shall, if made with intent to defraud a subsequent purchaser, be voidable at the instance of a subsequent purchaser.

(2) For the purposes of this section no such instrument (whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930), shall, if registered before a subsequent purchase, be deemed to have been made with intent to defraud by reason only of that purchase, or that the instrument was not made for valuable consideration.

37C. (1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.

In this subsection "reversionary interest" includes an expectancy or possibility.

(2) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

11. The Principal Act is further amended—

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(a) by omitting section forty-two and the sub-heading “DIVISION 2.—*Certain cases in which deeds are necessary*” immediately preceding that section.

Further amendment of Act No. 6, 1919. Sec. 42 and Division 2.

(b) by inserting next after subsection two of section forty-four the following new subsection :—

Substituted sec. 44. New subsec. (2A), new sec. 45A.

(2A) A provision in any instrument executed, made, or coming into operation whether before or after the commencement of the Conveyancing (Amendment) Act, 1930, directing or authorising land to be conveyed by way of use operating under the Statute of Uses may be given effect to by a direct conveyance without the intervention of uses.

(c) by inserting next after section forty-five the following new section :—

45A. (1) In a conveyance of land a reservation of any easement, right, liberty, or privilege not exceeding in duration the estate conveyed in the land, shall operate without any execution of the conveyance by the grantee of the land out of which the reservation is made, or any regrant by him, so as to create the easement, right, liberty, or privilege, 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.

Reservation of easements, &c., in conveyances of land. cf. 15 & 16 Geo. V, c. 20, s. 65.

(2) This section applies only to reservations made after the commencement of the Conveyancing (Amendment) Act, 1930.

(d) by omitting sections forty-eight and forty-nine.

Secs. 48, 49.

12. The Principal Act is further amended by inserting next after section fifty-one the following new Division :—

Further amendment of Act No. 6, 1919. New Division. New sec. 51A.

DIVISION 4.—*Corporation instruments.*

51A. (1) In favour of a purchaser in good faith—

Execution of instruments by or on behalf of corporations. 15 Geo. V, c. 20, s. 74.

(a) a deed shall be deemed to have been duly executed by a corporation aggregate if its seal is affixed thereto in the presence of and attested by its clerk, secretary, or other permanent

permanent officer or his deputy, and a member of the board of directors, council, or other governing body of the corporation; and

- (b) 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 shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

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

(3) Where a person is authorised under a power of attorney or under any statutory or other power to assure any property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the assurance by signing his name in such way as to show that he does so as attorney of the corporation in the presence of at least one witness, and in the case of a deed by executing the same in accordance with section thirty-eight of this Act, and such execution shall take effect and be valid in like manner as if the corporation had executed the assurance.

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to assure any property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose, either generally or in the particular instance, by the board of directors, council, or other governing body of the corporation by resolution or otherwise, may execute the assurance in the name of such other person; and where an instrument is
executed

executed by an officer who purports to be so appointed, then in favour of a purchaser in good faith the instrument shall be deemed to have been executed by an officer duly authorised.

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(5) The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of the Conveyancing (Amendment) Act, 1930, except that, in the case of a power or an appointment of an agent or officer, they apply whether the power was conferred or the appointment was made before or after such commencement or by this Act.

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

13. The Principal Act is further amended as follows:—

Further amendment of Act No. 6, 1919.

- (a) (i) by omitting from section fifty-three the words "this Act" and by inserting in lieu thereof the words "the Conveyancing (Amendment) Act, 1930";
- (ii) by omitting from subsection one of the same section the words "forty" and "sixty" wherever occurring and by inserting in lieu of the word "forty" the word "thirty" and in lieu of the word "sixty" the word "forty";
- (iii) by omitting from the same subsection the word "heretofore" and inserting in lieu thereof the words "before the commencement of such Act";
- (b) (i) in paragraph (e) of subsection two of section fifty-three by inserting therein immediately before the word "furnish" the words "as soon after completion as reasonably possible"; and

Sec. 53 (1).

Sec. 53 [(2) (e)].

(ii)

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- (ii) by inserting in the same paragraph after the word "require" the words "an undertaking by the vendor or his solicitor so to furnish";
- (iii) by inserting at the end of the same paragraph the words "This paragraph shall, in relation to contracts made after the commencement of the Conveyancing (Amendment) Act, 1930, have effect notwithstanding any stipulation to the contrary."
- (c) by inserting at the end of the same section the following new subsection:—

New subsec.
(3).
15 Geo. V,
c. 20, s. 44
(8).

(3) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made inquiries in regard to matters prior to the period of commencement of title fixed by this or any other Act, or by any rule of law, he might have had notice, unless he actually makes such investigation or inquiries.

Further
amendment of
Act No. 6, 1919.
New sec. 54A.
Contracts for
sale, &c., of
land to be in
writing.
15 Geo. V,
c. 20, s. 40.

14. The Principal Act is further amended by inserting next after section fifty-four the following new section:—

54A. (1) No action or suit 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 or suit is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930, and does not affect the law relating to part performance, or sales by the court.

Further
amendment of
Act No. 6, 1919.
Sec. 55, new
subsec. (2A).
15 Geo. V,
c. 20, s. 49
(2).

15. The Principal Act is further amended as follows:—

- (a) by inserting next after subsection two of section fifty-five the following new subsection:—

(2A) In every case where the court refuses to grant specific performance of a contract, or
in

in any suit or proceeding for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit with or without interest thereon. No. 44, 1930.

- (b) (i) by omitting from subsection one of section sixty-two the words "or lessor" and by inserting in lieu thereof the words "lessor or purchaser"; Sec. 62 (1), (2).
- (ii) by omitting from the same subsection the words "or lease" firstly and secondly occurring and by inserting in lieu thereof the words "lease or purchase";
- (iii) by inserting in subsection two of the same section after the word "lessor" the word "purchaser";
- (c) by omitting from subsection one of section sixty-five the word "property," and by inserting in lieu thereof the word "land." Sec. 65 (1).

16. The Principal Act is further amended by inserting next after section sixty-six the following new Division:— Further amendment of Act No. 6, 1919. New Division.

DIVISION 5.—Dispositions on trust for sale, or with power of sale.

66A. (1) If the consent or request of more than two persons is by the disposition made requisite to the execution of a trust for sale or the exercise of a power of sale of any property, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or the exercise of the power or to the exercise of any statutory or other powers vested in the trustees shall be deemed sufficient. Consents to the execution of a trust for sale. 25 Geo. V, c. 20, s. 26. 16 & 17 Geo. V, c. 11, Schedule.

(2) Where the person whose consent to or request for the execution of any such trust or exercise of any such power is expressed to be required in a disposition is not sui juris or is subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the consent of the parent or testamentary

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or other guardian of an infant or of the committee of the estate of an insane person or the manager of the estate of an incapable person, or if there is no such guardian, committee, or manager, the consent of the court or, in the case of an insane patient, of the Master in Lunacy.

(3) This section applies whether the trust for sale or power of sale is created or arises before or after the commencement of the Conveyancing (Amendment) Act, 1930.

Purchaser not to be concerned with the trusts of the proceeds of sale which are to be paid to two or more trustees or to a trust corporation.
cf. 15 Geo. V, c. 20, s. 27.

66B. (1) A purchaser of property from trustees for sale or having power of sale shall not be concerned with the trusts affecting the proceeds of sale of the property (whether made to attach to such proceeds by virtue of this Act or otherwise), or affecting the income of the property until sale, whether or not those trusts are declared by the same instrument by which the trust for sale or power of sale is created.

16 & 17
Geo. V, c. 11.
Schedule.

(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale or power of sale of property or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees, except where the trustee is a trust corporation, or he was appointed as a sole trustee by the instrument creating the trust or power, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, the proceeds of sale or other capital money; nor, except where capital money arises on the transaction, render it necessary to have more than one trustee.

Implied trust for sale in personalty settlements.
15 Geo. V,
c. 20, s. 32.

66c. (1) Where an instrument contains a power to invest money in the purchase of land, such land shall, unless the instrument otherwise provides, be held by the trustees on trust for sale, and the net rents and profits until sale, after keeping down costs of repairs properly payable out of income, insurance,
and

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 the purchase of land.

(2) This section applies only to instruments coming into operation after the commencement of the Conveyancing (Amendment) Act, 1930.

66D. (1) Subject to any direction to the contrary in the disposition on trust for sale, trustees for sale shall, in relation to land during postponement of sale, have the powers of management conferred by section 151c of this Act during a minority, but without the restriction relating to waste and the cutting of timber.

Powers of management, &c., conferred on trustees for sale. cf. 15 Geo. V, c. 20, s. 28.

(2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs properly payable out of income, 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 has been made and the proceeds had been duly invested.

(3) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in possession in two or more persons as joint tenants or tenants in common, the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale —

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

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

and, upon such partition being arranged, the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty (subject
or

or not to any mortgage created for raising equality money) to the persons entitled under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given.

(4) (a) If a share in the net proceeds belongs to—

(i) an insane or incapable person, the consent of the committee or manager of his estate, or if there is no such committee or manager, the consent of the Master in Lunacy ;

(ii) an insane patient, the consent of the Master in Lunacy or of the court

shall be sufficient to protect the trustees for sale.

(b) If a share in the net proceeds is affected by an incumbrance, the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.

(5) If a share in the net proceeds is absolutely vested in an infant, or in a person who cannot be found or ascertained, or as to whom it is uncertain whether he is living or dead, the trustees for sale may act on behalf of the infant or person, and retain land or other property to represent his share.

(6) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of the Conveyancing (Amendment) Act, 1930.

66E. If the trustees for sale refuse to sell or to exercise any of the powers conferred by section 66D, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit.

Powers of court where trustees for sale refuse to exercise powers.
15 Geo. V,
c. 20, s. 30

17. (1) The Principal Act is further amended by inserting next after section 60E the following new Division:—

No. 44, 1930.

Further
Amendment of
Act No. 6, 1919.
New Division G.

DIVISION 6.—*Statutory trusts of property held in co-ownership.*

66F. In this Division—

(1) “Co-ownership” means ownership whether at law or in equity in possession by two or more persons as joint tenants or as tenants in common; and “co-owner” has a corresponding meaning and includes an incumbrancer of the interest of a joint tenant or tenant in common.

Interpreta-
tion.

(2) (a) Property held upon the “statutory trust for sale” shall be held upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs and expenses, and of the net income until sale after payment of costs, expenses, and outgoings, and in the case of land of rates, taxes, costs of insurance, repairs properly payable out of income, and other outgoings upon such trusts, and subject to such powers and provisions as may be requisite for giving effect to the rights of the co-owners;

cf. 15 Geo. V,
c. 20, s. 35.

(b) where—

- (i) an undivided share is subject to a settlement; and
- (ii) the settlement remains subsisting in respect of other property; and
- (iii) the trustees thereof are not the same persons as the trustees for sale,

16 & 17
Geo. V, c. 11.
Schedule.

then the statutory trust for sale includes a trust for the trustees for sale to pay the proper proportion of the net proceeds of sale or other capital money attributable to the share to the trustees of the settlement to be held for and to go to the same persons successively in the same manner and for and on the same estates, interests, and trusts as the undivided share would if not disposed of have been held and have gone under the settlement.

[cf. 15 Geo.
V, c. 18,
s. 75 (5).]

(3)

Conveyancing (Amendment) Act.

No. 44, 1930.

(3) Property held upon the "statutory trust for partition" shall be held upon trust—

- (a) with the consent of the incumbrancer of the entirety (if any) to partition the property and to provide (by way of mortgage or otherwise) for the payment of any equality money ; and
- (b) upon such partition being made to give effect thereto by assuring the property so partitioned in severalty (subject or not to any mortgage created for raising equality money) to the persons entitled under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given.

Statutory trusts for sale or partition of property held in co-ownership.

66G. (1) Where any property (other than chattels) is held in co-ownership the court may, on the application of any one or more of the co-owners, appoint trustees of the property and vest the same in such trustees, subject to incumbrances affecting the entirety, but free from incumbrances affecting any undivided shares, to be held by them on the statutory trust for sale or on the statutory trust for partition.

(2) Where the entirety of the property is vested in trustees or personal representatives, those trustees or personal representatives shall, unless the court otherwise determines, be appointed trustees on either of such statutory trusts, but subject, in the case of personal representatives, to their rights and powers for the purposes of administration.

(3) (a) Where the entirety of the property is vested at law in co-owners the court may appoint a trust corporation either alone or with one or two individuals (whether or not being co-owners), or two or more individuals, not exceeding four (whether or not including one or more of the co-owners), to be trustees of the property on either of such statutory trusts.

(b)

(b) On such appointment the property shall, subject to the provisions of section nine of the Trustee Act, 1925, vest in the trustees.

(4) If, on an application for the appointment of trustees on the statutory trust for sale, any of the co-owners satisfies the court that partition of the property would be more beneficial for the co-owners interested to the extent of upwards of a moiety in value than sale, the court may, with the consent of the incumbrancers of the entirety (if any), appoint trustees of the property on the statutory trust for partition, or as to part of the property on the statutory trust for sale, and as to part on the statutory trust for partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given.

(5) (a) When such trustees for partition have prepared a scheme of partition they shall serve notice in writing thereof on all the co-owners of full age, and any of such co-owners dissatisfied with the scheme may, within one month after service upon him of such notice, apply to the court for a variation of the same.

(b) Where any of the co-owners is—

- (i) an insane or incapable person, such notice shall be served on the committee or manager of his estate, or if there is no such committee or manager, on the Master in Lunacy;
- (ii) an insane patient, the notice shall be served on the Master in Lunacy.

(c) Where any of the co-owners is an infant or a person who cannot be found or ascertained, or as to whom it is uncertain whether he is living or dead, the trustees may act on behalf of the infant or person, and retain land or other property to represent his share.

(6) In relation to the sale or partition of property held in co-ownership, the court may alter such statutory trusts, and the trust so altered shall be deemed to be the statutory trust in relation to that property.

No. 44, 1950.

(7) Where property becomes subject to such statutory trust for sale—

- (a) in the case of joint tenancy, a sale under the trust shall not of itself effect a severance of that tenancy;
- (b) in any case land shall be deemed to be converted upon the appointment of trustees for sale unless the court otherwise directs.

(8) This section applies to property held in co-ownership at the commencement of the Conveyancing (Amendment) Act, 1930, and to property which becomes so held after such commencement.

[cf. 15 Geo. V, c. 18, s. 75 (10).]

(9) This section does not apply to property in respect of which a subsisting contract for sale (whether made under an order in a suit for partition, or by or on behalf of all the co-owners) is in force at the commencement of the Conveyancing (Amendment) Act, 1930, if the contract is completed in due course, nor to land in respect of which a suit for partition is pending at such commencement if a decree for a partition or sale is subsequently made in such suit.

Trustee on statutory trusts for sale or partition to consult persons interested.

cf. 15 Geo. V, c. 20, s. 26 (3).

16 & 17 Geo. V, c. 11. Schedule.

66H. So far as practicable trustees on the statutory trust for sale, or on the statutory trust for partition, shall consult the persons of full age and not subject to disability for the time being beneficially entitled to the income of the property until sale or partition, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that the provisions of this section have been complied with.

Right of co-owners to bid at sale under statutory power of sale.

66I. (1) On any sale under a statutory trust for sale the court may allow any of the co-owners of the property to purchase whether at auction or otherwise on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters as to the court seems reasonable.

(2)

(2) A co-owner, with a right to purchase shall not, without the leave of the court, be entitled to act as trustee in connection with the sale.

No. 44, 1930.

(2) The Partition Act, 1900, is hereby repealed.

Repeal of Act No. 24, 1900. (Consequential.)

18. (1) The Principal Act is further amended as follows:—

Further amendment of Act No. 6, 1919.

(a) by omitting section seventy and by inserting the following new sections in lieu thereof:—

Substituted sec. 70.

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

New sec. 70A.

Benefit of covenants relating to land.

15 Geo. V, c. 20, s. 78.

For the purposes of this subsection in connection with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(2) This section applies to covenants whether express or implied under this or any other Act made or implied after the commencement of the Conveyancing (Amendment) Act, 1930, but the repeal of the section for which this section is substituted does not affect the operation of covenants to which the repealed section applied.

70A. (1) A covenant relating to any land of a covenantor or capable of being bound by him by covenant shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself and his successors in title, and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

Burden of covenants relating to land.

15 Geo. V, c. 20, s. 79

This subsection 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.

(2)

No. 44, 1930.

(2) For the purposes of this section in connection with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of such land.

(3) This section applies only to covenants made or implied after the commencement of the Conveyancing (Amendment) Act, 1930.

Sec. 81 (1)
and (3).

(b) (i) by inserting in subsection one of section eighty-one after the word "Act" where first occurring the words "or in any memorandum of mortgage under the Real Property Act, 1900";

(ii) by inserting at the end of subsection three of the same section the following words "and to memoranda of mortgage made after the commencement of the Conveyancing (Amendment) Act, 1930."

Sec. 82.

(c) by inserting at the end of section eighty-two the following new subsection:—

(2) This section applies to a memorandum of mortgage under the Real Property Act, 1900.

Sec. 86 (1)
and (3).

(d) (i) by inserting in subsection one of section eighty-six after the word "Act" where first occurring the words "or in any memorandum of lease under the Real Property Act, 1900";

(ii) by inserting at the end of subsection three of the same section the following words: "and to memoranda of lease made after the commencement of the Conveyancing (Amendment) Act, 1930";

Sec. 87.

(e) by inserting at the end of section eighty-seven the following new subsection:—

(2) This section applies to a memorandum of lease under the Real Property Act, 1900.

Repeal of sec. 81
of Act No. 25,
1900.
(Consequential.)

(2) Section eighty-one of the Real Property Act, 1900, is hereby repealed.

19. The Principal Act is further amended—

No. 44, 1930.

- (a) by omitting the subheading immediately preceding section eighty-eight and by inserting the following new Division in lieu thereof :—

Further amendment of Act No. 6, 1919.

DIVISION 4.—*Easements and restrictive covenants.*

- (b) by omitting sections eighty-eight and eighty-nine and by inserting the following new sections in lieu thereof :—

Substituted secs. 88, 89.

88. (1) An easement expressed to be created by an instrument coming into operation after the commencement of the Conveyancing (Amendment) Act, 1930, and a restriction arising under covenant or otherwise as to the user of any land the benefit of which is intended to be annexed to other land, contained in an instrument coming into operation after such commencement, shall not be enforceable against a person interested in the land claimed to be subject to the easement or restriction, and not being a party to its creation unless the instrument clearly indicates—

Limitation of enforceability of easements and restrictions of user of land.

- (a) the land to which the benefit of the easement or restriction is appurtenant;
- (b) the land which is subject to the burden of the easement or restriction;
- (c) the persons (if any) having the right to release, vary, or modify the easement or restriction, other than the persons having, in the absence of agreement to the contrary, the right by law to release, vary, or modify the easement or restriction; and
- (d) the persons (if any) whose consent to a release, variation, or modification of the easement or restriction is stipulated for.

(2) This section shall not prevent the enforcement by a person entitled to a reversion remainder or other future estate or interest in any land of any contract against a person

Conveyancing (Amendment) Act.

No. 44, 1930.

person entitled to the estate or interest on which the reversion remainder or other future estate or interest is expectant.

(3) This section applies to land under the provisions of the Real Property Act, 1900, and in respect thereof—

(a) The Registrar-General shall have and be deemed always to have had power to enter in the appropriate folium of the register book relating to the land subject to the burden of a restriction, a notification of the restriction, and a notification of any instrument purporting to affect the operation of the restriction of which a note has been so entered, and when the restriction is released, varied, or modified, to cancel or alter the notification thereof.

(b) A notification in the register book of any such restriction shall not give the restriction any greater operation than it has under the instrument creating it.

(c) Every such restriction notified on the appropriate folium of the register book shall be an interest within the meaning of section forty-two of that Act.

(4) Subsection one of this section shall not apply to an easement acquired by or for the Crown, or by or for any public or local authority constituted by Act of Parliament, nor to any restriction affecting the user of land in relation to any such easement.

88A. It shall be, and shall be deemed always to have been possible—

(a) to create in favour of the Crown or of any public or local authority constituted by Act of Parliament an easement without a dominant tenement;

(b) to make appurtenant or to annex to an easement another easement or the benefit of a restriction as to the user of land.

Easements in gross and easements and restrictions appurtenant to easements.

89. (1) Where land is subject to an easement or to a restriction arising under covenant or otherwise as to the user thereof, the court may from time to time, on the application of any person interested in the land, by order modify or wholly or partially extinguish the easement or restriction upon being satisfied—

No. 44, 1930.

Substituted
sec. 89.

Power for
court to
modify or
extinguish
easements
and
restrictive
covenants.

- (a) that by reason of change in the user of any land having the benefit of the easement or restriction, or in the character of the neighbourhood or other circumstances of the case which the court may deem material, the easement or restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land subject to the easement or restriction without securing practical benefit to the persons entitled to the easement or to the benefit of the restriction, or would, unless modified, so impede such user; or
- (b) that the persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the easement wholly or in part or waived the benefit of the restriction wholly or in part; or
- (c) that the proposed modification or extinguishment will not substantially injure the persons entitled to the easement, or to the benefit of the restriction.

(2) Where any proceedings by suit or otherwise are instituted to enforce an easement or restriction, or to enforce any rights arising out

out of a breach of any restriction, any person against whom the proceedings are instituted may in such proceedings apply to the court for an order under this section.

(3) The court may on the application of any person interested make an order declaring whether or not in any particular case any land is affected by an easement or restriction, and the nature and extent thereof, and whether the same is enforceable, and if so by whom.

(4) Notice of any application made under this section shall, if the court so directs, be given to the council of the municipality or shire in which the land is situated, and to such other persons and in such manner, whether by advertisement or otherwise, as the court, either generally or in a particular instance, may order.

(5) An order under this section shall, when registered as in this section provided, be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the easement, or interested in enforcing the restriction and whether such persons are parties to the proceedings or have been served with notice or not.

(6) This section applies to easements and restrictions existing at the commencement of the Conveyancing (Amendment) Act, 1930, or coming into existence after such commencement.

(7) An order under this section may be registered in the Register of Causes, Writs, and Orders affecting land. No such order shall release or bind any land until it is so registered.

(8) This section applies to land under the provisions of the Real Property Act, 1900, and in such case the Registrar-General may, of his own motion and on the prescribed application shall make all necessary amendments and entries in the register-book for giving effect

effect to such order in respect of all grants, certificates of title, and other instruments affected thereby and the duplicates thereof, if or when available. No. 44, 1930.

For the purposes of this subsection a duplicate grant, certificate of title, or other instrument which is not in the possession of the Registrar-General shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of the Real Property Act, 1900, and the provisions of that Act applicable in respect of a grant, certificate of title, or instrument wrongfully retained shall apply in respect of such duplicate.

(9) In the case of other land a memorandum of such order shall be endorsed on such of the instruments of title as the court directs.

20. The Principal Act is further amended—

Further amendment of Act No. 6, 1919.

- (a) (i) by omitting from paragraph (a) of subsection three of section ninety-one the word "shall" where first occurring; Sec. 91.
- (ii) by inserting in the same paragraph after the word "memorandum" where secondly occurring the words "shall, unless a contrary intention appears in the memorandum,"; and
- (iii) by inserting in the same paragraph immediately before the proviso the words "discharged from all moneys secured by the mortgage";

- (b) by inserting immediately after section ninety-six the following new section:— New sec. 96A.

96A. (1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged or released as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice Notice of trusts affecting mortgage debts.
15 Geo. V, c. 26, s. 113.

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

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

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

(2) This section applies to mortgages made before or after the commencement of the Conveyancing (Amendment) Act, 1930, but only as respects dealings effected after such commencement.

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

Sec. 93.

- (c) by inserting in subsection two of section ninety-eight next after the word "debt" where first occurring the words "and as a deed of conveyance in the same manner as a memorandum of discharge operates under subsection three of section ninety-one";

Substituted
sec. 102.

- (d) by omitting section one hundred and two and by inserting in lieu thereof the following new section :—

On judgment
for mortgage
debt the
interest of the
mortgagor
not seizable.
See New
York Civil
Code, s. 1432.

102. (1) On a judgment of any court for a debt secured by mortgage of any property (including land under the provisions of the Real Property Act, 1900), the interest of the mortgagor in that property shall not be taken in execution under the judgment.

(2)

(2) Nothing in this section shall affect the construction of the section for which this section is substituted.

No. 44, 1930.

(e) by inserting at the end of subsection one of section one hundred and seventeen the following paragraph :—

Sec. 117 (1).
New para.
15 Geo. V,
c. 20, s. 79.

This subsection 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.

21. The Principal Act is further amended by inserting next after section one hundred and twenty the following new section :—

Further amend-
ment of Act
No. 6, 1919.
New sec. 120A.

120A. (1) The doctrine of *interesse termini* is hereby abolished.

Abolition of
*interesse
termini* and
as to
reversionary
leases.

(2) As from the commencement of the Conveyancing (Amendment) Act, 1930, all terms of years shall, whether the interest is created before or after such commencement be capable of taking effect at law or in equity, according to the estate, interest, or powers of the grantor, from the date fixed for the commencement of the term, without actual entry.

15 Geo. V,
c. 20, s. 149.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of the Conveyancing (Amendment) Act, 1930, to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void.

(4) Nothing in subsections one and two of this section shall prejudicially affect the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of the Conveyancing (Amendment) Act, 1930, shall operate to vary any statutory or other obligations imposed in respect of such terms or interests.

(5)

Conveyancing (Amendment) Act.

No. 44, 1930.

(5) Nothing in this Act affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

15 Geo. V,
c. 20, s. 205.

(6) In this section "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year.

Further
amendment of
Act No. 6, 1919.

22. The Principal Act is further amended as follows :—

Sec. 129 (6)
(b).15 Geo. V,
c. 20, s. 146,
[(8)(i)].

(a) by inserting in section one hundred and twenty-eight after the word "Division" the words "and Division 3";

(b) (i) by inserting in paragraph (b) of subsection six of section one hundred and twenty-nine after the words "land leased" the words "where the breach occurred before the commencement of the Conveyancing (Amendment) Act, 1930";

Sec. 129 (7).

(ii) by inserting in subsection seven of the same section after the words "with the consent of the lessor" the words "or without such consent where it is not required by the lease";

Sec. 129 (8).
Ibid. s. 146
(11).

(iii) by inserting in subsection eight of the same section after the word "not" the words "save as otherwise mentioned";

Sec. 130.
Ibid. s. 146
(4).

(c) by inserting in subsection one of section one hundred and thirty after the word "Act" the words "or for non-payment of rent";

Substituted
sec. 131.

(d) by omitting section one hundred and thirty-one and by inserting the following section in lieu thereof :—

Costs and
expenses.
Ibid. s. 146
(3).

131. A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry

or

or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act ;

No. 44, 1930.

The lessor shall be so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under subsection two of section one hundred and twenty-nine of this Act.

Vict. Act,
No. 2633,
s. 23.

23. The Principal Act is further amended by inserting next after section one hundred and thirty-three the following new Division :—

Further
amendment of
Act No. 6, 1919
New Division

DIVISION 3.—*Special provisions as to certain covenants.*

133A. (1) Damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant or agreement as aforesaid ; and in particular no damage shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the lease have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.

Provisions as
to covenants
to repair.
17 & 18
Geo. V,
c. 36, s. 18.

(2) A right of re-entry or forfeiture for a breach of any such covenant or agreement as aforesaid shall not be enforceable, by action or otherwise, unless the lessor proves that the fact that such a notice as is required by

by

by section one hundred and twenty-nine of this Act had been served on the lessee was known either—

- (a) to the lessee; or
- (b) to an under-lessee holding under an under-lease which reserved a nominal reversion only to the lessee; or
- (c) to the person who last paid the rent due under the lease either on his own behalf or as agent for the lessee or under-lessee;

and that a time reasonably sufficient to enable the repairs to be executed had elapsed since the time when the fact of the service of the notice came to the knowledge of any such person.

Where a notice has been sent by post in a registered letter addressed to a person at his last known place of abode in or out of New South Wales, and that letter is not returned through the post office undelivered, then, for the purposes of this subsection, that person shall be deemed, unless the contrary is proved, to have had knowledge of the fact that the notice had been served as from the time at which the letter would have been delivered in the ordinary course of post.

This subsection shall be construed as one with section one hundred and twenty-nine of this Act.

(3) This section applies whether the lease was created before or after the commencement of the Conveyancing (Amendment) Act, 1930.

Covenants against assigning, &c.

133B. (1) In all leases whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930, containing a covenant, condition, or agreement against assigning, underletting, charging, or parting with the possession of demised premises or any part thereof without license or consent, such covenant,

Provisions as to covenants not to assign, &c., without license or consent.

17 & 18
Geo. V, c. 36,
s. 19.

covenant, condition, or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—

No. 44, 1930.

- (a) to a proviso to the effect that such license or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the lessor to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such license or consent ; and
- (b) (if the lease is for more than forty years and is made in consideration wholly or partially of the erection, or the substantial improvement, addition, or alteration of buildings) to a proviso to the effect that in the case of any assignment, under-letting, charging, or parting with the possession (whether by the holders of the lease or any under-lessee whether immediate or not) effected more than seven years before the end of the term no consent or license shall be required, if notice in writing of the transaction is given to the lessor within six months after the transaction is effected.

(?) In all leases whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930, containing a covenant, condition, or agreement against the making of improvements without license or consent, such covenant, condition, or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to the proviso that such license or consent is not to be unreasonably withheld ; but this proviso does not preclude the right to require as a condition of such license or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the lessor, and of any legal or
other

other expenses properly incurred in connection with such license or consent nor, in the case of an improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such license or consent, where such a requirement would be reasonable, an undertaking on the part of the lessee to reinstate the premises in the condition in which they were before the improvement was executed.

(3) In all leases whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930, containing a covenant, condition, or agreement against the alteration of the user of the demised premises, without license or consent, such covenant, condition, or agreement shall, if the alteration does not involve any structural alteration of the premises, be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, shall be payable for or in respect of such license or consent; but this proviso does not preclude the right of the lessor to require payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to him and of any legal or other expenses incurred in connection with such license or consent.

Where a dispute as to the reasonableness of any such sum has been determined by a court of competent jurisdiction, the lessor shall be bound to grant the license or consent on payment of the sum so determined to be reasonable.

(4) This section shall not apply to leases of rural holdings within the meaning of the Rural Tenants Improvement Act, 1916, and paragraph (b) of subsection one and subsections two and three of this section shall not apply to mining leases.

24. The Principal Act is further amended by omitting section one hundred and forty-five and the sub-heading immediately before that section and inserting in lieu of that sub-heading and section the following new sub-heading and section :—

No. 44, 1930.
 Further amendment of Act No. 6, 1919.
 Substituted sec. 145.

Debts charged on property of deceased.

145. (1) Where a person dies after the commencement of the Conveyancing (Amendment) Act, 1930, possessed of or entitled to, or, under a general power of appointment by his will disposes of—

Charges on property of deceased to be paid primarily out of the property charged.
 15 Geo. V, c. 23, s. 35.

- (a) property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge, or otherwise (including a lien for unpaid purchase money); or
- (b) land in respect of which there is owing at the time of his death any money under a contract of purchase whether from the Crown or not,

and the deceased has not by will, deed, or other document signified a contrary or other intention, the property so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the property, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

- (a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate or his residuary real and personal estate, or his residuary real estate; or
- (b) by a charge of debts upon any such estate;

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3)

Conveyancing (Amendment) Act.

No. 44, 1930.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

Further amendment of Act No. 6, 1919.
Sec. 147 (2).

25. The Principal Act is further amended by inserting at the end of subsection two of section one hundred and forty-seven the words "or to any instrument executed for the purposes of that Act by a married woman, with the written consent of her husband, in favour of a purchaser in good faith."

Further amendment of Act No. 6, 1919.
New Part XIV.A.

26. The Principal Act is further amended by inserting next after section one hundred and fifty-one the following new Part:—

PART XIV.A.

INFANTS AND INFANTS' PROPERTY.

Infant's not to be appointed trustees.
15 Geo. V.
c. 20, s. 20.

151A. (1) The appointment of an infant to be a trustee in relation to any trust shall be void, but without prejudice to the power to appoint a new trustee to fill the vacancy.

(2) This section applies only to appointments made after the commencement of the Conveyancing (Amendment) Act, 1930.

Receipts by married infants.
Ibid. s. 21.

151B. (1) A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

(2) This section applies only to receipts given after the commencement of the Conveyancing (Amendment) Act, 1930.

Management of land during minority.
cf. *Ibid.*
c. 18, s. 102.

151C. (1) If and as long as any person who is entitled to a beneficial interest in possession affecting land is an infant, the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the court whereby they or their predecessors in office were appointed to be such trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the court on the application of a guardian or next friend of
the

the infant may enter into and continue in possession of the land on behalf of the infant, and in every such case the subsequent provisions of this section shall apply.

(2) The trustees shall manage or superintend the management of the land, with full power—

- (a) to fell timber from time to time in the usual course for sale, or for repairs or otherwise; and
- (b) to erect, alter, pull down, rebuild, and repair houses, and other buildings, dams, fences, and other erections; and
- (c) to continue the working of mines, minerals, and quarries which have usually been worked; and
- (d) to drain or otherwise improve the land or any part thereof; and
- (e) to insure against any insurable risk; and
- (f) to grant leases for any term not exceeding three years; and
- (g) to make allowances to and arrangements with tenants and others; and
- (h) to determine tenancies, and to accept surrenders of leases and tenancies; and
- (i) generally to deal with the land in a proper and due course of management;

[Act No. 14,
1925, s. 36
(1).]

but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

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

(4)

Conveyancing (Amendment) Act.

No. 44, 1930.

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

Power to
appoint
trustees of
infants'
property.
15 Geo. V,
c. 23, s. 42.

151D. (1) (a) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of the Conveyancing (Amendment) Act, 1930 (in this section called "the deceased"), to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue, or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may by registered deed appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives) to be the trustee or trustees of such devise, legacy, residue, or share for the infant, and to be trustees of any land devised or any land being or forming part of such residue or share for the purposes of section 151c of this Act.

(h) Where a trust corporation, or a trust corporation and one or more individuals are the personal representatives of the deceased, the personal representatives may by registered deed appoint the trust corporation either alone or with one or two individuals (whether or not including one or both the individual personal representatives) to be such trustees for the infant.

(c) On such appointment the provisions of section nine of the Trustee Act, 1925, shall apply to the vesting in the trustees of such devise, legacy, residue, or share.

(d) On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and the same may be retained in
its

its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment. No. 44, 1930.

(2) Where a personal representative has, before the commencement of the Conveyancing (Amendment) Act, 1930, retained or sold any such devise, legacy, residue, or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into court.

27. The Principal Act is further amended as follows:— Further amend-
ment of Act
No. 6, 1919.

(a) (i) by omitting from subsection two of section one hundred and fifty-three the words “or executor”; Sec. 153 (2).

(ii) by inserting next after subsection two of the same section the following new sub-sections:— New subsecs.
(2A), (2B),
(2C).

(2A) No conditions imposed on the exercise by an executor of any such power of sale, mortgage, or lease shall operate after the commencement of the Conveyancing (Amendment) Act, 1930.

(2B) The Registrar of Probates shall embody in or endorse on every certificate of the grant of administration a copy or record of any such conditions imposed by the order of such court.

(2C) No purchaser nor the Registrar-General, Crown Solicitor, or other person registering or certifying title under any sale, mortgage, or lease under this section shall be affected by any such conditions imposed by order of which he has not actual notice unless a copy or record of the order is registered.

(b) by omitting subsection two of section one hundred and fifty-four. Sec. 154 (2).

No. 44, 1930.

Further
amendment
of Act No. 6,
1919.New sec.
157A.Trustee or
personal
representa-
tive deemed
entitled to
sell and
convey land
resumed
under
statutory
authority.

28. The Principal Act is further amended by inserting next after section one hundred and fifty-seven the following new sub-heading and section :—

*Resumption of land vested in personal
representatives or trustees.*

157A. (1) In this section "resumption" means the compulsory acquisition of land under the provisions of the Public Works Act, 1912, or any other Act authorising the compulsory acquisition of land, and "resumed" has a meaning corresponding with that of "resumption."

(2) Notwithstanding anything contained in any Act, where land vested in a trustee or personal representative is resumed, such trustee or personal representative or his successor in office shall be entitled to sell and convey the land resumed, and to agree upon and receive all compensation money whatsoever payable in respect of the resumption.

(3) Such compensation money shall be held by the trustee or personal representative receiving the same on the trusts affecting the land in respect of which the compensation money is paid, or affecting the compensation money, and, subject to the terms of the instrument (if any) containing such trusts and to the provisions of this Act, on trust for investment in accordance with section fourteen of the Trustee Act, 1925.

(4) A sole trustee other than a trust corporation or a trustee or body of trustees incorporated by any Act or a person appointed as a sole trustee by the creator of the trust shall not be entitled under this section to agree upon or to receive the compensation money payable in respect of a resumption, but upon the appointment of an additional trustee of the instrument containing the trust affecting the land approved by the Crown Solicitor such trustees shall be entitled under this section to agree upon and receive such money, but this subsection does not affect the right of a sole
personal

personal representative as such to agree upon and give a valid receipt for or direct the application of such compensation money.

(5) (a) Subject to the provisions of the instrument (if any) creating such trusts, the trustees or the personal representatives may, with the consent of the person of full age and free from disability, who would have been entitled to the income of the land resumed, apply the compensation money paid under this section in respect of a resumption for the following purposes:—

- (i) in the purchase of other lands to be conveyed upon the like trusts as the lands in respect of which such money has been paid stood limited; or
- (ii) if such money has been paid in respect of any buildings taken under the authority of any such Act as aforesaid, or injured by the proximity of any work authorised by any such Act,—in removing or replacing such buildings or substituting others in their stead.

(b) If the person who would have been entitled to the income is—

- (i) an insane or incapable person, the consent of the committee or manager of his estate, or if there is no such committee or manager, the consent of the Master in Lunacy;
- (ii) an insane patient, the consent of the Master in Lunacy or of the court,

shall be sufficient authority to protect the trustees or personal representatives so applying the compensation money.

(c) If the person who would have been entitled to the income is an infant, or a person who cannot be found or ascertained, or as to whom it is uncertain whether he is living or dead, the trustees or personal representatives may so apply the money without the consent of any person.

(6) The costs of the appointment of an additional trustee under subsection four, and of obtaining

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No. 44, 1930.

obtaining the necessary consents under subsection five of this section, shall be paid by the person in whom the land vests on resumption.

(7) This section applies only to resumptions made after the commencement of the Conveyancing (Amendment) Act, 1930.

(8) The powers of trustees and personal representatives under this section shall be cumulative, and not in substitution for, or in derogation of any other powers of any such persons to sell and convey land the subject of a resumption, or to agree upon and receive compensation money payable in respect of a resumption.

Further amendment of Act No. 6, 1919.

Sec. 160.

New subsec.

(3).

cf. 15 Geo. V,

c. 20, s. 124

(2).

29. The Principal Act is further amended as follows :—

(a) by inserting next after subsection three of section one hundred and sixty the following new subsection :—

(3A) Where the donee of the power is a corporation aggregate the declaration may be made by any officer of the corporation appointed for that purpose either generally or in the particular instance by the board of directors, council, or other governing body by resolution or otherwise ; and where the declaration contains a statement that the declarant is an officer of the corporation appointed for for the purpose of making the declaration, that statement shall be conclusive evidence in favour of the persons mentioned in subsection three of this section.

New s. 162A.

(b) by inserting next after section one hundred and sixty-two the following new section :—

162A. Any act done, whether before or after the commencement of the Conveyancing (Amendment) Act, 1930, in professed exercise of a power mentioned in either section one hundred and sixty-one or section one hundred and sixty-two of this Act, and within the time, if any, fixed by the power, shall, in favour of a purchaser

Protection of purchaser under irrevocable power.

purchaser without notice of the revocation of the power with the concurrence of the donee thereof, be as valid as if the power had not been so revoked.

No. 44, 1930.

- (c) (i) by inserting at the end of subsection two of section one hundred and sixty-three the words: " Provided that on registration of the instrument creating the power every such conveyance deed or memorandum executed by the donee of the power shall take effect as if the instrument creating the power had been registered before the execution of the conveyance deed or memorandum " ;

Sec. 163 (2).

- (ii) by inserting at the end of the same section the following new subsections :—

New subsecs. (3) and (4).

(4) Every such conveyance and other deed and memorandum as is mentioned in subsection two executed by the donee of a power of attorney before the commencement of the Conveyancing (Amendment) Act, 1930, shall have the same effect as if that Act had been in operation at the time of the execution.

(5) Nothing in the last preceding subsection shall affect the rights of any party to any proceeding at law or in equity concluded before or pending at the commencement of the Conveyancing (Amendment) Act, 1930.

30. (1) The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Substituted sec. 165.

- (a) by omitting section one hundred and sixty-five and inserting in lieu thereof the following new section :—

165. When an instrument is marked by the Commissioner or Assistant Commissioner of Stamp Duties as duly stamped, as fully stamped, or as sufficiently stamped, a purchaser or the Registrar-General or the Crown Solicitor

Stamping of documents not to give notice of trust or written contract. Act No. 32, 192 s. 15 (vi).

shall

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No. 44, 1930.

shall not by reason only of the stamp borne by the instrument, or of its being so marked as aforesaid, be deemed to have notice of any trust or of any written contract of sale or other document affecting the title of the property to which the instrument refers; but notwithstanding anything in this section the Registrar-General may, if he thinks fit, require production of any such document.

Sec. 168 (1)
(b).

(b) by inserting in paragraph (b) of subsection one of section one hundred and sixty-eight after the words “(if any)” the words “or by such other person as the Chief Justice may appoint”;

(c) (i) by inserting in paragraph (b) of subsection one of section one hundred and seventy after the word “in” where first occurring the words “or out of”;

Sec. 170, new
subsec. (2A).
15 Geo. V,
c. 20, s. 193
(5).

(ii) by inserting next after subsection two of the same section the following new subsection:—

(2A) The provisions of this section extend to notices required to be served by any instrument affecting property (including any instrument under the Real Property Act, 1900) executed, made, or coming into operation after the commencement of the Conveyancing (Amendment) Act, 1930, unless a contrary intention appears in the instrument or in the Real Property Act, 1900.

(d) Section one hundred and seventy-five is amended by omitting the word “disposition” wherever occurring and by inserting in lieu thereof the word “appointment”;

Sec. 177.

(c) by omitting section one hundred and seventy-seven.

Repeals.

(2) Section one hundred and forty-two of the Stamp Duties Act, 1920–1924, as inserted by the Stamp Duties (Further Amendment) Act, 1924, and paragraph (vi) of section fifteen of the Stamp Duties (Further Amendment) Act, 1924, are hereby repealed.

31. The Principal Act is further amended—

No. 44, 1930.

- (a) by omitting section one hundred and eighty-one and by inserting in lieu thereof the following new sections:—

Further amendment of Act No. 6, 1919. Substituted sec. 181.

New secs. 181A, 181B.

181. (1) In all deeds, contracts, wills, orders, and other instruments (whether relating to property or not), and in any rules or regulations under this Act executed or made after the commencement of the Conveyancing (Amendment) Act, 1930, unless the contrary intention appears,—

Construction of expressions used in deeds and other instruments. 15 Geo. V. c. 20, s. 61.

- (a) The masculine includes the feminine and vice versa.
- (b) The singular includes the plural and vice versa.
- (c) "Person" includes a corporation.
- (d) "Month" means calendar month.

(2) This section extends to instruments under the Real Property Act, 1900.

181A. (1) In an instrument purporting to create a right-of-way the expressions "right of carriage way" and "right of foot way" have the same effect as if there had been inserted in lieu thereof respectively the words contained in Schedule VIII to this Act.

Construction of expressions "right of carriage way" and "right of footway."

(2) The said expressions shall not have the meaning attributed to them respectively by this subsection if any alteration is made in the expressions otherwise than by means of a proviso thereto.

(3) This section applies only to instruments executed or made after the commencement of the Conveyancing (Amendment) Act, 1930.

(4) This section extends to instruments under the Real Property Act, 1900.

181B. (1) Where in an assurance of land made by a person entitled to assure or create easements in respect of a wall built or to be built on the common boundary of that land

Construction of expression "party wall" in assurances of land.

and

Conveyancing (Amendment) Act.

No. 44, 1930.

and adjoining land so that the boundary passes longitudinally through the wall, the wall is described as a "party wall," that expression means (unless a contrary intention appears) a wall severed vertically and longitudinally with separate ownership of the severed portions, and with cross-easements entitling each of the persons entitled to a portion to have the whole wall continued in such manner that each building supported thereby shall have the support of the whole wall, and the assurance shall operate to create such easements accordingly.

(2) This section applies only to assurances executed or made after the commencement of the Conveyancing (Amendment) Act, 1930.

(3) This section extends to instruments under the Real Property Act, 1900.

New Sched.
VIII.

(b) by inserting next after Schedule VII the following new Schedule:—

Sec. 181A.

SCHEDULE VIII.

PART I.

Right of Carriage Way.

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by him, to go, pass and repass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof.

PART II.

Right of Foot Way.

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by him, to go, pass and repass on foot at all times and for all purposes, without animals or vehicles to and from the said dominant tenement or any such part thereof.

32. The Principal Act is further amended as follows:—

No. 44, 1930.

Further amendment of Act No. 6, 1919. Sec. 187 (c).

(a) by inserting in paragraph (c) of section one hundred and eighty-seven after the word "Parliament" the words "of the State or Commonwealth";

(b) by inserting next after section one hundred and ninety-five the following new section:—

New sec. 195A.

195A. (1) The Registrar-General shall also enter, in such manner as may be prescribed, in the Register of Causes, Writs and Orders affecting land, all notices not provided for by subsection two of section one hundred and ninety-five received by him pursuant to the Commonwealth Bankruptcy Act, 1924-1929.

(2) Subsection three of section one hundred and ninety-five shall apply not only to petitions and orders under the Commonwealth Bankruptcy Act, 1924-1929, but also to deeds of assignment and deeds of arrangement executed pursuant to that Act.

(3) No purchaser shall be affected with notice of any such petition, order, or deed by reason of omission to make any inquiry or any search other than search in such register.

(4) This section shall take effect as if it had come into operation on the first day of August, one thousand nine hundred and twenty-eight.

33. (1) The Principal Act is further amended by omitting section one hundred and ninety-six and by inserting in lieu thereof the following new section:—

Further amendment of Act No. 6, 1919.

Substituted sec. 196. Registration of plans.

196. (1) In this section the expressions "public road," "road," and "subdivision" have the same meaning as, unless inconsistent with their context or subject-matter, they respectively have, or shall have, in the Local Government Act, 1919, as amended.

(2) Every person who by any Act is required to procure the registration of a plan of a public road or of a subdivision shall lodge in the office of the Registrar-General a plan of the road or subdivision.

(3)

Conveyancing (Amendment) Act.

No. 44, 1930.

(3) Every person who makes or intends to make a subdivision of which he is not required by any Act to procure the registration of a plan may lodge in the office of the Registrar-General a plan of the subdivision.

(4) Every plan lodged in pursuance of this section shall—

- (a) be prepared in the prescribed manner; and
- (b) contain all prescribed particulars; and
- (c) be certified in the prescribed form by a licensed surveyor or a surveyor registered under the Surveyors Act, 1929 (and if the land is under the provisions of the Real Property Act, 1900, a surveyor specially licensed under that Act or a surveyor so registered), unless the Registrar-General dispenses with the certificate:

Provided that after the expiration of eighteen months from the commencement of the Surveyors Act, 1929, only a surveyor registered under that Act shall be competent to certify such plan.

(5) Every plan lodged in pursuance of this section of a public road, or which provides for—

- (a) the opening of a public road; or
 - (b) a drainage reserve; or
 - (c) public garden or public recreation space,
- shall be signed by every person having an estate or interest in the land whose concurrence or consent would be necessary for a dedication of the road, or for a conveyance of the drainage reserve or public garden or public recreation space. For the purposes of this section the seal of a corporation shall be deemed to be a signature.

(6) Every plan lodged in pursuance of this section shall comply with all statutory requirements relating to the plan.

(7) Every plan lodged in pursuance of this section shall contain a statement showing whether—

- (a) any, and, if any, which of the roads shown on the plan are intended to be dedicated to the public; and

(b)

(b) any, and, if any, what rights of way and other easements are intended to be created in favour of purchasers of lots and of which lots shown on the plan, or as appurtenant to any, and, if any, which roads shown on the plan.

(8) When a plan is lodged in pursuance of this section, the Registrar-General shall satisfy himself whether all the requirements of this Act in relation to the plan have been complied with.

(9) If the Registrar-General is not satisfied that all the requirements of this Act in relation to a plan lodged in pursuance of this section have been complied with, he shall give notice to the person on whose behalf the plan was lodged, or to the solicitor, conveyancer, or agent acting for him, of all such requirements as have not been complied with.

(10) When the Registrar-General is satisfied that all the requirements of this Act in relation to a plan lodged in pursuance of this section have been complied with, he shall cause the plan to be numbered, and an entry to be made in a register of plans so lodged of the number of the plan and of the date on which it was so numbered, and thereby the plan shall be registered.

(11) When on the registration of a plan there is, by the operation of any Act, a vesting of a road shown on the plan, any easement stated in the plan as intended to be created as appurtenant to the road shall vest with the road.

(12) A conveyance of land comprised in a plan registered under this section may be made by reference to the plan.

(13) The Registrar-General on the application of any person interested in any land to which a plan registered under this section relates may, on such evidence as appears to him sufficient, and after such notices, if any, as he thinks proper, amend the plan, or cause it to be amended so as to correct any error therein, or supply any omission therefrom.

Every

Every such amendment shall be so made that the original words or symbols shall not be rendered illegible, and the date of every amendment shall be noted on the plan, and initialled by the Registrar-General or some person authorised by him.

Every such amendment shall take effect as if the error or omission thereby corrected or supplied had not been made :

Provided that any such amendment shall not affect the construction of any instrument made before the amendment so as to prejudice any person claiming under that instrument.

(14) This section applies to land under the provisions of the Real Property Act, 1900.

(15) The Registrar-General may require the lodgment under this section of a plan before or in connection with the registration under the Real Property Act, 1900, of any instrument or of any person as proprietor of land.

(16) A contravention of this section shall not invalidate any instrument intended to affect or evidence the title to any land.

Further amendment of Act No. 6, 1919. New Division 3A. New sec. 196A.

34. (1) The Principal Act is further amended by inserting next after section one hundred and ninety-six the following new Division :—

DIVISION 3A.—Register of resumptions.

Register of resumptions.

196A. (1) In this section “resumption” means the compulsory acquisition of land under the provisions of the Public Works Act, 1912, or any other Act authorising the compulsory acquisition of land, and “resumed” has a meaning corresponding with that of “resumption.”

(2) A register, to be called the Register of Resumptions, shall be kept at the office of the Registrar-General.

(3) Whenever any land is resumed the Crown or other authority making the resumption shall forthwith send to the Registrar-General notice in the prescribed form of the resumption.

(4)

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(4) The Registrar-General shall enter in such register, in such manner as may be prescribed, particulars of such resumption, unless the land so resumed is wholly or in part comprised in a grant or a certificate of title under the Real Property Act, 1900, in which case the Registrar-General shall give effect to such notice of resumption as if the same were a memorandum of transfer duly executed under that Act.

(5) Where land is resumed under the Commonwealth Land Acquisition Act, 1906-1916, the Registrar-General may, subject to the payment of the prescribed fees, deal with the copy of the notification lodged with him under that Act as if it were a notice of resumption under this section.

(6) This section applies only to resumptions (including resumptions under any Act of the Commonwealth) made after the commencement of the Conveyancing (Amendment) Act, 1930.

(2) The following Acts are to the extent in this subsection mentioned hereby repealed:—

- (a) Closer Settlement Act, 1904, section forty-four; Act No. 37, 1904 sec. 44.
- (b) Public Works Act, 1912, section forty-six, subsection (1); Act No. 45, 1912 sec. 46, subsec. (1).
- (c) Crown Lands Consolidation Act, 1913, section one hundred and ninety-seven, all words therein after the words "abstract of his title"; Act No. 7, 1913, sec. 197, last para.
- (d) Local Government Act, 1919, section five hundred and thirty-six, subsection seven; Act No. 41, 1919, sec. 536, subsec. (7).
- (e) Metropolitan Water, Sewerage and Drainage Act, 1924, section one hundred and fifteen, subsection seven; Act No. 50, 1924, sec. 115, subsec. (7).
- (f) Surveyors Act, 1929, section one, subsection two, paragraph (b). Act No. 3, 1929, sec. 1, subsec. (2) (b).

(3) By inserting at the end of section two hundred and two the following new subsection:—

(4) Regulations made under this Part of this Act after the commencement of the Conveyancing (Amendment) Act, 1930, shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations;

T

(c)

Sec. 202.
(Regulations.)

No. 44, 1930.

- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Further amendment of Act No. 6, 1919.

35. The Principal Act is further amended in section two—

(a) under Part II—

(i) Division 1, by omitting “8” and inserting in lieu thereof “9”;

(ii) Division 2, by omitting “23” and inserting in lieu thereof “23A”;

(iii) Division 3, by omitting “*Property generally, ss. 24-37*” and inserting in lieu thereof “*Assurances of land—ss. 23B-23E*”;

(iv) by inserting after Division 3—

“DIVISION 4.—*Property generally—ss. 24-37*”;

“DIVISION 5.—*Voidable dispositions—ss. 37A-37C*”;

(b) under Part III—

(i) by omitting “Division 2.—*Certain cases in which deeds are necessary—s. 42*”;

(ii) by inserting at the end thereof “DIVISION 4.—*Corporation instruments—s. 51A*”;

(c) under Part IV, by inserting at the end thereof—

“DIVISION 5.—*Dispositions on trust for sale, or with power of sale—ss. 66A-66E*”;

“DIVISION 6.—*Statutory trusts of property held in co-ownership—ss. 66F-66I*”;

(d)

Sec. 2 (Division 2 of Act).

- (d) (i) under Part VI, Division 3, by omitting "89" and inserting in lieu thereof "87";
 (ii) by inserting at the end thereof "DIVISION 4.—*Easements and restrictive covenants—ss. 88-89*";
- (e) under Part VIII by inserting next after Division 2 the following new Division: "DIVISION 3.—*Special provisions as to certain covenants—ss. 133A, 133B*";
- (f) under Part XII, by omitting "LAND" and by inserting in lieu thereof "PROPERTY OF DECEASED";
- (g) by inserting next after Part XIV the following: "PART XIVA—*INFANTS AND INFANTS' PROPERTY—ss. 151A-151D*";
- (h) under Part XV, by omitting "157" and by inserting in lieu thereof "157A";
- (i) (i) under Part XXIII, Division 2, by omitting "s. 195" and by inserting in lieu thereof "ss. 195-195A";
 (ii) by inserting next after "DIVISION 3.—*Plans of subdivision—s. 196*" the following: "DIVISION 3A.—*Register of resumptions—s. 196A*";

No 44, 1930.

36. The Real Property Act, 1900, is amended by inserting next after section fourteen the following new section:—

14A. (1) When an easement is expressly created by an instrument not registered under this Act as appurtenant to land the subject of an application under section fourteen or section one hundred and two of this Act, or under the provisions of this Act, the easement may be brought under the provisions of this Act, and, subject to this section, this Act shall apply to any such easement.

(2) When an appurtenant easement is brought under the provisions of this Act, the Registrar-General shall include in or endorse on the certificate of title relating to the dominant tenement a statement indicating that the easement is appurtenant to the land or some part of the land in that certificate of title.

Amendment of Act No. 25, 1900.
 New sec. 14A.
 Easements created by unregistered instruments may be brought under Act.

(3)

No. 44, 1930.

(3) The statement mentioned in the last preceding subsection may describe the easement by a reference to the instrument by which it was created, or otherwise with or without such a reference.

(4) When an easement is brought under the provisions of this Act and the servient tenement is under the provisions of this Act, the Registrar-General shall, unless the easement is notified on the title for the servient tenement, notify the easement on that certificate of title.

For the purpose of this subsection, a certificate of title shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of this Act, and the provisions of this Act applicable in respect of a certificate of title wrongfully retained shall apply in respect of such certificate as if the notification required by this subsection were a correction.

(5) The statement mentioned in subsection two of this section shall operate to register as proprietor of the easement the person named in the certificate of title as the proprietor of the dominant tenement.

(6) No certificate of title shall be issued for an easement alone.

(7) The indication in the certificate of title of anything as an easement shall not make effective as an easement anything which by law is incapable of being an easement.

Further amendment of Act No. 25, 1900. **37.** The Real Property Act, 1900, is further amended as follows:—

Sec. 26.

(a) by inserting at the end of clause (b) of section twenty-six the words “and served the order or injunction on or given written notice thereof to the Registrar-General”; and

Sec. 32.

(b) by inserting at the end of section thirty-two the following new subsection:—

(3) The Registrar-General shall have and be deemed always to have had power by an entry in the Register Book to cancel any entry in
the

the Register Book relating to anything which he is satisfied has ceased to affect the land to which that entry relates. No. 44, 1930.

- (c) (i) by inserting in the proviso to subsection two of section thirty-two next after the word "matter" where firstly occurring the words "is a memorandum under paragraph (b), (c), or (d) of subsection one of section ninety-one of the Conveyancing Act, 1919, or"; Sec. 32, (2).
- (ii) by inserting at the end of the same proviso the words "and this subsection shall take effect as if this proviso so amended as aforesaid had been included in subsection one of section three of the Real Property (Amendment) Act, 1928";

38. The Real Property Act, 1900, is further amended as follows:— Further amendment of Act No. 25, 1900.

- (a) by inserting after paragraph (c) of section forty-two the word "and" and immediately thereafter the following new paragraph:— Sec. 42, new para. (d).

- (d) a tenancy whereunder the tenant is in possession or entitled to immediate possession, and an agreement or option for the acquisition by such a tenant of a further term to commence at the expiration of such a tenancy, of which in either case the registered proprietor before he became registered as proprietor had notice against which he was not protected:

Provided that—

- (i) The term for which the tenancy was created does not exceed three years; and
- (ii) in the case of such an agreement or option, the additional term for which it provides would not, when added to the original term, exceed three years; and
- (iii) the registration of the proprietor is after the commencement of the Conveyancing (Amendment) Act, 1930. (b)

Conveyancing (Amendment) Act.

No. 44, 1930.

New sec. 43A

Protection as to notice of person contracting or dealing in respect of land under this Act before registration.

(b) by inserting next after section forty-three the following new section:—

43A. (1) For the purpose only of protection against notice, the estate or interest in land under the provisions of this Act, taken by a person under an instrument registrable, or which when appropriately signed by or on behalf of that person would be registrable under this Act shall, before registration of that instrument, be deemed to be a legal estate.

(2) No person contracting or dealing in respect of an estate or interest in land under the provisions of this Act shall be affected by notice of any instrument, fact, or thing merely by omission to search in a register not kept under this Act.

(3) Registration under the Registration of Deeds Act, 1897, shall not of itself affect the rights of any person contracting or dealing in respect of estates or interests in land under the provisions of this Act.

Further amendment of Act No. 25, 1900. New sec. 45A.

39. The Real Property Act, 1900, is further amended by inserting next after section forty-five the following new section:—

Construction of instruments relating to land abutting on streams or roads.

45A. (1) Except as in this section mentioned, the rebuttable rule of construction applicable to a conveyance of land therein indicated as abutting on a non-tidal stream or a road, that the land extends to the middle line of the stream or road, shall apply, and be deemed always to have applied to instruments registered under the provisions of this Act relating to land indicated in the instruments as so abutting.

(2) The fact that an applicant to bring land abutting on a non-tidal stream or a road under the provisions of this Act has not expressly declared that he was entitled to the bed or part of the bed of the stream or to the road or part thereof shall not, but the fact that the applicant had not a title to any part of the bed of the stream or to any part of the road shall prevent the application of the rule mentioned in subsection one of this section to a certificate

certificate of title issued to such an applicant, or to any subsequent certificate of title relating to the land or part of the land which was the subject of the application. No. 44, 1930.

(3) This section shall not apply to a Crown grant of land indicated therein as abutting on a road created by the Crown, or to any certificate of title or other instrument relating to that land.

40. The Real Property Act, 1900, is further amended as follows:— Further amendment of Act No. 25, 1900.
New sec. 47A.

(a) by inserting next after section forty-seven the following new section:—

47A. An easement created by an instrument registered under this Act or of which any person is registered as the proprietor under this Act may be released wholly or partly by a memorandum of transfer registered under this Act altered as the circumstances of the case may render necessary. Release of easement.

(b) by inserting next after section fifty-two the following new section:— New sec. 52A.

52A. (1) All acts, powers, and rights which may be done or exercised by the mortgagee or encumbrancee of an estate in land in relation to the estate or the mortgagor or encumbrancer of the estate may, when the mortgage or encumbrance of the estate is subject to a mortgage, be done or exercised by the mortgagee of the mortgage or encumbrance, and shall not be done or exercised by the mortgagee or encumbrancee of the estate. Mortgage of a mortgage or encumbrance.

(2) Nothing in this section shall affect the rights of a mortgagor or encumbrancer who has not received notice of a mortgage of the mortgage or encumbrance.

(3) This section applies only to mortgages executed after the commencement of the Conveyancing (Amendment) Act, 1930, of mortgages or encumbrances created before or after such commencement.

(4)

No. 44, 1930.

(4) In case of default within the meaning of section fifty-seven of this Act, notice authorised by that section shall not be given by leaving the notice on the mortgaged or encumbered land.

(5) The provisions of section sixty of this Act shall not apply in case of default by the mortgagor of a mortgage or encumbrance.

Further
amendment
of Act
No. 25, 1900.
New sec. 56A.
Postpone-
ment of
mortgages.

41. The Real Property Act, 1900, is further amended as follows:—

(a) by inserting next after section fifty-six the following new section:—

56A. (1) A registered mortgage under this Act (whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930) may be postponed in its entirety to any other registered mortgage affecting the whole of the same land and no other land, by a memorandum in or to the effect of a form which may be prescribed under the Conveyancing Act, 1919-1930, and registered under this Act.

(2) A memorandum under this section shall not be registered when any registered mortgage intervenes between the mortgage to be postponed and the mortgage intended to have benefit of the postponement, unless the proprietor of the intervening mortgage joins in the memorandum.

(3) Notwithstanding anything in this Act a memorial of a memorandum under this section shall be entered on the folium of the register book constituted by the existing grant or certificate of title on which memorials of the mortgages appear and the duplicate thereof, and on the mortgages affected by the memorandum and the duplicates thereof.

(4) After registration of a memorandum under this section, the mortgages affected by the postponement shall be entitled in priority the one over the other as if they had been registered in the order in which by the memorandum they are expressed to have priority.

(b)

- (b) by inserting next after section fifty-eight the following new section :—

No. 44, 1930.

New sec. 58A.

58A. (1) Any notice or lapse of time prescribed by sections fifty-seven or fifty-eight may, by agreement expressed in the mortgage or encumbrance, be dispensed with, and in such case section fifty-eight shall operate as if no notice or lapse of time were thereby required.

Dispensing with notice or lapse of time.

(2) This section applies to mortgages and encumbrances made before or after the commencement of the Conveyancing (Amendment) Act, 1930.

- (c) by omitting from section fifty-nine the words “upon proof to his satisfaction by statutory declaration that such default has been made and continues as aforesaid” occurring at the beginning of that section;

Sec. 39.

- (d) by inserting at the end of section sixty-one the following new subsection :—

Sec. 61

(5) In the case of any mortgage in which the requirement of notice prescribed by section fifty-seven is expressed to be dispensed with, subsection two of this section shall operate as if the words “after notice given to the mortgagor as in this Act provided” were omitted from that subsection.

New subsec. (5).

- (e) by omitting from subsection one of section sixty-five the words “having thereon an endorsement” and inserting in lieu thereof the words “accompanied by a memorandum”;
- (f) by inserting in section seventy-three next after the word “thereof” the words “and the order be served on or written notice thereof be given to the Registrar-General”;
- (g) by inserting at the end of section seventy-four the following proviso :—

Sec. 73.

Provided that nothing in this section shall prevent the entry in the register book of a memorandum of transfer or other instrument presented for registration before and awaiting registration at the time of the lodgment of the caveat and not afterwards withdrawn.

Conveyancing (Amendment) Act.

No. 44, 1930.

Further
amendment
of Act No.
25, 1900.
Sec. 123A.
Proviso.

42. The Real Property Act, 1900, is further amended as follows:—

- (a) by inserting at the end of section 123A the following proviso:—

Provided that the Registrar-General shall not be ordered to pay costs upon any proceeding relating to an application to bring land under the provisions of this Act, unless the court is of opinion that the Registrar-General has acted unreasonably.

Sec. 127.

- (b) (i) by omitting from section one hundred and twenty-seven the word “such” where it first occurs;

- (ii) by inserting in the same section next after the word “interest” the words “or to whose claim every such action would be inapplicable”;

New subsec.
(2).

- (iii) by inserting at the end of the same section the following subsection:—

(2) Subject to the limitation imposed by section one hundred and thirty of this Act, this section shall extend to losses and damages therein mentioned which have arisen or shall arise from anything done or omitted to be done before the commencement of the Conveyancing (Amendment) Act, 1930.

Sched. IV.

- (c) by omitting from the Fourth Schedule the words “delineated in the public map of the said (county or parish) deposited in the Department of Lands.”

Amendment
of Act No. 13,
1898.

43. The Wills Probate and Administration Act, 1898, is amended as follows:—

- (a) by inserting at the end of section fifteen the following new subsection:—

(2) A will made after the commencement of the Conveyancing (Amendment) Act, 1930, which is expressed to be made in contemplation of a marriage, shall not be revoked by the solemnisation of the marriage contemplated.

(b)

Sec. 15.
New subsec.
(2).
15 Geo. V,
c. 20, s. 177.

(b) by inserting next after section forty-six the following new sections:—

No. 44, 1930

New sec. 24A

46A. (1) The real and personal estate of a person dying after the commencement of the Conveyancing (Amendment) Act, 1930, to the extent of his beneficial interest therein, and the real and personal estate of which a person so dying disposes by his will (whenever made) in exercise of a general power, shall be assets for the discharge of the funeral, testamentary, and administrative expenses, debts, and liabilities.

Real and personal estate of person dying after commencement of Conveyancing (Amendment) Act, 1930, are assets for payment of debts.
cf. 15 Geo. V, c. 23, s. 32.

(2) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before any proceeding is taken or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the proceeding or under the process.

46B. (1) Real and personal estate passing under a gift contained in the will of a testator dying after the commencement of the Conveyancing (Amendment) Act, 1930, which operates as an appointment under a general power to appoint by will shall vest in his personal representatives as if he had been entitled thereto at his death, whether or not he was so entitled, and whether or not for an estate or interest not determining on his death.

New sec. 46B.
Appointments under general power.
cf. *Ibid.* s. 3 (2).

(2) Real and personal estate the subject of a gift contained in the will of a testator dying after the passing of the Probate Act of 1890, which operated as an appointment under a general power, shall be deemed to have vested under the provisions of that Act, or of this Act, as the case may require, in his executors or administrators as if that property had been vested in the testator at the time of his death, whether or not he was entitled thereto for an estate or interest not determining on his death.

(3)

New sec. 46C.
Administra-
tion of assets.
15 Geo. V,
c. 23, s. 34.

(3) Nothing in the last preceding subsection shall affect any right or title accrued before the commencement of this section under any disposition by an appointee which would have been valid if this section had not been passed, or shall affect the interpretation of section forty-four of this Act.

46C. (1) Where the estate of a deceased person is insolvent his real and personal estate shall, subject to the provisions of the Commonwealth Bankruptcy Act, 1924-1929, be administered in accordance with the rules set out in Part I of the Third Schedule to this Act.

(2) Where the estate of a deceased person is solvent his real and personal estate shall, subject to the provisions of any Act as to charges on property of the deceased and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary, and administrative expenses, debts, and liabilities, payable thereout in the order mentioned in Part II of the Third Schedule to this Act.

(3) In this section—

“deceased person” means a person dying after the commencement of the Conveyancing (Amendment) Act, 1930.

“solvent” means sufficient and “insolvent” means insufficient for the payment in full of the debts and liabilities of the deceased person.

New sec. 46D
Application
of income of
settled
residuary
real or
personal
estate.

46D. (1) Where, under the provisions of the will of a person dying after the commencement of the Conveyancing (Amendment) Act, 1930 (in this section called “the deceased”), any real or personal estate included (either by specific or general description) in a residuary gift is settled by way of succession, no part of the income of that property shall be applicable in or towards the payment of the funeral, testamentary

testamentary, and administrative expenses, debts, and liabilities, or of the interest (if any) thereon up to the date of the death of the deceased.

(2) The income of the settled property shall be applicable in priority to any other assets in payment of the interest (if any) accruing due on the funeral, testamentary, and administrative expenses, debts, and liabilities, after the date of the death of the deceased and up to the payment thereof, and the balance of such income shall be payable to the person for the time being entitled to the income of the property.

(3) Where, after the death of the deceased, income of assets which are ultimately applied in or towards payment of the funeral, testamentary, and administrative expenses, debts and liabilities arises pending such application, that income shall, for the purposes of this section, be deemed income of the residuary estate of the deceased.

(4) This section shall only affect the rights of beneficiaries under the will as between themselves, and shall not affect the rights of creditors of the deceased.

(5) This section shall have effect, subject to the provisions (if any) to the contrary contained in the will and to the provisions of any Act as to charges on property of the deceased.

46E. (1) (a) Real estate vested in an executor or administrator shall not be divested from him and vested in another person who may be entitled thereto either beneficially or as a trustee, or an executor or administrator, otherwise than by a registered conveyance, or by an acknowledgment operating under section eighty-three of this Act, or by registration under the provisions of the Real Property Act, 1900.

New sec. 46E.
Mode of divesting land from an executor or administrator.

(b)

No. 44, 1930.

(b) This subsection extends to real estate vested in an executor or administrator at the commencement of the Conveyancing (Amendment) Act, 1930, or thereafter becoming so vested.

(2) (a) Real estate mentioned in section eighty-three of this Act shall not, as against a purchaser in good faith from an executor or administrator, be held to have been divested from the executor or administrator and vested in another person entitled thereto, except by a registered conveyance, or by an acknowledgment operating under that section.

(b) This subsection applies to purchases made on or after the fifteenth day of December, one thousand eight hundred and ninety (being the day of the passing of the Probate Act of 1890).

(c) by inserting at the end of section seventy-two the following new subsection :—

(2) A grant of administration under this section shall continue in force notwithstanding the death of the donor of the power, unless the grant in terms provides that it shall determine on such event.

(d) by inserting next after the Second Schedule the following new Schedule :—

THIRD SCHEDULE.

PART I.

Rules as to payment of Debts and Liabilities where the Estate is Insolvent.

1. The funeral, testamentary, and administration expenses have priority.

2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as are in force at the death of the deceased person under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

PART

Sec. 72.
New subsec.
(2).
cf. 15 Geo. V,
c. 20, s. 124
(2).

New Second
Schedule.
cf. *Ibid.*
c. 24, s. 34, and
First Schedule.
Sec. 46c.

PART II.

No. 44, 1930.

Order of Application of Assets where the Estate is Solvent.

1. Assets undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
2. Assets not specifically disposed of by will but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
3. Assets specifically appropriated or disposed of by will (either by a specific or general description) for the payment of debts.
4. Assets charged with or disposed of by will (either by a specific or general description) subject to a charge for the payment of debts.
5. The fund, if any, retained to meet pecuniary legacies.
6. Assets specifically disposed of by will, rateably according to value.

44. The Trustee (Amendment) Act, 1929, is amended Amendment of Act No. 60 1929, s. 4. by inserting at the end of section four the following proviso:—

Provided that no such action or proceeding shall prevent the validation of a title purporting to have passed under a trust or power to a purchaser, unless the action or proceeding was or is against the person holding under that title.

Conveyancing (Amendment) Act.

No. 44, 1930.

SCHEDULE.

Reference to Act.	Subject or short title.	Extent of repeal.
IMPERIAL ACTS.		
13 Eliz., c. 5 ...	An Act against fraudulent deedes, giftes, alienations, &c.	The whole Act so far as the same applies to New South Wales.
27 Eliz., c. 4 ...	An Act against covenous and fraudulent conveyances.	The whole Act so far as the same applies to New South Wales.
29 Car. 2, c. 3 ...	The Statute of Frauds ...	Sections one, two, and three. In section four the words "or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them." Sections seven, eight, and nine: so far as any of the above sections apply to New South Wales.