

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

358

No. , 1929.

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## A BILL

To amend the law of property and improve the practice of conveyancing; to amend the Conveyancing Act, 1919, the Real Property Act, 1900, the Public Works Act, 1912, and certain other Acts; to validate certain matters, and for purposes connected therewith.

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

**1.** (1) This Act may be cited as the "Conveyancing (Amendment) Act, 1929," and shall commence on a day to be fixed by the Governor and notified by proclamation published in the Gazette.

Short title  
and com-  
mencement.

359

*Conveyancing (Amendment).*

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

(3) The Principal Act as amended by this Act may be cited as the Conveyancing Act, 1919-1929.

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

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 The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.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

3. The Principal Act is amended—

Amendment of Act No. 6, 1919

(a) by inserting in section seven in appropriate positions having regard to alphabetical sequence the following definitions :— Sec. 7. (Interpretation.)

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

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

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

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

“ Personal

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

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

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

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

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

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

(2) (a) Any deed, will, agreement for a <sup>What</sup> settlement, or other agreement, Act, or other <sup>constitutes a</sup> instrument, or any number of instruments, <sup>settlement.</sup> 15 Geo. V, whether made or passed before or after, or <sup>c. 18, s. 1.</sup> partly before and partly after the commencement of the Conveyancing (Amendment) Act, 1929, under or by virtue of which instrument or instruments any land on or after such commencement stands for the time being—

- (i) limited in trust for any persons by way of succession ; or
- (ii) limited in trust for any person in possession subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event ; or
- (iii) vested in, or limited in trust for an infant in possession ; or
- (iv) limited in trust for any person contingently on the happening of any event ; or

(v)

- (v) limited to or in trust for a married woman of full age in possession for an estate in fee simple or a term of years absolute or any other interest with a restraint on anticipation; or
- (vi) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rent charge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any term of years for securing or raising the same, creates, or is for the purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires:

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

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

(c) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

4. The Principal Act is further amended.—

Further amendment of Act No. 6, 1919. Substituted sec. 8.

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

8. (1) Where the estate of a deceased person is insolvent his real and personal estate shall, subject to the provisions of the Commonwealth Bankruptcy Act, 1924-1928, be administered in accordance with the rules set out in Part I of Schedule VIII to this Act. Administration of assets. 15 Geo. V, c. 23, s. 34.

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

(3) In this section —

“deceased person” means a person dying after the commencement of the Conveyancing (Amendment) Act, 1929.

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

SCHEDULE VIII.

Sec. 8.

PART I.

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

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

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

PART

263

Conveyancing (Amendment).

PART II.

Order of Application of Assets where the Estate is Solvent.

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

5. The Principal Act is further amended as follows:— Further amendment of Act No. 6, 1919. Sec. 23.

(a) by inserting next after subsection two of section twenty-three the following new subsection:— Limitation of claim by official assignee. Act No. 37 of 1924, s. 98 (3).

(2A) After the expiration of twenty years after the date of the sequestration of the estate of a bankrupt under the provisions of the Bankruptcy Act, 1898, or any Act relating to insolvency, no claim shall be made by the official assignee of the estate against a purchaser claiming through or under the bankrupt to any land which by virtue of any such Act is part of the property of the bankrupt, and that land shall, subject to the rights (if any) of any person in possession thereof, be deemed to be vested in the purchaser or the person claiming through or under him.

(b) by inserting next after section twenty-three the following new section:— New sec. 23A.

23A. (1) The rule of law prohibiting the limitation after a life interest to an unborn person of an interest in land to the unborn child Abolition of the double possibility rule.

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

or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

(2) This section only applies to limitations or trusts created by an instrument coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929.

(c) by omitting the short heading "DIVISION 3—*Property generally*" immediately following the said section and by inserting in lieu thereof the following new Division :—

DIVISION 3.—*Assurances of land.*

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

Assurances of land to be by deed.

(2) This section does not apply to—

New sec. 23B. 15 Geo. V, c. 20, s. 52.

- (a) an acknowledgment under section eighty-three of the Wills, Probate and Administration Act, 1898 ;
- (b) a disclaimer made in accordance with section one hundred and four of the Commonwealth Bankruptcy Act, 1924-1928, or section sixty-two of the Bankruptcy Act, 1898, or not required to be evidenced in writing ;
- (c) a surrender by operation of law, and a surrender which may, by law, be effected without writing ;
- (d) a lease or tenancy or other assurance not required by law to be made in writing ;
- (e) a vesting order ;
- (f) any other assurance taking effect under any Act.

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

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

Instruments required to be in writing.  
New sec. 23c.

(a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;

15 Geo. V,  
c. 20, s. 53.

(b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;

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

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

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

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

(2) Nothing in sections 23B or 23C shall affect the creation by parol of a lease taking effect in possession for a term not exceeding three years (whether or not the lessee is given a right to extend the term): Provided that the term and extension together do not exceed three years.

23E.



- 23E. Nothing in sections 23c or 23d shall—
- (a) invalidate any disposition by will; or
  - (b) affect any interest validly created before the commencement of the Conveyancing (Amendment) Act, 1929; or
  - (c) affect the right to acquire an interest in land by virtue of taking possession; or
  - (d) affect the operation of the law relating to part performance.

Savings in regard to secs. 23c and 23d.  
New sec. 23m.  
15 Geo. V,  
c. 20, s. 55.

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

New short heading.

DIVISION 4.—*Property generally.*

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

Sec. 42.

**6.** The Principal Act is further amended by inserting next after section twenty-nine the following new section :—

Further amendment of Act No. 6, 1919.  
New sec. 29A.

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

Protection of purchasers claiming under certain void appointments.  
15 Geo. V,  
c. 20, s. 157.

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

367

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

(3) A person deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

(4) This section applies only to dealings effected after the commencement of the Conveyancing (Amendment) Act, 1929.

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

Further amendment of Act No. 6, 1919. New secs. 31A and 31B.

31A. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of the Conveyancing (Amendment) Act, 1929) to be taken into account in determining the periods for which accumulations are permitted to be made by section thirty-one, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

Qualification of restrictions of accumulation.

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

31B. (1) Save as provided in this section, every assurance of property, made whether before or after the commencement of the Conveyancing (Amendment) Act, 1929, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.

Voluntary conveyances to defraud creditors voidable.

Ibid. s. 172.

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

(3) This section does not extend to any estate or interest in property assured for valuable consideration

consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the assurance, notice of the intent to defraud creditors.

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

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

36A. Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

Power to direct division of chattels. 15 Geo. V, c. 20, s. 188.

36B. (1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property to trustees upon trust for a person whose interest is contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator, except so far as such income, or any part thereof, may be otherwise expressly disposed of.

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

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

(3) This section applies only to wills and instruments coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929.

368

36c. (1) A will expressed to be made in contemplation of a marriage shall, notwithstanding anything in section fifteen of the Wills, Probate and Administration Act, 1898, or any other statutory provision or rule of law to the contrary, not be revoked by the solemnisation of the marriage contemplated.

Wills in contemplation of marriage.  
Act No. 13, 1898, secs. 5, 15.  
15 Geo. V, c. 20, s. 177.

(2) This section only applies to wills made after the commencement of the Conveyancing (Amendment) Act, 1929.

36d. Property passing under a gift contained in the will of a testator dying after the commencement of the Conveyancing (Amendment) Act, 1929, which operates as an appointment under a general power to appoint by will shall vest in his personal representatives as if he had been entitled thereto at his death.

Appointments under general power.  
cf. 15 Geo. V, c. 23, s. 3 (2).

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

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

DIVISION 4.—*Corporation instruments.*

51A. (1) In favour of a purchaser in good faith a deed shall be deemed to have been duly executed by a corporation aggregate if its seal is affixed thereto in the presence of and attested by its clerk, secretary, or other permanent officer or his deputy, and a member of the board of directors, council, or other governing body of the corporation, and where a seal purporting to be the seal of a corporation has been affixed to a deed attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

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

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

(3)

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

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

(5) The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of the Conveyancing (Amendment) Act, 1929, except that, in the case of a power or an appointment of an agent or officer, they apply whether the power was conferred or the appointment was made before or after such commencement or by this Act.

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

**10.** The Principal Act is further amended as follows:—

- (a) (i) In paragraph (e) of subsection two of section fifty-three by inserting therein immediately before the word "furnish" the words "as soon after completion as reasonably possible"; and
- (ii) by inserting at the end of the same paragraph the words "this paragraph shall have effect notwithstanding any stipulation to the contrary."

Further amendment of Act No. 6, 1919.  
Sec. 53 [(2) (e)] amended.

(b) By inserting at the end of the same section the following new subsection:—

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

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

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

Further amendment of Act No. 6, 1919.  
New secs. 54A, 54B.

54A. (1) No action or suit may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action or suit is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

Contracts for sale, &c., of land to be in writing.  
15 Geo. V, c. 20, s. 40.

(2) This section applies to contracts whether made before or after the commencement of the Conveyancing (Amendment) Act, 1929, and does not affect the law relating to part performance, or sales by the court.

54B. (1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction

Application of insurance money on completion of a sale or exchange.  
*Ibid.* s. 47.

372

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

(2) This section applies only to contracts made after the commencement of the Conveyancing (Amendment) Act, 1929, and has effect subject to—

- (a) any stipulation to the contrary contained in the contract;
- (b) any requisite consents of the insurers;
- (c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

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

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

**12.** The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Sec. 55, new sub-s. (2A).

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

(2A) In every case where the court refuses to grant specific performance of a contract, or in any suit or proceeding for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit. 15 Geo. V, c. 20, s. 49 (2).

- (b) by omitting from subsection one of section sixty-five the word "property," and by inserting in lieu thereof the word "land." Sec. 65 (1).

**13.**

**13.** The Principal Act is further amended by inserting next after section sixty-six the following new Division :—

Further amendment of Act No. 6, 1919 New secs. 66A, 66B, 66C, 66D, 66E, 66F.

**DIVISION 5.—Dispositions on trust for sale.**

66A. (1) So far as regards the safety and protection of any purchaser thereunder an express or implied trust for sale of property shall, subject to any express direction to the contrary in the instrument (if any) creating the trust for sale, be deemed to subsist, notwithstanding any lapse of time, until the property has been assured to or under the direction of the persons interested in the proceeds of sale.

Duration of trusts for sale. cf. 15 Geo. V, c. 20, s. 23.

(2) This section applies to sales whether made before or on or after the first day of July, one thousand nine hundred and twenty, but operates without prejudice to an order of any court restraining a sale.

(3) A sale made before the commencement of this section shall be as valid and effectual as if this section had commenced before the sale was made.

(4) Nothing in this section shall affect the rights of any party to any proceeding at law or in equity concluded before or pending at the commencement of this section.

66B. (1) The rule of law relating to perpetuities shall not apply to render void by reason of its commencement or duration a trust for sale or a power of sale of any property, whether the trust or power is express or implied, in any case where the trust or power is ancillary to valid trusts relating to that property or the proceeds of sale thereof.

Restrictions on the perpetuity rule as to trusts and powers of sale of property.

(2) Where a trust for sale or a power of sale is ancillary to trusts some one or more of which is or are invalid, the trust or power may be exercised only during the continuance of such of the trusts as is or are valid.

(3) This section applies to instruments coming into operation before or on or after the first day of July one thousand nine hundred and twenty.

(4)



(4) Anything done before the commencement of this section in exercise of any trust or power to which this section applies shall be as valid and effectual as if this section had been passed before the trust or power was exercised.

(5) Nothing in this section shall affect the rights of any party to any proceeding at law or in equity concluded before or pending at the commencement of this section.

66c. (1) A power to postpone sale shall, in the case of every trust for sale of property, be implied unless a contrary intention appears.

Power to postpone sale.  
15 Geo. V, c. 20, s. 25.

(2) Where there is a power to postpone sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser under the trust be concerned in any case with any directions respecting the postponement of sale.

(3) The foregoing provisions of this section apply whether the trust for sale is created or arises before or after the commencement of the Conveyancing (Amendment) Act, 1929.

(4) Where a disposition or settlement coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929, contains a trust either to retain or sell any property the same shall be construed as a trust to sell the property with power to postpone the sale.

66d. (1) If the consent or request of more than two persons is by the disposition made requisite to the execution of a trust for sale or the exercise of a power of sale of any property, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or the exercise of the power or to the exercise of any statutory or other powers vested in the trustees shall be deemed sufficient.

Consents to the execution of a trust for sale.  
*Ibid.* s. 26.  
16 & 17 Geo. V, c. 11. Schedule.

(2) Where the person whose consent to or request for the execution of any such trust or exercise of any such power is expressed to be required in a disposition is not sui juris or is subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the consent of the parent or testamentary or other guardian of an infant or of the committee of the estate of an insane person or the manager of the estate of an incapable person, or if there is no such guardian, committee, or manager, the consent of the court or of the Master in Lunacy in the case of an insane patient.

(3) Trustees for sale or having power of sale shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that the provisions of this subsection have been complied with.

This subsection does not apply to a non-statutory trust for sale or power of sale unless the contrary intention appears in the disposition creating the trust or power.

(4) This section applies whether the trust for sale or power of sale is created or arises before or after the commencement of the Conveyancing (Amendment) Act, 1929.

66E. (1) A purchaser of property from trustees for sale or having power of sale shall not be concerned with the trusts affecting the proceeds of sale of the property (whether made to attach to such proceeds by virtue of this Act or otherwise), or affecting the income of the property until sale, whether

Purchaser not to be concerned with the trusts of the proceeds of sale which are to be paid to two or more trustees or to the Public Trustee or a trustee company.  
*Ibid.* s. 27.

whether or not those trusts are declared by the same instrument by which the trust for sale or power of sale is created.

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

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

66F. (1) Where a settlement of land held upon trust for sale or of personal property contains a power to invest money in the purchase of land such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale, and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested otherwise than in the purchase of land.

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

(2) This section applies only to settlements (including wills) coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929.

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

Further amend-  
ment of Act  
No. 6, 1919.

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

Sec. 81 (1)  
and (3).

(ii)

- (ii) by inserting at the end of subsection three of the same section the following words "and to memoranda of mortgage made after the commencement of the Conveyancing (Amendment) Act, 1929.
- (b) by inserting at the end of section eighty-two Sec. 82. the following new subsection :—
- (2) This section applies to a memorandum of mortgage under the Real Property Act, 1900.
- (c) (i) by inserting in subsection one of section Sec. 86 (1) and (3). eighty-six after the word "Act" where first occurring the words "or in any memorandum of lease under the Real Property Act, 1900";
- (ii) by inserting at the end of subsection three of the same section the following words: "and to memoranda of lease made after the commencement of the Conveyancing (Amendment) Act, 1929";
- (iii) by inserting next after subsection three of the same section the following new subsection :—
- (4) Section eighty-one of the Real Property Act, 1900, is hereby repealed. Repeal of sec. 81 of Act No. 25, 1900. Sec. 37.
- (d) by inserting at the end of section eighty-seven Sec. 37. the following new subsection :—
- (2) This section applies to a memorandum of lease under the Real Property Act, 1900.

**15.** The Principal Act is further amended—

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

DIVISION 4.—*Easements and restrictive covenants.*

(b)

Further amendment of Act No. 6 1919

378

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

Substituted ss. 88 & 89.

88. (1) An easement created by an instrument coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929, and a restriction arising under covenant or otherwise as to the user of any land or the building thereon the benefit of which is intended to be annexed to other land, contained in an instrument coming into operation after such commencement, shall not be enforceable against a person interested in the land claimed to be subject to the easement or restriction, and not being a party to its creation unless the instrument clearly defines—

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

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

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

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

- (b) A notification in the register book of any such restriction shall not give the restriction any greater operation than it has under the instrument creating it.
- (c) Every such restriction notified on the appropriate folium of the register book shall be an interest within the meaning of section forty-two of that Act.

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

Substituted  
sec. 89.  
Power for  
court to  
modify or  
extinguish  
easements  
and  
restrictive  
covenants.

- (a) that by reason of change in the user of any land having the benefit of the easement or restriction, or in the character of the neighbourhood or other circumstances of the case which the court may deem material, the easement or restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land subject to the easement or restriction without securing practical benefit to the persons entitled to the easement or to the benefit of the restriction, or would, unless modified, so impede such user; or
- (b) that the persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the

the easement wholly or in part or waived the benefit of the restriction wholly or **in part; or**

(c) that the proposed modification or extinguishment will not substantially injure the persons entitled to the easement, or to the benefit of the restriction.

(2) Where any proceedings by suit or otherwise are instituted to enforce an easement or restriction, or to enforce any rights arising out of a breach of any restriction, any person against whom the proceedings are instituted may in such proceedings apply to the court for an order under this section.

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

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

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

(6) This section applies to easements and restrictions existing at the commencement of the Conveyancing (Amendment) Act, 1929, or coming into existence after such commencement.

(7)

381

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

(8) This section applies to land under the provisions of the Real Property Act, 1900, and in such case the Registrar-General may, of his own motion and on the prescribed application shall make all necessary amendments and entries in the register-book for giving effect to such order in respect of all grants, certificates of title, and other instruments affected thereby and the duplicates thereof, if or when available.

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

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

**16.** The Principal Act is further amended—

Further amendment of Act No. 8, 1919

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

(b)



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

Substituted sec. 102.

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

On judgment for mortgage debt the interest of the mortgagor not seizable.

See New York Civil Code, s. 1432. Sec. 111.

(c) by inserting next after subsection two of section one hundred and eleven the following new subsection:—

(3) Any notice required by this Act or the Real Property Act, 1900, to be served on a mortgagor may by agreement between the parties to the mortgage expressed in that mortgage be dispensed with.

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

Further amendment of Act No. 8, 1919. New sec. 120A.

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

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

(2) As from the commencement of the Conveyancing (Amendment) Act, 1929, all terms of years absolute shall, whether the interest is created before or after such commencement be capable of taking effect at law or in equity, according to the estate, interest, or powers of the grantor, from the date fixed for the commencement of the term, without actual entry.

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

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of the Conveyancing (Amendment) Act, 1929, to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void; but this subsection does not apply to any term taking effect in equity under a settlement, or created out of an equitable interest under a settlement, or under an equitable power for mortgage, indemnity, or other like purposes.

(4)

(4) Nothing in subsections one and two of this section shall prejudicially affect the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of the Conveyancing (Amendment) Act, 1929, shall operate to vary any statutory or other obligations imposed in respect of such terms or interests.

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

**18.** The Principal Act is further amended—

Further amendment of Act No. 8, 1910.

- (a) by inserting in subsection seven of section one hundred and twenty-nine after the words "with the consent of the lessor" the words "or without such consent where it is not required by the lease"; Sec. 129 (7).
- (b) by omitting section one hundred and thirty-one and by inserting the following section in lieu thereof:— Substituted sec. 131.

**131.** A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act; Costs and expenses. 15 Geo. V, c. 20, s. 146 (3).

The lessor shall be so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under subsection two of section one hundred and twenty-nine of this Act. Vict. Act, No. 2633, s. 23.

**19.**

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

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

*Debts charged on property of deceased.*

145. (1) Where a person dies after the commencement of the Conveyancing (Amendment) Act, 1929, possessed of or entitled to, or, under a general power of appointment by his will disposes of property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge, or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed, or other document signified a contrary or other intention, the property so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the property, according to its value, shall bear a proportionate part of the charge on the whole thereof.

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

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

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

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

**20.** The Principal Act is further amended by inserting at the end of subsection two of section one hundred and forty-seven the words “or to any instrument executed

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

executed for the purposes of that Act by a married woman, with the written consent of her husband, in favour of a purchaser in good faith."

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

Further amendment of Act No. 6, 1919. New Part XIVa.

PART XIVa.

INFANTS AND INFANTS' PROPERTY.

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

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

(2) This section applies only to appointments made after the commencement of the Conveyancing (Amendment) Act, 1929.

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

Receipts by married infants. *Ibid.* s. 21.

(2) This section applies only to receipts given after the commencement of the Conveyancing (Amendment) Act, 1929.

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

Management of land during minority or pending contingency. 15 Geo. V, c. 18, s. 102.

(2)

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

- (a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise; and
- (b) to erect, pull down, rebuild, and repair houses, and other buildings, dams, fences, and other erections; and
- (c) to continue the working of mines, minerals, and quarries which have usually been worked; and
- (d) to drain or otherwise improve the land or any part thereof; and
- (e) to insure against loss by fire; and
- (f) to grant leases for any term not exceeding five years; and Act No. 14, 1925, s. 36 (1).
- (g) to make allowances to and arrangements with tenants and others; and
- (h) to determine tenancies, and to accept surrenders of leases and tenancies; and
- (i) generally to deal with the land in a proper and due course of management;

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

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

person, and shall keep down any annual sum and the interest of any principal sum charged on the land.

(4) This section has effect subject to an express appointment by the settlement, or the court, of trustees for the purposes of this section.

(5) Where any person is contingently entitled to land, this section shall, subject to any prior interests or charges affecting that land, apply until his interest vests, or if his interest vests during his minority, until he attains the age of twenty-one years. This subsection applies only where a person becomes contingently entitled under an instrument coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929.

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

151D. (1) (a) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of the Conveyancing (Amendment) Act, 1929 (in this subsection called the "deceased"), to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue, or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint the Public Trustee or a trustee company, or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue, or share for the infant, and to be trustees of any land devised or any land being or forming part of such residue or share for

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

for the purposes of the statutory provisions relating to the management of land during a minority, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue, or share in the trustee or trustees so appointed.

(b) On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(2) Where a personal representative has, before the commencement of the Conveyancing (Amendment) Act, 1929, retained or sold any such devise, legacy, residue, or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into court.

**22.** The Principal Act is further amended—

Further amend-  
ment of Act  
No. 6, 1919.

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

Sec. 153 (2).

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

New subsecs.  
(2A), (2B),  
(2C).

(2A) No conditions imposed on the exercise by an executor of any such power of sale, mortgage, or lease shall operate after the commencement of the Conveyancing (Amendment) Act, 1929.

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

(2C)

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

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

(c) by inserting next after section one hundred and fifty-four the following new section:— New sec. 154A.

154A. (1) (a) Land vested in a personal representative shall not be divested from him and vested in another person who (whether by devise, bequest, devolution, or otherwise) may be entitled thereto either beneficially, or as a trustee or personal representative otherwise than by a conveyance or by an acknowledgment operating under section eighty-three of the Wills, Probate and Administration Act, 1898. Mode of divesting land from personal representative.

(b) This subsection extends to land vested in a personal representative at the commencement of the Conveyancing (Amendment) Act, 1929, or thereafter becoming so vested.

(2) (a) Real estate mentioned in section eighty-three of the Wills, Probate and Administration Act, 1898, shall not as against a purchaser in good faith from a personal representative be held to have been divested from the personal representative and vested in another person entitled thereto (whether by devise, bequest, devolution, or otherwise) except by a conveyance or by an acknowledgment operating under that section.

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

(d)



(d) by inserting next after section one hundred and fifty-seven the following new sub-heading and section :—

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

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

New sec. 157A.  
Trustee or personal representative deemed entitled to sell and convey land resumed under statutory authority.

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

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

(4) A sole trustee other than the Public Trustee or a trustee company, shall not be entitled under this section to agree upon or to receive the compensation money payable in respect of a resumption, but upon the appointment of an additional trustee approved by the Crown Solicitor such trustees shall be entitled under this section to agree upon and receive such money, but this subsection does not affect the right

C—

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

(5) Upon an order of the court made on the application of the person who would have been entitled to the income of the land resumed, compensation money paid under this section in respect of a resumption may be applied to one or more of the following purposes :—

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

(6) This section applies to resumptions made before or after the commencement of the Conveyancing (Amendment) Act, 1929.

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

**23.** The Principal Act is further amended by inserting next after section one hundred and sixty-two the following new section :—

Further  
amendment of  
Act No. 6, 1919.  
New s. 162A.

162A. Any act done, whether before or after the commencement of the Conveyancing (Amendment) Act, 1929, in professed exercise of a power mentioned in either section one hundred and sixty-one or section one hundred and sixty-two, and within the

Protection  
of purchaser  
under  
irrevocable  
power.

392

the time, if any, fixed by the power, shall, in favour of a purchaser without notice of the revocation of the power with the concurrence of the donee thereof, be as valid as if the power had not been so revoked.

**24.** The Principal Act is further amended by omitting section one hundred and sixty-five and inserting in lieu thereof the following new section :—

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

165. (1) When an instrument is marked by the Commissioner or Assistant Commissioner of Stamp Duties as duly stamped, as fully stamped, or as sufficiently stamped, a purchaser or the Registrar-General or the Crown Solicitor shall not by reason only of the stamp borne by the instrument, or of its being so marked as aforesaid, be deemed to have notice of any trust or of any written contract of sale or other document affecting the title of the property to which the instrument refers; but notwithstanding anything in this section the Registrar-General may, if he thinks fit, require production of any such document.

Stamping of documents not to give notice of trust or written contract.

Act No. 32, 1924, s. 15 (vi).

(2) Section one hundred and forty-two of the Stamp Duties Act, 1920-1924, is hereby repealed.

Repeal.

**25.** The Principal Act is further amended—

Further amendment of Act No. 6, 1919.

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

Sec. 168 (1) (b).

(b) by inserting next after subsection two of section one hundred and seventy the following new subsection :—

Sec. 170, new sub-s. (2A). 15 Geo. V, c. 20, s. 196 (5).

(2A) The provisions of this section extends to notices required to be served by any instrument affecting property executed, made, or coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929, unless a contrary intention appears.

393

**26.** The Principal Act is further amended by omitting section one hundred and eighty-one and by inserting in lieu thereof the following new section :—

Further amendm  
Act No. 6, 1919  
Subs - ed  
sec. 181.

181. In all deeds, contracts, wills, orders, and other instruments (whether relating to property or not) executed, made, or coming into operation after the commencement of the Conveyancing (Amendment) Act, 1929, unless the contrary intention appears—

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

- (a) words importing the masculine gender include females ;
- (b) words in the singular include the plural and words in the plural include the singular ;
- (c) the words "person" and "party" include bodies politic or corporate as well as individuals ;
- (d) the word "month" means calendar month.

**27.** The Principal Act is further amended by inserting in paragraph (c) of section one hundred and eighty-seven after the word "Parliament" the words "of the State or Commonwealth."

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

**28.** The Principal Act is further amended by inserting next after section one hundred and ninety-five the following new section :—

Further amendment of Act No. 6, 1919.

195A. (1) The Registrar-General shall also enter in such manner as may be prescribed, in the Register of Causes, Writs and Orders affecting land, all notices not provided for by subsection two of section one hundred and ninety-five received by him pursuant to the Commonwealth Bankruptcy Act, 1924-1928.

New sec. 195A.

(2) Subsection three of section one hundred and ninety-five shall apply not only to petitions and orders under the Commonwealth Bankruptcy Act, 1924-1928, but also to deeds of assignment and deeds of arrangement executed pursuant to that Act.

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

(4)

394

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

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

Further amendment of Act No. 6, 1919.

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

Substituted sec. 196.

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

Registration of plans.

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

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

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

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

(b)

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

- (a) the opening of a public road; or
- (b) a drainage reserve; or

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

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

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

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

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

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

(10)

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

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

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

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

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

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

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

397

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

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

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

New Division 4.  
New sec. 196A.

DIVISION 4.—*Register of resumptions.*

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

Register of resumptions.

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

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

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

(5) Where land is resumed under the Commonwealth Land Acquisition Act, 1906, the Registrar-General may, subject to the payment of the prescribed fees, deal with the

copy



copy of the notification lodged with him under that Act as if it were a notice of resumption under this section.

(6) This section applies only to resumptions (including resumptions under any Act of the Commonwealth) made after the commencement of the Conveyancing (Amendment) Act, 1929.

196B. The following Acts are to the extent hereinafter mentioned hereby repealed:—

- (a) Closer Settlement Act, 1904, section forty-four; Act No. 37, 1904 sec. 41.
  - (b) Public Works Act, 1912, section forty-six, subsection (1); Act No. 45, 1912, sec. 46, sub-s.(1).
  - (c) Crown Lands Consolidation Act, 1913, section one hundred and ninety-seven, all words therein after the words "abstract of title"; Act No. 7, 1913, sec. 197, last para.
  - (d) Local Government Act, 1919, section five hundred and thirty-six, subsection seven; Act No. 41, 1919 sec. 536, sub-s.(7).
  - (e) Metropolitan Water, Sewerage and Drainage Act, 1924, section one hundred and fifteen, subsection seven; Act No. 50, 1924 sec. 115, sub-s.(7).
  - (f) Surveyors Act, 1929, section two, paragraph (b). Act No. 3, 1929, sec. 2 (b).
- (c) (i) by omitting the figure "4" in the Division and heading immediately before section one hundred and ninety-seven and by inserting in lieu thereof the figure "5"; Sec. 197. (Heading.)
- (ii) by omitting the figure "5" in the Division and heading immediately before section one hundred and ninety-eight and by inserting in lieu thereof the figure "6." Sec. 198. (Heading.)

**30.** The Principal Act is further amended in section two— Further amendment of Act No. 6, 1919.

- (a) (i) by omitting "23" under Part II, Division 2, and inserting in lieu thereof "23A"; Sec. 2 (Division of Act).
- (ii) by omitting "Property generally, ss. 24-37" after Division 3 of such Part and inserting in lieu thereof "Assurances of land—ss. 23B-23E"; (iii)

- (iii) by inserting after Division 3 of such Part “ Division 4 — *Property generally* — ss. 24-37.”
- (b) by inserting under Part III at the end thereof “ Division 4—*Corporation instruments*—s. 51A ”;
- (c) by inserting under Part IV at the end thereof “ Division 5—*Dispositions on trust for sale*—ss. 66A-66F ”;
- (d) (i) by omitting “ 89 ” under Part VI, Division 3, and inserting in lieu thereof “ 87 ”;
- (ii) by inserting under such Part at the end thereof “ Division 4—*Easements and restrictive covenants*—ss. 88-89 ”;
- (e) by omitting “ *land* ” under Part XII and by inserting in lieu thereof “ *Property of deceased* ”;
- (f) by inserting next after Part XIV the following: “ Part XIVA—*Infants and infants’ property*—ss. 151A-151D ”;
- (g) by omitting “ 157 ” under Part XV and by inserting in lieu thereof “ 157A ”;
- (h) (i) by omitting “ s. 195 ” under Part XXIII, Division 2, and by inserting in lieu thereof “ ss. 195-195A ”;
- (ii) by omitting “ *Official searches, s. 197* ” under Division 4 of such Part and by inserting in lieu thereof “ *Register of resumptions*—s. 196A ”;
- (iii) by omitting “ *General*—ss. 198-204 ” under Division 5 of such Part and by inserting in lieu thereof “ *Official searches*—s. 197 ”;
- (iv) by inserting at the end of such Part “ Division 6—*General*—ss. 198-204.”

**31.** The Real Property Act, 1900, is amended as follows:—

Amendment  
of Act No. 25,  
1900.

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

Sec. 26.

(b)

- (b) by inserting at the end of section thirty-two Sec. 32. the following new subsection :—

(3) The Registrar-General shall have and be deemed always to have had power by an entry in the Register Book to cancel any entry in the Register Book relating to anything which he is satisfied has ceased to affect the land to which that entry relates.

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

(d) any estate or interest in possession under a lease, agreement for a lease, or under-lease for a term not exceeding three years, of which the registered proprietor had notice before he became registered as proprietor, and any agreement or option of which the registered proprietor had notice before he became registered as proprietor, for the acquisition by a person entitled to such estate or interest of a further term to commence at the termination of such estate or interest and which added to the term of the lease, agreement for lease, or under-lease would not exceed three years.

- (d) by inserting at the end of section forty-three Sec. 43. the following new subsection :—

(2) Every such person as is mentioned in subsection one of this section shall, before he becomes registered as proprietor under this Act, have the same rights in relation to unregistered estates, interests, and rights of which he has no notice as if the estate or interest in respect of which he contracts or deals were not under the provisions of this Act; and, for the purposes of this subsection only, an instrument registrable under this Act

Act which has been delivered to any such person, shall have the same effect as if it had passed a legal estate, provided that:—

- (a) where two or more instruments purport to transfer, mortgage, lease, or encumber the same estate or interest, the instrument first so delivered only shall be deemed to have passed a legal estate; and
  - (b) nothing in this subsection shall affect any equity which may arise out of any omission to lodge a caveat under this Act.
- (e) by inserting next after section fifty-two the New sec. 52A following new section:—

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

- (f) by inserting next after section fifty-six the New sec. 56A. following new section:—

56A. (1) A registered mortgage under this Act (whether made before or after the commencement of the Conveyancing (Amendment) Act, 1929) may be postponed in its entirety to any other registered mortgage affecting the whole of the same land and no other land, by a memorandum in or to the effect of a form which may be prescribed under the Conveyancing Act, 1919–1929, and registered under this Act. Postponement of mortgages.

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

(3)

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

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

(g) by inserting in section seventy-three next after *Sec. 73.* the word "thereof" the words "and the order be served on or written notice thereof be given to the Registrar-General."

(h) by inserting at the end of section seventy-four *Sec. 74* the following proviso :—

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

(i) by omitting from the Fourth Schedule the words "delineated in the public map of the said (county or parish) deposited in the Department of Lands."

403

*Conveyancing (Amendment).*

SCHEDULE.

Reference to Act.	Subject or short title.	Extent of repeal.
IMPERIAL ACTS.		
27 Hen. 8, c. 10...	The Statute of Uses ...	The whole Act so far as the same applies to New South Wales.
13 Eliz., c. 5 ...	An Act against fraudulent deedes, giftes, alienations, &c.	The whole Act so far as the same applies to New South Wales.
27 Eliz., c. 4 ...	An Act against covenous and fraudulent conveyances.	The whole Act so far as the same applies to New South Wales.
29 Car. 2, c. 3 ...	The Statute of Frauds ...	Sections one, two, and three. In section four the words "or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them." Sections seven, eight, nine, and twenty-four: so far as any of the above sections apply to New South Wales.

## Conveyancing (Perpetuities) Bill, 1929.

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### EXPLANATORY NOTE.

**THIS** Bill is designed to facilitate the execution of trusts for sale where their duration is not expressly limited, and to remove difficulties appearing in the case of *re Alott*, 1924, 2 Ch. 498, followed in the Supreme Court in the case of *Davis v. Samuel*, 1928, S.R. 1, where the application of the rule against perpetuities apparently operated to defeat the intention of the settlor, though that intention did not seem to offend against the spirit or object of the rule.

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