

LAWS OF FIJI

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CHAPTER 130

PROPERTY LAW

ARRANGEMENT OF SECTIONS

PART I-PRELIMINARY

SECTION

1. Short title.
2. Interpretation.
3. Application of Act and savings.

PART II-DEEDS AND OTHER INSTRUMENTS

4. Formalities of deed.
5. Execution of instruments by or on behalf of corporations.
6. Receipt for consideration money.
7. Persons taking who are not parties.
8. Description of deeds.
9. Exercise of powers.
10. Appointments.
11. Leases need not be by deed.
12. Construction of expressions and stipulations as to time in contracts, etc.

PART III-GENERAL RULES AFFECTING PROPERTY

13. Uses not necessary.
14. Estates tail abolished.
15. Freehold in future may be created.
16. Creation by deed of estate in chattel real.
17. When contingent remainders capable of taking effect.
18. Rights of entry, etc.
19. Certain expressions to be words of purchase; rule in *Shelley's* case abolished.
20. Restriction on executory limitations.
21. Abolition of restraint upon anticipation.
22. Presumption of survivorship.
23. Equitable waste.
24. No merger by operation of law.
25. Partial release of land from rent.
26. Corporations may hold as joint tenants.

27. Disclaimer of powers.
28. Intermediate income of contingent or executory gifts.
29. Receipts for income by married infants.
30. "Heirs" and other words interpreted.
31. "Heirs of the body" and other words interpreted.
32. Appointments valid notwithstanding objects excluded.
33. Transfer by person of property to himself.

PART IV – PERPETUITIES AND ACCUMULATIONS

34. Application.
35. Interpretation.
36. The perpetuity period.
37. Capacity to procreate or bear a child.
38. Wait and see rule.
39. Power of court to make declaration as to validity of limitations.
40. Invalid age contingencies.
41. Class gifts.
42. Order of applying rules.
43. Unborn spouses.
44. Dependent limitations.
45. Options.
46. Application of the rule to possibilities of reverter, rights of entry and resulting trusts.
47. Powers of appointment.
48. Accumulations of income.
49. Rule in *Whitby v. Mitchell* abolished.
50. Superannuation funds, etc.

PART V-PROTECTION OF PURCHASERS AND CREDITORS

51. Alienation with intent to defraud creditors.
52. Voluntary transfer of land with intent to defraud purchaser.
53. Purchase in good faith of reversion not to be set aside for undervalue only.
54. Payment of consideration money to barrister and solicitor.

PART VI-COVENANTS AND POWERS

55. Benefit of covenants relating to land.
56. Burden of covenants relating to land.
57. Effect of covenant with two or more jointly.
58. Covenants and agreements made by a person with himself and others.
59. Covenants to be joint and several.
60. Implied covenants may be negated.
61. Benefit of covenant for title.

PART VII-COVENANTS IMPLIED IN TRANSFERS GENERALLY

- 62. Covenants implied in transfer by way of sale, etc.
- 63. Covenant between transferee and transferor implied in transfer subject to a mortgage.
- 64. Covenant implied in transfer of a lease.
- 65. Further covenant implied in transfer of a lease.
- 66. Covenant implied in transfer by trustee or mortgagee.

PART VIII-MORTGAGES

- 67. Mortgage of a lease to include tenant's fixtures.
- 68. Covenants, etc., implied in all mortgages.
- 69. Transferee of land subject to mortgage personally liable to mortgagee.
- 70. Effect of advance on joint account, etc.
- 71. Security for further advances.
- 72. Repayment of mortgages.
- 73. Mortgagor may require mortgagee to transfer instead of discharging.
- 74. Encumbrancee to have the like right.
- 75. Mortgagee may, after default, enter into possession.
- 76. Further powers of mortgagee as to receipt of rent, etc.
- 77. Mortgagor in default.
- 78. Notice not required when money payable on demand.
- 79. Mortgagee may sell.
- 80. Restriction on power of variation in case of land.
- 81. Application of purchase money.
- 82. Mortgagee may appoint receiver.
- 83. Mortgagee of leasehold liable for rent after entry.
- 84. Mortgagee's receipts, discharges, etc.
- 85. Sections 68 to 83 to apply only in case of mortgage by deed.
- 86. Equitable mortgages and charges.
- 87. Restriction on consolidation.
- 88. Retrospective operation of Part VIII.

PART IX LEASES AND TENANCIES

- 89. Termination of tenancies.
- 90. Covenants implied in leases.
- 91. Powers in lessor.
- 92. Implied covenant in a sublease.
- 93. Effect of licence to assign.
- 94. No fine for licence to assign.
- 95. Assignment by trustee or liquidator, etc.
- 96. Merger of reversion not to affect remedies.
- 97. Rent and benefit of lessee's covenants to run with reversion.

- 98. Obligation of lessor's covenants to run with reversion.
- 99. Apportionment of conditions on severance, etc.
- 100. Restriction on effect of waiver.
- 101. Personal representatives not personally liable for covenants.
- 102. Tenant not prejudiced by assignment before notice.
- 103. Abolition of *interesse termini*, and as to reversionary leases and leases for lives.
- 104. Effect of extinguishment of reversion.
- 105. Restrictions on and relief against forfeiture of leases.

PART X-EASEMENTS, ENCROACHMENTS AND MISTAKE.

- 106. Easement in gross permitted.
- 107. Access or use of light or air.
- 108. Court may authorise entry for erecting or repairing buildings, etc.
- 109. Power of court to grant special relief in cases of encroachment.
- 110. Relief in cases of mistake as to boundaries or identity of land.
- 111. Recovery of payments made under mistake of law.
- 112. Payments made under mistake of law or fact nor always recoverable.

PART XI- ASSIGNMENTS OF THINGS IN ACTION.

- 113. Assignment of debts and choses in actions.

PART XII- POWERS OF ATTORNEY.

- 114. Execution by attorney in his own name.
- 115. Continuance until notice of death or revocation received.
- 116. Irrevocable power of attorney for value.
- 117. Power of attorney made irrevocable for fixed time.
- 118. Application to corporations.

PART XIII- PARTITION OF LAND AND DIVISION OF CHATTELS

- 119. In action for partition court may direct land to be sold.
- 120. Proceeds of sale, how applied.
- 121. Costs in partition suits.
- 122. Division of chattels.

PART XIV APPORTIONMENT.

- 123. Interpretation.
- 124. Income apportionable in respect of time.
- 125. Time when apportioned part payable.
- 126. Recovery of apportioned parts.

127. Exceptions and application.

PART XV SERVICE OF NOTICES

128. Service of notices in case of registered land

129. Service of notices in other cases.

Schedules.

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO
PROPERTY AND FOR INCIDENTAL AND OTHER PURPOSES**

[1st August, 1971]

PART I-PRELIMINARY

Short title

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

Interpretation

2. In this Act, unless the context otherwise requires-

"court" means the Supreme Court;

"encumbrance" means all mortgages, charges, estates or interests; and encumbrance has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or entitled to require the payment or performance thereof;

"executors" and "administrators" of a deceased person mean respectively the persons to whom probate of the will or letters of administration of the estate of the deceased has been granted by the proper court, whether for general, special or limited purposes; and "executors" includes executors by right of representation;

"fine" includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium or foregift;

"income", when used with reference to land, includes rents and profits;

"instrument" includes a deed and a will and every document registered or capable of registration under the Land Transfer Act, or in respect of which any memorial is by that Act directed, required or permitted to be entered in the Register Book or endorsed on any registered instrument;

"land" includes all estates and interests in land;

"lease" includes a sub-lease and an agreement for a lease or sub-lease or for a tenancy and "lessee" and "lessor" have corresponding meanings;

"mortgage" includes a mortgage registered or capable of being registered under the provisions of the Land Transfer Act, and also includes a charge on any property for securing money or money's worth or the performance or any obligation; (*Cap 131*)

"mortgage money" means all moneys, whether principal sum, annuity, rentcharge or other periodical payment, interest or other moneys whatsoever, owing under or secured by a mortgage;

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

"mortgagor" includes any person from time to time deriving title under the original mortgagor, or entitled to redeem or pay off a mortgage, according to his estate, interest or right in the mortgaged property;

"owner" means the owner of any property or any estate or interest therein, and includes a proprietor;

"personal representative" means an executor or administrator;

"possession" when used with reference to land, includes the receipt of income therefrom;

"property" includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest;

"proprietor" means the person who for the time being is registered as the proprietor of land subject to the provisions of the Land Transfer Act, or of any estate or interest therein and in the case of property or any estate or interest therein not subject to the provisions of that Act whether on account of non-registration thereunder or otherwise means the owner of that property or person entitled to an estate or interest therein; (*Cap. 131*)

"purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property; and where the context so requires "purchaser" includes an intending purchaser and "purchase" has a corresponding meaning;

"registered" or "duly registered" in the case of land or any estate or interest therein means registered in the manner provided by the Land Transfer Act; and "the register" and "registration" have corresponding meanings; (*Cap. 131*)

"rent" includes yearly or other rent, toll, duty, royalty, or other reservation by measurement or otherwise;

"sale" means a sale properly so called;

"transfer" includes a transfer registered or capable of being registered under the provisions of the Land Transfer Act, or any other Act and also includes any assignment, appointment, lease, settlement or other transfer or assurance of any property whether or not the same is so registered or is capable of being so registered and "transfers" or "transferred" have corresponding meanings; (*Cap. 131*)

"trust" and "trustee" have the same meaning as in the Trustee Act; (*Cap. 65*)

"will" includes codicil.

Application of Act and savings

3.-(1) This Act shall be read and construed so as not to conflict with the provisions either of the Land Transfer Act, or the Agricultural Landlord and Tenant Act.
(*Cap. 131, Cap. 270.*)

(2) Subject to the provisions of subsection (1) and except as otherwise expressly provided in this Act, all of the provisions of this Act shall, as far as they are applicable, apply to land and instruments subject to the provisions of the Land Transfer Act and of the Agricultural Landlord and Tenant Act.
(*Cap. 131, Cap. 270.*)

(3) Without prejudice to the operation of the Interpretation Act, any alteration, by this Act, of the law, shall not, unless otherwise expressly provided by this Act affect-
(*Cap. 7.*)

(a) any right accrued, or obligation incurred, before the commencement of this Act under the law so altered; or

(b) the validity or invalidity, or any operation, effect or consequence, of any instrument executed or made, or of anything done or suffered before that date; or

(c) any action, proceeding or thing pending on that date or uncompleted on that date and that action, proceeding and thing may be carried on and completed as if the law had not been altered.

PART II-DEEDS AND OTHER INSTRUMENTS

Formalities of deed

4.-(1) Every deed, whether or not affecting property, shall be signed by the party to be bound thereby, and shall also be attested by at least one witness not being a party to the deed, but no particular form of words shall be requisite for the attestation.

(2) Sealing of a deed is not necessary except in the case of a deed executed by a corporation under its common or official seal.

(3) Formal delivery and indenting are not necessary in any case.

(4) Every instrument expressed or purporting to be an indenture or a deed or an agreement under seal or otherwise purporting to be a document executed under seal and which is executed as required by this section shall have the same effect as a deed duly executed in accordance with the law in force immediately prior to the commencement of this Act.

(5) Every instrument registered or capable of being registered under the provisions of the Land Transfer Act, shall upon execution have the effect of a deed made between the parties executing the same.

(Cap. 131.)

Execution of instruments by or on behalf of corporations

5.-(1) A deed shall be deemed to have been duly executed by a corporation aggregate in favour of a purchaser, if the seal of that corporation is affixed to the deed in the presence of and attested by a person who is its clerk, secretary or other permanent officer or his deputy, and a member of its board of directors, council or other governing body.

(2) Where a seal purporting to be the seal of a corporation aggregate has been affixed to a deed, attested by a person and a member purporting to be such a person and such a member as is referred to in subsection (1), the deed shall be deemed to have been duly executed and to have taken effect accordingly.

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

(4) When a person is authorised under a power of attorney or under any statutory or other power to execute any instrument in the name of, or on behalf of a corporation, sole or aggregate, he may as attorney execute the instrument by signing the name of the corporation and adding the words "by its attorney" and his own signature in the presence

of at least one witness and, subject to compliance by such attorney with the provisions of subsection (3) of section 115, an instrument so executed shall take effect and be valid as if duly executed by the corporation.

(5) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to execute any instrument in the name or on behalf of any other person (including another corporation), an officer of the corporation aggregate appointed for that purpose by the board of directors, council or other governing body of that corporation by resolution or otherwise, may execute the instrument in the name of that other person; and if the instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(6) The foregoing provisions of this section apply to transactions wherever effected, but only to instruments executed after the date of the coming into operation of this Act, except that, in the case of powers or appointments of an agent or officer, those provisions apply whether the power was conferred or the appointment was made before or after that date.

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

Receipt for consideration money

6. An acknowledgement of the receipt of the consideration contained in the body of a deed shall be as valid and effectual in all respects as if the same had also been endorsed thereon.

Persons taking who are not parties

7.-(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 is not named as a party to the transfer or other instrument that relates to the land or property.

(2) In cases other than those to which the provisions of subsection (1) are applicable, where a contract expressly in its terms purports to confer a benefit directly on a person who is not named as a party to the contract, that contract is enforceable by that person in his own name subject to -

(a) all defences which would have been available to the defendant had the plaintiff been named as a party to the contract;

(b) each person named as a party to the contract being joined as a party in the proceedings; and

(c) the defendant against whom relief is sought being entitled to enforce as against the plaintiff all obligations which in the terms of the contract are imposed on the plaintiff for the benefit of the defendant.

(3) Unless the contract referred to in subsection (2) otherwise provides, the contract may be cancelled by the mutual consent of the persons named as parties thereto at any time before the person referred to in that subsection has adopted it either expressly or by conduct.

Description of deeds

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

Exercise of powers

9. Where a power of appointment by deed or writing, otherwise than by will, is exercised by deed executed in the manner required by this Act, the deed shall be deemed to be a valid exercise of the power, notwithstanding that by the instrument creating the power some additional or other form of execution is required.

Appointments

10. No appointment to be made by deed or writing (otherwise than by will) in exercise of a power shall be valid unless the same is executed as a deed in accordance with the provisions of this Act.

Leases need not be by deed

11. A deed is not necessary to the validity of a lease.

Construction of expressions and as to time in contracts etc.

12. -(1) In all deeds, contracts, wills, orders and other instruments executed or made on or after the commencement of this Act, unless the context otherwise requires:-

(a) "month" means a calendar month;

(b) "person" includes a corporation;

(c) the singular includes the plural and vice versa;

(d) the masculine includes the feminine and vice versa;

(e) every word in either of the said numbers or genders shall be construed as including a body corporate.

(2) Stipulations in a contract, as to time or otherwise, that according to rules of equity are not deemed to be or to have become of the essence of the contract, shall be construed and have effect at law in accordance with the rules of equity.

PART III - GENERAL RULES AFFECTING PROPERTY

Uses not necessary

13. Every limitation which may be made by way of use operating under the imperial enactment known as the Statute of Uses or under this Act may be made by direct transfer without the intervention of uses.

Estates tail abolished

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

(2) Where at the commencement of this Act any person is entitled to an estate tail (legal or equitable), whether in possession, reversion or remainder, in any land, that person, save as hereinafter mentioned, shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be), in that land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail.

(3) In subsection (2) the expression "estate tail" includes that estate in fee into which an estate tail is converted where the issue in tail is barred, but the persons claiming estates by way of remainder are not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issued extinct.

Freehold in future may be created

15. An estate of freehold to take effect at a future time may be created by any deed by which a present estate of freehold may be created.

Creation by deed of estate in chattel real

16. Any estate or interest that is capable of being created by will in any chattel real may also be created by deed.

When contingent remainders capable of taking effect

17. -(1) A contingent remainder shall be capable of taking effect notwithstanding the destruction or determination by any means of the particular estate immediately preceding, and notwithstanding that it may have been created expectant on the termination of a term of years.

(2) A contingent remainder or a contingent interest lying between two estates vested in the same person shall prevent the merger of those two estates.

Rights of entry, etc.

18. Every right of entry, contingent remainder, and every contingent or executory or future estate, right or interest in property, may be transferred by deed.

*Certain expressions to be words of purchase; rule in **Shelley's case** abolished*

19. Where in an instrument coming into operation after the commencement of this Act a remainder is limited mediately or immediately to the heirs or heirs of the body of a person to whom an estate for any life in the same property is expressly given, the estate of that person shall be an estate for the life mentioned with remainder to the persons who on the death of that person intestate would be beneficially entitled to his property and in the same shares.

Restriction on executory limitations

20. Where there is a person entitled to land for an estate in fee, or for a term of years absolute, or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect if and as soon as there is living any issue that has attained the age of twenty-one years, of the class of default or failure whereof the limitation over was to take effect.

Abolition of restraint upon anticipation

21 .-(1) A restriction upon anticipation or alienation attached to the enjoyment of any property by a woman that could not have been attached to the enjoyment of that property by a man is of no effect.

(2) This section applies to any instrument whether executed before, on or after the commencement of this Act.

Presumption of survivorship

22. In all cases where, on or after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, those deaths shall (subject to any order of the court) for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

Equitable waste

23. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears by the instrument creating that estate.

No merger by operation of law

24. There shall not be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Partial release of land from rent

25. A release from a rent of part of the land out of which it is payable does not extinguish the whole rent, but operates only to bar the right to recover any part of the rent out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release.

Corporations may hold as joint tenants

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

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

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

Disclaimer of powers

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

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

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

Intermediate income of contingent or executory gifts

28. 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, that interest shall carry the intermediate income of that property, from the time when the instrument comes into operation, except so far as the income or any part thereof may be otherwise expressly disposed of.

Receipts for income by married infants

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

"Heirs" and other words interpreted

30. -(1) Where by or under the terms of any instrument coming into operation after the commencement of this Act, any property would except for the provisions of this Act, vest in -

(a) the heir or heirs of any person; or

(b) the next of kin of any person, such property shall vest in the persons who on the death of the person intestate would be beneficially entitled to his real and personal estate upon intestacy, and in the same shares.

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

"Heirs of the body" and other words interpreted

31.-(1) Where by or under the terms of any instrument coming into operation after the commencement of this Act, any property would, except for the provisions of this Act, vest in -

(a) the heir or heirs of the body of any person; or

(b) the heir or heirs male of any person or the heir or heirs male of the body of any person; or

(c) the heir or heirs female of any person, or the heir or heirs female of the body of any person,

the property shall vest as follows:-

in case (a) in the issue of that person as tenants in common per stirpes; and

in case (b) in the sons and issue of sons of that person as tenants in common per stirpes; and

in case (c) in the daughters and the issue of daughters of that person as tenants in common per stirpes.

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

Appointments valid notwithstanding objects excluded

32.-(1) An appointment in exercise of any power to appoint any property amongst several objects shall be valid and effectual notwithstanding that any one or more of the objects do not by the appointment or in default of appointment take a share or shares of the property.

(2) Nothing in this section shall prejudice or affect any provision in any instrument creating any power which declares the amount of the share or shares from which no object of the power shall be excluded, or some one or more object or objects shall not be excluded.

Transfer by person of property to himself

33. A person may transfer property to himself or to himself and another person or persons.

PART IV - PERPETUITIES AND ACCUMULATIONS

Application

34.-(1) Except where otherwise expressly provided in this Part, this Part -

(a) insofar as it applies to wills, applies only to the wills of testators dying after the commencement of this Act; and

(b) insofar as it applies to instruments other than wills, applies only to instruments executed after that date.

(2) This Part binds the Crown.

Interpretation

35. In this Part, unless the context otherwise requires -

"instrument" includes a will and also includes an instrument, testamentary or otherwise, exercising a power of appointment, whether general or special, even if the power were created before this Part came into operation; but does not include any written law;

"limitation" includes any provision in an instrument whereby any property, or any interest in any property, or any right, power, authority or discretion in or over or in connection with any property, is or purports to be devised or bequeathed to, or created for, or given or granted or appointed to or conferred upon, or otherwise limited to, any person or purpose, and whether subject to a condition, precedent or subsequent, or not.

The perpetuity period

36. In determining whether any limitation is invalid as infringing the rule of law known as the rule against perpetuities, the perpetuity period is, for the purposes of that rule, such period of years not exceeding eighty as may be specified in the instrument creating that limitation or, if no such period of years is specified in such instrument, the period that is applicable under that rule at law.

Capacity to procreate or bear a child

37. -(1) This section applies whenever, in determining whether any limitation is invalid as infringing the rule against perpetuities, or in determining the right of any persons to put an end to a trust or accumulation, or generally in the management or administration of any trust, estate or fund, or for any purposes relating to the disposition, transmission or

devolution of property, it becomes relevant to enquire whether any person is or at a relevant date was or will be capable of procreating or bearing a child.

(2) Where this section applies, there is a presumption, rebuttable by sufficient evidence to the contrary tendered at the time at which the matter falls for decision (but not subsequently), that -

(a) a woman who has attained the age of fifty-five years is incapable of bearing a child; and

(b) a male or female who has not attained the age of twelve years is incapable of procreating or bearing a child.

(3) Where this section applies, medical evidence that a male or female of any age is or at a relevant date was or will be incapable of procreating or bearing a child is admissible in proceedings in order to establish that incapacity, and the court may accept any such evidence of a high degree of improbability of procreating or childbearing as it thinks proper as establishing the incapacity.

(4) Any decision of the court, in which any such presumption as is mentioned in subsection (2) is applied or in which any such evidence as is mentioned in subsection (3) is accepted remains effective notwithstanding the subsequent birth of a child; but if a limitation, that is not itself invalid as infringing the rule against perpetuities, confers upon that child or his spouse, or upon his issue or the spouse of any of his issue, a right to any property, that right (including any right to follow or trace the property) is not affected by the decision of the court.

Wait and see rule

38. -(1) A limitation shall not be declared or treated as invalid, as infringing the rule against perpetuities, unless and until it is certain that the interest that it creates cannot vest within the perpetuity period or, if the limitation creates or confers a general power of appointment over or in connexion with property, that the power cannot become exercisable within the perpetuity period, but if the power becomes exercisable, within that period, it is valid.

(2) Where a limitation creates a power exercisable over or in connexion with any property, whether that power be a special power of appointment, or a power of advancement or of distribution under a discretionary trust, or any other power (not being a general power of appointment or a power that is exempted from the application of the rule against perpetuities by section 25 of the Trustee Act), that limitation is valid, so far as the rule against perpetuities is concerned -

(Cap 65)

(a) if the power is exercisable only during the perpetuity period; or

(b) if and to the extent that the power is exercised during the perpetuity period.

(3) Nothing in this section makes any person a life in being for the purpose of ascertaining the perpetuity period unless that person would have been reckoned a life in being for that purpose if this section had not been enacted.

Power of court to make declaration as to validity of limitations

39. -(1) A trustee of any property, or any person interested under, or on the invalidity of, a limitation of property, may at any time apply to the court for a declaration as to the validity, in respect of the rule against perpetuities, of a limitation of that property.

(2) The court may, on an application under subsection (1), make a declaration, on the basis of facts existing and events that have occurred at the time the declaration is made, as to the validity or otherwise of the limitation in respect of which the application is made; but the court shall not make a declaration in respect of any limitation the validity of which cannot be determined at the time at which the court is asked to make the declaration.

Invalid age contingencies

40. -(1) Where in an instrument the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by any person of an age exceeding twenty-one years, and the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation or trust arising on the total or partial failure of the original gift, would, but for this section, be rendered invalid as infringing the rule against perpetuities, the instrument takes effect for the purposes of that gift, gift over, remainder, executory limitation or trust as if the absolute vesting or ascertainment had been made to depend on the person attaining the age of twenty one years, and that age shall be substituted for the age stated in the instrument.

(2) This section applies to any instrument other than a will executed after the commencement of this Act and to any testamentary appointment (whether made in exercise of a general or special power), devise or bequest contained in the will of a person dying after that date, whether the will was made before or after that date; but, in the case of an instrument executed, and the will of a person dying, after the commencement of this Act, this section applies only to the extent provided in section **42**.

(3) This section applies without prejudice to any provision whereby the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the instrument is attained.

Class gifts

41. -(1) A limitation to a class of persons is not invalid as infringing the rule against perpetuities by reason of the failure of the limitation as to some only of the members of the class, but the limitation shall, in that case, be construed and take effect as a limitation only to those members of the class who attain a vested interest within the perpetuity period.

(2) This section applies only to the extent provided in section **42**.

Order of applying rules

42. -(1) The provisions of section **40** shall not be applied -

(a) unless and until it is certain that a limitation as worded is invalid as infringing the rule against perpetuities; and

(b) unless either -

(i) the application of the provisions of that section would render the limitation valid; or

(ii) the application of the provisions of that section, in conjunction with the provisions of section **41**, would render the limitation valid.

(2) The provisions of section **41** shall not be applied unless and until -

(a) it is certain that a limitation as worded is invalid as infringing the rule against perpetuities; and

(b) any invalid age contingency in that limitation has been reduced in accordance with the provisions of section **40** as applied by subsection (1)

43. The widow or widower of a person who is a life in being for the purpose of the rule against perpetuities shall be deemed a life in being for the purpose of -

(a) a limitation in favour of that widow or widower; and

(b) a limitation in favour of a person who attains, or of a class the members of which attain, according to the limitation, a vested interest on or after the death of the survivor of that person and his spouse.

Dependent limitations

44. -(1) A limitation, that itself complies with the rule against perpetuities, is not invalidated solely by reason of its being preceded by one or more invalid limitations, whether or not it expressly, or by implication, takes effect after, or subject to, or is dependent upon, those invalid limitations or any of them.

(2) Where a limitation is invalid as infringing the rule against perpetuities, any subsequent valid limitation is thereby accelerated.

Options

45. -(1) The rule against perpetuities does not apply to -

(a) an option granted to a lessee in respect of the property demised, being an option exercisable only during the currency of the lease or within one year after the expiration thereof and enabling the lessee or the lessee for the time being to purchase the freehold or other superior interest in the demised property; or

(b) an option to acquire an interest in land, not being an option to which paragraph (a) refers.

(2) An option to which paragraph (b) of subsection (1) refers, and which according to its terms is, or may be, exercisable at a date more than twenty-one years from the date of its grant, becomes void, on the expiry of twenty-one years from the date of its grant, as between the original parties to that grant and all persons claiming through them.

(3) Nothing in this section affects an option for renewal contained in a lease or a pre-emptive right to acquire an individual unit or individual units of accommodation in a building containing several units.

Application of the rule to possibilities of reverter, rights of entry and resulting trusts

46. -(1) The rule against perpetuities as amended by this Part applies -

(a) to a possibility of reverter in land consequent upon a fee simple determinable; and so that, if the fee simple does not determine within the perpetuity period, it thereafter continues as a fee simple absolute;

(b) to a right of entry for condition broken the exercise of which may determine a fee simple subject to a condition subsequent; and so that, if the right of entry is not exercised within the perpetuity period, the fee simple thereafter continues as a fee simple absolute; and

(c) to an interest in property by way of resulting trust analogous to a possibility to a reverter in land; and so that, if the initial trust does not determine within the perpetuity period, the interest it creates thereafter continues as an absolute interest.

(2) The provisions of subsection (1) apply as therein provided, whether the determinable or conditional estate or interest is charitable or not, except that the rule against perpetuities does not apply to a gift over from one charity to another.

Powers of appointment

47. For all purposes connected with the rule against perpetuities, a power of appointment under which there is a sole donee who is at all times free, without the concurrence of any other person, to appoint the whole of the property to himself is a general power, and every other power of appointment is a special power; but, notwithstanding the foregoing provisions of this section, an appointment made by will under a power that would, but for the fact that it was made exercisable only by will, have been a general power is to be treated as having been made under a general power for all purposes connected with the rule against perpetuities.

Accumulations of income

48. -(1) Where property is settled or disposed of in such manner that the income thereof may or shall be accumulated wholly or in part, the power or direction to accumulate that income is valid if the disposition of the accumulated income is, or may be, valid and not otherwise.

(2) Nothing in this section affects the right of any person or persons to terminate an accumulation that is for his or their benefit or any jurisdiction or power of the court to maintain or advance out of accumulations or any powers of a trustee under Part V of the Trustee Act.

(*Cap 65*).

(3) For the avoidance of doubt, it is hereby declared that this section has effect only as provided by section **34**.

*Rule in **Whitby v. Mitchell** abolished*

49. 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.

Superannuation funds, etc.

50. -(1) The rule against perpetuities does not apply and shall be deemed never to have applied to -

(a) a trust or fund established for the purpose of making provision by way of assistance, benefit, superannuation, allowances, gratuities or pensions for the employees of any employer or the widows, widowers, children, grandchildren, parents or dependants of any of those employees or for any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund; and

(b) a trust or fund established for the purpose of making provision by way of superannuation for persons (not being employees) engaged in any lawful profession, trade, occupation or calling or the widows, widowers, children, grandchildren, parents or dependants of any of those persons or for any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund.

(2) In paragraph (a) of subsection (1), "employee" includes any director, officer, servant or person at any time in the employment-

(a) of an employer;

(b) of an employer that is a subsidiary of an employer; or

(c) of an employer that is allied to, or associated with, an employer; or

(d) of an employer that is allied to, or associated with, a subsidiary of an employer; or

(e) of an employer having a subsidiary; or

(f) of an employer whose business is acquired by an employer, that establishes or contributes to a trust or fund such as is mentioned in that paragraph; and in this subsection "employer" includes a company.

**PART V-PROTECTION OF PURCHASERS
AND CREDITORS**

Alienation with intent to defraud creditors

51.-(1) Save as provided by this section, every alienation of property with intent to defraud creditors shall be voidable at the instance of the person thereby prejudiced.

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

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

Voluntary transfer of land with intent to defraud purchaser

52. -(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 that subsequent purchaser.

(2) For the purposes of this section, no such instrument 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.

Purchase in good faith of reversion not to be set aside for undervalue only

53. No purchase of any reversionary interest in real or personal estate made in good faith and without fraud or unfair dealing shall hereafter be opened or set aside merely on the ground of undervalue.

Payment of consideration money to barrister and solicitor

54. -(1) Where a barrister and solicitor produces an instrument having in the body thereof or endorsed thereupon a receipt for consideration money or other consideration, the instrument being executed or the endorsed receipt being signed by the person entitled to give a receipt for that consideration, the instrument shall be sufficient authority to the person liable to pay or give the consideration for his paying or giving the same to the barrister and solicitor, and it shall not be necessary for the barrister and solicitor to produce any separate or other direction or authority in that behalf from the person who executed or signed the instrument or receipt.

(2) This section also applies where the instrument is executed or the receipt is signed by trustees.

PART VI - COVENANTS AND POWERS

Benefit of covenants relating to land

55. -(1) A covenant, whether express or implied by or under the provisions of this or any other Act, relating to any land of the covenantee shall, unless a contrary intention is expressed, be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if those successors and other persons were expressed.

(2) For the purposes of this section, in connexion with covenants restrictive of the user of land, the expression "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.

Burden of covenants relating to land

56. -(1) A covenant, whether express or implied by or under the provisions of this or any other Act, 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 those successors and other persons were expressed.

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

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

Effect of covenant with two or more jointly

57. -(1) A covenant, whether express or implied by or under the provisions of this or any other Act, and a contract by deed, and a bond or obligation by deed, made with two or more jointly, to pay money, or to transfer property or to do any other act to them or for their benefit shall be deemed to include, and shall by virtue of the provisions of this Act imply, an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person on whom devolves the right to sue on the covenant, contract, bond or obligation.

(2) This section applies only in so far as a contrary intention is not expressed in the deed containing the covenant or contract, or in the bond or obligation, and shall have effect subject to the provisions thereof.

Covenants and agreements made by a person with himself and others

58. A covenant, whether express or implied by or under the provisions of this or any other Act, or an agreement made by a person with himself and another or others, shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been made with the other or others.

Covenants to be joint and several

59. Where under a covenant whether express or implied by or under the provisions of this or any other Act, more persons than one are covenantors, the covenant shall, unless a

contrary intention is expressed, be deemed to bind the covenantors and any two or greater number of them jointly and each of them severally.

Implied covenants may be negatived

60. A covenant implied or a power conferred by or under the provisions of this or any other Act shall have the same force and effect, and may be enforced in the same manner, as if it had been set out at length in the instrument:

Provided that, unless otherwise expressed in this or such other Act, any such covenant or power may be negatived, varied or extended in the instrument, or by a memorandum in writing endorsed thereon and executed as a deed is required to be executed by the parties to the instrument intended to be bound thereby.

Benefit of covenant for title

61. The benefit of a covenant for title implied by or under the provisions of this or any other Act shall be annexed and incident to and shall go with the estate and interest of the implied covenantee, and may be enforced by any person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

PART VII - COVENANTS IMPLIED IN TRANSFERS GENERALLY

Covenants implied in transfer by way of sale, etc.

62. -(1) In every transfer by way of sale, marriage settlement or lease, and in every other transfer for valuable consideration, there shall be implied (except where the transferor is a trustee or mortgagee of the property concerned) the following covenants by the transferor with the transferee:-

(a) a covenant that the transferor has good right and full power to transfer and assure the property purported to be transferred, and that free and clear from all encumbrances other than such as are mentioned in the transfer;

(b) a covenant that the transferee of the property and all persons claiming through or under him, shall quietly enjoy the same without any disturbance by the transferor or by any person claiming through or under him;

(c) a covenant that the transferor and his personal representatives and all other persons having or claiming any interest in the subject-matter of the transfer, will, at the cost of the person requiring the same, do and execute all such acts and transfers for the better assuring of the property purported to be thereby transferred as may from time to time be reasonably required by the transferee or any person claiming through or under him.

Covenant between transferee and transferor implied in transfer subject to a mortgage

63. In every transfer of land subject to a mortgage there shall be implied a covenant by the transferee with the transferor that the transferee will pay the money secured by such mortgage and perform and observe all the covenants, conditions and other provisions contained or implied in such mortgage and will indemnify the transferor against all liability in respect of the same.

Covenant implied in transfer of a lease

64. In every transfer of a lease there shall be implied a covenant by the transferee with the transferor that the transferee will pay the rent reserved by the lease and perform and observe all the covenants, conditions and other provisions contained or implied in the lease and will indemnify the transferor against all liability in respect of the same.

Further covenant implied in transfer of a lease

65. In every transfer of a lease (except where the transferor is a trustee or mortgagee of the lease) there shall be implied a covenant by the transferor with the transferee that the rent payable under the lease and the covenants and conditions of the lease to be paid or performed and observed by the lessee have been respectively paid, performed and observed up to the date of the transfer.

Covenant implied in transfer by trustee or mortgagee

66. Where the transferor is a trustee or mortgagee of the property transferred there shall be implied the following covenant on the part of the transferor, which covenant shall be deemed to extend to his own acts only, namely, that he has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing whereby or by means whereof the subject-matter of the transfer or any part thereof is or may be impeached, charged, affected or encumbered in title, estate or otherwise, or whereby or by means whereof he is in any wise hindered from transferring the subject-matter of the transfer or any part thereof in the manner in which it is expressed to be transferred.

PART VIII - MORTGAGES

Mortgage of a lease to include tenant's fixtures

67. A mortgage of a lease shall include and be a charge on all fixtures on the land the subject of the lease which by the express or implied terms of the lease are removable by the lessee and shall also be a charge on all compensation moneys which by the express or implied terms of the lease or by or under the provisions of any Act are payable to the lessee in respect of any improvements made on the land.

Covenants, etc., implied in all mortgages

68. In every mortgage of land there shall be implied the covenants by the mortgagor and the powers and conditions set forth in the Schedule, except in so far as the same are varied or negated in the mortgage, and except also that clauses (9), (10) and (11) of that Schedule shall be implied only in mortgages subject to a prior mortgage or mortgages, and that clauses (12), (13) and (14) of that Schedule shall be implied only in mortgages of a lease.

Transferee of land subject to mortgage personally liable to mortgagee

69. In every transfer of land subject to a mortgage the transferee shall, unless a contrary intention appears in such mortgage and irrespective of whether he has signed the transfer become personally liable to the mortgagee for the payment of all money secured by such mortgage and shall also become personally liable to the mortgagee for the fulfilment and observance of all covenants, conditions and other provisions contained or implied in such mortgage as if he were an original mortgagor of the land and had covenanted with the mortgagee for such payment as aforesaid and for the fulfilment and observance of such covenants, conditions and other provisions as aforesaid, and the mortgagee shall have remedy directly against the transferee accordingly, but nothing herein shall extinguish the liability of any original mortgagor under the mortgage or the liability of any intermediate transferee of the land subject to the mortgage:

Provided that nothing in this section shall render an executor or administrator or trustee personally liable in respect of the estate of a deceased person or in respect of any land subject to a trust, as the case may be, except to the extent of the property under his control as such executor or administrator or trustee.

Effect of advance on joint account, etc.

70. -(1) Where, in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one, out of money or as money belonging to them on a joint account, or where a mortgage, or such an obligation, or such a transfer, is made to more persons than one jointly and not in shares, the mortgage money or other money or money's worth for the time being due to those persons on the mortgage or obligation shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to them on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, or their or his assigns, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

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

Security for further advances

71. Where a mortgage purports to secure a principal sum the amount of which is specified therein (whether or not the mortgage also purports to secure further advances), the mortgagee shall have the right to advance from time to time to the mortgagor the whole or any part of the principal sum the amount of which is so specified so as to rank in priority to any subsequent mortgage, notwithstanding that the advance is made after the execution or registration of the subsequent mortgage, and whether or not the mortgagee has actual or constructive notice of the subsequent mortgage at the time of making the advance:

Provided that, except in the case of a mortgage securing advances on current account, any part of the principal sum which has been repaid to the mortgagee and readvanced to the mortgagor shall be deemed for the purposes of this section not to form part of the principal sum specified in the mortgage.

Repayment of mortgages

72. -(1) A mortgagor is entitled to redeem the mortgaged property at any time before the same has been actually sold by the mortgagee under his power of sale, on payment of all moneys due and owing under the mortgage at the time of payment.

(2) A mortgagor is entitled to redeem the mortgaged property although the time for redemption appointed in the mortgage has not arrived; but in that case he shall pay to the mortgagee, in addition to any other moneys then due and owing under the mortgage, interest on the principal sum secured thereby for the unexpired portion of the term of the mortgage.

(3) A mortgagor seeking to redeem after the expiry of the term of the mortgage, or of any further term for which it has been renewed or extended, shall give to the mortgagee three clear months' notice in writing of his intention to redeem, or shall pay to the mortgagee three months interest in lieu thereof:

Provided that this subsection shall not apply in any case where the mortgagee has entered into possession of the mortgaged property or any part thereof, or has taken any steps to realize his security.

(4) For the purposes of this section, the expression "moneys due and owing under a mortgage" includes all expenses reasonably incurred by the mortgagee-

(a) for the protection and preservation of the mortgaged property or otherwise in accordance with the provisions of the mortgage; and

(b) with a view to the realization of his security,

and in either case includes interest on the sums so expended at the rate expressed in the mortgage.

Mortgagor may require mortgagee to transfer instead of discharging

73. -(1) Where a mortgagor is entitled to redeem he shall by virtue of this Act have power to require the mortgagee, instead of discharging, and on the terms on which he would be bound to discharge, to transfer the mortgage to any third person as the mortgagor directs; and the mortgagee shall by virtue of this Act be bound to transfer accordingly.

(2) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary; but does not apply where the mortgagee is or has been in possession.

Encumbrancee to have the like right

74. The like right to require a mortgagee to transfer the mortgage to a third person shall belong to and may be enforced by each encumbrancee or by the mortgagor, notwithstanding any intermediate encumbrance; but a requisition of an encumbrancee shall prevail over a requisition of the mortgagor, and, as between encumbrancees, a requisition of a prior encumbrancee shall prevail over a requisition of a subsequent encumbrancee.

Mortgagee may, after default, enter into possession

75. A mortgagee, upon default in payment of the mortgage money or any part thereof, may enter into possession of the mortgaged land by receiving the rents and profits thereof or may distrain upon the occupier or tenant of the said land for the rent then due.

Further powers of mortgagee as to receipt of rent, etc.

76. Whenever a mortgagee gives notice of his demand to receive the rents and profits of the mortgaged land to the tenant or occupier or other person liable to pay on account of the rents and profits thereof, all the powers and remedies of the mortgagor in regard to receipt and recovery of and giving discharges for such rents and profits shall be suspended and transferred to such mortgagee until such notice be withdrawn or the mortgage is satisfied and a discharge thereof duly registered, and in every such case the receipt in writing of the mortgagee shall be sufficient discharge for any rents and profits therein expressed to be received, and no person paying the same shall be bound to inquire concerning any default or other circumstance affecting the right of the person giving such notice beyond the fact of his being duly registered as mortgagee of the land:

Provided that nothing herein contained shall interfere with the effect of any rule, order or judgment of the court in regard to the payment of rent under the special circumstances of

any case, nor shall prejudice any remedy of the mortgagor against the mortgagee for wrongful entry or for an account.

Mortgagor in default

77. If default is made in payment of the mortgage money or any part thereof, or in the performance or observance of any covenant expressed in any mortgage or in this Act declared to be implied in any mortgage, and such default is continued for one month or for such other period of time as is in such mortgage for that purpose expressly fixed, the mortgagee may serve on the mortgagor notice in writing to pay the mortgage money or to perform and observe the covenants therein expressed or implied, as the case may be.

Notice not required when money payable on demand

78. Where money secured by a mortgage is made payable on demand, a demand in writing pursuant to the provisions of the mortgage shall be deemed to be the notice in writing to pay the money owing provided for by section **77**, and no other notice shall be required to create the default in payment mentioned in section **79**.

Mortgagee may sell

79. -(1) If default in payment of the mortgage money or in the performance or observance of any covenant continues for one month after the service of the notice referred to in section **77**, the mortgagee may sell or concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior leases, mortgages and encumbrances or otherwise, and either together or in lots, by public auction or by private contract, or partly by the one and partly by the other of those methods of sale, and subject to such condition as to title or evidence of title, time or method of payment of the purchase money or otherwise as the mortgagee thinks fit, with power to vary any contract for sale and to buy in at any auction or to vary or rescind any contract for sale and to resell without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages and grant such easements of right of way or drainage over the same as the circumstances of the case require and the mortgagee thinks fit, and may make and sign such transfers and do such acts and things as are necessary for effectuating any such sale.

(2) No purchaser shall be bound to see or inquire whether default has been made or has happened, or has continued, or whether notice has been served, or otherwise into the propriety or regularity of any such sale.

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

Restriction on power of variation in case of land

80. Except as therein provided the provisions of sections **77**, **78** and **79** may not be negated or varied in the case of a mortgage of land.

Application of purchase money

81. The purchase money arising from the sale by the mortgagee of any mortgaged property shall be applied as follows:-

- (a) first, in payment of the expenses of and incidental to the sale and consequent on the default;
- (b) Secondly, in payment of the moneys which are due or owing under the mortgage;
- (c) thirdly, in payment of subsequent mortgages or encumbrances, if any, in the order of their respective priorities; and
- (d) fourthly, the surplus, if any, shall be paid to the mortgagor.

Mortgagee may appoint receiver

82. -(1) When a mortgagee has become entitled to exercise the power of sale conferred by the provisions of this Act, he may by writing under his hand appoint such person as he thinks fit to be receiver, and the person so appointed shall be entitled to exercise the powers by this Act conferred on a receiver.

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

(3) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver by action, distress or otherwise in the name either of the mortgagor or of the mortgagee to the full extent of the estate or interest which the mortgagor could dispose of and to give effectual receipts accordingly for the same.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5) The receiver may be removed and a new receiver may be appointed from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any moneys received by him for his remuneration and in satisfaction of all costs, charges and expenses incurred by him as

receiver a commission at such rate not exceeding five per cent on the gross amount of all moneys received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent or at such higher rate as the court thinks fit to allow on application made by him for the purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire out of the moneys received by him any building, effects or property comprised in the mortgage, whether affixed to the land or not, being of an insurable nature.

(8) The receiver shall apply all moneys received by him as follows:-

(a) in discharge of all rents, taxes, rates and outgoings whatsoever affecting the mortgaged property; and

(b) in keeping down all annual sums or other payments and the interest on all principal sums having priority to the mortgage in right whereof he is the receiver; and

(c) in payment of his commission and of the premiums on fire, life or other insurance, if any, payable under the provisions of the mortgage or of this Act and the costs of executing necessary or proper repairs directed in writing by the mortgagee; and

(d) in payment of the interest due and unpaid and accruing due in respect of any money due under the mortgage; and

(e) in or towards discharge of the principal money, annuity, rent-charge or periodical payment due under the mortgage, if so directed in writing by the mortgagee, and shall pay the residue, if any, of the moneys received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property or who is otherwise entitled to that property.

Mortgagee of leasehold liable for rent after entry

83. Every mortgagee of an estate in leasehold in land or any person claiming such an estate in the land as a purchaser or otherwise from or under any such mortgagee, after entering into possession of the land or the rents and profits thereof, shall, during that possession and to the extent of any rents and profits which may be received by him, become and be subject and liable to the lessor of the land, or the person for the time being entitled to the lessor's estate or interest in the land, to the same extent as the lessor was subject to and liable for prior to that mortgagee, or other person, entering into possession of the land or the rents and profits thereof.

Mortgagee's receipts, discharges, etc.

84. -(1) The receipt in writing or a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage or arising thereunder, and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred.

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

Sections 68 to 83 to apply only in case of mortgage by deed

85. The provisions of sections **68** to **83** inclusive shall only apply in cases where the mortgage is made by deed or under the provisions of this or any other Act is deemed to be so made or to have the effect of a deed.

Equitable mortgages and charges

86. -(1) A person having an equitable mortgage or charge on land created by writing or by deposit of an instrument of title registered under the provisions of the Land Transfer Act, for securing the payment of money and who has obtained a judgment of the court for the sum due may apply for and obtain an order for sale of the property subject to such terms and conditions as the court may direct.

(Cap. 131.)

(2) A person who has, under the provisions of section **32** of the Supreme Court Act, obtained an order imposing a charge on any land for securing the payment of any moneys due or to become due under any judgment or order of the court may, subject to the provisions of any law for the time being in force requiring the registration of such charge, on default being made by the debtor in payment of any such money, apply to the court for and obtain an order for the sale of such land, subject to such terms and conditions as the court may direct.

(Cap. 13.)

(3) Where an order for sale is made by the court under the provisions of this section, the court may in favour of the purchaser make a vesting order transferring the property or may appoint a person to transfer the same.

Restriction on consolidation

87. A mortgagor seeking to redeem any one mortgage shall, by virtue of this Act, be entitled to do so without paying any money due under any separate mortgage made by him or by any person through whom he claims, on property other than that comprised in the mortgage that he seeks to redeem.

Retrospective operation of Part VIII

88. The provisions of this Part, with the exception of section **68**, apply to all mortgages of land whether executed before or after the commencement of this Act.

PART IX-LEASES AND TENANCIES

Termination of tenancies

89. -(1) No tenancy from year to year is implied by payment of rent.

(2) In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving to the other written notice as follows:-

(a) where the rent is payable yearly or for any recurring period exceeding one year, at least six months' notice expiring at the end of any year of the tenancy; or

(b) where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not.

Covenants implied in leases

90. In every lease of land there shall be implied the following covenants by the lessee, for himself, his personal representative, transferees and assigns with the lessor and his personal representatives and transferees: -

(a) that he or they will pay the rent thereby reserved at the time therein mentioned:

Provided that in case the demised premises or any part thereof shall at any time during the continuance of the lease, without neglect or default of the lessee, be destroyed or damaged by fire, flood, lightning, storm, tempest or earthquake so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage, shall abate, and all or

any remedies for the recovery of the rent or the proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act;

(b) that he or they will, at all times during the continuance of the said lease, keep, and at the termination thereof yield up, the demised premises in good and tenantable repair, having regard to their condition at the commencement of the said lease, accidents and damage from fire, flood, lightning, storm, tempest, earthquake and fair wear and tear (all without neglect or default of the lessee) excepted.

Powers in lessor

91. In every lease of land there shall be implied the following powers in the lessor, his personal representatives and transferees:

(a) that he or they may, by himself or themselves, or his or their agents, at all reasonable times, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, his personal representatives, transferees or assigns, a notice in writing of any defect requiring him or them, within a reasonable time, to be therein prescribed, to repair the same in accordance with the covenant in that behalf contained or implied in the lease;

(b) that whenever the rent reserved is in arrear he or they may levy the same by distress;

(c) that whenever the rent or any part thereof, whether legally demanded or not, is in arrear for the space of one month, or whenever the lessee has failed to perform or observe any of the covenants, conditions or stipulations contained or implied in the lease, and on the part of the lessee to be performed, or observed, he or they may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee, his personal representatives, transferees or assigns, therein, but without releasing him or them from liability in respect of the breach or non-observance of any such covenant, condition or stipulation.

Implied covenant in a sublease

92. There shall be implied in every sublease a covenant by the sublessor, his personal representatives and transferees with the sublessee, his personal representatives, transferees and permitted assigns that the sublessor shall pay the rent and perform and observe all the covenants and conditions in the headlease contained or implied and by him to be performed or observed.

Effect of licence to assign

93. A condition or covenant not to assign or underlet or to do any other act without licence shall not be released or determined by any such licence.

No fine for licence to assign

94. In all leases containing a covenant, condition or agreement that the lessee shall not, without the licence or consent of the lessor, assign, underlet, part with the possession or dispose of the demised premises or any part thereof, that covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of any such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to the licence or consent.

Assignment by trustee or liquidator etc.

95. Neither the assignment or underletting of any leasehold by a trustee in bankruptcy, or by the liquidator of a company, or by the Sheriff under an execution, nor the bequest of a leasehold, shall be deemed to be a breach of any covenant, condition or agreement referred to in section **94** unless the contrary is expressly declared in the lease.

Merger of reversion not to affect remedies

96. Where the reversion of land subject to a lease is merged in any remainder or other reversion or future estate, the person entitled to the estate into which the reversion has merged, and his personal representative, shall have the same remedy for non-performance or non-observance of the conditions or covenants expressed or implied in the lease as the person who would for the time being have been entitled to the mesne reversion so merged would have had.

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

97. -(1) Rent reserved by a lease and the benefit of every covenant or provision therein having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and may be recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. This subsection shall extend to a covenant to do any act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(2) The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall be capable of being enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by transfer or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

(3) This section shall not render enforceable any condition of re-entry or other condition waived or released before that person became entitled as aforesaid.

(4) This section shall apply to leases whether made before or after the commencement of this Act, but with respect only to rent accruing due after the commencement of this Act, and to the benefit of a condition of re-entry or forfeiture for a breach committed after the commencement of this Act of any covenant, condition or provisions contained in the lease.

(5) In the case of leases registered under the provisions of the Land (Transfer and Registration) Ordinance before the commencement of this Act, with respect to rent accrued due before the commencement of this Act, and to the benefit of a condition of re-entry or forfeiture for a breach committed before the commencement of this Act of any covenant, condition or provision contained in the lease, the provisions of section 50 of the Land (Transfer and Registration) Ordinance shall continue to apply notwithstanding the repeal of that Ordinance by the Land Transfer Act. (*Cap. 136, 1955 Edition*) (*Cap. 131.*)

Obligation of lessor's covenants to run with reversion

98.- (1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, that obligation may be taken advantage of and enforced against any person so entitled.

(2) This section applies to leases made before or after the commencement of this Act but not to any severance of the reversionary estate which was effected before such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

Apportionment of conditions on severance, etc.

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

Restriction on effect of waiver

100.-(1) Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his personal representatives, or assigns is proved to have taken place on or after the commencement of this Act, in any one particular instance, that actual waiver shall not be deemed to extend to any instance or any breach of covenant or condition other than that to which the waiver specially relates, or to be a general waiver of any such covenant or condition, unless an intention to that effect appears.

(2) After the giving of a notice to quit acceptance of rent expressed to be without prejudice to the notice shall not operate as a waiver of the right to enforce the notice or create or revive a tenancy.

Personal representatives not personally liable for covenants

101. Personal representatives shall not be personally liable on any covenant entered into by a testator or intestate as a lessee of land, any rule of law notwithstanding.

Tenant not prejudiced by assignment before notice

102. A lessee shall not be prejudiced or damaged by payment of any rent to any grantor, transferor or assignor of any reversion or by breach of any condition for non-payment of rent before notice is given to him by the grantee, transferee or assignee to whom the grant, transfer or assignment is made by the grantor, transferor or assignor.

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

103. -(1) The doctrine of *interesse termini* is abolished.

(2) As from the commencement of this Act all terms of years absolute are, whether the interest is created before or after such commencement, capable of taking effect at law or

in equity, according to the estate, interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, is void, and any contract made after that date to create such a term is likewise void; but this subsection does not apply to any term taking effect under a settlement, or created out of an interest under a settlement, or under a power for mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of this Act, operates to vary any statutory or other obligations imposed in respect of those terms or interests.

(5) Nothing in this Part 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 and that rule is hereby confirmed.

Effect of extinguishment of reversion

104. -(1) Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

(2) This section shall apply to surrenders or mergers effected after the commencement of this Act.

Restrictions on and relief against forfeiture of leases

105. -(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition, express or implied, in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice -

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the

breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

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

(3) 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 barrister and solicitor or a surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this section.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as sub lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as sublessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such sublessee be entitled to require a lease to be granted to him for any longer term than he had under his original sublease.

(5) For the purposes of this section -

(a) "lease" includes an original or derivative sublease; also an agreement for a lease where the lessee has become entitled to have his lease granted;

(b) "lessee" includes an original or derivative sublessee, and the persons deriving title under a lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;

(c) "lessor" includes an original or derivative sublessor, and the persons deriving title under a lessor; also a person making such grant as aforesaid and the persons deriving title under him;

(d) "sublease" includes an agreement for a sublease where the sublessee has become entitled to have his sublease granted;

(e) "sublessee" includes any person deriving title under a sublessee.

(6) This section shall apply although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act.

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

(8) The provisions of this section shall not extend -

(a) to a covenant or condition against assigning, subletting, parting with the possession or disposing of the land leased; or

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof; or

(c) to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest; or

(d) to a condition for forfeiture for breach of any liquor or distillation laws; or

(e) to any contract of tenancy of agricultural land which is subject to the provisions of the Agricultural Landlord and Tenant Act. (*Cap 270*)

(9) This section shall not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(10) This section shall have effect notwithstanding any stipulation to the contrary.

PART X-EASEMENTS, ENCROACHMENTS AND MISTAKE

Easement in gross permitted

106. An easement over land may be created without being attached or made appurtenant to other land, and such an easement shall run with and bind the land over which it is created, and all persons claiming title to that land by, through or under the person creating the easement; and the easement so created shall be to all intents and purposes an incorporeal heraditament, and shall be assignable accordingly.

Access or use of light or air

107 -(1) Subject to the provisions of subsection (2) no tenement shall be servient to any other in respect of the access of either light or air, and no person shall have or acquire by prescription, grant or otherwise any claim or right to the access of light or air to any land or building from or over the land of any other person.

(2) A grant of the right of access of light or air made at any time after the commencement of this Act may be enforced if the grant -

(a) is made by an instrument in an appropriate form provided by the Land Transfer Act;

(*Cap. 131.*)

(b) is duly registered under the provisions of that Act; and

(c) limits and defines the area or parcel of land on, to or over which the uninterrupted access of light or air, or light and air, is intended to be provided for.

(3) Every such grant shall, if duly registered as required by subsection (2), confer upon the owner for the time being of the dominant tenement such rights as may be therein defined in respect of the access of light or air, or light and air; and those rights shall ensure, unless otherwise provided, notwithstanding that any buildings erected upon the dominant tenement may be altered or destroyed and replaced by other buildings.

(4) The erection of buildings of any height not encroaching upon the area limited and defined as aforesaid shall not be deemed to be an infringement of the right or a derogation from the grant.

Court may authorize entry for erecting or repairing buildings, etc.

108 -(1) The owner of any land may at any time apply to the court by originating summons for an order authorizing him, or any person authorized by him in writing in that behalf, to enter upon any adjoining land for the purpose of erecting, repairing, adding to or painting the whole or any part of any building, wall, fence or other structure on the applicant's land, and to do on the land so entered upon such things as may reasonably be considered necessary for any such purpose as aforesaid.

(2) On any such application the court may make such order as it thinks fit, and any such order, or any provision thereof, may be made upon and subject to such terms and conditions as the court thinks fit.

Power of court to grant special relief in cases of encroachment

109. -(1) Where any building on any land, whether erected before or after the commencement of this Act, encroaches on any part of any adjoining land (that part being referred to in this section as the piece of land encroached upon), whether the building was erected by the owner of the first-mentioned land (in this section referred to as the encroaching owner) or by any of his predecessors in title, either the encroaching owner or the owner of the piece of land encroached upon may apply to the court, whether in any action or proceeding then pending or in progress and relating to the piece of land encroached upon or by an originating summons, to make an order in accordance with the provisions of this section in respect of that piece of land.

(2) If it is proved to the satisfaction of the court that the encroachment was not intentional and did not arise from gross negligence, or, where the building was not erected by the encroaching owner, if in the opinion of the court it is just and equitable in the circumstances that relief should be granted to the encroaching owner or any other person, the court, without ordering the encroaching owner or any other person to give up possession of the piece of land encroached upon or to pay damages, and without granting an injunction, may in its discretion make an order -

(a) vesting in the encroaching owner or any other person any estate or interest in the piece of land encroached upon; or

(b) creating in favour of the encroaching owner or any other person any easement over the piece of land encroached upon; or

(c) giving the encroaching owner or any other person the right to retain possession of the piece of land encroached upon.

(3) Where the court makes any order under the provisions of this section, the court may, in the order, declare any estate or interest so vested to be free from any mortgage or other encumbrance affecting the piece of land encroached upon, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease or contract affecting or relating to that piece of land.

(4) Any order under the provisions of this section, may be made upon and subject to such terms and conditions as the court thinks fit, whether as to the payment by the encroaching owner or any other person of any sum or sums of money, or the execution by the encroaching owner or any other person of any mortgage, lease, easement, contract or other instrument, or otherwise.

(5) Every person having any estate or interest in the piece of land encroached upon or in the adjoining land of the encroaching owner, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, contract or easement affecting or relating to any such land, shall be entitled to apply for an order under the provisions of this section, or to be heard in relation to any application for or proposal to make any such order. For the

purposes of this subsection the court may, if in its opinion notice of the application or proposal should be given to any such person, direct that such notice as it thinks fit shall be given to that person by the encroaching owner or any other person.

(6) Every order vesting any estate or interest in any person under the provisions of this section shall for the purposes of the Stamp Duties Act be deemed to be a transfer on sale and shall be liable to stamp duty accordingly.

(Cap 205)

Relief in cases of mistake as to boundaries or identity of land

110 .-(1) Where, before or after the commencement of this Act, any person who has or had an estate or interest in any piece of land (in this section referred to as the original piece of land) has, while he had that estate or interest, erected a building on any other piece of land (that other piece together with any land reasonably required as curtilage and for access to the building being in this section referred to as the piece of land wrongly built upon), if the building has been so erected because of a mistake as to any boundary or as to the identity of the original piece of land, that person, or any other person for the time being in possession of the building or having an estate or interest in either the original piece of land or the piece of land wrongly built upon, or any other person mentioned in subsection (6), may apply to the court, whether in any action or proceeding then pending or in progress and relating to the piece of land wrongly built upon, or by an originating summons, to make an order in accordance with this section.

(2) If in the opinion of the court it is just and equitable in the circumstances that relief should be granted to the applicant or any other person, the court may in its discretion make an order -

(a) vesting the piece of land wrongly built upon in the person or persons specified in the order;

(b) allowing any person or persons specified in the order to remove the building and any chattels and fixtures or any of them from the piece of land wrongly built upon;

(c) where it allows possession of the building to any person or persons having an estate or interest in the piece of land wrongly built upon, requiring all or any of the persons having an estate or interest in that piece of land to pay compensation in respect of the building and other improvements to the piece of land wrongly built upon to such person or persons as the court may specify;

(d) giving the person who erected the building or any person or persons claiming through him the right to possession of the piece of land wrongly built upon for such period and on such terms and conditions as the court may specify.

(3) Where appropriate, the court may make any such order without ordering the applicant or any other person to give up possession of the piece of land wrongly built upon, or to pay damages, and without granting an injunction.

(4) Where the court makes any order under the provisions of this section, the court may, in the order, declare any estate or interest in the piece of land wrongly built upon to be free from any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, easement, contract or other instrument affecting or relating to that piece of land.

(5) Any order under the provisions of this section, may be made upon and subject to such terms and conditions as the court thinks fit, whether as to the payment by any person of any sum or sums of money, or the execution by any person of any mortgage, lease, easement, contract or other instrument, or otherwise.

(6) Every person for the time being in possession of the building or having any estate or interest in the piece of land wrongly built upon or in the original piece of land, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract or other instrument affecting or relating to any such land, and any local or public authority concerned, shall be entitled to apply for an order under the provisions of this section, or to be heard in relation to any application for or proposal to make any such order. For the purposes of this subsection the court may, if in its opinion notice of the application or proposal should be given to any such person or authority as aforesaid, direct that such notice as it thinks fit shall be given to that person by the applicant or any other person.

(7) Every order vesting any estate or interest in any person under the provisions of this section shall for the purposes of the Stamp Duties Act be deemed to be a transfer on sale and shall be liable to stamp duty accordingly.

(Cap 205)

(8) Nothing in this section contained shall restrict the operation of section **109**.

Recovery of payments made under mistake of law

111. -(1) Subject to the provisions of this section, where relief in respect of any payment that has been made under mistake is sought in any court, whether in an action or other proceeding or by way of defence, set off, counterclaim or otherwise, and that relief could be granted if the mistake were wholly one of fact, that relief shall not be denied by reason only that the mistake is one of law whether or not it is, in any degree also one of fact.

(2) Nothing in this section enables relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of payment.

Payments made under mistake of law or fact not always recoverable

112. -(1) Relief, whether under section **111** or in equity or otherwise, in respect of any payment made under mistake, whether of law or fact, shall be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his position in reliance on the validity of the payment that in the opinion of the court, having regard to all possible implications in respect of the parties (other than the plaintiff or claimant) to the payment and of other persons acquiring rights or interests through them, it is inequitable to grant relief, or to grant relief in full.

(2) Where the court makes an order for the repayment of any money paid under a mistake, the court may in that order direct that the repayment shall be by periodic payments or by instalments, and may fix the amount or rate thereof, and may from time to time vary, suspend or discharge the order for cause shown, as the court thinks fit.

PART XI - ASSIGNMENTS OF THINGS IN ACTION

Assignment of debts and choses in action

113.-(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim that debt or chose in action, is effectual in law (subject to equities having priority over the right of the assignee), to pass and transfer from the date of the notice -

(a) the legal right to that debt or chose in action;

(b) all legal and other remedies for the debt or chose in action; and

(c) the power to give a good discharge for the debt or chose in action, without the concurrence of the assignor.

(2) Where the debtor, trustee, or other person liable in respect of the debt or chose in action referred to in subsection (1) has notice -

(a) that the assignment so referred to is disputed by the assignor, or any person claiming under him; or

(b) of any other opposing or conflicting claims, to the debt or chose in action, he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the debt or chose in action, or pay the debt or other chose in action into court, under the provisions of the Trustee Act.

(Cap. 65.)

PART XII - POWERS OF ATTORNEY

Execution by attorney in his own name

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

(2) This section shall apply to powers of attorney created by instruments executed either before or after the commencement of this Act.

Continuance until notice of death or revocation received

115. -(1) Subject to any stipulation to the contrary contained in the instrument creating a power of attorney, the power shall, so far as concerns any act or thing done or suffered thereunder in good faith, operate and continue in force until notice of the death of the donor of the power or until notice of other revocation thereof has been received by the donee of the power.

(2) Every act or thing within the scope of the power done or suffered in good faith by the donee of the power after such death or other revocation as aforesaid, and before notice thereof has been received by him, shall be as effectual in all respects as if that death or other revocation had not happened or been made.

(3) A certificate by any such attorney, to the effect that he has not received any notice or information of the revocation of the power of attorney shall, if made immediately before or if made after any such act as aforesaid, be taken to be conclusive proof of the non-revocation at the time when the act was done or suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of such revocation.

(4) Where the donee of the power is a corporation, the certificate shall be sufficient if made by any director, manager or secretary of the corporation or by any officer thereof discharging the functions usually appertaining to any of those offices or 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 if it is to the effect that to the best of the knowledge and belief of the person making the same neither the attorney nor any servant or agent of the attorney has received any such notice or information as is mentioned in subsection (3), and where the certificate contains a statement that the person making the same is a director, manager or secretary of the corporation or is an officer of the corporation discharging the functions usually appertaining to any of those offices or is an officer of the corporation appointed for the

purpose of making the certificate, that statement shall be conclusive evidence in favour of the persons mentioned in that subsection.

(5) Every certificate made under the provisions of either of subsections (3) or (4) shall be attested by a qualified witness and shall have the same force and effect as a statutory declaration and every person who knowingly and wilfully in any such certificate makes a statement false in any material particular shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or to a fine not exceeding two hundred dollars or to both such fine and imprisonment.

(6) In this section the expression "qualified witness" has the same meaning as in subsection (1) of section 2 of the Land Transfer Act.

(Cap. 131.)

(7) This section shall apply to powers of attorney created by instruments executed in or out of Fiji and whether executed before or after the commencement of this Act.

Irrevocable power of attorney for value

116. -(1) Where a power of attorney given for valuable consideration (whether executed in or out of Fiji) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser -

(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, unsoundness of mind or bankruptcy of the donor; and

(b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, unsoundness of mind or bankruptcy of the donor, had not been done or had not happened; and

(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, unsoundness of mind or bankruptcy of the donor.

(2) This section shall apply only to powers of attorney created by instruments executed either before or after the commencement of this Act.

Power of attorney made irrevocable for fixed time

117. -(1) Where a power of attorney (whether executed in or out of Fiji, and whether given for valuable consideration or not) is in the instrument creating the power expressed

to be irrevocable for a fixed time therein specified, not exceeding two years from the date of the instrument, then, in favour of a purchaser -

(a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, unsoundness of mind or bankruptcy of the donor; and

(b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, unsoundness of mind or bankruptcy of the donor had not been done or had not happened; and

(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, unsoundness of mind or bankruptcy of the donor within that fixed time.

(2) This section shall apply only to powers of attorney created by instruments executed after the commencement of this Act.

Application to corporations

118. -(1) The provisions of this Part shall apply with the necessary modifications with respect to any power of attorney executed by any corporation to the same extent as if the corporation were a person and the dissolution of the corporation (however occurring) were the death of a person within the meaning of this Part.

(2) The provisions of subsection (1) shall not apply to a corporation which is dissolved before the commencement of this Act, but shall apply to powers of attorney created by instruments executed either before or after its commencement.

PART XIII - PARTITION OF LAND AND DIVISION OF CHATTELS

In action for partition court may direct land to be sold

119.-(1) Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly.

(2) The court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the court that, by reason of the nature of the land, or of the number of

the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.

(3) The court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale, and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale.

(4) On directing any such sale or valuation to be made, the court may give also all necessary or proper consequential directions.

(5) Any person may maintain such action as aforesaid against any one or more of the parties interested without serving the other or others, and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause the court may direct such inquiries as to the nature of the land and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further considerations:

Provided that all persons who, if this Act had not been enacted, would have been necessary parties to the action shall be served with notice of the decree or order on the hearing, and, after that notice, shall be bound by the proceedings as if they had originally been parties to the action, and shall be deemed parties to the action, and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rules of court, apply to the court to add to the decree or order.

(6) On any sale under the provisions of this section, the court may allow any of the parties interested in the land to bid at the sale, on such terms as the court deems reasonable 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.

Proceeds of sale, how applied

120. -(1) All money received under any sale under the provisions of section **119** may, if the court thinks fit, be paid to trustees appointed by the court, and applied, as the court from time to time directs -

(a) in the discharge of any encumbrance affecting the land directed to be sold; and, subject thereto,

(b) in the payment of the residue to the parties interested.

(2) Where the court so directs, the trustees, if any, may in their discretion apply the money in manner aforesaid; and where no such direction is given any party interested may apply to the court for an order that the money be so applied.

(3) Until the money can be applied as aforesaid it shall be from time to time invested in such securities as the court may approve, and the interest and dividends thereof shall be paid to the parties interested.

Costs in partition suits

121. In an action for partition, the court may make such order as it thinks just respecting costs up to the time of the hearing.

Division of chattels

122. 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 of any of them, according to a valuation or otherwise, and the court may make such order and give such consequential directions as the court thinks fit.

PART XIV - APPORTIONMENT

Interpretation

123. In this Part, unless the context otherwise requires -

"annuities" includes salaries and pensions;

"dividends" includes (besides dividends strictly so called) all payments made by the name of dividend, bonus or otherwise by a company or corporation divisible between all or any of the members thereof, whether those payments are usually made or declared at any fixed times or otherwise; and all such dividends shall for the purposes of this section be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same is declared or expressed to be made; but "dividends" does not include payments in the nature of a return or reimbursement of capital;

"rent" includes rents and all periodical payments in lieu of or in the nature of rent.

Income apportionable in respect of time

124. All rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

Time when apportioned part payable

125. The apportioned part of any rent, annuity, dividend or other payment referred to in section **124** shall be payable or recoverable in the case of a continuing rent, annuity or other payment as soon as the entire portion of which the apportioned part forms part becomes due and payable, and not before; and where the payment is determined by re-entry, death or otherwise, as soon as the next entire portion of the same would have become payable if the same had not been so determined, and not before.

Recovery of apportioned parts

126. All persons and their respective personal representatives and assigns, and also the personal representatives and assigns respectively of persons whose interests determined with their own death, shall have such or the same remedies, legal and equitable, for recovering such apportioned parts as aforesaid when payable (allowing for a proportionate part of all just allowance) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively:

Provided that where any person is liable to pay rent reserved out of or charged on land that person and the land shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid; but the entire or continuing rent, including the apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under the provisions of this Part or otherwise, would have been entitled to the entire or continuing rent; and the apportioned part shall be recoverable from the last mentioned person by the personal representative, or other parties entitled thereto under the provisions of this Part.

Exceptions and application

127. -(1) Nothing in this Part shall render apportionable any annual sums payable under policies of assurance of any description.

(2) This Part shall not extend to any case in which it is expressly stipulated that apportionment shall not take place.

PART XV - SERVICE OF NOTICES

Service of notices in case of registered land

128. Subject to the provisions of the Land Transfer Act, any notice required or authorised by the provisions of this Act to be served on the proprietor of any estate or interest in land registered under the provisions of that Act may be served on him -

(Cap. 131.)

(a) by delivering the same to him personally;

(b) by posting the same to him by registered letter addressed to him at his address as appearing in the register in which case such notice shall be deemed to have been served at the time when the registered letter would be delivered in the ordinary course of post; or

(c) in the case of a notice to be served on a lessee or mortgagor if there be no such address by leaving the same on the land the subject of such lease or mortgage.

Service of notices in other cases

129.-(1) In cases other than those to which the provisions of section **128** applies any notice required or authorized by this Act to be served on any person may be served on him by delivering the same to him personally or by posting it by registered letter addressed to that person -

(a) in the case of a company incorporated or registered under the provisions of the Companies Act in the manner in which notices are required to be served on companies under the provisions of that Act; or (*Cap. 247.*)

(b) in any other case at his last known place of abode or business in Fiji, and a notice so posted shall be deemed to have been served at the time when the registered letter would be delivered in the ordinary course of post.

(2) If the person is absent from Fiji, the notice may be delivered as aforesaid to his agent in Fiji. If he is deceased, the notice may be delivered as aforesaid to his personal representative.

(3) If the person is not known, or is absent from Fiji and has no known agent in Fiji, or is deceased and has no personal representative, the notice shall be delivered in such manner as may be directed by an order of the court.

(4) Notwithstanding anything in the foregoing provisions of this section, the court may in any case make an order directing the manner in which any notice may be served, or dispensing with the service thereof.

(5) This section shall apply only if and so far as a contrary intention is not expressed in any instrument, and shall have effect subject to the provisions of any instrument.

SCHEDULE

(Section 68)

COVENANTS, CONDITIONS AND POWERS IMPLIED IN MORTGAGES

(1) That the mortgagor will pay to the mortgagee the principal, interest and other moneys secured by the mortgage in accordance with the provisions of the mortgage.

(2) That the mortgagor will forthwith insure and, so long as any money remains owing on the security, will keep insured against loss or damage by fire all buildings and erections for the time being situate on the land described in the mortgage, the insurance to be effected in the name of the mortgagee, and with some insurance office in Fiji to be approved by the mortgagee, and to be for the full insurable value of such buildings and erections; and will deliver the policy or policies of insurance, or cause the same to be delivered, to the mortgagee, who shall be entitled to the exclusive custody thereof; and will duly and punctually pay all premiums and sums of money necessary for the purpose of keeping every such insurance in force; and will, not later than the forenoon of the day on which any premium falls due, deliver or cause to be delivered the receipt therefore to the mortgagee.

(3) That the mortgagor will during the continuance of the mortgage punctually pay all rates, taxes and charges as and when the same become due in respect of the said land.

(4) That the mortgagor will from time to time, so long as any money remains owing on the security, well and substantially repair, and keep in good and substantial repair and condition, all buildings or other improvements erected and made upon the said land; and that the mortgagee shall at all reasonable times be at liberty, by himself, his agents or servants, to enter upon the land to view and inspect the said buildings and improvements.

(5) That if the mortgagor fails to insure or keep insured the said buildings and erections, or to pay the said rates, taxes and charges, or to repair the said buildings and improvements, or to keep them in good and substantial repair and condition as aforesaid, then and in any such case, and as often as the same shall happen, it shall be lawful for but not obligatory on the mortgagee, at the cost and expense in all things of the mortgagor, to insure the said buildings and erections or any of them in the amount of their full insurable value or in any less amount, or to pay any such premium, or to pay the said rates, taxes and charges, or to repair the said buildings and improvements and keep them in good and substantial repair and condition.

(6) That in the event of the said buildings and erections or any of them being destroyed or damaged by fire, all moneys received by the mortgagee under any insurance in respect of any such destruction or damage shall be applied, at his sole option, either in or towards rebuilding or repairing the buildings and erections so destroyed or damaged, or in or towards payment of the principal, interest and other moneys for the time being covered

by the security, notwithstanding that the same or any of them may not have accrued due under the terms of the mortgage:

Provided that, if the mortgagee applies the said moneys in or towards payment of the principal and other moneys as aforesaid, the mortgagor shall have the right to pay off the whole amount remaining due under the mortgage at any time within two months after the application of the said moneys has been made.

(7) That all moneys expended by the mortgagee in and about effecting or keeping in force any insurance as aforesaid, or in paying any of the said rates, taxes and charges, or in repairing or keeping in repair any of the said buildings and improvements as aforesaid, or in lawfully exercising or enforcing any power, right or remedy in the mortgage contained or implied in favour of the mortgagee, shall be payable to him by the mortgagor on demand, and until paid shall be charged on the said land, together with interest at the rate agreed upon in the mortgage, computed from the date or dates of the said moneys being expended.

(8) That the mortgagee will, on payment by the mortgagor of all moneys due under the mortgage at the time and in the manner mentioned in the mortgage for payment of the principal sum, or at any time thereafter on payment of all moneys then due (three clear months' notice of the intention to pay the same having been given) execute a proper (and registrable where necessary) discharge, release or satisfaction of the mortgage to be prepared and stamped (and registered where necessary) by or at the cost of the mortgagor.

COVENANTS, CONDITIONS AND POWERS IMPLIED IN MORTGAGES SUBJECT TO PRIOR MORTGAGES

(9) That the mortgagor will duly and punctually pay all principal, interest and other moneys secured by, and will perform and observe all the covenants and conditions contained or implied in, any mortgage having priority to this present mortgage.

(10) That if the mortgagor makes default in the payment of any moneys secured by or in the performance or observance of any of the covenants and conditions contained or implied in any mortgage having priority to this present mortgage it shall be lawful for but not obligatory upon this present mortgagee to pay those moneys and perform and observe those covenants or conditions, and the provisions of the foregoing clause (7) shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants or conditions of the prior mortgage.

(11) That compliance with the provisions of any mortgage having priority to this present mortgage, which relate to insurance against loss or damage by fire shall be deemed, so far as it extends, to be compliance with any provisions as to the like insurance contained or implied in this present mortgage.

COVENANTS IMPLIED IN MORTGAGES OF LEASES

(12) That the rent reserved by the lease under which the mortgagor holds the land has been paid, and the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, have been performed and observed up to the date of the mortgage.

(13) That the mortgagor will from time to time, so long as any money remains owing on the security, pay the rent reserved by the lease under which the mortgagor holds the land, and perform and observe the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee, and will at all times keep the mortgagee indemnified against all actions, expenses and claims on account of the non-payment of the said rent, or the breach or non-observance of the said covenants or conditions, or any of them.

(14) That if the mortgagor makes default in the payment of the rent reserved by the lease under which the mortgagor holds the land, or in the performance or observance of any of the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee, it shall be lawful for but not obligatory upon the mortgagee to pay that rent and to perform and observe those covenants and conditions, and the provisions of the foregoing clause (7) shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants and conditions of the lease.

INTERPRETATION

(15) The expressions - "mortgagor" and "mortgagee" in the foregoing provisions shall, where such meaning is not inconsistent with the context, extend to and include the personal representative, or in the case of a corporation the successors and the assigns of the mortgagor and mortgagee respectively.

Controlled by Ministry of the Attorney-General
